

STATE OF NEW YORK

7077

IN SENATE

(Prefiled)

January 3, 2018

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

AN ACT to amend the banking law, in relation to establishing the New York state infrastructure development bank; making an appropriation therefor; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York state infrastructure development bank act".

3 § 2. The banking law is amended by adding a new article 17 to read as
4 follows:

ARTICLE 17

NEW YORK STATE INFRASTRUCTURE DEVELOPMENT BANK

Section 9100. Definitions.

8 9101. Establishment.

9 9102. Board of directors; powers and duties.

10 9103. Executive committee.

11 9104. Risk management committee.

12 9105. Audit committee.

13 9106. Eligibility criteria and assistance.

14 9107. Exemption from local taxation.

15 9108. Status and applicability of certain federal laws; full
16 faith and credit.

17 9109. Audits and reports.

18 § 9100. Definitions. For the purposes of this article:

19 1. The term "bank" shall mean the New York state infrastructure devel-
20 opment bank established pursuant to this article.

21 2. The term "board" shall mean the New York state infrastructure
22 development bank board established under section ninety-one hundred two
23 of this article.

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

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1 3. The term "chief asset and liability management officer" means the
2 chief individual responsible for coordinating the management of assets
3 and liabilities of the bank.

4 4. The term "chief compliance officer" or "CCO" means the chief indi-
5 vidual responsible for overseeing and managing the compliance and regu-
6 latory affairs issues of the bank.

7 5. The term "chief financial officer" means the chief individual
8 responsible for managing the financial risks, planning, and reporting of
9 the bank.

10 6. The term "chief loan origination officer" means the chief individ-
11 ual responsible for the processing of new loans provided by the bank.

12 7. The term "chief operations officer" means the chief individual
13 responsible for information technology and the day to day operations of
14 the bank.

15 8. The term "chief risk officer" or "CRO" means the chief individual
16 responsible for managing operational and compliance-related risks of the
17 bank.

18 9. The term "chief treasury officer" means the chief individual
19 responsible for managing the bank's treasury operations.

20 10. The terms "development" and "develop" mean, with respect to an
21 infrastructure project, any:

22 (a) preconstruction planning, feasibility review, permitting, design
23 work, and other preconstruction activities; and

24 (b) construction, reconstruction, rehabilitation, replacement, or
25 expansion.

26 11. The term "disadvantaged community" means a community with a median
27 household income of less than eighty percent of the statewide median
28 household income for the state.

29 12. The term "energy infrastructure project" means any project for
30 energy transmission, energy efficiency enhancement for buildings, public
31 housing, and schools, renewable energy, and energy storage.

32 13. The term "entity" means an individual, corporation, partnership
33 (including a public-private partnership), joint venture, trust, the
34 state or other governmental entity, including a political subdivision or
35 any other instrumentality of the state or a revolving fund.

36 14. The term "environmental infrastructure project" means any project
37 for the establishment, maintenance, or enhancement of any drinking water
38 and wastewater treatment facility, storm water management system, dam,
39 levee, open space management system, solid waste disposal facility,
40 hazardous waste facility, or industrial site cleanup.

41 15. The term "executive director" means the individual serving as the
42 chief executive officer of the bank.

43 16. The term "general counsel" means the individual who serves as the
44 chief lawyer for the bank.

45 17. The term "infrastructure project" means any energy, environmental,
46 telecommunications, or transportation infrastructure project.

47 18. The term "public benefit bond" means a bond issued with respect to
48 an infrastructure project in accordance with this article:

49 (a) the net spendable proceeds from the sale of the issue may be used
50 for expenditures incurred after the date of issuance with respect to the
51 project, subject to the rules of the bank;

52 (b) the bond issued by the bank is in registered form and meets the
53 requirements of this article and otherwise applicable law;

54 (c) the term of each bond which is part of the issue is greater than
55 thirty years; and

1 (d) the payment of principal with respect to the bond is the obli-
2 gation of the bank.

