

HOUSE No. 989

The Commonwealth of Massachusetts

PRESENTED BY:

Carmine Lawrence Gentile

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act providing for the bank of Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>1/15/2019</i>

HOUSE No. 989

By Mr. Gentile of Sudbury, a petition (accompanied by bill, House, No. 989) of Carmine Lawrence Gentile relative to providing for the bank of Massachusetts. Financial Services.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act providing for the bank of Massachusetts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter 168 the following
2 chapter:-

3 CHAPTER 168A

4 BANK OF MASSACHUSETTS

5 Section 1. Notwithstanding any law to the contrary, for the purpose of encouraging and
6 promoting agriculture, commerce, and industry, the commonwealth of Massachusetts shall
7 engage in the business of banking, and for that purpose shall maintain a system of banking
8 owned, controlled, and operated by it, under the name of the Bank of Massachusetts.

9
10 Section 2. The state treasurer shall operate, manage, and control the Bank of
11 Massachusetts, locate and maintain its places of business, of which the principal place must be

12 within the state, and make and enforce orders, rules, regulations, and bylaws for the transaction
13 of its business. The business and financial transactions of the Bank, in addition to other matters
14 specified in this chapter, may include anything that any bank or bank holding company lawfully
15 may do, except as it is restricted by the provisions of this chapter. This provision may not be held
16 in any way to limit or qualify either the powers of the state treasurer granted by or the functions
17 of said Bank as defined in this chapter. The powers of the state treasurer and the functions of the
18 Bank must be implemented through actions taken and policies adopted by the state treasurer.

19
20 Section 3. To enlist the help of private enterprise and to encourage more active use of the
21 purposes for which the Bank of Massachusetts was created, the governor shall appoint an
22 advisory board of directors to the Bank of Massachusetts consisting of 7 persons, at least 2 of
23 whom must be officers of banks, the majority of the stock of which is owned by Massachusetts
24 residents, and at least 1 of whom must be an officer of a state-chartered or federally chartered
25 financial institution. The governor shall appoint a chairman, vice chairman, and secretary from
26 the advisory board of directors. The term of a director is 4 years. The state treasurer shall define
27 the duties of the advisory board of directors.

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29 Section 4. The advisory board of directors to the Bank of Massachusetts shall:

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31 (i) Meet regularly with the management of the Bank of Massachusetts to review the
32 Bank's operations to determine whether recommendations should be made by the board to the

state treasurer relating to improved management performance, better customer service, and overall improvement in internal methods, procedures, and operating policies of the Bank.

(ii) Make recommendations to the state treasurer relating to the establishment of additional objectives for the operation of the Bank of Massachusetts.

(iii) Make recommendations to the state treasurer concerning the appointment of officers of the Bank of Massachusetts.

(iv) Meet regularly with the state treasurer to present any recommendations concerning the Bank of Massachusetts.

Section 5. In addition to the foregoing and pursuant to authorization from the state treasurer, act on behalf of the Bank with respect to the powers and functions of the Bank.

Section 6. The state treasurer shall appoint a president of the Bank, and may appoint and employ such subordinate officers, employees, and agents as it may judge expedient and in the interests of the state, and shall define the duties, designate the titles, and fix the compensation of all such persons. The commission may designate the president or other officers or employees as its agent in respect to the functions of the Bank, subject to its supervision, limitation, and control. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the Bank, shall remain within the appropriation, revenues, or capital lawfully available for such purposes.

Section 7. The state treasurer may remove and discharge any and all persons appointed in the exercise of the powers granted by this chapter, whether by the commission or by the

53 president of the Bank. All appointments and removals contemplated by this chapter must be
54 made as the commission deems fit to promote the efficiency of the public service.

55 Section 8. All state funds and funds of all state penal, educational, and industrial
56 institutions must be deposited in the Bank of Massachusetts by the persons having control of
57 such funds or must be deposited in accordance with constitutional and statutory provisions. All
58 income earned by the Bank for its own account on state moneys that are deposited in or invested
59 with the Bank to the credit of the state must be credited to and become a part of the revenues and
60 income of the Bank.

