

AMENDED IN SENATE JUNE 29, 2011

AMENDED IN ASSEMBLY MAY 31, 2011

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 53760 of, and to add Sections 8860, 53760.3, 53760.5, 53761, 53761.3, 53761.5, 53762, 53762.5, 53762.6, 53762.7, 53762.8, and 53763 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 506, as amended, Wieckowski. Local government: bankruptcy: neutral evaluation.

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 a neutral evaluation process with interested parties, as defined, has received a certificate of good faith participation, and if the neutral evaluation results in either an agreement for debt readjustment, or if the neutral evaluator certifies in writing that continued neutral evaluation 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 provide technical assistance as a

neutral third party as necessary in any neutral evaluation process, as specified.

*The bill would require the State Auditor to review specified information submitted by the local public entity. The bill would additionally provide an alternative process that a local public entity may use to fill under federal bankruptcy law if the local public entity has been participating in the neutral evaluation process and the local public entity has submitted certain information to the State Auditor and the State Auditor has determined that the local public entity is insolvent.*

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~~ *governmental* entities. Seeking financial relief through  
6 the provisions of Chapter 9 of *the* federal Bankruptcy Code imposes  
7 substantial administrative costs and expenses on a municipality,  
8 potentially exceeding several million dollars. In order for a  
9 municipality to be a debtor under Chapter 9, the municipality ~~shall~~  
10 *must* make certain showings required by subdivision (c) of Section  
11 109 of Title 11 of the United State Code, that include, but are not  
12 limited to, establishing that the municipality is insolvent, the  
13 municipally desires to effect a plan to adjust its debts, and that the  
14 municipality has negotiated in good faith or attempted to negotiate  
15 in good faith with its creditors, as specified in that section.

16 (b) Filing for Chapter 9 can reduce service levels to the  
17 taxpayers and residents of a municipality. In some circumstances,  
18 it can have major ~~short-term~~ *short* and long-term fiscal  
19 consequences for the municipality, the surrounding municipalities,  
20 and the state. Filing for bankruptcy protection under Chapter 9  
21 should be considered a last resort, to be instituted only after other  
22 reasonable efforts have been made, to avoid a bankruptcy filing  
23 or otherwise appropriately plan for it. It is in the interest of the  
24 state, local governments, and the public that local ~~government~~  
25 *governmental* entities have sufficiently sound financial capacity  
26 to provide required services to the public and meet their contractual

1 and other obligations during any restructuring or financial  
2 reorganization process. Furthermore, it is in the best interest of the  
3 public, the state, and local ~~government~~ *governmental* entities, the  
4 employees, investors, bondholders, and other interestholders be  
5 included in an appropriate restructuring process and have an  
6 adequate understanding of the financial capacity of local  
7 ~~government~~ *governmental* entities and their obligations, as a clear  
8 understanding of both is necessary for any restructuring or  
9 reorganization process.

10 (c) The Legislature has an interest in monitoring the conditions  
11 under which local entities may seek Chapter 9 protection. The  
12 relief provided through the bankruptcy process can affect state and  
13 municipal government service levels, debt, and contracts. The  
14 Legislature has a strong interest in ensuring adequate disclosure  
15 of the conditions under which a municipality may seek Chapter 9  
16 protection and providing a process to make any Chapter 9 filing  
17 as efficient as possible.

18 (d) To the extent financial relief granted through Chapter 9 can  
19 affect debt service payments, the state's investors and bondholders  
20 have a direct interest in the Chapter 9 process, particularly prior  
21 to filing. So it is important for those parties to be able to participate  
22 in a prefiling confidential neutral evaluation process that could  
23 assist parties in reaching a settlement and avoiding a bankruptcy  
24 filing or otherwise lead to a prenegotiated consensual plan of  
25 readjustment as clearly contemplated by subdivision (c) of Section  
26 109 of Title 11 of the United States Code.

27 (e) To the extent financial relief granted through Chapter 9 could  
28 affect public employee compensation, employees have a direct  
29 interest in the Chapter 9 process, particularly prior to filing.  
30 Therefore, it is important for those parties to be able to participate  
31 in a prefiling confidential neutral evaluation process that could  
32 assist parties in reaching a settlement or otherwise lead to a  
33 prenegotiated agreement and avoid a Chapter 9 filing.

