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1762--A

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IN SENATE

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Introduced by Sens. SANDERS, BAILEY, BENJAMIN, BIAGGI, BRISPORT, COMRIE, HOYLMAN, JACKSON, KRUEGER, MAY, MAYER, MYRIE, PARKER, RAMOS, RIVERA, SALAZAR, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, the state finance law and the general municipal law, in relation to establishing the "New York public banking act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York public banking act".

3 § 2. It is the intent of the legislature that this act (i) authorizes
4 municipal and other local governments to form and control public banks
5 through the ownership of capital stock or other ownership interests, and
6 to loan or grant public funds or lend public credit to such public banks
7 for the public purposes of achieving cost savings, strengthening local
8 economies, supporting community economic development, and addressing
9 infrastructure and housing needs for localities; and (ii) codifies the
10 common law interpretation of the New York state constitution that
11 cities, counties, and other municipalities may own stock or other owner-
12 ship interests in, and lend or grant money to, public and private corpo-
13 rations, limited liability companies or not-for-profit corporations, so
14 long as such actions are pursuant to public purposes.

15 § 3. Subdivisions 1 and 11 of section 2 of the banking law, subdivi-
16 sion 1 as amended by chapter 684 of the laws of 1938 and subdivision 11
17 as amended by chapter 154 of the laws of 2007, are amended to read as
18 follows:

19 1. Bank. The term, "bank," when used in this chapter, unless a differ-
20 ent meaning appears from the context, means any corporation, other than

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 a trust company, organized under or subject to the provisions of article
2 three or three-C of this chapter.

3 11. Banking organizations. The term, "banking organizations," when
4 used in this chapter, means and includes all banks, trust companies,
5 private bankers, savings banks, safe deposit companies, savings and loan
6 associations, credit unions, public banks organized under article
7 three-C of this chapter, and investment companies.

8 § 4. The banking law is amended by adding a new article 3-C to read as
9 follows:

10 ARTICLE 3-C
11 PUBLIC BANKS

12 Section 156. Definitions.

13 156-a. Sponsors and corporate structure.

14 156-b. Governance.

15 156-c. Public bank charter requirements.

16 156-d. Financial and operations framework.

17 156-e. Insurance.

18 156-f. Deposits.

19 156-g. Permitted activities of the public bank.

20 156-h. Inconsistency with other laws.

21 156-i. Owners not to be considered bank holding companies.

22 § 156. Definitions. For the purposes of this article:

23 1. "Advisory board" means a board established pursuant to section one
24 hundred fifty-six-b of this article.

25 2. "Affiliate" means:

26 (a) in the case of a person (other than an individual), another person
27 that directly, or indirectly through one of more intermediaries,
28 controls, or is controlled by, or is under common control with such
29 person.

30 (b) in the case of an individual, (i) any member of the immediate
31 family of such individual, including parents, siblings, spouse and chil-
32 dren (including those by adoption) and any other person who lives in
33 such individual's household; the parents, siblings, spouse, or children
34 (including those by adoption) of such immediate family member, and in
35 any such case any trust whose primary beneficiary is such individual or
36 one or more members of such immediate family and/or such individual's
37 lineal descendants; (ii) the legal representative or guardian of such
38 individual or of any such immediate family member in the event such
39 individual or any such immediate family member becomes mentally incompe-
40 tent; and (iii) any person controlling, controlled by or under common
41 control with such individual.

42 (c) As used in this definition, the term "control," including the
43 correlative terms "controlling," "controlled by" and "under common
44 control with," means possession, directly or indirectly, of the power to
45 direct or cause the direction of management or policies (whether through
46 ownership of securities or any partnership or other ownership interest,
47 by contract or otherwise) of a person. Such control shall be presumed to
48 exist where a person owns a ten percent or greater ownership interest in
49 another person.

50 (d) "Person" shall be construed broadly and shall include, without
51 limitation, an individual, a partnership, a limited liability company, a
52 corporation, an association, a joint stock company, a trust, a joint
53 venture, an unincorporated organization and a governmental entity or any
54 department, agency or political subdivision thereof.

1 3. "Bank" means any corporation, other than a trust corporation,
2 organized under or subject to the provisions of this article or article
3 three of this chapter.

4 4. "Board" means a board of directors or board of managers of a public
5 bank.

