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## Memorandum

To: Members of the Municipal Bank Feasibility Task Force  
From: Molly Cohen, Senior Policy Analyst, Banking & Investments  
Date: March 14, 2018 (UPDATED March 21, 2019)  
Subject: Public Banking in the United States – A Literature Review

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### **I. Introduction**

In February 2018, City and County of San Francisco (the “City”) Treasurer José Cisneros convened a Municipal Bank Feasibility Task Force (the “Task Force”) to investigate the potential costs and benefits of a municipal bank as well as other opportunities to leverage the City’s banking and investment practices to support community objectives. This effort was initiated by the City’s Board of Supervisors, including Supervisor Malia Cohen, who introduced Resolution 152-17, requesting the Office of Treasurer & Tax Collector (TTX) convene the Task Force,<sup>1</sup> and Supervisor Sandra Fewer, who sought a Budget and Legislative Analyst report on the topic.

A public or municipal bank<sup>2</sup> is a banking institution affiliated with a locality or a state, though it is a legally separate entity. Aside from state ownership, there is no widely-agreed upon definition of a public bank, and the actual functions vested in a public bank could vary widely, depending on the jurisdiction’s needs. There is currently only one fully-operational public bank in the United States, the Bank of North Dakota (“BND”).<sup>3</sup> However, Puerto Rico previously had a public bank—the Puerto Rico Development Bank—which was liquidated in summer 2017,<sup>4</sup> and American Samoa is currently founding a public

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<sup>1</sup> City and County of San Francisco Board of Supervisors, Resolution 152-17, retrieved from: <http://sfbos.org/sites/default/files/r0152-17.pdf>. The resolution asks “the Office of the Treasurer & Tax Collector to convene a task force, and the City Attorney to advise the Treasurer in this effort, for the purpose of advising the Mayor, the Board of Supervisors, and relevant City Departments regarding the creation of a Municipal Public Bank, either as a new City Department or a separate Enterprise Department.”

<sup>2</sup> A public bank is a bank affiliated with any government entity, no matter the level of government. A municipal bank is a bank associated with a municipality. In the memo, these terms will be used interchangeably.

<sup>3</sup> To limit the scope, this literature review will only discuss reports regarding public banking in the United States, though numerous international models exist.

<sup>4</sup> Scurria, A. (2017, April 28). Puerto Rico Government Development Bank Opts to Liquidate. *The Wall Street Journal*, retrieved from: <https://www.wsj.com/articles/puerto-rico-government-development-bank-opts-to-liquidate-1493386141>.

bank—the Territorial Bank of American Samoa —which formally opened in 2016 and gained access to the Federal Reserve’s payment system in 2018.<sup>5</sup>

To assist the work of the Task Force and the staff of TTX, this memo compiles existing resources on public banks, including background reports on benefits and risks of public banking, other jurisdictions’ feasibility studies, and relevant California-related reports.<sup>6</sup>

## **II. Summary of Findings**

While currently any public bank initiative comes with more questions than answers, there are some foundational lessons we can take away from prior work on public banking. For example, the majority of the documents presented below find that:

- Capitalizing a public bank requires a significant outlay of funds and can act as an impediment to public banking
- Serving the cannabis industry will greatly increase the complexity and legal risk of public banking
- Alternative vehicles, like development authorities, may solve similar issues as public banks with less costs though also less flexibility

The documents included in this literature review raise and answer many questions about public banking. Similarly, the Task Force will need to address many of these questions to determine the feasibility and advisability of a municipal bank. These questions cover the goals of the bank, the regulatory structure of the bank as well the bank’s potential products and services. Questions include:

- What are the main aims in creating a municipal bank? Can the bank fully achieve those aims? Can other strategies achieve those aims?
- How should the bank be structured? Should it have a federal or state charter? Should it be a commercial bank or a credit union?
- How much funding is needed to capitalize the bank? Where should this capital come from?
- Would the bank need insurance? Could it get it from the Federal Deposit Insurance Corporation (“FDIC”)? Or a private source? Would it need a change in state law to exempt it from insurance?
- Would the bank need access to the Federal Reserve’s payment systems?
- What services and products should the bank offer? Should it perform treasury functions for the City? Should it act as a banker’s bank and serve local community banks? Should it offer depository services and bank accounts to members of the public? Should it partner with existing banks for lending? Or should it offer and originate loans to members of the public directly?
- Should the bank serve cannabis businesses? How will this impact its access to FDIC insurance and the Federal Reserve’s payment system?
- How much would start-up activities cost? How much would ongoing operational activities cost?
- How and when would the bank make a profit? How much profit? What should it do with these profits?

## **III. Background Documents**

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<sup>5</sup> Blackwell, R. (April 30, 2018). American Samoa Finally Gets a Public Bank. And U.S. States Are Watching. How Far *American Banker*, retrieved from: <https://www.americanbanker.com/news/american-samoa-finally-gets-a-public-bank-and-us-states-are-watching>.

<sup>6</sup> Within a section, all reports are listed in chronological order.

### A. *Demos, Main Street Partnership Banks*

In April 2011, Demos, a public policy research organization, published a report on “partnership banks,” which are public banks that act as banker’s banks to in-state community banks and provide banking services to state governments.<sup>7</sup> Demos’s partnership bank is modeled after BND. Using BND as an example, the report finds that partnership banks could offer many benefits to the local economy, local banking industry and local governments. For example, by partnering with community banks and increasing lending, a partnership bank could create jobs, spur economic growth and strengthen local banks. The report notes that partnership banks could also generate revenue for states via bank dividend payments and could lower debt costs for local governments by providing access to low-cost funds from the regional FHLB and passing these savings on to local governments when they buy debt for infrastructure investments.

### B. *David Swayze and Christine Schiltz, State-Owned Banks: A Relic of the Past or the Wave of the Future?*

This 2013 summary article in *Delaware Banker* provides background on BND, describes advantages and disadvantages of public banking, and ultimately concludes that alternative loan and hybrid funding vehicles are preferable to public banks.<sup>8</sup> The authors begin by describing BND, which was founded in 1919 on a wave of economic populism, capitalized with a \$2 million bond offering and charged with “promoting agriculture, commerce and industry” in North Dakota.<sup>9</sup> Under North Dakota state law, all state funds must be deposited into BND, and the bank is governed by the Industrial Commission of North Dakota, composed of the Governor, the Attorney General and the Agriculture Commissioner. BND is not a member of the FDIC, but, pursuant to state law, its deposits are insured by the “full faith and credit” of the State of North Dakota.<sup>10</sup> Though BND does offer retail banking to members of the public, it does not market these services and does not provide ATMs, debit cards, online bill pay or branch offices to avoid competing with local banks.<sup>11</sup> While BND does originate some student loans, it primarily partners with local banks and credit unions to lend, providing guarantees, capital contributions for the initial loan, and interest rate buy-downs. BND currently turns a profit and has for every year since 1971. From 2003-2013, it returned \$300 million to the state fund.<sup>12</sup> Perhaps most importantly, the authors believe that BND can serve as a bulwark in times of natural disaster and economic distress, in one instance providing \$70 million in a line of credit to residents and businesses after a natural disaster.<sup>13</sup> In

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<sup>7</sup> Judd, J. and McGhee, H. *Banking on America: How Main Street Partnership Banks Can Improve Local Economies*. New York, NY: Demos, retrieved from:

[http://www.demos.org/sites/default/files/publications/Demos\\_NationalBankPaper.pdf](http://www.demos.org/sites/default/files/publications/Demos_NationalBankPaper.pdf).