34 (f) The state has established a statewide system of public  
35 employee collective bargaining for state and local government  
36 employers and employees intended to protect the state's interest  
37 in promoting peaceful and harmonious labor relations and  
38 preventing work stoppages. Contracts reached through collective  
39 bargaining are essential to maintaining labor peace and the  
40 uninterrupted delivery of vital public services, and these

1 agreements may be subject to review, amendment or rejection in  
2 the event of a Chapter 9 bankruptcy proceeding. However, it is  
3 the intent of the Legislature that the rights of workers to  
4 collectively bargain shall be fully enforced and respected in the  
5 neutral evaluation process.

6 (g) Currently, 23 states do not permit municipalities to file for  
7 bankruptcy. Twenty-seven states permit municipalities to file for  
8 bankruptcy, but most states impose standards and guidelines for  
9 access to bankruptcy proceedings. California is one of only 10  
10 states that does not restrict or otherwise limit authority of its  
11 municipalities to file for bankruptcy. At present, California offers  
12 no opportunity for those municipalities that are insolvent to receive  
13 state-level, prebankruptcy guidance, oversight, neutral evaluation,  
14 or assistance. Nor does the state provide a mechanism for exchange  
15 of current and projected financial information with public employee  
16 representatives, debt and bondholders, and other interested parties  
17 in a prebankruptcy setting even if these municipalities are not  
18 currently insolvent but concerned about becoming insolvent and  
19 unable to pay obligations as these obligations come due. As a  
20 result, there is no process in this state requiring potential Chapter  
21 9 debtors to qualify as Chapter 9 debtors, leaving these cases  
22 subject to motions to dismiss on any number of grounds, thus  
23 delaying earlier resolution and increasing administrative fees, *legal*  
24 *fees*, and costs.

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

28 (i) Given the connection between state allocations and local  
29 budgets, the state has a role in assisting municipalities to address  
30 potential insolvency with the goal of averting municipality  
31 bankruptcy filings where possible and providing a process designed  
32 to make the debt restructuring process in or outside of a Chapter  
33 9 bankruptcy as cost effective and efficient as possible for all  
34 participants.

35 (j) It is the duty of all state and local elected officials to ensure  
36 that governments provide essential services to the communities  
37 they are elected to serve, and to respect collective bargaining  
38 agreements reached with their employees.

39 (k) California's taxpayers who rely on public safety, senior,  
40 recreational, municipal health, library, and other public services

1 as well as those who own and operate businesses in our  
2 communities, deserve every reasonable and appropriate effort that  
3 state and local government can make to avoid adverse  
4 consequences of Chapter 9 bankruptcy filings, particularly where  
5 a neutral evaluation may lead to out-of-court resolution of  
6 outstanding obligations and disputes or to a preagreed,  
7 prenegotiated plan of readjustment.

8 (l) Resolving municipal and state business and financial issues  
9 in a timely, fair and cost-effective manner is an integral part of a  
10 successful government and is in the public interest. It has long  
11 been recognized that alternative dispute resolution proceedings,  
12 like a neutral evaluation, offer an economical, discreet, and  
13 expeditious way to resolve potentially devastating situations.

14 (m) Through the neutral evaluation process, the neutral  
15 evaluator, a specially trained, neutral third party can assist the  
16 municipality and its creditors and stakeholders to fully explore  
17 alternatives, while allowing the interested parties to exchange  
18 information in a confidential environment with the assistance and  
19 supervision of a neutral evaluator to determine whether the  
20 municipality's contractual and financial obligations can be  
21 renegotiated on a consensual basis.

22 (n) The California Debt and Investment Advisory Commission's  
23 current statutory duties to collect municipal finance data, conduct  
24 research, administer educational seminars, and provide information  
25 and technical assistance on behalf of municipalities, and given the  
26 commission's membership, it is appropriate that the commission  
27 be able to provide technical assistance as a neutral party at the  
28 request of a municipality contemplating restructuring or a Chapter  
29 9 filing or by a stakeholder concerned about the financial condition  
30 of the municipality.

