

AMENDED IN SENATE MAY 20, 2010

AMENDED IN SENATE JULY 1, 2009

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AMENDED IN ASSEMBLY MARCH 27, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 155

Introduced by Assembly Member Mendoza

(Principal coauthor: Assembly Member Torrico)

(Coauthors: Assembly Members Brownley, Coto, De Leon, Fuentes, Furutani, Krekorian, Lieu, Ma, Nava, John A. Perez, V. Manuel Perez, Price, and Yamada)

(Coauthors: Senators DeSaulnier, Liu, and Wiggins)

January 26, 2009

An act to amend Section 53760 of, and to add Sections 8860, 8861, 8862, 8863, 8864, and 8865 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Mendoza. Local government: bankruptcy proceedings.

Under existing law, any taxing agency or instrumentality of the state may file a petition and prosecute to completion bankruptcy proceedings permitted under the laws of the United States.

This bill would provide that a local public entity may only file under federal bankruptcy law with the approval of the California Debt and Investment Advisory Commission, *except* as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:
- 3 (a) The California Constitution and current statutory law provide
4 for a continuity and interdependence between state and local
5 government entities. Seeking financial relief through the provisions
6 of Chapter 9 (commencing with Section 901 of Title 11) of the
7 United States Code imposes costs on a municipality, potentially
8 exceeding \$1 million. It can reduce service levels to the taxpayers
9 and residents of a municipality. In some circumstances, it can have
10 major short- and long-term fiscal consequences to the municipality,
11 the surrounding local public entities, and the state. In 2009, bond
12 counsel stated that “filing for bankruptcy protection under Chapter
13 9 should be considered a last resort, to be effected only after every
14 effort has been made to avoid it.”
- 15 (b) The Legislature has an interest in monitoring the conditions
16 under which local entities seek Chapter 9 protection. The relief
17 provided through the federal courts can affect state and municipal
18 government service levels, debt, and contracts. The Legislature
19 also has a strong interest in ensuring adequate disclosure of the
20 conditions under which a municipality may seek Chapter 9
21 protection.
- 22 (c) To the extent financial relief granted through Chapter 9 can
23 affect debt service payments, the state’s investors and bondholders
24 have a direct interest in the Bankruptcy Court’s decisions.
- 25 (d) The state has established a statewide system of public
26 employee collective bargaining for state and local government
27 employers and employees intended to protect the state’s interest
28 in promoting peaceful and harmonious labor relations and
29 preventing work stoppages. The validity and enforceability of
30 contracts arrived at through collective bargaining are essential to
31 maintaining labor peace and the uninterrupted delivery of vital
32 public services, and these agreements may be subject to review
33 and amendment or rescission in the event of a Chapter 9 bankruptcy
34 proceeding.

1 (e) The state has established and administers statewide pension
2 systems that provide retirement and health benefits to state and
3 local agency employees, many of whose benefits rely on contracts
4 negotiated between local agencies and the California Public
5 Employees' Retirement System, and that may be subject to review
6 and amendment or rescission in the event of a Chapter 9 bankruptcy
7 proceeding.

8 (f) California is one of only 12 states that grants blanket
9 authority for its municipalities to petition for bankruptcy and offers
10 no opportunity for its municipalities to receive state-level,
11 prebankruptcy guidance, oversight, or assistance for those
12 jurisdictions that are truly insolvent and face no other alternative
13 to bankruptcy.

14 (g) State intervention in local affairs should only occur in
15 exceptional circumstances and not without a compelling interest
16 of statewide concern.

17 (h) Given the connection between state allocations and local
18 budgets, the state has a role in mitigating possible local bankruptcy.

19 (i) It is the duty of all state and local elected officials to ensure
20 that governments provide essential services to the communities
21 they are elected to serve.

22 (j) California's taxpayers who rely on public safety, senior,
23 park, and library services, as well as those who own and operate
24 businesses in our communities, deserve every effort that state and
25 local government can make to avoid the long-term devastation of
26 bankruptcy.

27 (k) The California Debt and Investment Advisory Commission
28 is the appropriate body to provide the expert oversight and guidance
29 sought by local public agencies who find themselves in a fiscal
30 crisis, given its current statutory duties to collect municipal finance
31 data, conduct research, administer educational seminars, and
32 provide information and technical assistance on behalf of local
33 public agencies and their finance professionals, and given the
34 commission's diverse membership that includes state and local
35 government financial experts.

36 SEC. 2. Section 8860 is added to the Government Code, to
37 read:

38 8860. (a) The commission shall, upon request of a local public
39 entity, advise and, if deemed appropriate by the commission, grant
40 approval to the entity to exercise its rights pursuant to Section

1 53760, which may include conditions prescribed by the
2 commission.

