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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 León, Fuentes,
Furutani, Lieu, Ma, Nava, John A. Pérez, V. Manuel Pérez, 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~~ 8865, and 53760.5 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. *The bill would also provide an alternative procedure for a local entity to file under federal bankruptcy law by submitting specific analyses regarding its financial position to the State Auditor who would be required to audit the analyses and financial position of the local entity. The public entity would be authorized to file a petition under federal bankruptcy law after the State Auditor has notified the public entity of completion of its audit work and made public the findings of that audit.*

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.

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

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

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

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

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

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

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

37 (k) The California Debt and Investment Advisory Commission
38 is the appropriate body to provide the expert oversight and guidance
39 sought by local public agencies who find themselves in a fiscal
40 crisis, given its current statutory duties to collect municipal finance

1 data, conduct research, administer educational seminars, and
2 provide information and technical assistance on behalf of local
3 public agencies and their finance professionals, and given the
4 commission's diverse membership that includes state and local
5 government financial experts.

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

8 8860. (a) The commission shall, upon request of a local public
9 entity, advise and, if deemed appropriate by the commission, grant
10 approval to the entity to exercise its rights pursuant to Section
11 53760.

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

14 (1) A resolution or ordinance, adopted by that governing body
15 at a public hearing held pursuant to the Ralph M. Brown Act
16 (Chapter 9 (commencing with Section 54950) of Part 1 of Division
17 2 of Title 5), that does both of the following:

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

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

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

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

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

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

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

37 (4) Evidence of irreparable harm that may result during the
38 30-day evaluation period, pursuant to subdivision (d), and the 15
39 days allotted for a hearing, pursuant to subdivision (e).

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

5 (A) Approval of the request.

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

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

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

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

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

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

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

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

31 (e) After the commission conducts the evaluation, pursuant to
32 paragraph (2) of subdivision (c) and publishes its evaluation, the
33 commission shall conduct a hearing and publish a decision within
34 15 days of, but not less than 10 days after, the publication of the
35 staff evaluation conducted pursuant to subdivision (d). The hearing
36 shall be conducted according to the provisions of Section 8861.
37 The commission hearing on the application shall be held in
38 convenient proximity of the entity filing the application.

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

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

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

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

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

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

31 8861. (a) The commission shall hold a public hearing to
32 consider a request made pursuant to Section 8860. The hearing
33 shall provide sufficient time for public testimony.

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

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

39 (d) The hearing shall be subject to the provisions of the
40 Bagley-Keene Open Meeting Act (Article 9 (commencing with

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

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

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

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

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

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

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

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

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

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

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

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

1 8864. This section and Sections 8860, 8861, 8862, 8863, and
2 8865 shall only apply to a local public entity on or after the
3 effective date of 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, file a petition and
20 exercise powers pursuant to applicable federal bankruptcy law if
21 either of the following apply:

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

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

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

34 SEC. 9. Section 53760.5 is added to the Government Code, to
35 read:

36 53760.5. (a) *As an alternative to the procedure specified and*
37 *required pursuant to Section 53760, a local public entity may file*
38 *a petition and exercise powers pursuant to applicable federal*
39 *bankruptcy law if it meets the requirements of this section.*

1 ***(b) To file a petition and exercise powers pursuant to federal***
2 ***bankruptcy law pursuant to this section, a local public entity shall***
3 ***submit information to the State Auditor describing the public***
4 ***entity’s current financial position. This information shall include***
5 ***analyses of all of the following:***

6 ***(1) The local public entity’s petition to exercise powers pursuant***
7 ***to applicable federal bankruptcy law.***

8 ***(2) The local public entity’s ability to pay its undisputed debts.***

9 ***(3) The options that the local public entity has considered to***
10 ***avoid seeking relief under this section.***

11 ***(4) The local public entity’s plan for restoring the soundness***
12 ***of the local public entity’s financial position.***

13 ***(5) An itemized list of creditors that may be impaired or may***
14 ***seek damages as a result of the proposed plan.***

15 ***(c) Upon receipt of the analyses described in subdivision (b),***
16 ***the State Auditor shall audit the analyses and financial position***
17 ***of the local public entity. The State Auditor shall work with the***
18 ***local public entity to establish a deadline for the audit work. The***
19 ***local public entity may file a petition to exercise powers pursuant***
20 ***to applicable federal bankruptcy law, only after the State Auditor***
21 ***has notified the local public entity of completion of its audit work***
22 ***and made public the findings of that audit work.***

23 ***(d) Any audit initiated under this section shall take precedent***
24 ***over any pending audit requested under subdivision (b) of Section***
25 ***8546.1.***

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

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