

File No. 190951

Committee Item No. _____

Board Item No. 28

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: _____
Board of Supervisors Meeting

Date: _____
Date: September 24, 2019

Cmte Board

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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OTHER

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|--------------------------|-------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>California State Assembly Bill No. 857 - September 6, 2019</u> |
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Prepared by: Brent Jalipa
Prepared by: _____

Date: September 19, 2019
Date: _____

1 [Urging the Governor to Sign California State Assembly Bill No. 857 (Chiu and
2 Santiago) - Public Banks Act]

3 **Resolution urging the Governor to sign into law California State Assembly Bill**
4 **No. 857, authored by State Assembly Members David Chiu and Miguel Santiago,**
5 **the “Public Banks Act,” to provide a pathway for the creation of municipal and**
6 **regional public banks.**

7
8 WHEREAS, San Francisco taxpayer funds are currently held in large commercial
9 banks that engage in practices misaligned with the values of the City and County of San
10 Francisco, including predatory lending and investment in fossil fuels, private prisons,
11 firearms, and more; and

12 WHEREAS, There have been many efforts to gain more control of city taxpayer
13 dollars, including through the San Francisco Treasurer and Tax Collector’s Office
14 development of a Social Responsibility Matrix to guide the investment of city dollars, but
15 these efforts are limited given the lack of alternatives to large commercial banks; and

16 WHEREAS, The Budget and Legislative Analyst for the Board of Supervisors
17 published a policy analysis report in November 2017 entitled, “Community Supportive
18 Banking Options 2017 Update”, which noted that “a public bank would be better
19 equipped to meet the city’s business needs and public policy goals”; and

20 WHEREAS, As recommended by the Board of Supervisors (via Resolution
21 No. 152-17), the Treasurer and Tax Collector convened a Municipal Bank Feasibility
22 Task Force to explore the creation of a municipal public bank and “increase
23 transparency and equity across the City’s financial functions”; and

24 WHEREAS, The Municipal Bank Feasibility Task Force met for eleven months,
25 then releasing a report in March 2019 that provided analysis of some of the financial

1 costs and benefits of creating a municipal bank, and outlined both policy and
2 operational considerations for further consideration; and

3 WHEREAS, California State Assembly Bill No. 857 (AB 857) was introduced by
4 Assembly Members David Chiu and Miguel Santiago in March 2019, to green-light the
5 development of a public banking system in the State of California and provide an
6 alternative to large commercial banks, in order to reinvest public funds for the public
7 good; and

8 WHEREAS, The bill would launch a pilot program, allowing for up to ten public
9 bank charters to be issued over a seven-year trial period, while also guaranteeing three
10 separate levels of regulatory oversight, from the California Department of Business
11 Oversight, the FDIC, and the Federal Reserve; and

12 WHEREAS, The bill would require partnerships between a public bank and
13 existing local financial institutions to provide retail services, enabling public banks to
14 support local credit unions and small banks, as well as small businesses and local non-
15 profits by increasing the lending capacity of the local banking system; and

16 WHEREAS, Over 180 community organizations, labor unions and elected
17 leaders have endorsed AB 857 from across the state of California; and

18 WHEREAS, The Board of Supervisors (via Resolution No. 196-19) unanimously
19 endorsed AB 857 and expressed support for the continued efforts in San Francisco to
20 create and operationalize a municipal public bank; and

21 WHEREAS, AB 857 cleared both houses of the California State Legislature in a
22 historic victory for economic democracy, and moved forward for consideration by the
23 Governor of California, Gavin Newsom; and

24 WHEREAS, Governor Newsom has previously expressed support for public
25 banking and a critique of the large commercial banking system that severely limits

1 the options for governments to reinvest tax dollars in public priorities; now, therefore, be
2 it

3 RESOLVED, That Board of Supervisors continues to support local efforts to
4 establish a municipal public bank in San Francisco; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors commends both houses of
6 the California State Legislature for passage of such a groundbreaking bill; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors urges Governor Gavin
8 Newsom to sign California State Assembly Bill No. 857 into law and allow for a pathway
9 for local and regional public banks in the State of California; and, be it

10 FURTHER RESOLVED, That the City and County of San Francisco hereby
11 directs the Clerk of the Board to transmit a copy of this Resolution to the Office of the
12 Governor of California.

AMENDED IN SENATE SEPTEMBER 6, 2019

AMENDED IN SENATE AUGUST 30, 2019

AMENDED IN SENATE JULY 9, 2019

AMENDED IN SENATE JUNE 20, 2019

AMENDED IN ASSEMBLY MAY 17, 2019

AMENDED IN ASSEMBLY APRIL 29, 2019

AMENDED IN ASSEMBLY MARCH 19, 2019

CALIFORNIA LEGISLATURE—2019—20 REGULAR SESSION

ASSEMBLY BILL

No. 857

Introduced by Assembly Members Chiu and Santiago

**(Coauthors: Assembly Members Bonta, Carrillo, Chu, *Friedman*,
Gipson, Gonzalez, Kalra, Luz Rivas, Mark Stone, McCarty,
Nazarian, Ting, and Wicks)**

**(Coauthors: Senators Beall, Hill, Hueso, Skinner, Wieckowski, and
Wiener)**

February 20, 2019

An act to amend Sections 5130 and 7130 of the Corporations Code, to amend Sections 119, 1004, and 1100 of, and to add Section 1008 to, the Financial Code, to amend Sections 6254.26, 23007, 53601, 53635, and 53635.2 of, to add Division 5 (commencing with Section 57600) to Title 5 of, and to add Sections ~~6254.34~~, 6254.35, 54956.97, and 54956.98 to, 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, the Nonprofit Corporation Law, regulates the formation and conduct of a nonprofit mutual benefit corporation and a nonprofit public benefit corporation.

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 as either a nonprofit mutual benefit corporation or a nonprofit public benefit corporation 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 prohibit the commissioner from issuing more than 2 public bank licenses, as defined, in a calendar year and would prohibit the commissioner from authorizing more than 10 public banks at one time. The bill would require a public bank to include a specified purpose statement in its articles of incorporation and make conforming changes. 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 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 authorize a public bank to make distributions to its members. The bill would require, as specified, a public bank to conduct retail activities in partnership with local financial institutions and would prohibit a public bank from competing with local financial institutions.

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.