3 19. The term "public-private partnership" means any entity:

4 (a) (i) which is undertaking the development of all or part of an
5 infrastructure project, which will have a public benefit, pursuant to
6 requirements established in one or more contracts between the entity and
7 the state or an instrumentality of the state; or

8 (ii) the activities of which, with respect to such an infrastructure
9 project, are subject to regulation by the state or any instrumentality
10 of the state; and

11 (b) which owns, leases, or operates, or will own, lease, or operate,
12 the project in whole or in part, and at least one of the participants in
13 the entity is a nongovernmental entity.

14 20. The term "revolving fund" means a fund or program established by
15 the state or a political subdivision or other instrumentality of the
16 state, the principal activity of which is to make loans, commitments, or
17 other financial accommodation available for the development of one or
18 more categories of infrastructure projects.

19 21. The term "smart grid" means an electricity delivery system using a
20 two-way digital communications system and associated equipment and soft-
21 ware, installed on the electrical delivery system and on the premises of
22 retail end-use customers, which provides real-time monitoring, diagnos-
23 tic, and control information and services that improve the efficiency
24 and reliability of the distribution and use of electricity.

25 22. The term "smart growth" means an urban planning and transportation
26 theory that concentrates growth in the center of a city to avoid urban
27 sprawl.

28 23. The term "state" means the state of New York.

29 24. The term "telecommunications infrastructure project" means any
30 project involving infrastructure required to provide communications by
31 wire or radio.

32 25. The term "transportation infrastructure project" means any project
33 for the construction, maintenance, or enhancement of highways, roads,
34 bridges, transit and intermodal systems, inland waterways, commercial
35 ports, airports, high speed rail and freight rail systems.

36 § 9101. Establishment. There is hereby established within the depart-
37 ment the New York state infrastructure development bank.

38 § 9102. Board of directors; powers and duties. 1. (a) The bank shall
39 have a board of directors consisting of five members representing
40 different regions of the state to be appointed by the governor as
41 follows:

42 (i) Two members shall have public sector experience; and

43 (ii) Three members shall have private sector experience.

44 (b) As designated at the time of appointment, one of the directors of
45 the board shall be designated chairperson of the board by the governor
46 and one shall be designated as vice chairperson of the board by the
47 governor.

48 (c) (i) Except as provided in subparagraph (ii) of this paragraph,
49 each director shall be appointed for a term of six years.

50 (ii) Of the initial members of the board:

51 (A) the chairperson and the vice chairperson shall be appointed for
52 terms of six years;

53 (B) one member shall be appointed for a term of five years;

54 (C) one member shall be appointed for a term of four years;

55 (D) one member shall be appointed for a term of three years.

1 (d) The initial appointments by the governor shall be made not later
2 than sixty days after the effective date of this article.

3 (e) A vacancy on the board shall be filled in the manner in which the
4 original appointment was made. Any director appointed to fill a vacancy
5 occurring before the expiration of the term for which the director's
6 predecessor was appointed shall be appointed only for the remainder of
7 such term.

8 (f) A director may serve after the expiration of that director's term
9 until a successor has taken office.

10 (g) Any director of the board may be reappointed once by the governor
11 in accordance with this subdivision.

12 2. Three directors shall constitute a quorum.

13 3. Directors of the board shall serve on a part-time basis and shall
14 receive a per diem when engaged in the actual performance of bank busi-
15 ness, plus reasonable reimbursement for travel, subsistence and other
16 necessary expenses incurred in the performance of their duties.

17 4. No director of the board may participate in any review or decision
18 affecting a project under consideration for assistance under this arti-
19 cle if the director has or is affiliated with any person who has an
20 interest in such project.

21 5. (a) In order to carry out the purposes of the bank, the board shall
22 be responsible for monitoring and overseeing infrastructure projects,
23 shall establish criteria for determining project eligibility for finan-
24 cial assistance under this article and shall have the following powers:

25 (i) to issue public benefit bonds and provide direct subsidies to
26 infrastructure projects;

27 (ii) to borrow on the global capital market and lend to entities and
28 commercial banks for funding infrastructure projects; and

29 (iii) to purchase, pool and sell infrastructure-related loans and
30 securities on such market.

