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CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 857

Introduced by Assembly Members Chiu and Santiago
**(Coauthors: Assembly Members *Gonzalez*, *Kalra*, *Mark Stone*,
Ting, and *Wicks*)**
(Coauthors: Senators Beall, Skinner, and Wiener)

February 20, 2019

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

LEGISLATIVE COUNSEL'S DIGEST

AB 857, as amended, Chiu. Public banks.

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

Existing law prohibits a county from giving or loaning its credit to, or in aid of, any person or corporation. Existing law requires a local agency, as defined, to deposit all money belonging to, or in the custody

of that local agency, into specified state or national banks, as defined. Existing law regulates the investment of public funds by local agencies.

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

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

The bill would require a public bank to comply with all requirements of the Financial Institutions Law and the Banking Law and to obtain and maintain insurance, subject to specified requirements. The bill would require a local agency to conduct and approve, as specified, a study of the viability of a public bank containing specified elements before submitting an application to the commissioner to organize and establish a public ~~bank~~ *bank and would require the local agency to include a copy of that study in the application submitted to the commissioner.* The bill would authorize a county to lend its credit to a public bank. The bill also would authorize a local agency to deposit funds in a public bank, and to invest in a public bank, subject to certain requirements.

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

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

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

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

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

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

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

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

16 SEC. 3. Section 23007 of the Government Code is amended
17 to read:

18 23007. Except as specified in this chapter, a county shall not,
19 in any manner, give or loan its credit to or in aid of any person or
20 corporation that is not a public bank, as defined in Section 57600.
21 An indebtedness or liability incurred contrary to this chapter is
22 void.

23 SEC. 4. Section 53601 of the Government Code is amended
24 to read:

25 53601. This section shall apply to a local agency that is a city,
26 a district, or other local agency that does not pool money in
27 deposits or investments with other local agencies, other than local
28 agencies that have the same governing body. However, Section
29 53635 shall apply to all local agencies that pool money in deposits
30 or investments with other local agencies that have separate
31 governing bodies. The legislative body of a local agency having
32 moneys in a sinking fund or moneys in its treasury not required
33 for the immediate needs of the local agency may invest any portion
34 of the moneys that it deems wise or expedient in those investments
35 set forth below. A local agency purchasing or obtaining any

1 securities prescribed in this section, in a negotiable, bearer,
2 registered, or nonregistered format, shall require delivery of the
3 securities to the local agency, including those purchased for the
4 agency by financial advisers, consultants, or managers using the
5 agency's funds, by book entry, physical delivery, or by third-party
6 custodial agreement. The transfer of securities to the counterparty
7 bank's customer book entry account may be used for book entry
8 delivery.

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

25 (a) Bonds issued by the local agency, including bonds payable
26 solely out of the revenues from a revenue-producing property
27 owned, controlled, or operated by the local agency or by a
28 department, board, agency, or authority of the local agency.

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

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

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

1 (e) Bonds, notes, warrants, or other evidences of indebtedness
2 of a local agency within this state, including bonds payable solely
3 out of the revenues from a revenue-producing property owned,
4 controlled, or operated by the local agency, or by a department,
5 board, agency, or authority of the local agency.

6 (f) Federal agency or United States government-sponsored
7 enterprise obligations, participations, or other instruments,
8 including those issued by or fully guaranteed as to principal and
9 interest by federal agencies or United States government-sponsored
10 enterprises.

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

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

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

27 (1) The entity meets the following criteria:

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

30 (B) Has total assets in excess of five hundred million dollars
31 (\$500,000,000).

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

35 (2) The entity meets the following criteria:

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

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

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

3 Eligible commercial paper shall have a maximum maturity of
4 270 days or less. Local agencies, other than counties or a city and
5 county, may invest no more than 25 percent of their moneys in
6 eligible commercial paper. Local agencies, other than counties or
7 a city and county, may purchase no more than 10 percent of the
8 outstanding commercial paper of any single issuer. Counties or a
9 city and county may invest in commercial paper pursuant to the
10 concentration limits in subdivision (a) of Section 53635.

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

33 (j) (1) Investments in repurchase agreements or reverse
34 repurchase agreements or securities lending agreements of
35 securities authorized by this section, as long as the agreements are
36 subject to this subdivision, including the delivery requirements
37 specified in this section.

