

This document has been prepared as part of the implementation project of Legal Pathways to Deep Decarbonization (Michael B. Gerrard and John C. Dernbach, eds. Environmental Law Institute [2019]) (LPDD). For background information on the project, see <https://lpdd.org>

## MODEL GREEN BANK BYLAWS

Prepared by Robert Freedman, Claire Melvin and Nathan Bishop of Shearman & Sterling LLP and Amara Gossin of Barclays

Bylaws Adopted: [Insert date]  
[Bylaws Revised: [Insert date if applicable]]

### ARTICLE I: PURPOSE AND NAME

1. The name of this corporation shall be the “[State][Municipality/City/Town/Village] [Clean Energy Fund]” (hereinafter, the “[Fund]”).
2. The [Fund] is organized for the purposes set forth in its articles of incorporation and for carrying out the purposes of [[insert Clean Energy Fund bill reference, if applicable] (or any statute created thereby or any such successor statute)] (the “Act”), including, without limitation, the purposes of the Act.

### ARTICLE II: BOARD OF DIRECTORS, MEETINGS, COMMITTEES

1. **Powers.** The powers of the [Fund] are vested in and exercised by the Board of Directors (the “Board”). The Board may exercise all such authority and powers of the [Fund] and do all such lawful acts and things as are necessary to carry out the purposes of the [Fund] as otherwise permitted by law.
2. **Directors.** The Board shall consist of [nine] Directors.
3. **Initial Composition and Terms.** The Directors of the Board will include—
  - (a) [[Three]] *ex officio* members<sup>1</sup> consisting of:
    - (i) [The Director of the [Office of Energy] or his or her designee;]
    - (ii) [The Director of the [Office of Economic Development] or his or her designee; and]

---

<sup>1</sup> **Comment 1:** Jurisdictions desiring greater independence for the Board can consider a structure without *ex officio* members. *Ex officio* members are included to provide expertise and a degree of integrated government oversight, without allowing any administration to control the Board.

(iii) [The [Treasurer] or his or her designee; and]

(b) [[Six] additional members [appointed by the [Governor][Mayor], appointed with the advice and consent of the [General Assembly][Senate][Council]][elected by the *ex officio* members] who shall have among them real estate, financial, project development, or legal expertise in zero and low-emissions energy generation and efficiency, infrastructure, transportation, agriculture, stormwater management, housing, or environmental justice;]

4. **Director Diversity.** When appointing members to the Board, consideration must be given to whether those members appointed reflect the gender, ethnic and geographical diversity of this [State] [Municipality/City/Town/Village] and to whether the Board provides representation to Climate-Impacted Communities.

5. **Classification.** [The [six] non-*ex officio* Directors identified in [Section 3(b)] of this [Article II] shall be divided into three classes (each a “Class”) as follows: (a) one class consisting of two Directors (“Class I”), the initial term of which shall expire at the first annual meeting of the Board to be held after the date hereof; (b) a second class consisting of two Directors (“Class II”), the initial term of which shall expire at the second annual meeting of the Board to be held after the date hereof; and (c) a third class consisting of two Directors, (“Class III”), the initial term of which shall expire at the third annual meeting of the Board to be held after the date hereof.]

6. **[Subsequent Composition and] Terms.** After the initial term of each Class set forth in [Section 5(a), (b), and (c)] of this [Article II], the term of each member of the Board [appointed][elected] pursuant to [Section 3(b)] [and this [Section 6]] of this [Article II] shall be [three] years. [Except for the selection of the initial members of the Board under [Section 3(b)] of this [Article II], the non-*ex officio* members of the Board shall be elected by the members of the Board.]<sup>2</sup> A non-*ex officio* member may be [reappointed][re-elected] for additional terms of [three] years. A member of the Board shall be disqualified from voting for any position on the Board for which such member is a candidate.

7. **Vacancy.** A vacancy occurring in the membership of the Board must be filled [in the same manner as the original appointment of such member][by a vote of the members of the Board].

