



September 23, 2019

The Honorable Gavin Newsom
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: AB 857 (Chiu and Santiago) – REQUEST FOR VETO

Dear Governor Newsom,

On behalf of the California Association of County Treasurers and Tax Collectors (CACTTC), I write to urge you to veto AB 857 (Chiu and Santiago).

Fundamentally, this measure creates a procedural dead end for public bank advocates. The advocates have been very active with legislators for several years, urging the establishment of a public bank – specifically to divest public funds from private, for-profit banks that those advocates believe do not serve California’s best interests.

The reality of the measure before you is that it sets impossible hurdles for the advocates to overcome, but they will try. And it will cost local governments significant amounts of local dollars in order to go through the motions, because the advocates will pressure local officials into first funding a study of the feasibility in that jurisdiction, which will cost at least a few hundred thousand dollars. There is no requirement in AB 857 that the feasibility study has to make a finding, determination or recommendation to the local agency – which means then that even though the study is more than likely to find that the formation of a local public bank is not fiscally possible, the local agency will be pressured to put the question to the voters, which will cost more money.

Los Angeles voters most recently rejected such an idea; however, if in the future, another electorate that may approve pursuing a public bank despite the probability of it being infeasible leaves the local elected officials in an untenable position – to pursue a public bank that is not actually possible.

It is factually accurate to state that a local public bank, holding the localities’ public funds, cannot work; current local investment law, which is unchanged even if this bill is signed, prohibits public funds from being placed in any investment for more than five years. The most wildly optimistic timeframe for a public bank to be solvent, per the most recent study done by San Francisco, is ten years, and that is for a bank that does not commercially serve the public. There is no way a locality can fund a public bank with its own dollars. This is a literal statement.

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Further, funds in county treasuries are budgeted for, and are meant to pay, **the near-term obligations of counties, schools and special districts.**

The proponents of public banking have not reconciled themselves to the fact that the only known model of a state public bank took approximately thirty years to reach solvency and that bank does not serve the public in the way the public bank advocates speak about what a public bank could do. In no event could a California county treasurer put county pool dollars on deposit with any entity – public or private – that presented any risk to those funds. Doing so would violate the statutory obligations of the county treasurer to manage the pool funds with security of those funds *being the single highest priority and responsibility of the treasurer.*

Further, banking regulations and requirements have evolved significantly, especially in recent years. The costs associated with meeting all compliance standards and other obligations associated with running a bank are expensive, intensive and ongoing. There is no way around those obligations and a public bank would spend significant funds to meet those standards.

While CACTTC certainly understands the motivation to move public dollars away from certain private, commercial banks, there is simply no question that county treasurers complying with state law cannot possibly deposit county funds into a public bank. We have communicated this directly to the public bank advocates and have also provided them our policy statement on the matter, which was developed prior to the introduction of AB 857.

This legislation creates a false sense of hope for proponents who have been repeatedly advised that county pools cannot be used for these purposes; critical statutory protections of local dollars cannot be lightly dismissed. Now, a measure is before you to create a process that will waste local time and local money, and will not lead to the desired result, but will waste public funds along the way.

For the reasons stated above, and consistent with our established policies on public banking, CACTTC urges you to veto AB 857 and end this false sense of hope for a public bank that cannot be realized.

Sincerely,



Karen Lange
CACTTC Legislative Advocate

Enclosures

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December 2018

Public Bank: CACTTC Policy Statement

This policy statement is intended to proactively establish principles and policies, without regard to specific legislation or specific proposals, to ensure those parties seeking to establish public or limited-charter banks understand CACTTC's position, concerns and objections to particular elements of such proposals.

Public banks are financial institutions owned by a nation, state or a municipality. Rather than serving profit motives and answering to shareholders, public banks aim to achieve community goals by investing profits back into the community. In recent years, jurisdictions around the country, including Oakland, Los Angeles, Seattle, Massachusetts and Santa Fe have embarked on feasibility studies of public banking, and more are underway.

