

STATE OF NEW YORK

8686--A

IN SENATE

July 8, 2020

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the state finance law, in relation to establishing the state of New York 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

STATE OF NEW YORK PUBLIC BANK ACT

Section 254. Legislative intent.

255. Definitions.

256. Creation.

257. Commission.

258. Transition board.

259. Deposit of public funds.

260. Investment of state moneys.

261. Infrastructure loans.

262. Student loans.

263. Small business, minority- and women-owned business enterprises and farmers.

264. Treasury and banking services.

265. Management.

266. Advisory board.

267. Financial regulation.

268. Reporting requirements.

269. Ethical requirements.

270. Fees and taxes.

271. Bank records.

272. Capitalization.

273. Public depositary.

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

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274. Application of this chapter to the president.

275. Cash and demand deposits available.

276. Permitted investments.

277. Severability.

§ 254. Legislative intent. 1. The legislature finds that there are significant public infrastructure, higher education, home loans, and small business development needs, including those involving minority- and women-owned business enterprises, 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 state of New York 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 and projects 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) Acquire and contract to acquire existing mortgages owned by banks for the purchase of said mortgages, and to provide low-cost home loans to first time home buyers;

(d) Provide small businesses, including minority- and women-owned business enterprises, farmers, communities and low income areas of our state access to low-interest capital; and

(e) 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, creating a pathway to home ownership and strengthening the state's economy by investing in small businesses, including minority- and women-owned business enterprises, and farmers, 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 state of New York public bank.

2. "Commission" means the state of New York public bank commission.

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

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

1 5. "Economic distressed communities" means those communities where at
2 least thirty percent of residents have incomes that are less than the
3 national poverty level and where the unemployment rate is greater than
4 the national unemployment rate, or economic opportunity zone designated
5 communities.

6 6. "Superintendent" means the superintendent of the department of
7 financial services.

8 7. "Public infrastructure system" means a system of a local government
9 or political subdivision, a special purpose district, a public school
10 district, an institution of higher education, a federally recognized
11 Indian tribe, or the state, including but not limited to a system
12 involving: Wastewater treatment; storm water management; solid waste
13 disposal; drinking water treatment; flood control levees; energy effi-
14 ciency enhancements; roads, streets, and bridges; transportation infras-
15 tructure, including freight and passenger rail and public transit;
16 broadband and telecommunications infrastructure; outdoor recreation and
17 habitat protection facilities; community, social service, or public
18 safety facilities; schools and educational facilities; and affordable
19 housing.

20 8. "Special purpose charter" means any public bank organized under the
21 laws of this state that is engaged in banking for the benefit of the
22 public.

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

26 10. "Comptroller" means the comptroller of the state of New York.

27 11. "Bank" means the state of New York public bank.

28 § 256. Creation. The state of New York public bank is created.

29 § 257. Commission. 1. The state of New York public bank commission is
30 created as the primary governing authority of the bank. The commission
31 shall be an independent board consisting of no less than three members
32 with substantial banking and financial experience. The commission shall
33 consist of eight members with one member appointed by the governor, one
34 member appointed by the temporary president of the senate, one member
35 appointed by the senate majority leader, one member appointed by the
36 speaker of the assembly, one member appointed by the assembly majority
37 leader, one member appointed by the chair of the senate banks committee,
38 one member appointed by the chair of the assembly banks committee, and
39 one member appointed by the state comptroller.

40 2. The commission shall adopt rules regarding the:

41 (a) Safety and soundness standards of the bank;

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

43 (c) Eligibility requirements and limits for borrowing;

44 (d) Transparency requirements for bank operations;

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

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

50 3. The commission shall commence bank operations by April first, two
51 thousand twenty-one.

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

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

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

6 § 258. Transition board. 1. (a) The bank transition board is estab-
7 lished, with members as provided in this section.

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

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

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

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

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

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

24 (b) Initial capital requirements of the bank;

25 (c) Options for capitalizing the bank; and

26 (d) Other items requested by the commission in order to commence bank
27 operations by April first, two thousand twenty-one.

28 3. The bank transition board may appoint an interim president and
29 other necessary staff who are exempt from the provisions of this chap-
30 ter, and who serve at the board's pleasure on such terms and conditions
31 as the board determines. The department must provide technical assist-
32 ance to the bank transition board. The board may also contract with
33 additional persons who have specific technical expertise if the exper-
34 tise is necessary to carry out the requirements of this section.

35 § 259. Deposit of public funds. 1. (a) The bank shall serve as the
36 depository for state moneys once the bank has built sufficient capacity
37 to accept and manage state moneys, as determined by the commission. The
38 commission shall establish a process and time frame for the deposit of
39 state moneys into the bank.