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

33 8860. The commission shall, when requested by a local public  
34 agency or a neutral evaluator, serve as a neutral third party to  
35 provide technical assistance in any neutral evaluation process  
36 conducted pursuant to Article 5 (commencing with Section 53760)  
37 of Chapter 4 of Part 1 of Division 2 of Title 5.

38 SEC. 3. Section 53760 of the Government Code is amended  
39 to read:

1 53760. (a) Except as otherwise provided by statute, a local  
2 public entity in this state shall not file a petition and exercise  
3 powers pursuant to applicable federal bankruptcy law unless the  
4 local public entity has participated in the neutral evaluation process  
5 as provided in ~~Section 8860~~ *this article* and received a good faith  
6 certification from the neutral evaluator, and if one of the following  
7 applies:

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

11 (2) The local public entity and the interested parties were unable  
12 to reach an out-of-court agreement and the neutral evaluator has  
13 certified in writing that the parties have participated in the neutral  
14 evaluation process in good faith, pursuant to subdivision (d) of  
15 Section 53762.5.

16 (3) The local public entity initiated the neutral evaluation process  
17 and interested parties did not participate in the neutral evaluation  
18 process, pursuant to subdivision (e) of Section 53762.5 and has  
19 disclosed documents arising from the process required by ~~Section~~  
20 ~~8860~~ *this article*.

21 (b) A local public entity shall not file a petition and exercise  
22 powers pursuant to subdivision (a) if the neutral evaluator  
23 determines that a local entity has failed to participate in the neutral  
24 evaluation process in good faith. Failure to participate in good  
25 faith includes, but is not limited to, the failure to provide accurate  
26 and essential financial information, the failure to attempt to reach  
27 settlement with all interested parties to avert bankruptcy, or  
28 evidence of manipulation to delay and obstruct a timely agreement.

29 (c) As used in this article, “local public entity” means any  
30 county, city, district, public authority, public agency, or other  
31 entity, without limitation, that is a “municipality,” as defined in  
32 paragraph (40) of Section 101 of Title 11 of the United States Code  
33 (bankruptcy), or that qualifies as a debtor under any other federal  
34 bankruptcy law applicable to local public entities. *For purposes*  
35 *of this article, “local public entity” does not include a school*  
36 *district.*

37 SEC. 4. Section 53760.3 is added to the Government Code, to  
38 read:

39 53760.3. (a) A local public entity may initiate the neutral  
40 evaluation process pursuant to this article. A neutral evaluator shall

1 oversee the neutral evaluation process, and shall facilitate all of  
2 the requirements set forth in subdivision (b).

3 (b) (1) The local public entity shall make complete disclosure  
4 of all documentation necessary to clearly demonstrate whether the  
5 local public entity is solvent, including, but not limited to, financial  
6 reports, expenditures, assets, and any other relevant documentation.

7 (2) The local public entity and any interested party shall ~~make~~  
8 present information to each other, which shall include, but is not  
9 limited to, the status of funds of the local public agency that clearly  
10 distinguishes between general funds and special funds.

11 (3) The local public entity and any interested party shall present  
12 its proposed plan of readjustment.

13 (4) The local public entity and any interested party shall  
14 negotiate in good faith.

15 (c) The neutral evaluation process shall be confidential, and is  
16 subject to ~~Section 703.5 and Chapter 2 (commencing with Section~~  
17 ~~1115) of Division 9 of the Evidence Code. Section 53762.8.~~

18 SEC. 5. Section 53760.5 is added to the Government Code, to  
19 read:

20 53760.5. (a) A local public entity may initiate the neutral  
21 evaluation process when the local public entity is or likely will  
22 become unable to meet its financial obligations when those  
23 obligations are due or become due and owing.

24 (b) A neutral evaluation shall be conducted through an  
25 alternative dispute resolution program within the state and in  
26 accordance with ~~Section 8860~~ *this article*.

