

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 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.

O