Existing law, the Ralph M. Brown Act, requires that all meetings of the legislative body, as defined, of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized.

This bill would authorize the governing board of a public bank or a committee of that governing board to meet in a closed session to consider and take action on matters pertaining to a loan or investment decision, a decision of the internal audit committee, the compliance committee, or the governance committee, and a meeting with a state or federal regulator. The bill would authorize a public bank to make all information received by a shareholder, member, or owner of a public bank to be confidential, as specified.

Existing law, the California Public Records Act, requires that public records, as defined, be available to the public for inspection and made promptly available to any person.

This bill would exempt specified information and records of a public bank, and related decisions of the directors, officers, and managers of the public bank, from the disclosure requirements of the act, including, among others, records related to alternative investments of the bank, as specified, meeting materials of any closed session, a record containing information regarding a portfolio position in which the public bank invests, information related to a specific account in the bank, and specified correspondence related to meetings with, or a memorandum or letter received from, state and federal banking regulators.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

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 public banks for the purpose of achieving cost
4 savings, strengthening local economies, supporting community
5 economic development, and addressing infrastructure and housing
6 needs for localities. It is the intent of the Legislature that public
7 banks shall partner with local financial institutions, such as credit
8 unions and local community banks, and shall not compete with
9 local financial institutions.

10 SEC. 2. Section 5130 of the Corporations Code is amended to
11 read:

12 5130. The articles of incorporation of a corporation formed
13 under this part shall set forth:

14 (a) The name of the corporation.

15 (b) (1) Except as provided in paragraph (2), the following
16 statement:

17
18 “This corporation is a nonprofit public benefit corporation and
19 is not organized for the private gain of any person. It is organized
20 under the Nonprofit Public Benefit Corporation Law for (public
21 or charitable [insert one or both]) purposes.”

1 [If the purposes include “public” purposes, the articles shall,
2 and in all other cases the articles may, include a further
3 description of the corporation’s purposes.]
4

5 (2) If the corporation is a public bank, as defined in Section
6 57600 of the Government Code, the articles shall set forth a
7 statement of purpose that is prescribed in subdivision (b) of Section
8 57601 of the Government Code.

9 (c) The name and street address in this state of the corporation’s
10 initial agent for service of process in accordance with subdivision
11 (b) of Section 6210.

12 (d) The initial street address of the corporation.

13 (e) The initial mailing address of the corporation, if different
14 from the initial street address.

15 SEC. 3. Section 7130 of the Corporations Code is amended to
16 read:

17 7130. The articles of incorporation of a corporation formed
18 under this part shall set forth the following:

19 (a) The name of the corporation.

20 (b) (1) Except as provided in paragraph (2) or (3), the following
21 statement:

22 “This corporation is a nonprofit mutual benefit corporation
23 organized under the Nonprofit Mutual Benefit Corporation Law.
24 The purpose of this corporation is to engage in any lawful act or
25 activity, other than credit union business, for which a corporation
26 may be organized under such law.”

27 (2) In the case of a corporation formed under this part that is
28 subject to the California Credit Union Law (Chapter 1
29 (commencing with Section 14000) of Division 5 of the Financial
30 Code), the articles shall set forth a statement of purpose that is
31 prescribed in the applicable provisions of the California Credit
32 Union Law.

33 (3) In the case of a corporation formed under this part that is a
34 public bank, as defined in Section 57600 of the Government Code,
35 the articles shall set forth a statement of purpose that is prescribed
36 in subdivision (a) of Section 57601 of the Government Code.

37 (4) The articles may include a further definition of the
38 corporation’s purposes.

1 (c) The name and street address in this state of the corporation's
2 initial agent for service of process in accordance with subdivision
3 (b) of Section 8210.

4 (d) The initial street address of the corporation.

5 (e) The initial mailing address of the corporation, if different
6 from the initial street address.

7 SEC. 4. Section 119 of the Financial Code is amended to read:

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

13 SEC. 5. Section 1004 of the Financial Code is amended to read:

14 1004. (a) A California state bank is a corporation incorporated
15 under Division 1 (commencing with Section 100) of Title 1 of the
16 Corporations Code or, in the case of a public bank, a corporation
17 incorporated under Part 2 (commencing with Section 5110) or Part
18 3 (commencing with Section 7110) of Division 2 of Title 1 of the
19 Corporations Code, that is, with the approval of the commissioner,
20 incorporated for the purpose of engaging in, or that is authorized
21 by the commissioner to engage in, the commercial or industrial
22 banking business.

23 (b) (1) All provisions of law applicable to corporations
24 generally, including, but not limited to, the General Corporation
25 Law (Division 1 (commencing with Section 100), Title 1 of the
26 Corporations Code) shall apply to a bank that is not a public bank.
27 However, whenever any provision of this division or any regulation
28 or order issued under any provision (other than this section) of this
29 division applicable to banks is inconsistent with any provision of
30 law applicable to corporations generally, that provision of this
31 division or that regulation or order shall apply and the provision
32 of law applicable to corporations generally shall not apply.

33 (2) *All provisions of law applicable to nonprofit corporations*
34 *generally, including, but not limited to, the Nonprofit Corporation*
35 *Law (Division 2 (commencing with Section 5000), Title 1 of the*
36 *Corporations Code) shall apply to public banks. Whenever a*
37 *provision of Division 5 of Title 5 of the Government Code*
38 *applicable to public banks is inconsistent with a provision of law*
39 *applicable to nonprofit mutual benefit corporations or nonprofit*
40 *public benefit corporations generally, the provision of Division 5*

1 *of Title 5 of the Government Code applicable to public banks shall*
2 *apply, and the inconsistent provision of law applicable to nonprofit*
3 *mutual benefit corporations or nonprofit public benefit*
4 *corporations generally shall not apply to a public bank.*

5 (c) As used in this section, public bank has the same meaning
6 as defined in Section 57600 of the Government Code.

7 SEC. 6. Section 1008 is added to the Financial Code, to read:

8 1008. When applicable to a corporation organized as a public
9 bank, as defined in Section 57600 of the Government Code,
10 references in this division to share, shareholder, or stockholder
11 shall mean membership or member in the public bank, as
12 applicable.