27 (c) The role of the neutral evaluator shall be to assist all  
28 interested parties in reaching an equitable settlement to avert a  
29 Chapter 9 filing. The neutral evaluator shall also assist the parties  
30 in identifying the anticipated legal costs associated with a Chapter  
31 9 filing relative to the local public entity's budget shortfall. The  
32 neutral evaluator may consult with alternate dispute resolution  
33 service providers, the California Debt and Investment Advisory  
34 Commission, *the California State Mediation and Conciliation*  
35 *Service*, the Executive Office for U.S. Trustees, retired bankruptcy  
36 judges, or other appropriate entities in establishing and  
37 administering the neutral evaluation regarding issues that are not  
38 confidential.

39 SEC. 6. Section 53761 is added to the Government Code, to  
40 read:

1 53761. (a) A neutral evaluator shall meet all of the following  
2 qualifications:

3 (1) At least 10 years of high level business or legal practice  
4 involving bankruptcy.

5 (2) Experience and training in conflict resolution and alternative  
6 dispute resolution.

7 (3) Completion of a mandatory training program in municipal  
8 organization, municipal debt restructuring, Chapter 9 bankruptcy,  
9 public finance, taxation, California constitutional law, California  
10 labor law, federal labor law, and municipal finance dispute  
11 resolution, provided through an alternative dispute resolution  
12 program within the state.

13 (b) The neutral evaluator shall be impartial, objective,  
14 independent, and free from prejudice. The neutral evaluator shall  
15 not act with partiality or prejudice based on any participant's  
16 personal characteristics, background, values or beliefs, or  
17 performance during the neutral evaluation process.

18 (c) (1) The neutral evaluator shall avoid a conflict of interest  
19 or the appearance of a conflict of interest during the neutral  
20 evaluation process. The neutral evaluator shall make a reasonable  
21 inquiry to determine whether there are any facts that a reasonable  
22 individual would consider likely to create a potential or actual  
23 conflict of interest. *Notwithstanding subdivision (b) of Section*  
24 *53761.3, if the neutral evaluator is informed of the existence of*  
25 *any facts that a reasonable individual would consider likely to*  
26 *create a potential or actual conflict of interest, the neutral*  
27 *evaluator shall disclose these facts in writing to the local public*  
28 *entity and all interested parties involved in the neutral evaluation.*  
29 *If any party to the neutral evaluation objects to the neutral*  
30 *evaluator, that party shall notify all other parties to the neutral*  
31 *evaluation, including the neutral evaluator, within 15 days of*  
32 *receipt of the notice from the neutral evaluator, the neutral*  
33 *evaluator shall withdraw and a new neutral evaluator shall be*  
34 *selected pursuant to subdivision (a) of Section 53761.3.*

35 (2) Prior to the neutral evaluation process, the neutral evaluator  
36 shall not establish another relationship with any of the parties in  
37 a manner that would raise questions about the integrity of the  
38 neutral evaluation, except that the neutral evaluator may conduct  
39 further neutral evaluations regarding other potential local public

1 entities that may involve some of the same or similar constituents  
2 to a prior mediation.

3 (d) The neutral evaluator shall conduct the neutral evaluation  
4 process in a manner that promotes voluntary, uncoerced  
5 decisionmaking in which each party makes free and informed  
6 choices regarding the process and outcome.

7 (e) The neutral evaluator shall not impose a settlement on the  
8 parties. The neutral evaluator shall use his or her best efforts to  
9 assist the parties to reach a satisfactory resolution of their disputes.  
10 Subject to the discretion of the neutral evaluator, the neutral  
11 evaluator may make oral or written recommendations for settlement  
12 or plan of readjustment to a party privately or to all parties jointly.

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

21 (g) The neutral evaluator may request from the parties  
22 documentation and other information that the neutral evaluator  
23 believes may be helpful in assisting the parties to address the  
24 obligations between them.

25 (h) In the event a complete settlement of all or some issues in  
26 dispute is not achieved within the scheduled neutral evaluation  
27 session or sessions, the neutral evaluator may, at the neutral  
28 evaluator's discretion, continue to communicate with the parties  
29 in an ongoing effort to facilitate a complete settlement in order to  
30 avoid a Chapter 9 filing.

31 (i) The neutral evaluator shall provide counsel and guidance to  
32 all parties and shall not be a legal representative of any party and  
33 shall not have a fiduciary duty to any party.

