

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

SENATE BILL

No. 88

**Introduced by ~~Committee on Budget and Fiscal Review~~ Senator
DeSaulnier**
(Principal coauthors: Assembly Members Mendoza and Torrico)

January 20, 2009

~~An act relating to the Budget Act of 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

SB 88, as amended, ~~Committee on Budget and Fiscal Review~~ *DeSaulnier. Budget Act of 2009. Local government: bankruptcy.*

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, or if the local public entity has adopted a resolution to override the findings of the commission, as specified.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2009.~~

Vote: majority. Appropriation: ~~yes-no~~. Fiscal committee: ~~no~~ 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*
4 *provide for a continuity and interdependence between state and*
5 *local government entities. Seeking financial relief through the*
6 *provisions of Chapter 9 (commencing with Section 901 of Title*
7 *11) of the United States Code imposes costs on a municipality,*
8 *potentially exceeding \$1 million. It can reduce service levels to*
9 *the taxpayers and residents of a municipality. In some*
10 *circumstances, it can have major short- and long-term fiscal*
11 *consequences to the municipality, the surrounding local public*
12 *entities, and the state. In 2009, bond counsel stated that “filing*
13 *for bankruptcy protection under Chapter 9 should be considered*
14 *a last resort, to be effected only after every effort has been made*
15 *to avoid it.”*

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

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

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

36 *(e) The state has established and administers statewide pension*
37 *systems that provide retirement and health benefits to state and*
38 *local agency employees, many of whose benefits rely on contracts*

1 *negotiated between local agencies and the California Public*
2 *Employees' Retirement System, and that may be subject to review*
3 *and amendment or rescission in the event of a Chapter 9*
4 *bankruptcy proceeding.*

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

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

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

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

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

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

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

36 *8860. (a) The commission shall, upon request of a local public*
37 *entity, advise and, if deemed appropriate by the commission, grant*
38 *approval to the entity to exercise its rights pursuant to Section*
39 *53760, which may include conditions prescribed by the*
40 *commission.*

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

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

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

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

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

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

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

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

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

26 **(4)** Evidence of irreparable harm that may result during the
27 30-day evaluation period, pursuant to subdivision (d), and the 15
28 days allotted for a hearing, pursuant to subdivision (e).

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

33 **(A)** Approval of the request.

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

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

1 *days of receipt of the request, the request shall be deemed*
2 *approved.*

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

7 *(1) Demonstrated that it has exhausted other remedies.*

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

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

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

17 *(5) Has proposed a remedy that is appropriate and*
18 *proportionate to the entity's fiscal problems.*

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

27 *(f) A governing board of a local public entity may do either of*
28 *the following if its request was denied pursuant to Section 8861:*

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

33 *(2) Hold a public hearing to override the decision adopted by*
34 *the commission, and adopt a resolution to declare the public*
35 *entity's intent to exercise authority pursuant to applicable federal*
36 *bankruptcy law under Section 53760. At the public hearing, the*
37 *governing body shall make public findings about the necessity to*
38 *override the decision of the commission. If the governing body*
39 *votes to exercise its authority pursuant to Section 53760 and makes*
40 *findings to that effect, both the commission's findings and the local*

1 *public entity's findings shall be submitted along with any filing of*
2 *a petition for bankruptcy pursuant to Section 53760.*

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

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

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

16 *8861. (a) The commission shall hold a public hearing to*
17 *consider a request made pursuant to Section 8860. The hearing*
18 *shall provide sufficient time for public testimony.*

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

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

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

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

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

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

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

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

6 8862. (a) After the commission receives a request pursuant to
7 Section 8860, the executive director shall record costs incurred
8 by the commission to make and publish the evaluation pursuant
9 to Section 8860 and conduct the hearing required under Section
10 8861. The director shall report those costs to the commission at
11 the next regularly scheduled commission hearing.

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

17 (c) The commission may propose regulations to govern the
18 request and review process required under Sections 8860 and
19 8861.

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

22 8863. In enacting Sections 8860, 8861, 8862, and the changes
23 in Section 53760, the state assumes no new or additional fiscal
24 responsibilities for local entities that may apply to the commission
25 for review pursuant to this chapter.

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

28 8864. Sections 8860 to 8865, inclusive, shall only apply to a
29 local public entity on or after the effective date of the act adding
30 this section.

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

33 8865. If a member of the California Debt and Investment
34 Advisory Commission is also employed as a local government
35 finance officer by an entity requesting approval pursuant to Section
36 8860, the Treasurer shall replace that member, for purposes of
37 the application of the local government that also employs the
38 member, with a person employed by a city, county, or city and
39 county, within the state, experienced in the issuance and sale of

1 *municipal bonds and nominated by associations affiliated with*
2 *these agencies, to preside over that application.*

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

5 53760. (a) Except as otherwise provided by statute, a local
6 public entity in this state may file a petition and exercise powers
7 pursuant to applicable federal bankruptcy ~~law.~~ *law if either of the*
8 *following applies:*

9 *(1) The California Debt and Investment Advisory Commission*
10 *has approved and the local public entity has met the conditions*
11 *under Section 8860.*

12 *(2) The governing board of the local public entity adopts a*
13 *resolution to override the commission’s findings pursuant to*
14 *Section 8860.*

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

21 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
22 ~~changes relating to the Budget Act of 2009.~~