<sup>8</sup> Swayze, David S. and Christine Schiltz (Spring 2013), *State-Owned Banks: A Relic of the Past or the Wave of the Future?*, *Delaware Banker*, Delaware, retrieved from: <https://www.pgslegal.com/wp-content/uploads/2017/07/Spring-2013-Delaware-Banker-Article.pdf>

<sup>9</sup> Id. at 13.

<sup>10</sup> Swayze and Schiltz, at 13.

<sup>11</sup> Bank of North Dakota. *Public*. Retrieved from: <https://bnd.nd.gov/public/>

<sup>12</sup> Swayze and Schiltz, at 13.

<sup>13</sup> Id. Similarly, during the economic crisis from 2007-2009, when most banks faced a credit crunch, BND actually increased its lending: its participation loans with local banks grew by 35 percent. Demos. *Putting Massachusetts Money to Work for Massachusetts: Introducing the Massachusetts Partnership Bank*. Retrieved from: <http://www.demos.org/sites/default/files/publications/MA%20Paper%20Final.pdf>.

general, the authors agree that BND is a successful public bank, able to offer low-interest loans, support the local banking industry and provide revenue to the state.

Despite noting these advantages, the authors argue that there are many disadvantages to public banks as well as ready alternatives. They believe that the major disadvantages include high cost of start-up capital, concerns about political pressure impairing bank governance, and potential competition with the private sector. To illustrate these issues, the authors outline the failure of the partially state-owned Farmers' Bank of Delaware, where state pressure to increase profits led to illegal activity, solvency concerns, an attempted bail-out, and ultimately a distress sale.<sup>14</sup> The authors conclude that rather than pursuing a public bank, states should create and expand "special loan, grant and hybrid funding authorities," such as economic development agencies to target specific needs.<sup>15</sup>

### C. *Karl Beitel, Municipal Banking: An Overview*

This April 2016 report offers a broad, theoretical framework for how municipalities can establish, fund and operate municipal banks. Beitel believes that local governments have two main options for establishing a municipal financial institution. First, the municipality could create a full state-chartered depository institution, either via legislation or voter-approved Charter Amendment.<sup>16</sup> Or second, the municipality could take an incremental approach, creating a non-depository Municipal Financial Corporation for long-term housing and infrastructure investments as well as a small-scale, limited-purpose depository to support these investments.<sup>17</sup> In time, the city could expand the role of the limited-purpose depository institution to take over the banking and cash management work currently done by outside banks.<sup>18</sup> In both instances, the bank would need start-up capital. Beitel stresses that a municipal bank should be independent from the political process and have strict underwriting criteria as well as independent review and auditing. Profits from the bank may either be capitalized and leveraged to increase lending capacity or invested in dedicated funds to create a source of subsidy for interest-rate payments on various financial instruments (such as affordable housing bonds, loans to small businesses etc.). Aside from generating profits, Beitel believes that a bank could also save the municipality money by purchasing short-term municipal debt obligations from the municipality: according to his calculations, this could amount to savings of \$68 million per year in San Francisco. Beitel concludes by outlining ways in which a municipal bank could support affordable housing by financing acquisition programs, new production and linkages to existing city programs.

### D. *Karl Beitel, The Municipal Bank: Regulatory Compliance, Capitalization, Liquidity and Risk*

Building on the overview paper, in this report, Beitel further details his vision for the capitalization, funding, lending, liquidity and risks associated with municipal banking.<sup>19</sup> Beitel believes that municipalities have two options for capitalization: a one-time appropriation from the General Fund or a

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<sup>14</sup> Swayze and Schiltz, at 14.

<sup>15</sup> *Id.* at 14.

<sup>16</sup> Beitel, K. (2016). *Municipal Banking: An Overview*. New York, NY: Roosevelt Institute (p. 8), retrieved from: <http://rooseveltinstitute.org/wp-content/uploads/2016/04/Municipal-Banking-An-Overview.pdf>.

<sup>17</sup> *Id.* at 7-8.

<sup>18</sup> *Id.* at 8.

<sup>19</sup> Beitel, K. (2016). *The Municipal Bank: Regulatory Compliance, Capitalization, Liquidity and Risk*. New York, NY: Roosevelt Institute, retrieved from: <http://rooseveltinstitute.org/municipal-bank-regulatory-compliance-capitalization-liquidity-and-risk/> (hereinafter "The Municipal Bank").

time-limited dedication of annual investment earnings from the investment pool to a capitalization fund. The city would determine the initial capitalization needed based on start-up costs, operating losses and FDIC requirements. Beitel believes a municipal bank could collateralize city deposits as required by California state law<sup>20</sup> by securing a Federal Home Loan Bank (“FHLB”) line of credit.<sup>21</sup> Once this FHLB line of credit is secured, the municipal bank could take over city depository and cash management functions, including accepting deposits, conducting payments using the Federal Reserve payment system and investing temporary surpluses in the money market. The bank could fund its lending operations through the issuance of medium-term notes sold to the City Treasurer,<sup>22</sup> and it could also accept deposits and sell CDs and medium-term notes to other entities. To support community development, Beitel argues that the bank could make loans in affordable housing and infrastructure and partner with local credit unions and community banks. Beitel suggests that the bank enter into asset swap agreements with the treasurer to provide additional liquidity. Beitel concludes with strategies to manage risk, including outside monitoring of lending practices and securitization and sale of long-term loans.<sup>23</sup>

#### **IV. Past Feasibility Studies**

In recent years, there has been significant interest in public banks across the country. Many states and municipalities including, Oakland, Seattle, Los Angeles and New Jersey are currently considering public banks. While no city or state has created a public bank aside from North Dakota, Puerto Rico and American Samoa, in the past few years, several jurisdictions have performed feasibility studies. This section summarizes feasibility studies done in Massachusetts, Vermont and Santa Fe. All three studies note the benefits of a public bank but also disadvantages, particularly the high costs of capitalization. Because of these costs, the three studies ultimately recommended against creating and capitalizing a full public bank initially, though two reports suggest a phased approach to public banking. The following section summarizes these reports with an emphasis on the goals for the public bank, findings and the outcome of the report.

