

STATE OF NEW YORK

8290--A

2021-2022 Regular Sessions

IN ASSEMBLY

October 6, 2021

Introduced by M. of A. FAHY, SOLAGES, DAVILA, GALLAGHER, J. D. RIVERA, GONZALEZ-ROJAS, STERN, JEAN-PIERRE, MAMDANI, DICKENS, FRONTUS, REYES, GALEF, SIMON, HUNTER, ENGLEBRIGHT, LUNSFORD, JACOBSON, FALL, DINOWITZ, MITAYNES, THIELE, BICHOTTE HERMELYN, BURKE, GOTTFRIED, HEVESI, L. ROSENTHAL, BURGOS, BRONSON, AUBRY, EPSTEIN, MONTESANO, CARROLL, ROZIC, ANDERSON, FERNANDEZ, SEPTIMO, TAYLOR, NIOU, BURDICK, QUART, FORREST, OTIS, KIM, CLARK, SILLITTI, COLTON, CRUZ, SAYEGH, JACKSON, SEAWRIGHT, GLICK, BARNWELL, KELLES, TAPIA, CUNNINGHAM, MEEKS -- read once and referred to the Committee on Banks -- recommitted to the Committee on Banks in accordance with Assembly Rule 3, sec. 2 -- 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.

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

LBD01784-05-2

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

1. Bank. The term, "bank," when used in this chapter, unless a different meaning appears from the context, means any corporation, other than a trust company, organized under or subject to the provisions of article three or three-C of this chapter.

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

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

ARTICLE 3-C
PUBLIC BANKS

Section 156. Definitions.

156-a. Sponsors and corporate structure.

156-b. Governance.

156-c. Public bank charter requirements.

156-d. Financial and operations framework.

156-e. Insurance.

156-f. Deposits.

156-g. Permitted activities of the public bank.

156-h. Inconsistency with other laws.

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

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

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

2. "Affiliate" means:

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

(b) in the case of an individual, (i) any member of the immediate family of such individual, including parents, siblings, spouse and children (including those by adoption) and any other person who lives in such individual's household; the parents, siblings, spouse, or children (including those by adoption) of such immediate family member, and in any such case any trust whose primary beneficiary is such individual or one or more members of such immediate family and/or such individual's lineal descendants; (ii) the legal representative or guardian of such individual or of any such immediate family member in the event such individual or any such immediate family member becomes mentally incompetent; and (iii) any person controlling, controlled by or under common control with such individual.

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

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

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

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

5. "Community banking experience" means current or past employment experience as an officer, director or executive, or current or past employment experience in a senior leadership role at any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

12. "Minority" means any person who is a member of one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic/Latino persons of Mexican, Puerto Rican,

Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; and (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

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

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

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

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

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

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

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

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

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

(a) incorporate as a public benefit corporation under article seventeen of the business corporation law; or

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

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

3. A public bank organized as a limited liability company or corporation may have other members or shareholders but such other members or shareholders shall only be passive members or shareholders and shall not have any consent or veto rights over any decisions, any removal rights

1 of the sponsor, any rights to elect or choose the board or any voting
2 rights whatsoever.

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

9 5. The sponsor shall owe no fiduciary duty nor any other duty to
10 passive investors. No passive investor may pursue legal action against
11 the sponsor for any reason other than failure to distribute funds
12 required to be distributed pursuant to governing documents of the public
13 bank.

14 § 156-b. Governance. 1. The public bank shall be governed by the
15 board. Such board shall be composed of nine directors or eleven direc-
16 tors. Each director shall live within the jurisdictional boundaries of
17 the sponsor.

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

20 (a) the mayor, or head of the executive branch of government of the
21 sponsor or sponsors, shall appoint three members, at least one of whom
22 shall have community banking experience and at least one of whom shall
23 be independent;

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

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

31 (d) the board members selected pursuant to paragraphs (a) through (c)
32 of this subdivision shall, pursuant to a two-thirds majority vote,
33 appoint at their discretion and in accordance with subdivisions five and
34 six of this section, either three or five additional board members, with
35 the purpose of maximizing board diversity to include a variety of the
36 sponsor's community stakeholders, including community-based organiza-
37 tions, labor organizations and those groups prioritized by the public
38 bank's underwriting and financial policies, as reflected in section one
39 hundred fifty-six-g of this article. For any sponsor that is also a city
40 with a population of one million or more, the board members selected
41 pursuant to paragraphs (a) through (c) of this subdivision may, pursuant
42 to a two-thirds majority vote, appoint either seven or nine additional
43 board members to maximize board diversity.

