

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 506**

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**Introduced by Assembly Member Wieckowski**

February 15, 2011

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~~An act to amend Section 31458.2 of the Government Code, relating to county employees retirement.~~ *An act to amend Section 53760 of, and to add Sections 8860, 53760.5, 53761, 53761.5, 53762, 53762.5, and 53763 to, the Government Code, relating to local government.*

LEGISLATIVE COUNSEL'S DIGEST

AB 506, as amended, Wieckowski. ~~County employees retirement.~~ *Local government: bankruptcy: mediation.*

*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 shall not file under federal bankruptcy law unless the local public entity has participated in mediation with interested parties, as defined, has received a certificate of good faith participation, and if the mediation results in either an agreement for debt readjustment, or if the mediator certifies in writing that continued mediation will not contribute to a resolution of the parties' dispute, under certain circumstances. The bill would also require the California Debt and Investment Advisory Commission to adopt mediation guidelines, as specified.*

~~Under existing law, counties and districts, as defined, may provide retirement benefits to their employees pursuant to the County Employees Retirement Law of 1937. The County Employees Retirement Law of 1937 sets forth a comprehensive system of retirement benefits for county~~

~~and district employees. That law requires, if a member dies leaving a spouse and has not designated a beneficiary, and, prior to the payment of any portion of the death benefit, the surviving spouse files with the board written evidence that she or he is the surviving spouse, as specified, the surviving spouse is to be deemed nominated as the beneficiary by that member.~~

~~This bill would declare the intent of Legislature to enact legislation that would address issues relating to county public employee retirement pensions:~~

~~Vote: majority. Appropriation: 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 of federal Bankruptcy Code imposes*  
 7     *substantial administrative costs and expenses on a municipality,*  
 8     *potentially exceeding several million dollars. Filing for Chapter*  
 9     *9 can reduce service levels to the taxpayers and residents of a*  
 10    *municipality. In some circumstances, it can have major short-term*  
 11    *and long-term fiscal consequences for the municipality, the*  
 12    *surrounding municipalities, and the state. Filing for bankruptcy*  
 13    *protection under Chapter 9 should be considered a last resort, to*  
 14    *be instituted only after other reasonable efforts have been made,*  
 15    *to avoid a bankruptcy filing or otherwise appropriately plan for*  
 16    *it. It is in the interest of the state, local governments, and the public*  
 17    *that local government entities have sufficiently sound financial*  
 18    *capacity to provide required services to the public and meet their*  
 19    *contractual and other obligations during any restructuring or*  
 20    *financial reorganization process. Furthermore, it is in the best*  
 21    *interest of the public, the state, and local government entities, the*  
 22    *employees, investors, bondholders, and other interest holders be*  
 23    *included in an appropriate restructuring process and have an*  
 24    *adequate understanding of the financial capacity of local*  
 25    *government entities and their obligations, as a clear understanding*

1 of both is necessary for any restructuring or reorganization  
2 process.

3 (b) The Legislature has an interest in monitoring the conditions  
4 under which local entities may seek Chapter 9 protection. The  
5 relief provided through the bankruptcy process can affect state  
6 and municipal government service levels, debt, and contracts. The  
7 Legislature has a strong interest in ensuring adequate disclosure  
8 of the conditions under which a municipality may seek Chapter 9  
9 protection and providing a process to make any Chapter 9 filing  
10 as efficient as possible.

11 (c) To the extent financial relief granted through Chapter 9 can  
12 affect debt service payments, the state's investors and bondholders  
13 have a direct interest in the Chapter 9 process, particularly prior  
14 to filing. So it is important for those parties to be able to participate  
15 in a prefiling confidential mediation process that could assist  
16 parties in reaching a settlement and avoiding a bankruptcy filing  
17 or otherwise lead to a prenegotiated consensual plan of  
18 readjustment.

19 (d) To the extent financial relief granted through Chapter 9  
20 could affect public employee compensation, employees have a  
21 direct interest in the Chapter 9 process, particularly prior to filing.  
22 Therefore, it is important for those parties to be able to participate  
23 in a prefiling confidential mediation process that could assist  
24 parties in reaching a settlement or otherwise lead to a  
25 prenegotiated agreement and avoid a Chapter 9 filing.

26 (e) 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. Contracts reached through collective  
31 bargaining are essential to maintaining labor peace and the  
32 uninterrupted delivery of vital public services, and these  
33 agreements may be subject to review, amendment or rejection in  
34 the event of a Chapter 9 bankruptcy proceeding. However, it is  
35 the intent of the Legislature that the rights of workers to collectively  
36 bargain shall be fully enforced and respected in the mediation  
37 process.

