

ASSEMBLY BILL

No. 2500

Introduced by Assembly Member Hueso

February 24, 2012

An act to add Part 9.5 (commencing with Section 17750) to Division 4 of Title 2 of the Government Code, relating to state government, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2500, as introduced, Hueso. State government: California Investment Trust: state bank.

Existing law authorizes the Infrastructure and Economic Development Bank to enter into loan agreements with a sponsor or a participating party in order to finance a project related to infrastructure or economic development. Existing law provides that all money in the possession of, or collected by, any state agency or department is state money and is subject to provisions governing its deposit and handling in trust accounts. Existing law authorizes the Pooled Money Investment Board to invest surplus state money held in the Pooled Money Investment Account in accordance with certain procedures.

This bill would establish the California Investment Trust within state government, and would authorize the trust to exercise various powers and duties relating to banking, including, among others, receiving and managing deposits from public funds, loaning money, engaging in financial transactions, and buying and selling federal funds. The bill would require all state money, as defined, to be deposited into the California Investment Trust. The bill would establish a California Investment Trust Board to be chaired by the Treasurer, and would establish an advisory board for purposes of advising the board. The bill

would establish the California Investment Trust Fund for deposit of all state moneys, and would continuously appropriate those moneys to the board for expenditure, thereby making an appropriation of General Fund moneys. The bill would require the State Auditor to make specified audits of the trust, and require the State Auditor, Department of Finance, and the Controller to make specified reports to the Legislature with regard to the trust. The bill would exempt certain documents of the trust from public disclosure.

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.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Part 9.5 (commencing with Section 17750) is
2 added to Division 4 of Title 2 of the Government Code, to read:

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4 PART 9.5. CALIFORNIA INVESTMENT TRUST

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6 CHAPTER 1. FINDINGS AND DECLARATIONS

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8 17750. The Legislature finds and declares all of the following:

9 (a) California communities have suffered greatly since the
10 financial crisis of 2007. During the last several years, monthly
11 unemployment levels have remained above 10 percent leaving
12 millions of Californians out of work. Bankruptcies among small
13 businesses and individuals are up, capital markets are tight, and
14 local communities have limited resources to address their economic
15 and community development challenges.

16 (b) Independent analysis has shown that a state bank can do all
17 of the following:

18 (1) Support in-state economic development by increasing access
19 to capital for businesses in the state.

20 (2) Support job creation and retention through increased and
21 sustained business lending.

- 1 (3) Provide stability to the local financial sector.
- 2 (4) Reduce the cost paid by state government for banking
- 3 services.

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5 CHAPTER 2. DEFINITIONS

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7 17751. For the purposes of this part, the following terms have
8 the following meanings:

- 9 (a) "Advisory board" means the advisory board of the trust.
- 10 (b) "Board" means the board of directors of the trust.
- 11 (c) "California Investment Trust" or "trust" means the California
- 12 Investment Trust established pursuant to this part.
- 13 (d) "California Investment Trust Fund" or "fund" means the
- 14 fund established by Section 11757 for the deposit and appropriation
- 15 of state money.
- 16 (e) "Financial institutions" means banking or savings
- 17 organizations, including, but not limited to, banks, savings and
- 18 loan associations, and credit unions authorized to conduct business
- 19 in California, and state-chartered commercial banks, trust
- 20 companies, and savings and loan associations.
- 21 (f) "Public funds" means public funds of any local entity or
- 22 financial bank.
- 23 (g) "State-chartered bank" means a corporation incorporated
- 24 under Division 1 (commencing with Section 100) of Title 1 of the
- 25 Corporations Code that is, with the approval of the commissioner,
- 26 incorporated for the purpose of engaging in, or that is authorized
- 27 by the commissioner to engage in, the commercial or industrial
- 28 banking business, and, in that capacity, may carry out various
- 29 powers and duties, including, among others, the receipt of private
- 30 deposits, and the loaning and investment of money.
- 31 (h) "State money" means all general fund money in the
- 32 possession of, or collected by, any state agency or department that
- 33 is not otherwise restricted for expenditure by the California
- 34 Constitution. .

35
36 CHAPTER 3. THE CALIFORNIA INVESTMENT TRUST

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38 17752. (a) The California Investment Trust is hereby
39 established within state government as an independent entity.

