INITIAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER
THE BANKING LAW: PUBLIC BANKS

In accordance with Government Code section 11346.2(b), the Department of Financial Protection and Innovation ("Department") has prepared the following initial statement of reasons for the proposed rulemaking related to public banks.

BACKGROUND

On October 2, 2019, the Governor signed into law AB 857 (Chapter 442, Statutes of 2019). AB 857 establishes a process for a local agency to apply for a public bank charter from the Department of Financial Protection and Innovation, formerly the Department of Business Oversight. AB 857 specifies that a local agency would need to meet the same general requirements and approval criteria as existing law requires of a private sector applicant for a banking license, including obtaining deposit insurance provided by the Federal Deposit Insurance Corporation. AB 857 authorizes the Commissioner of Financial Protection and Innovation ("Commissioner") to promulgate regulations for the purpose of carrying out the Commissioner's duties under the new law.

Division 1.1 of the Financial Code ("Banking Law") regulates, except where the context provides otherwise, all corporations engaged in commercial banking, industrial banking, or trust business. A corporation, other than a national banking association or an other-state bank, that seeks to transact banking business in California must apply for a certificate of authorization from the Commissioner.

AB 857 amends the Banking Law to include a public bank as part of the definition of a "bank."[1] Prior to commencing business, AB 857 requires a public bank to obtain a certificate of authorization to transact business as a bank pursuant to Division 1.1 of the Financial Code.[2] AB 857 specifies that a local agency seeking to establish a public bank must submit an application pursuant to Financial Code section 1020.[3] Private bank applicants are already subject to Financial Code section 1020.

SPECIFIC PURPOSE OF REGULATIONS [Government Code Section 11346.2, Subdivision (b)(1)]

AB 857 introduces terms that relate to public banking; however, not all the new terms are defined in statute. This rulemaking would define those new terms that require clarification.

AB 857 also requires that a local agency seeking to establish a public bank submit an application pursuant to Financial Code section 1020. When processing an application,

[1] Fin. Code, §§ 119, 1004.
[2] Govt. Code, § 57603.
[3] Govt. Code, § 57606.

the Commissioner is required to make determinations on several factors.[4] This rulemaking would clarify those factors that need to be evaluated differently due to the unique organizational and business structure of a public bank.

By this rulemaking, the Commissioner proposes to amend Sections 10.112; 10.141; 10.151; 10.3000; 10.3100; 10.3402; and the title of Subarticle 2, Article 4; and to adopt Sections 10.131.7; 10.135.1; 10.140.1; 10.140.6; 10.141.1; 10.166.1; and 10.3301.1 in Chapter 1 of Title 10 of the California Code of Regulations.

Section 10.112. Banking Business.

Problem: Financial Code section 103 defines "bank" to mean any banking institution that has been incorporated "to engage in the commercial banking business, industrial banking, or trust business." Banks are divided into three classes: (1) commercial banks, (2) industrial banks, and (3) trust companies.[5] An "industrial bank" is a corporation organized for the purpose of engaging in the industrial banking business.[6]

Existing Section 10.112 omits "industrial banking business" from the definition of "banking business." Financial Code sections 103 and 105, however, make clear that "banking business" is meant to encompass industrial banking business as well as commercial banking business and trust business. Thus, Section 10.112 needs to be amended to provide a more accurate definition of "banking business."

In addition, because AB 857 has amended the definition of a "bank" to include a public bank, and AB 857 defines a public bank as a corporation engaged in the commercial banking business or industrial banking business,[7] Section 10.112 needs to be updated to reflect that "banking business" includes commercial banking business or industrial banking business engaged in by a public bank.

Specific purpose: Section 10.112 would clarify that "banking business" includes industrial banking business. The proposed regulation would also clarify that "banking business" includes commercial banking business and industrial banking business engaged in by a public bank.

Necessity: In order for laws that apply to "banking business" to apply to industrial banks and to public banks in accordance with AB 857, it is necessary to amend the definition of "banking business."

Section 10.135.1. Governing Board of Public Bank.

