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:

Section 1. Short title. This act shall be known and may be cited as the "bank of Rochester act".

§ 2. Legislative intent. 1. It is the intent of the legislature that this act (i) authorizes the city of Rochester to form and control the bank of Rochester, and loan or grant public funds or lend public credit to the bank of Rochester for the public purposes of achieving cost savings, strengthening local economies, supporting community economic development, and addressing infrastructure and housing needs for localities; and (ii) codifies the common law interpretation of the constitution of the state of New York that cities, counties, and other municipalities may own a not-for-profit corporation and lend or grant money to such not-for-profit corporation, so long as such actions are pursuant to public purposes.

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

§ 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

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

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associations, credit unions, 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
BANK OF ROCHESTER

Section 156. Definitions.
156-a. Sponsors and corporate structure.
156-b. Powers and restrictions.
156-c. Bank of Rochester governance.
156-d. Bank of Rochester charter requirements.
156-e. Financial and operations framework.
156-f. Transparency and financial reporting.
156-g. Insurance and rehabilitation.
156-h. Deposits.
156-i. Policy mandate.
156-j. Ethics and financial disclosure.
156-k. Inconsistency with other laws.
156-l. Owners not to be considered bank holding companies.

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

1. "Affiliate" shall mean:

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

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

(c) another person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a member of the board of directors. For the purposes of this paragraph, the term "control" shall mean 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.

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

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

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

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

5. "Community banking experience" shall mean current or past employment experience as an officer, director or executive, or current or past employment experience in a senior leadership role at (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" or "CDFI" shall mean 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. "Credit union" shall have the same meaning as ascribed to such term by subdivision nine of section two of the banking law.

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

9. "Independent" shall mean, with respect to a member of the board of directors, advisory board, officers of the bank of Rochester, an individual who:

(a) at the time of his or her appointment to the board of directors, or the advisory board, 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 agency banking" shall mean (i) accepting a deposit of any kind from a local agency within the county of Monroe or (ii) granting a loan or extension of credit of any kind to a local agency within the county of Monroe.

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

12. "Local financial institution" shall mean a community development financial institution that is (a) 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 community bank that otherwise serves low-income, rural or other underserved or economically distressed communities.

13. "Local elected official" shall mean 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.

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

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

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

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

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

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

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

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

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

§ 156-b. Powers and restrictions. 1. The bank of Rochester 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 policy mandate as described in section one hundred fifty-six-i of this article. Such powers shall include the following:

(a) Incorporating with the secretary of state;

(b) Chartering with the superintendent;

(c) Accepting deposits and appropriations from local agencies;

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

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

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

(g) Selling bonds;

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

(i) Issuing letters of credit;

(j) Engaging in local agency banking;

(k) Engaging in infrastructure lending;

(l) Engaging in wholesale lending; and

(m) Engaging in participation lending.

2. Notwithstanding the provisions of articles three and fifteen of this chapter, the bank of Rochester shall be restricted from the following:

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

(b) Engaging in direct commercial lending;

(c) Engaging in retail banking; and

(d) Participating in equity markets.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) ensure that the bank of Rochester's operations are consistent with social equity principles, including racial, gender, and environmental justice;

(iv) provide technical advice as needed.

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

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

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

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

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

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

(c) adequate reserves and liquidity exist to cover the bank of Rochester'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 member on the board of directors, or affiliates of such members, from receiving a loan or other financial benefit from the bank of Rochester;

(h) procedures for obtaining fidelity insurance;

(i) sufficient internal audits and controls;

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

(k) no material negative impact of the bank of Rochester 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 superintendent may require.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 6. This act shall take effect immediately.