SENATE BILL 313

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Jeff Steinborn

AN ACT

RELATING TO PUBLIC FINANCE; ENACTING THE PUBLIC BANKING ACT;
CREATING THE PUBLIC BANK OF NEW MEXICO; ESTABLISHING A BOARD OF
DIRECTORS AND THE STRUCTURE OF THE PUBLIC BANK OF NEW MEXICO;
PROVIDING DUTIES; PERMITTING CERTAIN INVESTMENTS; PROHIBITING
CONFLICTS OF INTEREST; CREATING THE STATE BANKING FUND;
REQUIRING THE STATE TREASURER TO DEPOSIT AND MAINTAIN A CERTAIN
AMOUNT OF PUBLIC MONEY IN THE PUBLIC BANK OF NEW MEXICO;
REQUIRING A CERTAIN AMOUNT OF THE SEVERANCE TAX PERMANENT FUND
TO BE INVESTED IN THE STATE BANKING FUND; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 7 of this act may be cited as the "Public Banking Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Public Banking Act:

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A. "bank" means the public bank of New Mexico;
B. "board" means the board of directors of the bank;
C. "director" means a member of the board; and
D. "fund" means the state banking fund.

SECTION 3. [NEW MATERIAL] PUBLIC BANK OF NEW MEXICO--ESTABLISHED--BOARD OF DIRECTORS.--

A. The "public bank of New Mexico" is created as a public body politic and corporate, constituting a governmental instrumentality, which shall be chartered pursuant to the laws of the United States.

B. The bank shall constitute a public body corporate by the name set forth in the incorporation certificate and by such name may sue and be sued, have the capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal, accept deposits, grants and donations, borrow and lend money, incur indebtedness, impose fees and assessments and do any other act necessary or proper for carrying out the provisions of the Public Banking Act. The bank may serve as a fiscal agent of the state and any agency or instrumentality of the state, and the bank may serve as a fiscal agent for any local government or municipality.

C. The bank shall be governed, and all of its functions, powers and duties shall be exercised, by the board of directors. The board consists of eleven voting members as
follows:

1. two members appointed by the New Mexico legislative council who have successful management experience in banking finance or banking operations in a regulatory environment; provided that the two members shall not be members of the same political party;

2. one member appointed by the New Mexico legislative council who has successful community economic development experience, which may be evidenced by experience with organizations, including chambers of commerce, community foundations, tribal entities, economic development districts and councils of governments;

3. one member appointed by the New Mexico legislative council with at least five years of community development experience working to address community needs, including infrastructure, food systems and local agriculture, public facilities installation, renewable energy, community centers, housing rehabilitation, public services, microenterprise assistance, code enforcement and homeowner assistance;

4. one member appointed by the governor who has successful management experience in banking finance or banking operations in a regulatory environment or who is an entrepreneur with successful, sophisticated business borrowing experience;
(5) two members appointed by the governor who have successful community economic development experience, which may be evidenced by experience with organizations, including chambers of commerce, community foundations, tribal entities, economic development districts and councils of governments;

(6) one member appointed by the governor with at least five years of community development experience working to address community needs, including infrastructure, food systems and local agriculture, public facilities installation, renewable energy, community centers, housing rehabilitation, public services, microenterprise assistance, code enforcement and homeowner assistance;

(7) the chief executive officer of the New Mexico finance authority;

(8) the state treasurer; and

(9) the secretary of economic development.

D. The directors appointed pursuant to Subsection C of this section shall be residents of the state and shall serve for terms of four years and shall not serve more than two consecutive terms, except as provided in Subsection E of this section.

E. The initial board shall establish membership terms for the directors appointed pursuant to Subsection C of this section so that:
(1) four of the initial appointed members are
appointed for an initial term of two years; and

(2) four of the initial appointed members are
appointed for an initial term of four years.

F. Any person currently serving as a board member,
or equivalent position, for a community development financial
institution, credit union, trust or other banking institution
or an employee of a community development financial institution
or credit union shall not be eligible to serve as a director.

G. Directors shall receive per diem and mileage as
provided in the Per Diem and Mileage Act and shall receive no
other compensation, perquisite or allowance.

H. Directors, officers and employees of the bank
shall be governed by the provisions of the Governmental Conduct
Act.

I. Directors shall elect a chair of the board.

J. If a vacancy occurs among the directors, the
appointing authority of the former director shall appoint a
replacement to serve out the term of that director. If a
director's term expires, the director shall continue to serve
until another member is appointed.