CACTTC is aware of two distinct public bank efforts under discussion in Sacramento, both of which envision the creation of publicly chartered depositor banks. The first is specific to the cannabis industry and is meant to expand the banking services offered to this industry. The second is related to generally establishing a framework for the creation of a public banking system in California.

CACTTC wants to make it clear that the membership generally supports a federal solution to the cannabis banking issue. CACTTC does not support the establishment of any type of taxpayer-funded public bank in California that involves money managed by County treasurers or county investment pools.

Cannabis-specific bank.

CACTTC believes that the cannabis-specific banking challenges cannot be truly solved unless there is a change at the federal level that permits cannabis businesses to be fully banked. CACTTC provided informal and formal feedback to the author of SB 930 in 2018 to clarify the logistical challenges and personal physical risks for county treasurer-tax collector employees with regard to using a limited charter bank to provide an option for cannabis businesses. Ultimately, CACTTC opposed the measure, but not on its merit, or because the problem does not exist; it does and a change is needed but the problem and related solutions lie at the federal level.

Creation of a Public Bank

CACTTC is generally supportive of proposals that would result in the Department of Business Oversight providing more guidance on, or a specific charter mechanism for, the creation of a public bank at the municipal, regional or state levels.

Funding Sources. Use of Pooled Investment Funds, Collateralization

CACTTC will strongly oppose the establishment of a public bank that requires or relies on taxpayer funds under the management of County Treasurers or in county pools.

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In the wake of the Orange County bankruptcy, very strict criteria were codified to govern how county treasurers manage public funds. In ranking order: safety, then liquidity and last yield are the criteria that treasurers must invest by.

Finally, the California Government Code requires any investment entity provide collateralization of 105%-150%, depending upon the nature of the collateral. This requirement is a critical safeguard of the public's money and CACTTC has historically opposed and will continue to oppose any proposal to weaken this requirement.

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CalMatters: Three bills that flunk smell test

BY DAN WALTERS PUBLISHED: SEPTEMBER 19, 2019

This is the story of three bills that, while superficially distinct, reflect the expansive tenor of the Legislature's Democratic majority — a belief that making government larger and/or more intrusive is beneficial.

However, all three flunk the smell test, and two of them fell by the wayside before the Legislature adjourned last week.

First, the two that failed.

—[Assembly Bill 1027](#), introduced by Assemblywoman Autumn Burke, a Los Angeles Democrat, would have added a new wrinkle to the state's array of tax breaks and other subsidies for certain business activities. It would have allowed the state, in some instances, to subsidize firms in return for a state ownership interest.

The subsidies are already highly questionable and have drawn sharp criticism from, among others, the Legislature's own budget analyst.

The potential mischief from making the state part-owners of businesses it subsidizes is limitless. And while the Assembly wasn't bothered by that potential, the Senate's leadership fortunately thought otherwise and quietly buried AB 1027 before it reached the Senate floor.

—[Assembly Bill 161](#), carried by Assemblyman Phil Ting, a San Francisco Democrat, would have prohibited large businesses from issuing paper receipts to their customers, unless requested, by making electronic receipts the default.

"They're wasteful and they're toxic," Ting contended. But the bill drew opposition not only from the affected businesses but from privacy advocates.

"It's trying to reduce paper waste and that's commendable, but we just want to make sure that in the process we're not creating a big digital trail for everyone who goes into a drug store," said Bennett Cyphers, a technologist for the Electronic Frontier Foundation. "If the business needs to collect some kind of contact information, what do they do with that data? It's going to be a field day for data brokers, data about what people buy and who's buying what and when. We'd really like that not to be the case."

AB 161 also whipped through the Assembly, only to be indirectly killed, like AB 1027, by Senate leaders.

Both bills demonstrated the Legislature's tendency to make decrees with little thought to potentially adverse consequences.

The third measure, Assembly Bill 857, also contains downside risks — big ones, in fact — but it survived the legislative mill and is now residing, figuratively at least, on Gov. Gavin Newsom's desk.

AB 857, proposed by Assemblyman David Chiu, also a San Francisco Democrat, would allow local governments to create their own "public banks."

