

**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 STATE AND LOCAL LEGISLATION

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### Introduction

The *Model Laws for Deep Decarbonization in the United States* project at Columbia Law School's Sabin Center for Climate Change Law develops model laws that can be adopted by all levels of government and the private sector to drastically reduce fossil fuel use and greenhouse gas emissions.<sup>1</sup>

Further to the recommendation set out in “Legal Pathways to Deep Decarbonization in the United States” that green investment banks should be established at the state and local levels,<sup>2</sup> this Model Green Bank State and Local Legislation (the “**Model Legislation**”) provides the legislative structure to achieve that goal.

Green banks are independent nonprofit, public, or quasi-public financial institutions that leverage public or philanthropic dollars – and government backing – to attract private capital to zero and low-emissions energy generation and transportation, energy efficiency, and other projects that reduce greenhouse gas emissions (mitigation), adjust to new climate conditions and reduce risk to valued assets (adaptation), or address disruptions from climate change (resilience) – while aiming to lower the cost of energy for consumers and protect climate-impacted communities.<sup>3</sup>

Unlike grants and subsidies for decarbonization projects, green banks use a range of financing tools to mobilize and “crowd-in”<sup>4</sup> greater total investment to address climate change. Because the financing offered by green banks is repaid, green banks are able to reinvest funds and

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<sup>1</sup> Sabin Center for Climate Change Law, Columbia Law School, Columbia University Earth Institute, <http://columbiaclimatelaw.com> (last visited June 10, 2020).

<sup>2</sup> LPDD, *Model Laws for Deep Carbonization in the United States*, <https://lpdd.org> (last visited June 10, 2020).

<sup>3</sup> Coalition for Green Capital, *Market Insight: The Nonprofit Model for Green Bank Development*, Jan. 2019 (hereafter, “CGC Nonprofit Model”), <http://coalitionforgreencapital.com/wp-content/uploads/2019/05/Nonprofit-Model-Memo.pdf> (2019); American Green Bank Consortium, Coalition for Green Capital, *Green Banks in the United States: 2018 Annual Industry Report*, (2019).<https://coalitionforgreencapital.com/wp-content/uploads/2020/05/GreenBanksintheUS-2018AnnualIndustryReport.pdf>.

<sup>4</sup> Coalition for Green Capital, *Mobilization \$1 Trillion Towards Climate Change* (2019), <https://greenbanknetwork.org/wp-content/uploads/2019/09/US-National-Climate-Bank-IT-investment-white-paper.pdf>.

sustain their own operations.<sup>5</sup> As of publication, state and local green banks in the United States have facilitated US \$5 billion in green investment.<sup>6</sup>

When the initial proposal for a federal green bank in 2009 failed to pass in the Senate after passing in the House of Representatives,<sup>7</sup> states and local governments began to establish their own green banks, beginning with Connecticut in 2011.<sup>8</sup> Now, for the first time since 2009, there is serious consideration and support for federal green bank legislation in the US.<sup>9</sup> Outside the US, several countries, including Malaysia, Australia, and Japan, also established and currently operate green banks.<sup>10</sup>

Over the past ten years, state and local governments have taken different approaches in establishing their green banks.<sup>11</sup>

The first state green banks, including those in New York and Connecticut, were established as public or quasi-public entities run entirely or in large part by the government using public resources.<sup>12</sup> Other states, such as Nevada in 2017, followed a nonprofit model to create their green banks.<sup>13</sup>

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<sup>5</sup> OECD, *Green Investment Banks: Scaling up Private Investment in Low-carbon, Climate-resilient Infrastructure*, pg.15-16 (2016), [https://read.oecd-ilibrary.org/finance-and-investment/green-investment-banks\\_9789264245129-en#page17](https://read.oecd-ilibrary.org/finance-and-investment/green-investment-banks_9789264245129-en#page17).

<sup>6</sup> American Green Bank Consortium & Coalition for Green Capital, *Green Banks in the United States: 2020 US Green Bank Annual Industry Report*, pg. 3 (2020), <https://bit.ly/2B74dOv>.

<sup>7</sup> H.R. 1698, 111<sup>th</sup> Cong. (2009-2010).

<sup>8</sup> Conn. Gen. Stat. § 16-245n (2015).

<sup>9</sup> Coalition for Green Capital, *CGC Polling Results: 4 out of 5 Voters Nationally want Government to Invest in New Jobs in Clean Energy*, pg. 7 (May, 2020), <https://coalitionforgreencapital.com/wp-content/uploads/CGC-Clean-Energy-Jobs-Fund-Polling.pdf>.

<sup>10</sup> Green Bank Network, *Members*, (last visited June 10, 2020), <https://greenbanknetwork.org/members/>.