K. The board shall meet quarterly and at the call
of the chair.

L. The board shall maintain minutes of all meetings
of the board and maintain other appropriate records, including

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financial transaction records in compliance with state and federal law and adequate to provide an accurate record for audit purposes pursuant to the Audit Act.

M. Members of the board shall be subject to the Financial Disclosure Act.

N. The bank shall be subject to all applicable regulatory and reporting requirements that allow access to the federal reserve and shall obtain a blanket bond on all employees of the bank.

SECTION 4. [NEW MATERIAL] CHIEF EXECUTIVE OFFICER--CHIEF RISK OFFICER--DUTIES--STAFF.--

A. The chief executive officer of the bank shall be hired by the board. The position of the chief executive officer shall be a full-time position, and the chief executive officer shall not engage in any other occupation or profession or hold any other public office, appointive or elective.

B. The chief executive officer shall be an individual qualified by experience in the field of investment management, investment risk management, corporate governance, investment accounting or finance. The chief executive officer of the bank shall direct the affairs and business of the bank, subject to the policies, control and direction of the board. The chief executive officer shall have substantial experience successfully running a financial institution of a comparable asset size or greater and shall be responsible for achieving
the community and economic development purposes as described in
the Public Banking Act. The chief executive officer shall be
responsible for the management of the bank; its relations with
creditors, banking and credit union partners and local
communities; maintaining and improving the financial health and
the internal operations and overall performance of the bank;
and maintaining compliance of the bank with fiscal and
regulatory requirements.

C. The chief executive officer shall receive a
salary to be determined by the board and shall report to the
board on all matters pertaining to the bank.

D. The chief risk officer of the bank shall be
hired by the chief executive officer. The chief risk officer
shall report to the board and to the chief executive officer
and shall assist the chief executive officer in strategic
planning to achieve the corporate objectives and regulatory
expectations of the bank. The chief risk officer shall hold
the credential of a certified risk manager or an equivalent
credential within that professional field.

E. The chief executive officer shall:

(1) annually prepare a budget for the bank
that shall be reviewed and approved by the board. Any funds
provided for the operating budget of the bank shall be
appropriated by the legislature from the assets of the fund;

(2) hire all employees of the bank;
(3) keep accurate and complete records and accounts concerning all transactions involving the bank; and

(4) report quarterly to the board on the investments made pursuant to the Public Banking Act and on the available and encumbered funds of the fund. Annually, a report shall be submitted no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim legislative committees. The bank shall make the report available to the public by publishing the report on the internet.

SECTION 5. [NEW MATERIAL] INVESTMENTS--LENDING.--

A. Subject to the limitations, conditions and restrictions provided by law or policy adopted by the board, the bank may:

(1) make purchases, sales, exchanges, investments and reinvestments of the assets of the fund; provided that all transactions be in accordance with the Public Banking Act and the Uniform Prudent Investor Act;

(2) make, purchase, guarantee or hold loans:

(a) to state-chartered or federally chartered lending agencies or institutions;

(b) that are insured or guaranteed in whole or in part by the United States or its agencies or instrumentalities or the federal deposit insurance corporation.
or other agencies or instrumentalities;

    (c) to instrumentalities or political subdivisions of the state;

    (d) to an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c) of the federal Internal Revenue Code of 1986 and subject to the provisions of the Nonprofit Corporation Act;

    (e) obtained as security pledged for, or originated in the restructuring of, any other loan properly originated or participated in by the bank; and

    (f) originated by financial institutions authorized to do business in this state;

    (3) buy and sell federal bonds;

    (4) lease, assign, sell, exchange, transfer, convey, grant, pledge or mortgage real and personal property;

    (5) purchase bonds, capitalize other state financing programs, acquire securities or make loans to political subdivisions of the state for the purpose of providing financing for any public project;

    (6) purchase participation interests in loans made or held by state-chartered or federally chartered financial institutions; and

    (7) enter into agreements or develop memoranda
of understanding with credit unions or community banks for the
purpose of facilitating lending opportunities and carrying out
the provisions of the Public Banking Act.

B. The bank shall not make loans to a private
individual or private legal entity except as provided in
Subsection C of this section.

