

STATE OF NEW YORK

9326

IN SENATE

May 13, 2024

Introduced by Sen. BROUK -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law and the state finance law, in relation to enacting the "bank of Rochester 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 "bank of Rochester act".

3 § 2. Legislative intent. 1. It is the intent of the legislature that
4 this act (i) authorizes the city of Rochester to form and control the
5 bank of Rochester, and loan or grant public funds or lend public credit
6 to the bank of Rochester for the public purposes of achieving cost
7 savings, strengthening local economies, supporting community economic
8 development, and addressing infrastructure and housing needs for locali-
9 ties; and (ii) codifies the common law interpretation of the constitu-
10 tion of the state of New York that cities, counties, and other munici-
11 palities may own a not-for-profit corporation and lend or grant money to
12 such not-for-profit corporation, so long as such actions are pursuant to
13 public purposes.

14 2. It is also the intent of the legislature that the bank of Rochester
15 shall partner with local financial institutions, such as credit unions,
16 CDFIs, and local community banks, and shall not compete with local
17 financial institutions or commercial banks.

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

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

26 11. Banking organizations. The term, "banking organizations," when
27 used in this chapter, means and includes all banks, trust companies,
28 private bankers, savings banks, safe deposit companies, savings and loan

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

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1 associations, credit unions, banks organized under article three-C of
2 this chapter and investment companies.

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

5 ARTICLE 3-C
6 BANK OF ROCHESTER

7 Section 156. Definitions.

8 156-a. Sponsors and corporate structure.

9 156-b. Powers and restrictions.

10 156-c. Bank of Rochester governance.

11 156-d. Bank of Rochester charter requirements.

12 156-e. Financial and operations framework.

13 156-f. Transparency and financial reporting.

14 156-g. Insurance and rehabilitation.

15 156-h. Deposits.

16 156-i. Policy mandate.

17 156-j. Ethics and financial disclosure.

18 156-k. Inconsistency with other laws.

19 156-l. Owners not to be considered bank holding companies.

20 § 156. Definitions. For the purposes of this article, the following
21 terms shall have the following meanings:

22 1. "Affiliate" shall mean:

23 (a) any member of the immediate family of a member of the board of
24 directors, including parents, siblings, spouses and children (including
25 those by adoption), any other person who lives in such member of the
26 board of directors' household, and any legal representative or guardian
27 of a family member of such member of the board of directors;

28 (b) any trust whose primary beneficiary is a member of the board of
29 directors, or one or more members of such immediate family and/or such
30 member of the board of directors' lineal descendants; or

31 (c) another person that, directly or indirectly through one or more
32 intermediaries, controls, or is controlled by, or is under common
33 control with a member of the board of directors. For the purposes of
34 this paragraph, the term "control" shall mean possession, directly or
35 indirectly, of the power to direct or cause the direction of management
36 or policies, whether through ownership of securities or any partnership
37 or other ownership interest, by contract or otherwise, of a person. Such
38 control shall be presumed to exist where a person owns a ten percent or
39 greater ownership interest in another person.

40 2. "Bank of Rochester charter application documents" shall mean a
41 business plan and application to be submitted to the department of
42 financial services pursuant to section one hundred fifty-six-d of this
43 article for the purpose of chartering the bank of Rochester.

44 3. "Community bank" shall mean any locally owned and managed independ-
45 ent banking institution with no national presence, primarily operating
46 within a limited geographic area, typically a local community. Such
47 banks shall emphasize serving the unique financial needs of the local
48 community, including accepting deposits, extending loans, and offering
49 financial services to such community. Additionally, such banks shall
50 foster strong community relationships and contribute to the economic
51 development of the specific geographic area in which they are situated.

52 4. "Commercial bank" shall mean any for-profit financial institution
53 engaged in the commercial banking business, including but not limited to
54 a banking institution, trust company, private banker, national banking
55 association, or any banking corporation organized under federal law or
56 the laws of any state of the United States. Commercial banks also

1 include any corporation organized under the laws of any foreign country
2 and engaged in the commercial banking business that maintains a branch
3 or agency licensed by any state of the United States or comptroller of
4 currency.