61 Section 9. Whenever any of the public funds hereinbefore designated are deposited in the
62 Bank of Massachusetts, as hereinbefore provided, the official having control thereof and the
63 sureties on the bond of every such official shall be exempt from all liability by reason of loss of
64 any such funds while so deposited.

65 Section 10. All deposits in the Bank of Massachusetts are guaranteed by the state. Such
66 deposits are exempt from state, county, and municipal taxes of any and all kinds.

67 Section 11. For banks that make the Bank of Massachusetts a reserve depository, it may
68 perform the functions and render the services of a clearinghouse, including all facilities for
69 providing domestic and foreign exchange, and may rediscount paper, on such terms as the state
70 treasurer shall provide.

71 Section 12. The Bank of Massachusetts may:

72 (a) Make, purchase, guarantee, or hold loans:

(1) To state-chartered or federally chartered lending agencies or institutions or any other financial institutions.

(2) To holders of Bank of Massachusetts certificates of deposit and savings accounts up to 90 per cent of the value of the certificates and savings accounts offered as security.

(3) To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of Massachusetts a first lien on real estate in Massachusetts in amounts not to exceed 80 per cent of the value of the security.

(4) That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.

(5) That are eligible to be guaranteed under the general laws. Loans made pursuant to this paragraph may provide for interest that remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.

(6) To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.

(7) To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code , the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the parks and recreation department.

(8) Under Public Law No. 99-198, as amended through December 31, 1996, to nonprofit corporations for the purpose of relending loan funds to rural businesses.

(9) Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, as amended through December 31, 1996, to finance businesses and community development projects in rural areas.

(10) Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.

(11) To instrumentalities of this state.

(12) As otherwise provided by this chapter or other general or special laws.

(13) If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action or from the receiver of the participating lender's assets.

(14) To an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this state.

(b) Make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act Public Law 100-233, as amended through December 31, 1996.

(c) Purchase participation interests in loans made or held by banks, bank holding companies, state-chartered or federally chartered lending agencies or institutions, any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.

- 114 (d) Invest its funds:
- 115 (1) In conformity with policies of the state treasurer.
- 116 (2) In a public venture capital corporation organized and doing business in this state
117 through the purchase of shares of stock.
- 118 (3) In Massachusetts alternative and venture capital investments and early-stage
119 capital funds, for the purpose of providing funds for investment in Massachusetts alternative and
120 venture capital investments, early-stage capital funds, and entrepreneurship awards. The Bank
121 may invest a maximum of \$200,000 per year in Massachusetts-based venture capital entities that
122 make investments in companies located outside Massachusetts. The Bank may allow for third-
123 party management of the funds invested under this subdivision if the management is provided by
124 the Massachusetts development fund, incorporated, or a third party that is located in the state and
125 that has demonstrated fund management experience.
- 126 (e) Buy and sell federal funds.
- 127 (f) Lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real
128 and personal property, title to which has been acquired in any manner.
- 129 (g) Acquire real or personal property or property rights by purchase, lease, or, subject
130 to chapter 79A, the exercise of the right of eminent domain and may construct, remodel, and
131 repair buildings.
- 132 (h) Receive deposits from any source and deposit its funds in any bank or other
133 financial institution.

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

(j) Purchase mortgage loans on residential real property originated by financial institutions.

Section 13. The state treasurer and the office of the comptroller may, when the balance in the General Fund is insufficient to meet legislative appropriations, borrow from the Bank of Massachusetts in an amount that at no time exceeds the total principal amount of \$50,000,000 with principal maturity not to extend beyond the biennium in which the borrowing occurs. As a condition precedent to the loan, the state treasurer shall; request and obtain a statement from the secretary for administration and finance and commissioner of the department of revenue certifying that anticipated General Fund revenues for the balance of the year in which the loan is taken will exceed the principal amount and interest on the loan; provided, however, that if no such certification from either is issued within 15 days of such request the condition precedent shall be waived. The state treasurer may in turn direct the Bank of Massachusetts to make loans to the state general fund at such rates of interest as the state treasurer may prescribe. The state treasurer and the comptroller shall establish a repayment plan for the repayment of the principal upon maturity and the interest when due. The comptroller shall report to the house and senate committee on ways and means regarding any loans obtained pursuant to this section.