<sup>11</sup> As of June 2020, the following states have established green banks: California, Connecticut, Hawaii, New Jersey, New York, Nevada, and Rhode Island. Green Fin. Auth. Establishment Act of 2018, D.C. Law 22-155, Act No. 22-395, eff. Aug. 22, 2018, <https://code.dccouncil.us/dc/council/laws/22-155.html>; Bill No. 18-15, ch. 35, Act of Oct. 6, 2015, Montgomery County Green Bank, Md., County Council, <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2015/18-15.htm>; Mich. Public Serv. Comm'n, Mich. Energy Efficiency Grant (Case No. U-13129), Request For Proposal, Feb. 13, 2009; Sen. B. No. 407, 79th Sess. (Nev. eff. July 1, 2017); Sen. B. No. 1087, 27th Leg. (Haw. eff. July 1, 2013); Conn. Gen. Stat. § 16-245n (2015).

<sup>12</sup> The Connecticut Green Bank is a quasi-public corporation, governed by statute, but is not a department, institution or agency of the state (*See* Conn. Gen. Stat. § 16-245n (2015)); the New York Green Bank is a division of the New York State Energy Research and Development Authority (NYSERDA) (*See* Order Establishing New York Green Bank and Providing Initial Capitalization, State of New York Public Service Commission, Case 13-M-0412, December 19, 2013).

<sup>13</sup> Nev. Rev. Stat. § 701B.930-995.

Public or quasi-public models allow state governments to establish state-sponsored financial entities by creating a new financial agency from scratch or repurposing existing agencies and/or revenue programs into a focused financial entity. The public or quasi-public models, however, can be difficult to implement in some jurisdictions, particularly those with fewer funding resources from which to draw.<sup>14</sup>

For a number of reasons, the nonprofit model offers a practical approach that many, if not most, state and local governments could take to establish a green bank in their locality.<sup>15</sup> A brief comparison of the public, quasi-public, and nonprofit green bank models is set forth in the Green Bank Model Comparison Chart attached hereto as Annex A.

Accordingly, this Model Legislation provides the legislative structure to establish a green bank following the nonprofit model and takes its basic structure from the Nevada Clean Energy Fund legislation.<sup>16</sup> However, the provisions contained herein can also be used by lawmakers and regulators alike for purposes of establishing and structuring a public or quasi-public green bank through either the legislative or regulatory process.

Provisions from proposed federal legislation<sup>17</sup> and green bank legislation enacted in certain other states have been incorporated to provide flexibility based on a given locality's resources, political and environmental goals, and unique geographical considerations.

As green bank legislation continues to spread across the US and gathers momentum at the federal level, coherence among programs will facilitate the sharing of best practices and help leverage resources across jurisdictions. The Coalition for Green Capital, the New American Green Bank Consortium, and the United States Climate Alliance, among others, are leading efforts to promote organization among green banks. This Model Legislation is designed to facilitate the drafting and adoption of green bank legislation and to provide alignment and coherence in the green bank policy-space.

Throughout the Model Legislation, bracketed text denotes optional text that a state or local government may elect to enact or delete. Bracketed text or blank spaces also indicate areas where custom terms, such as the name of the state, municipality, city, town or village should be inserted or where the provisions can be changed to fit a locality's needs. This Model Legislation provides

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<sup>14</sup> CGC Nonprofit Model, p. 7.

<sup>15</sup> *Id* at 3 (“The nonprofit model presents distinct benefits that make it preferable for many states and markets. These include: faster time to market, reduced burden to government, and flexibility to draw on diverse sources of national capital.”)

<sup>16</sup> Nev. Rev. Stat. § 701B.930-995.

<sup>17</sup> Specifically, the Clean Energy and Sustainability Accelerator adopted as an amendment to the Moving Forward Act, H.R. – 116<sup>th</sup> Congress (2019-2020), approved by the House of Representatives on July 1, 2020. The Clean Energy and Sustainability Accelerator is formerly known as and based on the National Climate Bank Act, S. 2057 – 116<sup>th</sup> Congress (2019-2020), introduced July 8, 2019, and companion bill H.R. 5416 – 116<sup>th</sup> Congress (2019-2020), introduced December 12, 2019.

commentary throughout clarifying areas of potential ambiguity and discussing the application, benefits and drawbacks of certain provisions.

*[Model Legislation Follows]*

[Bill No, [●]—[Insert Names of Sponsors]]

CHAPTER [●]

**[Purpose & Intent]**

AN ACT relating to [energy][energy and the environment][[climate change mitigation, adaptation, and] [climate] resiliency]; creating the [State][Municipality/City/Town/Village] [Clean Energy Fund (the “Fund”)];<sup>18</sup> creating the Board of Directors of the [Fund] to administer the [Fund]; setting forth the duties and powers of the Board; and providing other matters properly relating thereto.

This bill establishes the [State][Municipality/City/Town/Village] [Clean Energy Fund] to provide funding for and increase significantly the pace and amount of financing available for Qualified Projects in this [State] [Municipality/City/Town/Village]. Section [4] of this bill creates the Board of Directors of the [Fund], whose responsibility it is to carry out the provisions of this bill. Section [5] of this bill sets forth certain duties of the Board relative to the responsibility of the Board to carry out the provisions of this bill.

