

4319

2009-2010 Regular Sessions

I N A S S E M B L Y

February 3, 2009

Introduced by M. of A. WEISENBERG, SCHROEDER, FIELDS, KOON, PERRY, ALFANO, DelMONTE, WALKER, CASTRO, AMEDORE, ERRIGO, GREENE -- Multi-Sponsored by -- M. of A. BACALLES, CHRISTENSEN, GIGLIO, HAWLEY, JACOBS, KOLB, McDONOUGH, McKEVITT, PHEFFER, SWEENEY -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law and the state finance law, in relation to the establishment of a savings bank, savings and loan association or credit union municipal deposit program, and limiting deposits of public funds in such institutions to one million dollars

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph c of subdivision 1 of section 10 of the general
2 municipal law, as amended by chapter 623 of the laws of 1998, is amended
3 to read as follows:
4 c. "Public deposits" shall mean deposits of public funds in a bank,
5 SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, or trust
6 company which are available for all uses generally permitted by the
7 bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, or trust
8 company to the depositing local government for actually and finally
9 collected funds under the bank's, SAVINGS BANK'S, SAVINGS AND LOAN ASSO-
10 CIATION'S, CREDIT UNION'S, or trust company's account agreement or poli-
11 cies.
12 S 2. Paragraphs f, g and h of subdivision 1 of section 10 of the
13 general municipal law are relettered paragraphs g, h and i and three new
14 paragraphs f, j and k are added to read as follows:
15 F. "CREDIT UNION" SHALL MEAN A STATE-CHARTERED CREDIT UNION AS DEFINED
16 BY SUBDIVISION NINE OF SECTION TWO OF THE BANKING LAW OR A
17 FEDERALLY-CHARTERED CREDIT UNION AS DEFINED BY THE FEDERAL CREDIT UNION
18 ACT, LOCATED AND AUTHORIZED TO DO BUSINESS IN NEW YORK.
19 J. "SAVINGS BANK" SHALL MEAN A SAVINGS BANK AS DEFINED BY SUBDIVISION
20 FOUR OF SECTION TWO OF THE BANKING LAW OR ANY FEDERAL SAVINGS BANK.

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

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1 K. "SAVINGS AND LOAN ASSOCIATION" SHALL MEAN A SAVINGS AND LOAN ASSO-
2 CIATION AS DEFINED BY SUBDIVISION EIGHT OF SECTION TWO OF THE BANKING
3 LAW OR ANY FEDERAL SAVINGS AND LOAN ASSOCIATION.

4 S 3. Subdivisions 2, 3 and 4 of section 10 of the general municipal
5 law, as amended by chapter 623 of the laws of 1998, paragraphs a and b
6 of subdivision 3 as amended by chapter 545 of the laws of 2005, and
7 paragraph c of subdivision 3 as amended by chapter 615 of the laws of
8 2002, are amended to read as follows:

9 2. a. The governing board of every local government shall designate
10 one or more banks, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, CREDIT
11 UNIONS or trust companies for the deposit of public funds, the disposi-
12 tion of which is not otherwise provided for by law, received by the
13 chief fiscal officer or any other officer authorized by law to make
14 deposits. Such designation shall be by resolution of the governing
15 board or, in the case of a city, such other body as may be authorized or
16 required by law to designate depositories. Such resolution shall speci-
17 fy the maximum amount which may be kept on deposit at any time in each
18 such bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or
19 trust company. Such designations and amounts may be changed at any time
20 by further resolution.

21 THE GOVERNING BOARD OF EVERY LOCAL GOVERNMENT SHALL FORWARD A COPY OF
22 SUCH RESOLUTION TO THE OFFICE OF THE STATE COMPTROLLER WHO SHALL RETAIN
23 SUCH COPY UNTIL SUCH RESOLUTION IS AMENDED OR DISSOLVED. A COPY OF SUCH
24 RESOLUTION SHALL BE RETAINED BY THE STATE COMPTROLLER FOR RECORD KEEPING
25 PURPOSES ONLY.