6 5. "Community banking experience" means current or past employment
7 experience as an officer, director or executive, or current or past
8 employment experience in a senior leadership role at any of the follow-
9 ing:

10 (a) a community development financial institution that is a credit
11 union, loan fund, minority depository institution, union controlled bank
12 or locally based community bank; or

13 (b) a credit union, loan fund, minority depository institution, union
14 controlled bank or locally based community bank that otherwise serves
15 low-income, rural or other underserved or economically distressed commu-
16 nities.

17 6. "Community development financial institution" means an entity that
18 has been certified as meeting the eligibility requirements of section
19 1805.201 of title 12 of the code of federal regulations.

20 7. "Deposit" means the placing of money with a public bank to be with-
21 drawn upon the depositor's demand or under the rules and regulations
22 agreed upon between the bank and the depositor.

23 8. "Economically distressed communities" means those communities where
24 at least thirty percent of residents have incomes that are less than the
25 national poverty level or where the unemployment rate is greater than
26 the national unemployment rate; or economic opportunity zone designated
27 communities, excluding contiguity economic opportunities zones.

28 9. "Independent" means, with respect to a member of a public bank's
29 board of directors, board of managers, or advisory board, an individual
30 who:

31 (a) at the time of his or her election to the board of directors,
32 board of managers, or advisory board of a public bank, is not a holder
33 of any public office within the sponsor; and

34 (b) within the past five years has not been a holder of public office
35 within such sponsor.

36 10. "Local elected official" means any officer elected to a position
37 within a county, city, town, village, school district or district corpo-
38 ration, or any agency, department, division, board, commission or bureau
39 thereof; provided, that, such term shall not include any judge or
40 justice of a court.

41 11. "Minority depository institution" means any depository institution
42 that is owned in any of the following manners:

43 (a) a privately owned institution of which fifty-one percent is owned
44 by one or more individuals who are minorities;

45 (b) a publicly owned institution of which fifty-one percent of the
46 stock is owned by one or more minorities; or

47 (c) an institution otherwise designated as a minority depository
48 institution by the institution's applicable federal regulators.

49 12. "Minority" means citizens or permanent resident aliens who are
50 Black, Hispanic, Asian or American Indian.

51 13. "Public bank" means a not-for-profit corporation, a stock corpo-
52 ration, including a public benefit corporation incorporated pursuant to
53 article seventeen of the business corporation law, or limited liability
54 company that is chartered pursuant to this article as a bank. A public
55 bank formed as a stock corporation or a not-for-profit corporation shall

1 be a public corporation, and a public bank formed as a limited liability
2 corporation shall be a public limited liability company.

3 14. "Public bank application documents" means a business plan and
4 application to be submitted to the department pursuant to section one
5 hundred fifty-six-c of this article for the purpose of chartering a
6 public bank.

7 15. "Public corporation" means a stock corporation, including a public
8 benefit corporation incorporated pursuant to article seventeen of the
9 business corporation law, or a not-for-profit corporation that is incor-
10 porated, owned and controlled by a county, city, town or village.

11 16. "Public funds" means funds of the sponsor.

12 17. "Public limited liability company" means a limited liability
13 company that is incorporated, owned and controlled by a county, city,
14 town or village.

15 18. "State or local authority" means a local government or agency, a
16 group of two or more local governments or agencies acting together,
17 special district, a group of two or more special districts acting
18 together, state agency, or a group of two or more state agencies acting
19 together.

20 19. "Sponsor" means one or more cities, towns, villages and/or coun-
21 ties within the state of New York with an aggregate population of at
22 least one hundred thousand residents.

23 § 156-a. Sponsors and corporate structure. A public bank may be a
24 not-for-profit corporation, a limited liability company or a business
25 corporation that is formed by a sponsor, subject to the following corpo-
26 rate structure requirements:

27 1. If incorporated as a business corporation, a public bank may, but
28 is not required to:

29 (a) incorporate as a public benefit corporation under article seven-
30 teen of the business corporation law; or

31 (b) identify in its certificate of incorporation a specific public
32 benefit, consistent with the provisions of article seventeen of the
33 business corporation law. Specific public benefits within the meaning of
34 this section shall include, but are not limited to, strengthening local
35 economies, supporting community economic development, addressing infras-
36 tructure and housing needs for localities and providing banking services
37 to unbanked or underbanked communities.