##### *A. Massachusetts Feasibility Study*

In August 2010, the Massachusetts State Legislature passed Chapter 240 of the acts of 2010, creating “a commission to study the feasibility of establishing a bank owned by the commonwealth or by a public authority constituted by the commonwealth.”<sup>24</sup> As part of the Commission, the Federal Reserve Bank of Boston, published a study evaluating whether BND could serve as a public bank model for Massachusetts and other states.<sup>25</sup>

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<sup>20</sup> Cal Gov’t Code § 53652.

<sup>21</sup> This FHLB line of credit requires FDIC insurance and designated collateral, such as U.S. Treasury notes or securities of housing agencies, and is limited to 15 percent of the bank’s total assets. Beitel, *The Municipal Bank*, at 6.

<sup>22</sup> Per California Government Code, municipalities are limited to investing only 30% of their portfolio in medium-term notes of an “A” rating or better. Cal Gov’t Code § 53601(k).

<sup>23</sup> Beitel, *The Municipal Bank*, at 13-15.

<sup>24</sup> Mass. Gen. La. ch. 240, § 180(a), retrieved from: <https://malegislature.gov/Laws/SessionLaws/Acts/2010/Chapter240>.

<sup>25</sup> Kodrzycki, Y. and Elamatad, T. (2011). *The Bank of North Dakota: A model for Massachusetts and other states?* Boston, MA: Federal Reserve Bank of Boston, retrieved from: <http://www.monetary.org/wp-content/uploads/2016/03/The-bank-of-north-dakota-a-model-for-mAss.pdf>

*Goals:* In contemplating a public bank, Massachusetts had four main goals: (1) stabilizing the state economy, (2) providing local businesses with greater access to credit, (3) augmenting the lending capacity of private banks, and (4) contributing revenue to help fund the state government.<sup>26</sup>

*Findings:* Overall, the Federal Reserve Bank of Boston study finds that BND is a well-respected and well-run institution, but a similar institution would not meet Massachusetts's goals and would require high start-up costs. The authors agree that BND is a conservative institution with a strong and stable balance sheet, and it serves as a lending partner for North Dakota's numerous small banks.<sup>27</sup> However, by comparing North Dakota with South Dakota, the authors find little evidence that BND acts as a fiscal stabilization tool. Though BND did assist with liquidity during the financial crisis, the authors note that this capacity was limited and was backed by federal assistance, suggesting a public bank may not always be able to assist in a credit crunch. Lastly, while BND does serve as a revenue source (and at times has been used to balance North Dakota's budget), this funding is not guaranteed. Using BND as a model, the authors calculate that the start-up costs for a Massachusetts public bank could be upwards of \$3.6 billion.<sup>28</sup> The authors conclude by suggesting that there are other avenues to achieve Massachusetts's aims, such as development and financing agencies and state-level countercyclical policies to offset credit constraints in the private sector. It recommends that Massachusetts more concretely identify the specific market failures it wants to address via a public bank and investigate other ways to fulfill these objectives.<sup>29</sup>

*Outcome:* Relying on the Federal Reserve Bank of Boston's study as well as comprehensive review of the management of the Commonwealth's money and various state development agencies, the Commission recommended that the Legislature not pursue a public bank.<sup>30</sup> Their decision rested on a number of rationales, including the significant initial capital investment required, the potential risk to public funds and reduced rate of return, and the lack of successful models (aside from BND) as well as existing programs to achieve infrastructure investment and small business lending.<sup>31</sup>

#### *B. Vermont Feasibility Study*

Though the Vermont state legislature has considered bills regarding public banking on several occasions, none of these bills have passed.<sup>32</sup> Taking matters into their own hands, in December 2013, an advocacy coalition called "Vermonters for a New Economy" commissioned a public bank feasibility report.<sup>33</sup> To

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<sup>26</sup> Id. at 3.

<sup>27</sup> Id. at 10-11.

<sup>28</sup> Id. at 19. The report estimates the costs to capitalize a Massachusetts public bank by starting at the \$2 million used to capitalize BND in 1919 and adjusting for inflation, the increase in the national economy and the larger size of Massachusetts.

<sup>29</sup> Id. at 20.

<sup>30</sup> *Report of the Commission to Study the Feasibility of Establishing a Bank Owned by the Commonwealth*. (2011). Retrieved from: <https://www.politico.com/states/f/?id=0000015b-5330-d932-a97b-f3fc404f0001>.

<sup>31</sup> Id.

<sup>32</sup> Vermonters for a New Economy. (2013). *Exploring a Public Bank for Vermont: Economic Impacts, Capital Needs, and Implementation*, retrieved from: <https://publicbanking.files.wordpress.com/2014/01/public-banking-1-13-2014.pdf>.

<sup>33</sup> Of the three feasibility studies highlighted in this literature review, only the Vermont study was conducted by advocates without the backing of a state or local legislative body.

ensure the document was well-reasoned, municipal bank skeptics reviewed the report, and their comments were included in the document.

*Goals:* This coalition seeks a public bank to meet the state’s unmet capital needs more cheaply and to dissociate Vermont from traditional Wall Street banks.

*Findings:* Given the high start-up capital costs, the report does not recommend that Vermont create a wholly new public bank, but instead recommends that the Vermont Economic Development Authority (“VEDA”), a state financing agency, operate a bank pilot program.<sup>34</sup> The primary goal of a Vermont public bank is to meet unmet capital needs. While the report notes that the state could simply invest its money in capital projects (as the Vermont State Treasurer has already done), it finds that a public bank has many benefits over state investment. Compared to state investment, a public bank offers lower costs and more options for liquidity as well as the opportunity to leverage assets to increase local investment.<sup>35</sup> For example, the report finds that if Vermont used 66 percent of its deposits (over \$230 million) for VEDA loans, it would result in over 2,500 new jobs, or if it used the money to finance state capital expenditures instead, it would result in \$100 million saved on interest costs. Despite these optimistic results, the report acknowledges several major risks of public banking, including the high cost of capitalizing a bank, concerns about lost tax revenue and downgrading of Vermont’s bond rating and liquidity demands. For example, based on projected deposits of over \$300 million, Vermont would need to capitalize the bank with \$30-60 million, which could come either from a state appropriation or general obligation bond sales.<sup>36</sup>

Critics of the report, however, believe the report has a fatal flaw: it assumes that the bank could both lend a significant chunk of its money and also meet Vermont’s considerable liquidity needs. A bank expert and municipal bank skeptic critiques, “the report makes the assumption that a state bank could simply borrow on a short-term basis the funds necessary to promote liquidity to the state treasury.”<sup>37</sup> However, if the public bank loaned 66 percent of its assets, it would not have the liquidity necessary to serve the state, and its cash reserves would not meet the leverage and collateral requirements to borrow additional money from the Fed.<sup>38</sup>

Despite this critique, the authors remain optimistic about public banking. However, due to high costs of capitalization, the report recommends against creating a new public bank, and instead suggests that VEDA create a pilot bank, because VEDA has the collateral and capital, as well as the expertise and capacity, to function as a state depository.