8. **Board Membership.** Directors shall serve until their respective terms expire and may serve until their successors are appointed, or until their earlier death, resignation or removal.

9. **[Removal of Non-*ex officio* Directors.** Non-*ex officio* Board members may be removed from the Board by a resolution passed by two-thirds of Board members, not including the Board member affected directly by the resolution.]

---

<sup>2</sup> **Comment 2:** After the initial members of the Board have completed their terms, the subsequent Board members can continue to be appointed or elected in the same manner as the initial members. Alternatively, the existing members of the Board at the time of a vacancy could elect subsequent non-*ex officio* Board members.

10. **[Chair] [President] of the Board.** The Board shall annually elect a [Chair][President] from among its members. The candidate receiving the majority or plurality of votes from other Board members shall be elected [Chair][President]. The [Chair][President] shall be empowered to execute any contract or agreement authorized by the Board of Directors, or delegate such authority to the Executive Director or other Director.

11. **[Vice Chair of the Board.** The Board shall annually elect a Vice Chair of the Board from among its members. The candidate receiving the majority or plurality of votes from other Board members shall be elected Vice Chair.]

12. **Secretary of the Board.** [The Board shall appoint at the inaugural Board meeting and from time to time elect a Secretary of the Board from among its members.][The Executive Director, as *ex officio*, non-voting member of the Board, or his or her designee, shall serve as the Secretary of the Board.] The Secretary shall give or cause to be given notice of all meetings of the Directors and all other notices required by law or these bylaws. The Secretary shall record all the proceedings of meetings of the Directors.

13. **Treasurer.** The Board shall appoint at the inaugural Board meeting and from time to time elect a Treasurer of the [Fund] from among its members. The candidate receiving the majority or plurality of votes from Board members shall be elected Treasurer.

14. **Meetings of the Board.** The Board shall meet on a [quarterly] basis. The Board may also meet at other times as determined by the [Chair][President].

15. **Compensation.** No Director shall at any time receive or be entitled to receive any compensation for the performance of his or her duties as a Director, but Directors are entitled to receive the per diem allowance and reasonable travel expenses provided for [State][Municipal/City/Town/Village] officers and employees as permitted by law.

16. **Dissenting Board Members.** Members of the Board may formally submit their written dissent to any Board decision to the Secretary of the Board, who will include any such dissent in the official records of the Board.

17. **Attendance.** A Director or a member of a committee created pursuant to [Section 19] of this [Article II] (each, a “Committee”) may participate in a meeting of the Board or such Committee by means of [teleconference, videoconference, or similar communications equipment]<sup>3</sup> enabling all Directors and Committee members participating in the meeting to hear one another, and such participation in a meeting shall constitute presence in person at such a meeting. Directors or their designees who miss [three] consecutive meetings shall be asked to become more active on the Board. In the event of further absence, the Board may decide by majority vote [to recommend to the [Governor][Mayor] that the appointment be reconsidered][to replace such Director].

---

<sup>3</sup> **Comment 3:** Remote participation should be included to the extent authorized by state corporate law.

18. **Quorum.** The presence of [five] members of the Board shall constitute a quorum of the Board for the transaction of business. A majority of the quorum of the Board is required to take action with respect to any matter unless otherwise specified in these bylaws.

19. **Committees.**

- (a) The Board may delegate any and all things necessary or convenient to carry out the purposes of the [Fund] to a Committee consisting of [three] or more Directors. Committee Chairs shall be appointed by a majority vote of Directors present. The Board will create an Audit Committee and any other Committees deemed necessary or convenient to perform the activities of the [Fund]. The Board may also convene any subcommittees and advisory councils it considers appropriate without any limitation as to the membership of such groups.
- (b) Notwithstanding the foregoing, no Committee may:
  - (i) amend, alter, or repeal the bylaws;
  - (ii) elect, appoint, or remove any member of any such Committee or any member of the Board;
  - (iii) amend or repeal the articles of incorporation, adopt a plan of merger or a plan of consolidation with another entity;
  - (iv) authorize the sale, lease, or exchange of all of the property and assets of the [Fund];
  - (v) authorize the voluntary dissolution of the [Fund] or revoke proceedings therefor;
  - (vi) adopt a plan for the distribution of the assets of the [Fund]; or
  - (vii) amend, alter, or repeal any resolution of the Board unless such resolution provides by its terms that it may be amended, altered, or repealed by a Committee.