3 (b) Upon request under subdivision (a), the local public entity
4 shall submit all of the following to the commission:

5 (1) A resolution or ordinance, adopted by that governing body
6 at a public hearing held pursuant to the Ralph M. Brown Act
7 (Chapter 9 (commencing with Section 54950) of Part 1 of Division
8 2 of Title 5), that does both of the following:

9 (A) Requests authority pursuant to Section 53760 to petition
10 the federal bankruptcy court for financial relief under the provisions
11 of Chapter 9 (commencing with Section 901 of Chapter 11) of the
12 United States Code.

13 (B) Acknowledges that the state's fiscal and financial
14 responsibilities are not changed by the application or the
15 commission's decision pursuant to Section 8861.

16 (2) A thorough analysis of the entity's request to petition under
17 Chapter 9 (commencing with Section 901 of Title 11) of the United
18 States Code. In addition to any other information it may provide,
19 the entity shall do all of the following:

20 (A) Demonstrate that it is or will be unable to pay its undisputed
21 debts.

22 (B) Demonstrate that it has exhausted all options to avoid
23 seeking relief under Chapter 9.

24 (C) Detail a specific plan for restoring the soundness of the
25 entity's financial plans.

26 (3) An itemization of creditors that may be impaired or may
27 seek damages as a result of the proposed plan.

28 (4) Evidence of irreparable harm that may result during the
29 30-day evaluation period, pursuant to subdivision (d), and the 15
30 days allotted for a hearing, pursuant to subdivision (e).

31 (c) (1) Upon receipt of the information required by subdivision
32 (b), the commission shall evaluate the information presented and
33 within 5 days, notify the local public entity of one of the following
34 results:

35 (A) Approval of the request.

36 (B) The commission intends to proceed with a further evaluation
37 based on a finding that the local public entity did not provide
38 sufficient evidence pursuant to paragraph (4) of subdivision (b).

39 (2) If the commission determines that it will proceed with a
40 further evaluation, pursuant to subparagraph (B) of paragraph (1),

1 the commission shall publish its evaluation within 30 business
2 days. If the commission does not respond to the request within
3 five days of receipt of the request, the request shall be deemed
4 approved.

5 (d) After noticing the local public agency of the commission's
6 intent to further evaluate the request, the commission staff shall
7 specifically evaluate the extent to which the local public entity has
8 done the following:

9 (1) Demonstrated that it has exhausted other remedies.

10 (2) Demonstrated that it has taken sufficient steps to reduce the
11 negative consequences of its proposed bankruptcy relief.

12 (3) ~~Has anticipated~~ *Anticipated* the transfer of service
13 responsibility to other governments or parties and to what extent
14 the entity has documented the consequences for the transfer of
15 municipal and other government services.

16 (4) Documented the likely effect a successful petition will have
17 on state and local finances, including the impact on credit access
18 and debt service.

19 (5) ~~Has proposed~~ *Proposed* a remedy that is appropriate and
20 proportionate to the entity's fiscal problems.

21 (e) After the commission conducts the evaluation, pursuant to
22 paragraph (2) of subdivision (c) and publishes its evaluation, the
23 commission shall conduct a hearing and publish a decision within
24 15 days of, but not less than 10 days after, the publication of the
25 staff evaluation conducted pursuant to subdivision (d). The hearing
26 shall be conducted according to the provisions of Section 8861.
27 The commission hearing on the application shall be held in
28 convenient proximity of the entity filing the application.

29 (f) ~~A~~ *If the local public entity's request is denied pursuant to*
30 *Section 8861, the governing board of a the local public entity may*
31 ~~reapply if its request was denied pursuant to Section 8861. do~~
32 *either of the following:*

33 (1) *The local public entity may reapply.* In making the
34 reapplication, the local public entity shall adopt another resolution
35 and submit documentation to address the deficiencies identified
36 by the commission pursuant to Section 8861.

37 (2) *Hold a public hearing to override the decision adopted by*
38 *the commission, and adopt a resolution to declare the public*
39 *entity's intent to exercise authority pursuant to applicable federal*
40 *bankruptcy law under Section 53760. At the public hearing, the*

1 *governing body shall make findings regarding the necessity to*
2 *override the decision of the commission. If the governing body*
3 *votes to exercise its authority pursuant to Section 53760 and makes*
4 *findings to that effect, both the commission's findings and the local*
5 *public entity's findings shall be submitted with any filing of a*
6 *petition for bankruptcy pursuant to Section 53760.*

7 (g) A county that has requested approval to file under
8 subdivision (a) may require local agencies with funds invested in
9 the county treasury to provide a five-day notice of withdrawal
10 before the county is required to comply with a request for
11 withdrawal of funds by that local agency.

12 (h) As used in this chapter, "local public entity" means any city,
13 county, city and county, district public authority, public agency,
14 or other entity that is a "municipality" within the meaning of
15 paragraph (40) of Section 101 of Title 11 of the United States
16 Code, or that qualifies as a debtor under any federal bankruptcy
17 law applicable to local public entities.