*Outcome:* No government action on public banking has occurred in Vermont.

### C. *Santa Fe, New Mexico Feasibility Study*

Spurred by grassroots activists, Santa Fe, New Mexico began exploring the feasibility of creating a municipal bank, and in January 2016, contractor, Building Solutions LLC, published a feasibility analysis.<sup>39</sup>

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<sup>34</sup> Id. at 4.

<sup>35</sup> Id. at 10-11.

<sup>36</sup> Id. at 16-17.

<sup>37</sup> Id. at 17.

<sup>38</sup> Id. at 17.

<sup>39</sup> Banking on New Mexico. *A Public Bank for Santa Fe*. Retrieved from: <http://bankingonnewmexico.org/>.

*Goals:* Though the report authors are not explicit about the goals of the municipal bank, they do note concerns with the “banking sector,” including fear that banks may stop accepting Santa Fe’s deposits, businesses’ inability to get loans over \$500,000, consolidation in the banking industry, and low loan-to-deposit ratios in Santa Fe. Likely a public bank would seek to address these concerns.

*Findings:* The study finds that a municipal bank is feasible and could “provide enhanced fiscal management, improved net interest rate margins, and a more robust local lending climate.”<sup>40</sup> The report, however, advocates for a deliberate and phased approach to municipal banking. In Phase I, Santa Fe would create a separate city entity to assume “basic cash management functions of the City, including lending on approved City capital expenditures.”<sup>41</sup> This phase would not require a banking charter and would result in significant benefits to Santa Fe via better cash and liquidity management. During Phase I, Santa Fe could also investigate whether the city could change its depository collateral policy to allow local banks to accept Santa Fe’s deposits.<sup>42</sup> During Phase II, the bank would apply for a state banking charter and seek permission to accept deposits from other public entities and non-profits. At this point, the bank could pursue a conventional equity model or a mutual bank model.<sup>43</sup> In Phase III, the bank would broaden its lending function to include “public interest loans underwritten by community banks in the region.”<sup>44</sup>

The feasibility study includes a discussion of legal risks, administrative costs and economic impacts. The study reports that no explicit legal obstacles exist but notes that further analysis is needed. It also acknowledges there are significant costs associated with a municipal bank, including 10% capitalization via a Santa Fe appropriation and costs of conforming to regulatory requirements.<sup>45</sup> On the other hand, an economic impact analysis performed by the Arrowhead Center at New Mexico State University found that a Santa Fe municipal bank could save the city \$2.4 to 3 million by its seventh year of operation from “increased interest income on deposits, reduced interest costs by better timing issuance of bonds with the expenditures financed by the bond and on profit earned on capital contributed to the bank.”<sup>46</sup>

*Outcome:* Based in part on this feasibility study, in April 2017 the City Council created a nine-member task force to determine “procedures, timelines and requirements that would be necessary to establish a chartered public bank and to make recommendations to the city council in order for the city council to make an informed decision about whether to establish a Public Bank for the City of Santa Fe.” The task force’s report should be published shortly.<sup>47</sup>

#### *D. Santa Fe, New Mexico Public Bank Task Force Report*

Following up on the January 2016 feasibility report, in August 2017, Santa Fe Mayor Javier Gonzales appointed a Santa Fe Public Task Force in accordance with City Council Resolution 2017-32. The Task

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<sup>40</sup> Updike, K. et al. (2016). *Public Banking Feasibility Study Final Report for the City of Santa Fe*. Retrieved from: [bankingonnewmexico.org/pdf/Final\\_Report\\_on\\_Public\\_Banking\\_Santa\\_Fe.pdf](http://bankingonnewmexico.org/pdf/Final_Report_on_Public_Banking_Santa_Fe.pdf).

<sup>41</sup> Id. at 19.

<sup>42</sup> Id.

<sup>43</sup> Id. at 20.

<sup>44</sup> Id.

<sup>45</sup> Id. at 35.

<sup>46</sup> Id. at 33.

<sup>47</sup> Conversations with David Buchholtz, chair of Task Force, March, 9, 2018.



Force investigated legal, regulatory, governance and capitalization questions related to creating of a public bank and published their final report in April 2018.

*Goals:* Per Resolution 2017-32, the goal of the public bank would be to “continue the ongoing enhancement of responsible stewardship of public funds.”<sup>48</sup>

*Findings:* The Task Force ultimately concluded that it was not feasible for the City of Santa Fe to move forward with a public bank and instead suggested alternative measures, such as advocating for a state-wide bank. The Task Force found that it was unable to determine the viability of a public bank and the specific costs and benefits associated with a public bank without engaging in a detailed business plan process, which was beyond the scope and capacity of the Task Force.<sup>49</sup> Specifically, the Task Force could not answer questions, such as what would start-up and overhead costs for a bank be? What capitalization is required? What loans could the bank make? The Task Force did note that the bank would be unlikely to provide the infrastructure to serve as the City’s Fiscal Agent and process the City’s deposits and payments and provide custodian services.<sup>50</sup> After studying the issue, the Task Force concluded that current legal and regulatory requirements would hamper the creation of a public bank and that legislative amendments would be necessary to start-up a bank. Ultimately, the Task Force also concluded that the that the possible benefits of a public bank are marginal when weighed against the costs and risks of a public bank, particularly given the small scale of Santa Fe and its limited financial resources. The Task Force recommended that Santa Fe advocate for a state-wide public bank and establish a collaborative financial network in Santa Fe to leverage public, private and philanthropic capital to meet critical community needs.<sup>51</sup>

*Outcome:* In response to this report, the Alliance for Local Economic Prosperity began meeting with legislators in 2018 to discuss a statewide public bank initiative. Legislation was introduced in 2019 in the New Mexico House and Senate calling for a state public bank feasibility study, though it has not passed.<sup>52</sup>

#### *E. East Bay, California Feasibility Study*

Due to advocacy by the Friends of the Public Bank of Oakland, in November 2016 the Oakland City Council adopted a resolution directing the City Administrator to prepare a report regarding the feasibility and economic impact of a public bank for Oakland. In summer 2017, the City of Oakland partnered with other local jurisdictions including Alameda County, the City of Berkeley and the City of Richmond to solicit a feasibility study on a multi-jurisdiction bank. In August 2018, the report written by Global Investment Corporation was released with a cover memo by the City of Oakland’s Finance Department.

*Goals:* The jurisdictions requested a feasibility study to assess whether a public bank could (1) finance community projects, (2) reduce risks in existing financial markets, and (3) provide better financial

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<sup>48</sup> Santa Fe City Council Resolution 2017-32.

<sup>49</sup> Santa Fe Public Bank Task Force. (April 17, 2018). *Santa Fe Public Bank Task Force Final Report to the Santa Fe City Council*. Retrieved from: [https://www.santafenm.gov/media/archive\\_center/PBTF\\_Final\\_Report.pdf](https://www.santafenm.gov/media/archive_center/PBTF_Final_Report.pdf).

