

# STATE OF NEW YORK

8290

2021-2022 Regular Sessions

## IN ASSEMBLY

October 6, 2021

Introduced by M. of A. FAHY -- read once and referred to the Committee on Banks

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

23 11. Banking organizations. The term, "banking organizations," when  
24 used in this chapter, means and includes all banks, trust companies,  
25 private bankers, savings banks, safe deposit companies, savings and loan  
26 associations, credit unions, public banks organized under article  
27 three-C of this chapter, and investment companies.

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

LBD01784-03-1

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

3 ARTICLE 3-C  
4 PUBLIC BANKS

5 Section 156. Definitions.

6 156-a. Sponsors and corporate structure.

7 156-b. Governance.

8 156-c. Public bank charter requirements.

9 156-d. Financial and operations framework.

10 156-e. Insurance.

11 156-f. Deposits.

12 156-g. Permitted activities of the public bank.

13 156-h. Inconsistency with other laws.

14 156-i. Owners not to be considered bank holding companies.

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

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

18 2. "Affiliate" means:

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

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

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

43 (d) "Person" shall be construed broadly and shall include, without  
44 limitation, an individual, a partnership, a limited liability company, a  
45 corporation, an association, a joint stock company, a trust, a joint  
46 venture, an unincorporated organization and a governmental entity or any  
47 department, agency or political subdivision thereof.

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

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

53 5. "Community banking experience" means current or past employment  
54 experience as an officer, director or executive, or current or past  
55 employment experience in a senior leadership role at any of the follow-  
56 ing:

1 (a) a community development financial institution that is a credit  
2 union, loan fund, minority depository institution, union controlled bank  
3 or locally based community bank; or

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

8 6. "Community development financial institution" means an entity that  
9 has been certified as meeting the eligibility requirements of section  
10 1805.201 of title 12 of the code of federal regulations.

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

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

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

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

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

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

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

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

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

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

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

42 13. "Public bank" means a not-for-profit corporation, a stock corpo-  
43 ration, including a public benefit corporation incorporated pursuant to  
44 article seventeen of the business corporation law, or limited liability  
45 company that is chartered pursuant to this article as a bank. A public  
46 bank formed as a stock corporation or a not-for-profit corporation shall  
47 be a public corporation, and a public bank formed as a limited liability  
48 corporation shall be a public limited liability company.

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

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

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

2 17. "Public limited liability company" means a limited liability  
3 company that is incorporated, owned and controlled by a county, city,  
4 town or village.

5 18. "State or local authority" means a local government or agency, a  
6 group of two or more local governments or agencies acting together,  
7 special district, a group of two or more special districts acting  
8 together, state agency, or a group of two or more state agencies acting  
9 together.

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

13 § 156-a. Sponsors and corporate structure. A public bank may be a  
14 not-for-profit corporation, a limited liability company or a business  
15 corporation that is formed by a sponsor, subject to the following corpo-  
16 rate structure requirements:

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

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

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

28 2. The sponsor shall be (a) the sole member of a not-for-profit public  
29 bank, (b) the majority and controlling member of a limited liability  
30 company public bank, and (c) the majority and controlling shareholder of  
31 a corporation public bank.

32 3. A public bank organized as a limited liability company or corpo-  
33 ration may have other members or shareholders but such other members or  
34 shareholders shall only be passive members or shareholders and shall not  
35 have any consent or veto rights over any decisions, any removal rights  
36 of the sponsor, any rights to elect or choose the board or any voting  
37 rights whatsoever.

38 4. Passive members or passive shareholders shall be allowed to invest  
39 capital into a public bank so long as such passive members or passive  
40 shareholders are approved by the sponsor and the sponsor maintains the  
41 right to direct the public bank to purchase the interests of any passive  
42 members or shareholders at a market price determined by an independent  
43 third party selected by the sponsor at any time.

44 5. The sponsor shall owe no fiduciary duty nor any other duty to  
45 passive investors. No passive investor may pursue legal action against  
46 the sponsor for any reason other than failure to distribute funds  
47 required to be distributed pursuant to governing documents of the public  
48 bank.

49 § 156-b. Governance. 1. The public bank shall be governed by the  
50 board. Such board shall be composed of nine directors or eleven direc-  
51 tors. Each director shall live within the jurisdictional boundaries of  
52 the sponsor.

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

55 (a) the mayor, or head of the executive branch of government of the  
56 sponsor or sponsors, shall appoint three members, at least one of whom

1 shall have community banking experience and at least one of whom shall  
2 be independent;

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

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

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

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

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

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

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

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

40 5. When a board member resigns or ceases to be a board member for any  
41 reason, the individual appointed to replace such board member shall be  
42 appointed in accordance with the same selection criteria and process by  
43 which such departing member was appointed under subdivision two of this  
44 section.

