97TH GENERAL ASSEMBLY
State of Illinois
2011 and 2012
HB5010

Introduced 2/7/2012, by Rep. William Davis

SYNOPSIS AS INTRODUCED:
New Act
5 ILCS 140/7

from Ch. 116, par. 207

Creates the State Bank of Illinois Act. Establishes The State Bank of Illinois and the State Bank of Illinois Board. Sets forth the membership of the State Board. Provides that the State Board shall appoint an advisory board of directors. Provides that the State Bank may accept deposits of private funds and public funds. Sets forth the powers of the State Bank. Provides that all deposits in the State Bank are guaranteed by the State. Provides that, whenever any public funds are deposited into the State Bank, the public official who deposited the funds is exempt from liability for loss of the funds while they are deposited in the State Bank. Amends the Freedom of Information Act to provide that certain records of the State Bank are exempt from disclosure.

LRB097 19473 PJG 64726 b

FISCAL NOTE ACT
MAY APPLY
AN ACT concerning State government.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the State Bank of Illinois Act.

Section 5. Definitions. As used in this Act:

"Advisory board" means the advisory board of directors created under Section 20.

"Board" or "State Board" means the State Bank of Illinois Board created under Section 15.

"Department" means the Department of Financial and Professional Regulation.

"Public funds" means funds under the control or in the custody of a public official by virtue of office.

"State Bank" means The State Bank of Illinois created under Section 10.

Section 10. The State Bank of Illinois.

(a) The State Bank of Illinois is established.

(b) The purposes of the State Bank are:

(1) to support the creation of jobs and broader economic development in this State by increasing access to capital for businesses and farms within this State in
partnership with local financial institutions;

(2) to provide stability to the local financial sector, issue bank stock loans to financial institutions organized under the laws of this State, and not in anyway to compete with community banks, credit unions, or other financial institutions;

(3) to reduce the costs paid by this State for basic banking services; and

(4) to return profits, beyond those necessary to accomplish the mission and continued sound operation of the State Bank, to the State.

Section 15. The State Bank of Illinois Board.

(a) The State Bank of Illinois Board is established. The Board shall operate, manage, and control the State Bank. The Board shall locate and maintain places of business of the State Bank and adopt and enforce orders, rules, and bylaws for the transaction of the State Bank's business.

(b) The Board consists of the Governor, the Treasurer, and the Speaker of the House of Representatives. The powers of the Board and the functions of the State Bank must be implemented through actions taken and policies and rules adopted by the Board.

(c) The Governor shall act as chairperson of the Board. The Board shall establish rules requiring the holding of regular meetings and specifying the means for providing notice of the
meetings.

(d) Two members of the Board constitute a quorum to transact business and exercise all rights, duties, and powers of the Board.

(e) A special meeting may be called at any time upon notice by the Governor, or by a majority of the members of the Board.

(f) The Board shall appoint a president of the State Bank. The person appointed as president must have extensive experience in banking. The Board may appoint and employ any subordinate officers, employees, and agents as the Board considers necessary, and shall define the duties, designate the titles, and fix the compensation of all those persons. The Board may designate, subject to approval by a majority of each house of the General Assembly, the president or other officers or employees as its agent in respect to the functions of the State Bank, subject to the supervision, limitation, and control of the Board.

(g) The Board may remove and discharge any and all persons appointed in the exercise of the powers granted by this Act.

Section 20. Advisory board of directors.

(a) To enlist the help of private enterprise and to encourage more active use of the purposes for which the State Bank was established, the State Board shall appoint an advisory board of directors that consists of 7 members.

(b) The members of the advisory board must include
representatives of this State's financial, business, agricultural, and labor sectors. At least 2 members must be officers of banks, the majority of the stock of which is owned by residents of this State. At least 2 members shall be nominated by the General Assembly, subject to approval by the State Board.

(c) The State Board shall appoint a chairperson, vice-chairperson, and secretary from the advisory board. The term of office of directors shall be set by the State Board, but may not exceed 4 years.

