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CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 857

Introduced by Assembly Members Chiu and Santiago
(Coauthors: Assembly Members *Bonta, Carrillo, Chu, Gonzalez,*
Kalra, Luz Rivas, Mark Stone, McCarty, Nazarian, Ting, and
***Wicks*)**
(Coauthors: Senators Beall, *Hueso, Skinner, Wieckowski, and Wiener*)

February 20, 2019

An act to amend Section 119 of the Financial Code, to amend Sections 23007, 53601, 53635, and 53635.2 of, and to add Division 5 (commencing with Section 57600) to Title 5 of, the Government Code, and to add Section 23701aa to the Revenue and Taxation Code, relating to public banks.

LEGISLATIVE COUNSEL'S DIGEST

AB 857, as amended, Chiu. Public banks.

Existing law, the Financial Institutions Law, regulates the activities of various financial entities, including commercial banks, industrial banks, trust companies, credit unions, and savings associations. The Banking Law defines and regulates state banks and commits the

enforcement of banking laws to the Commissioner of Business Oversight.

Existing law prohibits a county from giving or loaning its credit to, or in aid of, any person or corporation. Existing law requires a local agency, as defined, to deposit all money belonging to, or in the custody of that local agency, into specified state or national banks, as defined. Existing law regulates the investment of public funds by local agencies.

Existing law generally governs benefit corporations and requires that a benefit corporation make an annual report to shareholders, as specified. Existing law, the Social Purpose Corporations Act, generally governs social purpose corporations and requires that a social purpose corporation make a specified annual report to shareholders.

This bill would define the term “bank” for purposes of the Financial Institutions Law and the Banking Law to include a public bank. The bill would define the term “public bank” to mean a corporation, organized for the purpose of engaging in the commercial banking business or industrial banking business, that is wholly owned by a local agency, as specified, local agencies, or a joint powers authority.

The bill would require a public bank to obtain a certificate of authorization to transact business as a bank from the commissioner and to obtain and maintain insurance, subject to specified requirements. The bill would require a local agency to conduct and approve, as specified, a study of the viability of a public bank containing specified elements before submitting an application to the commissioner to organize and establish a public bank and would require the local agency to include a copy of that study in the application submitted to the commissioner. *The bill would require a local agency that is not a charter city to obtain voter approval of a motion to submit an application to the commissioner, as specified.* The bill would authorize a county to lend its ~~credit~~ *available funds* to a public bank. The bill also would authorize a local agency to deposit funds in a public bank, and to invest in a public bank, subject to certain requirements.

The bill would further require a public bank to identify in its articles of incorporation either a special purpose or a special public benefit. The bill would authorize, but not require, a public bank to incorporate as a benefit corporation or a social purpose corporation but would require a public bank to comply with the reporting requirements to which a social benefit or social purpose corporation are held, as specified.

Existing law authorizes a local agency to invest specified money in a sinking fund of, or surplus money in, its treasury in specified securities

and financial instruments. In this regard, existing law authorizes a local agency as described above to invest in shares of beneficial interest issued by a specified type of joint powers authority that invests in specified securities and obligations, provided that certain conditions are met, including that the joint powers authority has retained an adviser that, among other criteria, is required to have not less than 5 years of experience investing in specified securities and obligations authorized under existing law.

This bill would require the adviser employed by that joint powers authority to have not less than 5 years of experience investing in securities of a public bank.

The Corporation Tax Law imposes a franchise tax on financial corporations, but provides that the tax is in lieu of all other state and local taxes and licenses, with certain exceptions. That law also exempts specified classes of entities from the franchise and income taxes imposed by that law, including state-chartered credit unions.

This bill would additionally exempt from those franchise and income taxes any public bank. This bill would also exempt a public bank from all other state and local taxes and licenses, with certain exceptions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature that this act
2 authorize the lending of public credit to public banks and authorize
3 public ownership of stock in public banks for the purpose of
4 achieving cost savings, strengthening local economies, supporting
5 community economic development, and addressing infrastructure
6 and housing needs for localities. It is the intent of the Legislature
7 that public banks shall partner with local financial institutions,
8 such as credit unions and local community banks, and shall not
9 compete with local financial institutions.