34 (j) In the event of a settlement with all interested parties, the  
35 neutral evaluator may assist the parties in negotiating a prepetition,  
36 preagreed plan of readjustment in connection with a potential  
37 Chapter 9 filing.

38 (k) The neutral evaluator shall maintain the confidentiality of  
39 all the information obtained by the neutral evaluator in the neutral  
40 evaluation process, unless otherwise agreed to by the parties. The

1 neutral evaluation shall be subject to Chapter 2 (commencing with  
2 Section 1115) of Division 9 of the Evidence Code.

3 *SEC. 7. Section 53761.3 is added to the Government Code, to*  
4 *read:*

5 *53761.3. (a) The parties shall select a neutral evaluator*  
6 *through a mutually agreed upon process.*

7 *(b) If at any time during the neutral evaluation process the local*  
8 *public entity and a majority of interested parties wish to remove*  
9 *the neutral evaluator, the local public entity or any interested party*  
10 *may make a request to the other interested parties to remove the*  
11 *neutral evaluator. If the local public entity and the majority of the*  
12 *interested parties agree that the neutral evaluator should be*  
13 *removed, the parties shall select a new neutral evaluator pursuant*  
14 *to subdivision (a).*

15 ~~SEC. 7.~~

16 *SEC. 8. Section 53761.5 is added to the Government Code, to*  
17 *read:*

18 *53761.5. The parties shall exchange all documents including*  
19 *current financial information and projections addressing future*  
20 *financial obligations affecting the local public entity or that may*  
21 *hinder a resolution of the issues before the neutral evaluator. The*  
22 *neutral evaluator may request the submission or exchange of*  
23 *memoranda on issues, including the underlying interests, and the*  
24 *history of the parties' prior negotiations. Information that a party*  
25 *wishes to keep confidential may be sent to the neutral evaluator*  
26 *in a separate communication clearly marked "CONFIDENTIAL."*

27 ~~SEC. 8.~~

28 *SEC. 9. Section 53762 is added to the Government Code, to*  
29 *read:*

30 *53762. (a) Each interested party shall provide at least one*  
31 *representative of each party to attend all neutral evaluation*  
32 *conferences. Each party's representative shall have authority to*  
33 *settle and resolve disputes or shall be in a position to present any*  
34 *proposed settlement or plan of readjustment to the governing body*  
35 *or membership for approval and implementation.*

36 *(b) The local public entity shall provide a local public entity*  
37 *representative who shall represent the local public entity's interest*  
38 *in the neutral evaluation and who shall be in a position to propose*  
39 *any settlement or plan of readjustment to the governing body of*  
40 *the local public entity.*

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

3 (d) The parties shall maintain the confidentiality of the neutral  
4 evaluation process and shall not disclose statements made,  
5 information disclosed, or documents prepared or produced, during  
6 the neutral evaluation process, as specified in Sections  
7 1119, 1120, 1121, and 1122 of the Evidence Code, unless all parties  
8 consent in writing to the disclosure Section 53762.8. This  
9 subdivision does not apply to documents that were not confidential  
10 prior to the start of the neutral evaluation process.

11 ~~SEC. 9.~~

12 *SEC. 10.* Section 53762.5 is added to the Government Code,  
13 to read:

14 53762.5. The neutral evaluation process shall end if any of  
15 the following occur:

16 (a) The parties execute an agreement of settlement.

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

19 (c) The neutral evaluator certifies in writing that one or more  
20 of the parties has not participated in good faith, that no resolution  
21 has been reached, and that further efforts at the neutral evaluation  
22 process would not contribute to a resolution of the parties' dispute.

23 (d) The neutral evaluator certifies in writing that the parties  
24 have participated in good faith but the parties have reached an  
25 impasse and further efforts at the neutral evaluation process would  
26 not contribute to a resolution of disputes.

27 (e) The neutral evaluator certifies in writing that a neutral  
28 evaluation was initiated by the local public entity but that no  
29 interested parties participated.

