S T A T E O F N E W Y O R K

7790

2011-2012 Regular Sessions

I N A S S E M B L Y

May 17, 2011

Introduced by M. of A. HEASTIE -- 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 allowing credit unions, savings banks, savings and loan associations and federal savings associations to accept and secure deposits from municipal corporations

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

Section 1. Paragraph c of subdivision 1 of section 10 of the general municipal law, as amended by chapter 623 of the laws of 1998, is amended to read as follows:

c. "Public deposits" shall mean deposits of public funds in a bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, or trust company which are available for all uses generally permitted by the bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION, or trust company to the depositing local government for actually and finally collected funds under the bank's, SAVINGS BANK'S, SAVINGS AND LOAN ASSOCIATION'S, CREDIT UNION'S, or trust company's account agreement or policies.

S 2. Paragraphs f, g and h of subdivision 1 of section 10 of the general municipal law are relettered paragraphs g, h and i and three new paragraphs f, j and k are added to read as follows:

F. "CREDIT UNION" SHALL MEAN A STATE-CHARTERED CREDIT UNION AS DEFINED BY SUBDIVISION NINE OF SECTION TWO OF THE BANKING LAW OR A FEDERALLY-CHARTERED CREDIT UNION AS DEFINED BY THE FEDERAL CREDIT UNION ACT, LOCATED AND AUTHORIZED TO DO BUSINESS IN NEW YORK.

J. "SAVINGS BANK" SHALL MEAN A SAVINGS BANK AS DEFINED BY SUBDIVISION FOUR OF SECTION TWO OF THE BANKING LAW OR ANY FEDERAL SAVINGS BANK.

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

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

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

2. a. The governing board of every local government shall designate one or more banks, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, CREDIT UNIONS or trust companies for the deposit of public funds, the disposition of which is not otherwise provided for by law, received by the chief fiscal officer or any other officer authorized by law to make deposits. Such designation shall be by resolution of the governing board or, in the case of a city, such other body as may be authorized or required by law to designate depositaries. Such resolution shall specify the maximum amount which may be kept on deposit at any time in each such bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company. Such designations and amounts may be changed at any time by further resolution.

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

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

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

D. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, NO BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION SHALL BE DESIGNATED FOR DEPOSITS OF FUNDS PURSUANT TO THE PROVISIONS OF THIS

SECTION OR SECTION ELEVEN OF THIS ARTICLE UNLESS THE TAXES DESCRIBED IN SUBDIVISION ONE OF SECTION TWO HUNDRED FIFTY-THREE OF THE TAX LAW ARE PAID ON LOANS SECURED BY MORTGAGES THAT ARE PROVIDED BY ANY SUCH BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION. ANY FUNDS DEPOSITED IN ANY SUCH BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION SHALL BE WITHDRAWN IN ACCORDANCE WITH THE TERMS OF ANY DEPOSIT AGREEMENT IF SUCH TAXES WERE NOT PAID AT THE TIME ANY SUCH MORTGAGES WERE RECORDED.

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

a. The officers making a deposit may accept a pledge of eligible securities having in the aggregate a market value at least equal to the aggregate amount of public deposits from such officers, or a pledge of a pro rata portion of a pool of eligible securities having in the aggregate a market value at least equal to the aggregate amount of public deposits from all such officers within the state at such bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company, together with a security agreement from the bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company. The security agreement and custodial agreement referred to below may be the same agreement including when the bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company holding the public deposits holds the collateral for the public body. The security agreement shall provide that such eligible securities or pro rata portion of a pool of eligible securities are being pledged by the bank or trust company as security for the public deposits, together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposit upon a default. It shall also provide for the conditions under which the securities or pro rata portion of a pool of eligible securities held may be sold, presented for payment, substituted or released and the events of default which will enable the local government to exercise its rights against the pledged securities. Such agreement shall include all provisions deemed necessary and sufficient to secure in a satisfactory manner the local government's interest in the collateral. The custodial agreement shall provide that the pledged securities or pro rata portion of a pool of eligible securities will be held by the custodial bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company as agent of, and custodian for, the local government, and will be kept separate and apart from the general assets of the custodial bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company and it shall also provide for the manner in which the custodial bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company shall confirm the receipt, substitution or release of the collateral. Such agreement shall provide for the frequency of revaluation of collateral by the custodial bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company and the substitution of collateral when a change in the rating of a security causes ineligibility pursuant to paragraph [f] G of subdivision one of this section. Such agreement shall include all provisions deemed necessary and sufficient to secure in a satisfactory manner the local government's interest in the collateral. Such agreement may also contain such other provisions as the governing board may deem necessary.