10 SEC. 2. Section 119 of the Financial Code is amended to read:

11 119. "Bank" or "banks" includes a public bank, as defined in
12 Section 57600 of the Government Code, commercial banks,
13 industrial banks, and trust companies unless the context otherwise
14 requires. However, "bank" does not include a savings association
15 or a credit union.

1 SEC. 3. Section 23007 of the Government Code is amended
2 to read:

3 23007. Except as specified in this chapter, a county shall not,
4 in any manner, give or loan its credit to or in aid of any person or
5 corporation that is not a public bank, as defined in Section 57600.
6 An indebtedness or liability incurred contrary to this chapter is
7 void.

8 SEC. 4. Section 53601 of the Government Code is amended
9 to read:

10 53601. This section shall apply to a local agency that is a city,
11 a district, or other local agency that does not pool money in
12 deposits or investments with other local agencies, other than local
13 agencies that have the same governing body. However, Section
14 53635 shall apply to all local agencies that pool money in deposits
15 or investments with other local agencies that have separate
16 governing bodies. The legislative body of a local agency having
17 moneys in a sinking fund or moneys in its treasury not required
18 for the immediate needs of the local agency may invest any portion
19 of the moneys that it deems wise or expedient in those investments
20 set forth below. A local agency purchasing or obtaining any
21 securities prescribed in this section, in a negotiable, bearer,
22 registered, or nonregistered format, shall require delivery of the
23 securities to the local agency, including those purchased for the
24 agency by financial advisers, consultants, or managers using the
25 agency's funds, by book entry, physical delivery, or by third-party
26 custodial agreement. The transfer of securities to the counterparty
27 bank's customer book entry account may be used for book entry
28 delivery.

29 For purposes of this section, "counterparty" means the other
30 party to the transaction. A counterparty bank's trust department
31 or separate safekeeping department may be used for the physical
32 delivery of the security if the security is held in the name of the
33 local agency. Where this section specifies a percentage limitation
34 for a particular category of investment, that percentage is applicable
35 only at the date of purchase. Where this section does not specify
36 a limitation on the term or remaining maturity at the time of the
37 investment, no investment shall be made in any security, other
38 than a security underlying a repurchase or reverse repurchase
39 agreement or securities lending agreement authorized by this
40 section, that at the time of the investment has a term remaining to

1 maturity in excess of five years, unless the legislative body has
2 granted express authority to make that investment either
3 specifically or as a part of an investment program approved by the
4 legislative body no less than three months prior to the investment:

5 (a) Bonds issued by the local agency, including bonds payable
6 solely out of the revenues from a revenue-producing property
7 owned, controlled, or operated by the local agency or by a
8 department, board, agency, or authority of the local agency.

9 (b) United States Treasury notes, bonds, bills, or certificates of
10 indebtedness, or those for which the faith and credit of the United
11 States are pledged for the payment of principal and interest.

12 (c) Registered state warrants or treasury notes or bonds of this
13 state, including bonds payable solely out of the revenues from a
14 revenue-producing property owned, controlled, or operated by the
15 state or by a department, board, agency, or authority of the state.

16 (d) Registered treasury notes or bonds of any of the other 49
17 states in addition to California, including bonds payable solely out
18 of the revenues from a revenue-producing property owned,
19 controlled, or operated by a state or by a department, board, agency,
20 or authority of any of the other 49 states, in addition to California.

21 (e) Bonds, notes, warrants, or other evidences of indebtedness
22 of a local agency within this state, including bonds payable solely
23 out of the revenues from a revenue-producing property owned,
24 controlled, or operated by the local agency, or by a department,
25 board, agency, or authority of the local agency.

26 (f) Federal agency or United States government-sponsored
27 enterprise obligations, participations, or other instruments,
28 including those issued by or fully guaranteed as to principal and
29 interest by federal agencies or United States government-sponsored
30 enterprises.