13 SEC. 7. Section 1100 of the Financial Code is amended to read:

14 1100. The articles of each bank shall contain the applicable
15 one of the following statements:

16 (a) Except as provided in subdivision (f), if the bank is, or is
17 proposed to be, a commercial bank not authorized to engage in
18 trust business, that the purpose of the corporation is to engage in
19 commercial banking business and any other lawful activities which
20 are not, by applicable laws or regulations, prohibited to a
21 commercial bank.

22 (b) Except as provided in subdivision (f), if the bank is, or is
23 proposed to be, a commercial bank authorized to engage in trust
24 business, that the purpose of the corporation is to engage in
25 commercial banking business and trust business and any other
26 lawful activities which are not, by applicable laws or regulations,
27 prohibited to a commercial bank authorized to engage in trust
28 business.

29 (c) Except as provided in subdivision (f), if the bank is, or is
30 proposed to be, an industrial bank not authorized to engage in trust
31 business, that the purpose of the corporation is to engage in
32 industrial banking business and any other lawful activities which
33 are not, by applicable laws or regulations, prohibited to an
34 industrial bank.

35 (d) Except as provided in paragraph (f), if the bank is, or is
36 proposed to be, an industrial bank authorized to engage in trust
37 business, that the purpose of the corporation is to engage in
38 industrial banking business and trust business and any other lawful
39 activities which are not, by applicable laws or regulations,

1 prohibited to an industrial bank authorized to engage in trust
2 business.

3 (e) In case the bank is, or is proposed to be, a trust company
4 (other than a commercial bank authorized to engage in trust
5 business), that the purpose of the corporation is to engage in trust
6 business and any other lawful activities which are not, by
7 applicable laws or regulations, prohibited to a trust company.

8 (f) If the bank is, or is proposed to be, a public bank, the articles
9 shall set forth a statement of purpose that is prescribed in
10 subdivision (a) or (b) of Section 57601 of the Government Code.

11 SEC. 8. Section 6254.26 of the Government Code is amended
12 to read:

13 6254.26. (a) Notwithstanding any provision of this chapter or
14 other law, the following records regarding alternative investments
15 in which public investment funds invest shall not be subject to
16 disclosure pursuant to this chapter, unless the information has
17 already been publicly released by the keeper of the information:

18 (1) Due diligence materials that are proprietary to the public
19 investment fund or the alternative investment vehicle.

20 (2) Quarterly and annual financial statements of alternative
21 investment vehicles.

22 (3) Meeting materials of alternative investment vehicles.

23 (4) Records containing information regarding the portfolio
24 positions in which alternative investment funds invest.

25 (5) Capital call and distribution notices.

26 (6) Alternative investment agreements and all related documents.

27 (b) Notwithstanding subdivision (a), the following information
28 contained in records described in subdivision (a) regarding
29 alternative investments in which public investment funds invest
30 shall be subject to disclosure pursuant to this chapter and shall not
31 be considered a trade secret exempt from disclosure:

32 (1) The name, address, and vintage year of each alternative
33 investment vehicle.

34 (2) The dollar amount of the commitment made to each
35 alternative investment vehicle by the public investment fund since
36 inception.

37 (3) The dollar amount of cash contributions made by the public
38 investment fund to each alternative investment vehicle since
39 inception.

1 (4) The dollar amount, on a fiscal yearend basis, of cash
2 distributions received by the public investment fund from each
3 alternative investment vehicle.

4 (5) The dollar amount, on a fiscal yearend basis, of cash
5 distributions received by the public investment fund plus remaining
6 value of partnership assets attributable to the public investment
7 fund's investment in each alternative investment vehicle.

8 (6) The net internal rate of return of each alternative investment
9 vehicle since inception.

10 (7) The investment multiple of each alternative investment
11 vehicle since inception.

12 (8) The dollar amount of the total management fees and costs
13 paid on an annual fiscal yearend basis, by the public investment
14 fund to each alternative investment vehicle.

15 (9) The dollar amount of cash profit received by public
16 investment funds from each alternative investment vehicle on a
17 fiscal year-end basis.

18 (c) For purposes of this section, the following definitions shall
19 apply:

20 (1) "Alternative investment" means an investment in a private
21 equity fund, venture fund, hedge fund, or absolute return fund.

22 (2) "Alternative investment vehicle" means the limited
23 partnership, limited liability company, or similar legal structure
24 through which the public investment fund invests in portfolio
25 companies.

26 (3) "Portfolio positions" means individual portfolio investments
27 made by the alternative investment vehicles.

28 (4) "Public investment fund" means any public pension or
29 retirement system, any public endowment or foundation, or a public
30 bank, as defined in Section 57600.

31 ~~SEC. 9. Section 6254.34 is added to the Government Code, to~~
32 ~~read:~~

33 *SEC. 9. Section 6254.35 is added to the Government Code, to*
34 *read:*

35 ~~6254.34.~~

36 6254.35. (a) For purposes of this section, the following
37 definitions shall apply:

38 (1) "Customer" means a person or entity that has transacted or
39 is transacting business with or has used or is using the services of

1 a public bank or a person or entity for whom the public bank has
2 acted as a fiduciary with respect to trust property.

3 (2) "Investment recipient" means an entity in which the public
4 bank invests.

5 (3) "Loan recipient" means an entity or individual which has
6 received a loan from the public bank.

7 (4) "Personal data" means social security numbers, tax
8 identification numbers, physical descriptions, home addresses,
9 home telephone numbers, statements of personal worth or any
10 other personal financial data, employment histories, electronic
11 mail addresses, and information that reveals any electronic network
12 location or identity.

13 (5) "Public bank" has the same meaning as defined in Section
14 57600.

15 (b) Notwithstanding another provision of this chapter, the
16 following information and records of a public bank and the related
17 decisions of the directors, officers, and managers of a public bank
18 shall not be subject to disclosure pursuant to this chapter, unless
19 the information has already been publicly released by the custodian
20 of the information:

21 (1) Due diligence materials that are proprietary to the public
22 bank.

23 (2) A memorandum or letter produced and distributed internally
24 by the public bank.

25 (3) A commercial or personal financial statement or other
26 financial data received from an actual or potential customer, loan
27 recipient, or investment recipient.

28 (4) Meeting materials of a closed session meeting, or a closed
29 session portion of a meeting, of the board of directors, a committee
30 of the board of directors, or executives of a public bank.

31 (5) A record containing information regarding a portfolio
32 position in which the public bank invests.