30 *SEC. 11.* Section 53762.6 is added to the Government Code,  
31 to read:

32 53762.6. (a) *Once a local public entity has initiated the neutral*  
33 *evaluation process pursuant to this article, to help ensure that a*  
34 *local public entity meets the insolvency requirement in subdivision*  
35 *(c) of Section 109 of Title 11 of the United States Code and to*  
36 *assist the local public entity and the interested parties in the neutral*  
37 *evaluation process, the local public entity may submit information*  
38 *to the State Auditor describing the public entity's current financial*  
39 *position. This information shall include all of the following:*

1     (1) *The local public entity's revenues and estimated revenues*  
2 *for the relevant time period.*

3     (2) *The local public entity's anticipated ongoing expenses.*

4     (3) *The local public entity's proposed plan for restoring the*  
5 *soundness of the local public entity's financial position, if they*  
6 *have one.*

7     (4) *An itemized list of creditors that may be impaired or may*  
8 *seek damages as a result of the proposed plan to restore the*  
9 *soundness of the local public entity's financial position.*

10    (5) *Any additional information the auditor deems necessary to*  
11 *complete the audit in a timely manner.*

12    (b) *Upon receipt of the analyses information described in*  
13 *subdivision (a), the State Auditor shall audit the analyses and*  
14 *financial position of the local public entity. The State Auditor shall*  
15 *work with the local public entity to establish a deadline for the*  
16 *audit work.*

17    (c) *Any audit initiated under this section shall take precedent*  
18 *over any pending audit requested under subdivision (b) of Section*  
19 *8546.1.*

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

28    (e) *The auditor's report developed pursuant to this section shall*  
29 *become public at the time of filing for bankruptcy or prior to filing*  
30 *at the public entity's discretion.*

31    SEC. 12. *Section 53762.7 is added to the Government Code,*  
32 *to read:*

33    53762.7. (a) *Notwithstanding Section 53760, a local public*  
34 *entity may file a petition and exercise powers pursuant to*  
35 *applicable federal bankruptcy laws if both of the following*  
36 *conditions are met:*

37    (1) *The State Auditor determines that the local public entity is*  
38 *insolvent, as defined in subparagraph (C) of subdivision (32) of*  
39 *Section 101 of Title 11 of the United States Code.*

1 (2) *The local public entity has been participating in a neutral*  
2 *evaluation with interested parties for at least 90 days.*

3 (b) *If a local public entity files a petition and exercises powers*  
4 *pursuant to applicable federal bankruptcy laws pursuant to*  
5 *subdivision (a), the court shall not consider whether that filing*  
6 *meets the requirements of Section 53760.*

7 SEC. 13. *Section 53762.8 is added to the Government Code,*  
8 *to read:*

9 53762.8. (a) *No evidence of anything said or any admission*  
10 *made for the purpose of, in the course of, or pursuant to, a neutral*  
11 *evaluation is admissible or subject to discovery, and disclosure of*  
12 *the evidence shall not be compelled, in any arbitration,*  
13 *administrative adjudication, civil action, or other noncriminal*  
14 *proceeding in which, pursuant to law, testimony can be compelled*  
15 *to be given.*

16 (b) *No writing, as defined in Section 250 of the Evidence Code,*  
17 *that is prepared for the purpose of, in the course of, or pursuant*  
18 *to a neutral evaluation is admissible or subject to discovery, and*  
19 *disclosure of the writing shall not be compelled, in any arbitration,*  
20 *administrative adjudication, civil action, or other noncriminal*  
21 *proceeding in which, pursuant to law, testimony can be compelled*  
22 *to be given.*

23 (c) *All communications, negotiations, or settlement discussions*  
24 *by and between participants in the course of a neutral evaluation*  
25 *shall remain confidential.*

26 (d) *Evidence otherwise admissible or subject to discovery*  
27 *outside of a neutral evaluation shall not be or become inadmissible*  
28 *or protected from disclosure solely by reason of its introduction*  
29 *or use in a neutral evaluation.*

30 (e) *Neither a mediator neutral evaluator nor any other person*  
31 *may submit to a court or other adjudicative body, and a court or*  
32 *other adjudicative body may not consider, any report, assessment,*  
33 *evaluation, recommendation, or finding of any kind by the neutral*  
34 *evaluator concerning a neutral evaluation conducted by the neutral*  
35 *evaluator, unless the information is deemed necessary by a judge*  
36 *presiding over a bankruptcy proceeding pursuant to Chapter 9 of*  
37 *Title 11 of the United States Code to determine eligibility of a*  
38 *municipality to proceed with a bankruptcy proceeding pursuant*  
39 *to Chapter 9 of Title 11 of the United States Code or unless all*  
40 *parties to the neutral evaluation expressly agree otherwise.*

