

HOUSE BILL 236

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

INTRODUCED BY

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

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

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

5           D. "fund" means the state banking fund.

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

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

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

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

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1 follows:

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

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

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

21 (4) one member appointed by the governor who  
22 has successful management experience in banking finance or  
23 banking operations in a regulatory environment or who is an  
24 entrepreneur with successful, sophisticated business borrowing  
25 experience;

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

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

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

16                   (8) the state treasurer; and

17                   (9) the secretary of economic development.

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

23                   E. The initial board shall establish membership  
24 terms for the directors appointed pursuant to Subsection C of  
25 this section so that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 B. The chief executive officer shall be an  
18 individual qualified by experience in the field of investment  
19 management, investment risk management, corporate governance,  
20 investment accounting or finance. The chief executive officer  
21 of the bank shall direct the affairs and business of the bank,  
22 subject to the policies, control and direction of the board.  
23 The chief executive officer shall have substantial experience  
24 successfully running a financial institution of a comparable  
25 asset size or greater and shall be responsible for achieving

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

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

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

20 E. The chief executive officer shall:

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

25 (2) hire all employees of the bank;

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

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

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

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

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

20 (2) make, purchase, guarantee or hold loans:  
21 (a) to state-chartered or federally  
22 chartered lending agencies or institutions;

23 (b) that are insured or guaranteed in  
24 whole or in part by the United States or its agencies or  
25 instrumentalities or the federal deposit insurance corporation

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1 or other agencies or instrumentalities;

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

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

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

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

15 (3) buy and sell federal bonds;

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

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

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

25 (7) enter into agreements or develop memoranda

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1 of understanding with credit unions or community banks for the  
2 purpose of facilitating lending opportunities and carrying out  
3 the provisions of the Public Banking Act.

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

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

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

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

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

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

24 A. If any director, officer or employee of the bank  
25 has an interest, either direct or indirect, in any contract to

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1 which the bank is or is to be a party, such interest shall be  
2 disclosed to the board in writing. The director, officer or  
3 employee having such interest shall not participate in any  
4 action by the bank with respect to that contract.

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

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

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

25 B. All money credited to the fund is appropriated

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1 to and retained by the bank for the purpose of carrying out the  
2 provisions of the Public Banking Act.

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

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

11 SECTION 8. A new section of Chapter 6, Article 10 NMSA  
12 1978 is enacted to read:

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

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

18 B. Within thirty days of the incorporation of the  
19 public bank of New Mexico and the bank receiving its formal  
20 charter, the state treasurer shall make a deposit into the  
21 public bank of New Mexico in an amount of fifty million dollars  
22 (\$50,000,000). The state treasurer shall not withdraw the  
23 funds from the initial deposit provided for in this section,  
24 but may deposit and withdraw additional funds in the public  
25 bank of New Mexico."

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1           SECTION 9. A new section of the Severance Tax Bonding Act  
2 is enacted to read:

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

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

13           "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND.--

14           A. The severance tax permanent fund shall be  
15 invested in separate differential rate and market rate  
16 investment classes. "Differential rate investments" are  
17 permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13  
18 through 7-27-5.17, 7-27-5.22, 7-27-5.24 and 7-27-5.26 NMSA 1978  
19 and are intended to stimulate the economy of New Mexico and to  
20 provide income to the severance tax permanent fund. "Market  
21 rate investments" are investments that are not differential  
22 rate investments and are intended to provide income to the  
23 severance tax permanent fund. All market rate investments and  
24 differential rate investments shall be invested in accordance  
25 with the Uniform Prudent Investor Act and shall be accounted

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1 for in accordance with generally accepted accounting  
2 principles.

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

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

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

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