40 (b) The comptroller shall deposit state moneys in the bank in accord-
41 ance with the time frame and guidelines determined by the commission
42 under this section.

43 2. All deposits in the bank are guaranteed by the state.

44 3. All income earned by the bank on state moneys that are deposited in
45 or invested with the bank must be credited to and become a part of the
46 revenues and income of the bank.

47 4. The bank may accept deposits of public funds, but is exempt from
48 the requirements of section one hundred five of this chapter.

49 5. The bank may accept funds from any source, including federal funds
50 or other public funds, including thirty percent of a cannabis revenue
51 fund as part of the state's social and economic equity plan. Specif-
52 ically, fifty percent of all public deposits made in to the bank shall
53 prioritize lending made in unbanked or underserved communities that have
54 an income lower than eighty percent of the median income of the county
55 in which the applicant resides, has a minority-owned or women-owned
56 business, or is a disadvantaged farmer.

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. Small business, minority- and women-owned business enterprises and farmers. The bank is authorized to leverage twenty percent of public deposits as financial capital and resources to provide access to low-cost capital and/or credit 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

1 of this state as provided for by this section. The bank is also author-
2 ized to leverage its financial capital and resources to provide access
3 to low-cost capital to bring fiscally sound and financially successful
4 businesses into this state as provided for by this section. The bank is
5 also authorized to leverage its financial capital and resources to
6 provide access to low-cost capital and/or credit to established busi-
7 nesses in this state for the purpose of providing financial stability
8 for the bank as provided for by this section.

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

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

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

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

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

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

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

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

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

38 2. The president shall provide support to the commission and the advi-
39 sory board, carry out bank policies and programs, and exercise addi-
40 tional authority as may be delegated by the commission.

41 3. Subject to available funding and consistent with commission direc-
42 tion, the bank president:

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

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

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

52 (b) The governor shall appoint members of the advisory board, subject
53 to confirmation by the senate. The members of the advisory board must be
54 knowledgeable in banking or finance and must represent a diversity of
55 experience relevant to activities of the bank. Six or more of the
56 members must have expertise in banking or finance. Two members must be

1 from a consumer advocacy or social justice organization or have a back-
2 ground in the area of consumer advocacy or social justice. Advisory
3 board members serve at the pleasure of the governor.

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

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

16 § 267. Financial regulation. 1. The bank must maintain capital adequa-
17 cy and other standard indicators of safety and soundness as is appropri-
18 ate for a publicly owned financial institution.

19 2. The superintendent may examine the bank in the same manner as a
20 state-chartered financial institution. The superintendent shall take
21 into consideration the unique circumstances of a publicly owned finan-
22 cial institution when examining the bank. The bank shall pay the direc-
23 tor for the reasonable costs of examinations.

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

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

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

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

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

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

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

47 3. This section does not prohibit:

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

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

54 § 272. Capitalization. The commission must make recommendations to the
55 appropriate fiscal committees of the legislature on options for capital-

1 ization of the bank. Any recommendations must include draft legislation
2 for consideration by the legislature.

3 § 273. Public depository. The state of New York public bank created in
4 section two hundred fifty-six of this article may accept deposits of
5 public funds, but is not a public depository.

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

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

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

22 1. Certificates, notes, or bonds of the United States, or other obli-
23 gations of the United States or its agencies, or of any corporation
24 wholly owned by the government of the United States;

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

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

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

43 5. Negotiable certificates of deposit of any national or state commer-
44 cial or mutual savings bank or savings and loan association doing busi-
45 ness in the United States, provided, the comptroller shall follow the
46 investment policies and procedures advised by the investment advisory
47 committee pursuant to subdivision b of section four hundred twenty-three
48 of the retirement and social security law;

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

53 § 277. Severability. If any clause, sentence, paragraph, subdivision,
54 section or part of this article shall be adjudged by a court of compe-
55 tent jurisdiction to be invalid, such judgment shall not affect, impair
56 or invalidate the remainder thereof, but shall be confined in its opera-

1 tion to the clause, sentence, paragraph, subdivision, section or part of
2 this article directly involved in the controversy in which such judgment
3 shall have been rendered.

4 § 2. This act shall take effect immediately; provided, however, that
5 section 258 of the state finance law, as added by section one of this
6 act shall be deemed repealed on April 1, 2021. Effective immediately,
7 the addition, amendment and/or repeal of any rule or regulation neces-
8 sary for the implementation of this act on its effective date are
9 authorized to be made and completed on or before such effective date.