Chiu railed at "Wall Street bankers" that mistreat consumers and portrayed public banks as an antidote to finance progressive projects and services and shun loans to such politically incorrect businesses as oil drilling, guns and cigarettes.

"The private banking system has unfortunately failed," Chiu said, contending that public banks would "keep taxpayer dollars in local communities."

As with the two bills that failed, the negative consequences could be immense.

There are roughly 5,000 units of local government in California, ranging from immense Los Angeles County to tiny mosquito control districts, and some of them, small cities particularly, have been vessels of corruption.

At the very least, if Chiu's bill becomes law, we could see political pull being used to direct loans from these banks. At the worst, we could see the sort of blatant self-dealing that causes Assembly Speaker Anthony Rendon to call his Los Angeles County district a "corridor of corruption."

Rendon was one of 42 Assembly members who voted last Friday to send AB 857 to Newsom. He, of all people, should have known better.

<https://calmatters.org/commentary/three-democrat-bills-flunk/>



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CONCURRENCE IN SENATE AMENDMENTS

AB 857 (Chiu and Santiago)

As Amended September 6, 2019

Majority vote

SUMMARY:

Provides for the establishment of a public bank by a local agency, subject to approval by the Department of Business Oversight (DBO) and Federal Deposit Insurance Corporation (FDIC).

The Senate Amendments:

- 1) Require a local agency that is not a charter city to obtain voter approval prior to applying for a public bank charter, as specified.
- 2) Provide that all provisions of law applicable to nonprofit corporations generally shall apply to public banks. If such a provision is inconsistent with a provision of the Public Banking division added by this bill, the provision of the Public Banking division shall apply, and the inconsistent provision applicable to nonprofit corporations shall not apply.
- 3) Restrict the number of public bank licenses that may be approved by the Commissioner of Business Oversight, as follows:
 - a) The commissioner may not issue more than two public bank licenses in a calendar year, nor more than ten in total.
 - b) The commissioner may not issue a public bank license more than seven years after promulgating regulations pursuant to the Public Banking division.
- 4) Require a public bank to conduct retail activities, as defined, in partnership with local financial intuitions and prohibit a public bank from competing with local financial institutions, except in the case of local agency banking, infrastructure lending, wholesale lending, and participation lending, as defined.
- 5) Exempt from public disclosure specified information and records of a public bank, as specified.
- 6) Authorize the governing board of a public bank or a committee of the governing board of a public bank to meet in closed session.

COMMENTS:

On the heels of the 2007-08 financial crisis, renewed interest in public banking has sparked legislation or feasibility studies in state and local governments around the United States. To date, no state or local government has established a public bank, and feasibility studies often find significant start-up costs and high levels of financial and operational risk associated with public banks.

This bill would specify a process for a local agency to apply for a public bank license from the Department of Business Oversight (DBO). The local agency would need to meet the same general requirements and approval criteria as existing law requires of a private sector applicant,

including deposit insurance provided by the FDIC. Under the proposed bill and existing law, both the DBO and FDIC would provide routine supervision and examinations of a public bank to evaluate the nature of the bank's operations, the adequacy of the bank's internal controls and its internal audit function, and the bank's compliance with laws and regulations. If weaknesses are identified, the regulators have tools to correct deficiencies in the bank's risk management practices and address weaknesses in the bank's operations.

In addition to FDIC insurance, existing law provides protections for taxpayer dollars that may be deposited in a public bank. After the bankruptcy of Orange County in the mid-1990s, the Legislature passed laws requiring that funds deposited by a local agency must be protected with special collateral requirements. These requirements ensure that taxpayer funds are protected, even if the size of the local agency's deposit account is greater than the FDIC protection limit of \$250,000. This bill does not exempt a public bank from these collateral requirements.

While collateral requirements protect local government deposits, any capital provided to a public bank by the local government as shareholder equity or as a non-deposit liability may be exposed to losses. Additionally, a local agency may expend significant taxpayer funds in studying the viability of a public bank and in organizational start-up costs, only to later find that the public bank proposal does not meet the requirements of the DBO or FDIC. As fiduciaries and trustees of taxpayer funds, local government officials should carefully consider the cost and risks involved with public bank proposals, particularly in light of their responsibilities under the prudent investor rule.

