STATE OF NEW YORK

8428

IN SENATE

May 7, 2018

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law, in relation to establishing the empire state public bank; and providing for the repeal of certain provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The state finance law is amended by adding a new article 17 to read as follows:

ARTICLE 17

EMPIRE STATE PUBLIC BANK

Section 254. Legislative intent.
255. Definitions.
256. Creation.
257. Commission.
258. Transition board.
259. Deposit of public funds.
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261. Infrastructure loans.
262. Student loans.
263. Business, non-profit and individual loans.
264. Treasury and banking services.
265. Management.
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270. Fees and taxes.
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272. Capitalization.
273. Public depositary.
274. Application of this chapter to the president.
275. Cash and demand deposits available.
276. Permitted investments.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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277. Severability.

§ 254. Legislative intent. 1. The legislature finds that there are significant public infrastructure, higher education and business development needs of the state that are unmet. The legislature further finds that there are opportunities to use the state's depository assets to generate additional benefit for the people and the economy of the state. Therefore, the legislature intends to create the empire state public bank as a legacy institution that amasses sufficient capital reserves to address opportunities now and in the future.

2. The legislature intends that the public bank may:

(a) Facilitate investment in, and financing of, public infrastructure systems that will increase public health, safety, and quality of life, improve environmental conditions, and promote community vitality and economic growth;

(b) Assist students who are in need of additional low-cost student loans in order to finance the cost of higher education;

(c) Provide businesses, communities and low income areas of our state access to low-interest capital; and

(d) Leverage New York's financial capital and resources, and work in partnership with financial institutions, community-based organizations, economic development organizations, guaranty agencies, and other similar organizations.

3. The mission of the bank is to use New York's depository assets in ways that afford most efficient use of taxpayer revenues and public resources for the benefit of the people and economy of the state. The legislature intends for the bank to apply business strategies to manage taxpayer revenues while concurrently meeting identified needs and strategic opportunities across the state. In achieving its purpose of improving public infrastructure and increasing access to higher education, the legislature intends for the bank to adhere to the following priorities:

(a) Institutional safety and soundness;

(b) Long-term viability;

(c) Social return and monetary return on investments;

(d) Prudent and best banking and business practices;

(e) Highest ethical, accountability, and transparency standards; and

(f) Insulation from political influence.

§ 255. Definitions. The definitions in this section apply throughout this article unless the context clearly requires otherwise.

1. "Board" means the advisory board of the empire state public bank.

2. "Commission" means the empire state public bank commission.

3. "Department" means the department of financial services.

4. "Director" means the director of the department of financial services.

5."Superintendent" means the superintendent of the department of financial services.

6. "Public infrastructure system" means a system of a local government or political subdivision, a special purpose district, a public school district, an institution of higher education, a federally recognized Indian tribe, or the state, including but not limited to a system involving: Wastewater treatment; storm water management; solid waste disposal; drinking water treatment; flood control levees; energy efficiency enhancements; roads, streets, and bridges; transportation infrastructure, including freight and passenger rail and public transit; broadband and telecommunications infrastructure; outdoor recreation and habitat protection facilities; community, social service, or public

safety facilities; schools and educational facilities; and affordable housing.

7. "State-chartered bank" means any corporation organized under the laws of this state that is engaged in banking, other than a trust company, savings association, or a mutual savings bank. It does not include the empire state public bank.

8. "State moneys" means all moneys or funds belonging to or in the custody of the state under the control of the state comptroller shall be considered as state moneys or funds.

9. "Comptroller" means the comptroller of the state of New York.

10. "Bank" means the empire state public bank.

§ 256. Creation. The empire state public bank is created.

§ 257. Commission. 1. The empire state public bank commission is created as the primary governing authority of the bank. The commission shall consist of the governor, the lieutenant governor, the chair of the assembly banking committee, the chair of senate banking committee, and the state comptroller.

2. The commission shall adopt rules regarding the:

(a) Safety and soundness standards of the bank;

(b) Criteria for evaluating, approving, and monitoring loans;

(c) Eligibility requirements and limits for borrowing;

(d) Transparency requirements for bank operations;

(e) Ethics and conflict of interest requirements for the commission, the board, and officers and employees of the bank, including rules to ensure that they perform their functions in compliance with the public officers law; and

(f) Other topics as needed for efficient administration of the bank.