33 (6) A record containing information regarding a specific loan
34 amount or loan term, or information received from a loan recipient
35 or customer pertaining to a loan or an application for a loan.

36 (7) A capital call or distribution notice, or a notice to a loan
37 recipient or customer regarding a loan or account with the public
38 bank.

39 (8) An investment agreement, loan agreement, deposit
40 agreement, or a related document.

1 (9) Specific account information or other personal data received
2 by the public bank from an actual or potential customer, investment
3 recipient, or loan recipient.

4 (10) A memorandum or letter produced and distributed for
5 purposes of meetings with a federal or state banking regulator.

6 (11) A memorandum or letter received from a federal or state
7 banking regulator.

8 (12) Meeting materials of the internal audit committee, the
9 compliance committee, or the governance committee of the Board
10 of Directors of a public bank.

11 (c) Notwithstanding subdivision (b), the following information
12 contained in records described in subdivision (b) shall be subject
13 to disclosure pursuant to this chapter and shall not be considered
14 a trade secret exempt from disclosure:

15 (1) The name, title, and appointment year of each director and
16 executive of the public bank.

17 (2) The name and address of each current investment recipient
18 in which the public bank currently invests.

19 (3) General internal performance metrics of the public bank and
20 financial statements of the bank, as specified or required by the
21 public bank's charter or as required by federal law.

22 (4) Final audit reports of the public bank's independent auditors,
23 although disclosure to an independent auditor of any information
24 described in subdivision (b) shall not be construed to permit public
25 disclosure of that information provided to the auditor.

26 SEC. 10. Section 23007 of the Government Code is amended
27 to read:

28 23007. Except as specified in this chapter, a county shall not,
29 in any manner, give or loan its credit to or in aid of any person or
30 corporation that is not a public bank, as defined in Section 57600.
31 An indebtedness or liability incurred contrary to this chapter is
32 void.

33 SEC. 11. Section 53601 of the Government Code is amended
34 to read:

35 53601. This section shall apply to a local agency that is a city,
36 a district, or other local agency that does not pool money in
37 deposits or investments with other local agencies, other than local
38 agencies that have the same governing body. However, Section
39 53635 shall apply to all local agencies that pool money in deposits
40 or investments with other local agencies that have separate

1 governing bodies. The legislative body of a local agency having
2 moneys in a sinking fund or moneys in its treasury not required
3 for the immediate needs of the local agency may invest any portion
4 of the moneys that it deems wise or expedient in those investments
5 set forth below. A local agency purchasing or obtaining any
6 securities prescribed in this section, in a negotiable, bearer,
7 registered, or nonregistered format, shall require delivery of the
8 securities to the local agency, including those purchased for the
9 agency by financial advisers, consultants, or managers using the
10 agency's funds, by book entry, physical delivery, or by third-party
11 custodial agreement. The transfer of securities to the counterparty
12 bank's customer book entry account may be used for book entry
13 delivery.

14 For purposes of this section, "counterparty" means the other
15 party to the transaction. A counterparty bank's trust department
16 or separate safekeeping department may be used for the physical
17 delivery of the security if the security is held in the name of the
18 local agency. Where this section specifies a percentage limitation
19 for a particular category of investment, that percentage is applicable
20 only at the date of purchase. Where this section does not specify
21 a limitation on the term or remaining maturity at the time of the
22 investment, no investment shall be made in any security, other
23 than a security underlying a repurchase or reverse repurchase
24 agreement or securities lending agreement authorized by this
25 section, that at the time of the investment has a term remaining to
26 maturity in excess of five years, unless the legislative body has
27 granted express authority to make that investment either
28 specifically or as a part of an investment program approved by the
29 legislative body no less than three months prior to the investment:

30 (a) Bonds issued by the local agency, including bonds payable
31 solely out of the revenues from a revenue-producing property
32 owned, controlled, or operated by the local agency or by a
33 department, board, agency, or authority of the local agency.

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

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

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

6 (e) Bonds, notes, warrants, or other evidences of indebtedness
7 of a local agency within this state, including bonds payable solely
8 out of the revenues from a revenue-producing property owned,
9 controlled, or operated by the local agency, or by a department,
10 board, agency, or authority of the local agency.

11 (f) Federal agency or United States government-sponsored
12 enterprise obligations, participations, or other instruments,
13 including those issued by or fully guaranteed as to principal and
14 interest by federal agencies or United States government-sponsored
15 enterprises.

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

23 This subdivision does not preclude a municipal utility district
24 from investing moneys in its treasury in a manner authorized by
25 the Municipal Utility District Act (Division 6 (commencing with
26 Section 11501) of the Public Utilities Code).

27 (h) Commercial paper of "prime" quality of the highest ranking
28 or of the highest letter and number rating as provided for by a
29 nationally recognized statistical rating organization (NRSRO).
30 The entity that issues the commercial paper shall meet all of the
31 following conditions in either paragraph (1) or (2):

32 (1) The entity meets the following criteria:

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

35 (B) Has total assets in excess of five hundred million dollars
36 (\$500,000,000).

37 (C) Has debt other than commercial paper, if any, that is rated
38 in a rating category of "A" or its equivalent or higher by an
39 NRSRO.

40 (2) The entity meets the following criteria:

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

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

5 (C) Has commercial paper that is rated "A-1" or higher, or the
6 equivalent, by an NRSRO.

7 Eligible commercial paper shall have a maximum maturity of
8 270 days or less. Local agencies, other than counties or a city and
9 county, may invest no more than 25 percent of their moneys in
10 eligible commercial paper. Local agencies, other than counties or
11 a city and county, may purchase no more than 10 percent of the
12 outstanding commercial paper of any single issuer. Counties or a
13 city and county may invest in commercial paper pursuant to the
14 concentration limits in subdivision (a) of Section 53635.

15 (i) Negotiable certificates of deposit issued by a nationally or
16 state-chartered bank, a savings association or a federal association
17 (as defined by Section 5102 of the Financial Code), a state or
18 federal credit union, or by a federally licensed or state-licensed
19 branch of a foreign bank. Purchases of negotiable certificates of
20 deposit shall not exceed 30 percent of the agency's moneys that
21 may be invested pursuant to this section. For purposes of this
22 section, negotiable certificates of deposit do not come within
23 Article 2 (commencing with Section 53630), except that the amount
24 so invested shall be subject to the limitations of Section 53638.
25 The legislative body of a local agency and the treasurer or other
26 official of the local agency having legal custody of the moneys
27 are prohibited from investing local agency funds, or funds in the
28 custody of the local agency, in negotiable certificates of deposit
29 issued by a state or federal credit union if a member of the
30 legislative body of the local agency, or a person with investment
31 decisionmaking authority in the administrative office manager's
32 office, budget office, auditor-controller's office, or treasurer's
33 office of the local agency also serves on the board of directors, or
34 any committee appointed by the board of directors, or the credit
35 committee or the supervisory committee of the state or federal
36 credit union issuing the negotiable certificates of deposit.