According to the Author:

AB 857 provides more local control, transparency, and self-determination in how local taxpayer dollars are leveraged in the banking system by allowing local governments to charter their own public banks. These public banks would have oversight from the Department of Business Oversight (DBO) and a separate, professional board. In contrast to profit-driven commercial banks, the public bank's board of directors will have a fiduciary duty to protect taxpayers' assets... By creating a public bank, taxpayer money will be held by an insured financial institution that measures its return on investment not only by profits, but also by its success in supporting communities.

Arguments in Support:

According to the California Public Bank Alliance, "Unlike a privately-owned bank, which prioritizes shareholder returns, public banks leverage their deposit base and lending power to benefit the public. This allows public banks to focus on pressing local needs, like affordable housing, small business loans, and public infrastructure projects such as rebuilding after wildfires. A public bank's decisions may consider the needs of the community and leverage public funds to meet those needs at a lower cost than the private sector."

Arguments in Opposition:

According to the California Bankers Association, "AB 857 infers that banks are not serving their communities, an argument repeatedly made by public bank activists in a variety of forums...Proponents for the creation of a public bank have failed to identify how the current marketplace is not meeting the public's financial needs...Commercial banks, particularly community banks, will be harmed by the taking of local agency deposits which would otherwise be used as a source of liquidity by these banks to make loans into their communities. The notion

that the public bank will cooperate with local financial institutions is illusory and this measure forces community banks to compete on an unlevel playing field."

The California Association of County Treasurers and Tax Collectors states, "there is simply no question that county treasurers complying with state law cannot possibly deposit county funds into a public bank...Moving forward this legislation creates a false sense of hope for proponents who have been repeatedly advised that county pools cannot be used for these purposes, and that critical statutory protections of local dollars cannot be lightly dismissed."

FISCAL COMMENTS:

According to the Senate Appropriations Committee, this bill will result in significant ongoing costs to DBO for the oversight of newly formed public banks. DBO will incur initial costs to develop regulations for the public banks. Assuming that two public banks are formed in the first year following the promulgation of regulations, and every year thereafter for five years, DBO will incur estimated ongoing costs in the hundreds of thousands of dollars to low millions of dollars per year. These estimates include costs for examiners, managers, legal staff, and support staff. DBO will be able to recoup some of its costs with application fees and annual renewal fees.

This bill may also result in an unknown, potentially significant reduction in tax revenue to the General Fund. Public banks, which will be exempt from the 10.84% of apportioned net income in franchise taxes, will be competitive against commercial banks, which are subject to the franchise tax. As such, the state could incur a reduction in tax revenue from the commercial banks due to the formation of tax-exempt public banks.

VOTES:

ASM BANKING AND FINANCE: 7-3-2

YES: Limón, Bauer-Kahan, Burke, Gabriel, Mark Stone, Weber, Wicks

NO: Chen, Choi, Melendez

ABS, ABST OR NV: Cervantes, Grayson

ASM LOCAL GOVERNMENT: 5-2-1

YES: Aguiar-Curry, Bloom, Boerner Horvath, Luz Rivas, Robert Rivas

NO: Lackey, Voepel

ABS, ABST OR NV: Ramos

ASM APPROPRIATIONS: 11-5-2

YES: Gonzalez, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Quirk, Robert Rivas

NO: Bigelow, Brough, Diep, Fong, Obernolte

ABS, ABST OR NV: Maienschein, Petrie-Norris

ASSEMBLY FLOOR: 41-29-10

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Bonta, Burke, Carrillo, Chau, Chiu, Chu, Cunningham, Eggman, Friedman, Gabriel, Eduardo Garcia, Gipson, Gloria, Gonzalez, Holden, Irwin, Jones-Sawyer, Kalra, Levine, Limón, Low, Maienschein, McCarty,