<sup>50</sup> Id. at 14.

<sup>51</sup> Id. at 4-5.

<sup>52</sup> Alliance for Local Economic Prosperity. <http://bankingonnewmexico.org/>

returns on public investments.<sup>53</sup> The feasibility study also looked at whether a public bank could provide solutions to unmet financial needs of Bay Area households, businesses, governments and the cannabis industry.<sup>54</sup>

*Findings:* The feasibility study found that it is possible to form a public bank with very limited regulatory changes and that the jurisdictions have the financial resources necessary to establish and maintain a public bank.<sup>55</sup> Building a bank would require capital, a management team and a transition plan, but the report estimates it could be accomplished in 12-18 months.<sup>56</sup> The report suggests that the bank pursue two aims: provide local governments with a socially responsible alternative to large banks for cash management work and increase availability and affordability of loans. The bank could offer numerous loan types, including student, mortgage, infrastructure and business loans.<sup>57</sup> The report recommends against providing services to the cannabis industry.<sup>58</sup> The report outlines legal and regulatory issues facing a public bank, concluding that a bank can be chartered as a commercial bank in California, though a public bank charter would be preferable.<sup>59</sup> It suggests that the public bank be large, because bigger banks are more diversified, better at managing risks and have larger impacts.<sup>60</sup> For bank capital, the report suggests that the public bank not seek capital from government sources, and instead solicit funds from large investors with high risk tolerance.<sup>61</sup> The report concludes with next steps, noting that a more detailed business plan and roadmap is required to move forward with a regional public bank.<sup>62</sup>

*Outcome:* The Oakland Department of Finance appended a cover memorandum to the feasibility report noting some concerns staff had with the report, including its lack of supporting details and analysis. No further governmental action has been taken in Oakland or the East Bay since the report was released in fall 2019, though advocates are seeking funding to create a business plan

#### F. Seattle, Washington Feasibility Study

In 2013, the Seattle City Council passed a resolution requiring that the City consider social responsibility when selecting banking partners, and in 2017, the City Council passed an ordinance calling on the City to discontinue its use of Wells Fargo as a banking provider due to the bank's predatory lending practices and investment in the Dakota Access Pipeline. In 2017, hoping to sever its ties with Wells Fargo, the City of Seattle issued an RFP for banking services, breaking its business up into five pieces. No banks' bid on the commercial banking work, and Seattle continued to work with Wells Fargo.<sup>63</sup> Seeking a replacement

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<sup>53</sup> Kasaine, K. (August 20, 2018). *Public Bank Feasibility Study Prepared by Global Investment Company*. Retrieved from: <https://sftreasurer.org/sites/default/files/Oakland%20Feasibility%20Study.pdf>.

<sup>54</sup> Global Investment Company. (June 15, 2018). *Multi-Jurisdictional Public Bank Feasibility Study*. Retrieved from: <https://sftreasurer.org/sites/default/files/Oakland%20Feasibility%20Study.pdf>

<sup>55</sup> Id. at 7.

<sup>56</sup> Id. at 8.

<sup>57</sup> Id. at 9.

<sup>58</sup> Id. at 18.

<sup>59</sup> Id. at 11-14.

<sup>60</sup> Id. at 44.

<sup>61</sup> Id. at 46.

<sup>62</sup> Id. at 49-50.

<sup>63</sup> Schofield, K. (Undated). Why Seattle is Stuck with Wells Fargo for a Few More Years. *Seattle Business*, retrieved from: <https://www.seattlebusinessmag.com/policy/why-seattle-stuck-wells-fargo-few-more-years>.

for Wells Fargo, the City Council explored public banking, issuing an RFP for a feasibility study in winter 2018. HR&A Advisors was selected to perform the work and completed its study in October 2018.

*Goals:* The primary goal behind a Seattle public bank is to allow Seattle to divest its banking services work from Wells Fargo and secondarily to “provide banking services to the public.”<sup>64</sup>

*Findings:* The report found that current laws and regulatory structures meant that creating a public bank would be a difficult, long-term process involving significant trade-offs. The report analyzed two public bank models: (1) a baseline model that would allow Seattle to divest from Wells Fargo, and (2) a secondary model that would both divest and perform supplementary activities like accepting retail deposits, lending money and serving the cannabis industry. The baseline model would serve as Seattle’s bank and replace the banking and transactions services currently provided by Wells Fargo, but it would not accept retail deposits or perform lending. The report found that no federal or state laws prohibited the creation of the baseline bank model, though it would still be difficult to receive necessary regulatory approvals. The report estimated that the baseline model would need to be at least \$100 million in size and more realistically \$250 million to succeed. It would cost upwards of \$3 million per year to operate and would likely need to outsource some of the banking work because small banks typically cannot serve a client the size of Seattle.<sup>65</sup> The bank would likely lose money and require a subsidy initially because it would not issue market-rate loans or charge fees but would be required to offer Seattle a two percent return on its deposits.<sup>66</sup> Overall the report found that the baseline model would not represent cost savings compared to Seattle’s current relationship with Wells Fargo, because the public bank would require commitment of capital from Seattle of at least \$10 million plus ongoing financial support to cover start-up costs and the expense of doing Seattle’s banking work.

Aside from the baseline model, the report also analyzed the costs and benefits of a secondary model, which would perform Seattle’s banking services and also lend to members of the general public, accept deposits from the public and serve the cannabis industry.<sup>67</sup> However, numerous barriers prevented a public bank from performing these activities comfortably and profitably, including the requirement that public funds be collateralized, a restriction in the Washington State Constitution that forbids public lending except to the “poor and infirm,” FDIC insurance requirements, and federal prohibition on cannabis banking.

The report concluded that though a public bank is feasible, “state and federal laws would limit its operations and revenue potential, such that the value of such a bank must be carefully weighed vis-à-vis the City’s goals.”<sup>68</sup> If Seattle wished to move forward, next steps would be to create a business plan and draft articles of incorporation for the bank, amend Seattle’s charter to expressly allow for banking activities, meet with regulators and dedicate start-up and ongoing operational funds for the bank.<sup>69</sup> The report also suggests that Seattle could engage in complementary approaches, including refreshing

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<sup>64</sup> HR&A Advisors. (October 2018). *Public Bank Feasibility Study for the City of Seattle*. Retrieved from: [https://res.cloudinary.com/hra-madeo/image/upload/v1541435798/HR\\_A\\_Advisors\\_Inc.\\_-Public\\_Bank\\_Feasibility\\_Study\\_-\\_FINAL\\_10.5.18\\_2\\_plkv1v.pdf](https://res.cloudinary.com/hra-madeo/image/upload/v1541435798/HR_A_Advisors_Inc._-Public_Bank_Feasibility_Study_-_FINAL_10.5.18_2_plkv1v.pdf).

<sup>65</sup> Id. at 14-15.