5 5. "Community banking experience" shall mean current or past employ-
6 ment experience as an officer, director or executive, or current or past
7 employment experience in a senior leadership role at (a) a community
8 development financial institution that is a credit union, loan fund,
9 minority depository institution, union-controlled bank or locally based
10 community bank; or (b) a credit union, loan fund, minority depository
11 institution, union-controlled bank or locally based community bank that
12 otherwise serves low-income, rural or other underserved or economically
13 distressed communities.

14 6. "Community development financial institution" or "CDFI" shall mean
15 an entity that has been certified as meeting the eligibility require-
16 ments of section 1805.201 of title 12 of the code of federal regu-
17 lations.

18 7. "Credit union" shall have the same meaning as ascribed to such term
19 by subdivision nine of section two of the banking law.

20 8. "Deposit" shall mean the placing of money with the bank of Roches-
21 ter to be withdrawn upon the depositor's demand or under the rules and
22 regulations agreed upon between the bank of Rochester and the depositor.

23 9. "Independent" shall mean, with respect to a member of the board of
24 directors, advisory board, officers of the bank of Rochester, an indi-
25 vidual who:

26 (a) at the time of his or her appointment to the board of directors,
27 or the advisory board, is not a holder of any public office within the
28 sponsor; and

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

31 10. "Local agency banking" shall mean (i) accepting a deposit of any
32 kind from a local agency within the county of Monroe or (ii) granting a
33 loan or extension of credit of any kind to a local agency within the
34 county of Monroe.

35 11. "Local agency" shall have the same meaning as ascribed to such
36 term by subdivision twelve of section eight hundred ten of the general
37 municipal law.

38 12. "Local financial institution" shall mean a community development
39 financial institution that is (a) a credit union, loan fund, minority
40 depository institution, union-controlled bank or locally based community
41 bank; or (b) a credit union, loan fund, minority depository institution,
42 union-controlled bank or community bank that otherwise serves low-in-
43 come, rural or other underserved or economically distressed communities.

44 13. "Local elected official" shall mean any officer elected to a posi-
45 tion within a county, city, town, village, school district or district
46 corporation, or any agency, department, division, board, commission or
47 bureau thereof; provided, that, such term shall not include any judge or
48 justice of a court.

49 14. "Officer" refers to an individual holding a managerial or execu-
50 tive position within the bank of Rochester and managing its day-to-day
51 operations, including roles such as chief executive officer, chief
52 financial officer, or chief operations officer.

53 15. "Participation lending" shall mean purchasing or selling an inter-
54 est in a loan or loans originated by or sold to a community bank, CDFI,
55 or credit union, or originating, leading, or directing a loan trans-

1 action involving a local financial institution pursuant to a written
2 agreement with the local financial institution.

3 16. "Policy mandate" shall mean a written declaration of an organiza-
4 tion's core public purpose. Policy mandates should remain relatively
5 unchanged over time, separate and identify priorities if there are more
6 than one, identify desired outcomes, and communicate the entire organ-
7 ization's intended direction. Policy mandates could advance worker coop-
8 eratives, community land trusts, low-income and affordable housing,
9 renewable energy, infrastructure development, small businesses, small
10 farms, minority- and women-owned business enterprises, students in need
11 of low-cost education financing or refinancing student loan debts, and
12 other initiatives that serve a public purpose.

13 17. "Public funds" shall mean funds from any government entity or
14 subdivision thereof.

15 18. "Retail banking" shall mean providing financial products and
16 services to individuals for household, family, and other personal
17 expenditures. These products and services include savings and checking
18 accounts, consumer loans, credit cards, auto loans, student loans, and
19 loans to individuals secured by their personal residences, including
20 first mortgage, home equity, and home improvement loans.

21 19. "Sponsor" shall mean the city of Rochester.

22 20. "Wholesale lending" shall mean granting a loan or extension of
23 credit to a local financial institution or local agency.

24 § 156-a. Sponsors and corporate structure. The bank of Rochester is
25 hereby established as a not-for-profit corporation that shall be formed
26 and owned solely by the city of Rochester and subject to the not-for-
27 profit corporation law.