Mullin, Nazarian, O'Donnell, Luz Rivas, Robert Rivas, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

NO: Bigelow, Boerner Horvath, Chen, Choi, Cooper, Dahle, Daly, Diep, Flora, Fong, Frazier, Gallagher, Cristina Garcia, Gray, Kamlager-Dove, Kiley, Lackey, Mathis, Medina, Melendez, Obernolte, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Blanca Rubio, Salas, Voepel, Waldron

ABS, ABST OR NV: Brough, Calderon, Cervantes, Cooley, Grayson, Mayes, Muratsuchi, Quirk, Reyes, Rodriguez

SENATE FLOOR: 25-11-4

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hill, Hueso, Jackson, Leyva, McGuire, Mitchell, Monning, Portantino, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Chang, Dahle, Grove, Hurtado, Jones, Moorlach, Morrell, Nielsen, Stone, Wilk

ABS, ABST OR NV: Borgeas, Hertzberg, Pan, Roth

UPDATED:

VERSION: September 6, 2019

CONSULTANT: Michael Burdick / B. & F. / (916) 319-3081

FN: 0002335



June 28, 2019

The Honorable David Chiu
California State Assembly
State Capitol Room 4112
Sacramento, CA 95814

The Honorable Miguel Santiago
California State Assembly
State Capitol, Room 6027
Sacramento, CA 95814

RE: AB 857 (Chiu and Santiago) – Oppose

Dear Assemblymembers Chiu and Santiago,

On behalf of the California Association of County Treasurers and Tax Collectors (CACTTC), I write to to inform you of CACTTC's continued opposition to AB 857.

CACTTC undertook a thoughtful process in the Fall of 2018 to review the various legislative proposals that were in circulation to establish a process for a public bank. The Association concluded that the premise on which the bank is founded – that it would be the repository of county dollars – was not an appropriate way to fund the bank. Funds in county treasuries are budgeted for, and are meant to pay the near-term obligations of counties, schools and special districts.

The proponents of public banking have not reconciled themselves to the fact that the only known model of a state public bank took approximately thirty years to reach solvency. In no event could a California county treasurer put county pool dollars on deposit with any entity – public or private – that presented any risk to those funds. Doing so would violate the statutory obligations of the county treasurer to manage the pool funds with security of those funds *being the single highest priority and responsibility of the treasurer.*

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While CACTTC certainly understands the motivation to move public dollars away from certain private, commercial banks, there is simply no question that country treasurers complying with state law cannot possibly deposit county funds into a public bank. We have communicated this directly to the public bank advocates and have also provided them our policy statement on the matter, which was developed prior to the introduction of your legislation. Moving forward this legislation creates a false sense of

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For the reasons stated above, and consistent with our established policies on public banking, CACTTC respectfully remains opposed to your AB 857.

Sincerely,



Karen Lange
CACTTC Legislative Advocate

CC: Chairman, Members & Consultants, Senate Governance & Finance Committee
California State Association of Counties

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Public banks are financial institutions owned by a nation, state or a municipality. Rather than serving profit motives and answering to shareholders, public banks aim to achieve community goals by investing profits back into the community. In recent years, jurisdictions around the country, including Oakland, Los Angeles, Seattle, Massachusetts and Santa Fe have embarked on feasibility studies of public banking, and more are underway.

CACTTC is aware of two distinct public bank efforts under discussion in Sacramento, both of which envision the creation of publicly chartered depositor banks. The first is specific to the cannabis industry and is meant to expand the banking services offered to this industry. The second is related to generally establishing a framework for the creation of a public banking system in California.

CACTTC wants to make it clear that the membership generally supports a federal solution to the cannabis banking issue. CACTTC does not support the establishment of any type of taxpayer-funded public bank in California that involves money managed by County treasurers or county investment pools.

Cannabis-specific bank.