31 (g) Bankers' acceptances otherwise known as bills of exchange
32 or time drafts that are drawn on and accepted by a commercial
33 bank. Purchases of bankers' acceptances shall not exceed 180
34 days' maturity or 40 percent of the agency's moneys that may be
35 invested pursuant to this section. However, no more than 30 percent
36 of the agency's moneys may be invested in the bankers'
37 acceptances of any one commercial bank pursuant to this section.

38 This subdivision does not preclude a municipal utility district
39 from investing moneys in its treasury in a manner authorized by

1 the Municipal Utility District Act (Division 6 (commencing with
2 Section 11501) of the Public Utilities Code).

3 (h) Commercial paper of “prime” quality of the highest ranking
4 or of the highest letter and number rating as provided for by a
5 nationally recognized statistical rating organization (NRSRO).
6 The entity that issues the commercial paper shall meet all of the
7 following conditions in either paragraph (1) or (2):

8 (1) The entity meets the following criteria:

9 (A) Is organized and operating in the United States as a general
10 corporation.

11 (B) Has total assets in excess of five hundred million dollars
12 (\$500,000,000).

13 (C) Has debt other than commercial paper, if any, that is rated
14 in a rating category of “A” or its equivalent or higher by an
15 NRSRO.

16 (2) The entity meets the following criteria:

17 (A) Is organized within the United States as a special purpose
18 corporation, trust, or limited liability company.

19 (B) Has programwide credit enhancements including, but not
20 limited to, overcollateralization, letters of credit, or a surety bond.

21 (C) Has commercial paper that is rated “A-1” or higher, or the
22 equivalent, by an NRSRO.

23 Eligible commercial paper shall have a maximum maturity of
24 270 days or less. Local agencies, other than counties or a city and
25 county, may invest no more than 25 percent of their moneys in
26 eligible commercial paper. Local agencies, other than counties or
27 a city and county, may purchase no more than 10 percent of the
28 outstanding commercial paper of any single issuer. Counties or a
29 city and county may invest in commercial paper pursuant to the
30 concentration limits in subdivision (a) of Section 53635.

31 (i) Negotiable certificates of deposit issued by a nationally or
32 state-chartered bank, a savings association or a federal association
33 (as defined by Section 5102 of the Financial Code), a state or
34 federal credit union, or by a federally licensed or state-licensed
35 branch of a foreign bank. Purchases of negotiable certificates of
36 deposit shall not exceed 30 percent of the agency’s moneys that
37 may be invested pursuant to this section. For purposes of this
38 section, negotiable certificates of deposit do not come within
39 Article 2 (commencing with Section 53630), except that the amount
40 so invested shall be subject to the limitations of Section 53638.

1 The legislative body of a local agency and the treasurer or other
2 official of the local agency having legal custody of the moneys
3 are prohibited from investing local agency funds, or funds in the
4 custody of the local agency, in negotiable certificates of deposit
5 issued by a state or federal credit union if a member of the
6 legislative body of the local agency, or a person with investment
7 decisionmaking authority in the administrative office manager's
8 office, budget office, auditor-controller's office, or treasurer's
9 office of the local agency also serves on the board of directors, or
10 any committee appointed by the board of directors, or the credit
11 committee or the supervisory committee of the state or federal
12 credit union issuing the negotiable certificates of deposit.

13 (j) (1) Investments in repurchase agreements or reverse
14 repurchase agreements or securities lending agreements of
15 securities authorized by this section, as long as the agreements are
16 subject to this subdivision, including the delivery requirements
17 specified in this section.

18 (2) Investments in repurchase agreements may be made, on an
19 investment authorized in this section, when the term of the
20 agreement does not exceed one year. The market value of securities
21 that underlie a repurchase agreement shall be valued at 102 percent
22 or greater of the funds borrowed against those securities and the
23 value shall be adjusted no less than quarterly. Since the market
24 value of the underlying securities is subject to daily market
25 fluctuations, the investments in repurchase agreements shall be in
26 compliance if the value of the underlying securities is brought back
27 up to 102 percent no later than the next business day.

28 (3) Reverse repurchase agreements or securities lending
29 agreements may be utilized only when all of the following
30 conditions are met:

31 (A) The security to be sold using a reverse repurchase agreement
32 or securities lending agreement has been owned and fully paid for
33 by the local agency for a minimum of 30 days prior to sale.

