

AMENDED IN SENATE SEPTEMBER 2, 2011

AMENDED IN SENATE AUGUST 31, 2011

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN SENATE JULY 12, 2011

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 53760.1, 53760.3, and 53760.5, ~~53761, 53761.3, 53761.5, 53762, 53762.1, 53762.5, and 53762.7~~ 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 prohibit a local public entity from filing under federal bankruptcy law unless the local public entity has participated in a *specified* 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 maintain a list of qualified neutral evaluators on its Internet Web site. *or the local public entity has declared a fiscal emergency and has adopted a resolution by a majority vote of the governing board at a noticed public hearing that includes findings that the financial state of the local public entity jeopardizes the health, safety, or well-being of the residents of the local public entity's jurisdiction or service area absent bankruptcy protections.*

The bill would additionally provide an alternative process that a local public entity may use to file under federal bankruptcy law if the financial difficulties of the local public entity jeopardize the health, safety, or well-being of the residents of the local public entity's jurisdiction or service area absent the protections of bankruptcy. The bill would require the local public entity to submit a petition to the Local Agency Bankruptcy Committee, which would consist of the Treasurer, Controller, and Director of Finance, and would require the Local Agency Bankruptcy Committee to review the petition and approve or deny the petition, in writing, as specified:

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*. 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 ~~governmental entities. Seeking financial relief through the~~  
 6 ~~provisions of Chapter 9 of the United States Bankruptcy Code~~  
 7 ~~imposes substantial administrative costs and expenses on a~~  
 8 ~~municipality, potentially exceeding several million dollars. In order~~  
 9 ~~for a municipality to be a debtor under Chapter 9, the municipality~~  
 10 ~~must prove that it is eligible for Chapter 9 relief by satisfying~~  
 11 ~~requirements in Section 109(c) of Title 11 of the United States~~  
 12 ~~Code, that include, but are not limited to, establishing that the~~  
 13 ~~municipality is insolvent, that the municipality desires to effect a~~

1 ~~plan to adjust its debts, and that the municipality has negotiated~~  
2 ~~in good faith or attempted to negotiate in good faith with its~~  
3 ~~creditors, as specified in that section.~~

4 (b)

5 (a) Filing for Chapter 9 can reduce service levels to the  
6 taxpayers and residents of a municipality. In some circumstances,  
7 it can have major short- and long-term fiscal consequences for the  
8 municipality, the surrounding municipalities, and the state. Filing  
9 for bankruptcy protection under Chapter 9 should be considered  
10 a last resort, to be instituted only after other reasonable efforts  
11 have been made to avoid a bankruptcy filing or otherwise  
12 appropriately plan for it. It is in the interest of the state, local  
13 governments, and the public that local governmental entities have  
14 sufficiently sound financial capacity to provide required services  
15 to the public and meet their contractual and other obligations during  
16 any restructuring or financial reorganization process. Furthermore,  
17 it is in the best interest of the public, the state, and local  
18 governmental entities that employees, trade creditors, bondholders,  
19 and other interest holders be included in an appropriate  
20 restructuring process and have an adequate understanding of the  
21 financial capacity of local governmental entities and their  
22 obligations, as a clear understanding of both is necessary for any  
23 restructuring or reorganization process.

24 ~~(e) The Legislature has an interest in monitoring the conditions~~  
25 ~~under which local entities may seek Chapter 9 protection. The~~  
26 ~~relief provided through the bankruptcy process can affect state and~~  
27 ~~municipal government service levels, debt, and contracts. The~~  
28 ~~Legislature has a strong interest in ensuring adequate disclosure~~  
29 ~~of the conditions under which a municipality may seek Chapter 9~~  
30 ~~protection and providing a process to make any Chapter 9 filing~~  
31 ~~as efficient as possible.~~

32 (d)

33 (b) To the extent financial relief granted through Chapter 9 can  
34 affect debt service payments, the bondholders have a direct interest  
35 in the Chapter 9 process, particularly prior to filing. Therefore, it  
36 is important for those parties to be able to participate in a pre-filing  
37 confidential neutral evaluation process that could assist parties in  
38 reaching a settlement and avoiding a bankruptcy filing or otherwise  
39 lead to a prenegotiated consensual plan of readjustment as clearly

1 contemplated by Section 109(c) of Title 11 of the United States  
2 Code.

