

STATE OF NEW YORK

1762--B

2021-2022 Regular Sessions

IN SENATE

January 15, 2021

Introduced by Sens. SANDERS, BAILEY, BIAGGI, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, GAUGHRAN, GIANARIS, GOUNARDES, HINCHEY, HOYLMAN, JACKSON, KAVANAGH, KRUEGER, MAY, MAYER, MYRIE, PARKER, PERSAUD, RAMOS, REICHLIN-MELNICK, RIVERA, SALAZAR, SAVINO, SEPULVEDA, SERRANO, SKOUFIS, STAVISKY -- 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 -- recommitted to the Committee on Banks in accordance with Senate Rule 6, sec. 8 -- 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

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

LBD01784-04-2

1 as amended by chapter 154 of the laws of 2007, are amended to read as
2 follows:

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

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

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

14 ARTICLE 3-C
15 PUBLIC BANKS

16 Section 156. Definitions.

17 156-a. Sponsors and corporate structure.

18 156-b. Governance.

19 156-c. Public bank charter requirements.

20 156-d. Financial and operations framework.

21 156-e. Insurance.

22 156-f. Deposits.

23 156-g. Permitted activities of the public bank.

24 156-h. Inconsistency with other laws.

25 156-i. Owners not to be considered bank holding companies.

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

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

29 2. "Affiliate" means:

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

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

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

54 (d) "Person" shall be construed broadly and shall include, without
55 limitation, an individual, a partnership, a limited liability company, a
56 corporation, an association, a joint stock company, a trust, a joint

1 venture, an unincorporated organization and a governmental entity or any
2 department, agency or political subdivision thereof.

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

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

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

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

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

19 6. "Community development financial institution" means an entity that
20 has been certified as meeting the eligibility requirements of section
21 1805.201 of title 12 of the code of federal regulations.

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

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

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

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

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

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

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

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

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

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

51 12. "Minority" means any person who is a member of one of the follow-
52 ing groups: (a) Black persons having origins in any of the Black African
53 racial groups; (b) Hispanic/Latino persons of Mexican, Puerto Rican,
54 Dominican, Cuban, Central or South American of either Indian or Hispanic
55 origin, regardless of race; (c) Native American or Alaskan native
56 persons having origins in any of the original peoples of North America;

1 and (d) Asian and Pacific Islander persons having origins in any of the
2 Far East countries, South East Asia, the Indian subcontinent or the
3 Pacific Islands.

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

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

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

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

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

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

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

31 § 156-a. Sponsors and corporate structure. A public bank may be a
32 not-for-profit corporation, a limited liability company or a business
33 corporation that is formed by a sponsor, subject to the following corpo-
34 rate structure requirements:

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

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

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

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

50 3. A public bank organized as a limited liability company or corpo-
51 ration may have other members or shareholders but such other members or
52 shareholders shall only be passive members or shareholders and shall not
53 have any consent or veto rights over any decisions, any removal rights
54 of the sponsor, any rights to elect or choose the board or any voting
55 rights whatsoever.

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

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

12 § 156-b. Governance. 1. The public bank shall be governed by the
13 board. Such board shall be composed of nine directors or eleven direc-
14 tors. Each director shall live within the jurisdictional boundaries of
15 the sponsor.

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

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

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

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

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

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

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

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

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

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

55 4. At least one board member appointed pursuant to paragraphs (a) and
56 (b) of subdivision two of this section shall be a representative of one

1 of the community stakeholders prioritized by the public bank's under-
2 writing and financial policies as reflected in section one hundred
3 fifty-six-g of this article.

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

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

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

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

20 9. The board may establish one or more committees to manage the public
21 bank.

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

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

27 (a) provide input to the board regarding ways to accomplish its
28 mission;

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

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

36 (d) provide technical advice as needed; and

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

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

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

54 § 156-c. Public bank charter requirements. 1. A proposed public bank
55 shall be chartered by the department upon submission of the public bank
56 application documents that demonstrate the following:

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

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

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

8 (d) the qualifications of the proposed directors;

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

11 (f) an organizational chart;

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

15 (h) procedures for obtaining fidelity insurance;

16 (i) sufficient internal audits and controls;

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

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

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

24 (m) a certificate of incorporation;

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

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

28 2. The public bank may but shall not be required to insure or colla-
29 teralize deposits from the sponsor or any other governmental entity with
30 insurance or collateral determined by the public bank in its governing
31 documents.

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

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

40 § 156-d. Financial and operations framework. 1. The public bank may
41 raise capital through any legal means, including but not limited to:

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

43 (b) sponsor equity contributions,

44 (c) passive member or shareholder equity contributions,

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

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

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

50 3. All lending and actions of the public bank shall abide by the
51 United Nations declaration on the rights of indigenous peoples. Conse-
52 quently, all public banks that are formed by a sponsor that includes
53 indigenous communities will include a representative number of indige-
54 nous people on the board and advisory committee of the public bank and
55 prioritize loans to indigenous communities.

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

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

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

14 § 156-e. Insurance. A public bank shall obtain insurance of deposits
15 only to the extent that it receives deposits from the general public.

16 § 156-f. Deposits. 1. The board shall develop a plan, subject to
17 approval by the advisory board, to accept and manage deposits.

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

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

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

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

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

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

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

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

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

3 § 156-i. Owners not to be considered bank holding companies. For the
4 purposes of section one hundred forty-one of this chapter, any sponsor,
5 person or entity, including a state or local authority, that owns,
6 controls, or holds an ownership interest in a public bank is not a bank
7 holding company by reason of that ownership interest.

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

10 7-a. Commercial paper, debt securities, bonds, notes, or other obli-
11 gations of a public bank, as defined in article three-C of the banking
12 law.

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

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

19 § 7. This act shall take effect immediately.