- 1 (b) The purposes of the California Investment Trust are all of
- 2 the following:
- 3 (1) Supporting the economic development of the state by
- 4 increasing access to capital for businesses and farms within the
- 5 state in partnership with local financial institutions.
- 6 (2) Providing stability to the local financial sector without
- 7 entering into competition with community banks, credit unions,
- 8 or other financial institutions.
- 9 (3) Reducing the cost paid by state government for banking
- 10 services.
- 11 (4) To return profits, beyond those necessary to accomplish the
- 12 mission and sound operations of the trust, to the General Fund.

13

14 CHAPTER 4. THE CALIFORNIA INVESTMENT TRUST BOARD

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16 17753. (a) The California Investment Trust Board is hereby

17 established within the trust. The board shall operate, manage, and

18 control the California Investment Trust. The board shall locate and

19 maintain places of business of the trust. The board shall adopt and

20 enforce orders, rules, and bylaws for the transaction of the trust's

21 business.

- 22 (b) The board shall consist of all of the following:
- 23 (1) The Governor or his or her designee.
- 24 (2) The Treasurer.
- 25 (3) The Controller or his or her designee.
- 26 (4) One member appointed by the Senate Committee on Rules
- 27 and having a background in one or more areas of finance, including,
- 28 but not limited to, individuals working in for-profit and nonprofit
- 29 financial and academic institutions and economic development
- 30 practitioners.
- 31 (5) One member appointed by the Speaker of the Assembly and
- 32 having a background in one or more areas of finance, including,
- 33 but not limited to, individuals working in for-profit and nonprofit
- 34 financial and academic institutions and economic development
- 35 practitioners.
- 36 (c) The Treasurer shall act as chairperson of the board. The
- 37 board shall establish rules requiring the holding of regular meetings
- 38 and specifying the means for providing notice of the meetings
- 39 consistent with Article 9 (commencing with Section 11120) of
- 40 Chapter 9 of Part 1 of Division 3.

1 (d) The powers of the board and the functions of the trust shall
2 be implemented through actions taken and policies and rules
3 adopted by the board, subject to Chapter 3.5 (commencing with
4 Section 11340) of Part 1 of Division 3 and Section 11758.

5 (e) Three members of the board shall constitute a quorum to
6 transact business and exercise all rights, duties, and powers of the
7 board.

8 (f) The board shall appoint a president of the trust. The person
9 appointed as president shall have extensive experience in banking.
10 The board may appoint and employ any subordinate officers,
11 employees, and agents as the board considers necessary, and shall
12 define the duties, designate the titles, and fix the compensation of
13 all those persons. The board may designate the president or other
14 officers or employees as its agent in respect to the functions of the
15 trust, subject to the supervision, limitation, and control of the board.

16 (g) The board may remove and discharge any and all persons
17 under subdivision (f) or Section 11754.

18
19 CHAPTER 5. ADVISORY BOARD
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21 17754. (a) To enlist the help of private enterprise and to
22 encourage more active use of the purposes for which the California
23 Investment Trust is established, the board shall appoint an advisory
24 board of directors that consists of seven members.

25 (b) The members of the advisory board shall include:

26 (1) One representative of this state's financial industry sector.

27 (2) One representative of this state's small business sector.

28 (3) One representative of this state's agricultural sector.

29 (4) One representative of this state's labor groups.

30 (5) At least two members shall be officers of state-chartered
31 banks who do not maintain offices outside the boundaries of this
32 state.

33 (c) The board shall appoint a chairman, vice chairman, and
34 secretary of the advisory board. The term of office of directors
35 shall be set by the board, but may not exceed four years.

36 (d) The advisory board shall do all of the following:

37 (1) Meet regularly with the management of the trust to review
38 the trust's operations and finances to determine whether
39 recommendations should be made by the advisory board to the
40 board relating to improved management performance, better

1 customer service and overall improvement in internal methods,
2 procedures and operating policies of the trust.

3 (2) Make recommendations to the board relating to the
4 establishment of additional objectives for the operation of the trust.

5 (3) Make recommendations to the board concerning the
6 appointment of officers of the trust.

7 (4) Meet every annual quarter with the board to present
8 recommendations concerning the trust.

9 (5) Participate on loan committees, if created by the board.

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11 CHAPTER 6. STATE MONEYS

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13 17755. (a) The California Investment Trust may accept
14 deposits of public funds. The trust may not accept deposits of
15 private funds.

16 (b) All state moneys shall be deposited in the California
17 Investment Trust Fund. All income earned by the trust for its own
18 account on state moneys that are deposited in, or invested with,
19 the trust to the credit of the state shall be credited to, and become
20 a part of, the revenues and income of the trust.