28 § 156-b. Powers and restrictions. 1. The bank of Rochester shall have
29 all the rights and powers conferred by articles three and fifteen of
30 this chapter, which must be exercised in a manner consistent with its
31 policy mandate as described in section one hundred fifty-six-i of this
32 article. Such powers shall include the following:

33 (a) Incorporating with the secretary of state;

34 (b) Chartering with the superintendent;

35 (c) Accepting deposits and appropriations from local agencies;

36 (d) Accepting deposits and appropriations from the county of Monroe;

37 (e) Accepting deposits and appropriations from the state of New York;

38 (f) Accepting deposits or appropriations from the federal government;

39 (g) Selling bonds;

40 (h) Purchasing stocks or bonds of local financial institutions;

41 (i) Issuing letters of credit;

42 (j) Engaging in local agency banking;

43 (k) Engaging in infrastructure lending;

44 (l) Engaging in wholesale lending; and

45 (m) Engaging in participation lending.

46 2. Notwithstanding the provisions of articles three and fifteen of
47 this chapter, the bank of Rochester shall be restricted from the follow-
48 ing:

49 (a) Competing with commercial banks or local financial institutions;

50 (b) Engaging in direct commercial lending;

51 (c) Engaging in retail banking; and

52 (d) Participating in equity markets.

53 § 156-c. Bank of Rochester governance. 1. The bank of Rochester shall
54 be governed by a board of directors. Such board shall be composed of
55 nine voting directors and four non-voting directors. All directors
56 shall serve a term of four years. The mayor of the city of Rochester

1 shall appoint one of their four appointees as chair. Each director shall
2 live within the jurisdictional boundaries of the county of Monroe and at
3 least five shall live within the jurisdictional boundaries of the city
4 of Rochester. Upon a majority vote, the board of directors shall appoint
5 officers. Such board shall set policy for the bank of Rochester,
6 provided that neither the board nor any directors shall be involved in
7 the day-to-day operations of the bank of Rochester. Decisions made by
8 such board shall be consistent with the policy mandate as described in
9 section one hundred fifty-six-i of this article.

10 2. The board of directors shall adopt governing bylaws and procedures
11 as required by the not-for-profit corporation law. Notwithstanding any
12 conflicting provisions in the not-for-profit corporation law, in addi-
13 tion to the requirements established by such article, the bank of
14 Rochester board of directors shall hold meetings on a monthly basis.

15 3. (a) The nine voting members shall be appointed as follows:

16 (i) The mayor of the city of Rochester shall appoint four voting
17 directors. At least two of such voting members shall have community
18 banking experience, and at least two of such voting members shall be
19 independent;

20 (ii) The director of the city of Rochester office of management and
21 budget or their representative shall serve as one voting director. If
22 the director of the city of Rochester office of management and budget
23 ceases to hold such position, their successor shall serve as or appoint
24 a replacement voting director;

25 (iii) The president of the Rochester city council shall appoint two
26 voting directors. At least one such voting director shall have community
27 banking experience, and one such voting director shall be independent;

28 (iv) The president of the Monroe county legislature shall appoint one
29 voting director with experience in ethics; and

30 (v) The county executive of Monroe county shall appoint one voting
31 director who is a county officer or employee.

32 (b) The four non-voting directors shall be appointed as follows:

33 (i) The mayor of the city of Rochester shall appoint one non-voting
34 director with experience in economic development and urban planning;

35 (ii) The president of the Rochester city council shall appoint one
36 non-voting director upon the recommendation of a community-based organ-
37 ization chosen by such president;

38 (iii) The president of the Rochester city council shall appoint one
39 non-voting director upon the recommendation of an advocacy organization
40 chosen by such president, provided that such advocacy organization's
41 mission shall align with the bank of Rochester's policy mandate pursuant
42 to section one hundred fifty-six-i of this article, and the parties or
43 projects that such advocacy organization represents shall be of the type
44 prioritized by the bank of Rochester's underwriting and financial poli-
45 cies as reflected in section one hundred fifty-six-i of this article;
46 and

47 (iv) The president of the Monroe county legislature shall appoint one
48 non-voting director upon the recommendation of a labor organization or
49 union chosen by such president, provided that such labor organization or
50 union represents construction workers who would be performing the neces-
51 sary labor to carry out the bank of Rochester's mandate.