Problem: AB 857 uses two different terms to describe the board of directors of a public

[4] *See* Fin. Code, §§ 1022, 1023.
[5] Fin. Code, § 105.
[6] Fin. Code, § 111.
[7] Govt. Code, § 57600.

bank: “governing board of public bank”[8] and “board of directors.”[9] The use of different terms makes it confusing whether the law intends for the terms to have different meanings.

In addition, AB 857 requires a public bank to be subject to the Banking Law. However, the Banking Law does not use the term “governing board.” Rather, it uses the term “board of directors.” It is therefore unclear whether references in the Banking Law to “board of directors” would apply to a “governing board” of a public bank.

Purpose: Section 10.135.1 would define “governing board of public bank” to mean the board of directors of a public bank.

Necessity: The proposed regulation would clarify that terms “governing board of public bank” and “board of directors” are equivalent. The context in which the term “governing board” is used in AB 857 supports that interpretation.

This clarification is necessary so that licensees and applicants know who can perform the activities that a governing board and board of directors are authorized to perform. For example, Government Code section 54956.97 provides that the “governing board” of a public bank may take action on: a loan or investment decision, a decision of an internal committee, or meet with a state or federal regulator. Further, Government Code section 54956.98 provides that a “governing board” may adopt policies or bylaws. The foregoing activities are typical activities performed by a board of directors.

AB 857 also makes legislative findings relating to the confidentiality of certain meetings held by the board of directors of a public bank. Specifically, the findings state that certain information collected by a public bank must be kept confidential, and that “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.”[10] The foregoing activities are identical to the activities that AB 857 describes as being performed by the “governing board” of a public bank.

By defining “governing board of public bank” to mean the board of directors of a public bank, the proposed regulation would eliminate any confusion about whether “governing board” refers to something other than the board of directors. The proposed regulation would also clarify that references in the Banking Law to “board of directors” apply to the “governing board of public bank.”

Section 10.131.7. Financial Product or Service.

Problem: AB 857 specifies that public banks may only conduct retail activities in

[8] Govt. Code, § 6254.35; Sec. 18 of AB 857 (legislative findings relating to limiting the scope of public access to certain meetings conducted by a public bank).
[9] Govt. Code, §§ 54956.97, 54956.98,
[10] Sec. 18 of AB 857.

partnership with a local financial institution unless the retail activity is not offered by local financial institutions in the jurisdiction of the local agency or agencies that own the public bank. Retail activities are defined as any kind of financial product or service to a person that is typically offered by a local financial institution, such as accepting deposits and making loans.

"Financial product or service" is not further defined in AB 857. It is unclear whether financial products refer to the type of product such as a checking account or the terms associated with the particular type product, such as interest rates, fees and conditions.

Purpose: Section 10.131.7 would define "financial product or service" as a product or service offered by a financial institution based on the type ofproduct or service.

Necessity: The proposed regulation would clarify that "financial product or service" means product or service type. The proposed regulation would specify and that products and services are not considered different because competing financial institutions offer that product or service type at different terms or features, such as different interest rates. This will eliminate confusion and numerous questions by stakeholders, including applicants and consumers.

Section 10.140.1. Jurisdiction of Local Agency or Agencies.

Problem: AB 857 requires public banks to offer retail activities in partnership with a local financial institution within the jurisdiction of the public bank. A public bank may offer retail activities if not offered by a local financial institution within the jurisdiction of the local agency or agencies owning the public bank. AB 857 uses two different terms in specifying limitations on offering retail activities: "jurisdiction of the public bank" and "jurisdiction of the local agency or agencies" owning the public bank.

Purpose: Section 10.140.1 would define "jurisdiction of the local agency or agencies" as the total geographic area covered or serviced by the local agency or agencies. Section 10.140.1 would define "jurisdiction of a public bank" the same as "jurisdiction of the local agency or agencies."

Necessity: By defining "jurisdiction of the public bank" and "jurisdiction of the local agency or agencies" to mean the same thing, the proposed regulation would eliminate any confusion about whether the two terms have different meanings.