21 (c) Whenever any public funds are deposited in the trust, the
22 official having control of the public funds and the sureties on the
23 bond of the official shall be exempt from all liability by reason of
24 loss of any of the funds deposited in the trust.

25 (d) The trust shall pay interest on public deposits at a rate
26 comparable to average statewide rates paid by private depositories
27 of public funds and may offer other financial products to state
28 entities on a competitive basis.

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30 CHAPTER 7. POWERS

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32 17756. The California Investment Trust may do all of the
33 following:

34 (a) Make loans in the form of participation loans in which the
35 originator of the loan is a financial institution doing business in
36 this state that meets safety and performance standards that are
37 generally accepted by state or federal financial regulatory agencies
38 and the purpose of the loan is for operation or expansion of a
39 qualified business located in California.

1 (b) Purchase participation interests in loans made or held by
2 financial institutions doing business in this state and that meet
3 safety and performance standards that are generally accepted by
4 state or federal financial regulatory agencies where the purpose of
5 the loan is for operation or expansion of a qualified business
6 located in California.

7 (c) Purchase, guarantee, or hold loans originated by financial
8 institutions doing business in this state that meet safety and
9 performance standards that are generally accepted by state or
10 federal financial regulatory agencies.

11 (d) Purchase or hold loans that are insured or guaranteed in
12 whole or in part by the United States, its agencies, or
13 instrumentalities.

14 (e) Make, purchase, guarantee, or hold loans of instrumentalities
15 of this state.

16 (f) Purchase or hold loans that are obtained as security pledged
17 for, or originated in the restructuring of, any other loan properly
18 originated or participated in by the trust.

19 (g) Invest its funds in conformity with policies of the board.

20 (h) Buy and sell federal funds.

21 (i) Act as a custodian bank for financial institutions organized
22 under the laws of this state and accept deposits from the financial
23 institutions in connection with this function.

24 (j) Issue bank stock loans to financial institutions organized
25 under the laws of this state and doing the majority of their business
26 in this state.

27 (k) For financial institutions that make the trust a reserve
28 depository, perform the functions and render the services of a
29 clearinghouse, including all facilities for providing domestic and
30 foreign exchange and may rediscount paper, on terms prescribed
31 by the board.

32 (l) Perform all acts and do all things necessary, convenient,
33 advisable, or desirable to carry out the powers expressly granted
34 or necessarily implied in this act through or by means of its
35 president, officers, agents, or employees or by contracts with any
36 person, firm, or corporation.

37 (m) The bank may not make a loan to any board member, the
38 president, or any officer of the bank.

39
40 CHAPTER 8. CALIFORNIA INVESTMENT TRUST FUND

1 17757. (a) The California Investment Trust Fund is hereby
2 established in the State Treasury for use by the trust.
3 Notwithstanding Section 13340, all money held in the fund is
4 continuously appropriated to the trust for purposes of this part.

5 (b) As soon as possible after the end of each calendar year, the
6 board shall determine the amount of income, if any, earned by the
7 California Investment Trust in that calendar year that is in excess
8 of amounts necessary to pay for expenses of administering the
9 activities of the trust and shall, in consultation with the Legislature,
10 determine how much of the excess shall be transferred to the
11 General Fund, if not constitutionally restricted with regard to the
12 transfer of those funds.

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14 CHAPTER 9. RULES AND REGULATIONS
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16 17758. The California Investment Trust Board shall adopt rules
17 and regulations to do all of the following:

18 (a) Ensure the safety and soundness of the California Investment
19 Trust, adhere to sound underwriting practices, avoid excessive risk
20 and, to the extent possible, reflect applicable standards for safety
21 and soundness set forth in Part 364 of Title 12 of the Code of
22 Federal Regulations.

23 (b) Specify the trust’s powers and permissible investments and
24 activities.

25 (c) Authorize specific services that the trust may provide.

26 (d) Specify limits for loans and other obligations the trust makes
27 or undertakes.

28 (e) Specify reserve requirements consistent with federal law.

29 (f) Set other requirements that the board considers necessary to
30 administer the trust under this act.

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32 CHAPTER 10. AUDIT
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34 17759. (a) The State Auditor shall contract with an independent
35 certified public accounting firm for an annual audit of the trust in
36 accordance with generally accepted government auditing standards.