b. Whenever eligible securities delivered to a custodial bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company pursu-

ant to this paragraph are transferred by entries on the books of a federal reserve bank or other book-entry system operated by a federally regulated entity without physical delivery of the evidence of such obligations, the records of the custodial bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company shall show, at all times, the interest of the local government in such securities or pro rata portion of a pool of eligible securities as set forth in the security agreement.

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

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

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

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

(ii) The eligible securities described in subparagraph (ix) of paragraph [f] G of subdivision one of this section shall be valued at seventy percent of their market value.

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

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

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

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

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

(e) A bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company may, from time to time and as agreed upon with a local government, reimburse all or part of, but not more than, the actual cost incurred by the local government in transporting cash, negotiable instruments or other items for deposit through a courier service. Any such reimbursement agreement shall apply only to a specified deposit transaction, and may be subject to such terms, conditions and limitations as the bank, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION or trust company deems necessary to ensure sound banking practices, including, but not limited to, any terms, conditions or limitations that may be required by the [banking] department OF FINANCIAL SERVICES or other federal or state authority.

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

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

S 5. Subdivision 1 and the opening paragraph of subdivision 2 of section 105 of the state finance law, subdivision 1 as amended by chapter 204 of the laws of 2002 and the opening paragraph of subdivision 2 as amended by chapter 154 of the laws of 1953, are amended and two new subdivisions 7 and 8 are added to read as follows:

1. All moneys received by the commissioner of taxation and finance on account of the state, excepting such moneys as are required by law to be deposited to the credit of the comptroller, but including such moneys as are thereafter paid into the state treasury by the comptroller, shall be deposited by the commissioner of taxation and finance within three days after the receipt thereof, either as a demand deposit or an interest-bearing [time] deposit (other than a time certificate of deposit), as he OR SHE and the comptroller may determine, in such banks, trust companies

[and industrial banks], SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS OR CREDIT UNIONS as in his OR HER opinion and the opinion of the comptroller are secure. The moneys so deposited shall be placed to the account of the commissioner of taxation and finance. He OR SHE shall keep a bankbook in which shall be entered his OR HER account of deposit in and moneys drawn from the banks [and], trust companies [and industrial banks], SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS OR CREDIT UNIONS in which deposits are made by him OR HER, which he OR SHE shall exhibit to the comptroller for his OR HER inspection on the first Tuesday of every month and oftener if required. He OR SHE shall not draw any moneys from such banks, trust companies [or industrial banks unless by checks signed and countersigned], SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS OR CREDIT UNIONS DESIGNATED in the manner prescribed by section one hundred one OF THIS ARTICLE, unless otherwise provided by law. No moneys shall be paid by any such bank, trust company [or industrial bank], SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION out of any such deposit except upon such checks. Moneys may be paid through electronic transfer in accordance with procedures developed by the commissioner of taxation and finance and the comptroller and consistent with the requirements of this section for recording payments. Such payments through electronic transfer shall be considered, for purposes of this chapter, to be moneys drawn by check. Every such bank, trust company [or industrial bank], SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION shall transmit to the comptroller monthly statements of all moneys received and paid by it on account of the commissioner of taxation and finance.