1 (f) A communication or a writing, as defined in Section 250 of  
2 the Evidence Code, that is made or prepared for the purpose of,  
3 or in the course of, or pursuant to a neutral evaluation is not made  
4 inadmissible, or protected from disclosure, by provisions of this  
5 chapter if either of the following conditions is satisfied:

6 (1) All persons who conduct or otherwise participate in the  
7 neutral evaluation expressly agree in writing, or orally in  
8 accordance with Section 1118 of the Evidence Code, to disclosure  
9 of the communication, document, or writing.

10 (2) The communication, document, or writing was prepared by  
11 or on behalf of fewer than all the neutral evaluation participants,  
12 those participants expressly agree to its disclosure, and the  
13 communication, document, or writing does not disclose anything  
14 said or done or any admission made in the course of the neutral  
15 evaluation.

16 (g) A written settlement agreement prepared in the course of,  
17 or pursuant to, a neutral evaluation, is not made inadmissible, or  
18 protected from disclosure, by provisions of this section if the  
19 agreement is signed by the settling parties and any of the following  
20 conditions are satisfied:

21 (1) The agreement provides that it is admissible or subject to  
22 disclosure, or words to that effect.

23 (2) The agreement provides that it is enforceable or binding or  
24 words to that effect.

25 (3) All parties to the agreement expressly agree to its disclosure.

26 (4) The agreement is used to show fraud, duress, or illegality  
27 that is relevant to an issue in dispute.

28 (h) An oral agreement made in the course of, or pursuant to, a  
29 neutral evaluator is not made inadmissible, or protected from  
30 disclosure, by the provisions of this chapter if any of the following  
31 conditions are satisfied:

32 (1) The oral agreement is recorded by a court reporter or  
33 reliable means of audio recording.

34 (2) The terms of the oral agreement are recited on the record  
35 in the presence of the parties and the mediator, and the parties  
36 express on the record that they agree to the terms recited.

37 (3) The parties to the oral agreement expressly state on the  
38 record that the agreement is enforceable or binding, or words to  
39 that effect.

1 (4) *The recording is reduced to writing and the writing is signed*  
2 *by the parties within 72 hours after it is recorded.*

3 (5) *The agreement is used to show fraud, duress, or illegality*  
4 *that is relevant to an issue in dispute.*

5 (i) *Anything said, any admission made, or any writing that is*  
6 *inadmissible, protected from disclosure, and confidential under*  
7 *this chapter before a neutral evaluation ends, shall remain*  
8 *inadmissible, protected from disclosure, and confidential to the*  
9 *same extent after the neutral evaluation ends.*

10 (j) *If a person subpoenas or otherwise seeks to compel a neutral*  
11 *evaluator to testify or produce a writing, as defined in Section 250*  
12 *of the Evidence Code, and the court or other adjudicative body*  
13 *determines that the testimony or writing is inadmissible under this*  
14 *section, or protected from disclosure under this section, the court*  
15 *or adjudicative body making the determination shall award*  
16 *reasonable attorney's fees and costs to the neutral evaluator*  
17 *against the person seeking the testimony or writing.*

18 (k) *Any reference to a neutral evaluation during any subsequent*  
19 *trial is an irregularity in the proceedings of the trial for the*  
20 *purposes of Section 657 of the Code of Civil Procedure. Any*  
21 *reference to a neutral evaluation during any other subsequent*  
22 *noncriminal proceeding is grounds for vacating or modifying the*  
23 *decision in that proceeding, in whole or in part, and granting a*  
24 *new or further hearing on all or part of the issues, if the reference*  
25 *materially affected the substantial rights of the party requesting*  
26 *relief.*

27 ~~SEC. 10.~~

28 *SEC. 14.* Section 53763 is added to the Government Code, to  
29 read:

30 53763. As used in this article the following terms have the  
31 following meanings:

32 (a) "Chapter 9" means Chapter 9 (commencing with Section  
33 901) of Title 11 of the United States Code.

