

Assembly Bill No. 2805

CHAPTER 913

An act to add and repeal Section 146.1 of the Financial Code, to amend Sections 16522 and 16612 of the Government Code, and to amend Section 44559.1 of the Health and Safety Code, relating to financial institutions.

[Approved by Governor September 29, 2000. Filed
with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2805, Papan. Financial institutions.

The Banking Law provides for the regulation of banks in California and sets forth various definitions of terms relevant to those regulations.

This bill would define, until November 30, 2004, the term "small bank" for purposes of the Banking Law.

This bill would require the California Research Bureau to provide an annual report, until November 30, 2004, to the Legislature addressing the disposition of all state funds, the names of financial institutions receiving state funds, including the geographic location and use of the funds, and the percentage of funds remaining in California and invested out of state.

This bill would also require the California Research Bureau to complete a study by December 31, 2001, examining, among other things, the present geographical and socioeconomic disposition of California's state funds, the efforts made by state agencies in investing state funds to ensure the funds receive the best rates, and the feasibility and social benefits of mandating that a set percentage of California's public funds be used in California.

Existing law requires that banks, savings and loan associations, and credit unions deposit specified securities with the Treasurer in order to be eligible to receive and retain demand or time deposits of state funds.

This bill would add specified letters of credit issued by the Federal Home Loan Bank of San Francisco to the list of securities that may be received as security for demand and time deposits of state funds.

Existing law establishes the Capital Access Loan Program for the purpose of improving small businesses' access to capital from financial institutions in order to meet environmental standards imposed on businesses. Existing law defines various terms relevant to the program.

This bill would expand the definition of "financial institution" for purposes of the program.

This bill would incorporate additional changes in Section 44559.1 of the Health and Safety Code proposed by SB 1986, to become operative only if those bills are enacted and become effective on or before January 1, 2001, and this bill is enacted last.

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

SECTION 1. Section 146.1 is added to the Financial Code, to read:

146.1. "Small bank" means a bank that, as of December 31 of either of the prior two calendar years, had total assets of less than two hundred fifty million dollars (\$250,000,000) and was independent.

This section shall become inoperative on November 30, 2004, and as of January 1, 2005, is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. The California Research Bureau shall provide an annual report, until November 30, 2004, to the Legislature addressing the following:

- (a) The disposition of all state funds.
- (b) The names of financial institutions receiving state funds, and at what rates, with specific care being given to the location and disposition of the funds.
- (c) The geographic location and use of the funds.
- (d) The percentage of funds remaining in California and the percentage of funds invested out of state and out of the country.

SEC. 3. The California Research Bureau shall complete, by December 31, 2001, a study examining the following:

- (a) The present geographic and socioeconomic disposition of California's state funds.
- (b) The efforts made by state agencies in investing state funds to ensure the funds receive the best rates while satisfying other socially important goals, including keeping California's public funds working for Californians, and ensuring that a significant portion of publicly invested funds reach California's local communities.
- (c) Additional efforts that can be made to keep California funds working for Californians while practicing prudent investment policies.
- (d) The feasibility and social benefits of the following:
 - (1) Requiring the state to follow guidelines similar to the federal Community Reinvestment Act in its investment policies.
 - (2) Allocating funds for specific investment purposes.
 - (3) Mandating that a set percentage of California's public funds be used in California.
 - (4) Identifying impediments, if any, to community banks' receipt of public moneys, such as those from pooled money investment accounts.



(5) Creating a separate program for pooling deposits in California's community financial institutions to ensure that more public funds are used at the local level.

SEC. 4. Section 16522 of the Government Code is amended to read:

16522. The following securities may be received as security for demand and time deposits:

(a) Bonds, notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as those loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937) for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any county, city, town, metropolitan water district, municipal utility district, municipal water district, bridge and highway district, flood control district, school district, water district, water conservation district or irrigation district within this state, and, in addition, revenue or tax anticipation notes, and revenue bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by this state, or such local agency or district, or by a department, board, agency, or authority thereof.

(d) Registered warrants of this state.