Section 10.141. Member.

Problem: AB 857 adds Section 1008 to the Financial Code. That section specifies that in the context of a public bank, references to "share, shareholder, or stockholder" means "membership or member in the public bank." AB 857 also adds Section 54956.98 to the Government Code, which provides that a "member" means a local agency that is a shareholder of a public bank.

Existing Section 10.141 of the regulations defines "member" to mean a bank which is a member of the Federal Reserve System. Thus, there is a conflict between how the term "member" is used with respect to private banks and public banks depending on the context.

Purpose: The proposed regulation would amend Section 10.141 to include two new subdivisions to address commercial and industrial banks and public banks, respectively. Subdivision (a) would add "commercial or industrial" to modify "bank." Subdivision (b) would add that in the context of a public bank, "member" means the local agency or local agencies that own the public bank. Subdivision (b) would also clarify that this definition does not impact a public bank's ability to become a member of the Federal Reserve System.

Necessity: Subdivision (a) would add "commercial or industrial" to modify "bank" because those are the types of banks that can apply for membership to the Federal Reserve System. Also, Financial Code section 119 defines "bank" to include commercial banks and industrial banks. Therefore, the proposed regulation makes clear the specific types of bank that can be described as a "member" of the Federal Reserve System.

Subdivision (b) would clarify that when the term "member" is used in the context of ownership of a public bank, it refers to the local agency or local agencies that own it. AB 857 statutorily defines "member" as it relates to the ownership of a public bank because as a nonprofit corporation, a public bank will not have "shareholders" or "stockholders" in the same way a private bank does. That is, a private bank corporation typically issues and sells shares of its common stock to capitalize itself. Those investors who purchase such shares become the private bank's shareholders. A nonprofit corporation, however, does not issue shares to investors. Subdivision (b) is necessary in order to provide a term ("member") that describes the ownership of a public bank, consistent with Financial Code section 1008.

The proposed regulation also makes clear that just because the term "member," when used to refer to the ownership of a public bank, means the owner local agency, such definition does not preclude a public bank from also becoming a member of the Federal Reserve System. This is necessary in order to make clear the two meanings of the word "member" are not mutually exclusive and make clear that a public bank can both have "members" and be a "member" of the Federal Reserve System.

Section 10.141.1 Member of Governing Board of Public Bank.

Problem: AB 857 uses two different terms to describe the board of directors of a public bank: "governing board of public bank"[11] and "board of directors."[12] AB 857 uses the

[11] Govt. Code, § 6254.35; Sec. 18 of AB 857 (legislative findings relating to limiting the scope of public access to certain meetings conducted by a public bank).
[12] Govt. Code, §§ 54956.97, 54956.98.

term “member” to describe being a “member of the governing board.”[13] The use of the different terms, “governing board of public bank” and “board of directors,” and the use of the term “member” referring to member of the “governing board” makes it confusing whether the law intends for each term to have separate meanings.

In addition, AB 857 requires a public bank to be subject to the Banking Law. However, the Banking Law does not use the term “governing board.” Rather, it uses the term “board of directors.” It is therefore unclear whether references in the Banking Law to a member of the “board of directors” would apply to a member of the “governing board” of a public bank.

AB 857 also introduces the term “designated alternative member of governing board” of a public bank. The Banking Law, however, does not include the concept of an alternative member of the board of directors. Therefore, it is unclear what the definition of the term is.

Purpose: Section 10.141.1, subdivision (a) would define “member of governing board of the public bank” to mean a member of the board of directors of a public bank. The context in which the term “governing board” is used in AB 857 supports that interpretation. Section 10.141.1, subdivision (b) would define “designated alternative member of governing board of public bank” to mean the person designated by the local agency to represent the local agency at a meeting of the public bank’s board of directors in the event that a primary member is not available.

Necessity: Subdivision (a) is necessary in order to define what is meant by “member of governing board of the public bank” in AB 857.