38 (f) Currently, 23 states do not permit municipalities to file for  
39 bankruptcy. Twenty-seven states permit municipalities to file for  
40 bankruptcy, but most states impose standards and guidelines for

1 access to bankruptcy proceedings. California is one of only 10  
2 states that does not restrict or otherwise limit authority of its  
3 municipalities to file for bankruptcy. At present, California offers  
4 no opportunity for those municipalities that are insolvent to receive  
5 state-level, prebankruptcy guidance, oversight, mediation, or  
6 assistance. Nor does the state provide a mechanism for exchange  
7 of current and projected financial information with public employee  
8 representatives, debt and bondholders, and other interested parties  
9 in a prebankruptcy setting even if these municipalities are not  
10 currently insolvent but concerned about becoming insolvent and  
11 unable to pay obligations as these obligations come due.

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

15 (h) Given the connection between state allocations and local  
16 budgets, the state has a role in assisting municipalities to address  
17 potential insolvency with the goal of averting municipality  
18 bankruptcy filings where possible and providing a process designed  
19 to make the debt restructuring process in or outside of a Chapter  
20 9 bankruptcy as cost effective and efficient as possible for all  
21 participants.

22 (i) It is the duty of all state and local elected officials to ensure  
23 that governments provide essential services to the communities  
24 they are elected to serve, and to respect collective bargaining  
25 agreements reached with their employees.

26 (j) California's taxpayers who rely on public safety, senior,  
27 recreational, municipal health, library, and other public services  
28 as well as those who own and operate businesses in our  
29 communities, deserve every reasonable and appropriate effort that  
30 state and local government can make to avoid adverse  
31 consequences of Chapter 9 bankruptcy filings, particularly where  
32 mediation may lead to out-of-court resolution of outstanding  
33 obligations and disputes or to a preagreed, prenegotiated plan of  
34 readjustment.

35 (k) Resolving municipal and state business and financial issues  
36 in a timely, fair and cost-effective manner is an integral part of a  
37 successful government and is in the public interest. It has long  
38 been recognized that alternative dispute resolution proceedings,  
39 like mediation, offer an economical, discreet, and expeditious way  
40 to resolve potentially devastating situations.

1 (l) Through the mediation process, the mediator, a specially  
2 trained, neutral third party can assist the municipality and its  
3 creditors and stakeholders to fully explore alternatives, while  
4 allowing the interested parties to exchange information in a  
5 confidential environment with the assistance and supervision of a  
6 mediator to determine whether the municipality's contractual and  
7 financial obligations can be renegotiated on a consensual basis.

8 (m) The California Debt and Investment Advisory Commission  
9 is the appropriate body to administer the mediation process in  
10 conjunction with an appropriate alternative dispute resolution  
11 program within the state. As a result of the commission's current  
12 statutory duties to collect municipal finance data, conduct research,  
13 administer educational seminars, and provide information and  
14 technical assistance on behalf of municipalities, and given the  
15 commission's membership, it is appropriate that the commission  
16 be able to convene mediations, with the assistance of a neutral  
17 third-party nongovernmental entity that will administer the  
18 mediation and train the mediators, at the request of a municipality  
19 contemplating restructuring or a Chapter 9 filing or by a  
20 stakeholder concerned about the financial condition of the  
21 municipality. It is the intent of the Legislature that the commission  
22 may consult with the Judicial Arbitration and Mediation Services,  
23 the Executive Office for U.S. Trustees, retired bankruptcy judges,  
24 or other appropriate entities in establishing and administering the  
25 program.

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

28 8860. The commission shall adopt mediation guidelines for  
29 mediation relating to local public entity bankruptcy conducted  
30 pursuant to Article 5 (commencing with Section 53760) of Chapter  
31 4 of Part 1 of Division 2 of Title 5. The commission may consult  
32 with the Judicial Arbitration and Mediation Services, the Executive  
33 Office for U.S. Trustees, the retired bankruptcy judges, or other  
34 appropriate entities in adopting these guidelines.

35 SEC. 3. Section 53760 of the Government Code is amended to  
36 read:

37 53760. (a) Except as otherwise provided by statute, a local  
38 public entity in this state ~~may~~ shall not file a petition and exercise  
39 powers pursuant to applicable federal bankruptcy law: ~~unless the~~  
40 local public entity has participated in mediation as provided in

1 Section 8860 and received a good faith certification from the  
 2 mediator, and if one of the following applies:

3 (1) The local public entity has reached an out-of-court  
 4 agreement with all interested parties regarding a plan of  
 5 adjustment pursuant to subdivision (b) of Section 53762.5.