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

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

8. FOR PURPOSES OF THIS SECTION, THE TERMS "CREDIT UNION", "SAVINGS BANK" AND "SAVINGS AND LOAN ASSOCIATION" SHALL HAVE THE MEANING PROVIDED IN SUBDIVISION ONE OF SECTION TEN OF THE GENERAL MUNICIPAL LAW.

S 6. Section 106 of the state finance law, the second undesignated paragraph as amended by chapter 293 of the laws of 1992, subdivision B and the closing paragraph as amended by chapter 583 of the laws of 1941, subdivision C as added by chapter 551 of the laws of 2010, is amended to read as follows:

S 106. Deposit of moneys by state officers, state institutions and charitable and benevolent institutions. 1. Such moneys received by the commissioner of taxation and finance as are now deposited to the credit of the comptroller pursuant to statute, and thereafter paid into the state treasury, shall be deposited by him to the credit of the comptroller in such bank [or], trust company, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION, as shall be designated by the comptroller at such rate of interest, if any, as shall be agreed upon by the depositary and the comptroller.

2. All other moneys received by the commissioner of taxation and finance except as provided in section one hundred five of this article and all moneys received by any other state officer or other person

receiving moneys belonging to the state, or for which such state officer or other person may be responsible in his official capacity, and all moneys received by any state institution, except for moneys received pursuant to a clinical practice plan established pursuant to subdivision fourteen of section two hundred six of the public health law and all moneys received from the state by any charitable or benevolent institution supported in whole or in part by the state, shall be deposited to his or its credit in such bank [or], trust company, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION OR CREDIT UNION, as shall be designated by the comptroller at such rate of interest, if any, as shall be agreed upon by the depositary and the comptroller.

3. Every [bank or trust company] DEPOSITARY designated by the comptroller for the deposit of any such moneys:

[A.] A. Shall give a bond with sufficient sureties for the security of such deposit, to be approved by the comptroller and filed in his office,

[B.] B. Or shall, in lieu of such surety bond, with the permission of the comptroller deposit with the comptroller such outstanding unmatured bonds or notes or such certified check or checks as are described in section one hundred five of this article. The comptroller may, in his discretion, accept and substitute for any surety bond or undertaking given, pursuant to this section, a bond or undertaking in such form and with other surety or sureties, or other security as required by this section, for such sums as may be prescribed and approved by the comptroller for the safe keeping and prompt payment of such moneys on legal demand therefor with interest, if any, and the comptroller may thereupon execute and deliver to the surety or sureties, upon the former bond or undertaking, a release of such surety or sureties from any liability accruing subsequent to the date of such release. Such release shall not relieve such surety or sureties from any obligation for losses incurred prior to the date thereof. On the withdrawal of all moneys from any such depository and a closing and settlement of the account thereof, the comptroller may in his discretion certify to such settlement and release to the obligor or owner or owners entitled thereto, of such surety bond, undertaking, certified check or checks, or other security deposited with him.

[C.] C. Notwithstanding any other provisions of this section, the comptroller shall not designate for the deposit of moneys by state officers, state institutions and charitable and benevolent institutions supported in whole or in part by the state a banking institution to which the Community Reinvestment Act of 1977, United States P.L. 95-128, applies unless such institution shall have received a record of performance no lower than "satisfactory" as determined under such act in accordance with section twenty-eight-b of the banking law.

4. This section shall not apply to any funds held by the superintendent of [banks or the superintendent of insurance] FINANCIAL SERVICES in a fiduciary capacity.

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

6. FOR PURPOSES OF THIS SECTION, THE TERMS "CREDIT UNION", "SAVINGS BANK" AND "SAVINGS AND LOAN ASSOCIATION" SHALL HAVE THE MEANING PROVIDED IN SUBDIVISION ONE OF SECTION TEN OF THE GENERAL MUNICIPAL LAW.

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

S 8. This act shall take effect immediately; provided, however, that sections three and six of this act shall take effect October 3, 2011.