34 (B) The total of all reverse repurchase agreements and securities
35 lending agreements on investments owned by the local agency
36 does not exceed 20 percent of the base value of the portfolio.

37 (C) The agreement does not exceed a term of 92 days, unless
38 the agreement includes a written codicil guaranteeing a minimum
39 earning or spread for the entire period between the sale of a security

1 using a reverse repurchase agreement or securities lending
2 agreement and the final maturity date of the same security.

3 (D) Funds obtained or funds within the pool of an equivalent
4 amount to that obtained from selling a security to a counterparty
5 using a reverse repurchase agreement or securities lending
6 agreement shall not be used to purchase another security with a
7 maturity longer than 92 days from the initial settlement date of the
8 reverse repurchase agreement or securities lending agreement,
9 unless the reverse repurchase agreement or securities lending
10 agreement includes a written codicil guaranteeing a minimum
11 earning or spread for the entire period between the sale of a security
12 using a reverse repurchase agreement or securities lending
13 agreement and the final maturity date of the same security.

14 (4) (A) Investments in reverse repurchase agreements, securities
15 lending agreements, or similar investments in which the local
16 agency sells securities prior to purchase with a simultaneous
17 agreement to repurchase the security may be made only upon prior
18 approval of the governing body of the local agency and shall be
19 made only with primary dealers of the Federal Reserve Bank of
20 New York or with a nationally or state-chartered bank that has or
21 has had a significant banking relationship with a local agency.

22 (B) For purposes of this chapter, “significant banking
23 relationship” means any of the following activities of a bank:

24 (i) Involvement in the creation, sale, purchase, or retirement of
25 a local agency’s bonds, warrants, notes, or other evidence of
26 indebtedness.

27 (ii) Financing of a local agency’s activities.

28 (iii) Acceptance of a local agency’s securities or funds as
29 deposits.

30 (5) (A) “Repurchase agreement” means a purchase of securities
31 by the local agency pursuant to an agreement by which the
32 counterparty seller will repurchase the securities on or before a
33 specified date and for a specified amount and the counterparty will
34 deliver the underlying securities to the local agency by book entry,
35 physical delivery, or by third-party custodial agreement. The
36 transfer of underlying securities to the counterparty bank’s
37 customer book-entry account may be used for book-entry delivery.

38 (B) “Securities,” for purposes of repurchase under this
39 subdivision, means securities of the same issuer, description, issue
40 date, and maturity.

1 (C) “Reverse repurchase agreement” means a sale of securities
2 by the local agency pursuant to an agreement by which the local
3 agency will repurchase the securities on or before a specified date
4 and includes other comparable agreements.

5 (D) “Securities lending agreement” means an agreement under
6 which a local agency agrees to transfer securities to a borrower
7 who, in turn, agrees to provide collateral to the local agency.
8 During the term of the agreement, both the securities and the
9 collateral are held by a third party. At the conclusion of the
10 agreement, the securities are transferred back to the local agency
11 in return for the collateral.

12 (E) For purposes of this section, the base value of the local
13 agency’s pool portfolio shall be that dollar amount obtained by
14 totaling all cash balances placed in the pool by all pool participants,
15 excluding any amounts obtained through selling securities by way
16 of reverse repurchase agreements, securities lending agreements,
17 or other similar borrowing methods.

18 (F) For purposes of this section, the spread is the difference
19 between the cost of funds obtained using the reverse repurchase
20 agreement and the earnings obtained on the reinvestment of the
21 funds.

22 (k) Medium-term notes, defined as all corporate and depository
23 institution debt securities with a maximum remaining maturity of
24 five years or less, issued by corporations organized and operating
25 within the United States or by depository institutions licensed by
26 the United States or any state and operating within the United
27 States. Notes eligible for investment under this subdivision shall
28 be rated in a rating category of “A” or its equivalent or better by
29 an NRSRO. Purchases of medium-term notes shall not include
30 other instruments authorized by this section and shall not exceed
31 30 percent of the agency’s moneys that may be invested pursuant
32 to this section.