20. **Committee Presiding Officer.** At each meeting of a Committee, the Committee Chair, or in the absence of the Committee Chair any other Committee member designated by the majority of the Committee members then present, shall act as Presiding Officer. The Executive Director, or his or her designee, or any Committee member chosen by the Presiding Officer, shall prepare or direct the preparation of a record of the business transacted at such meeting. Such record when adopted by a majority of the Committee members in attendance at the next meeting and signed by the Committee Chair shall be the official minutes of the Committee meeting.

21. **Report of Committee Actions.** Each Committee shall report to the Board on such Committee's actions and activities at the regular Board meeting next succeeding each Committee meeting.

22. **Delegation of Powers.** The Board may, by resolution, delegate to the officers of the [Fund] such powers of the [Fund] as they believe are necessary, advisable, or desirable to permit the timely performance of the functions of the [Fund] and to carry out the plans, policies, procedures, and decisions of the Board, except that such delegation shall not include any duties or responsibilities required by applicable laws to be performed by the Board or otherwise in conflict with law.

23. **Parliamentarian Authority.** Robert's Rules of Order, current revised edition, shall govern the proceedings of the Board when not in conflict with these bylaws.

24. **Staff resources.** The [Fund] shall provide necessary staff resources to the Board and coordinate the involvement of staff from any appropriate agency or organization, as necessary.

25. **Records.** The Board shall have access to all records of the [Fund].

26. **Amendments.** The power to alter, amend, or repeal the provisions of these bylaws of the [Fund] or to adopt new bylaws, not inconsistent with the Act, is vested in the Board.

27. **Order of Business at Board Meetings.** The order of business of any meeting of the Board or any Committee shall be as set forth in the agenda for such meeting, provided that the Board or Committee may vary the order of business in its discretion.

28. **Presiding Officer at Board Meetings.** At each meeting of the Board, the [Chair][President], or in the absence of the [Chair][President], a Director chosen by a majority of the Directors then present, shall act as Presiding Officer. The Secretary, or a [Fund] staff member designated by the Executive Director, shall prepare or direct the preparation of a record of all business transacted at such meeting. Such record when adopted by the Directors at the next meeting and signed by the [Fund] or the Secretary shall be the official minutes of the meeting.

29. **Programs and Policies.** The Board shall develop and adopt an annual work program, rules, policies, and procedures, and other items the Board determines to be necessary or advisable and consistent with the Act.

30. **Other sources of funds.** In addition to any funds available through [gifts, grants, donations or legislative appropriation] to carry out the purposes of the Act, the Board shall identify any other sources of funding which may, in the opinion of the Board, be used to provide funding for the [Fund].

31. **[Directors as Members.** The members of the Board shall constitute the "Members" (as such term is used in [insert relevant section of [State][Municipality/City/Town/Village] code]) of the [Fund]].

## ARTICLE III: OFFICERS AND EMPLOYEES

1. **Executive Director.** An Executive Director shall be appointed by the Board to be the chief executive officer [as well as the chief operating officer of the corporation]<sup>4</sup> and shall have authority for general supervision, direction, and control of the business of the [Fund] as well as the duty and responsibility to implement and accomplish the objectives of the [Fund]. The Executive Director has the authority to hire and dismiss the members of the staff of the organization according to the policies established by the Board. The Executive Director shall also perform such other duties as may be assigned by the Board of Directors.