31 (b) The board shall conduct its business in a manner consistent with
32 the requirements of this section.

33 (c) The provision of financial assistance by the board pursuant to
34 this article shall not be construed as:

35 (i) limiting the right of the state or any political subdivision or
36 other instrumentality of the state to approve or regulate the rates of
37 return on private equity invested in a project; or

38 (ii) otherwise superseding any law, rule or regulation of the state
39 applicable to a project.

40 (d) The board shall have the power to request the assistance, on a
41 reimbursable basis, of personnel from any state agencies with specific
42 expertise not available from within the bank or elsewhere. The head of
43 any state agency may assign, on a reimbursable basis, any personnel of
44 such agency requested by the board and shall not unreasonably refuse the
45 assistance of any personnel requested by the board.

46 6. (a) All meetings of the board held to conduct the business of the
47 bank shall be open to the public and shall be preceded by reasonable
48 notice.

49 (b) The board shall meet not later than ninety days after the date on
50 which all of the directors of the board are first appointed and other-
51 wise at the call of the chairperson.

52 (c) Pursuant to such rules as the board may establish through their
53 bylaws, the directors may close a meeting of the board if, at the meet-
54 ing, there is likely to be disclosed information which could adversely
55 affect or lead to speculation relating to an infrastructure project
56 under consideration for assistance under this article or in financial or

1 securities or commodities markets or institutions, utilities, or real
2 estate. The determination to close any meeting of the board shall be
3 made in a meeting of the board, open to the the public, and preceded by
4 reasonable notice. The board shall prepare minutes of any meeting which
5 is closed to the public and make such minutes available as soon as the
6 considerations necessitating closing such meeting no longer apply.

7 7. The chairperson of the board, executive director, CRO and CCO shall
8 appoint, remove, fix the compensation of and define the duties of such
9 qualified personnel to serve under the board, executive committee, risk
10 management committee or audit committee, as the case may be, as neces-
11 sary and prescribed by this article, the bylaws of the bank and the
12 board.

13 § 9103. Executive committee. 1. The board shall have an executive
14 committee consisting of nine members, headed by the executive director
15 of the bank.

16 2. A majority of the board shall have the authority to appoint and
17 reappoint the executive director.

18 3. The executive director shall be the chief executive officer of the
19 bank, with such executive functions, powers and duties as may be
20 prescribed by this article, the bylaws of the bank or the board.

21 4. The board shall appoint, remove, fix the compensation and define
22 the duties of eight other executive officers to serve on the executive
23 committee as the:

- 24 (a) chief compliance officer;
- 25 (b) chief financial officer;
- 26 (c) chief asset and liability management officer;
- 27 (d) chief loan origination officer;
- 28 (e) chief operations officer;
- 29 (f) chief risk officer;
- 30 (g) chief treasury officer; and
- 31 (h) general counsel.

32 5. The executive director and other executive officers shall have
33 demonstrated experience and expertise in one or more of the following:

- 34 (a) transportation infrastructure.
- 35 (b) environmental infrastructure.
- 36 (c) energy infrastructure.
- 37 (d) telecommunications infrastructure.
- 38 (e) economic development.
- 39 (f) workforce development.
- 40 (g) public health.
- 41 (h) private or public finance.

42 6. In order to carry out the purposes of the bank, the executive
43 committee shall:

- 44 (a) establish disclosure and application procedures for entities nomi-
45 nating projects for assistance under this article;
- 46 (b) accept, for consideration, project proposals relating to the
47 development of infrastructure projects, which meet the basic criteria
48 established by the board, and which are submitted by an entity;
- 49 (c) provide recommendations to the board and place project proposals
50 accepted by the executive committee on the list for consideration for
51 financial assistance from the board;
- 52 (d) provide technical assistance to entities receiving financing from
53 the bank and otherwise implement decisions of the board.

54 7. A vacancy in the position of executive director shall be filled in
55 the manner in which the original appointment was made.

1 8. The compensation of the executive committee shall be determined by
2 the board.