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THE PEOPLE OF THE [STATE] [MUNICIPALITY/CITY/TOWN/VILLAGE] OF [●],  
REPRESENTED IN  
[SENATE AND ASSEMBLY] [COUNCIL] [●], DO ENACT AS FOLLOWS:

Section 1. *[Insert provision describing necessary amendments to other laws in order to establish and empower the [Fund], as described below].*

Sec. 1.1. The Legislature hereby finds and declares that it is in the interest of this [State][Municipality/City/Town/Village] to establish and support in this [State][Municipality/City/Town/Village] an independent [nonprofit] [corporation for public benefit],<sup>19</sup> the [State][Municipality/City/Town/Village] [Clean Energy Fund], for the purposes of:

- (a) Maximizing reductions in greenhouse gas emissions;
- (b) Promoting investments in Qualified Projects;

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<sup>18</sup> **Comment 1:** The name “Clean Energy Fund” used in this Model Legislation is the name used for the Nevada green bank, but the green bank’s name should be something the locality sees as effective and descriptive of its green bank’s mission. Other examples in the United States include the New York Green Bank, the Rhode Island Infrastructure Bank, the Hawaii Green Infrastructure Authority, etc.

<sup>19</sup> **Comment 2:** Depending on the relevant state laws, the state or local government may wish to consider using either a corporation for public benefit or a nonprofit. These types of entities are similar but may provide distinct benefits depending on state corporate laws.

- (c) Increasing significantly the pace and amount of investments in Qualified Projects at the [state and] local level[s] [by catalyzing and mobilizing private capital through public and philanthropic investment and other financial products designed to reduce the asset risk to private investors];<sup>20</sup>
- (d) [Improving the standard of living of the [low and moderate income] residents of this [State][Municipality/City/Town/Village] by promoting the more efficient and lower cost development of Qualified Projects;]
- (e) [Enabling Climate-Impacted Communities to benefit from and afford projects and investments that reduce emissions;]
- (f) [Providing support for workers and communities impacted by the transition to a low-carbon economy;]
- (g) [Providing financing for Qualified Projects that will create high-paying, long-term jobs;]
- (h) [Fostering the development and consistent application of transparent underwriting standards, standard contractual terms, and measurement and verification protocols for Qualified Projects;]
- (i) [Promoting the creation of performance data that enables effective underwriting, risk management, and pro forma modeling of financial performance of Qualified Projects to support primary financing markets and to stimulate the development of secondary investment markets for Qualified Projects;]
- (j) [Achieving a level of financing support for Qualified Projects necessary to help abate climate change by [increasing zero- or low-emissions [electricity generation] and [transportation capabilities,]] [realizing energy efficiency potential in existing infrastructure,] [easing the economic effects of transitioning from a carbon-based economy to a clean-energy economy,] [achieving job creation through the construction and operation of Qualified Projects,] [and complementing and supplementing other zero and low-emissions energy generation and distribution and energy efficiency programs and initiatives in this [State][Municipality/City/Town/Village];]
- (k) [Conducting low-cost Procurements in the [State] [Municipality/City/Town/Village] that will be used to lower greenhouse gas emissions;]

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<sup>20</sup> **Comment 4:** Further statements of purpose to be determined by the State/Municipality/City/Town/Village based on political, economic and other considerations. Samples of additional statements of purpose are included in brackets. In particular, including a mandate to improve the standard of living for Climate-Impacted Communities may be necessary to ensure that certain philanthropic funds may be accessed, resources are distributed evenly and energy justice issues are addressed.

- (l) [Mitigating climate change, adapting to the impacts resulting from climate change, and implementing climate resiliency measures];
- (m) [Prioritizing environmental justice for Climate-Impacted Communities;][and]
- (n) [Receiving and implementing [National Climate Bank][Accelerator] funding and resources, whether available now or in the future, to improve zero and low-emissions energy infrastructure in the [State][Municipality/City/Town/Village] and support the other purposes listed in clauses [(●)] through [(●)] above.]<sup>21</sup>

Section 2. As used in this chapter, unless the context otherwise requires, the words and terms defined in Sections [2.1] to [2.16], inclusive, of this act have the meanings ascribed to them in those sections.<sup>22</sup>

Sec. 2.1. [**“Accelerator”** means the Clean Energy and Sustainability Accelerator established under section 1622 of the Clean Energy and Sustainability Accelerator adopted as an amendment to the Moving Forward Act, H.R. – 116th Congress (2019-2020).]

Sec. 2.2. [**“Alternative Fuel Vehicle Project”** means any project, technology, product, service, function, or measure, or an aggregation thereof, which supports the development and deployment of alternative fuels used for electricity generation, alternative fuel vehicles and related infrastructure, including, without limitation, infrastructure for electric vehicle charging stations. The term does not include any technology that involves the combustion of fossil fuels, including, without limitation, petroleum and petroleum products.]

Sec. 2.3. [**“Board”** means the Board of Directors of the [State][Municipality/City/Town/Village] [Clean Energy Fund].]