6 (2) The local public entity and the interested parties were unable  
 7 to reach an out-of-court agreement and the mediator has certified  
 8 in writing that the parties have participated in mediation in good  
 9 faith, pursuant to subdivision (d) of Section 53762.5.

10 (3) The local public entity initiated the mediation proceeding  
 11 and interested parties did not participate in the mediation, pursuant  
 12 to subdivision (e) of Section 53762.5.

13 (b) A local public entity shall not file a petition and exercise  
 14 powers pursuant to subdivision (a) if either of the following occur:

15 (1) The mediator determines that solvency or effective debt  
 16 restructuring can be achieved through settlement with all interested  
 17 parties and that a settlement can be reached through further  
 18 mediation.

19 (2) The mediator determines that a local entity has failed to  
 20 participate in good faith mediation. Failure to participate in good  
 21 faith includes, but is not limited to, the failure to provide accurate  
 22 and essential financial information, the failure to attempt to reach  
 23 settlement with all interested parties to avert bankruptcy, or  
 24 evidence of manipulation to delay and obstruct a timely agreement.

25 ~~(b)~~

26 (c) 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.

32 SEC. 4. Section 53760.5 is added to the Government Code, to  
 33 read:

34 53760.5. (a) A local public entity may initiate a mediation  
 35 when the local public entity is or likely will become unable to meet  
 36 its financial obligations when those obligations are due or become  
 37 due and owing.

38 (b) Mediation shall be conducted through an alternative dispute  
 39 resolution program within the state and in accordance with  
 40 mediation guidelines adopted by the commission.

1 (c) *The role of the mediator shall be to assist all interested*  
2 *parties in reaching an equitable settlement to avert a Chapter 9*  
3 *filing. The mediator shall also assist the parties in identifying the*  
4 *anticipated legal costs associated with a Chapter 9 filing relative*  
5 *to the local public entity's budget shortfall. The mediator may*  
6 *consult with the Judicial Arbitration and Mediation Services, the*  
7 *Executive Office for U.S. Trustees, retired bankruptcy judges, or*  
8 *other appropriate entities in establishing and administering the*  
9 *mediation.*

10 SEC. 5. *Section 53761 is added to the Government Code, to*  
11 *read:*

12 53761. (a) *A mediator shall meet all of the following*  
13 *qualifications:*

14 (1) *At least 10 years of high level business or legal practice*  
15 *involving bankruptcy.*

16 (2) *Experience in conflict resolution.*

17 (3) *Completion of a mandatory training program in municipal*  
18 *organization, municipal debt restructuring, Chapter 9 bankruptcy,*  
19 *public finance, taxation, California constitutional law, California*  
20 *labor law, federal labor law, and municipal finance dispute*  
21 *resolution, provided through an alternative dispute resolution*  
22 *program within the state.*

23 (b) *The mediator shall be impartial, objective, independent, and*  
24 *free from prejudice. The mediator shall not act with partiality or*  
25 *prejudice based on any participant's personal characteristics,*  
26 *background, values or beliefs, or performance during mediation.*

27 (c) *The mediator shall avoid a conflict of interest or the*  
28 *appearance of a conflict of interest during and after a mediation.*  
29 *The mediator shall make a reasonable inquiry to determine whether*  
30 *there are any facts that a reasonable individual would consider*  
31 *likely to create a potential or actual conflict of interest. Prior to*  
32 *mediation, the mediator shall not establish another relationship*  
33 *with any of the parties in a manner that would raise questions*  
34 *about the integrity of the mediation, except that the mediator may*  
35 *conduct further mediations regarding other potential local public*  
36 *entities that may involve some of the same or similar constituents*  
37 *to a prior mediation.*

38 (d) *The mediator shall conduct the mediation in a manner that*  
39 *promotes voluntary, uncoerced decisionmaking in which each*

1 party makes free and informed choices regarding the process and  
2 outcome.

3 (e) The mediator shall not impose a settlement on the parties.  
4 The mediator shall use his or her best efforts to assist the parties  
5 to reach a satisfactory resolution of their disputes. Subject to the  
6 discretion of the mediator, the mediator may make oral or written  
7 recommendations for settlement or plan of readjustment to a party  
8 privately or, if the parties agree, to all parties jointly.

9 (f) The mediator has a duty to instruct and inform the local  
10 public entity and all parties of the limitations of Chapter 9 relative  
11 to other chapters of the bankruptcy codes. This instruction shall  
12 highlight the limited authority of United States bankruptcy judges  
13 in Chapter 9 such as the lack of flexibility available to judges to  
14 reduce or cram down debt repayments and similar efforts not  
15 available to reorganize the operations of the city, that may be  
16 available to a corporate entity.