3 9. The executive officers may be removed at the discretion of a major-
4 ity of the board.

5 10. The executive officers shall serve for a term of six years and may
6 be reappointed once in accordance with this section.

7 11. The executive officers shall not:

8 (a) hold any other public office;

9 (b) have any interest in an infrastructure project considered by the
10 board;

11 (c) have any interest in an investment institution, commercial bank or
12 other entity seeking financial assistance for any infrastructure project
13 from the bank; and

14 (d) have any such interest during the two year period beginning on the
15 date such officer ceases to serve in such capacity.

16 § 9104. Risk management committee. 1. The bank shall establish a risk
17 management committee consisting of five members, headed by the chief
18 risk officer.

19 2. A majority of the board shall have the authority to appoint and
20 reappoint the CRO of the bank.

21 3. (a) The CRO shall have such functions, powers and duties as may be
22 prescribed by this article, the bylaws of the bank and the board. The
23 CRO shall report directly to the board.

24 (b) In order to carry out the purposes of this article, the risk
25 management committee shall:

26 (i) create financial, credit and operational risk management guide-
27 lines for the bank;

28 (ii) set standards to ensure diversification of lending activities by
29 both region and infrastructure project type; and

30 (iii) create conforming standards for infrastructure finance securi-
31 ties.

32 4. (a) The board shall appoint, remove, fix the compensation and
33 define the duties of four other risk management officers to serve on
34 such committee.

35 (b) The CRO and other risk management officers shall have demonstrated
36 experience and expertise in one or more of the following:

37 (i) treasury and asset and liability management.

38 (ii) investment regulations.

39 (iii) credit risk management and credit evaluations.

40 (iv) related disciplines.

41 5. A vacancy in the position of any risk management officer shall be
42 filled in the manner in which the original appointment was made.

43 6. The compensation of the risk management officers shall be deter-
44 mined by the board.

45 7. The risk management officers may be removed at the discretion of
46 the majority of the board.

47 8. The risk management officers shall serve a six year term and may be
48 reappointed once in accordance with this section.

49 9. The risk management officers shall not:

50 (a) hold any other public office;

51 (b) have any interest in an infrastructure project considered by the
52 board;

53 (c) have any interest in an investment institution, commercial bank or
54 other entity seeking financial assistance for any infrastructure project
55 from the bank; and

1 (d) have any such interest during the two year period beginning on the
2 date such officer ceases to serve in such capacity.

3 § 9105. Audit committee. 1. The bank shall establish an audit commit-
4 tee consisting of five members, headed by the chief compliance officer.

5 2. A majority of the board shall have the authority to appoint and
6 reappoint the CCO of the bank.

7 3. (a) The CCO shall have such functions, powers and duties as may be
8 prescribed by this article, the bylaws of the bank and the board. The
9 CCO shall report directly to the board.

10 (b) In order to carry out the purposes of this article, the audit
11 committee shall:

12 (i) provide internal controls and internal auditing activities for the
13 bank;

14 (ii) maintain responsibility for the accounting activities of the
15 bank;

16 (iii) issue financial reports of the bank; and

17 (iv) complete reports with outside auditors and public accountants
18 appointed by the board.

19 4. (a) The board shall appoint, remove, fix the compensation and
20 define the duties of four other audit officers to serve on such commit-
21 tee.

22 (b) The CCO and other audit officers shall have demonstrated experi-
23 ence and expertise in one or more of the following:

24 (i) Internal auditing.

25 (ii) Internal investigations.

26 (iii) Accounting practices.

27 (iv) Financing practices.

28 5. A vacancy in the position of any audit officer shall be filled in
29 the manner in which the original appointment was made.

30 6. The compensation of the audit officers shall be determined by the
31 board.

32 7. The audit officers may be removed at the discretion of the majority
33 of the board.

34 8. The audit officers shall serve a six year term and may be reap-
35 pointed once in accordance with this section.

