

STATE OF NEW YORK

9044

IN SENATE

October 13, 2020

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

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:

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

3 ARTICLE 17

4 STATE OF NEW YORK PUBLIC BANK ACT

5 Section 254. Legislative intent.

6 255. Definitions.

7 256. Creation.

8 257. Commission.

9 258. Governance.

10 259. Deposit of public funds.

11 260. Investment of state moneys.

12 261. Infrastructure loans.

13 262. Student loans.

14 263. Business, non-profit and individual loans.

15 264. Treasury and banking services.

16 265. Management.

17 266. Advisory board.

18 267. Financial regulation.

19 268. Reporting requirements.

20 269. Ethical requirements.

21 270. Fees and taxes.

22 271. Bank records.

23 272. Capitalization.

24 273. Public depository.

25 274. Application of this chapter to the president.

26 275. Cash and demand deposits available.

27 276. Permitted investments.

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

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1 277. Severability.

2 § 254. Legislative intent. 1. The legislature finds that there are
3 significant public infrastructure, higher education, home loans, and
4 small business development needs, including those involving minor-
5 ity- and women-owned business enterprises, of the state that are unmet.
6 The legislature further finds that there are opportunities to use the
7 state's depository assets to generate additional benefit for the people
8 and the economy of the state. Therefore, the legislature intends to
9 create the state of New York public bank as a legacy institution that
10 amasses sufficient capital reserves to address opportunities now and in
11 the future.

12 2. The legislature intends that the public bank may:

13 (a) Facilitate investment in, and financing of, public infrastructure
14 systems and projects that will increase public health, safety, and qual-
15 ity of life, improve environmental conditions, and promote community
16 vitality and economic growth;

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

19 (c) Acquire and contract to acquire existing mortgages owned by banks
20 and enter into advance commitments to banks for the purchase of such
21 mortgages, and to provide low-cost home loans to first time home buyers;

22 (d) Provide access to credit for small businesses, including minority-
23 and women-owned business enterprises and farmers; and

24 (e) Provide banking to underserved communities and economically disad-
25 vantaged communities of our state to provide access to low-interest
26 capital; and

27 (f) Leverage New York's financial capital and resources, and work in
28 partnership with financial institutions, including credit unions, commu-
29 nity development financial institutions, independent banks, community-
30 based organizations, economic development organizations, guaranty agen-
31 cies, and other similar organizations.

32 3. The mission of the bank is to use New York's depository assets in
33 ways that afford most efficient use of taxpayer revenues and public
34 resources for the benefit of the people and economy of the state. The
35 legislature intends for the bank to apply business strategies to manage
36 taxpayer revenues while concurrently meeting identified needs and stra-
37 tegic opportunities across the state. In achieving its purpose of
38 improving public infrastructure and increasing access to higher educa-
39 tion, creating a pathway to home ownership and strengthening the state's
40 economy by investing in small businesses, including minority- and
41 women-owned business enterprises, and farmers, the legislature intends
42 for the bank to adhere to the following priorities:

43 (a) Institutional safety and soundness;

44 (b) Long-term viability;

45 (c) Social return and monetary return on investments;

46 (d) Prudent and best banking and business practices;

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

48 (f) Insulation from political influence.

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

51 1. "Board" means the advisory board of the state of New York public
52 bank.

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

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

55 4. "Director" means the director of the department of financial
56 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 seven members
32 with substantial banking and financial experience, with two members
33 appointed by the governor, one member appointed by the temporary presi-
34 dent of the senate, one member appointed by the senate majority leader,
35 one member appointed by the speaker of the assembly, one member
36 appointed by the assembly majority leader, one member appointed by the
37 chair of the senate banks committee, one member appointed by the chair
38 of the assembly banks committee, and one member appointed by the state
39 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-two.

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. Governance. 1. The public bank shall be governed by a board.
7 Such board shall be composed of nine or eleven directors. Each director
8 shall live within the jurisdictional boundaries of the sponsor.