(d) The advisory board shall:

(1) meet regularly with the management of the State Bank to review the State Bank's operations and finances to determine whether recommendations should be made by the advisory board to the State Board relating to improved management performance, better customer service, and overall improvement in internal methods, procedures, and operating policies of the State Bank;

(2) make recommendations to the State Board relating to the establishment of additional objectives for the operation of the State Bank;

(3) make recommendations to the State Board concerning the appointment of officers of the State Bank;

(4) meet regularly with the State Board to present any recommendations concerning the State Bank; and

(5) participate on loan committees.
Section 25. Fund deposits.

(a) The State Bank may accept deposits of private funds and public funds. All income earned by the State Bank for its own account on public funds must be credited to and become a part of the revenues and income of the State Bank.

(b) Whenever any public funds are deposited in the State Bank, the official having control of the public funds and the sureties on the bond of the official are exempt from all liability by reason of loss of any of the funds while deposited in the State Bank.

(c) The State Bank shall pay interest on public deposits at a rate comparable to average statewide rates paid by private depositories of public funds and may offer other financial products to the State Treasurer on a competitive basis.

(d) The State Treasurer shall deposit with the State Bank from moneys received by the State Treasurer an amount necessary to allow the bank to fulfill its duties under this Act, but in any event not less than 30% of total State deposits, increasing to not less than 75% of State deposits by the fifth year of the State Bank's operation.

Section 30. Powers of the State Bank. The State Bank may:

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

(1) to State-chartered or federally-chartered lending agencies or institutions or any other financial
institutions;

(2) that are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities;

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

(4) to instrumentalities of this State;

(b) purchase participation interests in loans made or held by a bank, bank holding company, lending agency or institution organized under the laws of this State or conducting the majority of its business in this State, and any other financial institution or entity that provides financial services organized under the laws of this State or conducting the majority of its business in this State, that meets underwriting standards that are generally accepted by State or federal financial regulatory agencies;

(c) invest its funds in conformity with policies of the Board;

(d) buy and sell federal funds;

(e) lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner;

(f) perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this Act through or by means of its president, officers, agents, or employees or by
contracts with any person, firm, or corporation;

(g) purchase, guarantee, or hold loans originated by a financial institution organized under the laws of this State or conducting the majority of its business in this State;

(h) make loans in the form of participation loans to qualified persons residing in or doing business in this State where the originator of the loan is a private financial institution organized under the laws of the State or conducting the majority of its business in the State;

(i) act as a custodian bank for financial institutions organized under the laws of this State and accept deposits from the financial institutions in connection with this function;

(j) issue bank stock loans to financial institutions organized under the laws of this State and doing the majority of their business in this State; and

(k) for financial institutions that make the State Bank a reserve depository, perform the functions and render the services of a clearinghouse, including all facilities for providing domestic and foreign exchange and may rediscount paper, on terms prescribed by the Board.

Section 35. Excess income. As soon as possible after the end of each calendar year, the Board shall determine the amount of income, if any, earned by the State Bank in that calendar year that is in excess of amounts necessary to pay for expenses of administering the activities of the State Bank and shall, in
consultation with the General Assembly, determine how much of
the excess shall be transferred to the State.

Section 40. Rulemaking authority.
(a) The Board shall adopt rules in accordance with the
Illinois Administrative Procedure Act to:
   (1) ensure the safety and soundness of the State Bank,
   adhere to sound underwriting practices, avoid excessive
   risk, and, to the extent possible, reflect applicable
   standards for safety and soundness set forth in 12 C.F.R.
   part 364;
   (2) specify the State Bank's powers and permissible
   investments and activities;
   (3) authorize specific services that the State Bank may
   provide;
   (4) specify limits for loans and other obligations the
   State Bank makes or undertakes;
   (5) specify reserve requirements; and
   (6) set other requirements that the Board considers
   necessary to administer the State Bank under this Act.
(b) The Department of Financial and Professional
Regulation shall examine the State Bank at least once each
calendar quarter to verify and ensure that the bank is
complying with the rules the Board adopted under subsection (a)
of this Section. The Department shall report the results of the
examination to the Board and to the Secretary of State. The
Department's report is a public record subject to disclosure.

(c) The State Bank shall conduct an independent audit of the accounts and financial affairs of the State Bank at least once every 2 years.

Section 45. Deposit guarantee.

(a) All deposits in the State Bank are guaranteed by the State of Illinois.

