SENATE, No. 104

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator NIA H. GILL
District 34 (Essex and Passaic)
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District 27 (Essex and Morris)

SYNOPSIS

"State Bank of New Jersey Act."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT creating a State bank and supplementing Title 17 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "State Bank of New Jersey Act."

2. The Legislature finds and declares that:

a. Access to capital is vitally important for the health, security, and well-being of all individuals and businesses in our State. They are the economic drivers that help New Jersey's commerce run smoothly. The lack of accessible capital, as currently experienced due to the economic downturn, is exacerbating the economic hardships being faced by working families and businesses;

b. By creating a State bank, the State is able to direct economic development policy initiatives in a responsive and efficient manner to benefit citizens of New Jersey;

c. The mission of the State Bank of New Jersey shall be to promote small businesses, fair educational lending, housing, infrastructure improvements, community development, economic development, commerce, and industry in New Jersey. In this role, the bank shall act as a funding resource in partnership with other financial institutions, economic development groups, and guaranty agencies;

d. Accuracy of financial reporting and compliance with all applicable laws and regulations shall be an integral part of the State Bank of New Jersey's overall risk management strategy; and

e. It is the intent of the Legislature that State funds and funds of State institutions may be deposited at the State Bank of New Jersey and guaranteed by the State. Other deposits may be accepted from any public source. The State Bank of New Jersey shall be operated to benefit the citizens of New Jersey.

3. As used in this act:

"Board" means the board of directors of the State Bank of New Jersey.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"President" means the President of the State Bank of New Jersey.

"Public source" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"State Bank of New Jersey," “State bank” or “bank” refers to the State-owned financial institution established pursuant to section 4 of this act.

"State moneys" or “State funds” mean all moneys or funds belonging to or in the custody of the State under the control of the State Treasurer.

"State Treasurer" means the Treasurer of the State of New Jersey.

4. a. There is established the State Bank of New Jersey.

b. Notwithstanding any other law to the contrary, as soon as practicable, the State Treasurer may deposit State moneys in the bank. Any State funds not under the direct control of the State Treasurer may be deposited in the bank by the person in control of these funds.

c. All income earned by the bank for its own account on State moneys that are deposited in or invested with the bank to the credit of the State shall be credited to and become a part of the revenues and income of the bank.

5. a. The State bank may make loans subject to the limitations in this act and any rules adopted by the State Treasurer.

b. The bank shall be permitted to charge the same rate of interest and provide for the same terms for a loan or extension of credit as a State-chartered bank, consistent with “The State Bank Parity Act," P.L.1981, c.4 (C.17:13B-1 et seq.), and to exercise any other power or authority permissible to a State-chartered bank.

c. The bank shall invest State moneys in any manner that ensures appropriate cash management and may establish a cash management fund, separate from the bank’s general fund for investment purposes. The bank shall not make a loan to any board member, the president, or any officer of the bank, including any immediate family member of that person, or any entity with which that person is associated or in which he has an interest.

d. The bank may:

(1) Buy and sell federal funds;

(2) Lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner;

(3) Acquire real or personal property or property rights by purchase, lease, or the exercise of the right of eminent domain and may construct, remodel, and repair buildings;

(4) Receive deposits from any public source and deposit its funds in any bank or other financial institution;

(5) Perform all acts and do all things necessary, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this section through or by means of its president,

officers, agents, or employees or by contracts with any person, firm, or corporation;

(6) Provide loans or other assistance to public or private entities or consortia thereof for the purpose of financing all or a portion of the costs incurred for the planning, acquisition, engineering, construction, reconstruction, repair and rehabilitation of a transportation project;

(7) Coordinate with the Higher Education Student Assistance Authority to further access to postsecondary education, whether by loans, grants, scholarships, savings programs, or other means and shall have the authority enumerated in section 1 of P.L.1999, c.46 (C.18A:71A-9), as appropriate;

(8) Purchase mortgage loans on residential real property originated by financial institutions; and

(9) Provide loans or other assistance to small businesses.