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

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

50 (b) procedures for replacing directors consistent with this article;

51 (c) a provision requiring that the board membership of any board
52 member who also serves as a public official or local elected official of
53 a sponsor shall terminate immediately upon such board member ceasing to
54 hold such public office; and

55 (d) appropriate term limits for board members, consistent with para-
56 graph (c) of this subdivision.

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

6 5. When a board member resigns or ceases to be a board member for any
7 reason, the individual appointed to replace such board member shall be
8 appointed in accordance with the same selection criteria and process by
9 which such departing member was appointed under subdivision two of this
10 section.

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

14 7. A majority of the board shall be composed of independent directors
15 who are not government employees. The chair of the board must be an
16 independent director.

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

22 9. The board may establish one or more committees to manage the public
23 bank.

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

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

29 (a) provide input to the board regarding ways to accomplish its
30 mission;

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

35 (c) ensure that the public bank's operations are consistent with
36 social equity principles, including racial, gender, and environmental
37 justice and indigenous rights;

38 (d) provide technical advice as needed; and

39 (e) provide an annual report to the public and the sponsor evaluating
40 the public bank's performance in relation to its mission, its ethical
41 standards and its financial soundness.

42 12. The sponsor will determine the initial advisory board membership,
43 the term of its members, the qualifications of members and the method
44 for replacing its members, provided that a majority of each advisory
45 board is made up of independent members who are not governmental employ-
46 ees. The advisory board shall be composed of no fewer than five and no
47 more than eleven members. Any advisory board member shall live within
48 the jurisdictional boundary of the public bank's sponsor or its members
49 or shareholders.

50 13. Any action required or permitted by this chapter to be taken by
51 the board or an advisory board may be taken at a duly called meeting of
52 such board in accordance with its governing documents or without a meet-
53 ing if the action taken is evidenced by one or more written consents
54 describing the action taken and signed by each member of the board or
55 advisory board.

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

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

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

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

(d) the qualifications of the proposed directors;

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

(f) an organizational chart;

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

(h) procedures for obtaining fidelity insurance;

(i) sufficient internal audits and controls;

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

(k) no material negative impact of the public bank on the sponsor's financial condition;

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

(m) a certificate of incorporation;

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

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

2. The public bank may but shall not be required to insure or collateralize deposits from the sponsor or any other governmental entity with insurance or collateral determined by the public bank in its governing documents.

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

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

§ 156-d. Financial and operations framework. 1. The public bank may raise capital through any legal means, including but not limited to:

(a) the receipt and leverage of public deposits,

(b) sponsor equity contributions,

(c) passive member or shareholder equity contributions,

(d) sale of corporate debt to sponsor, and

(e) sale of corporate debt to third parties.

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

3. All lending and actions of the public bank shall abide by the United Nations declaration on the rights of indigenous peoples. Consequently, all public banks that are formed by a sponsor that includes indigenous communities will include a representative number of indige-

1 nous people on the board and advisory committee of the public bank and
2 prioritize loans to indigenous communities.

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

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

13 6. The public bank shall not be sold to or merged with another entity
14 unless such entity has a public bank charter and the sale or merger has
15 been approved by the superintendent.

16 § 156-e. Insurance. A public bank shall obtain insurance of deposits
17 only to the extent that it receives deposits from the general public.

18 § 156-f. Deposits. 1. The board shall develop a plan, subject to
19 approval by the advisory board, to accept and manage deposits.

20 2. The comptroller or chief financial officer of the sponsor shall be
21 authorized to deposit public funds in the public bank, provided that the
22 public bank's business plan permits the comptroller or chief financial
23 officer to meet the short or intermediate-term liquidity needs of the
24 sponsor.

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

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

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

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

47 § 156-h. Inconsistency with other laws. 1. A public bank shall comply
48 with all requirements of this chapter, the financial services law, the
49 state finance law, the local finance law, the general municipal law, the
50 not-for-profit corporation law, and all other relevant provisions of
51 state or local law, except to the extent that a requirement of any of
52 those laws is inconsistent with a provision of this article, in which
53 case the provisions of this article shall prevail.

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

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

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

6 § 156-i. Owners not to be considered bank holding companies. For the
7 purposes of section one hundred forty-one of this chapter, any sponsor,
8 person or entity, including a state or local authority, that owns,
9 controls, or holds an ownership interest in a public bank is not a bank
10 holding company by reason of that ownership interest.

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

13 7-a. Commercial paper, debt securities, bonds, notes, or other obli-
14 gations of a public bank, as defined in article three-C of the banking
15 law.

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

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

22 § 7. This act shall take effect immediately.