STATE OF NEW YORK

2324

2019-2020 Regular Sessions

IN SENATE

January 24, 2019

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:

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

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

ARTICLE 17

NEW YORK STATE INFRASTRUCTURE DEVELOPMENT BANK

Section 9100. Definitions.
9101. Establishment.
9102. Board of directors; powers and duties.
9103. Executive committee.
9104. Risk management committee.
9105. Audit committee.
9106. Eligibility criteria and assistance.
9107. Exemption from local taxation.
9108. Status and applicability of certain federal laws; full faith and credit.
9109. Audits and reports.

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

1. The term "bank" shall mean the New York state infrastructure development bank established pursuant to this article.

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

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

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

4. The term "chief compliance officer" or "CCO" means the chief individual responsible for overseeing and managing the compliance and regulatory affairs issues of the bank.

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

6. The term "chief loan origination officer" means the chief individual responsible for the processing of new loans provided by the bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) the payment of principal with respect to the bond is the obligation of the bank.

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

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

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

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

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

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

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

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

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

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

§ 9101. Establishment. There is hereby established within the department the New York state infrastructure development bank.

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

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

(ii) Three members shall have private sector experience.

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

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

(ii) Of the initial members of the board:

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

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

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

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

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

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

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

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

2. Three directors shall constitute a quorum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) chief compliance officer;

(b) chief financial officer;

(c) chief asset and liability management officer;

(d) chief loan origination officer;

(e) chief operations officer;

(f) chief risk officer;

(g) chief treasury officer; and

(h) general counsel.

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

(a) transportation infrastructure.

(b) environmental infrastructure.

(c) energy infrastructure.

(d) telecommunications infrastructure.

(e) economic development.

(f) workforce development.

(g) public health.

(h) private or public finance.

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

(a) establish disclosure and application procedures for entities nominating projects for assistance under this article;

(b) accept, for consideration, project proposals relating to the development of infrastructure projects, which meet the basic criteria established by the board, and which are submitted by an entity;

(c) provide recommendations to the board and place project proposals accepted by the executive committee on the list for consideration for financial assistance from the board;

(d) provide technical assistance to entities receiving financing from the bank and otherwise implement decisions of the board.

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

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

9. The executive officers may be removed at the discretion of a majority of the board.

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

11. The executive officers shall not:

(a) hold any other public office;

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

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

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

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

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

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

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

(i) create financial, credit and operational risk management guidelines for the bank;

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

(iii) create conforming standards for infrastructure finance securities.

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

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

(i) treasury and asset and liability management.

(ii) investment regulations.

(iii) credit risk management and credit evaluations.

(iv) related disciplines.

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

6. The compensation of the risk management officers shall be determined by the board.

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

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

9. The risk management officers shall not:

(a) hold any other public office;

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

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

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

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

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

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

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

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

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

(iii) issue financial reports of the bank; and

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

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

(b) The CCO and other audit officers shall have demonstrated experience and expertise in one or more of the following:

(i) Internal auditing.

(ii) Internal investigations.

(iii) Accounting practices.

(iv) Financing practices.

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

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

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

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

9. The audit officers shall not:

(a) hold any other public office;

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

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

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

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

(a) the requirements of this article; and

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

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

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

(ii) disclosure and application procedures to be followed by entities to nominate projects for assistance under this article; and

(iii) such other criteria as the board may consider to be appropriate for purposes of carrying out this article.

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

(ii) The criteria established pursuant to subparagraph (i) of paragraph (a) of this subdivision shall provide for the consideration of the following factors in considering eligibility for financial assistance under this article:

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

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

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

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

(C) the extent to which the provision of assistance by the bank maximizes the level of private investment in the infrastructure project while providing a public benefit.

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

(i) job creation, including workforce development for women and minorities, responsible employment practices, and quality job training opportunities.

(ii) reduction in carbon emissions.

(iii) reduction in surface and air traffic congestion.

(iv) smart growth in urban areas.

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

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

(vii) public health benefits.

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

(i) public health benefits.

(ii) pollution reductions.

(iii) job creation, including workforce development for women and minorities, responsible employment practices and quality job training opportunities.

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

(v) environmental justice.

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

(i) job creation, including workforce development for women and minorities, responsible employment practices and quality job training opportunities.

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

(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

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

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

§ 9109. Audits and reports. 1. The books of account of the bank shall be maintained in accordance with generally accepted accounting principles and shall be subject to an annual audit by independent public accountants appointed by the board and of nationally recognized standing.

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

(i) a summary of the bank's operations for such preceding fiscal year;

(ii) a schedule of the bank's obligations and capital securities outstanding at the end of such preceding fiscal year, with a statement of the amounts issued and redeemed or paid during such preceding fiscal year; and

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

(b) Not later than five years after the effective date of this article, the New York state comptroller shall submit to the governor and legislature a report evaluating activities of the bank for the fiscal years covered by the report that includes an assessment of the impact and benefits of each funded project, including a review of how effectively each project accomplished the goals prioritized by the bank's project criteria.

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

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

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

§ 4. This act shall take effect on the sixtieth day after it shall have become a law and shall expire and be deemed repealed December 31, 2034.