17 (g) The mediator shall request from the parties documentation  
18 and other information that the mediator believes may be helpful  
19 in assisting the parties to address the obligations between them.

20 (h) In the event a complete settlement of all or some issues in  
21 dispute is not achieved within the scheduled mediation session or  
22 sessions, the mediator may, at the mediator's discretion, continue  
23 to communicate with the parties in an ongoing effort to facilitate  
24 a complete settlement in order to avoid a Chapter 9 filing.

25 (i) The mediator shall provide council and guidance to all  
26 parties and shall not be a legal representative of any party and  
27 shall not have a fiduciary duty to any party.

28 (j) In the event of a settlement with all interested parties, the  
29 mediator may assist the parties in negotiating a prepetition,  
30 preagreed plan of readjustment in connection with a potential  
31 Chapter 9 filing.

32 (k) The mediator shall maintain the confidentiality of all the  
33 information obtained by the mediator in mediation, unless  
34 otherwise agreed to by the parties.

35 SEC. 6. Section 53761.5 is added to the Government Code, to  
36 read:

37 53761.5. The parties shall exchange all documents including  
38 current financial information and projections addressing future  
39 financial obligations affecting the local public entity or that may  
40 hinder a resolution of the issues before the mediator. The mediator

1 *may request the submission or exchange of memoranda on issues,*  
2 *including the underlying interests, and the history of the parties’*  
3 *prior negotiations. Information that a party wishes to keep*  
4 *confidential may be sent to the mediator in a separate*  
5 *communication clearly marked “CONFIDENTIAL.”*

6 *SEC. 7. Section 53762 is added to the Government Code, to*  
7 *read:*

8 *53762. (a) Each interested party shall provide at least one*  
9 *representative of each party to attend all mediation conferences.*  
10 *Each party’s representative shall have authority to settle and*  
11 *resolve disputes or shall be in a position to present any proposed*  
12 *settlement or plan of readjustment to the governing body or*  
13 *membership for approval and implementation.*

14 *(b) The local public entity shall provide a local public entity*  
15 *representative who shall represent the local public entity’s interest*  
16 *in the mediation and who shall propose any settlement or plan of*  
17 *readjustment to the governing body of the local public entity.*

18 *(c) An interested party may be represented by legal counsel,*  
19 *but must inform all parties of the representation.*

20 *(d) The parties shall participate in the mediation in good faith.*  
21 *If the mediator determines that a representative of one or more of*  
22 *the parties is not participating in good faith, the mediator may*  
23 *request that a substitute representative or representatives be*  
24 *appointed.*

25 *(e) The parties shall maintain the confidentiality of the mediation*  
26 *and shall not disclose statements made, information disclosed, or*  
27 *documents prepared or produced, during the mediation process,*  
28 *as specified in Sections 1119, 1120, 1121, and 1122 of the Evidence*  
29 *Code, unless all parties consent in writing to the disclosure.*

30 *SEC. 8. Section 53762.5 is added to the Government Code, to*  
31 *read:*

32 *53762.5. Mediation shall end if any of the following occur:*

33 *(a) The parties execute an agreement of settlement.*

34 *(b) The parties reach an agreement or proposed plan of*  
35 *readjustment that requires the approval of a bankruptcy judge.*

36 *(c) The mediator certifies in writing that one or more of the*  
37 *parties has not participated in good faith, that no resolution has*  
38 *been reached, and that further efforts at mediation would not*  
39 *contribute to a resolution of the parties’ dispute.*

1 (d) *The mediator certifies in writing that the parties have*  
2 *participated in good faith but the parties have reached an impasse*  
3 *and further efforts at mediation would not contribute to a resolution*  
4 *of disputes.*

5 (e) *The mediator certifies in writing that a mediation was*  
6 *initiated by the local public entity but that no interested parties*  
7 *participated.*

8 *SEC. 9. Section 53763 is added to the Government Code, to*  
9 *read:*

10 *53763. As used in this article the following terms have the*  
11 *following meanings:*

12 (a) *“Chapter 9” means Chapter 9 (commencing with Section*  
13 *901) of Title 11 of the United States Code.*

14 (b) *“Claim” means either of the following:*

15 (1) *A right to payment, whether or not the right is reduced to*  
16 *judgment, liquidated, unliquidated, fixed, contingent, matured,*  
17 *unmatured, disputed, undisputed, legal, equitable, secured, or*  
18 *unsecured.*