For example, Government Code section 54956.97 provides that the “governing board” of a public bank may take action on: a loan or investment decision, a decision of an internal committee, or meet with a state or federal regulator. Further, Government Code section 54956.98 provides that a “governing board” may adopts policies or bylaws. The foregoing activities are typical activities performed by a board of directors.

AB 857 also makes legislative findings relating to the confidentiality of certain meetings held by the board of directors of a public bank. Specifically, the findings state that certain information collected by a public bank must be kept confidential, and that “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.”[14] The foregoing activities are identical to the activities that AB 857 describes as being performed by the “governing board” of a public bank.

By defining “member of governing board of public bank” to mean member of the board of directors of a public bank, the proposed regulation would eliminate any confusion

[13] Govt. Code, § 54956.98.
[14] Sec. 18 of AB 857.

about whether a "member of governing board" refers to something other than a member of the board of directors. The proposed regulation would also clarify that references in the Banking Law to a member of the board of directors apply to a "member of governing board of public bank."

Subdivision (b) is necessary to define the term "designated alternative member of governing board," which is used in AB 857 but not defined. The local agency(s) that establishes a public bank becomes the owner(s) and sole shareholder(s) of the public bank.[15] As such, the local agency determines the membership of the bank's board of directors. Because such membership is held by the local agency, not the designee, the local agency has the authority to designate an alternative member when the primary representative is not available.

Section 10.140.6. Local Financial Institution.

Problem: AB 857 adds Section 57600 to the Government Code. That section defines "local financial institution" as a certified community development financial institution, a credit union, or a small bank or an intermediate small bank. AB 857 also adds Section 57604 to the Government Code. Section 57604 refers to the term "local financial institution" in the context of competition involving activities offered by a public bank. Specifically, Section 57604 mandates that a public bank conduct retail activities, as defined, "in partnership with local financial institutions and shall not compete with local financial institutions." Section 57604 further provides that a public bank may 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."

AB 857, however, does not define the relevant geographic market of a "local financial institution," which is a necessary factor in an analysis of whether competition is impacted. Identification of the relevant market is crucial to being able to determine which financial institutions compete within the market.

Purpose: Proposed Section 10.140.6 would define a "local financial institution" as an institution that has a physical presence within the jurisdiction of the public bank at issue. The proposed regulation would also incorporate the definition of a "local financial institution" provided in Government Code section 57600.

Necessity: Defining local financial institution as an institution with a physical presence within the jurisdiction of the public bank makes consistent subdivisions (a)(1) and (c)(2) of Government Code section 57604 as it relates to competition, and eliminates confusion. This is necessary to make clear which local financial institutions a public bank is prohibited from competing with under Government Code section 57604-specifically, the local financial institutions in the same geographic market as the public bank. For private banks, the primary determinant of market competition is entities

[15] Govt. Code, § 54956.98.

operating in or servicing the same geographic area. This definition clarifies that the same holds true for public banks.

Section 10.151. Organizer.

Problem: Existing Section 10.151 defines an "organizer" as any person who, alone or in conjunction with one or more other persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of the corporation or other organization. Typically, an "organizer" is a natural person. AB 857, however, authorizes a local agency to determine whether to file an application to organize and establish a public bank.[16] Therefore, there is some uncertainty whether the local agency as an organization would be considered an "organizer."

Purpose: The proposed amendment to Section 10.151 would clarify that in the context of a public bank, an "organizer" is the local agency or agencies that file an application for a public bank charter. AB 857 requires a local agency to conduct a viability study of the proposed public bank.[17] The study must be presented to and approved by the governing body of the local agency, and a majority vote of the governing body must approve a motion to move forward with an application for a public banking charter. The rights and duties of the local agency, therefore, mirror the characteristics of an organizer as presently defined in the regulation. That is, an "organizer" is one who takes the initiative in founding and organizing the business. Because the local agency, in the context of a public bank, performs the same functions as an organizer of a private bank, the proposed regulation makes consistent the definition of "organizer" as applied to private and public banks.