Section 14. (a) A revolving loan fund must be maintained in the Bank for the purpose of making or participating in loans to Massachusetts beginning farmers for the purchase of

agricultural real estate, equipment, and livestock. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are appropriated for the purpose of providing loans and to supplement the interest rate on loans to beginning farmers made by the Bank of Massachusetts under this chapter and in accordance with this section.

(b) The revolving loan fund and loans made from the fund must be administered and supervised by the Bank of Massachusetts. The Bank may deduct a service fee for administering the fund from interest payments received on loans. An application for a loan from the fund must be made to the Bank and, upon approval, a loan must be made from the fund in accordance with this section.

(c) A loan made from the fund may not exceed eighty percent of the appraised value of the agricultural collateral, with the actual percentage to be determined by the Bank. The Bank may do all things and acts and may establish additional terms and conditions necessary to make a loan under this section. A loan made from the fund shall have a first security interest.

(d) A loan made from the fund must have the interest rate fixed at one percent below the Bank's then current base rate for the first five years with a maximum rate of six percent per year and variable at one percent below the Bank's then current base rate for the second five years. During the second five years, the variable rate must be adjusted annually on the anniversary date. The rate during the remaining term of the loan floats at the Bank's base rate as in effect from time to time.

(e) The maximum term of a real estate loan is thirty years. The maximum term of a farm equipment or livestock loan is seven years.

(f) The state treasurer shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid for by the fund.

(g) The Bank shall adopt policies to implement this section.

Section 15. The Bank may not make any loan or otherwise give its credit to the state treasurer or any member of the state treasurer's office. Before taking office, the state treasurer shall file a statement with the Bank of Massachusetts indicating any personal interest that such person has in any loan or loan application in existence or pending.

Section 16. All business of the Bank must be conducted under the name of "The Bank of Massachusetts". Title to property pertaining to the operation of the Bank must be obtained and conveyed in the name of "The Commonwealth of Massachusetts, doing business as The Bank of Massachusetts". Instruments must be executed in the name of the Commonwealth of Massachusetts. Within the scope of authority granted by the state treasurer, the president may execute instruments on behalf of the Bank, including any instrument granting, conveying, or otherwise affecting any interest in or lien upon real or personal property. Other officers or employees of, and legal counsel to, the Bank may execute instruments on behalf of the Bank when authorized by the state treasurer.

Section 17. (a) Civil actions may be brought against the commonwealth of Massachusetts on account of claims for relief claimed to have arisen out of transactions connected with the operation of the Bank upon condition that the provisions of this section are complied with. In such actions, the state must be designated as "The Commonwealth of Massachusetts, doing business as The Bank of Massachusetts". The actions may be brought in the same manner and

are subject to the same provisions of law as other civil actions. The action shall be brought in Suffolk County superior court, sitting in Boston.

(b) If the Bank seeks to participate in a loan that involves multiple banks and if the loan documents require the Bank to agree that civil actions will be commenced in a state outside of Massachusetts, the Bank may agree to venue outside of the commonwealth if approved by the attorney general.

Section 18. Provisions of law requiring that a surety or sureties be given on undertakings in actions on appeal, attachment, claim and delivery, and other cases in which an undertaking is required, are not applicable to the state of Massachusetts, doing business as the Bank of Massachusetts, as the party seeking such relief. It is required to give its own undertaking without surety and to reimburse the adverse party when required by law.