Sec. 2.4. [**“Cash for Carbon Program”**<sup>23</sup> means any project or program using market mechanisms to expedite the retirement of carbon-intensive power generation

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<sup>21</sup> **Comment 5:** Federal legislation for a National Climate Bank has not yet been enacted but the Clean Energy and Sustainability Accelerator adopted as an amendment to the Moving Forward Act, H.R. – 116<sup>th</sup> Congress (2019-2020), was approved by the House of Representatives on July 1, 2020. The Clean Energy and Sustainability Accelerator is formerly known as and based on the National Climate Bank Act, S. 2057 – 116<sup>th</sup> Congress (2019-2020), introduced July 8, 2019, and companion bill H.R. 5416 – 116<sup>th</sup> Congress (2019-2020), introduced December 12, 2019. In the event that such legislation or similar legislation passes and a National Climate Bank or Accelerator is established, state and local green bank legislation should consider including provisions that will align the state or local green bank with the National Climate Bank or Accelerator legislation in order to take advantage of any federal resources or funding available.

<sup>22</sup> **Comment 6:** Additional defined terms should be included to align with other statutes, regulations or other legislative materials and also to further specify how terms are intended to be used with respect to a particular locality.

<sup>23</sup> **Comment 7:** This provision is included to align with, support and implement the proposed National Climate Bank Act. This provision may not be relevant if the locality does not have carbon-intensive power generating facilities in its jurisdiction. If “Cash for Carbon Programs” are included, consider whether to include

facilities, such as coal-fired power generation facilities, acquire carbon assets for the purposes of reducing emissions, and invest in communities negatively affected by the loss of those facilities or assets, including market mechanisms such as:

- (a) [Reverse auctions;]<sup>24</sup>
- (b) [Securitization;]<sup>25</sup>
- (c) [The offering of bidder’s credits to facilities that pose significant environmental justice or health concerns, particularly in low-income, minority, and distressed neighborhoods [(within the meaning of section 910 of the Housing and Community Development Act of 1992 (12 U.S.C. 2901 note, Public Law 102-550))];<sup>26</sup> [and]
- (d) [The provision of investment and technical assistance to the local community and site of a facility, including, where necessary, in cooperation with:
  - (i) The Administrator of the Environmental Protection Agency; or
  - (ii) Other Federal, State, or local authorities.]

Sec. 2.5. [**“Clean Agriculture Project”** means agriculture projects that reduce net greenhouse gas emissions or improve climate resiliency, including, but not limited to, reforestation, afforestation, forestry management, and regenerative agriculture.]

Sec. 2.6. [**“Climate-Impacted Communities”** means

- (a) Communities of color, which include any geographically distinct area the population of color of which is higher than the average population of color in the [State];
- (b) Communities that are already or are likely to be the first communities to feel the direct negative effects of climate change;

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provisions that would permit such programs to be expanded beyond the power sector to other carbon-intensive economic sectors, as determined by the Board of Directors.

<sup>24</sup> **Comment 8:** Under a reverse auction, companies bid against each other to store CO<sub>2</sub>, with the winning bidder receiving payment through government-administered carbon capture and storage funds.

<sup>25</sup> **Comment 9:** Through securitization, a green bank would purchase and pool loans made to fund zero and low-emissions energy projects in exchange for an asset-backed security that could be traded on a secondary market, analogous to the role of the Federal National Mortgage Association (Fannie Mae). Transferring the securitized loan credit risk to private investors in the secondary market has the added benefit of reducing taxpayer risk.

<sup>26</sup> **Comment 10:** This is a common standard to use for establishing which communities and neighborhoods are considered low-income, minority or distressed, however, the locality may reference its own standard for determining low-income, minority and distressed neighborhoods that is tailored to the demographics and geography of such area.

- (c) Distressed neighborhoods, demonstrated by indicators of need, including poverty, childhood obesity rates, academic failure, and rates of juvenile delinquency, adjudication, or incarceration;
- (d) Low-income communities, defined as any census block group in which [30] percent or more of the population are individuals with low income;
- (e) Low-income households, defined as a household with annual income equal to, or less than, the greater of:
  - (i) An amount equal to [80] percent of the median income of the area in which the household is located, as reported by the [Department of Housing and Urban Development]; and
  - (ii) [200] percent of the Federal poverty line; and
- (f) Rural areas, which include any area other than:
  - (i) A city or town that has a population of greater than [50,000] inhabitants; and
  - (ii) Any urbanized area contiguous and adjacent to a city or town described in clause (i) above.]<sup>27</sup>

Sec. 2.7. [**“Climate Resilient Infrastructure”** means any project that builds or enhances infrastructure so that such infrastructure:

- (a) Is planned, designed, and operated in a way that anticipates, prepares for, and adapts to changing climate conditions; and
- (b) Can withstand, respond to, and recover rapidly from disruptions caused by these climate conditions.]

