

Assembly Bill No. 857

CHAPTER 442

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 6254.35, 54956.97, and 54956.98 to, the Government Code, and to add Section 23701aa to the Revenue and Taxation Code, relating to public banks.

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LEGISLATIVE COUNSEL'S DIGEST

AB 857, 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 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.

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

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

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

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

(a) The name of the corporation.

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

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

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

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

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

(d) The initial street address of the corporation.

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

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

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

(a) The name of the corporation.

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

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

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

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

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

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

(d) The initial street address of the corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) In case the bank is, or is proposed to be, a trust company (other than a commercial bank authorized to engage in trust business), that the purpose of the corporation is to engage in trust business and any other lawful

activities which are not, by applicable laws or regulations, prohibited to a trust company.

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

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

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

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

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

(3) Meeting materials of alternative investment vehicles.

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

(5) Capital call and distribution notices.

(6) Alternative investment agreements and all related documents.

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

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

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

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

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

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

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

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

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

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

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

(1) “Alternative investment” means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

(2) “Alternative investment vehicle” means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.

(3) “Portfolio positions” means individual portfolio investments made by the alternative investment vehicles.

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

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

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

(1) “Customer” means a person or entity that has transacted or is transacting business with or has used or is using the services of a public bank or a person or entity for whom the public bank has acted as a fiduciary with respect to trust property.

(2) “Investment recipient” means an entity in which the public bank invests.

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

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

(5) “Public bank” has the same meaning as defined in Section 57600.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53601. This section shall apply to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies, other than local agencies that have the same governing body. However, Section 53635 shall apply to all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies. The legislative body of a local agency having moneys in a sinking fund or moneys in its treasury not required for the immediate needs of the local agency may invest any portion of the moneys that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those

purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery.

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

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

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

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

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

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

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

(g) Bankers' acceptances otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank. Purchases of bankers' acceptances shall not exceed 180 days' maturity or 40 percent of the agency's moneys that may be invested pursuant to this section. However,

no more than 30 percent of the agency's moneys may be invested in the bankers' acceptances of any one commercial bank pursuant to this section.

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

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

(1) The entity meets the following criteria:

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

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

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

(2) The entity meets the following criteria:

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

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

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

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

(i) Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a federally licensed or state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposit shall not exceed 30 percent of the agency's moneys that may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the moneys are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or a person with investment decisionmaking authority in the administrative office manager's office,

budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

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

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

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

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

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

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

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

(4) (A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may be made only upon prior approval of the governing body of the local agency and shall be made only with primary dealers of the Federal Reserve

Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

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

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

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

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

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

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

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

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

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

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

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

(l) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (q), inclusive, and

that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53635. (a) This section shall apply to a local agency that is a county, a city and county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have

the same governing body. However, Section 53601 shall apply to all local agencies that pool money in deposits or investments exclusively with local agencies that have the same governing body.

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

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

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

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

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

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

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

SEC. 14. Section 54956.97 is added to the Government Code, to read: 54956.97. Notwithstanding any provision of law, the governing board, or a committee of the governing board, of a public bank, as defined in Section 57600 of the Government Code, may meet in closed session to consider and take action on matters pertaining to all of the following:

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

SEC. 15. Section 54956.98 is added to the Government Code, to read: 54956.98. (a) For purposes of this section, the following definitions shall apply:

(1) “Shareholder, member, or owner local agency” or “shareholder, member, or owner” means a local agency that is a shareholder of a public bank.

(2) “Public bank” has the same meaning as defined in Section 57600.

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

(1) All information received by a shareholder, member, or owner of the public bank in a closed session related to the information presented to the governing board of a public bank in closed session shall be confidential. However, a member of the governing board of a shareholder, member, or owner local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

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

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

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

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

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

DIVISION 5. PUBLIC BANKS

57600. For purposes of this division:

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

(b) (1) “Public bank” means a corporation, organized under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) for the purpose of engaging in the commercial banking business or industrial banking business, that is wholly owned by a local agency, local agencies, or a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1) that is composed only of local agencies.

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

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

(c) “Public bank license” means a certificate of authorization to transact business as a bank as described in Section 1042 of the Financial Code.

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

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

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

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

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

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

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

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

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

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

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

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

57604. (a) As used in this section:

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

(2) “Infrastructure lending” means granting a loan or extending credit to a local agency for the purpose of building or improving public infrastructure, including housing projects, as defined in Section 34212 of the Health and Safety Code, and affordable housing, as defined in subdivision (a) of Section 62250.

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

(A) Accepting a deposit of any kind.

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

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

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

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

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

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

(7) “Wholesale lending” means granting a loan or extension of credit to a local financial institution.

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

(c) A public bank may do both of the following:

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

(A) Local agency banking.

(B) Infrastructure lending.

(C) Wholesale lending.

(D) Participation lending.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The Commissioner of Business Oversight shall not issue a public bank license if issuing that public bank license would cause there to be more

than 10 public banks authorized to transact business pursuant to Division 1.1 (commencing with Section 1000) of the Financial Code.

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

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

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

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

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

Certain information collected by a public bank must be kept confidential because confidentiality is essential to a public bank's relationships with its customers, lenders, regulators, and other banks. This confidentiality extends to portions of meetings of the board of directors relating to loan or investment decisions, to meetings with banking regulators, and to meetings of the internal audit committee, the compliance committee, or the governance committee of a public bank. This bill balances the interests of a public bank in keeping certain important information confidential with the interest of the public in accessing information concerning the conduct of the people's business by allowing the public to monitor the performance of a public bank and allowing the public to know the identities of principals involved in management of a public bank so that conflicts of interest on the part of public officials can be avoided.

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

paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

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

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