37 (j) (1) Investments in repurchase agreements or reverse
38 repurchase agreements or securities lending agreements of
39 securities authorized by this section, as long as the agreements are

1 subject to this subdivision, including the delivery requirements
2 specified in this section.

3 (2) Investments in repurchase agreements may be made, on an
4 investment authorized in this section, when the term of the
5 agreement does not exceed one year. The market value of securities
6 that underlie a repurchase agreement shall be valued at 102 percent
7 or greater of the funds borrowed against those securities and the
8 value shall be adjusted no less than quarterly. Since the market
9 value of the underlying securities is subject to daily market
10 fluctuations, the investments in repurchase agreements shall be in
11 compliance if the value of the underlying securities is brought back
12 up to 102 percent no later than the next business day.

13 (3) Reverse repurchase agreements or securities lending
14 agreements may be utilized only when all of the following
15 conditions are met:

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

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

22 (C) The agreement does not exceed a term of 92 days, unless
23 the agreement includes a written codicil guaranteeing a minimum
24 earning or spread for the entire period between the sale of a security
25 using a reverse repurchase agreement or securities lending
26 agreement and the final maturity date of the same security.

27 (D) Funds obtained or funds within the pool of an equivalent
28 amount to that obtained from selling a security to a counterparty
29 using a reverse repurchase agreement or securities lending
30 agreement shall not be used to purchase another security with a
31 maturity longer than 92 days from the initial settlement date of the
32 reverse repurchase agreement or securities lending agreement,
33 unless the reverse repurchase agreement or securities lending
34 agreement includes a written codicil guaranteeing a minimum
35 earning or spread for the entire period between the sale of a security
36 using a reverse repurchase agreement or securities lending
37 agreement and the final maturity date of the same security.

38 (4) (A) Investments in reverse repurchase agreements, securities
39 lending agreements, or similar investments in which the local
40 agency sells securities prior to purchase with a simultaneous

1 agreement to repurchase the security may be made only upon prior
2 approval of the governing body of the local agency and shall be
3 made only with primary dealers of the Federal Reserve Bank of
4 New York or with a nationally or state-chartered bank that has or
5 has had a significant banking relationship with a local agency.

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

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

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

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

14 (5) (A) “Repurchase agreement” means a purchase of securities
15 by the local agency pursuant to an agreement by which the
16 counterparty seller will repurchase the securities on or before a
17 specified date and for a specified amount and the counterparty will
18 deliver the underlying securities to the local agency by book entry,
19 physical delivery, or by third-party custodial agreement. The
20 transfer of underlying securities to the counterparty bank’s
21 customer book-entry account may be used for book-entry delivery.

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

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

29 (D) “Securities lending agreement” means an agreement under
30 which a local agency agrees to transfer securities to a borrower
31 who, in turn, agrees to provide collateral to the local agency.
32 During the term of the agreement, both the securities and the
33 collateral are held by a third party. At the conclusion of the
34 agreement, the securities are transferred back to the local agency
35 in return for the collateral.

36 (E) For purposes of this section, the base value of the local
37 agency’s pool portfolio shall be that dollar amount obtained by
38 totaling all cash balances placed in the pool by all pool participants,
39 excluding any amounts obtained through selling securities by way

1 of reverse repurchase agreements, securities lending agreements,
2 or other similar borrowing methods.

3 (F) For purposes of this section, the spread is the difference
4 between the cost of funds obtained using the reverse repurchase
5 agreement and the earnings obtained on the reinvestment of the
6 funds.

7 (k) Medium-term notes, defined as all corporate and depository
8 institution debt securities with a maximum remaining maturity of
9 five years or less, issued by corporations organized and operating
10 within the United States or by depository institutions licensed by
11 the United States or any state and operating within the United
12 States. Notes eligible for investment under this subdivision shall
13 be rated in a rating category of "A" or its equivalent or better by
14 an NRSRO. Purchases of medium-term notes shall not include
15 other instruments authorized by this section and shall not exceed
16 30 percent of the agency's moneys that may be invested pursuant
17 to this section.

18 (l) (1) Shares of beneficial interest issued by diversified
19 management companies that invest in the securities and obligations
20 as authorized by subdivisions (a) to (k), inclusive, and subdivisions
21 (m) to (q), inclusive, and that comply with the investment
22 restrictions of this article and Article 2 (commencing with Section
23 53630). However, notwithstanding these restrictions, a counterparty
24 to a reverse repurchase agreement or securities lending agreement
25 is not required to be a primary dealer of the Federal Reserve Bank
26 of New York if the company's board of directors finds that the
27 counterparty presents a minimal risk of default, and the value of
28 the securities underlying a repurchase agreement or securities
29 lending agreement may be 100 percent of the sales price if the
30 securities are marked to market daily.

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

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

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

39 (B) Retained an investment adviser registered or exempt from
40 registration with the Securities and Exchange Commission with

1 not less than five years' experience investing in the securities and
2 obligations authorized by subdivisions (a) to (k), inclusive, and
3 subdivisions (m) to (q), inclusive, and with assets under
4 management in excess of five hundred million dollars
5 (\$500,000,000).

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

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

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

15 (5) The purchase price of shares of beneficial interest purchased
16 pursuant to this subdivision shall not include commission that the
17 companies may charge and shall not exceed 20 percent of the
18 agency's moneys that may be invested pursuant to this section.
19 However, no more than 10 percent of the agency's funds may be
20 invested in shares of beneficial interest of any one mutual fund
21 pursuant to paragraph (1).