36 9. The audit officers shall not:

37 (a) hold any other public office;

38 (b) have any interest in an infrastructure project considered by the
39 board;

40 (c) have any interest in an investment institution, commercial bank or
41 other entity seeking financial assistance for any infrastructure project
42 from the bank; and

43 (d) have any such interest during the two year period beginning on the
44 date such officer ceases to serve in such capacity.

45 § 9106. Eligibility criteria and assistance. 1. No financial assist-
46 ance shall be available under this article from the bank unless the
47 applicant for such assistance has demonstrated to the satisfaction of
48 the board that the project for which such assistance is being sought
49 meets:

50 (a) the requirements of this article; and

51 (b) any criteria established in accordance with this article by the
52 board.

53 2. (a) Consistent with the requirements of subdivisions three and four
54 of this section, the board shall establish:

55 (i) criteria for determining eligibility for financial assistance
56 under this article;

1 (ii) disclosure and application procedures to be followed by entities
2 to nominate projects for assistance under this article; and
3 (iii) such other criteria as the board may consider to be appropriate
4 for purposes of carrying out this article.

5 (b) (i) The bank shall conduct an analysis that takes into account the
6 economic, environmental, social benefits and costs of each project under
7 consideration for financial assistance under this article, prioritizing
8 projects that contribute to economic growth, lead to job creation and
9 are of regional or local significance.

10 (ii) The criteria established pursuant to subparagraph (i) of para-
11 graph (a) of this subdivision shall provide for the consideration of the
12 following factors in considering eligibility for financial assistance
13 under this article:

14 (A) the means by which development of the infrastructure project under
15 consideration is being financed, including:

16 (1) the terms and conditions and financial structure of the proposed
17 financing; and

18 (2) the financial assumptions and projections on which the project is
19 based.

20 (B) the likelihood that the provision of assistance by the bank will
21 cause such development to proceed more promptly and with lower costs for
22 financing than would be the case without such assistance.

23 (C) the extent to which the provision of assistance by the bank maxi-
24 mizes the level of private investment in the infrastructure project
25 while providing a public benefit.

26 3. (a) For any transportation infrastructure project, the board shall
27 consider the following:

28 (i) job creation, including workforce development for women and minor-
29 ities, responsible employment practices, and quality job training oppor-
30 tunities.

31 (ii) reduction in carbon emissions.

32 (iii) reduction in surface and air traffic congestion.

33 (iv) smart growth in urban areas.

34 (v) poverty and inequality reduction through targeted training and
35 employment opportunities for low income workers.

36 (vi) use of smart tolling, such as vehicle miles traveled and
37 congestion pricing, for highway, road, and bridge projects.

38 (vii) public health benefits.

39 (b) For any environmental infrastructure project, the board shall
40 consider the following:

41 (i) public health benefits.

42 (ii) pollution reductions.

43 (iii) job creation, including workforce development for women and
44 minorities, responsible employment practices and quality job training oppor-
45 tunities.

46 (iv) poverty and inequality reduction through targeted training and
47 employment opportunities for low income workers.

48 (v) environmental justice.

49 (c) For any energy infrastructure project, the board shall consider
50 the following:

51 (i) job creation, including workforce development for women and minor-
52 ities, responsible employment practices and quality job training oppor-
53 tunities.

54 (ii) poverty and inequality reduction through targeted training and
55 employment opportunities for low income workers.

56 (iii) reduction in carbon emissions.