33 (l) (1) Shares of beneficial interest issued by diversified
34 management companies that invest in the securities and obligations
35 as authorized by subdivisions (a) to (k), inclusive, and subdivisions
36 (m) to (q), inclusive, and that comply with the investment
37 restrictions of this article and Article 2 (commencing with Section
38 53630). However, notwithstanding these restrictions, a counterparty
39 to a reverse repurchase agreement or securities lending agreement
40 is not required to be a primary dealer of the Federal Reserve Bank

1 of New York if the company's board of directors finds that the
2 counterparty presents a minimal risk of default, and the value of
3 the securities underlying a repurchase agreement or securities
4 lending agreement may be 100 percent of the sales price if the
5 securities are marked to market daily.

6 (2) Shares of beneficial interest issued by diversified
7 management companies that are money market funds registered
8 with the Securities and Exchange Commission under the
9 Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

10 (3) If investment is in shares issued pursuant to paragraph (1),
11 the company shall have met either of the following criteria:

12 (A) Attained the highest ranking or the highest letter and
13 numerical rating provided by not less than two NRSROs.

14 (B) Retained an investment adviser registered or exempt from
15 registration with the Securities and Exchange Commission with
16 not less than five years' experience investing in the securities and
17 obligations authorized by subdivisions (a) to (k), inclusive, and
18 subdivisions (m) to (q), inclusive, and with assets under
19 management in excess of five hundred million dollars
20 (\$500,000,000).

21 (4) If investment is in shares issued pursuant to paragraph (2),
22 the company shall have met either of the following criteria:

23 (A) Attained the highest ranking or the highest letter and
24 numerical rating provided by not less than two NRSROs.

25 (B) Retained an investment adviser registered or exempt from
26 registration with the Securities and Exchange Commission with
27 not less than five years' experience managing money market
28 mutual funds with assets under management in excess of five
29 hundred million dollars (\$500,000,000).

30 (5) The purchase price of shares of beneficial interest purchased
31 pursuant to this subdivision shall not include commission that the
32 companies may charge and shall not exceed 20 percent of the
33 agency's moneys that may be invested pursuant to this section.
34 However, no more than 10 percent of the agency's funds may be
35 invested in shares of beneficial interest of any one mutual fund
36 pursuant to paragraph (1).

37 (m) Moneys held by a trustee or fiscal agent and pledged to the
38 payment or security of bonds or other indebtedness, or obligations
39 under a lease, installment sale, or other agreement of a local
40 agency, or certificates of participation in those bonds, indebtedness,

1 or lease installment sale, or other agreements, may be invested in
2 accordance with the statutory provisions governing the issuance
3 of those bonds, indebtedness, or lease installment sale, or other
4 agreement, or to the extent not inconsistent therewith or if there
5 are no specific statutory provisions, in accordance with the
6 ordinance, resolution, indenture, or agreement of the local agency
7 providing for the issuance.

8 (n) Notes, bonds, or other obligations that are at all times secured
9 by a valid first priority security interest in securities of the types
10 listed by Section 53651 as eligible securities for the purpose of
11 securing local agency deposits having a market value at least equal
12 to that required by Section 53652 for the purpose of securing local
13 agency deposits. The securities serving as collateral shall be placed
14 by delivery or book entry into the custody of a trust company or
15 the trust department of a bank that is not affiliated with the issuer
16 of the secured obligation, and the security interest shall be perfected
17 in accordance with the requirements of the Uniform Commercial
18 Code or federal regulations applicable to the types of securities in
19 which the security interest is granted.

20 (o) A mortgage passthrough security, collateralized mortgage
21 obligation, mortgage-backed or other pay-through bond, equipment
22 lease-backed certificate, consumer receivable passthrough
23 certificate, or consumer receivable-backed bond. Securities eligible
24 for investment under this subdivision shall be rated in a rating
25 category of "AA" or its equivalent or better by an NRSRO and
26 have a maximum remaining maturity of five years or less. Purchase
27 of securities authorized by this subdivision shall not exceed 20
28 percent of the agency's surplus moneys that may be invested
29 pursuant to this section.

