



May 10, 2021

RE: AN ACT to amend the banking law, the state finance law and the general municipal law, in relation to establishing the "New York public banking act"

MEMORANDUM IN OPPOSITION
S.1762A (Sanders) / A.5782 (Pichardo)

This memorandum is submitted in strong opposition to the subject legislation by the Independent Bankers Association of New York State, Inc. which exclusively represents the interests of community banks located throughout New York State. This bill amends the Banking Law to create a new article 3-C to enable municipalities with an aggregate population of 100,000 residents to sponsor, own and control a public bank.

Article VIII section 1 of the New York State Constitution prohibits counties, cities, towns, villages and school districts from giving or loaning any money or its credit to any individual or public or private corporation or association or private undertaking. Despite the direct language of the Constitution, the courts have provided significant deference to the legislature in determining public purpose. Although the courts have demonstrated flexibility in interpreting the gifts and loans clause, the structure and operation of a public bank raises questions as to the authority of a municipality through a municipal bank to make loans for private purposes. This issue should be addressed prior to legislative action. The Attorney General should be consulted to obtain an opinion.

A public bank involves a significant cost to taxpayers. Capitalization of the bank would be paid for by municipal funds. Capitalization has proved to be a significant barrier to municipalities that have undertaken feasibility studies on establishment of a public bank. This cost is coupled with the fact that monies would have to be diverted from support of existing municipal programs. Taxes would have to be increased to fund capitalization, which would constitute a significant portion of existing revenues. In addition to capitalization, operational costs would be significant to acquire the personnel, infrastructure and equipment to function as a bank. The costs of operations would significantly escalate if the bank was offering retail customer services.

A critical consideration is not only taxpayer cost but also the inherent risk and liability of banking operations which would be backstopped by taxpayers. Without FDIC insurance the bank would need to self-insure deposits. Taxpayers would also be exposed to any violations of the Banking

Law and any penalties determined by the State Department of Financial Services, which would ultimately be the responsibility of taxpayers.

This legislation would enable the bank to opt to receive deposits from the general public and to provide retail banking services, which requires FDIC insurance. The ability to function as a retail bank would put municipal banks in direct competition with existing financial institutions. Under this bill public banks would be exempt from state, county and municipal taxes and licenses of any kind including income, capital gain; real estate and mortgage recording taxes. This creates an uneven playing field with a huge cost and competitive advantage for public banks. The cost and regulatory structure advantages for a public bank would be particularly overwhelming for community banks.

Public banks under this bill would be able to not only retain their own deposits but would also be able to hold the deposits of other municipalities. Unlike private banks, a public bank would not be required to collateralize deposits from other governmental entities. Maintaining collateral to guarantee the municipal funds constitutes a significant cost for banks. The combination of no collateral requirement with the lack of tax consequences will endanger municipal deposits for private banks. Municipalities will be incentivized if not compelled to deposit their funds in a public bank because of the higher rate of return, which will be available. Community banks have significant amounts of municipal deposits ranging from 10% to 30% of their total deposits. Loss of municipal deposits would have safety and soundness consequences for many community banks. The ability of community banks to make small business and other loans in their local communities would be crippled. Communities would be hurt by the lack of small business lending from community banks. The communities taxpayers, would be responsible for any losses incurred without collateralization of the municipal deposits.

Community banks would be unable to compete with the salary, healthcare and pension benefits which would be available to employees of public banks. Community bank employees would be attracted to higher salaries and benefits at public banks.

There is no necessity for the creation of public banks. The memorandum in support cites the benefits of public banks as “^(a) fund local projects at reduced cost ^(b) generate profits for local government to hold the line on taxes ^(c) provide access to capital and credit to small business, including MWBEs ^(d) refinance existing student debts and provide student loans to low income families and ^(e) offer low cost home loans to families. Municipalities can subsidize and fund local projects through Industrial Development Agency funding and real property and other tax concessions for projects. There are funding opportunities that meld with bank financing. With respect to small business access to credit and capital, community banks meet the needs of qualified small business borrowers. Municipalities have the tools to provide assistance to borrowers to enable banks to extend credit and loans to small businesses without the necessary financial resources to qualify. Banks are regulated and limited in their ability to make loans where high risk factors exist. Many student loans are currently financed by government agencies and the federal government is focused on forgiveness. The role of a municipal bank is minimized by the federal involvement. Mortgage rates are low but the municipalities could provide additional

enhancements through credits for property, sales or mortgage taxes. The additional incentives would provide down payment assistance for home buyers. There are existing mechanisms to accomplish the goals of this bill without the taxpayer expense and risk which accompany the establishment of Public Bank. An example is the New York Business Development Corporation which works with the federal Small Business Administration to make 504, 7A and microloans programs available directly to consumers and also in partnership with banks. This entity is particularly directed at working with small businesses to ensure their access to capital.

A number of municipalities have studied the costs and consequences of establishing a Public Bank and rejected the concept after determining the costs and risk exposure. There are more direct and less costly ways to expand access to banking services. If the state and municipalities have not invested in these less expensive opportunities, what would motivate the creation of a public bank. Incentives to resolve these access issues are available without negatively impacting the established financial system. This bill places government in competition with the private sector rather than incentivizing and partnering financially with banks to solve access problems where such problems exist.

Public banks will not impact the national, regional or international financial institutions to the level of community banks. Community bank safety and soundness would be potentially impacted by the competitive advantages provided to Public Banks. Rather than complementing and expanding the capabilities and reach of the current financial infrastructure of community banks, this bill undermines community banks by competing on the local level and holding municipal deposits. Community banks are already struggling to compete with credit unions that have a tax advantage. The community bank business model is severely impacted by creation of public banks funded by taxpayer dollars.

Based on the foregoing, it is respectfully requested that this bill be defeated.