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HOUSE BILL 75

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Patricia Roybal Caballero and 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;
PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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:

A. "bank" means the public bank of New Mexico;

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1 B. "board" means the board of directors of the
2 bank;

3 C. "director" means a member of the board; and

4 D. "fund" means the state banking fund and shall
5 include all assets, liabilities, equity, income and expenses of
6 the bank.

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

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

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

24 C. The bank shall be governed, and all of its
25 functions, powers and duties shall be exercised, by the board

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1 of directors, who shall be appointed with input from the
2 public. The board consists of eleven voting members as
3 follows:

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

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

15 (3) one member appointed by the New Mexico
16 legislative council with at least five years of community
17 development experience working to address community needs,
18 including infrastructure, food systems and sustainable,
19 regenerative agriculture, public facilities installation,
20 alternative and renewable energy, community centers, housing
21 rehabilitation, public services, microenterprise assistance,
22 code enforcement and homeowner assistance;

23 (4) one member appointed by the governor who
24 has successful management experience in banking finance or
25 banking operations in a regulatory environment or who is an

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1 entrepreneur with successful, sophisticated business borrowing
2 experience;

3 (5) two members appointed by the governor who
4 have successful community economic development experience,
5 which may be evidenced by experience with organizations,
6 including chambers of commerce, community foundations, tribal
7 entities, economic development districts and councils of
8 governments;

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

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

18 (8) the state treasurer; and

19 (9) the secretary of economic development.

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

25 E. The initial board shall establish membership

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1 terms for the directors appointed pursuant to Subsection C of
2 this section so that:

3 (1) four of the initial appointed members are
4 appointed for an initial term of two years; and

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

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

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

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

18 I. Directors shall elect a chair of the board.

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

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

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1 L. The board shall maintain minutes of all meetings
2 of the board and maintain other appropriate records, including
3 financial transaction records in compliance with state and
4 federal law and adequate to provide an accurate record for
5 audit purposes pursuant to the Audit Act.

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

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

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

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

19 B. The chief executive officer shall be an
20 individual qualified by experience in the field of investment
21 management, investment risk management, corporate governance,
22 investment accounting or finance. The chief executive officer
23 of the bank shall direct the affairs and business of the bank,
24 subject to the policies, control and direction of the board.
25 The chief executive officer shall have substantial experience

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1 successfully running a financial institution of a comparable
2 asset size or greater and shall be responsible for achieving
3 the community and economic development purposes as described in
4 the Public Banking Act. The chief executive officer shall be
5 responsible for the management of the bank; its relations with
6 creditors, banking and credit union partners and local
7 communities; maintaining and improving the financial health and
8 the internal operations and overall performance of the bank;
9 and maintaining compliance of the bank with fiscal and
10 regulatory requirements.

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

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

22 E. The chief executive officer shall:

23 (1) annually prepare a budget for the bank
24 that shall be reviewed and approved by the board. Any funds
25 provided for the operating budget of the bank shall be provided

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1 from bank income and equity;

2 (2) hire all employees of the bank;

3 (3) keep accurate and complete records and
4 accounts concerning all transactions involving the bank; and

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

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

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

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

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

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

25 (b) that are insured or guaranteed in

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1 whole or in part by the United States or its agencies or
2 instrumentalities or the federal deposit insurance corporation
3 or other agencies or instrumentalities;

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

6 (d) to an organization that has been
7 granted exemption from the federal income tax by the United
8 States commissioner of internal revenue as an organization
9 described in Section 501(c)(3) of the federal Internal Revenue
10 Code of 1986 and subject to the provisions of the Nonprofit
11 Corporation Act;

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

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

17 (3) buy and sell federal bonds;

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

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

24 (6) purchase participation interests in loans
25 made or held by state-chartered or federally chartered

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1 financial institutions; and

2 (7) enter into agreements or develop memoranda
3 of understanding with credit unions, community development
4 financial institutions or community banks for the purpose of
5 facilitating lending opportunities and carrying out the
6 provisions of the Public Banking Act.

7 B. The bank shall not make loans to a private
8 individual or private legal entity.

9 C. The bank shall pursue a policy of developing
10 loan programs for public benefit to further agriculture,
11 commerce and industry, including new and growing enterprises in
12 New Mexico, that are approved by the board, that ensure a
13 diversified loan portfolio and that make financing accessible
14 and equitably available to communities throughout the state as
15 evidenced by outcomes including more jobs with sustainable
16 wages. In pursuit of this policy the bank shall:

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

21 (2) make equity or debt investments in New
22 Mexico businesses through local financial institutions;
23 provided that the investments are made pursuant to policies
24 adopted by the board; and

25 (3) evaluate loan performance on the basis of

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1 both risk analysis and public benefit.

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

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

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

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

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

19 A. The "state banking fund" is created within the
20 bank. The fund shall be administered by the bank as a separate
21 account, but may consist of such subaccounts as the bank deems
22 necessary to carry out the purposes of the fund. The board
23 shall establish procedures and policies as required to
24 administer the fund in accordance with the Public Banking Act
25 and all other applicable state and federal law and banking

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1 regulatory requirements. The fund consists of appropriations,
2 capital, retained earnings, deposits and investment income of
3 the fund. Money in the fund shall not revert to the general
4 fund at the end of a fiscal year. The fund shall be used in
5 accordance with the provisions of the Public Banking Act, and
6 all income earned on the fund shall be credited to the fund.

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

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

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

18 SECTION 8. A new section of Chapter 6, Article 10 NMSA
19 1978 is enacted to read:

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

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

25 B. Within thirty days of the incorporation of the

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1 public bank of New Mexico and the bank receiving its formal
2 charter, the state treasurer shall make a deposit into the
3 public bank of New Mexico in an amount of sixty million dollars
4 (\$60,000,000). The state treasurer shall not withdraw the
5 funds from the initial deposit provided for in this section,
6 but may deposit and withdraw additional funds in the public
7 bank of New Mexico."

8 SECTION 9. APPROPRIATION.--Fifty million dollars
9 (\$50,000,000) is appropriated from the general fund to the
10 state banking fund for expenditure in fiscal year 2023 and
11 subsequent fiscal years to capitalize the public bank of New
12 Mexico for the purpose of carrying out the provisions of the
13 Public Banking Act. Any unexpended or unencumbered balance
14 remaining at the end of a fiscal year shall not revert to the
15 general fund.

16 SECTION 10. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2022.