

# STATE OF NEW YORK

1778

2019-2020 Regular Sessions

## IN SENATE

January 16, 2019

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:

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

3 ARTICLE 17

4 EMPIRE STATE PUBLIC BANK

5 Section 254. Legislative intent.

6 255. Definitions.

7 256. Creation.

8 257. Commission.

9 258. Transition board.

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.

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

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1 274. Application of this chapter to the president.

2 275. Cash and demand deposits available.

3 276. Permitted investments.

4 277. Severability.

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

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

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

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

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

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

26 3. The mission of the bank is to use New York's depository assets in  
27 ways that afford most efficient use of taxpayer revenues and public  
28 resources for the benefit of the people and economy of the state. The  
29 legislature intends for the bank to apply business strategies to manage  
30 taxpayer revenues while concurrently meeting identified needs and stra-  
31 tegic opportunities across the state. In achieving its purpose of  
32 improving public infrastructure and increasing access to higher educa-  
33 tion, the legislature intends for the bank to adhere to the following  
34 priorities:

35 (a) Institutional safety and soundness;

36 (b) Long-term viability;

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

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

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

40 (f) Insulation from political influence.

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

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

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

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

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

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

50 6. "Public infrastructure system" means a system of a local government  
51 or political subdivision, a special purpose district, a public school  
52 district, an institution of higher education, a federally recognized  
53 Indian tribe, or the state, including but not limited to a system  
54 involving: Wastewater treatment; storm water management; solid waste  
55 disposal; drinking water treatment; flood control levees; energy effi-  
56 ciency enhancements; roads, streets, and bridges; transportation infras-

1 structure, including freight and passenger rail and public transit;  
2 broadband and telecommunications infrastructure; outdoor recreation and  
3 habitat protection facilities; community, social service, or public  
4 safety facilities; schools and educational facilities; and affordable  
5 housing.

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

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

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

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

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

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

21 2. The commission shall adopt rules regarding the:

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

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

24 (c) Eligibility requirements and limits for borrowing;

25 (d) Transparency requirements for bank operations;

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

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

31 3. The commission shall commence bank operations by April first, two  
32 thousand twenty.

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

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

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

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

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

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

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

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

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

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

4 (b) Initial capital requirements of the bank;

5 (c) Options for capitalizing the bank; and

6 (d) Other items requested by the commission in order to commence bank  
7 operations by April first, two thousand twenty.

8 3. Legislative members of the bank transition board must be reimbursed  
9 for travel expenses in accordance with the rules of their respective  
10 houses. Non-legislative members are entitled to be reimbursed for  
11 expenses incurred in the discharge of their duties under this article.

12 4. The bank transition board may appoint an interim president and  
13 other necessary staff who are exempt from the provisions of this chap-  
14 ter, and who serve at the board's pleasure on such terms and conditions  
15 as the board determines. The department must provide technical assist-  
16 ance to the bank transition board. The board may also contract with  
17 additional persons who have specific technical expertise if the exper-  
18 tise is necessary to carry out the requirements of this section.

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

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

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

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

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

33 5. The bank may accept funds from any source, including federal funds  
34 or other public funds.

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

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

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

46 § 261. Infrastructure loans. The bank is authorized to facilitate  
47 investment in, and financing of, construction, rehabilitation, replace-  
48 ment, and improvement of new and existing public infrastructure systems.  
49 Before initiating operations, the commission must present an implementa-  
50 tion plan and any necessary legislation to the governor and appropriate  
51 legislative committees, that:

52 1. Identifies the public infrastructure systems that the bank plans to  
53 target initially;

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

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

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

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

8 § 262. Student loans. The bank is authorized to administer a state  
9 guarantee loan program to assist students in need of low-cost student  
10 loans and related loan benefits to address educational needs as neces-  
11 sary to support student success. The commission shall develop an imple-  
12 mentation plan that:

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

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

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

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

21 (a) Qualification criteria for students;

22 (b) Obligations and options for loan repayment;

23 (c) Requirements for loan guarantees and reserves;

24 (d) Fee and interest rate structure;

25 (e) Maximum loan amounts; and

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

28 § 263. Business, non-profit and individual loans. The bank is author-  
29 ized to leverage its financial capital and resources to provide access  
30 to low-cost capital to businesses, entrepreneurs, non-profit communi-  
31 based organizations, start-up businesses and below average income areas  
32 and individuals of this state to further economic growth, create jobs  
33 and build and sustain affordable housing for the residents of this state  
34 as provided for by this section. The bank is also authorized to leverage  
35 its financial capital and resources to provide access to low-cost capi-  
36 tal to bring fiscally sound and financially successful businesses into  
37 this state as provided for by this section. The bank is also authorized  
38 to leverage its financial capital and resources to provide access to  
39 low-cost capital to established businesses in this state for the purpose  
40 of providing financial stability for the bank as provided for by this  
41 section.

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

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

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

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

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

54 § 264. Treasury and banking services. 1. For financial institutions  
55 that make the bank a reserve depository, the bank may serve as a clear-

1 inghouse, including all facilities for providing domestic and foreign  
2 exchange, and may rediscount paper, on terms the commission provides.

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

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

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

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

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

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

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

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

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

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

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

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

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

53 § 267. Financial regulation. 1. The bank must maintain capital adequacy  
54 and other standard indicators of safety and soundness as is appropri-  
55 ate for a publicly owned financial institution.

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

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

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

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

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

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

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

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

29 3. This section does not prohibit:

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

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

36 § 272. Capitalization. The commission must make recommendations to the  
37 appropriate fiscal committees of the legislature on options for capital-  
38 ization of the bank. Any recommendations must include draft legislation  
39 for consideration by the legislature.

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

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

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

53 § 276. Permitted investments. Subject to the limitations in section  
54 two hundred sixty of this article, wherever there is in any fund or in  
55 cash balances in the state treasury more than sufficient to meet the  
56 current expenditures properly payable therefrom, the bank may invest or

1 reinvest such portion of such funds or balances as the bank deems expedient in the following defined securities or classes of investments:

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3 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;

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6 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;

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13 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;

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18 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;

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24 5. Bankers' acceptances purchased on the secondary market;

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30 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;

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34 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.

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41 § 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.

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§ 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, 2020. 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 to be made and completed on or before such effective date.