37 (b) The State Auditor shall audit annually or contract for an
38 annual audit of the separate programs and funds administered by
39 the trust. On request of the State Auditor, the board shall assist the
40 State Auditor in the auditing firm selection process, but the

1 selection of the auditing firm is the State Auditor’s responsibility.
 2 The auditor selected shall prepare an audit report that includes
 3 financial statements presented in accordance with the audit and
 4 accounting guide for banks and savings institutions issued by the
 5 American Institute of Certified Public Accountants. The auditor
 6 also shall prepare audited financial statements for inclusion in the
 7 comprehensive annual financial report for the state.

8 (c) The State Auditor may conduct performance audits of the
 9 trust, including the separate programs and funds administered by
 10 the trust.

11 (d) The auditor shall report the results of the audit to the board
 12 and to the Legislature.

13 (e) The trust or its separate programs and funds shall pay the
 14 costs of the audit, which shall be expended from the fund.

15 (f) The Department of Finance and the Controller shall examine
 16 the bank at least once every 24 months and conduct any
 17 investigation of the trust that may be necessary.

18 (g) The Treasurer shall report the examination results, and the
 19 results of any necessary investigation, to the board and to the
 20 Legislature as soon as practicable.

21 (h) The Department of Finance and the Controller may charge
 22 a fee for any examination or investigation at an hourly rate to be
 23 set by the Treasurer, sufficient to cover all reasonable expenses of
 24 the department and the Controller associated with the examinations
 25 and investigations provided for by this section, which shall be
 26 expended from the fund.

27
 28 CHAPTER 11. REPORT
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30 17760. (a) Immediately following the close of each calendar
 31 month, the Treasurer shall prepare a report on the General Fund,
 32 the trust, and every other fund under his or her control itemized
 33 as to all of the following:

34 (1) The amount in the fund at the close of business at the end
 35 of the preceding month.

36 (2) The amount of revenue deposited or transferred to the credit
 37 of each fund during the current month.

38 (3) The amount of withdrawals or transfers from each fund
 39 during the current month.

1 (4) The amount on hand in each fund at the close of business
2 at the end of the current month.

3 (b) One copy of the report shall be provided promptly to those
4 requesting the report, so long as the supply lasts. The report shall
5 also be posted on the Internet Web site of the Treasurer.

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7

CHAPTER 12. TITLE

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9 17761. (a) All business of the California Investment Trust
10 shall be conducted under the name of the "California Investment
11 Trust." Title to property pertaining to the operation of the trust
12 shall be obtained and conveyed in the name of the "California
13 Investment Trust, doing business as the California Investment
14 Trust."

15 (b) Instruments shall be executed in the name of the State of
16 California within the scope of authority granted by the California
17 Investment Trust Board. The president of the trust may execute
18 instruments on behalf of the trust, including any instrument
19 granting, conveying, or otherwise affecting any interest in or lien
20 upon real or personal property.

21 (c) Other officers or employees of, and legal counsel to, the
22 trust may execute instruments on behalf of the trust when
23 authorized by the board.

24

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CHAPTER 13. RECORDS

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27 17762. (a) The following records of the California Investment
28 Trust are confidential and shall not be disclosed to the public:

29 (1) Commercial or financial information of a customer of the
30 trust, whether obtained directly or indirectly, other than routine
31 credit inquiries concerning information that is required to be
32 disclosed in accordance with due legal process.

33 (2) Internal or interagency memoranda or letters that would not
34 be available by law to a party other than in litigation with the trust.

35 (3) Except as provided in Section 11759 or 11780, information
36 that is contained in, or related to a report of, an examination or
37 operating or condition reports prepared by, on behalf of or for the
38 use of a state or federal agency responsible for the regulation or
39 supervision of any trust activity, unless the state or federal agency
40 is required by law to make the report open to the public.

1 (b) As used in this section, “customer” means any person that
2 has transacted or is transacting business with, or has used or is
3 using the services of, the California Investment Trust, or for which
4 the trust has acted or is acting as a fiduciary with respect to trust
5 property.

6 SEC. 2. The Legislature finds and declares that Section 1 of
7 this act, which adds Section 11762 to the Government Code,
8 imposes a limitation on the public’s right of access to the meetings
9 of public bodies or the writings of public officials and agencies
10 within the meaning of Section 3 of Article I of the California
11 Constitution. Pursuant to that constitutional provision, the
12 Legislature makes the following finding to demonstrate the interest
13 protected by this limitation and the need to protect that interest:

14 In order to protect the confidentiality of the internal records of
15 persons doing business with the California Investment Trust and
16 to ensure effective administration of the California Investment
17 Trust, it is necessary that certain records be exempt from disclosure.