

House Bill 1623

By: Representative Lim of the 99th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,
2 so as to authorize the creation of public banks; to provide for legislative intent; to provide for
3 definitions; to require public banks to meet all the requirements to operate as a bank under
4 Title 7; to provide for licenses for public banks and for limitations on such licenses; to
5 provide for a study to be conducted by the Department of Banking and Finance; to authorize
6 the lending of public agency funds to public banks; to authorize certain investments by local
7 agencies; to provide for incorporation of public banks; to provide requirements for operation;
8 to authorize public banks to engage in certain banking activities; to provide for application
9 requirements for a license; to require a study to assess the viability of a proposed bank before
10 the submission of an application; to exempt proceedings and records from public disclosure;
11 to authorize the department to promulgate rules and regulations; to amend Code Section
12 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from sales and use
13 taxes, so as to exempt licensed public banks from such taxes; to provide for related matters;
14 to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 It is the intent of the General Assembly that:

18 (1) This Act authorize the lending of public credit to public banks and authorize public
19 ownership of public banks for the purpose of achieving cost savings, strengthening local
20 economies, supporting community economic development, and addressing infrastructure
21 and housing needs for localities; and

22 (2) Public banks shall partner with local financial institutions, such as credit unions and
23 local community banks, and shall not compete with local financial institutions.

24 **SECTION 2.**

25 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
26 amended by adding a new chapter to read as follows:

27 "CHAPTER 10.

28 7-10-1.

29 As used in this chapter, the term:

30 (1) 'Community development financial institution' means an entity that is designated as
31 a community development financial institution by the United States Department of the
32 Treasury's Community Development Financial Institutions Fund.

33 (2) 'Department' means the Department of Banking and Finance.

34 (3) 'Local agency' means a county, a municipal corporation, or an authority created
35 pursuant to Title 36.

36 (4) 'Local financial institution' means a community development financial institution, a
37 credit union as defined in paragraph (15) of Code Section 7-1-4, or a small bank or an
38 intermediate small bank as defined in Section 25.12 of Title 12 of the Code of Federal
39 Regulations.

40 (5) 'Public bank' means a corporation organized under Chapter 3 of Title 14, the 'Georgia
41 Nonprofit Corporation Code,' for the purpose of engaging in the banking business that
42 is wholly owned by a local agency or local agencies.

43 7-10-2.

44 (a) Before engaging in business, a public bank shall:

45 (1) Except as provided in this chapter, meet all of the requirements to be authorized to
46 operate as a bank pursuant to Chapter 1 of this title; and

47 (2) Be licensed to operate as a public bank pursuant to this Code section.

48 (b) A proposed public bank shall be licensed by the department upon the submission of
49 application documents that include the following:

50 (1) Information showing that the purpose of the proposed public bank is consistent with
51 the purposes required under this chapter;

52 (2) A business plan describing the banking services to be provided; and

53 (3) Such other information as the department may require.

54 7-10-3.

55 (a) The department shall not issue more than two public bank licenses in a calendar year.

56 (b) The department shall not issue a public bank license if such issuance would cause there
57 to be more than six public banks authorized to transact business pursuant to this chapter.

58 (c) The department shall conduct a study of public banking in Georgia within two years
59 after the date upon which the department issues its fourth public bank license.

60 (d) The department shall not issue a public bank license after the expiration of a period of
61 seven years from the date upon which the department first promulgates regulations for the
62 purpose of carrying out the department's duties under this chapter.

63 7-10-4.

64 (a) Notwithstanding any other law to the contrary, a local agency may lend any of its
65 available funds to any public bank.

66 (b) Notwithstanding any other law to the contrary, a local agency may invest in debt
67 securities or other obligations of a public bank.

68 (c) Notwithstanding any other law to the contrary, a public bank shall be eligible to receive
69 local agency money.

70 7-10-5.

71 (a) The articles of incorporation of a public bank shall include the following purpose
72 statement: 'This corporation is a nonprofit corporation organized under the Georgia
73 Nonprofit Corporation Code as a public bank. The purpose of the corporation is to engage
74 in the banking business and any other lawful activities which are not prohibited to a public
75 bank by applicable laws or regulations.'

76 (b) Notwithstanding any other law to the contrary, a public bank may make distributions
77 to its members.

78 (c) All provisions of law applicable to nonprofit corporations generally, including, but not
79 limited to, the Georgia Nonprofit Corporation Code, shall apply to public banks.
80 Whenever a provision of this chapter applicable to public banks is inconsistent with a
81 provision of law applicable to nonprofit corporations generally, the provision of this
82 chapter shall apply, and the inconsistent provision of law applicable to nonprofit
83 corporations generally shall not apply to public banks.

84 7-10-6.