Necessity: Because, in the context of a private bank, an "organizer" is typically a natural person, it is unclear whether the existing definition of "organizer" can apply to a public bank, which will not have a single individual as an "organizer." Therefore, the amendment is necessary to clarify who or what is an "organizer" of a public bank.

Section 10.166.1. Stockholder.

Problem: AB 857 adds Section 1008 to the Financial Code, which provides: "When applicable to a corporation organized as a public bank . . . references . . . to share, shareholder, or stockholder shall mean membership or member in the public bank." In a private bank, a stockholder means a person or entity who owns shares of the bank. References in the Banking Law to "stockholder" utilize the latter definition. The concept of a "stockholder" being a "member" of a bank does not exist in the private bank context. Also, as a nonprofit corporation, a public bank would not issue shares of stock. Thus, there is a potential for confusion about the meaning of "stockholder" as applied to a public bank in the Banking Law.

Purpose: The proposed regulation would define "stockholder," in the context of a public

[16] Govt. Code, § 57606.
[17] *Id.*

bank, to mean membership or member in the public bank.

Necessity: The Banking Law specifically states that "stockholder" in the context of a public bank means membership or member in the public bank, as applicable.[18]

While a public bank would not issue shares of stock, and therefore, it would not have stockholders in the traditional sense, the local agency or agencies which own(s) the public banks would act in the same capacity as a stockholder. The local agency would be able to appoint directors and determine the business plan. The proposed regulation would make consistent the term "stockholder" with the concept of ownership of a bank, and accordingly, it would define "stockholder" to mean the owner, which in the public bank context, is the local agency or agencies applying for and receiving a public bank charter.

Defining "stockholder" to align with the Banking Law definition also means "membership" in a public bank would include a local agency or agencies which invest(s) in a public bank after formation.

This proposed rule is necessary to clarify that "stockholder" in the public bank context means both the local agency or agencies which own the public bank and a local agency or agencies which subsequently invest in the public bank, as authorized under Government Code section 57603,

Subarticle 2, Article 4, Subchapter 10, Chapter 1, Title 10.

Problem: The title of Subarticle 2 Article 4, Subchapter 10, Chapter 1, Title 10 currently is "Establishment of California State Commercial Bank or Independent Trust Company."

Financial Code section 103 defines "bank" to mean any incorporated banking institution that has been incorporated "to engage in the commercial banking business, industrial banking, or trust business." Banks are divided into three classes: (1) commercial banks, (2) industrial banks, and (3) trust companies.[19]

The existing title of Subarticle 2, Article 4, Subchapter 10, Chapter 1 omits "industrial bank" from Subarticle 2 which contains regulations relating to the establishment of California state banks.

Purpose: The proposed amendment would correct the title of Subarticle 2 to state: "Establishment of California State Commercial Bank, Industrial Bank, or Independent Trust Company."

Necessity: This change is necessary in order to accurately describe the rules contained in this Subarticle, which apply to industrial banks.

[18] Fin. Code, § 1008.
[19] Fin. Code, § 105.

Section 10.3000. Scope.

Problem: Existing Section 10.3000 provides that Article 4, Subchapter 10, Chapter 1 relates to the establishment of a California state bank. Financial Code section 103 defines "bank" to mean any incorporated banking institution that has been incorporated "to engage in the commercial banking business, industrial banking, or trust business." Banks are thus divided into three classes: (1) commercial banks, (2) industrial banks, and (3) trust companies.

The existing regulation, however, describes Subarticle 2 as relating only to the establishment of a California state commercial bank or an independent trust company. The section omits reference to a California state industrial bank which is included in the statutory definition of a "bank."

In addition, because AB 857 has amended the definition of a "bank" to include a public bank, and AB 857 defines a public bank as a corporation engaged in the commercial banking business or industrial banking business,[20] Section 10.3000 needs to be updated to reflect that Subarticle 2 relates to the establishment of a commercial bank or industrial bank in order for Subarticle 2's rules to apply to a public bank.