9 2. The state shall determine the public bank's initial board in the
10 following manner:

11 (a) The governor shall appoint three members, with a least one member
12 having banking or financial experience;

13 (b) The temporary president of the senate shall appoint two members,
14 with at least one member having banking or financial experience;

15 (c) The speaker of the assembly shall appoint two members, with at
16 least one member having banking or financial experience;

17 (d) The comptroller shall appoint one member with banking or financial
18 experience; and

19 (e) The board members selected pursuant to paragraphs (a) through (c)
20 of this subdivision shall, pursuant to a majority vote, select at their
21 discretion either seven or nine additional board members, with the sole
22 purpose of maximizing board diversity of the state.

23 3. At least one board member selected pursuant to each of paragraphs
24 (a) through (c) of subdivision two of this section shall be an individ-
25 ual with experience in the finance industry or the business of banking
26 with an emphasis on community lending.

27 4. At least one board member selected pursuant to each of paragraphs
28 (a) through (c) of subdivision two of this section shall be an individ-
29 ual representative of at least one of the community stakeholders prior-
30 itized by the public bank's underwriting and financial policies.

31 5. When a board member resigns or leaves office for any reason, the
32 individual selected to replace such board member shall be selected in
33 the same manner as the initial appointment.

34 6. The sponsor and board shall take all necessary steps to ensure that
35 the composition of the board reflects the composition of the population
36 in terms of people of color and women.

37 7. A majority of the board shall be composed of independent directors
38 who are not government employees. The chair of the board shall be an
39 independent director.

40 8. The board shall set policy for the public bank; provided, however,
41 that neither the board nor any director shall be involved in day-to-day
42 operations regarding particular instruments. Management decisions shall
43 be made independently by bank management who shall be appointed by the
44 board in a manner consistent with bank policy.

45 9. The board may establish one or more committees to manage the public
46 bank.

47 10. The board shall adhere to all reporting requirements under this
48 chapter regarding the public bank's financial condition.

49 11. A public bank shall form one or more advisory boards in order to
50 provide advice and carry out any other duties, as determined by the
51 public bank, including but not limited to, the following:

52 (a) Provide input to the board regarding ways to accomplish its
53 mission;

54 (b) Ensure that the board follows strict ethical standards as deter-
55 mined by the sponsor in the public bank's governing documents, through
56 the approval of bylaws, to govern the board's management;

1 (c) Provide technical advice as needed; and

2 (d) Provide an annual report to the public and the sponsor evaluating
3 the public bank's performance in relation to its mission, its ethical
4 standards and its financial soundness.

5 12. The state shall determine the initial advisory board membership,
6 the term of its members, the qualifications of members and the method
7 for replacing its members, provided that a majority of each advisory
8 board is made up of independent members who are not government employ-
9 ees. Such advisory board shall be composed of no fewer than five members
10 and no more than eleven members. All advisory board members shall be
11 residents of the state.

12 13. Any action required or permitted by this chapter to be taken by
13 the board, or an advisory board, may be taken at a duly called meeting
14 of such board in accordance with its governing documents or without a
15 meeting if the action taken is evidenced by one or more written consents
16 describing the action taken and signed by each member of such board.

17 14. The department shall provide technical assistance to the board.
18 The board may also contract with additional persons who have specific
19 technical expertise if such expertise is necessary to carry out the
20 requirements of this section.

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

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

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

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

33 4. The bank may accept deposits of public funds.

34 5. The bank may accept funds from any source, including federal funds
35 or other public funds, including but not limited to, funds from the sale
36 of marihuana.

37 6. The commission shall review state accounts that contain public
38 funds that are not state moneys, such as the state insurance fund, and
39 make recommendations to the governor and the appropriate committees of
40 the legislature as to which accounts should be deposited in the bank.

41 7. The bank shall make disbursements to the state funds as necessary
42 for the function of state government.

43 § 260. Investment of state moneys. The bank may invest state moneys
44 deposited in the bank that are not reasonably expected to be necessary
45 to meet the short or intermediate-term liquidity needs of the state. The
46 state comptroller retains authority to manage and invest the amount of
47 funds necessary to meet the operational needs of state government.