C. The bank shall pursue a policy of supporting new
and growing industries and businesses in New Mexico; provided
that the bank shall develop lending programs that are approved
by the board that ensure a diversified loan portfolio that
makes financing available to communities throughout the state,
and in pursuit of these policies may:

   (1) cooperate with small business development
centers, regional economic development districts and parties
that have demonstrated abilities and relationships in providing
financial services to new and emerging businesses; and

   (2) make equity or debt investments in New
Mexico businesses; provided that the investments are made
pursuant to policies adopted by the board.

D. The chief executive officer of the bank and the
board are trustees of all funds under their control.

SECTION 6. [NEW MATERIAL] CONFLICTS OF INTEREST--
PENALTY.--

A. If any director, officer or employee of the bank
has an interest, either direct or indirect, in any contract to
which the bank is or is to be a party, such interest shall be
disclosed to the board in writing. The director, officer or
employee having such interest shall not participate in any
action by the bank with respect to that contract.

B. Any person who has a conflict of interest as
provided in this section and participates in any transaction
involving that conflict of interest or knowingly fails to
notify the bank of that conflict is guilty of a misdemeanor and
upon conviction shall be sentenced pursuant to the provisions
of Section 31-19-1 NMSA 1978.

SECTION 7. [NEW MATERIAL] STATE BANKING FUND.--

A. The "state banking fund" is created within the
bank. The fund shall be administered by the bank as a separate
account, but may consist of such subaccounts as the bank deems
necessary to carry out the purposes of the fund. The board
shall establish procedures and policies as required to
administer the fund in accordance with the Public Banking Act
and all other applicable state and federal law and banking
regulatory requirements. The fund consists of appropriations,
gifts, grants, deposits, donations and investment income of the
fund. Money in the fund shall not revert to the general fund
at the end of a fiscal year. The fund shall be used in
accordance with the provisions of the Public Banking Act, and
all income earned on the fund shall be credited to the fund.

B. All money credited to the fund is appropriated
to and retained by the bank for the purpose of carrying out the provisions of the Public Banking Act.

C. Except as otherwise provided in the Public Banking Act, money from payments of principal of and interest on loans and payments of principal of and interest on securities held by the bank shall be deposited in the fund and shall not revert to the general fund.

D. Money in the fund shall be disbursed on vouchers signed by the chief executive officer of the bank or the chief executive officer's authorized representative.

SECTION 8. A new section of Chapter 6, Article 10 NMSA 1978 is enacted to read:

"[NEW MATERIAL] PUBLIC BANK OF NEW MEXICO--DEPOSITS--EXCEPTED.--

A. Chapter 6, Article 10 NMSA 1978 is not applicable to deposits made to the public bank of New Mexico expect as provided in this section.

B. Within thirty days of the incorporation of the public bank of New Mexico and the bank receiving its formal charter, the state treasurer shall make a deposit into the public bank of New Mexico in an amount of fifty million dollars ($50,000,000). The state treasurer shall not withdraw the funds from the initial deposit provided for in this section, but may deposit and withdraw additional funds in the public bank of New Mexico."
SECTION 9. A new section of the Severance Tax Bonding Act is enacted to read:

"[NEW MATERIAL] PUBLIC BANK OF NEW MEXICO.--Within thirty days of the incorporation of the public bank of New Mexico and the bank receiving its formal charter, the state investment officer shall make a commitment to the public bank of New Mexico to invest fifty million dollars ($50,000,000) of the severance tax permanent fund in the state banking fund for the purpose of carrying out the provisions of the Public Banking Act."

SECTION 10. Section 7-27-5 NMSA 1978 (being Laws 1983, Chapter 306, Section 7, as amended) is amended to read:

"7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--

A. The severance tax permanent fund shall be invested in separate differential rate and market rate investment classes. "Differential rate investments" are permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17, 7-27-5.22, 7-27-5.24 and 7-27-5.26 NMSA 1978 and are intended to stimulate the economy of New Mexico and to provide income to the severance tax permanent fund. "Market rate investments" are investments that are not differential rate investments and are intended to provide income to the severance tax permanent fund. All market rate investments and differential rate investments shall be invested in accordance with the Uniform Prudent Investor Act and shall be accounted .218162.5
for in accordance with generally accepted accounting principles.

B. In addition to the investment classes described in Subsection A of this section, the severance tax permanent fund shall be invested in:

   (1) loans to provide emergency economic relief to local governments as provided by Section [8 of this 2020 act] 7-27-5.27 NMSA 1978; and

   (2) the state banking fund as provided in Section 9 of this 2021 act."

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.