30 (p) Shares of beneficial interest issued by a joint powers
31 authority organized pursuant to Section 6509.7 that invests in the
32 securities and obligations authorized in subdivisions (a) to ~~(q)~~, (r),
33 inclusive. Each share shall represent an equal proportional interest
34 in the underlying pool of securities owned by the joint powers
35 authority. To be eligible under this section, the joint powers
36 authority issuing the shares shall have retained an investment
37 adviser that meets all of the following criteria:

38 (1) The adviser is registered or exempt from registration with
39 the Securities and Exchange Commission.

1 (2) The adviser has not less than five years of experience
2 investing in the securities and obligations authorized in
3 subdivisions (a) to ~~(q)~~, (r), inclusive.

4 (3) The adviser has assets under management in excess of five
5 hundred million dollars (\$500,000,000).

6 (q) United States dollar denominated senior unsecured
7 unsubordinated obligations issued or unconditionally guaranteed
8 by the International Bank for Reconstruction and Development,
9 International Finance Corporation, or Inter-American Development
10 Bank, with a maximum remaining maturity of five years or less,
11 and eligible for purchase and sale within the United States.
12 Investments under this subdivision shall be rated in a rating
13 category of “AA” or its equivalent or better by an NRSRO and
14 shall not exceed 30 percent of the agency’s moneys that may be
15 invested pursuant to this section.

16 (r) Commercial paper, debt securities, or other obligations of a
17 public bank, as defined in Section 57600.

18 SEC. 5. Section 53635 of the Government Code is amended
19 to read:

20 53635. (a) This section shall apply to a local agency that is a
21 county, a city and county, or other local agency that pools money
22 in deposits or investments with other local agencies, including
23 local agencies that have the same governing body. However,
24 Section 53601 shall apply to all local agencies that pool money in
25 deposits or investments exclusively with local agencies that have
26 the same governing body.

27 This section shall be interpreted in a manner that recognizes the
28 distinct characteristics of investment pools and the distinct
29 administrative burdens on managing and investing funds on a
30 pooled basis pursuant to Article 6 (commencing with Section
31 27130) of Chapter 5 of Division 2 of Title 3.

32 A local agency that is a county, a city and county, or other local
33 agency that pools money in deposits or investments with other
34 agencies may invest in commercial paper pursuant to subdivision
35 (h) of Section 53601, except that the local agency shall be subject
36 to the following concentration limits:

37 (1) No more than 40 percent of the local agency’s money may
38 be invested in eligible commercial paper.

1 (2) No more than 10 percent of the total assets of the investments
2 held by a local agency may be invested in any one issuer's
3 commercial paper.

4 (b) Notwithstanding Section 53601, the City of Los Angeles
5 shall be subject to the concentration limits of this section for
6 counties and for cities and counties with regard to the investment
7 of money in eligible commercial paper.

8 (c) A local agency subject to this section may invest in
9 commercial paper, debt securities, or other obligations of a public
10 bank, as defined in Section 57600.

11 SEC. 6. Section 53635.2 of the Government Code is amended
12 to read:

13 53635.2. As far as possible, all money belonging to, or in the
14 custody of, a local agency, including money paid to the treasurer
15 or other official to pay the principal, interest, or penalties of bonds,
16 shall be deposited for safekeeping in state or national banks, public
17 banks, savings associations, federal associations, credit unions, or
18 federally insured industrial loan companies in this state selected
19 by the treasurer or other official having legal custody of the money;
20 or may be invested in the investments set forth in Section 53601.
21 To be eligible to receive local agency money, a bank, savings
22 association, federal association, or federally insured industrial loan
23 company shall have received an overall rating of not less than
24 "satisfactory" in its most recent evaluation by the appropriate
25 federal financial supervisory agency of its record of meeting the
26 credit needs of California's communities, including low- and
27 moderate-income neighborhoods, pursuant to Section 2906 of Title
28 12 of the United States Code. Sections 53601.5 and 53601.6 shall
29 apply to all investments that are acquired pursuant to this section.

30 SEC. 7. Division 5 (commencing with Section 57600) is added
31 to Title 5 of the Government Code, to read:

32

33

DIVISION 5. PUBLIC BANKS

34

35 57600. For purposes of this division:

36 (a) "Local financial institution" means a certified community
37 development financial institution, a credit union, or a small bank
38 or an intermediate small bank, as defined in Section 25.12 of Title
39 12 of the Code of Federal Regulations.