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

48 7. A majority of the board shall be composed of independent directors  
49 who are not government employees. The chair of the board must be an  
50 independent director.

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

1 9. The board may establish one or more committees to manage the public  
2 bank.

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

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

8 (a) provide input to the board regarding ways to accomplish its  
9 mission;

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

14 (c) provide technical advice as needed; and

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

18 12. The sponsor will determine the initial advisory board membership,  
19 the term of its members, the qualifications of members and the method  
20 for replacing its members, provided that a majority of each advisory  
21 board is made up of independent members who are not governmental employ-  
22 ees. The advisory board shall be composed of no fewer than five and no  
23 more than eleven members. Any advisory board member shall live within  
24 the jurisdictional boundary of the public bank's sponsor or its members  
25 or shareholders.

26 13. Any action required or permitted by this chapter to be taken by  
27 the board or an advisory board may be taken at a duly called meeting of  
28 such board in accordance with its governing documents or without a meet-  
29 ing if the action taken is evidenced by one or more written consents  
30 describing the action taken and signed by each member of the board or  
31 advisory board.

32 § 156-c. Public bank charter requirements. 1. A proposed public bank  
33 shall be chartered by the department upon submission of the public bank  
34 application documents that demonstrate the following:

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

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

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

42 (d) the qualifications of the proposed directors;

43 (e) the qualifications of the proposed chief executive officer and  
44 management team;

45 (f) an organizational chart;

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

49 (h) procedures for obtaining fidelity insurance;

50 (i) sufficient internal audits and controls;

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

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

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

4 (m) a certificate of incorporation;

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

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

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

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

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

19 5. Public bank charter applications that do not conflict with any  
20 requirements expressly provided in subdivision one of this section shall  
21 be liberally granted by the superintendent, and any decision by the  
22 superintendent refusing to grant permission for the operation of a  
23 public bank may be appealed by the sponsor to the governor within thirty  
24 days from the date of such decision, and the governor shall have the  
25 power to affirm, reverse, or modify such decision by the superintendent  
26 in the governor's sole discretion.

27 § 156-d. Financial and operations framework. 1. The public bank may  
28 raise capital through:

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

30 (b) sponsor equity contributions,

31 (c) passive member or shareholder equity contributions,

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

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

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

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

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

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

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

51 § 156-e. Insurance. A public bank shall obtain and maintain deposit  
52 insurance consistent with section thirty-two of this chapter to the  
53 extent that it accepts deposits from any third party that is not in  
54 excess of two hundred fifty thousand dollars.

55 § 156-f. Deposits. 1. The board shall develop a plan, subject to  
56 approval by the advisory board, to accept and manage deposits.

1 2. The comptroller or chief financial officer of the sponsor shall be  
2 authorized to deposit public funds in the public bank, provided that the  
3 public bank's business plan permits the comptroller or chief financial  
4 officer to meet the short or intermediate-term liquidity needs of the  
5 sponsor.

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

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

10 § 156-g. Permitted activities of the public bank. 1. The public bank  
11 shall have all the rights and powers conferred by articles three and  
12 fifteen of this chapter, which shall be exercised in a manner consistent  
13 with its mission. The public bank may limit and define its rights and  
14 powers in the charter that it submits pursuant to section one hundred  
15 fifty-six-c of this article, but it is the intention to grant any public  
16 bank created under this law the full rights and powers that any bank  
17 would be permitted to exercise under New York's banking laws, subject to  
18 those limitations that will be approved by the department.

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

28 § 156-h. Inconsistency with other laws. 1. A public bank shall comply  
29 with all requirements of this chapter, the financial services law, the  
30 state finance law, the local finance law, the general municipal law, the  
31 not-for-profit corporation law, and all other relevant provisions of  
32 state or local law, except to the extent that a requirement of any of  
33 those laws is inconsistent with a provision of this article, in which  
34 case the provisions of this article shall prevail.

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

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

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

42 § 156-i. Owners not to be considered bank holding companies. For the  
43 purposes of section one hundred forty-one of this chapter, any sponsor,  
44 person or entity, including a state or local authority, that owns,  
45 controls, or holds an ownership interest in a public bank is not a bank  
46 holding company by reason of that ownership interest.

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

49 7-a. Commercial paper, debt securities, bonds, notes, or other obli-  
50 gations of a public bank, as defined in article three-C of the banking  
51 law.

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

1 d. "Bank" shall mean a bank or public bank as defined by the banking  
2 law or a national banking association located and authorized to do busi-  
3 ness in New York.  
4 § 7. This act shall take effect immediately.