19 (2) *A right to an equitable remedy for breach of performance*  
20 *if the breach gives rise to a right to payment, whether or not the*  
21 *right to an equitable remedy is reduced to judgment, fixed,*  
22 *contingent, matured, unliquidated, disputed, undisputed, secured,*  
23 *or unsecured.*

24 (c) *“Collective bargaining” means the process by which workers*  
25 *exercise their right to negotiate with an entity’s or organization’s*  
26 *management in a good-faith process to establish employee*  
27 *compensation, working conditions, and other matters of mutual*  
28 *interest.*

29 (d) *“Collective bargaining agreement” means a written, legally*  
30 *enforceable contract for a specified period, between the*  
31 *management of an entity or organization and its employees*  
32 *represented by a recognized union. It sets down and defines*  
33 *conditions of employment, including, but not limited to, wages,*  
34 *working hours and conditions, overtime payments, holidays,*  
35 *vacations, health benefits, retirement benefits, and procedures for*  
36 *dispute resolution.*

37 (e) *“Commission” means the California Debt and Investment*  
38 *Advisory Commission.*

39 (f) *“Creditor” means either of the following:*

1     (1) *An entity that has a claim against a municipality that arose*  
2 *at the time of or before the commencement of the mediation process*  
3 *and whose claim represents at least 5 percent of the municipality’s*  
4 *general fund obligations.*

5     (2) *An entity that may have a claim against the municipality*  
6 *arising out of rejection of an executory contract or unexpired lease*  
7 *in a Chapter 9 case and whose claim represents at least 5 percent*  
8 *the municipality’s general fund obligations.*

9     (g) *“Debtor” means a local public entity that may file for*  
10 *bankruptcy under Chapter 9.*

11     (h) *“Good faith” means participation by a party in the mediation*  
12 *process with the intent to negotiate toward a resolution of the*  
13 *issues that are the subject of the mediation, including, but not*  
14 *limited to, the timely provision of complete and accurate*  
15 *information to provide the relevant parties through mediation with*  
16 *sufficient information, in a confidential manner, to negotiate the*  
17 *readjustment of the municipality’s debt.*

18     (i) *“Indenture trustee” means a trustee under a mortgage, deed*  
19 *of trust, or indenture, under which there is an outstanding security*  
20 *other than a voting-trust certificate, constituting a claim against*  
21 *the municipality.*

22     (j) *“Interested party” means a trustee, a committee of creditors,*  
23 *a creditor, an indenture trustee, a pension fund, a bondholder, or*  
24 *a union who under its collective bargaining agreements has*  
25 *standing to initiate contract or debt restructuring negotiations*  
26 *with the municipality.*

27     (k) *“Local public entity” means any county, city, district, public*  
28 *authority, public agency, or other entity, without limitation, that*  
29 *is a municipality as defined in paragraph (4) of Section 101 of*  
30 *Title 11 of the United States Code (bankruptcy), or that qualifies*  
31 *as a debtor under any other federal bankruptcy law applicable to*  
32 *local public entities.*

33     (l) *“Local public entity representative” means the person or*  
34 *persons designated by the local public agency with authority to*  
35 *make recommendations and to attend the mediation on behalf of*  
36 *the governing body of the municipality.*

37     SEC. 10. *The Legislature finds and declares that Sections 6*  
38 *and 7 of this act, which add Sections 53761.5 and 53762.5 to the*  
39 *Government Code, impose a limitation on the public’s right of*  
40 *access to the meetings of public bodies or the writings of public*

1 *officials and agencies within the meaning of Section 3 of Article*  
2 *I of the California Constitution. Pursuant to that constitutional*  
3 *provision, the Legislature makes the following findings to*  
4 *demonstrate the interest protected by this limitation and the need*  
5 *for protecting that interest:*

6 *To facilitate the process to avoid municipal bankruptcy, it is*  
7 *necessary to provide for secure documents.*

8 SECTION 1. ~~Section 31458.2 of the Government Code is~~  
9 ~~amended to read:~~

10 ~~31458.2. If, after December 31, 1957, and either before or after~~  
11 ~~retirement a member dies leaving a spouse and has not designated~~  
12 ~~a beneficiary, and, prior to the payment of any portion of the death~~  
13 ~~benefit, that spouse files with the board written evidence,~~  
14 ~~satisfactory to the board, that she or he is the surviving spouse and~~  
15 ~~the date of the marriage, that surviving spouse shall be deemed,~~  
16 ~~for the purposes of this chapter, to have been nominated as the~~  
17 ~~beneficiary by that member.~~