Section 19. The state auditor shall contract with an independent certified public accounting firm for an annual audit of the Bank of Massachusetts in accordance with generally accepted government auditing standards. The state auditor shall audit annually or contract for an annual audit of the separate programs and funds administered by the Bank of Massachusetts. On request of the state auditor, the state treasurer shall assist the state auditor in the auditing firm selection process, but the selection of the auditing firm is the state auditor's responsibility. The auditor selected shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American institute of certified public accountants. The auditor also shall prepare audited financial statements for inclusion in the comprehensive annual financial report for the state. The state auditor may conduct performance audits of the Bank of Massachusetts, including the

222 separate programs and funds administered by the Bank. The auditor shall report the results of the
223 audit to the state treasurer and to the legislative assembly. The Bank of Massachusetts or its
224 separate programs and funds shall pay the costs of the audit. The commissioner of banks, shall
225 examine the Bank of Massachusetts at least once each 24 months and conduct any investigation
226 of the Bank which may be necessary. The commissioner shall report the examination results, and
227 the results of any necessary investigation, to the state treasurer as soon as practicable and to the
228 General Court. The division of banks shall charge a fee for any examination or investigation at
229 an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the
230 division associated with the examinations and investigations provided for by this section.

231 Section 20. The Bank of Massachusetts may establish, under such rules and regulations as
232 adopted by the state treasurer, a system to provide fund transfer services to its customers and to
233 the customers of state-chartered and federally chartered banks located within the state of
234 Massachusetts, and to other financial institutions otherwise authorized to utilize the services of
235 electronic fund transfer systems, to acquire such equipment as is necessary to establish electronic
236 fund transfer systems, and to make such reasonable charges for services rendered to other banks
237 hereunder as may be established by the state treasurer.

238 Section 21. The following records of the Bank of Massachusetts are confidential and shall
239 not be subject to chapter 66:

240 i. Commercial or financial information of a customer, whether obtained directly or
241 indirectly, except for routine credit inquiries or unless required by due legal process. As used in
242 this subsection, "customer" means any person who has transacted or is transacting business with,

or has used or is using the services of, the Bank of Massachusetts, or for whom the Bank of Massachusetts has acted as a fiduciary with respect to trust property.

ii. Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the Bank.

iii. Information contained in or related to examination, 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.

iv. Information obtained from the division of banks that would not be available from that agency.

v. The report by a Bank officer or member of the Bank's advisory board of directors concerning personal financial statements.

Section 22. The Bank shall replace the state treasurer as the custodian of all securities that are required to be deposited with the state except that the state treasurer is the custodian of all securities resulting from the investment of funds by the state treasurer.

Section 23 The sale and leasing of agricultural real estate with an appraised value of \$10,000 or more acquired by the Bank of Massachusetts through foreclosure or deed in lieu of foreclosure shall be done in accordance with policies adopted by the state treasurer. The sale and leasing of agricultural real estate with an appraised value of less than \$10,000, acquired by the Bank of Massachusetts through foreclosure or deed in lieu of foreclosure, may be done in a

manner as the Bank determines is appropriate given the circumstances. In the case of a lease by the party holding the right of redemption, that party has the right to purchase at any time.

Section 24. (a) The Bank may establish a residential mortgage loan program under which the Bank may originate residential mortgages. Under this program a local financial institution or credit union may assist the Bank in taking a loan application, gathering required documents, ordering required legal documents, and maintaining contact with the borrower.

(b) If the Bank establishes a program under this section, at a minimum the program must provide:

(i) An applicant must be referred to the Bank by a local financial institution or credit union;

(ii) The loan application must be for an owner-occupied primary residence;

(iii) The Bank provide all regulatory disclosures, process and underwrite the loan, prepare closing documents, and disburse the loan; and

(iv) The terms of the loan originated by the Bank must provide:

(1) The amount of the loan may not exceed an amount to be established by Bank policy;

(2) The term of the loan may not exceed 30 years;

282 (3) The rate of the loan must be equal to the Bank's market rate;

283 (4) The maximum loan to value may not exceed eighty percent of appraised value;

284 however, a local financial institution or credit union may take a second mortgage that does not
285 exceed a combined loan to value of ninety-five percent; and

286 (5) Standard credit underwriting and documentation applies.

287 (c) The Bank may sell eligible first-time home buyer loans to the Massachusetts housing
288 finance agency.