



May 3, 2021

RE: AN ACT to amend the general municipal law and the banking 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.

**MEMORANDUM IN OPPOSITION
S.670 (Sanders)**

This memorandum is submitted by the Independent Bankers Association of New York State, Inc. ("IBANYS") in strong opposition to the subject bill. IBANYS exclusively represents the interests of community banks.

The subject bill enables credit unions to phase in the acceptance of municipal deposits with an escalation in the amount of deposits over a six-year period. A community investment requirement is included for credit unions which accept municipal deposits which is not comparable to Community Reinvestment Act requirements. This bill permits thrifts to take municipal deposits without the information of a limited purpose commercial bank.

IBANYS at an Assembly Hearing indicated that providing access to municipal deposits for credit unions should be contingent upon community banks net interest income from the acceptance of municipal deposits being exempt from the New York State franchise tax. This same net income is tax exempt for credit unions. The state is losing that revenue which it currently receives under this bill when credit unions accept municipal deposits. Community banks should be entitled to the same tax treatment when competing against credit unions for municipal deposits. An amendment to the franchise tax would help level the playing field. A disparity would remain in terms of federal tax treatment but that is out of the state's control as the legislation cannot amend the federal tax code. If this bill affirmatively addressed the state tax differential, it would at least create equality to the extent possible, especially since the state is foregoing revenue which provides the credit unions with the competitive advantage.

The failure to provide municipal deposits to credit unions in prior years has been based on fundamental fairness. The legislature has always been careful not to provide an unfair competitive advantage to parties, especially in bid situations where a tax advantage becomes a rate advantage. If this bill is passed in its current form, it violates that fundamental principle.

Credit unions have argued that their share of the municipal marketplace would have a minor impact. This position fails to subtract the deposits held by money center banks for the state and larger municipal entities which neither the community banks nor credit unions would compete for such as New York City, Buffalo Nassau County etc. the municipal deposits generated by towns, villages, fire, ambulance and small counties are the target deposits of community banks, and credit unions are well situated to compete for this business, particularly with a tax advantage to help them in the bidding process.

Community banks, according to the New York State Department of Financial Services Community Banking Report in February 2013, provided "...nearly 55% of all small business loans are approximately 90% of small farm loans in the State. Smaller community banks- those with assets of \$1 billion or less- hold only about 6% of all FDIC insured banking assets in New York yet make almost 28% of all small business loans, including 43% of small farm loans in the State." Community banks have a very basic business model which is focused on gathering deposits, or which municipal deposits are a critical component. The deposits are returned to the communities through loans particularly directed to small businesses and small business lending. Community banks are an important engine in the State's economy.

Community banks have approximately 45% of all municipal deposits of all banks in New York while holding only 18% of the bank assets and deposits of New York banks. Community banks' municipal deposits range from 15% to 30% of their deposits. Municipal deposits constitute a significant source of funds to make loans and invest in municipal bonds. Loss of municipal deposits negatively impacts the economies of the communities served by these institutions.

Municipal bonds are a significant portion of a community bank's investment portfolio. Community banks often purchase unrated paper from fire districts and other municipal entities. These purchases by community banks save these entities the costs associated with rated investment paper. Credit unions, as tax exempt entities, do not benefit from the purchase of municipal bonds. The testimony by the New York State Association of Counties at an Assembly hearing on municipal deposits to credit unions indicated that they were carefully considering the issue based on the consequences. Concern was expressed about access to bank funding in emergency situation where a continuing relationship plays a significant part in access to capital.

Municipal deposits constitute a consequential portion of community bank deposits- deposits which are not won back from consumers by toaster giveaways. Competition from credit unions, investment funds, mutual funds, exchange traded funds, and hedge funds have made deposits more difficult to acquire. Deposits are the lifeblood of community banks' ability to make small business loans. The loss of core funding from municipal deposits would result in a decrease in the amount of loans community banks are able to make and the municipal investments they purchase. Alternative funding for community banks beyond their own deposits will only be available with high borrowing costs. The community bank's profitability would be impacted potentially causing more of these institutions to consider merger and acquisition, which negatively impacts the communities that they serve.

The community investment requirement provided for in this bill is not comparable to bank CRA requirements in terms of scope, testing and assessment of community credit needs. Massachusetts provides a solid example of a CRA program for credit unions. Credit union acquisition of community banks is becoming more common. The credit unions are nearly equivalent to commercial banks except for payment of taxes, CRA and other regulatory requirements.

Credit unions want to expand their business model and membership without additional responsibilities. The credit unions' argument for expansion of their powers to accept municipal deposits is grounded on the promise of a better return for municipalities based on their income tax exemption. Community banks only want a level playing field. Fairless requires an amendment to make the banks' net income from their loans related to municipal deposits fully tax exempt.

Based on the foregoing, ***it is respectfully requested that this bill not receive favorable consideration.***