38 (2) Investments in repurchase agreements may be made, on an
39 investment authorized in this section, when the term of the
40 agreement does not exceed one year. The market value of securities

1 that underlie a repurchase agreement shall be valued at 102 percent
2 or greater of the funds borrowed against those securities and the
3 value shall be adjusted no less than quarterly. Since the market
4 value of the underlying securities is subject to daily market
5 fluctuations, the investments in repurchase agreements shall be in
6 compliance if the value of the underlying securities is brought back
7 up to 102 percent no later than the next business day.

8 (3) Reverse repurchase agreements or securities lending
9 agreements may be utilized only when all of the following
10 conditions are met:

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

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

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

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

33 (4) (A) Investments in reverse repurchase agreements, securities
34 lending agreements, or similar investments in which the local
35 agency sells securities prior to purchase with a simultaneous
36 agreement to repurchase the security may be made only upon prior
37 approval of the governing body of the local agency and shall be
38 made only with primary dealers of the Federal Reserve Bank of
39 New York or with a nationally or state-chartered bank that has or
40 has had a significant banking relationship with a local agency.

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

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

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

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

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

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

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

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

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

37 (F) For purposes of this section, the spread is the difference
38 between the cost of funds obtained using the reverse repurchase
39 agreement and the earnings obtained on the reinvestment of the
40 funds.

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

12 (l) (1) Shares of beneficial interest issued by diversified
13 management companies that invest in the securities and obligations
14 as authorized by subdivisions (a) to (k), inclusive, and subdivisions
15 (m) to (q), inclusive, and that comply with the investment
16 restrictions of this article and Article 2 (commencing with Section
17 53630). However, notwithstanding these restrictions, a counterparty
18 to a reverse repurchase agreement or securities lending agreement
19 is not required to be a primary dealer of the Federal Reserve Bank
20 of New York if the company’s board of directors finds that the
21 counterparty presents a minimal risk of default, and the value of
22 the securities underlying a repurchase agreement or securities
23 lending agreement may be 100 percent of the sales price if the
24 securities are marked to market daily.

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

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

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

33 (B) Retained an investment adviser registered or exempt from
34 registration with the Securities and Exchange Commission with
35 not less than five years’ experience investing in the securities and
36 obligations authorized by subdivisions (a) to (k), inclusive, and
37 subdivisions (m) to (q), inclusive, and with assets under
38 management in excess of five hundred million dollars
39 (\$500,000,000).

1 (4) If investment is in shares issued pursuant to paragraph (2),
2 the company shall have met either of the following criteria:
3 (A) Attained the highest ranking or the highest letter and
4 numerical rating provided by not less than two NRSROs.
5 (B) Retained an investment adviser registered or exempt from
6 registration with the Securities and Exchange Commission with
7 not less than five years' experience managing money market
8 mutual funds with assets under management in excess of five
9 hundred million dollars (\$500,000,000).

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

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

28 (n) Notes, bonds, or other obligations that are at all times secured
29 by a valid first priority security interest in securities of the types
30 listed by Section 53651 as eligible securities for the purpose of
31 securing local agency deposits having a market value at least equal
32 to that required by Section 53652 for the purpose of securing local
33 agency deposits. The securities serving as collateral shall be placed
34 by delivery or book entry into the custody of a trust company or
35 the trust department of a bank that is not affiliated with the issuer
36 of the secured obligation, and the security interest shall be perfected
37 in accordance with the requirements of the Uniform Commercial
38 Code or federal regulations applicable to the types of securities in
39 which the security interest is granted.

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

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

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

21 (2) The adviser has not less than five years of experience
22 investing in the securities and obligations authorized in
23 subdivisions (a) to (q), inclusive.

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

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

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

38 SEC. 5. Section 53635 of the Government Code is amended
39 to read:

1 53635. (a) This section shall apply to a local agency that is a
2 county, a city and county, or other local agency that pools money
3 in deposits or investments with other local agencies, including
4 local agencies that have the same governing body. However,
5 Section 53601 shall apply to all local agencies that pool money in
6 deposits or investments exclusively with local agencies that have
7 the same governing body.