38 2. The sponsor shall be (a) the sole member of a not-for-profit public
39 bank, (b) the majority and controlling member of a limited liability
40 company public bank, and (c) the majority and controlling shareholder of
41 a corporation public bank.

42 3. A public bank organized as a limited liability company or corpo-
43 ration may have other members or shareholders but such other members or
44 shareholders shall only be passive members or shareholders and shall not
45 have any consent or veto rights over any decisions, any removal rights
46 of the sponsor, any rights to elect or choose the board or any voting
47 rights whatsoever.

48 4. Passive members or passive shareholders shall be allowed to invest
49 capital into a public bank so long as such passive members or passive
50 shareholders are approved by the sponsor and the sponsor maintains the
51 right to direct the public bank to purchase the interests of any passive
52 members or shareholders at a market price determined by an independent
53 third party selected by the sponsor at any time.

54 5. The sponsor shall owe no fiduciary duty nor any other duty to
55 passive investors. No passive investor may pursue legal action against
56 the sponsor for any reason other than failure to distribute funds

1 required to be distributed pursuant to governing documents of the public
2 bank.

3 § 156-b. Governance. 1. The public bank shall be governed by the
4 board. Such board shall be composed of nine directors or eleven direc-
5 tors. Each director shall live within the jurisdictional boundaries of
6 the sponsor.

7 2. The sponsor shall determine the public bank's initial board in the
8 following manner:

9 (a) the mayor, or head of the executive branch of government of the
10 sponsor or sponsors, shall appoint three members, at least one of whom
11 shall have community banking experience and at least one of whom shall
12 be independent;

13 (b) the city council, or legislative branch of the sponsor or sponsors
14 shall appoint two members, at least one of whom shall have community
15 banking experience and at least one of whom shall be independent;

16 (c) the treasurer, controller or elected official charged with over-
17 seeing the sponsor or sponsors' finances and the administration of
18 public funds shall appoint one member who shall have community banking
19 experience and be independent; and

20 (d) the board members selected pursuant to paragraphs (a) through (c)
21 of this subdivision shall, pursuant to a two-thirds majority vote,
22 appoint at their discretion and in accordance with subdivisions five and
23 six of this section, either three or five additional board members, with
24 the purpose of maximizing board diversity to include a variety of the
25 sponsor's community stakeholders, including community-based organiza-
26 tions, labor organizations and those groups prioritized by the public
27 bank's underwriting and financial policies, as reflected in section one
28 hundred fifty-six-g of this article. For any sponsor that is also a city
29 with a population of one million or more, the board members selected
30 pursuant to paragraphs (a) through (c) of this subdivision may, pursuant
31 to a two-thirds majority vote, appoint either seven or nine additional
32 board members to maximize board diversity.

33 3. The board shall adopt bylaws, governing documents or their func-
34 tional equivalents as required by the not-for-profit corporation law,
35 business corporation law, or limited liability company law, as applica-
36 ble, based on the corporate structure of the public bank. Such governing
37 documents shall include:

38 (a) procedures to remove directors consistent with this article;

39 (b) a provision requiring that the board membership of any board
40 member who also serves as a public official or local elected official of
41 the sponsor shall terminate immediately upon such board member ceasing
42 to hold such public office; and

43 (c) appropriate term limits for board members, consistent with para-
44 graph (b) of this subdivision.

45 4. At least one board member appointed pursuant to paragraphs (a) and
46 (b) of subdivision two of this section shall be a representative of one
47 of the community stakeholders prioritized by the public bank's under-
48 writing and financial policies as reflected in section one hundred
49 fifty-six-g of this article.

50 5. When a board member resigns or ceases to be a board member for any
51 reason, the individual appointed to replace such board member shall be
52 appointed in accordance with the same selection criteria and process by
53 which such departing member was appointed under subdivision two of this
54 section.

1 6. The sponsor and board will take all steps necessary to ensure that
2 the composition of the board reflects the composition of the population
3 in terms of people of color and women.

4 7. A majority of the board shall be composed of independent directors
5 who are not government employees. The chair of the board must be an
6 independent director.

7 8. The board shall set policy for the public bank; provided that
8 neither the board nor any director shall be involved in day to day deci-
9 sions regarding particular instruments. Management decisions shall be
10 made independently by bank management who shall be appointed by the
11 board consistent with bank policy.