Sec. 2.8. [**“Demand Response Project”** means any project, technology, product, service, function, or measure, or an aggregation thereof, that changes the usage of electricity by retail customers in this [State][Municipality/City/Town/Village] from the normal consumption patterns in response to:

- (a) Changes in the price of electricity over time; or
- (b) Incentive payments designed to induce lower electricity use at times of high market prices or when system reliability is jeopardized.]

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<sup>27</sup> **Comment 11:** Standards for low-income communities and low-income households and what populations qualify as “rural” may vary by jurisdiction and definitions for such areas should be tailored to address the populations served by the [Fund].

Sec. 2.9. [**“Electrification”** means the installation, construction, or use of end-use electric technology that replaces existing fossil-fuel-based technology.]

Sec. 2.10. [**“Energy Efficiency Project”** means any project, technology, product, service, function, or measure, or an aggregation thereof, that:

- (a) Results in the reduction of energy use required to achieve the same level of service or output obtained before the application of such project, technology, product, service, function, or measure, or aggregation thereof; or
- (b) Substantially reduces greenhouse gas emissions relative to emissions that would have been produced before the application of such project, technology, product, service, function, or measure, or aggregation thereof; *provided* that this term does not include any project relating to power generation facilities that involve the combustion of fossil fuels, including, without limitation, petroleum and petroleum products.]

Sec. 2.11. “[**State**][**Municipality/City/Town/Village**] [**Clean Energy Fund**]” or “[**Fund**]” means the independent, nonprofit corporation established pursuant to Section [3] of this act to provide money to promote investments in and increase significantly the pace and amount of investment in Qualified Projects in this [State][Municipality/City/Town/Village] and to carry out the provisions of this chapter.

Sec. 2.12. [**“Procurement”** means the purchase, lease, or acquisition of real or personal property on a bid, negotiated, or open-market basis, including through a sole-source procurement or in such other manner as the Board or [Chief Executive Officer][Executive Director] determine to be appropriate and in the best interests of reducing emissions.

Sec. 2.13. [**“Qualified Clean Energy Project”** means any [Alternative Fuel Vehicle Project,] [Demand Response Project,] [Electrification,] [Energy Efficiency Project,] [Renewable Energy Project,] [Cash for Carbon Program,] [or System Efficiency Project].]

Sec. 2.14. [**“Qualified Project”** means any Qualified Clean Energy Project, [Clean Agriculture Project,] [Climate Resilient Infrastructure,] [Climate Change Mitigation or Adaptation Project,] and any other projects identified by the Board as consistent with the purposes of the [Fund] described in [Section 1.1].”<sup>28</sup>

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<sup>28</sup> **Comment 12:** Depending on the location and its most relevant needs, provisions providing for Qualified Project prioritization may be included. Such provisions could prioritize which kinds Qualified Projects receive funding based on the type of Qualified Project or based on impact. For example, in rural areas, Clean Agriculture Projects may be prioritized as the most immediate need. More generally, Qualified Projects could be prioritized based on potential for greenhouse gas emission reduction. Such prioritization could also include a specific mandate that a certain percentage of Qualified Projects funded must serve Climate-Impacted Communities.

Sec. 2.15. [“**Renewable Energy**” means energy produced by:<sup>29</sup>

- (a) Solar resources;
- (b) Wind resources;
- (c) [Geothermal resources;]
- (d) [Nonhazardous, organic biomass;]
- (e) [Anaerobic digestion of organic waste streams;]
- (f) [Hydropower;]
- (g) [Fuel cells using renewable resources; and]
- (h) [Any other source that naturally replenishes over a human, rather than geological, time frame and that is ultimately derived from solar, water or wind resources.]]

Sec. 2.16. [“**Renewable Energy Project**” means the development, construction, deployment, alteration or repair of any project, technology, product, service, function, or measure, or an aggregation thereof, that generates electric power from renewable energy].

Sec. 2.17. [“**System Efficiency Project**” means the development, construction, deployment, alteration, or repair of any distributed generation system, energy storage system, smart grid technology, advanced battery system, microgrid system, fuel cell system, or combined heat and power systems].

Section 3. The [Insert appropriate government official] shall cause to be formed in this [State][Municipality/City/Town/Village] [not later than one year after the date of enactment of this [bill]] an independent, nonprofit corporation recognized as exempt from federal income taxation for the public benefit named the “[State][Municipality/City/Town/Village] [Clean Energy Fund],” the general purpose of which is to carry out the provisions of this chapter.<sup>30</sup>

Sec. 3.1. [The [Fund] shall not be an agency or instrumentality of the [State] [Municipality/City/Town/Village] government.]

Sec. 3.2. [The [Fund] shall:

- (a) Be an organization described in Section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under Section 501(a) of such Code;

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<sup>29</sup> **Comment 13:** Relevant technologies to be added/removed as appropriate for the geographical location and political considerations.

<sup>30</sup> **Comment 14:** Model bylaws for a nonprofit corporation are attached to this Model Legislation as Annex B and can be used to prepare the organizational and establishing documents of the green bank entity.