48 § 261. Infrastructure loans. The bank is authorized to facilitate
49 investment in, and financing of, construction, rehabilitation, replace-
50 ment, and improvement of new and existing public infrastructure systems.
51 Before initiating operations, the commission shall present an implemen-
52 tation plan and any necessary legislation to the governor and appropri-
53 ate legislative committees, that:

54 1. Identifies the public infrastructure systems that the bank plans to
55 target initially;

1 2. Identifies any existing state programs that the bank recommends be
2 transferred under its umbrella, and the steps and timelines for the
3 transitions;

4 3. Describes additional financing products and services the bank plans
5 to offer, the target markets, anticipated rates, terms, and conditions;

6 4. Demonstrates how bank products and services will increase access to
7 capital for public infrastructure systems and complement those of exist-
8 ing public and private sources; and

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

11 § 262. Student loans. The bank is authorized to administer a state
12 guarantee loan program to assist students in need of low-cost student
13 loans and related loan benefits to address educational needs as neces-
14 sary to support student success, including the refinancing of an exist-
15 ing student debt. The commission shall develop an implementation plan
16 that:

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

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

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

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

25 (a) Qualification criteria for students;

26 (b) Obligations and options for loan repayment;

27 (c) Requirements for loan guarantees and reserves;

28 (d) Establishing criterion for refinancing an existing debt;

29 (e) Fee and interest rate structure;

30 (f) Maximum loan amounts; and

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

33 § 263. Business, non-profit and individual loans. The bank is author-
34 ized to leverage thirty percent of public deposits as financial capital
35 and resources to provide access to low-cost capital and/or credit to
36 small businesses, minority- and women-owned business enterprises, entre-
37 preneurs, start-up businesses, farmers and below average income commu-
38 nities and individuals of this state to further economic growth, create
39 jobs and build and sustain affordable housing for the residents of this
40 state as provided for by this section. The bank is also authorized to
41 leverage its financial capital and resources to provide access to low-
42 cost capital to bring fiscally sound and financially successful busi-
43 nesses into this state as provided for by this section. The bank is
44 also authorized to leverage its financial capital and resources to
45 provide access to low-cost capital and/or credit to established busi-
46 nesses in this state for the purpose of providing financial stability
47 for the bank as provided for by this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 2. The term of the members is three years. Five of the initial board
48 members shall be appointed to serve an initial term of three years,
49 three shall be appointed to serve an initial term of two years, and the
50 three remaining members shall be appointed to serve an initial term of
51 one year. All subsequent terms are three years. To ensure that the board
52 can continue to act, a member whose term expires shall continue to serve
53 until his or her replacement is appointed. In the case of any vacancy on
54 the board for any reason, the governor shall appoint a new member to
55 serve out the term of the person whose position has become vacant. A

1 board member may be removed for misconduct inconsistent with the mission
2 of the bank by the governor.

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

6 2. The superintendent may examine the bank in the same manner as a
7 state-chartered financial institution. The superintendent shall take
8 into consideration the unique circumstances of a publicly owned finan-
9 cial institution when examining the bank. The bank shall pay the direc-
10 tor for the reasonable costs of examinations.

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

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

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

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

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

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

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

34 3. This section does not prohibit:

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

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

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

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

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

51 § 275. Cash and demand deposits available. The state comptroller shall
52 maintain at all times cash, or demand deposits in the state of New York
53 public bank or qualified public depositories in an amount needed to meet
54 the operational needs of state government. The state comptroller shall
55 not be considered to be in violation of unlawful issuance of checks or

1 drafts if he or she maintains demand accounts in public depositories in
2 an amount less than all treasury warrants issued and outstanding.

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

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

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

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

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

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

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

40 § 277. Severability. If any clause, sentence, paragraph, subdivision,
41 section or part of this article shall be adjudged by a court of compe-
42 tent jurisdiction to be invalid, such judgment shall not affect, impair
43 or invalidate the remainder thereof, but shall be confined in its opera-
44 tion to the clause, sentence, paragraph, subdivision, section or part of
45 this article directly involved in the controversy in which such judgment
46 shall have been rendered.

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