

CLIENT NEWS BRIEF

In An Historic Move, California Paves Way For Public Banks

Effective January 1, 2020, local agencies will be allowed to create their own public banks. Assembly Bill (AB) 857, known as California's Public Banking Act, allows local agencies and/or joint powers associations to organize nonprofit mutual benefit corporations for the purpose of engaging in the banking business. The stated purpose of the Public Banking Act is achieving cost savings for local government entities, strengthening local economies, supporting local economic development, and addressing community infrastructure and housing needs.

The procedural requirements for establishing a public bank include the following: the local agency must establish a separate corporate legal entity with appropriate articles of incorporation setting forth a specified purpose statement for the bank. Then, the entity must conduct a required feasibility study to assess the viability of the proposed bank. Next, the entity must submit a certificate of authorization to the Commissioner on Business Oversight (CBO). (Non-charter cities must have voter approval of a motion to submit an application to the CBO.) Finally, the public bank must secure Federal Deposit Insurance Corporation (FDIC) insurance and obtain a license from the CBO.

Entry into the public banking market is limited. Under AB 857, the CBO is allowed to issue just two licenses per year, and there can be no more than 10 public banks authorized to operate at one time.

Once the public bank is operational, it will be prohibited from competing with other retail banking financial institutions. Accordingly, the public bank's primary function will be lending money to local initiatives that fall within the purview of its specified purpose statement in the articles of incorporation. Public banks are exempt from state taxes and a county is able to lend available funds to the bank.

Notably, the Public Banking Act includes Brown Act and Public Records Act exceptions. Brown Act open meeting requirements are waived when a local agency's board convenes to discuss matters involving loan or investment decisions, and matters involving internal audits, compliance, governance, and meetings with state or federal regulators. Public Records Act disclosure requirements will not apply to any information or records pertaining to decisions made in any closed session meeting, information regarding investment decisions, information regarding specific bank accounts, and information regarding meetings with state and federal regulators. Furthermore, all information received by a shareholder, member, or owner of a public bank must remain confidential.

Takeaways

The process for establishing a public bank involves multiple procedural steps each requiring state and federal approval. There will likely be significant competition to obtain state licensure because licenses will be severely restricted. Time is of the essence for local government entities interested in establishing their own public bank. Once established, a public bank will need

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to observe and comply with state and federal regulations applicable to financial institutions.

If you have questions regarding establishing a public bank, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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