52 4. The bank of Rochester shall form an advisory board.

53 (a) The advisory board shall be composed of no fewer than fifteen
54 members, and each member shall be subject to majority vote by the board
55 of directors prior to appointment. The board of directors will determine
56 the initial advisory board membership, the terms of its members, and the

1 method for replacing its members, provided that a majority of the advisory
2 board is made up of independent members who are not governmental
3 appointees. Any advisory board member shall live within the jurisdictional
4 boundaries of the county of Monroe.

5 (b) The advisory board shall provide advice and carry out other duties
6 including, but not limited to, the following:

7 (i) provide input to the board of directors regarding how to best
8 advance its policy mandate as described in section one hundred fifty-
9 six-i of this article;

10 (ii) ensure that the board of directors follows strict ethical stand-
11 ards as determined by the sponsor in the bank of Rochester's governing
12 bylaws and procedures, through the creation and enactment of a code of
13 conduct governing the board of directors' management;

14 (iii) ensure that the bank of Rochester's operations are consistent
15 with social equity principles, including racial, gender, and environ-
16 mental justice;

17 (iv) provide technical advice as needed.

18 (c) Any member appointed to a term on the advisory board shall have
19 experience in one or more of the following areas: economic development,
20 community banking, credit union banking, CDFI banking, finance, account-
21 ing, urban or regional planning, engineering, infrastructure,
22 construction, public policy, public administration, business management,
23 law, ethics, land use, management of large capital projects, labor
24 relations, human rights and fair lending, community advocacy, or have
25 experience in some other area of activity central to the policy mandate
26 of the bank of Rochester.

27 (d) Any action required or permitted by this chapter to be taken by
28 the board of directors or advisory board may be taken at a duly called
29 meeting of such board in accordance with its governing documents or
30 without a meeting if the action taken is evidenced by one or more writ-
31 ten consents describing the action taken and signed by each member of
32 the board of directors.

33 § 156-d. Bank of Rochester charter requirements. 1. The bank of
34 Rochester shall be chartered by the superintendent pursuant to article
35 fifteen of this chapter.

36 2. Notwithstanding any conflicting provisions in article fifteen of
37 this chapter, in addition to the information required by such article,
38 the bank of Rochester charter application documents shall additionally
39 demonstrate the following:

40 (a) the policy mandate of the proposed bank of Rochester is consistent
41 with the purposes and guidelines set forth under section one hundred
42 fifty-six-i of this article;

43 (b) minimum initial capitalization is no less than ten percent of the
44 bank of Rochester's projected lending total for the first year of opera-
45 tion after receipt of its charter;

46 (c) adequate reserves and liquidity exist to cover the bank of
47 Rochester's obligations relating to deposit withdrawals and defaulted
48 loans;

49 (d) the qualifications of the proposed directors;

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

52 (f) an organizational chart;

53 (g) policies and procedures prohibiting any member on the board of
54 directors, or affiliates of such members, from receiving a loan or other
55 financial benefit from the bank of Rochester;

56 (h) procedures for obtaining fidelity insurance;

- 1 (i) sufficient internal audits and controls;
2 (j) a pro forma financial statement projecting assets, liabilities,
3 income and expenses for no less than a three-year period;
4 (k) no material negative impact of the bank of Rochester on the spon-
5 sor's financial condition;
6 (l) a plan to comply with the community reinvestment act and fair
7 lending requirements, pursuant to section two hundred ninety-six-a of
8 the executive law;
9 (m) a certificate of incorporation;
10 (n) a narrative business plan describing the banking services to be
11 provided; and

12 (o) such other information as the superintendent may require.

13 § 156-e. Financial and operations framework. 1. The bank of Rochester
14 may raise capital through:

15 (a) the receipt and leverage of public deposits from the city of
16 Rochester, county of Monroe or any local agency thereof, the state of
17 New York, and the federal government;

18 (b) equity contributions from the city of Rochester, county of Monroe
19 or any local agency thereof, the state of New York, and the federal
20 government;

21 (c) the sale of debt securities and other obligations to the city of
22 Rochester, county of Monroe or any local agency thereof, the state of
23 New York, and the federal government; and

24 (d) the sale of debt securities and other obligations to third
25 parties.