12 9. The board may establish one or more committees to manage the public
13 bank.

14 10. The board shall adhere to all reporting requirements under this
15 chapter regarding the public bank's financial condition.

16 11. A public bank shall form one or more advisory boards in order to
17 provide advice and carry out any other duties, as determined by the
18 sponsor, including the following:

19 (a) provide input to the board regarding ways to accomplish its
20 mission;

21 (b) ensure that the board follows strict ethical standards as deter-
22 mined by the sponsor in the public bank's governing documents, through
23 the approval of bylaws or a code of conduct to govern the board's
24 management;

25 (c) provide technical advice as needed; and

26 (d) provide an annual report to the public and the sponsor evaluating
27 the public bank's performance in relation to its mission, its ethical
28 standards and its financial soundness.

29 12. The sponsor will determine the initial advisory board membership,
30 the term of its members, the qualifications of members and the method
31 for replacing its members, provided that a majority of each advisory
32 board is made up of independent members who are not governmental employ-
33 ees. The advisory board shall be composed of no fewer than five and no
34 more than eleven members. Any advisory board member shall live within
35 the jurisdictional boundary of the public bank's sponsor or its members
36 or shareholders.

37 13. Any action required or permitted by this chapter to be taken by
38 the board or an advisory board may be taken at a duly called meeting of
39 such board in accordance with its governing documents or without a meet-
40 ing if the action taken is evidenced by one or more written consents
41 describing the action taken and signed by each member of the board or
42 advisory board.

43 § 156-c. Public bank charter requirements. 1. A proposed public bank
44 shall be chartered by the department upon submission of the public bank
45 application documents that demonstrate the following:

46 (a) the purpose of the proposed public bank is consistent with the
47 purposes required under this article;

48 (b) minimum initial capitalization is no less than ten percent of the
49 public bank's projected lending total for the first year of operation
50 after receipt of its charter;

51 (c) adequate reserves and liquidity exist to cover the public bank's
52 obligations relating to deposit withdrawals and defaulted loans;

53 (d) the qualifications of the proposed directors;

54 (e) the qualifications of the proposed chief executive officer and
55 management team;

56 (f) an organizational chart;

1 (g) policies and procedures prohibiting any elected official, or
2 affiliates of such officials, from receiving a loan or other financial
3 benefit from the public bank;

4 (h) procedures for obtaining fidelity insurance;

5 (i) sufficient internal audits and controls;

6 (j) a pro forma financial statement projecting assets, liabilities,
7 income and expenses for no less than a three year period;

8 (k) the impact of the public bank on the sponsor's financial condi-
9 tion;

10 (l) a plan to comply with the community reinvestment act and fair
11 lending requirements, pursuant to section two hundred ninety-six-a of
12 the executive law;

13 (m) a certificate of incorporation;

14 (n) a narrative business plan describing the banking services to be
15 provided; and

16 (o) such other information as the department may require.

17 2. The public bank may but shall not be required to collateralize
18 deposits from the sponsor or any other governmental entity with collat-
19 eral determined by the public bank in its governing documents.

20 3. The public bank application documents are not required to provide
21 that the public bank will receive deposits in its initial three years of
22 operation, and not receiving deposits in the initial three years of
23 operation shall not be a reason for disapproval by the superintendent.

24 4. Public bank application documents are not required to include a
25 market, public convenience and advantage, competitive impact or a bank
26 premises analysis or address any other matters other than those listed
27 in subdivision one of this section.

28 5. Public bank charter applications that do not conflict with any
29 requirements expressly provided in subdivision one of this section shall
30 be liberally granted by the superintendent, and any decision by the
31 superintendent refusing to grant permission for the operation of a
32 public bank may be appealed by the sponsor to the governor within thirty
33 days from the date of such decision, and the governor shall have the
34 power to affirm, reverse, or modify such decision by the superintendent
35 in the governor's sole discretion.

36 § 156-d. Financial and operations framework. 1. The public bank may
37 raise capital through:

38 (a) the receipt and leverage of public deposits,

39 (b) sponsor equity contributions,

40 (c) passive member or shareholder equity contributions,

41 (d) sale of corporate debt to sponsor, and

42 (e) sale of corporate debt to third parties.

43 2. The public bank shall have all the rights and powers conferred by
44 articles three and fifteen of this chapter, which must be exercised in a
45 manner consistent with its mission.