18 SEC. 3. Section 8861 is added to the Government Code, to
19 read:

20 8861. (a) The commission shall hold a public hearing to
21 consider a request made pursuant to Section 8860. The hearing
22 shall provide sufficient time for public testimony.

23 (b) The commission shall, in a recorded vote on the date of the
24 hearing, approve or deny the request.

25 ~~(c) If the commission approves a request, it may order the entity,~~
26 ~~as a condition of approving the request, to limit the nature and~~
27 ~~extent of relief provided through Chapter 9 bankruptcy~~
28 ~~proceedings, including all of the following:~~

29 ~~(1) The commission may limit the changes to a contract.~~

30 ~~(2) The commission may prohibit the abrogation of contracts.~~

31 ~~(3) The commission may limit the amount of relief to ensure~~
32 ~~the protection of debt service payments.~~

33 ~~(d)~~

34 (c) If the commission disapproves a request, the commission
35 shall adopt specific findings that address the deficiencies of the
36 application.

37 ~~(e)~~

38 (d) The hearing shall be subject to the provisions of the
39 Bagley-Keene Open Meeting Act (Article 9 (commencing with
40 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2). At

1 the same time that the notice and agenda for the hearing is posted
2 to comply with the requirements of the Bagley-Keene Open
3 Meeting Act, ~~then~~ the commission shall do all of the following:

4 (1) Post the notice in a location in the *local public* entity that is
5 freely accessible to members of the public.

6 (2) Deliver the notice personally, by United States mail, or by
7 facsimile transmission, to each local newspaper of general
8 circulation whose circulation area reasonably includes the local
9 public entity.

10 (3) Deliver the notice by United States mail, or by facsimile
11 transmission, to each radio or television station that has requested
12 notice in writing.

13 (4) Request publication of the notice in the daily file of each
14 house of the Legislature at least 24 hours prior to the date of the
15 meeting, if the Legislature is in session.

16 SEC. 4. Section 8862 is added to the Government Code, to
17 read:

18 8862. (a) After the commission receives a request pursuant to
19 Section 8860, the executive director shall record costs incurred by
20 the commission to make and publish the evaluation pursuant to
21 Section 8860 and conduct the hearing required under Section 8861.
22 The director shall report those costs to the commission at the next
23 regularly scheduled commission hearing.

24 (b) Upon denial of the request, the executive director or
25 commission may assess the requesting entity a fee to cover some
26 or all the costs associated with making the findings and conducting
27 the hearing. Fee revenue shall be deposited in the California Debt
28 and Investment Advisory Commission Fund.

29 (c) The commission may propose regulations to govern the
30 request and review process required under Sections 8860 and 8861.

31 SEC. 5. Section 8863 is added to the Government Code, to
32 read:

33 8863. In enacting Sections 8860, 8861, 8862, and the changes
34 in Section 53760, the state assumes no new or additional fiscal
35 responsibilities for local entities that may apply to the commission
36 for review pursuant to this chapter.

37 SEC. 6. Section 8864 is added to the Government Code, to
38 read:

1 8864. ~~This chapter~~ *This section and Sections 8860, 8861, 8862,*
2 8863, and 8865 shall only apply to a local public entity on or after
3 the effective date of ~~this chapter~~ *the act adding this section.*

4 SEC. 7. Section 8865 is added to the Government Code, to
5 read:

6 8865. If a member of the California Debt and Investment
7 Advisory Commission is also employed as a local government
8 finance officer by an entity requesting approval pursuant to Section
9 8860, the Treasurer shall replace that member, for purposes of the
10 application of the local government that also employs the member,
11 with a person employed by a city, county, or city and county,
12 within the state, experienced in the issuance and sale of municipal
13 bonds and nominated by associations affiliated with these agencies,
14 to preside over that application.

15 SEC. 8. Section 53760 of the Government Code is amended
16 to read:

17 53760. (a) Except as otherwise provided by statute, a local
18 public entity in this state may, with the approval of the California
19 Debt and Investment Advisory Commission, under the terms and
20 conditions that the commission may impose pursuant to Section
21 8861, file a petition and exercise powers pursuant to applicable
22 federal bankruptcy law: *if either of the following apply:*

23 (1) *The California Debt and Investment Advisory Commission*
24 *has approved a request by the local public entity pursuant to*
25 *Section 8860.*

26 (2) *The governing board of the local public entity has adopted*
27 *a resolution to override the commission's findings pursuant to*
28 *Section 8860.*

29 (b) As used in this section, "local public entity" means any
30 county, city, district, public authority, public agency, or other
31 entity, without limitation, that is a "municipality," as defined in
32 paragraph (40) of Section 101 of Title 11 of the United States Code
33 (bankruptcy), or that qualifies as a debtor under any other federal
34 bankruptcy law applicable to local public entities.