85 (a) As used in this Code section, the term:

- 86 (1) 'Conducted in partnership with' means pursuant to a written agreement with a local
87 financial institution to provide financial products and services to the public located within
88 the jurisdiction of the public bank.
- 89 (2) 'Infrastructure lending' means granting a loan or extending credit to a local agency
90 for the purpose of building or improving public infrastructure and affordable housing.
- 91 (3) 'Local agency banking' means providing any of the following services to a local
92 agency:
- 93 (A) Accepting a deposit of any kind; or
94 (B) Granting a loan or extension of credit of any kind.
- 95 (4) 'Participation lending' means purchasing or selling an interest in a loan or loans
96 originated by or sold to a local financial institution or originating, leading, or directing
97 a loan transaction involving a local financial institution pursuant to a written agreement
98 with the local financial institution.
- 99 (5) 'Person' means a person as defined in paragraph (26) of Code Section 7-1-4, except
100 that a person does not mean a local agency as defined in this chapter, but includes any
101 individual employed by a local agency.
- 102 (6) 'Retail activities' means providing any kind of financial product or service to a person
103 that is typically offered or provided by a local financial institution, including, but not
104 limited to, the following:
- 105 (A) Accepting a deposit of any kind from a person, including the issuance of shares by
106 a credit union; and
107 (B) Granting a loan or extension of credit of any kind to a person.
- 108 (7) 'Wholesale lending' means granting a loan or extension of credit to a local financial
109 institution.
- 110 (b) Except as provided in paragraph (2) of subsection (c) of this Code section, a public
111 bank shall conduct retail activities in partnership with any local financial institution and
112 shall not compete with local financial institutions.

113 (c) A public bank may:

114 (1) Engage in any of the following banking activities:

115 (A) Local agency banking;

116 (B) Infrastructure lending;

117 (C) Wholesale lending; and

118 (D) Participation lending.

119 (2) Engage in retail activities without partnering with a local financial institution, if those
120 retail activities are not offered or provided by local financial institutions in the
121 jurisdiction of the local agency or agencies that own the public bank.

122 7-10-7.

123 (a) Before submitting an application to organize and establish a public bank pursuant to
124 Code Section 7-10-2, a local agency shall conduct a study to assess the viability of the
125 proposed public bank which shall include:

126 (1) A discussion of the purposes of the bank, including, but not limited to, achieving cost
127 savings, strengthening local economies, supporting community economic development,
128 and addressing infrastructure and housing needs for localities;

129 (2) A fiscal analysis of the costs associated with starting the proposed public bank;

130 (3) An estimate of the initial amount of capital to be provided by the local agency to the
131 proposed public bank;

132 (4) Financial projections, including a pro forma balance sheet and income statement, of
133 the proposed public bank for at least the first five years of operation. The financial
134 projections shall include an estimate of the time period for when expected revenues will
135 meet or exceed expected costs and an estimate of the total operating subsidy that the local
136 agency may be required to provide until the proposed public bank generates sufficient
137 revenue to cover its costs. In addition to projections that assume favorable economic
138 conditions, the analysis shall also consider the effect of an economic recession on the

139 financial results of the proposed public bank. The projections may include the effects of
140 continuing to do business with the local government's current banker or bankers;

141 (5) A legal analysis of whether the proposed structure and operations of the public bank
142 would likely comply with the Georgia Constitution, but nothing herein shall compel the
143 waiver of any attorney-client privilege attaching to that legal analysis; and

144 (6) An analysis of how the proposed governance structure of the public bank would
145 protect the bank from unlawful insider transactions and apparent conflicts of interest.

146 (b) The study may also include any of the following elements:

147 (1) A fiscal analysis of benefits associated with starting the proposed public bank,
148 including, but not limited to, cost savings, jobs created, jobs retained, economic activity
149 generated, and private capital leveraged;

150 (2) A qualitative assessment of social or environmental benefits of the proposed public
151 bank;

152 (3) An estimate of the fees paid to the local agency's current banker or bankers; and

153 (4) A fiscal analysis of the costs, including social and environmental costs, of continuing
154 to do business with the local agency's current banker or bankers.

155 (c)(1) The study required by subsection (a) of this Code section shall be presented to and
156 approved by the governing body of the local agency, and a motion to move forward with
157 an application for a public banking charter shall be approved by a majority vote of the
158 governing body at a public meeting prior to the local agency submitting an application
159 pursuant to Code Section 7-10-2. In addition, the local agency shall include a copy of
160 such study in the application submitted to the department.

161 (2) Before the local agency submits an application pursuant to Code Section 7-10-2, the
162 motion to move forward with an application for a public banking charter shall be subject
163 to voter approval at the next regularly scheduled election held at least 180 days following
164 the vote of the governing body.

165 (d) The local agency shall make available to the public the financial models and key
166 assumptions used to estimate the elements described in paragraphs (2) through (4) of
167 subsection (a) of this Code section before presenting the study to the governing body of the
168 local agency as required by paragraph (1) of subsection (c) of this Code section.

169 7-10-8.

170 Proceedings and records conducted or generated in an attempt to comply with this chapter
171 shall not be subject to disclosure pursuant to the provisions of either Chapter 14 or Article
172 4 of Chapter 18 of Title 50.

173 7-10-9.

174 The department shall have the authority to promulgate rules and regulations to effectuate
175 the objectives and provisions of this chapter."

176 **SECTION 3.**

177 Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from
178 sales and use taxes, is amended by revising paragraph (26) as follows:

179 "(26) Sales by a public bank licensed by the Department of Banking and Finance
180 pursuant to Code Section 7-10-2 Reserved;"

181 **SECTION 4.**

182 All laws and parts of laws in conflict with this Act are repealed.