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

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

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

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

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

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

30 SEC. 6. Section 53635.2 of the Government Code is amended
31 to read:

32 53635.2. As far as possible, all money belonging to, or in the
33 custody of, a local agency, including money paid to the treasurer
34 or other official to pay the principal, interest, or penalties of bonds,
35 shall be deposited for safekeeping in state or national banks, public
36 banks, savings associations, federal associations, credit unions, or
37 federally insured industrial loan companies in this state selected
38 by the treasurer or other official having legal custody of the money;
39 or may be invested in the investments set forth in Section 53601.
40 To be eligible to receive local agency money, a bank, savings

1 association, federal association, or federally insured industrial loan
2 company shall have received an overall rating of not less than
3 “satisfactory” in its most recent evaluation by the appropriate
4 federal financial supervisory agency of its record of meeting the
5 credit needs of California’s communities, including low- and
6 moderate-income neighborhoods, pursuant to Section 2906 of Title
7 12 of the United States Code. Sections 53601.5 and 53601.6 shall
8 apply to all investments that are acquired pursuant to this section.

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

11
12 DIVISION 5. PUBLIC BANKS

13
14 57600. For purposes of this division:

15 (a) “Local financial institution” means a certified community
16 development financial institution, a credit union, or a small bank
17 or an intermediate small bank, as defined in Section 25.12 of Title
18 12 of the Code of Federal Regulations.

19 (b) (1) “Public bank” means a corporation, organized for the
20 purpose of engaging in the commercial banking business or
21 industrial banking business, that is wholly owned by a local agency,
22 local agencies, or a joint powers authority formed pursuant to the
23 Joint Exercise of Powers Act (Article 1 (commencing with Section
24 6500) of Chapter 5 of Division 7 of Title 1) that is composed only
25 of local agencies, ~~or a special district.~~ agencies.

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

29 (3) *For purposes of paragraph (2), population shall be based*
30 *on the most recent estimate of population data determined by the*
31 *Demographic Research Unit of the Department of Finance.*

32 57601. (a) A public bank shall identify in its articles of
33 incorporation either a social purpose, as provided in paragraph (2)
34 of subdivision (6) of Section 2602 of the Corporations Code, or a
35 specific public benefit, as provided in Section 14610 of the
36 Corporations Code. Examples of a social purpose or a specific
37 public benefit include, but are not limited to, strengthening local
38 economies, supporting community economic development,
39 addressing infrastructure and housing needs for localities, and
40 providing banking services to the unbanked or underbanked.

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

3 (c) Notwithstanding subdivision (b), a public bank that identifies
4 a social purpose in its articles of incorporation shall comply with
5 Section 3500 of the Corporations Code, and a public bank that
6 identifies a specific public benefit in its articles of incorporation
7 shall comply with Section 14630 of the Corporations Code.

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

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

15 57603. (a) A public bank shall comply with all requirements
16 of the Financial Institutions Law (Division 1 (commencing with
17 Section 99) of the Financial Code) and the Banking Law (Division
18 1.1 (commencing with Section 1000) of the Financial Code), except
19 to the extent that a requirement of those laws is inconsistent with
20 a provision of this division, in which case the provisions of this
21 division shall prevail.

22 (b) A public bank shall comply with the requirements of Section
23 53638 unless the public bank and the depositor agree otherwise.

24 (c) Notwithstanding Section 23010, a county may lend its credit
25 to any public bank.

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

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

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

36 57604. (a) Wherever possible, any retail services of a public
37 bank shall be conducted in partnership with local financial
38 institutions.

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

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

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

6 57605. For the purposes of Section 1280 of the Financial Code,
7 any person or entity, including a local agency, that owns, controls,
8 or holds an ownership interest in a public bank is not a bank
9 holding company by reason of that ownership interest.

10 57606. (a) Before submitting an application to organize and
11 establish a public bank pursuant to Section 1020 of the Financial
12 Code, a local agency shall conduct a study to assess the viability
13 of the proposed public bank. The study shall include, but is not
14 limited to, all of the following elements:

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

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

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

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

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

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

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

5 (1) A fiscal analysis of benefits associated with starting the
6 proposed public bank, ~~including~~ *including*, but not limited to, cost
7 savings, jobs created, jobs retained, economic activity generated,
8 and private capital leveraged.

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

11 (3) An estimate of the fees paid to the local agency’s current
12 banker or bankers.

13 (4) A fiscal analysis of the costs, including social and
14 environmental, of continuing to do business with the local agency’s
15 current banker or bankers.

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

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

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

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

- 1 fee imposed by the state upon vehicles, motor vehicles, or the
- 2 operation thereof.

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