3. The commission shall commence bank operations by April first, two thousand nineteen.

4. The commission may delegate to the bank president such duties and powers as deemed necessary to carry on the business of the bank and enforce this article efficiently and effectively. The commission may not delegate its rule-making or policy-making authority.

5. The commission shall adopt policies and procedures for its own governance.

6. The commission may establish technical advisory committees or consult with public and private sector experts in substantive areas related to the bank's mission, objectives, and duties.

§ 258. Transition board. 1. (a) The bank transition board is established, with members as provided in this section.

(i) The temporary president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(ii) The speaker of the assembly shall appoint one member from each of the two largest caucuses of the assembly.

(iii) The temporary president of the senate and the speaker of the assembly jointly shall appoint seven citizen members with a substantial background in banking or financial issues.

(b) The temporary president of the senate and the speaker of the assembly jointly shall select the chair from among the citizen membership. The chair shall convene the initial meeting of the bank transition board within forty-five days after the effective date of this section.

2. The bank transition board shall develop and recommend the following to the commission within the timeline established by the commission:

(a) A start-up business plan for the bank that includes plans and timelines for functions that are new and functions transitioning to the bank that were previously performed by another entity;

(b) Initial capital requirements of the bank;
(c) Options for capitalizing the bank; and
(d) Other items requested by the commission in order to commence bank operations by April first, two thousand nineteen.
3. Legislative members of the bank transition board must be reimbursed for travel expenses in accordance with the rules of their respective houses. Non-legislative members are entitled to be reimbursed for expenses incurred in the discharge of their duties under this article.
4. The bank transition board may appoint an interim president and other necessary staff who are exempt from the provisions of this chapter, and who serve at the board's pleasure on such terms and conditions as the board determines. The department must provide technical assistance to the bank transition board. The board may also contract with additional persons who have specific technical expertise if the expertise is necessary to carry out the requirements of this section.
§ 259. Deposit of public funds. 1. (a) The bank shall serve as the depository for state moneys once the bank has built sufficient capacity to accept and manage state moneys, as determined by the commission. The commission shall establish a process and time frame for the deposit of state moneys into the bank.
(b) The comptroller shall deposit state moneys in the bank in accordance with the time frame and guidelines determined by the commission under this section.
2. All deposits in the bank are guaranteed by the state.
3. All income earned by the bank on state moneys that are deposited in or invested with the bank must be credited to and become a part of the revenues and income of the bank.
4. The bank may accept deposits of public funds, but is exempt from the requirements of section one hundred five of this chapter.
5. The bank may accept funds from any source, including federal funds or other public funds.
6. The commission shall review state accounts that contain public funds that are not state moneys, such as the state insurance fund, and make recommendations to the governor and the appropriate committees of the legislature as to which accounts should be deposited in the bank.
7. The bank shall make disbursements to the state funds as necessary for the function of state government.
§ 260. Investment of state moneys. The bank may invest state moneys deposited in the bank that are not reasonably expected to be necessary to meet the short or intermediate-term liquidity needs of the state. The state comptroller retains authority to manage and invest the amount of funds necessary to meet the operational needs of state government.
§ 261. Infrastructure loans. The bank is authorized to facilitate investment in, and financing of, construction, rehabilitation, replacement, and improvement of new and existing public infrastructure systems. Before initiating operations, the commission must present an implementation plan and any necessary legislation to the governor and appropriate legislative committees, that:
1. Identifies the public infrastructure systems that the bank plans to target initially;
2. Identifies any existing state programs that the bank recommends be transferred under its umbrella, and the steps and timelines for the transitions;
3. Describes additional financing products and services the bank plans to offer, the target markets, anticipated rates, terms, and conditions;

4. Demonstrates how bank products and services will increase access to capital for public infrastructure systems and complement those of existing public and private sources; and

5. Demonstrates how the bank plans to maximize revenues and public benefit.

§ 262. Student loans. The bank is authorized to administer a state guarantee loan program to assist students in need of low-cost student loans and related loan benefits to address educational needs as necessary to support student success. The commission shall develop an implementation plan that:

1. Identifies the needs and benefits to selected students that the program will target initially;

2. Demonstrates how the bank plans to maximize revenues and public benefit while minimizing public risk;

3. Demonstrates how the bank will coordinate with the office of student financial assistance; and

4. Identifies the ways that the program will address the following issues related to loans:

(a) Qualification criteria for students;

(b) Obligations and options for loan repayment;

(c) Requirements for loan guarantees and reserves;

(d) Fee and interest rate structure;

(e) Maximum loan amounts; and

(f) Ensuring student awareness of grants, federal loans, and other financial aid programs.