3 (e)

4 (c) To the extent financial relief granted through Chapter 9 could  
5 affect public employee compensation, employees have a direct  
6 interest in the Chapter 9 process, particularly prior to filing.  
7 Therefore, it is important for those parties to be able to participate  
8 in a prefiling confidential neutral evaluation process that could  
9 assist parties in reaching a settlement or otherwise lead to a  
10 prenegotiated, consensual plan of adjustment and avoid a Chapter  
11 9 filing.

12 ~~(f) The state has established a statewide system of public~~  
13 ~~employee collective bargaining for state and local government~~  
14 ~~employers and employees intended to protect the state's interest~~  
15 ~~in promoting peaceful and harmonious labor relations and~~  
16 ~~preventing work stoppages. Contracts reached through collective~~  
17 ~~bargaining are essential to maintaining labor peace and the~~  
18 ~~uninterrupted delivery of vital public services, and these~~  
19 ~~agreements may be subject to review, amendment, or rejection in~~  
20 ~~the event of a Chapter 9 bankruptcy proceeding. It is the intent of~~  
21 ~~the Legislature that the rights of workers to collectively bargain~~  
22 ~~be fully enforced and respected in the neutral evaluation process.~~

23 (g) ~~Currently, 23 states do not permit municipalities to file for~~  
24 ~~bankruptcy. Twenty-seven states permit municipalities to file for~~  
25 ~~bankruptcy, but most states impose standards and guidelines for~~  
26 ~~access to bankruptcy proceedings. California is one of only 10~~  
27 ~~states that does not restrict or otherwise limit the authority of its~~  
28 ~~municipalities to file for bankruptcy. At present, California offers~~  
29 ~~no opportunity for those municipalities that are insolvent to receive~~  
30 ~~state-level, prebankruptcy guidance, oversight, neutral evaluation,~~  
31 ~~or assistance. Nor does the state provide a mechanism for exchange~~  
32 ~~of current and projected financial information with public employee~~  
33 ~~representatives, debt and bondholders, and other interested parties~~  
34 ~~in a prebankruptcy setting even if these municipalities are not~~  
35 ~~currently insolvent but concerned about becoming insolvent and~~  
36 ~~unable to pay obligations as these obligations come due. As a~~  
37 ~~result, there is no process in this state requiring potential Chapter~~  
38 ~~9 debtors to qualify as Chapter 9 debtors, leaving these cases~~  
39 ~~subject to motions to dismiss on any number of grounds, thus~~

1 ~~delaying earlier resolution and increasing administrative fees, legal~~  
2 ~~fees, and costs.~~

3 ~~(h) State intervention in local affairs should only occur in~~  
4 ~~exceptional circumstances and not without a compelling interest~~  
5 ~~of statewide concern.~~

6 ~~(i)~~

7 (d) Given the connection between state allocations and local  
8 budgets, the state has a role in assisting municipalities to address  
9 potential insolvency with the goal of averting municipality  
10 bankruptcy filings where possible and providing a process designed  
11 to make the debt restructuring process in or outside of a Chapter  
12 9 bankruptcy as cost effective and efficient as possible for all  
13 participants.

14 ~~(j) It is the duty of all state and local elected officials to ensure~~  
15 ~~that governments provide essential services to the communities~~  
16 ~~they are elected to serve, and to respect collective bargaining~~  
17 ~~agreements reached with their employees.~~

18 ~~(k)~~

19 (e) California's taxpayers who rely on public safety, senior,  
20 recreational, municipal health, library, and other public services,  
21 as well as those who own and operate businesses in our  
22 communities, deserve every reasonable and appropriate effort that  
23 state and local government can make to avoid adverse  
24 consequences of Chapter 9 bankruptcy filings, particularly where  
25 a neutral evaluation may lead to the avoidance of Chapter 9 filing  
26 by an out-of-court resolution of outstanding obligations and  
27 disputes.