<sup>66</sup> Id. at 18.

<sup>67</sup> Id. at 8.

<sup>68</sup> Id. at 22.

<sup>69</sup> Id. at 22-23.

Seattle's RFP to select another banking partner aside from Wells Fargo, developing non-bank investment vehicles and partnerships, and participating in efforts to create a state-level public bank.

*Outcome:* There has been no further activity on public banking in Seattle since the report was released.

### G. Washington State Cooperative Bank Status Report

In 2017, the Washington State Legislature appropriated funding for the State Treasurer to “establish a task force on public infrastructure and a publicly-owned depository.”<sup>70</sup> The task force produced a short report opposed to the concept of a state bank.<sup>71</sup> Nevertheless, in 2018, the Washington State Legislature appropriated funds for banking experts to analyze the benefits and risks of creating a public cooperative bank to serve the state and its political subdivisions and to develop a business plan. The consultants hired produced a status report to the state legislature in December 2018.

*Goals:* The purpose of the public bank would be “to assist the potential members of the bank to manage cash and investments ... and to establish a sustainable funding source of ready capital for infrastructure and economic development.”<sup>72</sup>

*Findings:* The status report focuses on the benefits and risks of creating a state-chartered, public cooperative bank, outlining potential benefits and reporting on results of a survey of state and local agencies' demand for the products and services the public bank could offer. In general, a public cooperative bank could benefit local governments by offering: (1) improved access to capital for infrastructure, (2) depository and cash management services, and (3) broader investment opportunities with better returns.<sup>73</sup> The report outlined the nine major Washington state programs that currently provide infrastructure finance to local governments as well as programs other states have to assist in infrastructure financing such as state bond banks and revolving funds.

The report also included the results of a survey regarding demand for the potential services outlined above. In general, state and local agencies were uncertain about whether they would benefit from a public cooperative bank. 37 percent of small, rural local governments wanted access to infrastructure financing programs, and many jurisdictions wanted better investment options and financial advisory services. However, very few jurisdictions were interested in cash management and depository services.<sup>74</sup>

Lastly, the report included details about how the public cooperative bank could be structured and funded and analyzed legal elements of founding a public bank. The section on structure answers questions around membership, capitalization, governance and regulatory oversight,<sup>75</sup> and the legal

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<sup>70</sup> Washington State Treasurer. *Infrastructure and Public Depository Task Force*. <https://www.tre.wa.gov/about-us/infrastructure-public-depository-task-force/#toggle-id-1>

<sup>71</sup> Infrastructure and Public Depository Task Force. (December 2017). *Final Report*. Retrieved from: <https://www.tre.wa.gov/wp-content/uploads/Infrastructure-and-Public-Depository-Task-Force-Report-December-2017.pdf>.

<sup>72</sup> Longbrake, W. and Marlowe, J. (December 18, 2018). *Evaluation of the Benefits and Risks of a State-Chartered, Public Cooperative Bank – Status Report*. Retrieved from: <https://ofm.wa.gov/sites/default/files/public/publications/PublicCooperativeBanking.pdf>.

<sup>73</sup> Id.

<sup>74</sup> Id. at 4.

<sup>75</sup> Id. at 30-36.

analysis concluded that the state could create a public bank but would need to enact legislation to do so and amend existing statutes.<sup>76</sup>

*Outcome:* This report was a status update to the Washington State legislature. The consultants will be developing a business plan for a state-chartered, public cooperative bank with plans to deliver it to the legislature in June 2019. In the meantime, State Senator Bob Hasegawa has introduced a bill that would create a public state investment trust.<sup>77</sup>

#### *H. California State-Wide Cannabis Bank*

In November 2017, California State Treasurer John Chiang and his Cannabis Banking Work Group released a report on access to banking for the cannabis industry (described below in section (V)(B)). The report recommended that the state study the feasibility of creating a public financial institution, such as a banker's bank or a corporate credit union, to serve cannabis businesses. The State Treasurer's Office contracted with Level 4 Ventures to study the feasibility of a state-banked financial institution serving the cannabis industry, and the report was published in December 2018.

*Goals:* The goal of the public bank would be to provide a legal and secure place for cannabis businesses to store their cash and banking services.

*Findings:* The report evaluated multiple options for a cannabis-serving public bank, ultimately concluding that all options were unadvisable and that the state should instead pursue opportunities to open up the traditional banking sector to cannabis businesses. The report reviewed three models for a public bank to support the cannabis industry: (1) a bank exclusively serving the cannabis industry, (2) a bank that primarily serves the cannabis industry but also serves other industries and businesses, and (3) a correspondent bank that provides banking services for other commercial banks.<sup>78</sup> The report found that the process of establishing a public bank would likely require six years with a range of four to nine years.<sup>79</sup> Regardless of the bank structure, minimum capitalization would be close to \$1 billion and start-up costs would be about \$35 million.<sup>80</sup> Because the bank would serve cannabis (which is currently illegal under federal laws) and be highly concentrated in one industry, it would likely not receive deposit insurance, an account with the Federal Reserve or access to interbank instruments and interbank transactions.<sup>81</sup> The report estimated that a cannabis-only bank would require \$35 million in start-up costs over six years and would lose money for 12 years. The bank would not offer dividends to the state until 25 to 30 years after it opens.<sup>82</sup> For the second option, cannabis plus other industries, the bank would lose money for ten years, and California would not receive dividends until 18 to 23 years after the bank opens.<sup>83</sup> This bank would also require more capital because of its larger deposits. Lastly, a

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<sup>76</sup> Id. at 37.

<sup>77</sup> Washington State Senate SB 5949. Retrieved from: <http://lawfilesexp.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Bills/5949.pdf>.

<sup>78</sup> Level 4 Ventures. (December 24, 2018). *State-backed Financial Institution (Public Bank) for the State of California Servicing the Cannabis Industry Feasibility Study*. Retrieved from: <https://www.treasurer.ca.gov/comm-external-urls/cannabis-feasibility-full-report.pdf>.

<sup>79</sup> Id. at 14-15.

<sup>80</sup> Id. at 15.

<sup>81</sup> Id. at 16-17.

<sup>82</sup> Id. at 17-18.

<sup>83</sup> Id. at 18.

correspondent bank has the highest risks because it requires existing banks to enter the cannabis market. However, a correspondent bank will also have lower operational costs and will begin paying dividends sooner, approximately 16 to 20 years after the bank opens.<sup>84</sup>

Overall the report didn't recommend moving forward with a public bank for cannabis because all the bank models would pose "unacceptable risk levels, non-profitable financial forecasts and an overall inability to achieve the desired objectives."<sup>85</sup> The bank would operate in violation of federal law and may not even be able to achieve its stated goal. During the six years of start-up time, the cannabis banking landscape could change to reduce or eliminate the need: for example, Congress could legalize cannabis or cannabis banking, other banks could begin to serve cannabis (even if it remained illegal) or the federal government could crack down on legal cannabis. Overall the report found that "in the best-case scenario across all dimensions of risk, the return on the financial investments would be measured in decades not years. In the worst-case scenario the losses would be staggering."<sup>86</sup> Instead of pursuing a bank the report recommended that California help the cannabis industry get access to banking services via improved facilitation, communication and coordination.<sup>87</sup>

*Outcome:* Since the report was published, there has been no further action on a California public bank to serve the cannabis industry, though there has been other activity around improving access to banking for cannabis businesses and public banking in California.