26 b. Except as otherwise provided by law, all deposits shall be made to
27 the credit of the local government. The deposit of public funds pursu-
28 ant to this subdivision shall release the officer making the deposit and
29 his or her surety from any liability for loss of such public funds by
30 reason of the default or insolvency of any such bank, SAVINGS BANK,
31 SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company.

32 c. The governing board of a local government, in which a banking
33 development district has been designated by the superintendent of banks
34 pursuant to section ninety-six-d of the banking law, may designate a
35 bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, trust
36 company or national bank located in such district for the deposit of
37 public funds, the disposition of which is not otherwise provided for by
38 law, received by the chief fiscal officer or other officer authorized by
39 law to make such deposits. Such designation shall be by resolution of
40 the governing board or, in the case of a city, such other body as may be
41 authorized or required by law to designate depositories. Such resol-
42 ution shall specify the maximum amount which may be kept on deposit at
43 any time with such bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION,
44 CREDIT UNION, trust company or national bank located in such district.
45 THE GOVERNING BOARD OF EVERY LOCAL GOVERNMENT SHALL FORWARD A COPY OF
46 SUCH RESOLUTION TO THE OFFICE OF THE STATE COMPTROLLER WHO SHALL RETAIN
47 SUCH COPY UNTIL SUCH RESOLUTION IS AMENDED OR DISSOLVED. A COPY OF SUCH
48 RESOLUTION SHALL BE RETAINED BY THE STATE COMPTROLLER FOR RECORD KEEPING
49 PURPOSES ONLY. Subject to an agreement between such governing board and
50 such banking institution, public funds deposited in such banking insti-
51 tution may earn a fixed interest rate which is at or below such banking
52 institution's posted two year certificate of deposit rate. In those
53 instances where there is such an agreement, its terms and conditions
54 shall also be specified in the resolution. Any such designation,
55 amount, or agreement provisions may be changed at any time by further
56 resolution.

1 3. All public deposits in excess of the amount insured under the
2 provisions of the Federal Deposit Insurance Act OR BY THE NATIONAL CRED-
3 IT UNION ADMINISTRATION UNDER THE FEDERAL CREDIT UNION ACT as now or
4 hereafter amended shall be secured in accordance with this subdivision:

5 a. The officers making a deposit may accept a pledge of eligible secu-
6 rities having in the aggregate a market value at least equal to the
7 aggregate amount of public deposits from such officers, or a pledge of a
8 pro rata portion of a pool of eligible securities having in the aggre-
9 gate a market value at least equal to the aggregate amount of public
10 deposits from all such officers within the state at such bank, SAVINGS
11 BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company,
12 together with a security agreement from the bank, SAVINGS BANK, SAVINGS
13 AND LOAN ASSOCIATION, CREDIT UNION or trust company. The security agree-
14 ment and custodial agreement referred to below may be the same agreement
15 including when the bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION,
16 CREDIT UNION or trust company holding the public deposits holds the
17 collateral for the public body. The security agreement shall provide
18 that such eligible securities or pro rata portion of a pool of eligible
19 securities are being pledged by the bank or trust company as security
20 for the public deposits, together with agreed upon interest, if any, and
21 any costs or expenses arising out of the collection of such deposit upon
22 a default. It shall also provide for the conditions under which the
23 securities or pro rata portion of a pool of eligible securities held may
24 be sold, presented for payment, substituted or released and the events
25 of default which will enable the local government to exercise its rights
26 against the pledged securities. Such agreement shall include all
27 provisions deemed necessary and sufficient to secure in a satisfactory
28 manner the local government's interest in the collateral. The custodial
29 agreement shall provide that the pledged securities or pro rata portion
30 of a pool of eligible securities will be held by the custodial bank,
31 SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust compa-
32 ny as agent of, and custodian for, the local government, and will be
33 kept separate and apart from the general assets of the custodial bank,
34 SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust compa-
35 ny and it shall also provide for the manner in which the custodial bank,
36 SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust compa-
37 ny shall confirm the receipt, substitution or release of the collateral.
38 Such agreement shall provide for the frequency of revaluation of collat-
39 eral by the custodial bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION,
40 CREDIT UNION or trust company and the substitution of collateral when a
41 change in the rating of a security causes ineligibility pursuant to
42 paragraph [f] G of subdivision one of this section. Such agreement shall
43 include all provisions deemed necessary and sufficient to secure in a
44 satisfactory manner the local government's interest in the collateral.
45 Such agreement may also contain such other provisions as the governing
46 board may deem necessary.