1 (b) (1) “Public bank” means a corporation, organized for the
2 purpose of engaging in the commercial banking business or
3 industrial banking business, that is wholly owned by a local agency,
4 local agencies, or a joint powers authority formed pursuant to the
5 Joint Exercise of Powers Act (Article 1 (commencing with Section
6 6500) of Chapter 5 of Division 7 of Title 1) that is composed only
7 of local agencies.

8 (2) A local agency located within a county with a population
9 of less than 250,000 may organize a public bank only if it does so
10 as part of a joint powers authority formed for those purposes.

11 (3) For purposes of paragraph (2), population shall be based on
12 the most recent estimate of population data determined by the
13 Demographic Research Unit of the Department of Finance.

14 57601. (a) A public bank shall identify in its articles of
15 incorporation either a social purpose, as provided in paragraph (2)
16 of subdivision (6) of Section 2602 of the Corporations Code, or a
17 specific public benefit, as provided in Section 14610 of the
18 Corporations Code. Examples of a social purpose or a specific
19 public benefit include, but are not limited to, strengthening local
20 economies, supporting community economic development,
21 addressing infrastructure and housing needs for localities, and
22 providing banking services to the unbanked or underbanked.

23 (b) A public bank may, but is not required to, incorporate as a
24 benefit corporation or a social purpose corporation.

25 (c) Notwithstanding subdivision (b), a public bank that identifies
26 a social purpose in its articles of incorporation shall comply with
27 Section 3500 of the Corporations Code, and a public bank that
28 identifies a specific public benefit in its articles of incorporation
29 shall comply with Section 14630 of the Corporations Code.

30 57602. (a) A public bank shall obtain and maintain deposit
31 insurance provided by the Federal Deposit Insurance Corporation
32 under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et
33 seq.).

34 (b) In seeking and retaining insurance, a public bank may do
35 all things and assume and discharge all obligations required of it
36 that are not in conflict with state law.

37 57603. (a) Before engaging in business, a public bank shall
38 obtain a certificate of authorization to transact business as a bank
39 pursuant to Division 1.1 of the Financial Code (commencing with
40 Section 1000).

1 (b) A local agency shall comply with the requirements of Section
2 53638 with respect to its deposits in a public bank unless, with the
3 prior approval of the Commissioner of Business Oversight, the
4 public bank and the local agency depositor agree otherwise.

5 (c) Notwithstanding Section 23010, a county may lend ~~its credit~~
6 *any of its available funds* to any public bank.

7 (d) Notwithstanding Section 53601, any local agency that does
8 not pool money in deposits or investments with other local agencies
9 that have separate governing bodies may invest in debt securities
10 or other obligations of a public bank.

11 (e) Notwithstanding Section 53635, any local agency that pools
12 money in deposits or investments with other local agencies,
13 including local agencies that have the same governing body, may
14 invest in debt securities or other obligations of a public bank.

15 (f) Notwithstanding Section 53635.2, a public bank shall be
16 eligible to receive local agency money.

17 57604. (a) Wherever possible, any retail activities of a public
18 bank shall be conducted in partnership with local financial
19 institutions.

20 (b) Notwithstanding subdivision (a), a public bank may do both
21 of the following:

22 (1) Engage in banking activities, including, but not limited to,
23 infrastructure lending, wholesale lending, and participation lending.

24 (2) Engage in retail activities that are not provided by local
25 financial institutions in the jurisdiction of the local agency or
26 agencies that own the public bank.

27 57605. For the purposes of Section 1280 of the Financial Code,
28 any person or entity, including a local agency, that owns, controls,
29 or holds an ownership interest in a public bank is not a bank
30 holding company by reason of that ownership interest.

31 57606. (a) Before submitting an application to organize and
32 establish a public bank pursuant to Section 1020 of the Financial
33 Code, a local agency shall conduct a study to assess the viability
34 of the proposed public bank. The study shall include, but is not
35 limited to, all of the following elements:

36 (1) A discussion of the purposes of the bank including, but not
37 limited to, achieving cost savings, strengthening local economies,
38 supporting community economic development, and addressing
39 infrastructure and housing needs for localities.