6. a. The State bank shall be governed by a board of directors consisting of 13 members as follows:

(1) the State Treasurer, or the State Treasurer's designee, as an ex officio member; and

(2) twelve members, who are residents of this State, to be appointed by the Governor with the advice and consent of the Senate, including: one person who shall have experience in bank administration; one person who shall have experience in credit union administration; one person who shall have experience in consumer financial advocacy; one person who shall have experience in public administration; two additional public members; and of the six other persons, two shall be appointed upon the recommendation of the President of the Senate, two shall be appointed upon the recommendation of the Speaker of the General Assembly, one shall be appointed upon the recommendation of the Minority Leader of the Senate, and one shall be appointed upon the recommendation of the Minority Leader of the General Assembly.

Each public member of the board shall have demonstrated expertise in at least one of the following areas and be appointed in such a manner as to ensure that the public membership of the board includes individuals who have demonstrated expertise in the following areas:

(a) mortgage lending;

(b) the financial services industry;

(c) bank administration;

(d) public administration; and

(e) consumer financial advocacy.

b. The members of the board shall be reimbursed for any expenses incurred by them in the performance of their duties.

c. The members of the board shall serve for a term of four years; except that of the members first appointed, three of the members appointed shall each serve for a period of five years, three

shall each serve for a period of four years, three shall each serve for a period of three years; and the remaining three members appointed shall serve for a period of two years.

d. Each member of the board shall hold office for the term of his appointment and until his successor has been appointed. Vacancies shall be filled in the same manner as the original appointments were made. A member shall be eligible for reappointment.

e. The board shall organize as soon as practicable after the appointment of its members and shall select a chairperson from among its members.

f. (1) The board shall appoint a president of the bank to supervise the administrative affairs and general management and operations of the bank.

(2) The president shall:

(a) be qualified by training and experience to perform the duties of that position;

(b) serve as a member of the senior executive or unclassified service and be appointed without regard to the provisions of Title 11A of the New Jersey Statutes;

(c) attend all meetings of the board; and

(d) serve at the pleasure of the board, and receive compensation as determined by the board.

(3) With the approval of the board, the president shall:

(a) plan, direct, coordinate, and execute the administrative functions of the bank in conformity with the policies and directives of the board;

(b) employ professional and clerical staff as necessary to implement the provisions of this act;

(c) report to the board on all operations under the president's control and supervision;

(d) prepare an annual budget and manage the administrative expenses of the bank; and

(e) undertake any other activities necessary to accomplish the purposes of the bank.

(4) All employees of the bank, except the president, shall be in the career service of the Civil Service.

g. Except for a secretarial or clerical employee, while serving as a member of the board or an employee of the bank, and for a period of two years immediately following that service or employment, a person, any member of his immediate family, any entity with which that person is associated or in which he has an interest, or any partner, officer, director, or employee while he is associated with that entity, shall not be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, any person or entity that has obtained a loan from, or otherwise has done substantial business with, the bank.

h. All meetings of the board shall be subject to the requirements of the "Senator Byron M. Baer Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.). In addition to complying with the notice requirements of P.L.1975, c.231, the board shall provide electronic notice of its meetings as defined in section 1 of P.L.2002, c.91 (C.10:4-9.1).

i. A member of the board or an employee of the bank shall not be liable in an action for damages to any person for any action taken or recommendation made by the member or employee within the scope of his functions as a member or employee, if the action or recommendation was taken or made without malice. The members of the board shall be indemnified and their defense of any action provided for in the same manner and to the same extent as employees of the State under the "New Jersey Tort Claims Act," P.L.1972, c.45 (C.59:1-1 et seq.) on account of acts or omissions in the scope of their employment.

j. Records maintained by the bank shall be subject to P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.), commonly referred to as the open public records act, except the commissioner shall promulgate, by regulation, those financial, business, or proprietary records the commissioner deems inappropriate for public disclosure and, therefore, not subject to the open public records act, including financial and commercial information and records supplied by businesses or individuals during application for loans or other State bank services.

k. Members of the board and the President of the State bank shall make the same financial disclosures, whether required by law, rule, regulation or Executive Oder, including an annual filing of Financial Disclosure Statements, and in the same manner, as are required of the heads of each principal department in the Executive Branch.

7. The board shall:

a. Meet regularly with the management of the State bank to review the bank's operations;

b. Make recommendations and directives to the president relating to improved management performance, better customer service, and overall improvement in internal methods, procedures, and operating policies of the bank;

c. Make recommendations and directives relating to the establishment of additional objectives for the operation of the bank; and

d. Make recommendations and directives to the president concerning the appointment of officers of the bank.