47 b. Whenever eligible securities delivered to a custodial bank, SAVINGS
48 BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company pursu-
49 ant to this paragraph are transferred by entries on the books of a
50 federal reserve bank or other book-entry system operated by a federally
51 regulated entity without physical delivery of the evidence of such obli-
52 gations, the records of the custodial bank, SAVINGS BANK, SAVINGS AND
53 LOAN ASSOCIATION, CREDIT UNION or trust company shall show, at all
54 times, the interest of the local government in such securities or pro
55 rata portion of a pool of eligible securities as set forth in the secu-
56 rity agreement.

1 c. (i) In lieu of or in addition to the deposit of eligible securi-
2 ties, the officers making a deposit may accept an eligible surety bond
3 payable to such local government as security for the payment of one
4 hundred percent, or an eligible letter of credit payable to such local
5 government as security for the payment of one hundred forty percent, of
6 the aggregate amount of public deposits from such officers and the
7 agreed upon interest, if any. The terms and conditions of any eligible
8 surety bond shall be approved by the governing board.

9 (ii) In lieu of or in addition to the deposit of eligible securities,
10 the officers making a deposit may, in the case of an irrevocable letter
11 of credit issued in favor of the local government by a federal home loan
12 bank whose commercial paper and other unsecured short-term debt obli-
13 gations are rated in the highest rating category by at least one
14 nationally recognized statistical rating organization, accept such
15 letter of credit payable to such local government as security for the
16 payment of one hundred percent of the aggregate amount of public depos-
17 its from such officers and the agreed upon interest, if any.

18 d. For purposes of determining the market value of securities as
19 required by this subdivision:

20 (i) The eligible securities described in subparagraphs (viii), (x) and
21 (xi) of paragraph [f] G of subdivision one of this section shall be
22 valued at eighty percent of their market value.

23 (ii) The eligible securities described in subparagraph (ix) of para-
24 graph [f] G of subdivision one of this section shall be valued at seven-
25 ty percent of their market value.

26 (iii) Of the eligible securities described in subparagraphs (v), (vi)
27 and (vii) of paragraph [f] G of subdivision one of this section, those
28 securities rated in the highest category shall be valued at one hundred
29 percent of their market value; those securities rated in the second
30 highest rating category shall be valued at ninety percent of their
31 market value; and those securities rated in the third highest rating
32 category shall be valued at eighty percent of their market value. When
33 two nationally recognized statistical rating organizations rate a secu-
34 rity in two different categories, the security shall be considered to be
35 rated in the higher of the two categories.

36 4. (a) Notwithstanding any other provision of law to the contrary, the
37 chief fiscal officer, or other officer authorized by law to make depos-
38 its, may, subject to the approval of the governing body of a local
39 government, by resolution, enter into a contract with a courier service
40 for the purpose of causing the deposit of public funds with a bank,
41 SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust compa-
42 ny as provided in this section.

43 (b) The entrusting of public funds for deposit pursuant to paragraph
44 (a) of this subdivision shall release the officer entrusting the public
45 funds to the courier service and his or her surety from any liability
46 for loss of such public funds by the courier service in the process of
47 delivering such public funds to the designated bank, SAVINGS BANK,
48 SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company.