§ 263. Business, non-profit and individual loans. The bank is authorized to leverage its financial capital and resources to provide access to low-cost capital to businesses, entrepreneurs, non-profit community-based organizations, start-up businesses and below average income areas and individuals of this state to further economic growth, create jobs and build and sustain affordable housing for the residents of this state as provided for by this section. The bank is also authorized to leverage its financial capital and resources to provide access to low-cost capital to bring fiscally sound and financially successful businesses into this state as provided for by this section. The bank is also authorized to leverage its financial capital and resources to provide access to low-cost capital to established businesses in this state for the purpose of providing financial stability for the bank as provided for by this section.

1. Purchase, guarantee or hold loans made by private banks, credit unions or other financial institutions doing business in this state.

2. Make loans in the form of participation loans with community banks in this state to qualified individuals and businesses residing or doing business in this state when the originator of the loan is a private bank, credit union or other financial institution.

3. Serve as a banker's bank for chartered banks in this state by providing correspondent banking services and other related services in keeping with its mission.

4. Accept deposits related to such transactions from banks and other financial institutions.

5. Be authorized to issue bank stock loans to state-charted banks.

§ 264. Treasury and banking services. 1. For financial institutions that make the bank a reserve depository, the bank may serve as a clearinghouse, including all facilities for providing domestic and foreign exchange, and may rediscount paper, on terms the commission provides.

2. The bank may provide corporate trust services for the state and its political subdivisions including trustee, escrow agent, paying agent, bond registrar, and transfer agent.

3. The bank may buy and sell federal funds; issue letters of credit for public deposits; and provide a safekeeping service for United States treasury securities, federal agency securities, corporate bonds, tax-free bonds, money market investments, and mortgage-backed securities.

4. The bank may perform services currently contracted out by the office of temporary disability services regarding electronic benefits transfer cards.

§ 265. Management. 1. The commission shall appoint a bank president with demonstrated and substantial experience in banking. The president shall serve at the commission's pleasure, on such terms and conditions as the commission determines.

2. The president shall provide support to the commission and the advisory board, carry out bank policies and programs, and exercise additional authority as may be delegated by the commission.

3. Subject to available funding and consistent with commission direction, the bank president:

(a) May employ such additional personnel as are necessary to the bank's operations. This employment shall be in accordance with the state civil service law; and

(b) May contract with persons who have the technical expertise needed to carry out a specific, time-limited project.

§ 266. Advisory board. 1. (a) A public bank advisory board consisting of eleven members is created to review the bank's operations and make recommendations relating to the bank's management, services, policies, and procedures.

(b) The governor shall appoint members of the advisory board, subject to confirmation by the senate. The members of the advisory board must be knowledgeable in banking or finance and must represent a diversity of experience relevant to activities of the bank. Six or more of the members must have expertise in banking or finance. Two members must be from a consumer advocacy or social justice organization or have a background in the area of consumer advocacy or social justice. Advisory board members serve at the pleasure of the governor.

(c) The board shall choose its chair from among its membership.

2. The term of the members is three years. Five of the initial board members must be appointed to serve an initial term of three years, three must be appointed to serve an initial term of two years, and the three remaining members must be appointed to serve an initial term of one year. All subsequent terms are three years. To ensure that the board can continue to act, a member whose term expires shall continue to serve until his or her replacement is appointed. In the case of any vacancy on the board for any reason, the governor shall appoint a new member to serve out the term of the person whose position has become vacant. A board member may be removed for misconduct inconsistent with the mission of the bank by the governor.

3. Members of the advisory board are entitled to reimbursement for expenses incurred in the discharge of their duties under this article.