8. a. The State bank shall be exempt from the payment of all fees and all taxes levied by the State or any of its subdivisions.

b. All deposits in the bank shall be guaranteed by the State and shall be exempt from State, county, and municipal taxes.

c. The State bank may insure deposits held by the bank with the Federal Deposit Insurance Corporation, as appropriate, and comply with conditions necessary to obtain and maintain such insurance.

9. a. The commissioner shall examine the State bank in the same manner as a State-chartered financial institution pursuant to section 260 of P.L.1948, c.67 (C.17:9A-260). The bank shall reimburse the department for the costs of an examination. The commissioner may conduct any additional investigation of the bank which may be necessary to ensure the proper operation of the bank.

b. The commissioner shall report the examination results, and the results of any necessary investigation, pursuant to this section to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1).

c. The department shall charge a fee for any examination or investigation sufficient to cover all reasonable expenses of the department associated with the examinations and investigations provided for by this section.

10. a. The State Auditor shall contract with an independent certified public accounting firm for an annual audit of the State bank in accordance with generally accepted government auditing standards.

b. The State Auditor shall contract for an annual audit of the separate programs and funds administered by the bank. The auditor selected shall prepare: (1) an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American Institute of Certified Public Accountants; and (2) audited financial statements for inclusion in the comprehensive annual financial report for the State.

c. In addition to the audits conducted pursuant to subsections a. and b. of this section, the State Auditor may conduct performance audits of the bank, including the separate programs and funds administered by the bank.

d. The State Auditor shall report the results of the audits to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1).

e. The bank or its separate programs and funds shall pay the costs of the audits conducted pursuant to this section.

11. a. By December 1st of each year, the State Treasurer shall make an annual report to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), on the affairs of the bank. The report may include any recommendations that would improve the affairs of the bank.

b. Immediately following the close of each calendar month, the State Treasurer shall prepare a report as to the state of the general fund, any cash management fund, the bank, and every other fund under control of the State Treasurer itemized as to:

(1) The amount in the fund at the close of business at the end of the preceding month;

(2) The amount of revenue deposited or transferred to the credit of each fund during the current month;

(3) The amount of withdrawals or transfers from each fund during the current month; and

(4) The amount on hand in each fund at the close of business at the end of the current month.

The report required pursuant to this subsection shall be made available on the Department of the Treasury website.

12. The State Treasurer and the commissioner, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and in consultation with each other, shall each adopt such rules and regulations as may be necessary to effectuate the purposes of this act.

13. This act shall take effect on the 90th day following enactment.

STATEMENT

This bill, the "State Bank of New Jersey Act," creates the State Bank of New Jersey. The bill authorizes the creation of a board of directors to oversee the bank and the State Treasurer or any other person in control of State funds to deposit State moneys in the bank. The bill provides that all income earned by the bank for its own account on State moneys that are deposited in or invested with the bank to the credit of the State are to be credited to and become a part of the revenues and income of the bank.

The bill permits the bank to make loans subject to the limitations of the act and any rules adopted by the State Treasurer. The bill also provides that the State bank is permitted to charge the same rate of interest, provide for the same terms for a loan or extension of credit, and to exercise any other power or authority permissible to a State-chartered bank.

Under the bill, the bank is required to invest State moneys in any manner that ensures appropriate cash management. The bank is prohibited from making a loan to any board member, the president, or any officer of the bank, including any immediate family member of that person, or any entity with which that person is associated or in which he has an interest.

The bill also provides that the bank may:

(1) Buy and sell federal funds;

(2) Lease, assign, sell, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner;

(3) Acquire real or personal property or property rights by purchase, lease, or the exercise of the right of eminent domain and may construct, remodel, and repair buildings;

(4) Receive deposits from any public source and deposit its funds in any bank or other financial institution;

(5) Perform all acts and do all things necessary, advisable, or desirable to carry out the powers expressly granted or necessarily implied in the bill through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation;

(6) Provide loans or other assistance for transportation projects;

(7) Coordinate with the Higher Education Student Assistance Authority to further access to postsecondary education, whether by loans, grants, scholarships, savings programs, or other means and shall have the authority enumerated in section 1 of P.L.1999, c.46 (C.18A:71A-9), as appropriate;

(8) Purchase mortgage loans on residential real property originated by financial institutions; and

(9) Provide loans or other assistance to small businesses.