46 3. All lending and actions of the public bank shall abide by the
47 United Nations declaration on the rights of indigenous peoples.

48 4. The sponsor may prohibit investments and loans that may benefit any
49 type of designated business including the fossil fuel industry, weapons
50 or gun manufacturers, military systems companies, private prisons, immi-
51 gration detention facilities, companies engaged in offshore tax avoid-
52 ance or exploitative business or labor practices or the tobacco indus-
53 try, all as determined by the sponsor in the public bank's governing
54 documents.

1 5. The public bank shall be exempt from state, county, and municipal
2 taxes and licenses, of any kind, including income, capital gain, real
3 estate and mortgage recording taxes.

4 6. The public bank shall not be sold to or merged with another entity
5 unless such entity has a public bank charter.

6 § 156-e. Insurance. A public bank shall obtain and maintain deposit
7 insurance consistent with section thirty-two of this chapter to the
8 extent that it accepts deposits from any third party that is not in
9 excess of two hundred fifty thousand dollars.

10 § 156-f. Deposits. 1. The board shall develop a plan, subject to
11 approval by the advisory board, to accept and manage deposits.

12 2. The comptroller or chief financial officer of the sponsor shall be
13 authorized to deposit public funds in the public bank, provided that the
14 public bank's business plan permits the comptroller or chief financial
15 officer to meet the short or intermediate-term liquidity needs of the
16 sponsor.

17 3. The public bank may accept deposits, but shall be exempt from the
18 requirements of section ten of the general municipal law.

19 4. The public bank may accept deposits from any source and funds from
20 any source, including federal funds.

21 § 156-g. Permitted activities of the public bank. 1. The public bank
22 shall have all the rights and powers conferred by articles three and
23 fifteen of this chapter, which shall be exercised in a manner consistent
24 with its mission. The public bank may limit and define its rights and
25 powers in the charter that it submits pursuant to section one hundred
26 fifty-six-c of this article, but it is the intention to grant any public
27 bank created under this law the full rights and powers that any bank
28 would be permitted to exercise under New York's banking laws, subject to
29 those limitations that will be approved by the department.

30 2. Within the overall underwriting and financial policies of the
31 public bank, the public bank shall maximize and prioritize loans
32 supporting worker cooperatives, community land trusts, low-income and
33 affordable housing, renewable energy, infrastructure development, small
34 businesses, small farms, minority- and women-owned business enterprises,
35 students in need of low-cost education financing or refinancing student
36 loan debts, and other initiatives that fulfill the public bank's
37 mission, with a focus on serving underserved and underbanked communi-
38 ties, as well as those within economically distressed communities.

39 § 156-h. Inconsistency with other laws. 1. A public bank shall comply
40 with all requirements of this chapter, the financial services law, the
41 state finance law, the local finance law, the general municipal law, the
42 not-for-profit corporation law, and all other relevant provisions of
43 state or local law, except to the extent that a requirement of any of
44 those laws is inconsistent with a provision of this article, in which
45 case the provisions of this article shall prevail.

46 2. Notwithstanding any provision of state or local law, a county or
47 other state or local authority may lend its credit to any public bank.

48 3. Notwithstanding any provision of state or local law, any state or
49 local authority may invest in commercial paper, debt securities or other
50 obligations of a public bank.

51 4. Notwithstanding any provision of state or local law, a public bank
52 shall be eligible to receive state and local authority money.

53 § 156-i. Owners not to be considered bank holding companies. For the
54 purposes of section one hundred forty-one of this chapter, any sponsor,
55 person or entity, including a state or local authority, that owns,

1 controls, or holds an ownership interest in a public bank is not a bank
2 holding company by reason of that ownership interest.

3 § 5. Section 98 of the state finance law is amended by adding a new
4 subdivision 7-a to read as follows:

5 7-a. Commercial paper, debt securities, bonds, notes, or other obli-
6 gations of a public bank, as defined in article three-C of the banking
7 law.

8 § 6. Paragraph d of subdivision 1 of section 10 of the general munic-
9 pal law, as amended by chapter 623 of the laws of 1998, is amended to
10 read as follows:

11 d. "Bank" shall mean a bank or public bank as defined by the banking
12 law or a national banking association located and authorized to do busi-
13 ness in New York.

14 § 7. This act shall take effect immediately.