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TITLE 5. LOCAL AGENCIES [50001 - 57607] (Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 5. Public Banks [57600 - 57607] (Division 5 added by Stats. 2019, Ch. 442, Sec. 16.)

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.

(Added by Stats. 2019, Ch. 442, Sec. 16. (AB 857) Effective January 1, 2020.)

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.

(Added by Stats. 2019, Ch. 442, Sec. 16. (AB 857) Effective January 1, 2020.)

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 Financial Protection and Innovation, 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.

(Amended by Stats. 2022, Ch. 452, Sec. 189. (SB 1498) Effective January 1, 2023.)

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.

(Added by Stats. 2019, Ch. 442, Sec. 16. (AB 857) Effective January 1, 2020.)

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.

(Added by Stats. 2019, Ch. 442, Sec. 16. (AB 857) Effective January 1, 2020.)

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 Financial Protection and Innovation.

(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).

(Amended by Stats. 2022, Ch. 452, Sec. 190. (SB 1498) Effective January 1, 2023.)

57607. (a) The Commissioner of Financial Protection and Innovation shall not issue more than two public bank licenses in a calendar year.

(b) The Commissioner of Financial Protection and Innovation 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 Financial Protection and Innovation 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 Financial Protection and Innovation 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.

(Amended by Stats. 2022, Ch. 452, Sec. 191. (SB 1498) Effective January 1, 2023.)