The Executive Director is authorized on the [Fund's] behalf to sign checks, drafts, or other orders for the payment of money, acceptances, notes or other evidence of indebtedness, to enter into contracts or to execute and deliver other documents and instruments. [The Executive Director is an *ex officio*, non-voting member of the Board in addition to those *ex officio* members of the Board established pursuant to [Section 3(a)] of [Article II].] The Executive Director will be appointed by the Board and will not be subject to term limits and will serve at the pleasure of the Board.

2. **[Secretary to the Board.** The Executive Director or his or her designee shall be Secretary to the Board. The Executive Director shall attend the meetings of the Board, keep a record of the proceedings of the Board, and maintain and be custodian of all books, documents and papers filed with the Board, the minutes book of the Board, and its official seal.]

3. **Personnel Authority.** The Executive Director may employ on a permanent or temporary basis such employees, including technical advisors, financial advisors, accountants, legal counsel, appraisers, underwriters, and such other officers, agents, and employees deemed reasonably necessary to operate the [Fund] efficiently, and shall determine their qualifications, duties, and compensation.

4. **Personnel Guidelines.** [The [Fund] shall create policies, practices, and procedures for the hiring and employment of employees. [The [Fund] will have a preference for hiring [State][City] residents (or individuals who become [State][City] residents)]. The Board may reorganize, restructure, reclassify, or eliminate positions. The [Fund] personnel policies shall include guidelines for conforming to the [Fund] conflict of interest policy].

5. **Acting Executive Director.** The Board may, by resolution adopted by a majority vote, appoint an Acting Executive Director to perform the duties of the Executive Director in the event of the death, inability, absence, refusal to act by the Executive Director, or in the event of any other vacancy of the office. The Acting Executive Director shall be subject to the same restrictions and privileges placed upon and delegated to the Executive Director by the Board.

---

<sup>4</sup> **Comment 4:** States and municipalities should consider making two officer positions available for CEO and COO if resources are available and the Fund would benefit from the enhanced administrative capacity.

## ARTICLE IV: FISCAL YEAR, REPORTING, AND RECORDS

1. **Fiscal Year.** The [Fund] fiscal year shall commence on [January 1] of each calendar year and end on [December 31] of the same calendar year.

2. **[Annual][Quarterly] Meeting.** The Board shall report to the [General Assembly][Senate][Council] one [year][on the last day of the first fiscal quarter ending] after the effective date of the Act and on [the last day of] each succeeding [one year anniversary of][the fiscal quarter after] the effective date.

3. **Three-year assessment.** Four years after the effective date of the Act, the [Fund] will conduct an assessment of its activities in its first three years of operation and provide a report to the [Governor][Mayor] and [General Assembly][Senate][Council] that includes recommendations on expanded operations of the [Fund].<sup>5</sup>

4. **Audits.** The [Fund] will contract with an independent certified public accountant to audit its books and accounts at least once every year. The [Fund] shall transmit the audit to the [Governor][Mayor] and [General Assembly][Senate][Council], and shall make the audit available to the public on its website, within 10 days of receipt. The Audit Committee of the Board shall be responsible for the selection of a third-party audit firm as well as the timely completion of the annual audit of the [Fund].

5. **Maintaining Financial Records.** Any entity that receives financing through the [Fund] shall provide the Board an annual statement, certified as correct by the chief financial officer of the recipient of such financing, setting forth all sources and uses of funds in such detail as may be required by the [Fund] for such project. The [Fund] shall maintain any such statements for not less than 5 years.

6. **Public records.** The [Fund] will make available the following documents to the public on its website:

- (a) Annual work program;
- (b) Board meeting minutes and records;
- (c) Any conflicts and recusals required under the [Fund] conflict of interest policy; and
- (d) Any guidelines and procedures issued by the Board.

---

<sup>5</sup> **Comment 5:** The Three –Year Assessment is included in reference to Section 5(a) of the Model Legislation and should be modified to include any changes to such provisions. The intent is to set a realistic deadline by which the [Fund] will be financially self-sustaining, and include an assessment at such deadline to confirm whether the [Fund] has reached this financial milestone.