(b) The deposits and any income earned by the State Bank are not subject to State, county, city, or district taxes of any kind.

Section 50. Civil actions.

(a) Civil actions may be brought as provided in this Section against the State on account of claims for relief claimed to have arisen out of transactions connected with the operation of the State Bank.

(b) In an action brought under this Section, the State must be designated as "The State of Illinois, doing business as The State Bank of Illinois".

(c) An action brought under this Section may be brought in the same manner and is subject to the same provisions of law as other civil actions. The action must be brought in Sangamon County.

Section 55. Public official liability. Whenever any public
funds are deposited in the State Bank, the public official who
deposited the funds and the sureties on any bond of the public
official are exempt from liability by reason of loss of any of
the funds while the funds are deposited in the State Bank

Section 60. Title and other instruments.

(a) All business of the State Bank must be conducted under
the name of "The State Bank of Illinois". Title to property
pertaining to the operation of the State Bank must be obtained
and conveyed in the name of "The State of Illinois, doing
business as The State Bank of Illinois".

(b) Instruments must be executed in the name of the State
of Illinois. Within the scope of authority granted by the
Board, the president of the State Bank may execute instruments
on behalf of the State Bank, including any instrument granting,
conveying, or otherwise affecting any interest in or lien upon
real or personal property.

(c) Other officers or employees of, and legal counsel to,
the State Bank may execute instruments on behalf of the State
Bank when authorized by the Board.

Section 65. Confidentiality.

(a) The following records of the State Bank are
confidential and may not be disclosed:

(1) commercial or financial information of a customer
of the State Bank, whether obtained directly or indirectly,
other than routine credit inquiries concerning information
that is required to be disclosed in accordance with due
legal process;

(2) internal or interagency memoranda or letters that
would not be available by law to a party other than in
litigation with the State Bank; and

(3) except as provided in Section 40 of this Act,
information that is contained in or related to a report of
an examination or operating or condition reports prepared
by, on behalf of, or for the use of a State or federal
agency responsible for the regulation or supervision of any
bank activity.

(b) As used in this Section, "customer" means any person
who has transacted or is transacting business with, or has used
or is using the services of, the State Bank, or for whom the
State Bank has acted or is acting as a fiduciary with respect
to trust property.

Section 70. The Freedom of Information Act is amended by
changing Section 7 as follows:

(5 ILCS 140/7) (from Ch. 116, par. 207)
Sec. 7. Exemptions.

(1) When a request is made to inspect or copy a public
record that contains information that is exempt from disclosure
under this Section, but also contains information that is not
exempt from disclosure, the public body may elect to redact the
information that is exempt. The public body shall make the
remaining information available for inspection and copying.
Subject to this requirement, the following shall be exempt from
inspection and copying:

(a) Information specifically prohibited from
disclosure by federal or State law or rules and regulations
implementing federal or State law.

(b) Private information, unless disclosure is required
by another provision of this Act, a State or federal law or
a court order.

(b-5) Files, documents, and other data or databases
maintained by one or more law enforcement agencies and
specifically designed to provide information to one or more
law enforcement agencies regarding the physical or mental
status of one or more individual subjects.

(c) Personal information contained within public
records, the disclosure of which would constitute a clearly
unwarranted invasion of personal privacy, unless the
disclosure is consented to in writing by the individual
subjects of the information. "Unwarranted invasion of
personal privacy" means the disclosure of information that
is highly personal or objectionable to a reasonable person
and in which the subject's right to privacy outweighs any
legitimate public interest in obtaining the information.
The disclosure of information that bears on the public
duties of public employees and officials shall not be considered an invasion of personal privacy.

(d) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

(i) interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;

(ii) interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;

(iii) create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;

(iv) unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies; except that the identities of witnesses to traffic accidents, traffic accident reports, and rescue reports shall be provided by agencies of local government, except when disclosure
would interfere with an active criminal investigation conducted by the agency that is the recipient of the request;

(v) disclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request;

(vi) endanger the life or physical safety of law enforcement personnel or any other person; or

(vii) obstruct an ongoing criminal investigation by the agency that is the recipient of the request.

(e) Records that relate to or affect the security of correctional institutions and detention facilities.

(f) Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the public body. The exemption provided in this paragraph (f) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents.