(iv) environmental justice.
(v) smart growth in urban areas.
(vi) expanded use of renewable energy, including, but not limited to hydroelectric, solar, wind and waste-to-energy.
(vii) development of a smart grid.
(viii) energy efficient building, housing, school modernization and weatherization.
(ix) in any case in which the project is also a public housing project:
(A) improvement of the physical shape and layout;
(B) environmental improvement; and
(C) mobility improvements for residents.
(x) public health benefits.
(d) For any telecommunications project, the board shall consider the following:
(i) the extent to which assistance expands or improves broadband and wireless services in rural and disadvantaged communities.
(ii) job creation, including workforce development for women and minorities, responsible employment practices and quality job training opportunities.
(iii) poverty and inequality reduction through targeted training and employment opportunities for low income workers.
4. (a) Consideration of projects by the executive committee and board shall be conducted with personnel assisting the bank from relevant state and local agencies from among individuals who are familiar with and experienced in the selection criteria for competitive projects.
(b) A fee may be charged for the review of any project proposal in such amount as may be considered appropriate by the executive committee to cover the cost of such review.
5. Consistent with other provisions of this article, any determination of the board to provide assistance to any project, and the manner in which such assistance is provided, including the terms, conditions, fees and charges shall be at the sole discretion of the board.
6. The provision of assistance by the board in accordance with this article shall not be deemed to relieve any recipient of assistance or the related project of any obligation to obtain required, state, local and federal permit and approvals.
7. An entity receiving assistance from the board shall make annual reports to the board on the use of any such assistance, criteria set forth in this section and a disclosure of all entities with a development, ownership or operational interest in a project assisted or proposed to be assisted under this article.
§ 9107. Exemption from local taxation. All notes, debentures, bonds or other such obligations issued by the bank, and the interest on or credits with respect to such bonds or other obligations, shall not be subject to taxation by any state, county, municipality or local taxing authority.
§ 9108. Status and applicability of certain federal laws; full faith and credit. 1. The bank shall comply with all federal laws regulating budgetary and auditing practices of a government corporation, except as otherwise provided for in this article.
2. Any bond or other obligation issued by the bank under this article shall be an obligation supported by the full faith and credit of the United States.
3. All debt securities and other obligations issued by the bank pursuant to this article shall be deemed to be exempt securities within the

1 meaning of laws administered by the securities and exchange commission
2 to the same extent as securities which are direct obligations of, or
3 obligations fully guaranteed as to principal or interest by, the United
4 States.

5 4. The obligations of the bank issued pursuant to this article shall
6 be deemed to be obligations of the state.

7 § 9109. Audits and reports. 1. The books of account of the bank shall
8 be maintained in accordance with generally accepted accounting princi-
9 ples and shall be subject to an annual audit by independent public
10 accountants appointed by the board and of nationally recognized stand-
11 ing.

12 2. (a) The board shall submit to the governor and legislature, within
13 ninety days after the last day of each fiscal year, a complete and
14 detailed report with respect to the preceding fiscal year, setting
15 forth:

16 (i) a summary of the bank's operations for such preceding fiscal year;
17 (ii) a schedule of the bank's obligations and capital securities
18 outstanding at the end of such preceding fiscal year, with a statement
19 of the amounts issued and redeemed or paid during such preceding fiscal
20 year; and

21 (iii) the status of projects receiving funding or other assistance
22 pursuant to this article, including, but not limited to disclosure of
23 all entities with a development, ownership or operational interest in
24 such projects.

25 (b) Not later than five years after the effective date of this arti-
26 cle, the New York state comptroller shall submit to the governor and
27 legislature a report evaluating activities of the bank for the fiscal
28 years covered by the report that includes an assessment of the impact
29 and benefits of each funded project, including a review of how effec-
30 tively each project accomplished the goals prioritized by the bank's
31 project criteria.

32 3. (a) The bank shall maintain adequate books and records to support
33 the financial transactions of the bank with a description of financial
34 transactions and infrastructure projects receiving funding, and the
35 amount of funding for each project maintained on a publicly accessible
36 database.

37 (b) The books and records of the bank shall be maintained in accord-
38 ance with recommended accounting practices and shall be open to
39 inspection by the superintendent and the New York state comptroller.

40 § 3. The sum of two hundred fifty million dollars (\$250,000,000) is
41 hereby appropriated to the banking department out of any moneys in the
42 state treasury in the general fund to the credit of the state purposes
43 account, not otherwise appropriated, and made immediately available, for
44 the purpose of carrying out the provisions of this act. Such moneys
45 shall be payable on the audit and warrant of the comptroller on vouchers
46 certified or approved by the superintendent of banking department in the
47 manner prescribed by law.

48 § 4. This act shall take effect on the sixtieth day after it shall
49 have become a law and shall expire and be deemed repealed December 31,
50 2032.