CACTTC believes that the cannabis-specific banking challenges cannot be truly solved unless there is a change at the federal level that permits cannabis businesses to be fully banked. CACTTC provided informal and formal feedback to the author of SB 930 in 2018 to clarify the logistical challenges and personal physical risks for county treasurer-tax collector employees with regard to using a limited charter bank to provide an option for cannabis businesses. Ultimately, CACTTC opposed the measure, but not on its merit, or because the problem does not exist; it does and a change is needed but the problem and related solutions lie at the federal level.

Creation of a Public Bank

CACTTC is generally supportive of proposals that would result in the Department of Business Oversight providing more guidance on, or a specific charter mechanism for, the creation of a public bank at the municipal, regional or state levels.

Funding Sources. Use of Pooled Investment Funds, Collateralization

CACTTC will strongly oppose the establishment of a public bank that requires or relies on taxpayer funds under the management of County Treasurers or in county pools.

California Association of County Treasurers and Tax Collectors
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Website: www.cacttc.org

CACTTC also vehemently opposes the erosion of Government Code Section 53601 and any lessening of collateralization requirements including any weakening of Government Code 53635.2.

Each county in California has a pooled investment fund (pool), which is a consolidation of county, school and special district funds that have been invested in accordance with State law. The pool's source of funds are primarily tax revenues, fees, federal and state government apportionments, and bond proceeds; all of which have already been allocated through the budgetary process and through voter bond approvals. The primary duty, codified in statute, for a County Treasurer is to keep the pool assets safe and available for use in accordance with California Government Code Sections 27000-27013.

In the wake of the Orange County bankruptcy, very strict criteria were codified to govern how county treasurers manage public funds. In ranking order: safety, then liquidity and last yield are the criteria that treasurers must invest by.

Finally, the California Government Code requires any investment entity provide collateralization of 105%-150%, depending upon the nature of the collateral. This requirement is a critical safeguard of the public's money and CACTTC has historically opposed and will continue to oppose any proposal to weaken this requirement.

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April 15, 2019

The Honorable David Chiu
California State Assembly
State Capitol Room 4112
Sacramento, CA 95814

The Honorable Miguel Santiago
California State Assembly
State Capitol, Room 6027
Sacramento, CA 95814

RE: AB 857 (Chiu and Santiago) – Oppose

Dear Assemblymembers Chiu and Santiago,

On behalf of the California Association of County Treasurers and Tax Collectors (CACTTC), I write to respectfully oppose AB 857.

CACTTC undertook a thoughtful process in the Fall of 2018 to review the various legislative proposals that were in circulation to establish a process for a public bank. The Association concluded that the premise on which the bank is founded – that it would be the repository of county dollars – was not an appropriate way to fund the bank. Funds in county treasuries are budgeted for, and are meant to pay the near-term obligations of counties, schools and special districts.

The proponents of public banking have not reconciled themselves to the fact that the only known model of a state public bank took approximately thirty years to reach solvency. In no event could a California county treasurer put county pool dollars on deposit with any entity – public or private – that presented any risk to those funds. Doing so would violate the statutory obligations of the county treasurer to manage the pool funds with security of those funds *being the single highest priority and responsibility of the treasurer*.

Further, banking regulations and requirements have evolved significantly, especially in recent years. The costs associated with meeting all compliance standards and other obligations associated with running a bank are expensive, intensive and ongoing. There is no way around those obligations and a public bank would spend significant funds to meet those standards.

While CACTTC certainly understands the motivation to move public dollars away from certain private, commercial banks, there is simply no question that county treasurers complying with state law cannot possibly deposit county funds into a public bank. We have communicated this directly to the public bank advocates and have also provided them our policy statement on the matter, which was developed prior to the introduction of your legislation. Moving forward this legislation creates a false sense of

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hope for proponents who have been repeatedly advised that county pools cannot be used for these purposes, and that critical statutory protections of local dollars cannot be lightly dismissed.

We have not arrived at this position without considerable discussion among the membership of the Association and only after careful review of the various versions of this proposal. For the reasons stated above, and consistent with our established policies on public banking, CACTTC respectfully opposes your AB 857.

Sincerely,



Karen Lange
CACTTC Legislative Advocate

CC: Assembly Local Government Committee
California State Association of Counties

enclosure



December 2018

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