AMENDED IN SENATE JUNE 1, 2010

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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, 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:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The California Constitution and current statutory law provide for a continuity and interdependence between state and local government entities. Seeking financial relief through the provisions of Chapter 9 (commencing with Section 901 of Title 11) of the United States Code imposes costs on a municipality, potentially exceeding $1 million. It can reduce service levels to the taxpayers and residents of a municipality. In some circumstances, it can have major short- and long-term fiscal consequences to the municipality, the surrounding local public entities, and the state. In 2009, bond counsel stated that “filing for bankruptcy protection under Chapter 9 should be considered a last resort, to be effected only after every effort has been made to avoid it.”

(b) The Legislature has an interest in monitoring the conditions under which local entities seek Chapter 9 protection. The relief provided through the federal courts can affect state and municipal government service levels, debt, and contracts. The Legislature also has a strong interest in ensuring adequate disclosure of the conditions under which a municipality may seek Chapter 9 protection.

(c) To the extent financial relief granted through Chapter 9 can affect debt service payments, the state’s investors and bondholders have a direct interest in the Bankruptcy Court’s decisions.

(d) The state has established a statewide system of public employee collective bargaining for state and local government employers and employees intended to protect the state’s interest in promoting peaceful and harmonious labor relations and preventing work stoppages. The validity and enforceability of contracts arrived at through collective bargaining are essential to maintaining labor peace and the uninterrupted delivery of vital public services, and these agreements may be subject to review and amendment or rescission in the event of a Chapter 9 bankruptcy proceeding.

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

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

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

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

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

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

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

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

8860. (a) The commission shall, upon request of a local public entity, advise and, if deemed appropriate by the commission, grant approval to the entity to exercise its rights pursuant to Section 53760~~, which may include conditions prescribed by the commission~~.

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

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

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

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

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

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

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

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

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

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

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

(A) Approval of the request.

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

(2) If the commission determines that it will proceed with a further evaluation, pursuant to subparagraph (B) of paragraph (1), the commission shall publish its evaluation within 30 business days. If the commission does not respond to the request within five days of receipt of the request, the request shall be deemed approved.

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

(1) Demonstrated that it has exhausted other remedies.

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

(3) Anticipated the transfer of service responsibility to other governments or parties and to what extent the entity has documented the consequences for the transfer of municipal and other government services.

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

(5) Proposed a remedy that is appropriate and proportionate to the entity's fiscal problems.

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

(f) If the local public entity's request is denied pursuant to Section 8861, the governing board of the local public entity may do either of the following:

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

(2) Hold a public hearing to override the decision adopted by the commission, and adopt a resolution to declare the public entity's intent to exercise authority pursuant to applicable federal bankruptcy law under Section 53760. At the public hearing, the governing body shall make findings regarding the necessity to override the decision of the commission. If the governing body votes to exercise its authority pursuant to Section 53760 and makes findings to that effect, both the commission's findings and the local public entity's findings shall be submitted with any filing of a petition for bankruptcy pursuant to Section 53760.

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

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

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

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

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

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

(d) The hearing shall be subject to the provisions of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2). At the same time that the notice and agenda for the hearing is posted to comply with the requirements of the Bagley-Keene Open Meeting Act, the commission shall do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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