The bill creates a 13 member board of directors to govern the bank. The board consists of:

(1) the State Treasurer, or the State Treasurer's designee, as an ex officio member; and

(2) twelve members, who are residents of this State, to be appointed by the Governor with the advice and consent of the Senate, including: one person who shall have experience in bank administration; one person who shall have experience in credit union administration; one person who shall have experience in consumer financial advocacy; one person who shall have experience in public administration; two additional public members; and of the six other persons, two shall be appointed upon the recommendation of the President of the Senate, two shall be appointed upon the recommendation of the Speaker of the General Assembly, one shall be appointed upon the recommendation of the Minority Leader of the Senate, and one shall be appointed upon the recommendation of the Minority Leader of the General Assembly.

The board is required to appoint a president of the bank to supervise the administrative affairs and general management and operations of the bank. The bill provides that the president of the bank is to serve at the pleasure of the board and receive such compensation as the board shall determine.

With the approval of the board, the president is charged with:

(1) planning, directing, coordinating, and executing the administrative functions of the bank in conformity with the policies and directives of the board;

(2) employing professional and clerical staff as necessary to implement the provisions of the bill;

(3) reporting to the board on all operations under the president's control and supervision;

(4) preparing an annual budget and managing the administrative expenses of the bank; and

(5) undertaking any other activities necessary to accomplish the purposes of the bank.

The bill provides that all employees of the bank, except the president, are to be in the career service of the Civil Service. All meetings of the board are subject to the open public meetings act and, except as provided by the Commissioner of Banking and Insurance, records maintained by the bank shall be subject to the open public records act.

The bill includes post-employment restrictions on members of the board or employees of the bank. Except for a secretarial or clerical employee, while serving as a member of the board or an employee of the bank, and for a period of two years immediately following such service or employment, a person, any member of his immediate family, any entity with which that person is associated or in which he has an interest, or any partner, officer, director, or employee while he is associated with that entity, shall not be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, any person or entity that has obtained a loan from, or has otherwise done substantial business with, the bank.

The bill also provides that members of the board and the President of the State bank shall make the same financial disclosures, whether required by law, rule, regulation or Executive Oder, including an annual filing of Financial Disclosure Statements, and in the same manner, as are required of the heads of each principal department in the Executive Branch.

The bill requires the board to meet regularly with the management of the bank to review the bank's operations and make recommendations to the president on the operations of the bank.

The bill also provides that the State bank is exempt from the payment of all fees and all taxes levied by the State or any of its subdivisions. In addition, all deposits in the bank are guaranteed by the State and are exempt from State, county, and municipal taxes.

Under the bill, the Commissioner of Banking and Insurance is required to examine the State bank in the same manner as a State-chartered financial institution and may conduct any additional investigation of the bank which may be necessary to ensure the proper operation of the bank, at the bank's cost. The commissioner

shall report the examination results, and the results of any necessary investigation, to the Governor and to the Legislature.

In addition, the State Auditor shall contract with an independent certified public accounting firm for an annual audit of the bank in accordance with generally accepted government auditing standards. The State Auditor is required to contract for an annual audit of the separate programs and funds administered by the bank. The auditor selected shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American Institute of Certified Public Accountants. The auditor also shall prepare audited financial statements for inclusion in the comprehensive annual financial report for the State. The State Auditor may conduct performance audits of the bank, including the separate programs and funds administered by the bank. The auditor shall report the results of the audits to the Governor and to the Legislature. The bank or its separate programs and funds shall pay the costs of the audits.

The bill also provides that, by December 1st of each year, the State Treasurer shall make an annual report to the Governor, and to the Legislature on the affairs of the bank. The report may include any recommendations that would improve the affairs of the bank. Additionally, immediately following the close of each calendar month, the State Treasurer shall prepare a report as to the State of the general fund, the bank, and every other fund under the State Treasurer’s control. The monthly report is to be made available on the Department of the Treasury website.