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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, 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 bill would make the local public entity responsible for the costs of the audit, as specified.* 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

1 conditions under which a municipality may seek Chapter 9
2 protection.

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

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

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

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

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

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

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

37 (j) California's taxpayers who rely on public safety, senior,
38 park, and library services, as well as those who own and operate
39 businesses in our communities, deserve every effort that state and

1 local government can make to avoid the long-term devastation of
2 bankruptcy.

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

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

14 8860. (a) The commission shall, upon request of a local public
15 entity, advise and, if deemed appropriate by the commission, grant
16 approval to the entity to exercise its rights pursuant to Section
17 53760.

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

20 (1) A resolution or ordinance, adopted by that governing body
21 at a public hearing held pursuant to the Ralph M. Brown Act
22 (Chapter 9 (commencing with Section 54950) of Part 1 of Division
23 2 of Title 5), that does both of the following:

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

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

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

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

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

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

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

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

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

10 (A) Approval of the request.

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

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

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

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

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

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

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

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

36 (e) After the commission conducts the evaluation, pursuant to
37 paragraph (2) of subdivision (c) and publishes its evaluation, the
38 commission shall conduct a hearing and publish a decision within
39 15 days of, but not less than 10 days after, the publication of the
40 staff evaluation conducted pursuant to subdivision (d). The hearing

1 shall be conducted according to the provisions of Section 8861.
2 The commission hearing on the application shall be held in
3 convenient proximity of the entity filing the application.

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

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

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

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

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

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

34 8861. (a) The commission shall hold a public hearing to
35 consider a request made pursuant to Section 8860. The hearing
36 shall provide sufficient time for public testimony.

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

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

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

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

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

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

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

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

24 8862. (a) After the commission receives a request pursuant to
25 Section 8860, the executive director shall record costs incurred by
26 the commission to make and publish the evaluation pursuant to
27 Section 8860 and conduct the hearing required under Section 8861.
28 The director shall report those costs to the commission at the next
29 regularly scheduled commission hearing.

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

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

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

39 8863. In enacting Sections 8860, 8861, 8862, and the changes
40 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, 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.

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

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

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

(1) The local public entity's petition to exercise powers pursuant to applicable federal bankruptcy law.

(2) The local public entity's ability to pay its undisputed debts.

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

(4) The local public entity's plan for restoring the soundness of the local public entity's financial position.

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

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

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

(e) If a local public entity requests an audit pursuant to this section, the Controller shall transfer sufficient funds from the General Fund to the State Auditor to reimburse the State Auditor for the audit activities. The Controller shall use General Fund revenues that are payable to the state from local public entities during the fiscal year in which the audit is performed. Nothing in this subdivision shall be deemed to create an additional fiscal obligation to the local public entity.

~~(e)~~

(f) As used in this section, "local public entity" means any county, city, district, public authority, public agency, or other

1 entity, without limitation, that is a municipality, as defined in
2 paragraph (40) of Section 101 of Title 11 of the United States Code
3 (bankruptcy), or that qualifies as a debtor under any other federal
4 bankruptcy law applicable to local public entities.

5 *SEC. 10. The Legislature finds and declares that the duties of*
6 *the State Auditor that arise under Section 53760.5 of the*
7 *Government Code, as proposed to be added by this act, shall be*
8 *initially funded from the State Audit Fund, pursuant to Section*
9 *8544.5 of the Government Code, which meets the requirements of*
10 *subdivision (b) of Joint Rule 37.4, and which shall be subsequently*
11 *reimbursed pursuant to subdivision (e) of Section 53670.5 of the*
12 *Government Code.*