

STATE OF NEW YORK

439

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

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

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:

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 § 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 federally-
17 chartered credit union as defined by the Federal Credit Union Act,
18 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 § 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, paragraph a of
6 subdivision 2 as amended by chapter 128 of the laws of 2012, paragraphs
7 a and b of subdivision 3 as amended by chapter 545 of the laws of 2005,
8 paragraph c of subdivision 3 as amended by chapter 615 of the laws of
9 2002, and paragraph c of subdivision 2 and paragraph (e) of subdivision
10 4 as further amended by section 104 of part A of chapter 62 of the laws
11 of 2011, are amended to read as follows:

12 2. a. (i) The governing board of every local government shall design-
13 nate one or more banks, savings banks, savings and loan associations,
14 credit unions or trust companies for the deposit of public funds, the
15 disposition of which is not otherwise provided for by law, received by
16 the chief fiscal officer or any other officer authorized by law to make
17 deposits. Such designation shall be by resolution of the governing board
18 or, in the case of a city, such other body as may be authorized or
19 required by law to designate depositories. Such resolution shall specify
20 the maximum amount which may be kept on deposit at any time in each such
21 bank, savings banks, savings and loan associations, credit unions or
22 trust company. Such designations and amounts may be changed at any time
23 by further resolution. The governing board of every local government
24 shall forward a copy of such resolution to the office of the state comp-
25 troller who shall retain such copy until such resolution is amended or
26 dissolved. A copy of such resolution shall be retained by the state
27 comptroller for record keeping purposes only.

28 (ii) The governing board of a local government that has designated one
29 or more banks, savings banks, savings and loan associations, credit
30 unions or trust companies for the deposit of public funds pursuant to
31 subparagraph (i) of this paragraph may, in its discretion, authorize the
32 designated bank, savings bank, savings and loan association, credit
33 union or trust company to arrange for the redeposit of the local govern-
34 ment's funds in one or more banking institutions, as defined in section
35 nine-r of the banking law, for the account of the local government,
36 through a deposit placement program that meets all of the following
37 conditions:

38 (A) On or after the date that the local government's funds are
39 received, the designated bank, savings bank, savings and loan associ-
40 ation, credit union or trust company (I) arranges for the redeposit of
41 such funds into deposit accounts in one or more banking institutions and
42 (II) serves as custodian for the local government with respect to the
43 funds redeposited into such accounts.

44 (B) Local government funds deposited in a designated bank, savings
45 bank, savings and loan association, credit union or trust company in
46 accordance with this subparagraph and held in the designated bank,
47 savings bank, savings and loan association, credit union or trust compa-
48 ny in excess of the amount insured by the federal deposit insurance
49 corporation pending redeposit of the funds pursuant to this subparagraph
50 shall be secured in accordance with subdivision three of this section.

51 (C) The full amount of local government funds redeposited by the
52 designated bank, savings bank, savings and loan association, credit
53 union or trust company into deposit accounts in banking institutions
54 pursuant to this subparagraph (plus accrued interest, if any) shall be
55 insured by the federal deposit insurance corporation.

(D) At the same time that the money of the local government is redeposited pursuant to this subparagraph, the selected depository receives an amount of deposits from customers of other financial institutions pursuant to the deposit placement program that are at least equal to the amount of the local government's funds redeposited by the designated bank, savings bank, savings and loan association, credit union or trust company.

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 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

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

40 b. Whenever eligible securities delivered to a custodial bank, savings
41 bank, savings and loan association, credit union or trust company pursu-
42 ant to this paragraph are transferred by entries on the books of a
43 federal reserve bank or other book-entry system operated by a federally
44 regulated entity without physical delivery of the evidence of such obli-
45 gations, the records of the custodial bank, savings bank, savings and
46 loan association, credit union or trust company shall show, at all
47 times, the interest of the local government in such securities or pro
48 rata portion of a pool of eligible securities as set forth in the secu-
49 rity agreement.

50 c. (i) In lieu of or in addition to the deposit of eligible securi-
51 ties, the officers making a deposit may accept an eligible surety bond
52 payable to such local government as security for the payment of one
53 hundred percent, or an eligible letter of credit payable to such local
54 government as security for the payment of one hundred forty percent, of
55 the aggregate amount of public deposits from such officers and the

1 agreed upon interest, if any. The terms and conditions of any eligible
2 surety bond shall be approved by the governing board.

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

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

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

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

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

30 4. (a) Notwithstanding any other provision of law to the contrary, the
31 chief fiscal officer, or other officer authorized by law to make depos-
32 its, may, subject to the approval of the governing body of a local
33 government, by resolution, enter into a contract with a courier service
34 for the purpose of causing the deposit of public funds with a bank,
35 savings bank, savings and loan association, credit union or trust compa-
36 ny as provided in this section.

37 (b) The entrusting of public funds for deposit pursuant to paragraph
38 (a) of this subdivision shall release the officer entrusting the public
39 funds to the courier service and his or her surety from any liability
40 for loss of such public funds by the courier service in the process of
41 delivering such public funds to the designated bank, savings bank,
42 savings and loan association, credit union or trust company.