§ 267. Financial regulation. 1. The bank must maintain capital adequacy and other standard indicators of safety and soundness as is appropriate for a publicly owned financial institution.

2. The superintendent may examine the bank in the same manner as a state-chartered financial institution. The superintendent shall take into consideration the unique circumstances of a publicly owned finan-

cial institution when examining the bank. The bank shall pay the director for the reasonable costs of examinations.

3. The bank must undergo independent audits on the same basis as state-chartered banks.

§ 268. Reporting requirements. 1. The bank shall submit quarterly reports to the commission in a manner and form prescribed by the commission. Late reports are not permissible and shall be cause for removal of the person or persons responsible.

2. The commission shall make a report to the legislature on the affairs of the bank by December first of each year.

§ 269. Ethical requirements. The bank may not make a loan to any advisory board member, the president, public officers or employees of the bank. Advisory board members, the president, and employees of the bank must follow any applicable ethical requirements in rules, policies, and procedures adopted by the commission.

§ 270. Fees and taxes. The bank is exempt from payment of all fees and taxes levied by the state or any of its subdivisions.

§ 271. Bank records. 1. Certain bank business records and records of the department relating to the bank are exempt from public disclosure as authorized by the department of financial services.

2. Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this article may be shared between the department and the comptroller. These records may also be used in any suit or administrative hearing involving any provision of this chapter.

3. This section does not prohibit:

(a) The issuance of general statements based on the reports of persons subject to this article as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this article and a statement of the manner of the violation by that person.

§ 272. Capitalization. The commission must make recommendations to the appropriate fiscal committees of the legislature on options for capitalization of the bank. Any recommendations must include draft legislation for consideration by the legislature.

§ 273. Public depositary. The empire state public bank created in section two hundred fifty-six of this article may accept deposits of public funds, but is not a public depositary.

§ 274. Application of this chapter to the president. The provisions of this chapter outside this article do not apply to the president as defined in section two hundred sixty-five of this article.

§ 275. Cash and demand deposits available. The state comptroller shall maintain at all times cash, or demand deposits in the empire state public bank or qualified public depositaries in an amount needed to meet the operational needs of state government. The state comptroller shall not be considered to be in violation of unlawful issuance of checks or drafts if he or she maintains demand accounts in public depositaries in an amount less than all treasury warrants issued and outstanding.

§ 276. Permitted investments. Subject to the limitations in section two hundred sixty of this article, wherever there is in any fund or in cash balances in the state treasury more than sufficient to meet the current expenditures properly payable therefrom, the bank may invest or reinvest such portion of such funds or balances as the bank deems expedient in the following defined securities or classes of investments:

1. Certificates, notes, or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States;

2. In state, county, municipal, or school district bonds, or in warrants of taxing districts of the state. Such bonds and warrants shall be only those found to be within the limit of indebtedness prescribed by law for the taxing district issuing them and to be general obligations. The state comptroller may purchase such bonds or warrants directly from the taxing district or in the open market at such prices and upon such terms as it may determine, and may sell them at such times as it deems advisable;

3. In motor vehicle fund warrants when authorized by agreement between the state comptroller and the department of transportation requiring repayment of invested funds from any moneys in the motor vehicle fund available for state highway construction;

4. In federal home loan bank notes and bonds, federal land bank bonds and federal national mortgage association notes, debentures and guaranteed certificates of participation, or the obligations of any other government sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

5. Bankers' acceptances purchased on the secondary market;

6. Negotiable certificates of deposit of any national or state commercial or mutual savings bank or savings and loan association doing business in the United States, provided, the comptroller shall follow the investment policies and procedures advised by the investment advisory committee pursuant to subdivision b of section four hundred twenty-three of the retirement and social security law;

7. Commercial paper, provided that the comptroller shall follow the investment policies and procedures advised by the investment advisory committee pursuant to subdivision b of section four hundred twenty-three of the retirement and social security law.

§ 277. Severability. If any clause, sentence, paragraph, subdivision, section or part of this article shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this article directly involved in the controversy in which such judgment shall have been rendered.

§ 2. This act shall take effect immediately; provided, however, that section 258 of the state finance law, as added by section one of this act shall be deemed repealed on April 1, 2019; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.