28 ~~(l)~~

29 (f) Resolving municipal and state business and financial issues  
30 in a timely, fair, and cost-effective manner is an integral part of a  
31 successful government and is in the public interest. It has long  
32 been recognized that alternative dispute resolution proceedings,  
33 like a neutral evaluation, offer an economical, discreet, and  
34 expeditious way to resolve potentially devastating situations.

35 ~~(m)~~

36 (g) Through the neutral evaluation process, the neutral evaluator,  
37 a specially trained, neutral third party, can assist the municipality  
38 and its creditors and stakeholders to fully explore alternatives,  
39 while allowing the interested parties to exchange information in  
40 a confidential environment with the assistance and supervision of

1 a neutral evaluator to determine whether the municipality's  
2 contractual and financial obligations can be renegotiated on a  
3 consensual basis.

4 ~~SEC. 2. Section 53760 of the Government Code is amended~~  
5 ~~to read:~~

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

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

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

20 ~~(3) The local public entity initiated the neutral evaluation process~~  
21 ~~and interested parties did not participate in the neutral evaluation~~  
22 ~~process, pursuant to subdivision (e) of Section 53762.5.~~

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

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

1 SEC. 2. Section 53760 of the Government Code is amended to  
2 read:

3 53760. ~~(a) Except as otherwise provided by statute, a~~A local  
4 public entity in this state may file a petition and exercise powers  
5 pursuant to applicable federal bankruptcy law: *if either of the*  
6 *following apply:*

7 (a) ~~The local public entity has participated in a neutral~~  
8 ~~evaluation process pursuant to subdivision (a) of Section 53760.3.~~

9 (b) ~~The local public entity declares a fiscal emergency and~~  
10 ~~adopts a resolution by a majority vote of the governing board~~  
11 ~~pursuant to Section 53760.5.~~

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

18 SEC. 3. Section 53760.1 is added to the Government Code, to  
19 read:

20 53760.1. As used in this article the following terms have the  
21 following meanings:

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

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

25 (1) ~~A right to payment, whether or not the right is reduced to~~  
26 ~~judgment, liquidated, unliquidated, fixed, contingent, matured,~~  
27 ~~unmatured, disputed, undisputed, legal, equitable, secured, or~~  
28 ~~unsecured.~~

29 (2) ~~A right to an equitable remedy for breach of performance~~  
30 ~~if the breach gives rise to a right to payment, whether or not the~~  
31 ~~right to an equitable remedy is reduced to judgment, fixed,~~  
32 ~~contingent, matured, unliquidated, disputed, undisputed, secured,~~  
33 ~~or unsecured.~~

34 (c) ~~“Collective bargaining” means the process by which workers~~  
35 ~~exercise their right to negotiate with an entity’s or organization’s~~  
36 ~~management in a good faith process to establish employee~~  
37 ~~compensation, working conditions, and other matters of mutual~~  
38 ~~interest.~~

39 (d) ~~“Collective bargaining agreement” means a written, legally~~  
40 ~~enforceable contract for a specified period, between the~~

1 management of an entity or organization and its employees  
 2 represented by a recognized union. It sets down and defines  
 3 conditions of employment, including, but not limited to, wages,  
 4 working hours and conditions, overtime payments, holidays,  
 5 vacations, health benefits, retirement benefits, and procedures for  
 6 dispute resolution.

7 (e)

8 (b) “Creditor” means either of the following:

9 (1) An entity that has a claim against a municipality that arose  
 10 at the time of or before the commencement of the neutral evaluation  
 11 process and whose claim represents at least ~~5 percent of the~~  
 12 ~~municipality’s general fund obligations~~ *five million dollars*  
 13 *(\$5,000,000) or comprises more than 5 percent of the local public*  
 14 *entity’s debt or obligations, whichever is less.*

15 (2) An entity that may have a claim against the municipality  
 16 arising out of rejection of an executory contract or unexpired lease  
 17 in a Chapter 9 case and whose claim represents at least ~~5 percent~~  
 18 ~~of the municipality’s general fund obligations~~ *five million dollars*  
 19 *(\$5,000,000) or comprises more than 5 percent of the local public*  
 20 *entity’s debt or obligations, whichever is less.*

21 (f)

22 (c) “Debtor” means a local public entity that may file for  
 23 bankruptcy under Chapter 9.