(e) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, consolidated obligations of the Federal Home Loan Banks established under the Federal Home Loan Bank Act, bonds, debentures and other obligations of the Federal National Mortgage Association and of the Government National Mortgage Association established under the National Housing Act as amended, in the bonds of any federal home loan bank established under said act, bonds, debentures, and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970, and in bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act, as amended.



(f) Bonds and notes of the California Housing Finance Agency issued pursuant to Chapter 7 (commencing with Section 41700) of Part 3 of Division 31 of the Health and Safety Code.

(g) Promissory notes secured by first mortgages and first trust deeds upon residential real property located in California, provided that:

(1) Notwithstanding Section 16521, the promissory notes shall at all times be in an amount in value at least 50 percent in excess of the amount deposited with the bank;

(2) The Treasurer issues regulations, establishes procedures for determining the value of the promissory notes and develops standards necessary to protect the security of the deposits so collateralized;

(3) The depository may exercise, enforce, or waive any right or power granted to it by promissory note, mortgage, or deed of trust; and

(4) The following may not be used as security for deposits:

(i) Any promissory note on which any payment is more than 90 days past due,

(ii) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust, or

(iii) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(h) Bonds issued by the State of Israel.

(i) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, or the Government Development Bank of Puerto Rico.

(j) Any municipal securities, as defined by Section 3(a)(29) of the Securities Exchange Act of June 6, 1934, (15 U.S.C. 78, as amended), which are issued by this state or any local agency thereof.

(k) Letters of credit issued by the Federal Home Loan Bank of San Francisco, which shall be in the form and shall contain provisions as the Treasurer may prescribe, and shall include the following terms:

(1) The Treasurer shall be the beneficiary of the letter of credit.

(2) The letter of credit shall be clean and irrevocable, and shall provide that the Treasurer may draw upon it up to the total amount in the event of the failure of the bank or if the bank refuses to permit the withdrawal of funds by the Treasurer or any other authorized state officer or employee.

SEC. 5. Section 16612 of the Government Code is amended to read:

16612. The following securities may be received as security for deposits:



(a) Bonds, notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as such loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949 (42 U.S.C. Sec. 1452 et seq.)) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937) for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any county, city, town, metropolitan water district, municipal utility district, municipal water district, bridge and highway district, flood control district, school district, water district, water conservation district or irrigation district within this state, and, in addition, revenue on tax anticipation notes, and revenue bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by this state, or such local agency or district, or by a department, board, agency, or authority thereof.

(d) Registered warrants of this state.

(e) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, consolidated obligations of the Federal Home Loan Banks established under the Federal Home Loan Bank Act, bonds, debentures and other obligations of the Federal National Mortgage Association and of the Government National Mortgage Association established under the National Housing Act as amended, in the bonds of any federal home loan bank established under said act, bonds, debentures, and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970, and in bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act, as amended.

(f) Bonds and notes of the California Housing Finance Agency issued pursuant to Chapter 7 (commencing with Section 41700) of Part 3 of Division 31 of the Health and Safety Code.

(g) Promissory notes secured by first mortgages and first trust deeds upon residential real property located in California, provided that:



(1) Notwithstanding Section 16611, the promissory notes shall at all times be in an amount in value at least 50 percent in excess of the amount deposited with the savings and loan association;

(2) The State Treasurer issues regulations, establishes procedures for determining the value of the promissory notes and develops standards necessary to protect the security of the deposits so collateralized;

(3) The depository may exercise, enforce, or waive any right or power granted to it by promissory note, mortgage, or deed of trust; and

(4) The following may not be used as security for deposits:

(i) Any promissory note on which any payment is more than 90 days past due,

(ii) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust, or

(iii) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(h) Bonds issued by the State of Israel.

(i) Letters of credit issued by the Federal Home Loan Bank of San Francisco, which shall be in the form and shall contain provisions as the Treasurer may prescribe, and shall include the following terms:

(1) The Treasurer shall be the beneficiary of the letter of credit.

(2) The letter of credit shall be clean and irrevocable, and shall provide that the Treasurer may draw upon it up to the total amount in the event of the failure of the savings and loan association or credit union or if the savings and loan association or credit union refuses to permit the withdrawal of funds by the Treasurer or any other authorized state officer or employee.

SEC. 6. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise:

(a) "Authority" means the California Pollution Control Financing Authority.