22 (m) Moneys held by a trustee or fiscal agent and pledged to the
23 payment or security of bonds or other indebtedness, or obligations
24 under a lease, installment sale, or other agreement of a local
25 agency, or certificates of participation in those bonds, indebtedness,
26 or lease installment sale, or other agreements, may be invested in
27 accordance with the statutory provisions governing the issuance
28 of those bonds, indebtedness, or lease installment sale, or other
29 agreement, or to the extent not inconsistent therewith or if there
30 are no specific statutory provisions, in accordance with the
31 ordinance, resolution, indenture, or agreement of the local agency
32 providing for the issuance.

33 (n) Notes, bonds, or other obligations that are at all times secured
34 by a valid first priority security interest in securities of the types
35 listed by Section 53651 as eligible securities for the purpose of
36 securing local agency deposits having a market value at least equal
37 to that required by Section 53652 for the purpose of securing local
38 agency deposits. The securities serving as collateral shall be placed
39 by delivery or book entry into the custody of a trust company or
40 the trust department of a bank that is not affiliated with the issuer

1 of the secured obligation, and the security interest shall be perfected
2 in accordance with the requirements of the Uniform Commercial
3 Code or federal regulations applicable to the types of securities in
4 which the security interest is granted.

5 (o) A mortgage passthrough security, collateralized mortgage
6 obligation, mortgage-backed or other pay-through bond, equipment
7 lease-backed certificate, consumer receivable passthrough
8 certificate, or consumer receivable-backed bond. Securities eligible
9 for investment under this subdivision shall be rated in a rating
10 category of "AA" or its equivalent or better by an NRSRO and
11 have a maximum remaining maturity of five years or less. Purchase
12 of securities authorized by this subdivision shall not exceed 20
13 percent of the agency's surplus moneys that may be invested
14 pursuant to this section.

15 (p) Shares of beneficial interest issued by a joint powers
16 authority organized pursuant to Section 6509.7 that invests in the
17 securities and obligations authorized in subdivisions (a) to ~~(q)~~, (r),
18 inclusive. Each share shall represent an equal proportional interest
19 in the underlying pool of securities owned by the joint powers
20 authority. To be eligible under this section, the joint powers
21 authority issuing the shares shall have retained an investment
22 adviser that meets all of the following criteria:

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

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

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

30 (q) United States dollar denominated senior unsecured
31 unsubordinated obligations issued or unconditionally guaranteed
32 by the International Bank for Reconstruction and Development,
33 International Finance Corporation, or Inter-American Development
34 Bank, with a maximum remaining maturity of five years or less,
35 and eligible for purchase and sale within the United States.
36 Investments under this subdivision shall be rated in a rating
37 category of "AA" or its equivalent or better by an NRSRO and
38 shall not exceed 30 percent of the agency's moneys that may be
39 invested pursuant to this section.

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

3 SEC. 12. Section 53635 of the Government Code is amended
4 to read:

5 53635. (a) This section shall apply to a local agency that is a
6 county, a city and county, or other local agency that pools money
7 in deposits or investments with other local agencies, including
8 local agencies that have the same governing body. However,
9 Section 53601 shall apply to all local agencies that pool money in
10 deposits or investments exclusively with local agencies that have
11 the same governing body.

12 This section shall be interpreted in a manner that recognizes the
13 distinct characteristics of investment pools and the distinct
14 administrative burdens on managing and investing funds on a
15 pooled basis pursuant to Article 6 (commencing with Section
16 27130) of Chapter 5 of Division 2 of Title 3.

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

22 (1) No more than 40 percent of the local agency's money may
23 be invested in eligible commercial paper.

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

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

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

34 SEC. 13. Section 53635.2 of the Government Code is amended
35 to read:

36 53635.2. As far as possible, all money belonging to, or in the
37 custody of, a local agency, including money paid to the treasurer
38 or other official to pay the principal, interest, or penalties of bonds,
39 shall be deposited for safekeeping in state or national banks, public
40 banks, savings associations, federal associations, credit unions, or

1 federally insured industrial loan companies in this state selected
2 by the treasurer or other official having legal custody of the money;
3 or may be invested in the investments set forth in Section 53601.
4 To be eligible to receive local agency money, a bank, savings
5 association, federal association, or federally insured industrial loan
6 company shall have received an overall rating of not less than
7 “satisfactory” in its most recent evaluation by the appropriate
8 federal financial supervisory agency of its record of meeting the
9 credit needs of California’s communities, including low- and
10 moderate-income neighborhoods, pursuant to Section 2906 of Title
11 12 of the United States Code. Sections 53601.5 and 53601.6 shall
12 apply to all investments that are acquired pursuant to this section.

13 SEC. 14. Section 54956.97 is added to the Government Code,
14 to read:

15 54956.97. Notwithstanding any provision of law, the governing
16 board, or a committee of the governing board, of a public bank,
17 as defined in Section 57600 of the Government Code, may meet
18 in closed session to consider and take action on matters pertaining
19 to all of the following:

- 20 (a) A loan or investment decision.
- 21 (b) A decision of the internal audit committee, the compliance
22 committee, or the governance committee.
- 23 (c) A meeting with a state or federal regulator.

24 SEC. 15. Section 54956.98 is added to the Government Code,
25 to read:

26 54956.98. (a) For purposes of this section, the following
27 definitions shall apply:

- 28 (1) “Shareholder, member, or owner local agency” or
29 “shareholder, member, or owner” means a local agency that is a
30 shareholder of a public bank.
- 31 (2) “Public bank” has the same meaning as defined in Section
32 57600.

33 (b) The governing board of a public bank may adopt a policy
34 or a bylaw or include in its governing documents provisions that
35 authorize any of the following:

- 36 (1) All information received by a shareholder, member, or owner
37 of the public bank in a closed session related to the information
38 presented to the governing board of a public bank in closed session
39 shall be confidential. However, a member of the governing board
40 of a shareholder, member, or owner local agency may disclose

1 information obtained in a closed session that has direct financial.
2 or liability implications for that local agency to the following
3 individuals:

4 (A) Legal counsel of that shareholder, member, or owner local
5 agency for purposes of obtaining advice on whether the matter has
6 direct financial or liability implications for that shareholder local
7 agency.

8 (B) Other members of the governing board of the local agency
9 present in a closed session of that shareholder, member, or owner
10 local agency.

11 (2) A designated alternate member of the governing board of
12 the public bank who is also a member of the governing board of
13 a shareholder, member, or owner local agency and who is attending
14 a properly noticed meeting of the public bank governing board in
15 lieu of a shareholder, member, or owner local agency's regularly
16 appointed member may attend a closed session of the public bank
17 governing board.