Purpose: The purpose of this amendment is to add reference to a "California state industrial bank" to the subject of the regulations contained in Subarticle 2, Article 4, Subchapter 10, Chapter 1. Specifically, Section 10.3000 would be amended in relevant part to state: Subarticle 2 (commencing with Section 10.3100) of this Article contains regulations relating to the establishment of a California state commercial bank, of a California state industrial bank, or of a California state independent trust company pursuant to Chapter 1 (commencing with Section 1000) of the Banking Law.

Necessity: This change is necessary to make Section 10.3000 consistent with the definition of a bank as set forth in Financial Code section 105.

Section 10.3100. Definition of "Subject Institution" and Scope.

Problem: Existing Section 10.3100 defines "subject institution" to mean a California state bank which is or is proposed to be a commercial bank or an independent trust company. Financial Code section 103 defines "bank" to mean any incorporated banking institution that has been incorporated "to engage in the commercial banking business, industrial banking, or trust business." Banks are divided into three classes: (1) commercial banks, (2) industrial banks, and (3) trust companies. Thus, the existing regulation omits reference to an industrial bank which is included in the statutory definition of a "bank."

In addition, because AB 857 amends the definition of a "bank" to include a public bank, and AB 857 defines a public bank as a corporation engaged in the commercial banking

[20] Govt. Code, § 57600.

business or industrial banking business, Section 10.3100 needs to be updated to reflect that the term "subject institution" includes a public bank.

Purpose: The proposed amendment would add a reference to an "industrial bank" to the definition of "subject institution." In addition, Section 10.3100 would be amended to state: "'Subject institution' also means a California public bank which is proposed to be a commercial bank or industrial bank."

Necessity: The amendment is necessary to make Section 10.3100 consistent with the definition of a bank as set forth in Financial Code section 103 and ensure that industrial banks and public banks are subject to the rules in this Subarticle.

AB 857 requires an applicant for a public bank charter to submit an application to the Department pursuant to Financial Code section 1020. Existing Section 10.3100 sets forth the regulations governing the application requirements for establishing a state bank. By including a public bank in the definition of "subject institution," the proposed amendment to Section 10.3100 would clarify that the regulations relating to applications for a bank charter are applicable to applications for a public bank charter.

Section 10.3301.1. Reasonable Promise of Successful Operation.

Problem: One of the factors that the commissioner must evaluate in an application for authority to organize and establish a corporation to engage in the banking or trust business is whether a proposed applicant will have a reasonable promise of successful operation.[21] For private banks, the evaluation is based on a review of financial factors and the reasonableness of achieving stated financial goals. As a nonprofit corporation, a public bank may have goals other than financial stability, such as social policy goals and improved benefits to the general community. The reasonableness of achieving intangible goals, however, is highly subjective and does not lend itself to a clear standard of review. Therefore, the standard for determining reasonable promise of successful operation must be clarified as to its application to private and public banks.

Purpose: Section 10.3301.1 would set forth the administrative standard that the Commissioner would apply in evaluating "reasonable promise of success." Specifically, the proposed regulation would clarify that the reasonable promise of success for a bank is evaluated by the reasonableness of achieving the goals laid out in the applicant's financial projections, such as financial stability, solvency, and reserves.

Necessity: It is necessary to set a standard for how the Commissioner will evaluate the reasonable promise of success of a public bank applicant; otherwise, it is unclear how the Commissioner can enforce this standard.

Private applicants for a bank charter are assessed based on financial viability, which is the accepted standard for determining the likelihood of success for any enterprise. This objective standard should be no different for public banks. It can be argued that a public

[21] Fin. Code, § 1023.

bank applicant's financial viability should count most heavily as taxpayer money is being invested.

Section 10.3402. Exemptions.

Problem: The current regulation exempts from Commissioner approval certain transactions soliciting pre-opening funds by proposed officers, directors and organizers of a proposed private bank. Public banks are to be created with public money, after a determination by the governing board of the local agency or agencies that the creation of the public bank is a prudent financial investment. Eliminating the exemption for certain solicitations of pre-opening funds will further support the requirements that public funds be carefully, transparently and wisely invested, and that the decision be reviewed and approved by the Commissioner.