(b) "California Capital Access Fund" means a fund created within the authority to be used for purposes of the program.

(c) "Executive director" means the Executive Director of the California Pollution Control Financing Authority.

(d) "Financial institution" means a federal or state-chartered bank, savings association, credit union, not-for-profit community development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in



the consortium does not exceed 49 percent. “Financial institution” also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, and a Small Business Investment Company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations. A financial institution described in this subdivision shall be domiciled or have its principal office in the State of California.

(e) “Loss reserve account” means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purpose of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) “Participating financial institution” means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) “Passive real estate ownership” means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) “Program” means the Capital Access Loan Program created pursuant to this article.

(i) “Qualified business” means a small business concern that meets both of the following criteria:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.



(j) (1) “Qualified loan” means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) “Qualified loan” does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) “Severely affected community” means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(l) “Small Business Assistance Fund” means a fund created within the authority that may only be used to pay the authority’s contribution to a loss reserve account for a qualified small business that has operations that affect the environment.

(m) “Small business concern” has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

SEC. 6.5. Section 44559.1 of the Health and Safety Code is amended to read:

44559.1. As used in this article, unless the context requires otherwise:

(a) “Authority” means the California Pollution Control Financing Authority.

(b) “California Capital Access Fund” means a fund created within the authority to be used for purposes of the program.

(c) “Executive director” means the Executive Director of the California Pollution Control Financing Authority.

(d) “Financial institution” means a federal or state-chartered bank, savings association, credit union, not-for-profit community



development financial institution certified under Part 1805 (commencing with Section 1805.100) of Chapter XVIII of Title 12 of the Code of Federal Regulations, or a consortium of these entities. A consortium of those entities may include a nonfinancial corporation, if the percentage of capitalization by all nonfinancial corporations in the consortium does not exceed 49 percent. “Financial institution” also includes a lending institution that has executed a participation agreement with the Small Business Administration under the guaranteed loan program pursuant to Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, and a Small Business Investment Company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations. A financial institution described in this subdivision shall be domiciled or have its principal office in the State of California.

(e) “Loss reserve account” means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) “Participating financial institution” means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) “Passive real estate ownership” means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

(1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate.

(2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase.

(h) “Program” means the Capital Access Loan Program created pursuant to this article.



(i) “Qualified business” means a small business concern that meets both of the following criteria, regardless of whether the small business concern has operations that affect the environment:

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in the state.

(2) It has its primary business location within the boundaries of the state.

(j) (1) “Qualified loan” means a loan or a portion of a loan made by a participating financial institution to a qualified business for any business activity that has its primary economic effect in California. A qualified loan may be made in the form of a line of credit, in which case the participating financial institution shall specify the amount of the line of credit to be covered under the program, which may be equal to the maximum commitment under the line of credit or an amount that is less than that maximum commitment. A qualified loan made under the program may be made with the interest rates, fees, and other terms and conditions agreed upon by the participating financial institution and the borrower.

(2) “Qualified loan” does not include any of the following:

(A) A loan for the construction or purchase of residential housing.

(B) A loan to finance passive real estate ownership.

(C) A loan for the refinancing of an existing loan when and to the extent that the outstanding balance is not increased.

(D) A loan, the proceeds of which will be used in any manner that could cause the interest on any bonds previously issued by the authority to become subject to federal income tax.

(k) “Severely affected community” means any area classified as an enterprise zone pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), any area, as designated by the executive director, contiguous to the boundaries of a military base designated for closure pursuant to Section 2687 of Title 10 of the United States Code, as amended, and any other comparable economically distressed geographic area so designated by the executive director from time to time.

(l) “Small Business Assistance Fund” means a fund created within the authority pursuant to Section 44548.

(m) “Small business concern” has the same meaning as in Section 632 of Title 15 of the United States Code, or as otherwise provided in regulations of the authority.

SEC. 7. Section 6.5 of this bill incorporates amendments to Section 44559.1 of the Health and Safety Code proposed by both this bill and SB 1986. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2001, (2) each bill amends Section 44559.1 of the Health and Safety Code, and (3)



this bill is enacted after SB 1986, in which case Section 6 of this bill shall not become operative.

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