

STATE OF NEW YORK

8857

IN ASSEMBLY

January 19, 2022

Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the Committee on Banks

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:

ARTICLE 17

STATE OF NEW YORK PUBLIC BANK ACT

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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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, including the retrofitting of homes as green homes, 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 and enter into advance commitments to banks for the purchase of such mortgages, and to provide low-cost home loans to first time home buyers;

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

(e) Provide banking to underserved communities and economically disadvantaged communities of our state to provide access to low-interest capital; and

(f) Leverage New York's financial capital and resources, and work in partnership with financial institutions, including credit unions, community development financial institutions, independent banks, 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.

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

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

8 6. "Superintendent" means the superintendent of the department of
9 financial services.

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

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

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

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

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

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

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

42 2. The commission shall adopt rules regarding the:

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

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

45 (c) Eligibility requirements and limits for borrowing;

46 (d) Transparency requirements for bank operations;

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

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

52 3. The commission shall commence bank operations by April first, two
53 thousand twenty-three.

54 4. The commission may delegate to the bank president such duties and
55 powers as deemed necessary to carry on the business of the bank and

1 enforce this article efficiently and effectively. The commission may not
2 delegate its rule-making or policy-making authority.

3 5. The commission shall adopt policies and procedures for its own
4 governance.

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

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

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

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

15 (b) The temporary president of the senate shall appoint two members,
16 with at least one member having community banking or financial experi-
17 ence;

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

20 (d) The comptroller, who shall be a permanent member of the governing
21 board, shall appoint one member with community banking or financial
22 experience; and

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

27 3. 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 with experience in the finance industry or the business of community
30 banking with an emphasis on community lending.

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

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

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

41 7. A majority of the board shall be composed of independent directors
42 who are not government employees. The chair of the board shall be an
43 independent director.

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

49 9. The board may establish one or more committees to manage the public
50 bank.

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

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

1 (a) Provide input to the board regarding ways to accomplish its
2 mission;

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

6 (c) Provide technical advice as needed; and

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

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

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

22 14. The department shall provide technical assistance to the board.
23 The board may also contract with additional persons who have specific
24 technical expertise if such expertise is necessary to carry out the
25 requirements of this section. When seeking technical assistance and/or
26 advice, the board shall also consult minority-owned or women-owned busi-
27 nesses when applicable.

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

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

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

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

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

41 5. The bank may accept funds from any source, including federal funds
42 or other public funds, including but not limited to, twenty percent of a
43 cannabis revenue fund as part of the state's social and economic equity
44 plan. Specifically, fifty percent of all public deposits made into the
45 public bank shall prioritize lending in unbanked and underserved commu-
46 nities that have an income lower than eighty percent of the median
47 income of the county in which the applicant resides, has a minority-
48 owned or women-owned business or is a disadvantaged farmer.

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

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

55 8. The bank is authorized to establish a master account with the
56 federal reserve to enhance its liquidity.

1 § 260. Investment of state moneys. The bank may invest state moneys
2 deposited in the bank that are not reasonably expected to be necessary
3 to meet the short or intermediate-term liquidity needs of the state. The
4 state comptroller retains authority to manage and invest the amount of
5 funds necessary to meet the operational needs of state government.

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

12 1. Identifies the public infrastructure systems that the bank plans to
13 target initially;

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

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

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

22 5. Demonstrates how the bank plans to maximize revenues and public
23 benefit.

24 § 262. Student loans. The bank, in partnership with independent commu-
25 nity banks, credit unions or community development institutions, is
26 authorized to administer a state guarantee loan program to assist
27 students in need of low-cost student loans and related loan benefits to
28 address educational needs as necessary to support student success,
29 including the refinancing of an existing student debt. The commission
30 shall develop an implementation plan that:

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

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

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

37 4. Identifies the ways that the program will address the following
38 issues related to loans:

39 (a) Qualification criteria for students;

40 (b) Obligations and options for loan repayment;

41 (c) Requirements for loan guarantees and reserves;

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

43 (e) Fee and interest rate structure;

44 (f) Maximum loan amounts; and

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

47 § 263. Business, non-profit and individual loans. The bank, in part-
48 nership with independent community banks, credit unions or community
49 development financial institutions, is authorized to leverage thirty
50 percent of public deposits as financial capital and resources to provide
51 access to low-cost capital and/or credit to small businesses, minority-
52 and women-owned business enterprises, entrepreneurs, start-up busi-
53 nesses, farmers and below average income communities and individuals of
54 this state to further economic growth, create jobs and build and sustain
55 affordable housing for the residents of this state as provided for by
56 this section. The bank is also authorized to leverage its financial

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

8 1. The bank, in partnership with the state of New York mortgage agen-
9 cy, may purchase, guarantee or hold loans made by private banks, credit
10 unions or other financial institutions doing business in this state.

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

16 3. The bank may serve as a banker's bank for chartered banks in this
17 state by providing correspondent banking services and other related
18 services in keeping with its mission to create regional banks in
19 unbanked and underserved communities. The bank and regional banks estab-
20 lished pursuant to this statute shall not compete with private banks,
21 particularly in unbanked and underserved communities.

22 4. The bank may accept deposits related to such transactions from
23 banks and other financial institutions.

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

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

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

35 4. The bank may perform services currently contracted out by the
36 office of temporary disability services regarding electronic benefits
37 transfer cards.

38 § 265. Management. 1. The commission shall appoint a bank president
39 with demonstrated and substantial experience in community banking. The
40 president shall serve at the commission's pleasure, on such terms and
41 conditions as the commission determines.

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

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

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

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

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

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

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

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

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

2. The superintendent may examine the bank in the same manner as a state-chartered financial institution. The superintendent shall take into consideration the unique circumstances of a publicly owned financial institution when examining the bank. The bank shall pay the director for the reasonable costs of examinations.

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

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

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

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

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

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

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

3. This section does not prohibit:

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

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

4 § 272. Capitalization. The commission shall make recommendations to
5 the appropriate fiscal committees of the legislature on options for
6 capitalization of the bank. Any recommendations shall include draft
7 legislation for consideration by the legislature.

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

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

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

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

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

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

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

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

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

54 6. Commercial paper, provided that the comptroller shall follow the
55 investment policies and procedures advised by the investment advisory

1 committee pursuant to subdivision b of section four hundred twenty-three
2 of the retirement and social security law.

3 § 277. Severability. If any clause, sentence, paragraph, subdivision,
4 section or part of this article shall be adjudged by a court of compe-
5 tent jurisdiction to be invalid, such judgment shall not affect, impair
6 or invalidate the remainder thereof, but shall be confined in its opera-
7 tion to the clause, sentence, paragraph, subdivision, section or part of
8 this article directly involved in the controversy in which such judgment
9 shall have been rendered.

10 § 2. This act shall take effect immediately; provided, however, that
11 section 258 of the state finance law, as added by section one of this
12 act shall be deemed repealed on April 1, 2022. Effective immediately,
13 the addition, amendment and/or repeal of any rule or regulation neces-
14 sary for the implementation of this act on its effective date are
15 authorized to be made and completed on or before such effective date.