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

53 (d) A deposit made by a courier on behalf of a local government shall
54 be deemed to be a deposit made by the chief fiscal officer or other
55 officer entrusting such funds for purposes of the requirements contained
56 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 department of financial services or other federal or state authority.

§ 4. Subdivision 2 of section 11 of the general municipal law, as amended by chapter 128 of the laws of 2012, is amended to read as follows:

2. a. 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, either: (1) 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; or (2) in accordance with all of the following conditions:

(i) the moneys are invested through a bank, savings bank, savings and loan association, credit union or trust company located and authorized to do business in this state;

(ii) the bank, savings bank, savings and loan association, credit union or trust company arranges for the deposit of the moneys in certificates of deposit in one or more banking institutions, as defined in section nine-r of the banking law, for the account of the local government;

(iii) the full amount of principal and accrued interest of each such certificate of deposit must be insured by the federal deposit insurance corporation;

(iv) the bank, savings bank, savings and loan association, credit union or trust company acts as custodian for the local government with respect to such certificates of deposit issued for the local government's account; and

(v) at the same time that the local government's moneys are deposited and the certificates of deposit are issued for the account of the local government, the bank, savings bank, savings and loan association, credit union or trust company receives an amount of deposits from customers of other financial institutions equal to or greater than the amount of the moneys invested by the local government through the bank or trust company.

b. For any investment made pursuant to paragraph a of this subdivision, such time interest-bearing 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 interest-bearing 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.

§ 5. Subdivision 1 and the opening paragraph of subdivision 2 of section 105 of the state finance law, subdivision 1 as amended by chap-

ter 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.

§ 6. Section 106 of the state finance law, as amended by chapter 155 of the laws of 2012 and subdivision D as added by chapter 128 of the laws of 2012, is amended to read as follows:

§ 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

1 of the comptroller pursuant to statute, and thereafter paid into the
2 state treasury, shall be deposited by him or her to the credit of the
3 comptroller in such bank ~~[or]~~, trust company, savings bank, savings and
4 loan association or credit union, as shall be designated by the comp-
5 troller at such rate of interest, if any, as shall be agreed upon by the
6 depositary and the comptroller.

7 2. All other moneys received by the commissioner of taxation and
8 finance except as provided in section one hundred five of this article
9 and all moneys received by any other state officer or other person
10 receiving moneys belonging to the state, or for which such state officer
11 or other person may be responsible in his or her official capacity, and
12 all moneys received by any state institution, except for moneys received
13 pursuant to a clinical practice plan established pursuant to subdivision
14 fourteen of section two hundred six of the public health law and all
15 moneys received from the state by any charitable or benevolent institu-
16 tion supported in whole or in part by the state, shall be deposited to
17 his, her, or its credit in such bank ~~[or]~~, trust company, savings bank,
18 savings and loan association or credit union, as shall be designated by
19 the comptroller at such rate of interest, if any, as shall be agreed
20 upon by the depositary and the comptroller.

21 3. Every ~~[bank or trust company]~~ depository designated by the comp-
22 troller for the deposit of any such moneys

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

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

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

54 ~~[D-]~~ d. In lieu of a security bond as prescribed under ~~[subdivision A]~~
55 paragraph a of this ~~[section]~~ subdivision or other security as
56 prescribed under ~~[subdivision B]~~ paragraph b of this ~~[section]~~ subdivi-

1 sion, the comptroller may authorize a designated bank or trust company
2 to arrange for the redeposit of the moneys through a deposit placement
3 program that meets all of the following conditions:

4 (1) The designated bank or trust company arranges for the redeposit of
5 the moneys into deposit accounts with one or more banking institutions,
6 as defined in section nine-r of the banking law, for the account of the
7 state, and serves as custodian for the state with respect to the moneys
8 redeposited into such deposit accounts.

9 (2) Moneys held by a designated bank or trust company pending redepos-
10 it pursuant to paragraph one of this subdivision that are in excess of
11 the amount insured by the federal deposit insurance corporation shall be
12 secured in accordance with [~~subdivision A or B~~] paragraph a or b of this
13 [~~section~~] subdivision.

14 (3) The full amount of the moneys redeposited into deposit accounts
15 pursuant to paragraph one of this subdivision, plus accrued interest, if
16 any, shall be insured by the federal deposit insurance corporation.

17 (4) At the same time that the moneys are redeposited pursuant to para-
18 graph one of this subdivision, the designated bank or trust company
19 receives an amount of deposits from customers of other financial insti-
20 tutions pursuant to the deposit placement program that are at least
21 equal to the amount of the moneys redeposited by the designated bank or
22 trust company.

23 4. This section shall not apply to any funds held by the superinten-
24 dent of financial services in a fiduciary capacity.

25 5. Public funds deposited into a savings bank, federal savings bank,
26 credit union, federal credit union, savings and loan association or
27 federal savings and loan association, shall be limited to one million
28 dollars per savings bank, federal savings bank, credit union, federal
29 credit union, savings and loan association or federal savings and loan
30 association.

31 6. For purposes of this section, the terms "credit union", "savings
32 bank" and "savings and loan association" shall have the meaning provided
33 in subdivision one of section ten of the general municipal law.

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

39 § 8. This act shall take effect immediately.