18 (c) If the governing board of a public bank adopts a policy or a
19 bylaw or includes provisions in its governing documents pursuant
20 to subdivision (b), then the governing board of the shareholder,
21 member, or owner local agency, upon the advice of its legal
22 counsel, may conduct a closed session in order to receive, discuss,
23 and take action concerning information obtained in a closed session
24 of the public bank governing board pursuant to paragraph (1) of
25 subdivision (b).

26 SEC. 16. Division 5 (commencing with Section 57600) is added
27 to Title 5 of the Government Code, to read:

28
29 DIVISION 5. PUBLIC BANKS

30
31 57600. For purposes of this division:

32 (a) "Local financial institution" means a certified community
33 development financial institution, a credit union, as defined in
34 Section 165 of the Financial Code, or a small bank or an
35 intermediate small bank, as defined in Section 25.12 of Title 12
36 of the Code of Federal Regulations.

37 (b) (1) "Public bank" means a corporation, organized under the
38 Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing
39 with Section 7110) of Division 2 of Title 1 of the Corporations
40 Code) or the Nonprofit Public Benefit Corporation Law (Part 2

1 (commencing with Section 5110) of Division 2 of Title 1 of the
2 Corporations Code) for the purpose of engaging in the commercial
3 banking business or industrial banking business, that is wholly
4 owned by a local agency, local agencies, or a joint powers authority
5 formed pursuant to the Joint Exercise of Powers Act (Article 1
6 (commencing with Section 6500) of Chapter 5 of Division 7 of
7 Title 1) that is composed only 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 (c) "Public bank license" means a certificate of authorization
15 to transact business as a bank as described in Section 1042 of the
16 Financial Code.

17 57601. (a) If a public bank is organized as a nonprofit mutual
18 benefit corporation, the articles of incorporation shall include the
19 following purpose statement: "This corporation is a nonprofit
20 mutual benefit corporation organized under the Nonprofit Mutual
21 Benefit Corporation Law as a public bank. The purpose of the
22 corporation is to engage in the commercial banking business or
23 industrial banking business and any other lawful activities which
24 are not prohibited to a public bank by applicable laws or
25 regulations."

26 (b) If a public bank is organized as a nonprofit public benefit
27 corporation, the articles of incorporation shall include the following
28 purpose statement: "This corporation is a nonprofit public benefit
29 corporation and is not organized for the private gain of any person.
30 It is organized under the Nonprofit Public Benefit Corporation
31 Law for the public purpose of engaging in the commercial banking
32 business or industrial banking business as a public bank."

33 (c) Notwithstanding Sections 5410 and 7411 of the Corporations
34 Code, a public bank may make distributions to its members.

35 (d) All provisions of law applicable to nonprofit corporations
36 generally, including, but not limited to, the Nonprofit Corporation
37 Law (Division 2 (commencing with Section 5000) of Title 1 of
38 the Corporations Code) shall apply to public banks. Whenever a
39 provision of this division applicable to public banks is inconsistent
40 with a provision of law applicable to nonprofit mutual benefit

1 corporations or nonprofit public benefit corporations generally,
2 the provision of this division shall apply, and the inconsistent
3 provision of law applicable to nonprofit mutual benefit corporations
4 or nonprofit public benefit corporations generally shall not apply
5 to a public bank.

6 57602. (a) A public bank shall obtain and maintain deposit
7 insurance provided by the Federal Deposit Insurance Corporation
8 under the Federal Deposit Insurance Act (12 U.S.C. Sec. 1811 et
9 seq.).

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

13 57603. (a) Before engaging in business, a public bank shall
14 obtain a certificate of authorization to transact business as a bank
15 pursuant to Division 1.1 of the Financial Code (commencing with
16 Section 1000).

17 (b) A local agency shall comply with the requirements of Section
18 53638 with respect to its deposits in a public bank unless, with the
19 prior approval of the Commissioner of Business Oversight, the
20 public bank and the local agency depositor agree otherwise.

21 (c) Notwithstanding Section 23010, a county may lend any of
22 its available funds to any public bank.

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

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

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

33 57604. (a) As used in this section:

34 (1) "Conducted in partnership with" means pursuant to a written
35 agreement with a local financial institution to provide financial
36 products and services to the public located within the jurisdiction
37 of the public bank.

38 (2) "Infrastructure lending" means granting a loan or extending
39 credit to a local agency for the purpose of building or improving
40 public infrastructure, including housing projects, as defined in

1 Section 34212 of the Health and Safety Code, and affordable
2 housing, as defined in subdivision (a) of Section 62250.

3 (3) "Local agency banking" means providing any of the
4 following services to a local agency:

5 (A) Accepting a deposit of any kind.

6 (B) Granting a loan or extension of credit of any kind.

7 (4) "Participation lending" means purchasing or selling an
8 interest in a loan or loans originated by or sold to a local financial
9 institution, or originating, leading, or directing a loan transaction
10 involving a local financial institution pursuant to a written
11 agreement with the local financial institution.

12 (5) "Person" means a person as defined in Section 127 of the
13 Financial Code, except that a person does not mean a local agency
14 as defined in Section 50001 of the Government Code, but includes
15 any individual employed by a local agency.

16 (6) "Retail activities" means providing any kind of financial
17 product or service to a person that is typically offered or provided
18 by a local financial institution, including, but not limited to, all of
19 the following:

20 (A) Accepting a deposit of any kind from a person, including
21 the issuance of shares by a credit union.

22 (B) Granting a loan or extension of credit, of any kind, to a
23 person.

24 (7) "Wholesale lending" means granting a loan or extension of
25 credit to a local financial institution.

26 (b) Except as provided in *paragraph (2) of subdivision (c)*, a
27 public bank shall conduct retail activities in partnership with local
28 financial institutions and shall not compete with local financial
29 institutions.

30 ~~(c) Notwithstanding subdivision (b), a~~ A public bank may do
31 both of the following:

32 (1) Engage in all of the following banking activities:

33 (A) Local agency banking.

34 (B) Infrastructure lending.

35 (C) Wholesale lending.

36 (D) Participation lending.

37 (2) Engage in retail activities ~~that~~ *without partnering with a*
38 *local financial institution, if those retail activities* are not offered
39 or provided by local financial institutions in the jurisdiction of the
40 local agency or agencies that own the public bank.

