

STATE OF NEW YORK

1055

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sen. SANDERS -- 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 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.

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, home loans, and
7 small business development needs, including those involving minor-
8 ity- and women-owned business enterprises, of the state that are unmet.
9 The legislature further finds that there are opportunities to use the
10 state's depository assets to generate additional benefit for the people
11 and the economy of the state. Therefore, the legislature intends to
12 create the state of New York public bank as a legacy institution that
13 amasses sufficient capital reserves to address opportunities now and in
14 the future.

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

16 (a) Facilitate investment in, and financing of, public infrastructure
17 systems and projects that will increase public health, safety, and qual-
18 ity of life, improve environmental conditions, including the retrofit-
19 ting of homes as green homes, and promote community vitality and econom-
20 ic growth;

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

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

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

28 (e) Provide banking to underserved communities and economically disad-
29 vantaged communities of our state to provide access to low-interest
30 capital; and

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

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

47 (a) Institutional safety and soundness;

48 (b) Long-term viability;

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

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

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

52 (f) Insulation from political influence.

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

55 1. "Board" means the advisory board of the state of New York public
56 bank.

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

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

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

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

10 6. "Superintendent" means the superintendent of the department of
11 financial services.

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

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

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

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

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

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

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

44 2. The commission shall adopt rules regarding the:

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

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

47 (c) Eligibility requirements and limits for borrowing;

48 (d) Transparency requirements for bank operations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 9. The board may establish one or more committees to manage the public
52 bank.

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

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

4 (a) Provide input to the board regarding ways to accomplish its
5 mission;

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

9 (c) Provide technical advice as needed; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 1. Identifies the public infrastructure systems that the bank plans to
17 target initially;

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

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

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

26 5. Demonstrates how the bank plans to maximize revenues and public
27 benefit.

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

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

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

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

41 4. Identifies the ways that the program will address the following
42 issues related to loans:

43 (a) Qualification criteria for students;

44 (b) Obligations and options for loan repayment;

45 (c) Requirements for loan guarantees and reserves;

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

47 (e) Fee and interest rate structure;

48 (f) Maximum loan amounts; and

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

51 § 263. Business, non-profit and individual loans. The bank, in part-
52 nership with independent community banks, credit unions or community
53 development financial institutions, is authorized to leverage thirty
54 percent of public deposits as financial capital and resources to provide
55 access to low-cost capital and/or credit to small businesses, minority-
56 and women-owned business enterprises, entrepreneurs, start-up busi-

1 nesses, farmers and below average income communities and individuals of
2 this state to further economic growth, create jobs and build and sustain
3 affordable housing for the residents of this state as provided for by
4 this section. The bank is also authorized to leverage its financial
5 capital and resources to provide access to low-cost capital to bring
6 fiscally sound and financially successful businesses into this state as
7 provided for by this section. The bank is also authorized to leverage
8 its financial capital and resources to provide access to low-cost capi-
9 tal and/or credit to established businesses in this state for the
10 purpose of providing financial stability for the bank as provided for by
11 this section.

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

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

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

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

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

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

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

39 4. The bank may perform services currently contracted out by the
40 office of temporary disability services regarding electronic benefits
41 transfer cards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56 3. This section does not prohibit:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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