24 (g)

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

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

37 (i)

38 (e) “Interested party” means a trustee, a committee of creditors,  
 39 *a an affected* creditor, an indenture trustee, a pension fund, a  
 40 bondholder, a union that, under its collective bargaining

1 agreements, has standing to initiate contract or debt restructuring  
 2 negotiations with the municipality, or a representative selected by  
 3 an association of retired employees of the public entity who receive  
 4 income from the public entity convening the neutral evaluation.  
 5 *A local public entity may invite holders of contingent claims to*  
 6 *participate as interested parties in the neutral evaluation if the*  
 7 *local public entity determines that the contingency is likely to occur*  
 8 *and the claim may represent five million dollars (\$5,000,000) or*  
 9 *comprise more than 5 percent of the local public entity’s debt or*  
 10 *obligations, whichever is less.*

11 (j)  
 12 (f) “Local public entity” means any county, city, district, public  
 13 authority, public agency, or other entity, without limitation, that  
 14 is a municipality as defined in Section 101(40) of Title 11 of the  
 15 United States Code (bankruptcy), or that qualifies as a debtor under  
 16 any other federal bankruptcy law applicable to local public entities.  
 17 *For purposes of this article, “local public entity” does not include*  
 18 *a school district.*

19 (k)  
 20 (g) “Local public entity representative” means the person or  
 21 persons designated by the local public agency with authority to  
 22 make recommendations and to attend the neutral evaluation on  
 23 behalf of the governing body of the municipality.

24 SEC. 4. Section 53760.3 is added to the Government Code, to  
 25 read:

26 ~~53760.3.—(a) A local public entity may initiate the neutral~~  
 27 ~~evaluation process pursuant to this article. A neutral evaluator shall~~  
 28 ~~oversee the neutral evaluation process, and shall facilitate all of~~  
 29 ~~the requirements set forth in subdivision (b).~~

30 ~~(b) (1) The local public entity shall make complete disclosure~~  
 31 ~~to the neutral evaluator of all documentation necessary to clearly~~  
 32 ~~demonstrate whether the local public entity is solvent, including,~~  
 33 ~~but not limited to, financial reports, expenditures, assets, and any~~  
 34 ~~other relevant documentation.~~

35 ~~(2) The local public entity and any interested party or interested~~  
 36 ~~parties participating in the neutral evaluation process shall present~~  
 37 ~~information to each other, that shall include, but is not limited to,~~  
 38 ~~the status of funds of the local public entity that clearly~~  
 39 ~~distinguishes between general funds and special funds.~~

1     ~~(3) The local public entity and any interested party shall present~~  
2     ~~the entity’s proposed plan of readjustment.~~

3     ~~(4) The local public entity and all interested parties participating~~  
4     ~~in the neutral evaluation process shall negotiate in good faith.~~

5     ~~(e) The neutral evaluation process shall be confidential and is~~  
6     ~~subject to Section 53762.7.~~

7     ~~SEC. 5.— Section 53760.5 is added to the Government Code, to~~  
8     ~~read:~~

9     ~~53760.5.— (a) A local public entity may initiate the neutral~~  
10    ~~evaluation process when the local public entity is or likely will~~  
11    ~~become unable to meet its financial obligations as and when those~~  
12    ~~obligations are due or become due and owing.~~

13    ~~(b) A neutral evaluation shall be conducted through an~~  
14    ~~alternative dispute resolution program within the state and in~~  
15    ~~accordance with this article.~~

16    ~~(c) The role of the neutral evaluator shall be to assist all~~  
17    ~~interested parties in reaching an equitable settlement to avert a~~  
18    ~~Chapter 9 filing. The neutral evaluator shall also assist the parties~~  
19    ~~in identifying the anticipated legal costs and time associated with~~  
20    ~~a Chapter 9 filing relative to the local public entity’s budget~~  
21    ~~shortfall. The neutral evaluator may consult with alternative dispute~~  
22    ~~resolution service providers, the California Debt and Investment~~  
23    ~~Advisory Commission, the California State Mediation and~~  
24    ~~Conciliation Service, the Executive Office for United States~~  
25    ~~Trustees, retired bankruptcy judges, or other appropriate entities~~  
26    ~~in connection with the neutral evaluation regarding issues that are~~  
27    ~~not confidential or in connection with any matters with the consent~~  
28    ~~of the parties participating in the neutral evaluation.~~