1 57605. For the purposes of Section 1280 of the Financial Code,
2 any person or entity, including a local agency, that owns, controls,
3 or holds an ownership interest in a public bank is not a bank
4 holding company by reason of that ownership interest.

5 57606. (a) Before submitting an application to organize and
6 establish a public bank pursuant to Section 1020 of the Financial
7 Code, a local agency shall conduct a study to assess the viability
8 of the proposed public bank. The study shall include, but is not
9 limited to, all of the following elements:

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

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

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

18 (4) Financial projections, including a pro forma balance sheet
19 and income statement, of the proposed public bank for at least the
20 first five years of operation. The financial projections shall include
21 an estimate of the time period for when expected revenues meet
22 or exceed expected costs and an estimate of the total operating
23 subsidy that the local agency may be required to provide until the
24 proposed public bank generates sufficient revenue to cover its
25 costs. In addition to projections that assume favorable economic
26 conditions, the analysis shall also include a downside scenario that
27 considers the effect of an economic recession on the financial
28 results of the proposed public bank. The projections may include
29 the downside scenario of continuing to do business with the local
30 government's current banker or bankers.

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

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

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

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

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

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

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

12 (c) (1) The study required by subdivision (a) shall be presented
13 to and approved by the governing body of the local agency, and a
14 motion to move forward with an application for a public banking
15 charter shall be approved by a majority vote of the governing body
16 at a public meeting prior to the local agency submitting an
17 application pursuant to Section 1020 of the Financial Code. In
18 addition, the local agency shall include a copy of the study required
19 by subdivision (a) in the application submitted to the Commissioner
20 of Business Oversight.

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

26 (3) The voter approval requirement described in paragraph (2)
27 shall apply to a local agency entering into a joint powers authority
28 formed pursuant to the Joint Exercise of Powers Act (Article 1
29 (commencing with Section 6500) of Chapter 5 of Division 7 of
30 Title 1) after the study required in subdivision (a) has been
31 completed and before submitting an application to organize and
32 establish a public bank pursuant to Section 1020 of the Financial
33 Code.

34 (4) As used in paragraphs (2) and (3), "local agency" does not
35 include a charter city.

36 (d) The local agency shall make available to the public the
37 financial models and key assumptions used to estimate the elements
38 described in paragraphs (2) through (4) of subdivision (a) before
39 presenting the study to the governing body of the local agency as
40 required by subdivision (c).

1 57607. (a) The Commissioner of Business Oversight shall not
2 issue more than two public bank licenses in a calendar year.

3 (b) The Commissioner of Business Oversight shall not issue a
4 public bank license if issuing that public bank license would cause
5 there to be more than 10 public banks authorized to transact
6 business pursuant to Division 1.1 (commencing with Section 1000)
7 of the Financial Code.

8 (c) The Commissioner of Business Oversight shall conduct a
9 study of public banking in California within two years after the
10 date upon which the commissioner issues the 10th public bank
11 license.

12 (d) The Commissioner of Business Oversight shall not issue a
13 public bank license after the expiration of a period of seven years
14 from the date upon which the commissioner first promulgates
15 regulations for the purpose of carrying out the commissioner's
16 duties under this division.

17 SEC. 17. Section 23701aa is added to the Revenue and Taxation
18 Code, to read:

19 23701aa. A public bank as defined in Section 57600 of the
20 Government Code. In addition, a public bank is exempt from all
21 other taxes and licenses, state, county, and municipal, imposed
22 upon a public bank, local utility user taxes, sales and use taxes,
23 state energy resources surcharges, state emergency telephone users
24 surcharges, motor vehicle and other vehicle registration license
25 fees, and any other tax or license fee imposed by the state upon
26 vehicles, motor vehicles, or the operation thereof.

27 SEC. 18. The Legislature finds and declares that Sections 8,
28 9, 14, and 15 of this act, which amend Section 6254.26 of, and add
29 Sections 6254.34, 54956.97, and 54956.98 to, the Government
30 Code, impose a limitation on the public's right of access to the
31 meetings of public bodies or the writings of public officials and
32 agencies within the meaning of Section 3 of Article I of the
33 California Constitution. Pursuant to that constitutional provision,
34 the Legislature makes the following findings to demonstrate the
35 interest protected by this limitation and the need for protecting
36 that interest:

37 Certain information collected by a public bank must be kept
38 confidential because confidentiality is essential to a public bank's
39 relationships with its customers, lenders, regulators, and other
40 banks. This confidentiality extends to portions of meetings of the

1 board of directors relating to loan or investment decisions, to
2 meetings with banking regulators, and to meetings of the internal
3 audit committee, the compliance committee, or the governance
4 committee of a public bank. This bill balances the interests of a
5 public bank in keeping certain important information confidential
6 with the interest of the public in accessing information concerning
7 the conduct of the people's business by allowing the public to
8 monitor the performance of a public bank and allowing the public
9 to know the identities of principals involved in management of a
10 public bank so that conflicts of interest on the part of public
11 officials can be avoided.

12 SEC. 19. The Legislature finds and declares that Sections 8,
13 9, 14, and 15 of this act, which amend Section 6254.26 of, and add
14 Sections 6254.34, 54956.97, and 54956.98 to, the Government
15 Code, further, within the meaning of paragraph (7) of subdivision
16 (b) of Section 3 of Article I of the California Constitution, the
17 purposes of that constitutional section as it relates to the right of
18 public access to the meetings of local public bodies or the writings
19 of local public officials and local agencies. Pursuant to paragraph
20 (7) of subdivision (b) of Section 3 of Article I of the California
21 Constitution, the Legislature makes the following findings:

22 This bill balances the interests of a public bank in keeping certain
23 important information confidential with the interest of the public
24 in accessing information concerning the conduct of the people's
25 business.

Introduction Form

By a Member of the Board of Supervisors or Mayor

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BY *A*

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Fewer, Walton, Ronen, Peskin, Brown, Mandelman, Mar, Haney

Subject:

Urging the Governor to Sign into Law Assembly Bill No. 857 - Public Banks

The text is listed:

Resolution urging the Governor to sign into law Assembly Bill No. 857, the "Public Bank Act" to provide a pathway for the creation of municipal and regional public banks.

Signature of Sponsoring Supervisor:

Fardon Lee Fewer

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