49 (c) The local government authorizing the deposit of public funds by a
50 courier service pursuant to paragraph (a) of this subdivision shall
51 require the courier service to obtain a surety bond for the full amount
52 entrusted to the courier, payable to the local government and executed
53 by an insurance company authorized to do business in this state, the
54 claims paying ability of which is rated in the highest rating category
55 by at least two nationally recognized statistical rating organizations,
56 to insure against any loss of public funds entrusted to the courier

1 service for deposit or failure to deposit the full amount entrusted to
2 the courier.

3 (d) A deposit made by a courier on behalf of a local government shall
4 be deemed to be a deposit made by the chief fiscal officer or other
5 officer entrusting such funds for purposes of the requirements contained
6 in this section for securing public deposits.

7 (e) A bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION
8 or trust company may, from time to time and as agreed upon with a local
9 government, reimburse all or part of, but not more than, the actual cost
10 incurred by the local government in transporting cash, negotiable
11 instruments or other items for deposit through a courier service. Any
12 such reimbursement agreement shall apply only to a specified deposit
13 transaction, and may be subject to such terms, conditions and limita-
14 tions as the bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT
15 UNION or trust company deems necessary to ensure sound banking prac-
16 tices, including, but not limited to, any terms, conditions or limita-
17 tions that may be required by the banking department or other federal or
18 state authority.

19 S 4. Subdivision 2 of section 11 of the general municipal law, as
20 amended by chapter 708 of the laws of 1992, is amended to read as
21 follows:

22 2. The governing board of any local government or, if the governing
23 board so delegates, the chief fiscal officer or other officer having
24 custody of the moneys may temporarily invest moneys not required for
25 immediate expenditure, except moneys the investment of which is other-
26 wise provided for by law, in special time INTEREST-BEARING deposit
27 accounts in, or certificates of deposit issued by, a bank, SAVINGS BANK,
28 SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company located and
29 authorized to do business in this state, provided however, that such
30 time deposit account or certificate of deposit shall be payable within
31 such time as the proceeds shall be needed to meet expenditures for which
32 such moneys were obtained and provided further that such time deposit
33 account or certificate of deposit be secured in the same manner as is
34 provided for securing deposits of public funds by subdivision three of
35 section ten of this article.

36 S 5. Subdivision 1 and the opening paragraph of subdivision 2 of
37 section 105 of the state finance law, subdivision 1 as amended by chap-
38 ter 204 of the laws of 2002 and the opening paragraph of subdivision 2
39 as amended by chapter 154 of the laws of 1953, are amended and a new
40 closing paragraph is added to such section to read as follows:

41 1. All moneys received by the commissioner of taxation and finance on
42 account of the state, excepting such moneys as are required by law to be
43 deposited to the credit of the comptroller, but including such moneys as
44 are thereafter paid into the state treasury by the comptroller, shall be
45 deposited by the commissioner of taxation and finance within three days
46 after the receipt thereof, either as a demand deposit or an interest-
47 bearing [time] deposit (other than a time certificate of deposit), as he
48 OR SHE and the comptroller may determine, in such banks, trust companies
49 [and industrial banks], SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS OR
50 CREDIT UNIONS as in his OR HER opinion and the opinion of the comp-
51 troller are secure. The moneys so deposited shall be placed to the
52 account of the commissioner of taxation and finance. He OR SHE shall
53 keep a bankbook in which shall be entered his OR HER account of deposit
54 in and moneys drawn from the banks [and], trust companies [and indus-
55 trial banks], SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS OR CREDIT
56 UNIONS in which deposits are made by him OR HER, which he OR SHE shall