- (b) Ensure that no part of the income or assets of the [Fund] shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses;
- (c) Not contribute or otherwise support any political party or candidate for elective office; and
- (d) Not accept deposits.]

Section 4. There is hereby created the Board of Directors of the [State][Municipality/City/Town/Village] [Clean Energy Fund], consisting of the following [nine] members as follows:<sup>31</sup>

- (a) [[Three (3)] *ex officio*<sup>32</sup> members 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]
  - (iii) [The [Treasurer] or his or her designee.]
- (b) [[Six] additional members [appointed by the [Governor][Mayor] 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.]

Sec. 4.1. When appointing a member 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.

Sec. 4.2. [The six non *ex officio* members of the Board identified in [Section 4(b)] shall be divided into three classes (each a “Class”) as follows: (a) one class

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<sup>31</sup> **Comment 15:** The following provisions related to board appointments should be adapted according to a [State’s][Municipality/City/Town/Village’s] respective agencies and referenced officers’ anticipated capacity to serve the Board effectively. The number and voting capacity of board members should be adapted to provide for the maximum competency and operational efficiency of the Board. While the model language above establishes *ex officio* board membership, a board could be insulated from political influence by (a) providing that none of the seats shall be held *ex officio*, (b) specifying that no more than a certain number of members can be from the same political party and (c) requiring a certain number of board members be appointed with unanimous consent of the members from different political parties.

<sup>32</sup> **Comment 16:** States 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 the incumbent administration to control the Board.

consisting of two members (“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 members (“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 members, (“Class III”), the initial term of which shall expire at the third annual meeting of the Board to be held after the date hereof.]<sup>33</sup>

Sec. 4.3. After the initial term of each Class set forth in [Section 4.2(a),(b) and (c)], the term of each member of the Board appointed pursuant to Section 4(b) shall be [three] years. A non-*ex officio* member may be [reappointed][re-elected] for additional terms of [three] years [in the same manner as the original appointment][by a vote of the members of the Board]. [Except for the selection of the initial members of the Board for their initial terms under [Section 4(b)], the non-*ex officio* members of the Board shall be elected by the members of the Board.] A member of the Board shall be disqualified from voting for any position on the Board for which such member is a candidate.

Sec. 4.4. [The first orders of business of the Board shall be:

- (a) [To elect a [President][Chair] from among its members through a plurality vote and hold annual elections for [President][Chair] each year thereafter;]
- (b) [To hire a [Chief Executive Officer][Executive Director]<sup>34</sup> who shall:
  - (i) [Manage the day to day operations of the [Fund];
  - (ii) [Hire [•] staff members to assist in management of day to day operations of the [Fund]; and]
- (c) [To classify the six non-*ex officio* members of the Board identified in Section [4(b)] in accordance with [Section 4.2]].

Sec. 4.5. The Board shall meet regularly, at least [quarterly], and may meet at other times upon the call of the [President][Chair]. Any [five] members of the Board constitute a quorum for the purpose of voting. A majority vote of the quorum is required to take action with respect to any matter unless otherwise specified in the bylaws.

Sec. 4.6. The Board shall adopt [bylaws][rules] for its own management and government.

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<sup>33</sup> **Comment 17:** This staggered, or classified, board structure is designed to insulate the board from political turnover and promote independent governance across successive governing administrations.

<sup>34</sup> **Comment 18:** In addition to the Chief Executive Officer, the [State][Municipality/City/Town/Village] may want to also appoint a Chief Risk Officer to work with [Fund] auditors to monitor and limit risks of the [Fund] and, depending on the size of the Fund, a Chief Operating Office, if needed.

Sec. 4.7. While engaged in the business of the Board, each member of the Board is entitled to receive the per diem allowance and reasonable travel expenses provided for state officers and employees generally.<sup>35</sup>

Section 5. To carry out the provisions of this chapter, the Board shall:

- (a) Ensure that within [three]<sup>36</sup> years of launch and for the life of the [Fund], investments are made on a portfolio basis such that returns are sufficient to cover on-going portfolio losses and operating expenses (i.e. self-sustainability), with the exception of any specific funds or mandates provided to the [Fund] where it may invest without a high certainty or requirement of return;<sup>37</sup>
- (b) Leverage private investment in Qualified Projects through financing mechanisms that support, enhance, and complement private investment;<sup>38</sup>
- (c) Report to the [General Assembly][Council] on an [annual][quarterly] basis;
- (d) Ensure that the [Fund] is audited annually. Such audits shall be conducted with generally accepted auditing standards by independent certified public accountants; and
- (e) Ensure that the [Fund]:
  - (i) Maximizes the reduction of emissions in the [State][Municipality/City/Town/Village] for every dollar deployed by the [Fund];
  - (ii) Directs [twenty percent]<sup>39</sup> of its investment activity to serve Climate-Impacted Communities;

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<sup>35</sup> **Comment 19:** In addition to the Board, the [State][Municipality/City/Town/Village] may want to establish certain committees that need to be formed by the Board members, such as an advisory committee with expertise in development of the Qualified Projects and an investment committee with financial expertise.