26 2. The bank of Rochester shall be exempt from all forms of taxes,
27 including but not limited to state, county, and municipal taxes and
28 licenses, of any kind, including income, capital gain, real estate and
29 mortgage recording taxes.

30 3. The bank of Rochester shall not be sold to or merged with another
31 entity unless such entity has a public bank charter and the sale or
32 merger has been approved by the superintendent.

33 § 156-f. Transparency and financial reporting. 1. The bank of Roches-
34 ter shall, on or before the first day of February of each year, submit
35 to the governor, the state legislature, the mayor of the city of Roches-
36 ter, the Rochester city council, and the Monroe county council a
37 detailed report setting forth its operations and fiscal transactions
38 during the preceding calendar year with a statement of its financial
39 condition as of the end of such year and a statement of all receipts and
40 expenditures during such year.

41 2. The bank of Rochester advisory board shall include in such annual
42 report an evaluation of the bank of Rochester's performance in relation
43 to its policy mandate, its ethical standards, and its financial sound-
44 ness. It shall produce such evaluation in collaboration with non-voting
45 directors.

46 § 156-g. Insurance and rehabilitation. Deposits of public funds made
47 to the bank of Rochester from any governmental entity or subdivision
48 thereof shall be guaranteed by the state of New York, provided however,
49 that the superintendent shall have the authority to take possession of
50 the bank of Rochester pursuant to section six hundred six of this chap-
51 ter.

52 § 156-h. Deposits. 1. The board of directors shall develop a plan,
53 subject to approval by the advisory board, to accept and manage depos-
54 its.

55 2. The bank of Rochester may accept deposits but shall be exempt from
56 the requirements of section ten of the general municipal law.

1 3. The comptroller and chief financial officer of the city of Roches-
2 ter and county of Monroe, respectively, shall be authorized to deposit
3 public funds in the bank of Rochester, provided that the bank of
4 Rochester's business plan permits the respective comptroller or chief
5 financial officer to meet the short or intermediate-term liquidity needs
6 of the sponsor.

7 § 156-i. Policy mandate. The board of directors shall establish the
8 bank of Rochester's policy mandate, subject to approval by the mayor of
9 the city of Rochester and the president of the Rochester city council.
10 The overall underwriting and financial policies of the bank of Rochester
11 shall maximize and prioritize loans to advance its policy mandate.

12 § 156-j. Ethics and financial disclosure. 1. Every member of the board
13 of directors and advisory board and every officer of the bank of Roches-
14 ter shall submit an annual financial disclosure form, on the form
15 described in subdivision three of section seventy-three-a of the public
16 officer's law, or on a substantially equivalent form, to the Rochester
17 office of public integrity. Such form shall be prescribed by the Roches-
18 ter office of public integrity and provided to the bank of Rochester.

19 2. Notwithstanding any conflicting provision in this article to the
20 contrary, every board of directors member, advisory board member, and
21 officer shall adhere to the ethical standards established in section
22 seventy-four of the public officers law.

23 § 156-k. Inconsistency with other laws. The bank of Rochester shall
24 comply with all requirements of this chapter, the financial services
25 law, the state finance law, the local finance law, the general municipal
26 law, the not-for-profit corporation law, and all other relevant
27 provisions of state or local law, except to the extent that a require-
28 ment of any of those laws is inconsistent with a provision of this arti-
29 cle, in which case the provisions of this article shall prevail.

30 § 156-l. Owners not to be considered bank holding companies. For the
31 purposes of section one hundred forty-one of this chapter, the sponsor
32 of the bank of Rochester shall not be considered a bank holding company
33 by reason of that ownership interest.

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

36 7-a. Commercial paper, debt securities, bonds, notes, or other obli-
37 gations of the bank of Rochester, as established by article three-C of
38 the banking law.

39 § 6. This act shall take effect immediately.