



NEW YORK STATE SENATOR

Brian X. Foley

Senator Foley Passes Bill to Modernize Banking Law

BRIAN X. FOLEY June 10, 2010

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Senator Brian X. Foley (D – Blue Point) sponsored legislation (S7444), which passed the senate this week, that would modernize banking laws relating to unissued shares and shareholder preemptive rights.

The legislation will allow banks, trust companies, stock-form savings banks, savings and loan associations, safe deposit companies and investment companies to have authorized but unissued shares in an amount sufficient to meet the expected needs of any initial offering or another amount as permitted by the Banking Board. It will also provide that shareholders in corporations chartered under the Banking Law after the effective date of the legislation would only have preemptive rights to future shares if provided for in the organization certificate. Shareholders in corporations whose organization certificate was approved prior to the effective date will continue to have preemptive rights unless the certificate is amended.

“It is important, especially in the current economic times, that banking corporations are able to raise the capital necessary to continue operations,” said Senator Foley. “Allowing these corporations to have flexibility in the amount of capital stock they have outstanding rather

than requiring them to specifically identify the amount beforehand will allow them, among other things, to be able to respond more quickly to capital raising opportunities. By further allowing corporations more control over preemptive rights of shareholders, the corporations will not only become more efficient but will also be able to further expand the holding of shares.”

Currently, corporations chartered under Banking Law must specify in their organization certificate the amount of capital stock of the corporation. The law has been interpreted to mean that authorized but unissued shares are not allowed, unless they are to be issued at the time outstanding stock options and securities are exercised or converted into common stock. This means that banking corporations would have to get approval from shareholders before issuing additional capital stock, even when such stock is required by bank regulators.

The companion bill, sponsored by Assemblyman Benjamin, has advanced to its third reading in the assembly. The new provisions would take effect immediately upon being signed into law.