<sup>36</sup> **Comment 20:** Instituting a deadline for self-sustainability could help to reduce waste and increase efficiency. A three-year timeline has been successful in certain locations; however, timelines may vary from location to location.

<sup>37</sup> **Comment 21:** The intent of this language is to promote self-sustainability of the [Fund] to reduce ongoing burden on [public][philanthropic] funds.

<sup>38</sup> **Comment 22:** Provisions explicitly setting forth the financial products and investment types that the [Fund] may provide may be included in this section or left more general for the Board and management to determine.

<sup>39</sup> **Comment 23:** This percentage should align with any federal or other requirements in order to access the greatest number of potential funding sources. The twenty percent amount is based on the amount specified under the Clean Energy and Sustainability Accelerator adopted as an amendment to the Moving Forward Act, H.R. – 116th Congress (2019-2020).

- (iii) Prioritizes Qualified Projects according to benefits conferred on consumers and Climate-Impacted Communities;
- (iv) Complies with requirements of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.);
- (v) Requires that laborers and mechanics employed by contractors and subcontractors in construction work financed directly by the Accelerator will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under sections 3141 through 3144, 3146, and 3147 of title 40, United States Code;
- (vi) [Requires that Qualified Projects financed directly by the Accelerator with total capital costs of [insert dollar amount] or greater utilize a project labor agreement;]
- (vii) [Annually develops and adopts a work program to serve and support the deployment of Qualified Projects in this [State][Municipality/City/Town/Village], including, without limitation, projects benefiting Climate-Impacted Communities, single-family and multi-family residential property, commercial, industrial, educational and governmental property, hospitals, and nonprofit property, and any other projects which advance the purpose of this chapter;]
- (viii) [Develops rules, policies and procedures which specify the eligibility of borrowers and any other terms or conditions of the financial support to be provided by the [Fund] before financing support is provided for any Qualified Project;]
- (ix) [Develops and offers a range of financing structures, forms and techniques for Qualified Projects, including, without limitation, loans, bonds, credit enhancements, guarantees, warehousing, securitization, co-investing, and other financial products and structures;]
- (x) Develops consumer protection standards to be enforced on all investments to ensure the [Fund] and its partners are lending in a responsible and transparent manner that is in the financial interests of the borrowers;
- (xi) Assesses reasonable fees for the financing support and risk management activities provided by the [Fund] in amounts sufficient to cover the reasonable costs of the [Fund];
- (xii) Collects and makes available to the public in a centralized database on an Internet website maintained by the [Fund] information regarding rates, terms and conditions of all financing support transactions, unless the disclosure of such information includes a trade secret, confidential commercial information, or confidential financial information;

- (xiii) Prepares an [annual][quarterly] report for the public on the financing activities of the [Fund], which report shall specify the investments made in Climate-Impacted Communities required hereunder;
- (xiv) Works with market and program participants to provide information regarding best practices for overseeing Qualified Projects and information regarding other appropriate consumer protections; [and]
- (xv) Undertakes such other activities as are necessary to carry out the provisions of this chapter.

Section 6. [The [Fund] shall be initially capitalized by [money available through gifts, grants, donations and/or legislative appropriation] in an amount equal to \$[●] on the date on which the Fund is established under Section [1.1] and with \$[●] each [year] following such date].<sup>40</sup>

Sec. 6.1. Of the initial capitalization, up to \$[●] may be used for operational and start-up expenses and the remaining amount shall be used solely as investment capital for Qualified Projects financed by the [Fund].

Sec. 6.2. In addition to any money available through gifts, grants, donations or legislative appropriation to carry out the purposes of this chapter, the Board shall identify any other sources of money which may, in the opinion of the Board, be used to provide money for the [Fund].

Section 7. The [Fund] may:

- (a) Sue and be sued.
- (b) Have a seal.
- (c) Acquire real or personal property or any interest therein, by gift, purchase, foreclosure, deed in lieu of foreclosure, lease, option or otherwise.
- (d) Prepare and enter into agreements with the Federal Government for the acceptance of funding and grants of money for the purpose of this chapter.

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<sup>40</sup> **Comment 24:** CGC Nonprofit Model, p. 3 (“While nonprofit Green Banks are not public entities, a durable partnership between the Green Bank and government is critical for success. The final form(s) of partnership depend on a state’s preferences and needs. A small but meaningful commitment of public capital and/or resources can also be beneficial in drawing in philanthropic capital to the Green Bank.”). More generally, funding sources for green banks are diverse, including: government capitalization (Australia, United Kingdom); government grants and programs (New Jersey); reallocation of funds from existing programmes (New York); emissions trading schemes (New York); utility bill surcharges (Connecticut, New York); loans (Connecticut); bond issuances (Hawaii); and carbon tax revenue (Japan). “Green Investment Banks: Scaling up Private Investment in Low-carbon, Climate-resilient Infrastructure”, OECD (2016), pp.99-100, [https://read.oecd-ilibrary.org/finance-and-investment/green-investment-banks\\_9789264245129-en#page17](https://read.oecd-ilibrary.org/finance-and-investment/green-investment-banks_9789264245129-en#page17)