## **V. California-Related Reports**

Aside from feasibility studies from other jurisdictions, there have been a number of reports related to public banking in California published recently, including memos on legal aspects of public banking, an analysis of access to banking services for the cannabis industry, and preliminary assessments of public banking in San Francisco and Los Angeles. This section summarizes these reports, highlighting points particularly salient to the Task Force's work.

### *A. San Francisco City Attorney's Office: Municipal Bank Formation*

After receiving a Budget and Legislative Analyst's report in 2012 (updated in 2017, see Section V(B)), Supervisor John Avalos requested a legal opinion from the City Attorney's Office regarding two specific questions:

1. Does state law, including Government Code Section 23007, which prohibits a county from "giv[ing] or loan[ing] its credit to or in aid of any persons or corporation," bar the City from establishing a municipal bank?
2. May the City own stock in a municipal bank?<sup>88</sup>

With regards to the first question, the legal memo explains that "a court would likely conclude" that Government Code Section 230007 does not apply to San Francisco because it is a chartered city and county.<sup>89</sup> Article XVI, Section 6 of the State Constitution—which prohibits the State Legislature from

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<sup>84</sup> Id. at 19.

<sup>85</sup> Id.

<sup>86</sup> Id. at 21.

<sup>87</sup> Id. at 23.

<sup>88</sup> City Attorney's Office (2013), *Memorandum re: Municipal Bank Formation* (p. 1).

<sup>89</sup> Id.

lending the credit of a state, county or city—similarly does not apply to the City. Lastly, though a chartered city may spend its funds “only to promote municipal, rather than private purposes,” the City Attorney’s Office finds this limitation does not bar the City from lending credit to third parties. In fact, the memo notes that the City currently operates several programs that offer loans to private individuals and businesses without facing any legal challenges.<sup>90</sup>

Next, the legal memo takes the position that the City may own stock in a municipal bank and spend City money to support the bank’s operation so long as the Mayor and Board of Supervisors specifically appropriate funding for that purpose, and the bank serves a municipal purpose.<sup>91</sup> A legitimate municipal purpose can be broadly defined and can include goals such as affordable housing and lending to small business. However, the City may not invest funds held in the Treasurer’s Pooled Investment Fund in corporate stock, including stock of a municipal bank (though the legal memo does not take a position regarding whether money in the Pooled Investment Fund could be deposited into the municipal bank).<sup>92</sup>

#### *B. State Treasurer John Chiang, Banking Access Strategies for Cannabis-Related Businesses*

On November 7, 2017, California State Treasurer John Chiang and his Cannabis Banking Work Group released a report on access to banking for the cannabis industry. The report explains that cannabis businesses need banking services because cash-only businesses are targets for violent crime, collecting taxes in cash is risky and expensive, and relationships with banks can help drive out the illicit market.<sup>93</sup>

The report makes four major recommendations to improve access to financial services for cannabis businesses. To help with the collection of state and local taxes, the report recommends the state contract with an armored courier service to collect state tax and licensing payments. To help traditional banks serve cannabis entrepreneurs, the report suggests that state and local governments cooperate to create an online portal to aggregate data on cannabis businesses which will help financial institutions comply with burdensome know-your-customer and anti-money laundering (“AML”) requirements required under federal guidance. The report also recommends that the state study the feasibility of creating a public financial institution, such as a banker’s bank or a corporate credit union, to serve cannabis businesses. Lastly, to remove all banking barriers, California should lobby Congress to legalize cannabis or create a legal safe harbor for financial institutions serving the adult-use and medical cannabis industry.<sup>94</sup>

#### *C. Davis Polk & Wardwell: Bank Regulatory Considerations Related to Establishing a Public Bank in the State of California*

On November 18, 2017, law firm Davis Polk & Wardwell LLP wrote a legal memo to the Lawyers Committee for Civil Rights of the San Francisco Bay Area regarding federal and state banking laws and public banking. This memo outlines and discusses provisions of California and federal banking law and regulation that would apply to a public bank owned by either California or the City. Noting the unique

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<sup>90</sup> Id. at 2-3.

<sup>91</sup> Id. at 7-11.

<sup>92</sup> Id at 11-12.

<sup>93</sup> State Treasurer’s Cannabis Banking Work Group (November 2017). *Banking Access Strategies for Cannabis-Related Businesses*, Sacramento: California, retrieved from: <http://www.treasurer.ca.gov/cbwg/resources/reports/110717-cannabis-report.pdf>.

<sup>94</sup> Id.

challenges of serving the cannabis industry, the memo analyzes regulatory requirements and obstacles for a public bank serving cannabis businesses separately.<sup>95</sup> The memo took the position that a significant change in federal law is necessary to allow a public bank to serve cannabis businesses. Major issues covered include restrictions on cannabis banking, capitalization requirements, banking charter options and application requirements, access to FDIC insurance and the Federal Reserve, for example:

- Cannabis Restrictions – Under federal law, cannabis is a schedule I controlled substance, and AML laws including the Bank Secrecy Act and USA Patriot Act make it illegal for banks to handle money from illegal activities including violations of federal drug law.
- Capitalization Requirements – For new banks, the Federal Reserve Bank of San Francisco requires a leverage capital ratio of 9% for the first three years of operation,<sup>96</sup> and some banks have been “required to maintain capital at levels well above 10% for an extended period of time due to perceived risks associated with the business model.”<sup>97</sup>
- FDIC Insurance – Under California law, all state-chartered commercial banks must obtain federal deposit insurance.<sup>98</sup>
- Municipal Deposits Collateralization – California State law requires that any government entity that deposits money into a bank or credit union seek collateral from that bank over the FDIC-insured amount. This collateral may be securities with a fair value market of at least 110% of the deposits, first deed mortgage notes having a value of 150% of the deposits or Letters of Credit issued by the FHLB of San Francisco at 105% the value of the deposits.<sup>99</sup>

#### D. San Francisco Budget and Legislative Analyst’s Office: Community Supportive Banking Options

In 2011, then-Supervisor John Avalos requested the Budget and Legislative Analyst’s Office (“BLA”) research options for how the City could “invest its funds in community-supportive banking institutions, including those that invest more in local small businesses, single family homeowners, and community development.”<sup>100</sup> The report examined a variety of banking options such as private banks, credit unions and public banks. Supervisor Sandra Fewer requested an update to the memo and in November 2017 BLA published its report.