34 (b) "Claim" means either of the following:

35 (1) A right to payment, whether or not the right is reduced to  
36 judgment, liquidated, unliquidated, fixed, contingent, matured,  
37 unmatured, disputed, undisputed, legal, equitable, secured, or  
38 unsecured.

39 (2) A right to an equitable remedy for breach of performance  
40 if the breach gives rise to a right to payment, whether or not the

1 right to an equitable remedy is reduced to judgment, fixed,  
2 contingent, matured, unmatured, disputed, undisputed, secured,  
3 or unsecured.

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

9 (d) “Collective bargaining agreement” means a written, legally  
10 enforceable contract for a specified period, between the  
11 management of an entity or organization and its employees  
12 represented by a recognized union. It sets down and defines  
13 conditions of employment, including, but not limited to, wages,  
14 working hours and conditions, overtime payments, holidays,  
15 vacations, health benefits, retirement benefits, and procedures for  
16 dispute resolution.

17 (e) “Creditor” means either of the following:

18 (1) An entity that has a claim against a municipality that arose  
19 at the time of or before the commencement of the neutral evaluation  
20 process and whose claim represents at least 5 percent of the  
21 municipality’s general fund obligations.

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

26 (f) “Debtor” means a local public entity that may file for  
27 bankruptcy under Chapter 9.

28 (g) “Good faith” means participation by a party in the neutral  
29 evaluation process with the intent to negotiate toward a resolution  
30 of the issues that are the subject of the neutral evaluation process,  
31 including, but not limited to, the timely provision of complete and  
32 accurate information to provide the relevant parties through the  
33 neutral evaluation process with sufficient information, in a  
34 confidential manner, to negotiate the readjustment of the  
35 municipality’s debt.

36 (h) “Indenture trustee” means a trustee under a mortgage, deed  
37 of trust, or indenture, under which there is an outstanding security  
38 other than a voting-trust certificate, constituting a claim against  
39 the municipality.

1 (i) “Interested party” means a trustee, a committee of creditors,  
2 a creditor, an indenture trustee, a pension fund, a bondholder, or  
3 a union who under its collective bargaining agreements has  
4 standing to initiate contract or debt restructuring negotiations with  
5 the municipality.

6 (j) “Local public entity” means any county, city, district, public  
7 authority, public agency, or other entity, without limitation, that  
8 is a municipality as defined in paragraph ~~(4)~~ (40) of Section 101  
9 of Title 11 of the United States Code (bankruptcy), or that qualifies  
10 as a debtor under any other federal bankruptcy law applicable to  
11 local public entities.

12 (k) “Local public entity representative” means the person or  
13 persons designated by the local public agency with authority to  
14 make recommendations and to attend the neutral evaluation on  
15 behalf of the governing body of the municipality.

16 *SEC. 15. The Legislature finds and declares that the duties of*  
17 *the State Auditor that arise under Section 53762.6 of the*  
18 *Government Code, as proposed to be added by this act, shall be*  
19 *initially funded from the State Audit Fund, pursuant to Section*  
20 *8544.5 of the Government Code, which meets the requirements of*  
21 *subdivision (b) of Joint Rule 37.4, and which shall be subsequently*  
22 *reimbursed pursuant to subdivision (d) of Section 53762.6 of the*  
23 *Government Code.*

24 ~~SEC. 11.~~

25 *SEC. 16. The Legislature finds and declares that Sections 6*  
26 *and 7 of this act, which add Sections 53761.5 and 53762.5 to the*  
27 *Government Code, impose a limitation on the public’s right of*  
28 *access to the meetings of public bodies or the writings of public*  
29 *officials and agencies within the meaning of Section 3 of Article*  
30 *I of the California Constitution. Pursuant to that constitutional*  
31 *provision, the Legislature makes the following findings to*  
32 *demonstrate the interest protected by this limitation and the need*  
33 *for protecting that interest:*

34 To facilitate the process to avoid municipal bankruptcy, it is  
35 necessary to provide for secure documents.

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