- (e) Enter into agreements or cooperate with third parties to provide for enhanced leveraging of money of the [Fund], additional financing mechanisms or any other program or combination of programs for the purpose of expanding the scope of financial assistance available from the [Fund].
- (f) Bind the [Fund] and the Board to terms of any agreements entered into pursuant to this chapter.
- (g) Apply for and accept gifts, grants and donations from any reputable source acceptable to the Board for the purpose of carrying out the provisions of this chapter.
- (h) [Seek to qualify as a Community Development Financial Institution under Section 4702 of the United States Code. If approved as a Community Development Financial Institution, said [Fund] would be treated as a qualified community development entity for purposes of Section 45D and Section 1400(m) of the Internal Revenue Code.]

Section 8. [This act becomes effective:

- (a) Upon passage and approval for the purpose of adopting regulations and performing any preparatory administrative tasks that are necessary to carry out the provisions of this act; and
- (b) On [insert date], for all other purposes.]

ANNEX A

GREEN BANK MODEL COMPARISON CHART

	Green Bank Model Forms		
	Public	Quasi-Public	Private
<b>Legal form</b>	Part of the government (i.e., any agency, department, political subdivision or other instrumentality of a state or local government) – its responsibilities are established by statute or regulation	A corporation at least partially, but often wholly owned by the government, that has a legal obligation to provide certain services as determined in the legislation or regulation directing the creation of the entity	Private entity (e.g., corporation, non-profit corporation, public benefit corporation) – in the context of state and local green banks, such a private entity would be established pursuant to a statute or regulation, but would be an entity separate from the government itself
<b>Legal relationship to establishing government</b>	Part of the government of the jurisdiction it serves	Legally owned by the government, but oversight and management determined by the statute or regulation that directed the creation of the entity	Legally independent of the government, but the independent corporation’s purpose and governing documents would be guided by the statute or regulation under which it was established
<b>Manner of creation</b>	Legislation or regulation	Legislation, regulation and corporate entity formation laws of relevant jurisdiction	Legislation, regulation and corporate entity formation laws of relevant jurisdiction
<b>Source of funds / capitalization (generally)</b>	Public, often local taxes or federal grants	Public, often local taxes or federal grants, with potential to raise private and philanthropic capital	Flexible: public, private (e.g. commercial bank) or philanthropic funds (e.g. grants) – while a private corporation cannot collect taxes to fund itself, it can receive public funding through grants from local or federal sources
<b>Advantages</b>	<ul style="list-style-type: none"> <li>Policy coordination: integration within government promotes coordination with</li> </ul>	<ul style="list-style-type: none"> <li>Policy coordination: government ownership promotes policy coordination</li> </ul>	<ul style="list-style-type: none"> <li>Operational autonomy: not owned by the government and therefore insulated from political risk, able</li> </ul>

	<p>other government bodies and policy coherence</p> <ul style="list-style-type: none"> <li>• Management and oversight of use of public moneys is within government's control</li> </ul>	<ul style="list-style-type: none"> <li>• Management and oversight of use of public moneys is generally within government's control</li> <li>• Operational autonomy: follows government mandate but otherwise operates according to its own procedures and objectives</li> <li>• Access to capital: able to secure financing from multiple sources including public, private and philanthropic funds</li> </ul>	<p>to operate and pursue long-term strategies</p> <ul style="list-style-type: none"> <li>• Access to capital: able to secure financing from multiple sources including public, private and philanthropic funds</li> <li>• Private sector leverage: autonomous control of funds and longevity attracts private capital</li> <li>• Formation/operating costs: more efficient to incorporate and staff than a public or quasi-public entity.</li> </ul>
<p><b>Disadvantages</b></p>	<ul style="list-style-type: none"> <li>• Political risk: change in administration could threaten the existence or operations of the green bank</li> <li>• Loss of private sector leverage: because of the political risk that funds will be re-appropriated, the bank shut down or investment strategy changed, private capital may be less comfortable investing in projects with the green bank</li> <li>• Operational inefficiency: slow startup due to legal and political processes, staffing issues due to restrictions on state budgets with respect to hiring public employees</li> </ul>	<ul style="list-style-type: none"> <li>• Political risk: often wholly-owned by the government, change in administration could threaten the existence or operations of the green bank</li> <li>• Loss of private sector leverage: because of the political risk that funds will be re-appropriated, the bank shut down or investment strategy changed, private capital may be less comfortable investing in projects with the green bank</li> </ul>	<ul style="list-style-type: none"> <li>• Policy discord: increased potential for policy discord if government and green bank strategies diverge</li> <li>• Management and oversight of use of public moneys must be carefully addressed in corporate governing documents to ensure public moneys are well-managed</li> </ul>

ANNEX B

MODEL GREEN BANK BYLAWS

*[PROVIDED SEPARATELY]*