1 (2) A fiscal analysis of costs associated with starting the
2 proposed public bank.

3 (3) An estimate of the initial amount of capital to be provided
4 by the local agency to the proposed public bank.

5 (4) Financial projections, including a pro forma balance sheet
6 and income statement, of the proposed public bank for at least the
7 first five years of operation. The financial projections shall include
8 an estimate of the time period for when expected revenues meet
9 or exceed expected costs and an estimate of the total operating
10 subsidy that the local agency may be required to provide until the
11 proposed public bank generates sufficient revenue to cover its
12 costs. In addition to projections that assume favorable economic
13 conditions, the analysis shall also include a downside scenario that
14 considers the effect of an economic recession on the financial
15 results of the proposed public bank. The projections may include
16 the downside scenario of continuing to do business with the local
17 government's current banker or bankers.

18 (5) A legal analysis of whether the proposed structure and
19 operations of the public bank would likely comply with Section 6
20 of Article XVI of the California Constitution, but nothing herein
21 shall compel the waiver of any attorney-client privilege attaching
22 to that legal analysis.

23 (6) An analysis of how the proposed governance structure of
24 the public bank would protect the bank from unlawful insider
25 transactions and apparent conflicts of interest.

26 (b) The study may include any of the following elements:

27 (1) A fiscal analysis of benefits associated with starting the
28 proposed public bank, including, but not limited to, cost savings,
29 jobs created, jobs retained, economic activity generated, and private
30 capital leveraged.

31 (2) A qualitative assessment of social or environmental benefits
32 of the proposed public bank.

33 (3) An estimate of the fees paid to the local agency's current
34 banker or bankers.

35 (4) A fiscal analysis of the costs, including social and
36 environmental, of continuing to do business with the local agency's
37 current banker or bankers.

38 (c) (1) The study required by subdivision (a) shall be presented
39 to and approved by the governing body of the local agency, and a
40 motion to move forward with an application for a public banking

1 charter shall be approved by a majority vote of the governing body
2 at a public meeting prior to the local agency submitting an
3 application pursuant to Section 1020 of the Financial Code. In
4 addition, the local agency shall include a copy of the study required
5 by subdivision (a) in the application submitted to the Commissioner
6 of Business Oversight.

7 *(2) Before the local agency submits an application pursuant to*
8 *Section 1020 of the Financial Code, the motion to move forward*
9 *with an application for a public banking charter shall be subject*
10 *to voter approval at the next regularly scheduled election held at*
11 *least 180 days following the vote of the governing body.*

12 *(3) The voter approval requirement described in paragraph (2)*
13 *shall apply to a local agency entering into a joint powers authority*
14 *formed pursuant to the Joint Exercise of Powers Act (Article 1*
15 *commencing with Section 6500) of Chapter 5 of Division 7 of*
16 *Title 1) after the study required in subdivision (a) has been*
17 *completed and before submitting an application to organize and*
18 *establish a public bank pursuant to Section 1020 of the Financial*
19 *Code.*

20 *(4) As used in paragraphs (2) and (3), “local agency” does not*
21 *include a charter city.*

22 (d) The local agency shall make available to the public the
23 financial models and key assumptions used to estimate the elements
24 described in paragraphs (2) through (4) of subdivision (a) before
25 presenting the study to the governing body of the local agency as
26 required by subdivision (c).

27 SEC. 8. Section 23701aa is added to the Revenue and Taxation
28 Code, to read:

29 23701aa. A public bank as defined in Section 57600 of the
30 Government Code. In addition, a public bank is exempt from all
31 other taxes and licenses, state, county, and municipal, imposed
32 upon a public bank, ~~except taxes upon its real property,~~ local utility
33 user taxes, sales and use taxes, state energy resources surcharges,
34 state emergency telephone users surcharges, motor vehicle and
35 other vehicle registration license fees, and any other tax or license
36 fee imposed by the state upon vehicles, motor vehicles, or the
37 operation thereof.

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