The report provides background on the City’s current operations in both banking and community development and then outlines policy options moving forward, including the potential for the City to create a municipal bank.<sup>101</sup> The report begins by describing the major types of financial institutions—commercial banks, credit unions and community development banks—describing their missions,

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<sup>95</sup> Davis Polk & Wardwell, *Bank Regulatory Considerations Related to Establishing a Public Bank in the State of California*, retrieved from: [http://clkrep.lacity.org/onlinedocs/2017/17-0831\\_misc\\_12-13-17.pdf](http://clkrep.lacity.org/onlinedocs/2017/17-0831_misc_12-13-17.pdf).

<sup>96</sup> Federal Reserve Bank of San Francisco, *Membership*, retrieved from: <https://www.frbsf.org/banking/regulation/applications-membership/information/>.

<sup>97</sup> Davis Polk & Wardwell, *Bank Regulatory Considerations Related to Establishing a Public Bank in the State of California*.

<sup>98</sup> Cal. Code Regs. Tit. 10 § 10.3520 (2017).

<sup>99</sup> Cal Gov’t Code § 53652.

<sup>100</sup> Budget and Legislative Analyst’s Office (2011). *Memorandum re: Community Supportive Banking Options 2011* retrieved from: [http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/committees/materials/cons102411\\_111056.pdf](http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/committees/materials/cons102411_111056.pdf)

<sup>101</sup> Budget and Legislative Analyst’s Office (2017, Nov. 2017). *Memorandum re: Community Supportive Banking Options 2017*, retrieved from: [http://s79f01z693v3eco3s3yyjsg1.wpengine.netdna-cdn.com/wp-content/uploads/2017/12/BLA.CommunitySupportiveBanking\\_112717.pdf](http://s79f01z693v3eco3s3yyjsg1.wpengine.netdna-cdn.com/wp-content/uploads/2017/12/BLA.CommunitySupportiveBanking_112717.pdf).



operations, regulatory structure and oversight. It details the banking industry in California, noting its consolidation, which is particularly stark for national commercial banks. Next, the report examines California Government Code and the City’s investment policy—which both mandate the Treasurer first safeguard principal, then meet liquidity needs, and lastly achieve return on funds—as well as the City’s current banking practices. The report then details existing community development and affordable housing programs, such as the Downpayment Assistance Loan Program and the San Francisco Small Business Development Center.<sup>102</sup>

The updated BLA report then shifts away from describing current work around banking and community development to lay out options the City could pursue going forward. The report provides background on the Bank of North Dakota, noting its success as a public bank and describes efforts in California and other jurisdictions around the country to establish a public bank.<sup>103</sup> It outlines the steps required to create a municipal bank, including agreeing on goals, conducting a detailed financial feasibility study, appointing an independent board of directors, developing business plans, and determining oversight structure. Lastly, the report concludes by providing four major policy recommendations to the City. The City should:

- Invest more City funds in local credit unions or community development banks to align investment with the City’s community and economic development objectives;
- Support more funding to expand existing community development programs;
- Take steps to establish a municipal bank; and
- Assess legal risk associated with a public bank serving cannabis businesses.<sup>104</sup>

#### *E. Los Angeles’ Chief Legislative Analyst: Public Banking Memo*

In July 2017, Los Angeles City Council President Wesson and City Council Member Krekorian introduced a motion asking Council staff to study the “feasibility, requirements, legislative barriers and any other relevant aspects of creating a state-chartered public bank” for Los Angeles.<sup>105</sup> The City Council identified a range of services the public bank could provide, including performing city banking functions, investing in infrastructure and housing projects, offering small business and student loans as well as banking products and services for the cannabis industry and unbanked communities.<sup>106</sup> On February 26, 2018, the Los Angeles Chief Legislative Analyst published its report on public banking and existing housing and economic development programs. The report provides background on public banking, LA’s current banking practices and economic development efforts.

The report begins by defining the term “public bank,” noting that a public bank refers to a financial institution owned by a public entity, but there is no “consistent definition of such a financial institution beyond the core concept of public ownership.”<sup>107</sup> The report then offers international, national, and

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<sup>102</sup> Id. at 26-33.

<sup>103</sup> Id. at 36-38.

<sup>104</sup> Id. at 51-52.

<sup>105</sup> Los Angeles Motion Wesson-Krekorian CF 17-0831, retrieved from: [http://clkrep.lacity.org/onlinedocs/2017/17-0831\\_mot\\_07-26-2017.pdf](http://clkrep.lacity.org/onlinedocs/2017/17-0831_mot_07-26-2017.pdf).

<sup>106</sup> Chief Legislative Analyst (2018). *Public Banking Framework and Existing Housing and Economic Development Funding Programs*, retrieved from: [http://clkrep.lacity.org/onlinedocs/2017/17-0831\\_rpt\\_CLA\\_02-26-2018.pdf](http://clkrep.lacity.org/onlinedocs/2017/17-0831_rpt_CLA_02-26-2018.pdf).

<sup>107</sup> Id. at 8.

state models of public banking, describing Germany’s Savings Bank Finance Group and BND as well as public banking efforts in other jurisdictions, such as Hawaii and Massachusetts. Next the report provides background on banking barriers for cannabis businesses, surveying the federal landscape and various state proposals to address the issue, including Treasurer Chiang’s workgroup. The report then describes the most common financial institutions in the U.S., finding that no existing model is optimal for a public bank, and “[i]deally, a legislative solution would be approved in State or federal law that delineates the structure for a public bank.”<sup>108</sup> The report next details LA’s banking and investment practices, explaining that LA requires banking services similar to a multi-national corporation. The report then looks at implementation issues around public bank formation and operation, including concerns about procurement, the Prudent Investor Rule, collateralizing government deposits, start-up capital, and deposit insurance. Lastly, the report details current LA programs that perform quasi-banking functions and promote community development, such as affordable housing development programs, micro-loan programs and a linked-banking program.

The report concludes by explaining that the formation of a municipal bank in LA “under existing law and regulation would be a very difficult process, would be very costly, and would result in an institution that would not likely qualify to receive City business” and explains that there may be other opportunities for LA to address issues in the short-term via existing authority.<sup>109</sup> For next steps, the report suggests that the Council hire a consultant with specialized expertise in bank formation and operation to perform a detailed study and cost-benefit analysis. In the meantime, the report notes that the City can “review and enhance” existing housing and economic development programs and implement new investment practices.<sup>110</sup>

## **VI. Conclusion**

This memo summarizes existing resources on public banking to provide a foundation for members of the Task Force and other interested parties. Possible avenues for future research include:

- In-depth analysis of City’s current community development and affordable housing programs to determine effectiveness as well as areas for expansion;
- More research on different structures and models for municipal banks; and
- A policy briefing on issues surrounding cannabis banking

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<sup>108</sup> Id. at 23.

<sup>109</sup> Id. at 52.

<sup>110</sup> Id at 54.