1 exhibit to the comptroller for his OR HER inspection on the first Tues-
2 day of every month and oftener if required. He OR SHE shall not draw any
3 moneys from such banks, trust companies [or industrial banks unless by
4 checks signed and countersigned], SAVINGS BANKS, SAVINGS AND LOAN ASSO-
5 CIATIONS OR CREDIT UNIONS DESIGNATED in the manner prescribed by section
6 one hundred one OF THIS ARTICLE, unless otherwise provided by law. No
7 moneys shall be paid by any such bank, trust company [or industrial
8 bank], SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION out of
9 any such deposit except upon such checks. Moneys may be paid through
10 electronic transfer in accordance with procedures developed by the
11 commissioner of taxation and finance and the comptroller and consistent
12 with the requirements of this section for recording payments. Such
13 payments through electronic transfer shall be considered, for purposes
14 of this chapter, to be moneys drawn by check. Every such bank, trust
15 company [or industrial bank], SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION
16 OR CREDIT UNION shall transmit to the comptroller monthly statements of
17 all moneys received and paid by it on account of the commissioner of
18 taxation and finance.

19 Every bank, trust company [and industrial bank], SAVINGS BANK, SAVINGS
20 AND LOAN ASSOCIATION OR CREDIT UNION designated for the deposit of state
21 moneys under the provisions of this section shall, before deposits are
22 made:

23 PUBLIC FUNDS DEPOSITED INTO A SAVINGS BANK, FEDERAL SAVINGS BANK,
24 CREDIT UNION, FEDERAL CREDIT UNION, SAVINGS AND LOAN ASSOCIATION OR
25 FEDERAL SAVINGS AND LOAN ASSOCIATION, SHALL BE LIMITED TO ONE MILLION
26 DOLLARS PER DEPOSITORY.

27 S 6. The opening, second and third undesignated paragraphs of section
28 106 of the state finance law, the second undesignated paragraph as
29 amended by chapter 293 of the laws of 1992, are amended and a new clos-
30 ing paragraph is added to such section to read as follows:

31 Such moneys received by the commissioner of taxation and finance as
32 are now deposited to the credit of the comptroller pursuant to statute,
33 and thereafter paid into the state treasury, shall be deposited by him
34 to the credit of the comptroller in such bank [or], trust company,
35 SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION, as shall be
36 designated by the comptroller at such rate of interest, if any, as shall
37 be agreed upon by the depository and the comptroller.

38 All other moneys received by the commissioner of taxation and finance
39 except as provided in section one hundred five of this article and all
40 moneys received by any other state officer or other person receiving
41 moneys belonging to the state, or for which such state officer or other
42 person may be responsible in his official capacity, and all moneys
43 received by any state institution, except for moneys received pursuant
44 to a clinical practice plan established pursuant to subdivision fourteen
45 of section two hundred six of the public health law and all moneys
46 received from the state by any charitable or benevolent institution
47 supported in whole or in part by the state, shall be deposited to his or
48 its credit in such bank [or], trust company, SAVINGS BANK, SAVINGS AND
49 LOAN ASSOCIATION OR CREDIT UNION, as shall be designated by the comp-
50 troller at such rate of interest, if any, as shall be agreed upon by the
51 depository and the comptroller.

52 Every [bank or trust company] DEPOSITORY designated by the comptroller
53 for the deposit of any such moneys:

54 PUBLIC FUNDS DEPOSITED INTO A SAVINGS BANK, FEDERAL SAVINGS BANK,
55 CREDIT UNION, FEDERAL CREDIT UNION, SAVINGS AND LOAN ASSOCIATION OR

1 FEDERAL SAVINGS AND LOAN ASSOCIATION, SHALL BE LIMITED TO ONE MILLION
2 DOLLARS PER DEPOSITORY.

3 S 7. Severability. If any clause, sentence, paragraph, section or part
4 of this act shall be adjudged by any court of competent jurisdiction to
5 be invalid, such judgment shall not affect, impair or invalidate such
6 clause, sentence, paragraph, section or part thereof directly involved
7 in the controversy in which such judgment shall have been rendered.

8 S 8. This act shall take effect immediately.