(g) Trade secrets and commercial or financial
information obtained from a person or business where the
trade secrets or commercial or financial information are
furnished under a claim that they are proprietary,
privileged or confidential, and that disclosure of the
trade secrets or commercial or financial information would
cause competitive harm to the person or business, and only
insofar as the claim directly applies to the records
requested.

The information included under this exemption includes
all trade secrets and commercial or financial information
obtained by a public body, including a public pension fund,
from a private equity fund or a privately held company
within the investment portfolio of a private equity fund as
a result of either investing or evaluating a potential
investment of public funds in a private equity fund. The
exemption contained in this item does not apply to the
aggregate financial performance information of a private
equity fund, nor to the identity of the fund's managers or
general partners. The exemption contained in this item does
not apply to the identity of a privately held company
within the investment portfolio of a private equity fund,
unless the disclosure of the identity of a privately held
company may cause competitive harm.

Nothing contained in this paragraph (g) shall be
construed to prevent a person or business from consenting
to disclosure.
Proposals and bids for any contract, grant, or agreement, including information which if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contractor agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made.

Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this paragraph (i) does not extend to requests made by news media as defined in Section 2 of this Act when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.

The following information pertaining to educational matters:

(i) test questions, scoring keys and other examination data used to administer an academic examination;

(ii) information received by a primary or secondary school, college, or university under its
procedures for the evaluation of faculty members by their academic peers;

(iii) information concerning a school or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student; and

(iv) course materials or research materials used by faculty members.

(k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and the same for projects constructed or developed with public funds, including but not limited to power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security.

(l) Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act.

(m) Communications between a public body and an attorney or auditor representing the public body that would
not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

(n) Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.

(o) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

(p) Records relating to collective negotiating matters between public bodies and their employees or representatives, except that any final contract or agreement shall be subject to inspection and copying.

(q) Test questions, scoring keys, and other examination data used to determine the qualifications of an
applicant for a license or employment.

(r) The records, documents, and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.

(s) Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool. Insurance or self insurance (including any intergovernmental risk management association or self insurance pool) claims, loss or risk management information, records, data, advice or communications.

(t) Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law.
(u) Information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs, or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act.

(v) Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

(w) (Blank).

(x) Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility, by a power generator, or by the Illinois Power Agency.

(y) Information contained in or related to proposals,
bids, or negotiations related to electric power procurement under Section 1-75 of the Illinois Power Agency Act and Section 16-111.5 of the Public Utilities Act that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission.

(z) Information about students exempted from disclosure under Sections 10-20.38 or 34-18.29 of the School Code, and information about undergraduate students enrolled at an institution of higher education exempted from disclosure under Section 25 of the Illinois Credit Card Marketing Act of 2009.

(aa) Information the disclosure of which is exempted under the Viatical Settlements Act of 2009.

(bb) Records and information provided to a mortality review team and records maintained by a mortality review team appointed under the Department of Juvenile Justice Mortality Review Team Act.

(cc) Information regarding interments, entombments, or inurnments of human remains that are submitted to the Cemetery Oversight Database under the Cemetery Care Act or the Cemetery Oversight Act, whichever is applicable.

(dd) Correspondence and records (i) that may not be disclosed under Section 11-9 of the Public Aid Code or (ii) that pertain to appeals under Section 11-8 of the Public Aid Code.
(ee) (dd) The names, addresses, or other personal information of persons who are minors and are also participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations.

(ff) (ee) The names, addresses, or other personal information of participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation agencies, and special recreation associations where such programs are targeted primarily to minors.

(gg) Records of the State Bank of Illinois that may not be disclosed under Section 65 of the State Bank of Illinois Act.

(2) A public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body, and that directly relates to the governmental function and is not otherwise exempt under this Act, shall be considered a public record of the public body, for purposes of this Act.

(3) This Section does not authorize withholding of information or limit the availability of records to the public, except as stated in this Section or otherwise provided in this Act.
(Source: P.A. 96-261, eff. 1-1-10; 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10; 96-736, eff. 7-1-10; 96-863, eff. 3-1-10; 96-1378, eff. 7-29-10; 97-333, eff. 8-12-11; 97-385, eff. 8-15-11; 97-452, eff. 8-19-11; revised 9-2-11.)