Purpose: Amending Section 10.3402 to specify that transactions involving a proposed public bank are not eligible for the pre-opening solicitation of funds supports and underscores the fiduciary duty which public officials bear in managing public funds and eliminates confusion.

Necessity: The proposed regulation is necessary to prevent public bank applicants from claiming the exemption from Commissioner approval of the pre-opening solicitation of funds. This is necessary in order to protect public funds.

AB 857 requires public bank applicants to conduct a viability analysis prior to applying for a public bank charter. Voters must also approve the local agency applying for a public bank charter, except in the case of charter cities (which most larger California cities are.)[22] Moreover, the law authorizes a very minimal number of public bank charters. All this underscores the fact that public banks will involve the investment of taxpayer money and public funds. The investment and use of public funds are subject to the fiduciary care standard. Eliminating the exemption for the pre-opening solicitation of funds provides transparency and aligns with these standards and requirements.

ECONOMIC IMPACT ASSESSMENT [Government Code Section 11346.3, Subdivision (b)]

The Creation or Elimination of Jobs Within the State

The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California. This proposed rulemaking only clarifies certain definitions of terms related to public banks. AB 857 prescribes a maximum of ten public bank licenses that the Department may issue. Therefore, this would be a limited industry.

[22] https://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/Charter_Cities-List (as of September 16, 2020).

The Creation of New Businesses or the Elimination of Existing Businesses Within the State

The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California because the proposed regulations only clarify certain definitions of terms related to public banks.

The Expansion of Businesses Currently Doing Business Within the State

The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation of new businesses or the elimination of existing businesses in the State of California because the proposed regulations apply only to public bank applicants and licensees. AB 857 authorizes a minimal number of public banks-just two per calendar year and no more than ten total. Further, the Commissioner's authority to issue public bank licenses expires seven years after the date of which the commissioner first promulgates regulations for the purpose of carrying out the commissioner's duties under the Public Banks Division of the Government Code.[23]

The Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State's Environment

Public banks may offer local agency banking, infrastructure lending, participation lending, and wholesale lending. Local agencies may be able to invest their money and satisfy their banking needs at more advantageous rates, fees, terms and conditions. Local agencies may earn greater rates of return on their invested monies through participation and wholesale lending. California's critical infrastructure needs and shortage, including the housing shortage, may be addressed and improved through infrastructure lending by public banks.

Improved infrastructure and additional housing will be safer and provide additional housing units to combat California's severe housing crisis. This will decrease the large homelessness population and will benefit not just the homeless but all California residents who are affronted by the severity of the problem. This will benefit the physical, mental and emotional health and welfare of California residents, generally.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS [Government Code Section 11346.2, Subdivision (b)(3)]

There are no reports cited in the Specific Purpose of Regulation section or the Economic Impact Assessment section. The Department did not rely upon any technical, theoretical, or empirical study, report, or other similar document in proposing this regulatory action.

REASONABLE ALTERNATIVES AND REASONS FOR REJECTING THOSE

[23] Gov. Code, § 57607.

ALTERNATIVES [Government Code Section 11346.2, Subdivision (b)(4)(A)]

The Department has considered and determined that no reasonable alternative to the regulation has been identified or brought to its attention that would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Initial Statement of Reasons.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES AND REASONS FOR REJECTING THOSE ALTERNATIVES [Government Code Section 11346.2, Subdivision (b)(4)(B)]

No reasonable alternative considered by the Department or that have otherwise been identified and brought to the attention of the Department would be as effective and less burdensome to affected private persons or would lessen any adverse impact on small business.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY OR OTHER EVIDENCE RELIED ON BY AGENCY [Government Code Section 11346.2, Subdivision (b)(5)(A)]

The Department did not rely on any information in determining that the proposed regulatory action will not have a significant adverse economic impact on business. The proposed regulations are necessary to implement the law regulating public banks.