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SENATE BILL 110

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

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;
PROVIDING PENALTIES; MAKING APPROPRIATIONS.

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;

12 (3) one member appointed by the New Mexico
13 legislative council with at least five years of community
14 development experience working to address community needs;

15 (4) one member appointed by the governor who
16 has successful management experience in banking finance or
17 banking operations in a regulatory environment or who is an
18 entrepreneur with successful, sophisticated business borrowing
19 experience;

20 (5) two members appointed by the governor who
21 have successful community economic development experience,
22 which may be evidenced by experience with organizations;

23 (6) one member appointed by the governor with
24 at least five years of community development experience working
25 to address community needs;

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

3 (8) the state treasurer; and

4 (9) the secretary of economic development.

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

10 E. The initial board shall establish membership
11 terms for the directors appointed pursuant to Subsection C of
12 this section so that:

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

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

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

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

25 H. Directors, officers and employees of the bank

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1 shall be governed by the provisions of the Governmental Conduct
2 Act.

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

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

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

11 L. The board shall maintain minutes of all meetings
12 of the board and maintain other appropriate records, including
13 financial transaction records in compliance with state and
14 federal law and adequate to provide an accurate record for
15 audit purposes pursuant to the Audit Act.

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

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

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

24 A. The chief executive officer of the bank shall be
25 hired by the board. The position of the chief executive

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1 officer shall be a full-time position, and the chief executive
2 officer shall not engage in any other occupation or profession
3 or hold any other public office, appointive or elective.

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

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

24 D. The chief risk officer of the bank shall be
25 hired by the chief executive officer. The chief risk officer

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1 shall report to the board and to the chief executive officer
2 and shall assist the chief executive officer in strategic
3 planning to achieve the corporate objectives and regulatory
4 expectations of the bank. The chief risk officer shall hold
5 the credential of a certified risk manager or an equivalent
6 credential within that professional field.

7 E. The chief executive officer shall:

8 (1) annually prepare a budget for the bank
9 that shall be reviewed and approved by the board. Any funds
10 provided for the operating budget of the bank shall be provided
11 from bank income and equity;

12 (2) hire all employees of the bank;

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

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

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

25 A. Subject to the limitations, conditions and

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1 restrictions provided by law or policy adopted by the board,
2 the bank may:

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

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

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

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

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

16 (d) to an organization that has been
17 granted exemption from the federal income tax by the United
18 States commissioner of internal revenue as an organization
19 described in Section 501(c)(3) of the federal Internal Revenue
20 Code of 1986 and subject to the provisions of the Nonprofit
21 Corporation Act;

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

25 (f) originated by local financial

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1 institutions authorized to do business in this state;

2 (3) buy and sell federal bonds;

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

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

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

12 (7) enter into agreements or develop memoranda
13 of understanding with credit unions, community development
14 financial institutions or community banks for the purpose of
15 facilitating lending opportunities and carrying out the
16 provisions of the Public Banking Act.

17 B. The bank shall not make loans to a private
18 individual or private legal entity.

19 C. The bank shall pursue a policy of developing
20 loan programs for public benefit to further agriculture,
21 commerce and industry. In pursuit of this policy, the bank
22 shall:

23 (1) cooperate with small business development
24 centers, regional economic development districts and parties
25 that have demonstrated abilities and relationships in providing

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1 financial services to new and emerging businesses; and

2 (2) evaluate loan performance on the basis of
3 both risk analysis and public benefit.

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

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

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

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

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

21 A. The "state banking fund" is created within the
22 state treasury. The fund consists of appropriations, capital,
23 retained earnings, deposits and investment income of the fund.
24 Except as otherwise provided in the Public Banking Act, money
25 from payments of principal of and interest on loans and

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1 payments of principal of and interest on securities held by the
2 bank shall be deposited in the fund. Money in the fund shall
3 not revert to the general fund at the end of a fiscal year.

4 B. Until the bank is chartered, the state treasurer
5 shall administer the fund, and money in the fund is
6 appropriated to the state treasurer to be used for the purpose
7 of carrying out the provisions of the Public Banking Act.
8 Disbursements from the fund shall be made by warrant of the
9 secretary of finance and administration pursuant to vouchers
10 signed by the state treasurer or the state treasurer's
11 authorized representative.

12 C. When the bank becomes chartered pursuant to
13 state law:

14 (1) the fund shall be transferred to the bank;
15 (2) the bank shall administer the fund;
16 (3) money in the fund is appropriated to and
17 retained by the bank for the purpose of carrying out the
18 provisions of the Public Banking Act; and

19 (4) money in the fund shall be disbursed on
20 vouchers signed by the chief executive officer of the bank or
21 the chief executive officer's authorized representative.

22 SECTION 8. A new section of Chapter 6, Article 10 NMSA
23 1978 is enacted to read:

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

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

4 B. Within thirty days of the incorporation of the
5 public bank of New Mexico and the bank receiving its formal
6 charter, the state treasurer shall make a deposit into the
7 public bank of New Mexico in an amount of thirty-five million
8 dollars (\$35,000,000). The state treasurer shall not withdraw
9 the funds from the initial deposit provided for in this
10 section, but may deposit additional funds in the public bank of
11 New Mexico."

12 **SECTION 9. APPROPRIATIONS.--**

13 A. Twenty million dollars (\$20,000,000) is
14 appropriated from the general fund to the state banking fund
15 for expenditure in fiscal year 2025 and subsequent fiscal years
16 to capitalize the public bank of New Mexico for the purpose of
17 carrying out the provisions of the Public Banking Act. Any
18 unexpended or unencumbered balance remaining at the end of a
19 fiscal year shall not revert to the general fund.

20 B. One million five hundred thousand dollars
21 (\$1,500,000) is appropriated from the general fund to the
22 economic development department for expenditure in fiscal year
23 2025 and subsequent fiscal years for the purpose of
24 establishing and chartering the public bank of New Mexico and
25 developing the bank's lending programs. Any unexpended or

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1 unencumbered balance remaining at the end of a fiscal year
2 shall not revert to the general fund.

3 SECTION 10. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2024.

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