29    ~~SEC. 6.— Section 53761 is added to the Government Code, to~~  
30    ~~read:~~

31    ~~53761.— (a) A neutral evaluator shall meet all of the following~~  
32    ~~qualifications:~~

33    ~~(1) At least 10 years of high-level business or legal practice~~  
34    ~~involving bankruptcy or service as a United States Bankruptcy~~  
35    ~~Judge.~~

36    ~~(2) Experience and training in conflict resolution and alternative~~  
37    ~~dispute resolution.~~

38    ~~(3) Commencing January 1, 2013, completion of a mandatory~~  
39    ~~training program in municipal organization, municipal debt~~  
40    ~~restructuring, Chapter 9 bankruptcy, public finance, taxation,~~

1 ~~California constitutional law, California labor law, federal labor~~  
2 ~~law, and municipal finance dispute resolution, provided through~~  
3 ~~an alternative dispute resolution program within the state.~~

4 53760.3. (a) *A local public entity may initiate the neutral*  
5 *evaluation process if the local public entity is or likely will become*  
6 *unable to meet its financial obligations as and when those*  
7 *obligations are due or become due and owing. The local public*  
8 *entity shall initiate the neutral evaluation by providing notice by*  
9 *certified mail of a request for neutral evaluation to all interested*  
10 *parties as defined in Section 53760.1.*

11 (b) *Interested parties shall respond within 10 business days of*  
12 *receipt of notice of the local public entity's request for neutral*  
13 *evaluation.*

14 (c) *Interested parties agreeing to participate in the neutral*  
15 *evaluation shall select the neutral evaluator to oversee the neutral*  
16 *evaluation process and shall facilitate all discussions in an effort*  
17 *to resolve their disputes.*

18 (d) *A neutral evaluator shall have experience and training in*  
19 *conflict resolution and alternative dispute resolution and shall*  
20 *meet at least one of the following qualifications:*

21 (1) *At least 10 years of high-level business or legal practice*  
22 *involving bankruptcy or service as a United States Bankruptcy*  
23 *Judge.*

24 (2) *Professional experience or training in municipal finance*  
25 *and one or more of the following issue areas:*

26 (A) *Municipal organization.*

27 (B) *Municipal debt restructuring.*

28 (C) *Municipal finance dispute resolution.*

29 (D) *Chapter 9 bankruptcy.*

30 (E) *Public finance.*

31 (F) *Taxation.*

32 (G) *California constitutional law.*

33 (H) *California labor law.*

34 (I) *Federal labor law.*

35 ~~(b)~~

36 (e) *The neutral evaluator shall be impartial, objective,*  
37 *independent, and free from prejudice. The neutral evaluator shall*  
38 *not act with partiality or prejudice based on any participant's*  
39 *personal characteristics, background, values or beliefs, or*  
40 *performance during the neutral evaluation process.*

1     ~~(e)~~~~(1)~~

2     (f) The neutral evaluator shall avoid a conflict of interest or the  
3 appearance of a conflict of interest during the neutral evaluation  
4 process. The neutral evaluator shall make a reasonable inquiry to  
5 determine whether there are any facts that a reasonable individual  
6 would consider likely to create a potential or actual conflict of  
7 interest. Notwithstanding subdivision ~~(b)~~ of Section 53761.3 (n),  
8 if the neutral evaluator is informed of the existence of any facts  
9 that a reasonable individual would consider likely to create a  
10 potential or actual conflict of interest, the neutral evaluator shall  
11 disclose these facts in writing to the local public entity and all  
12 interested parties involved in the neutral evaluation. If any party  
13 to the neutral evaluation objects to the neutral evaluator, that party  
14 shall notify all other parties to the neutral evaluation, including  
15 the neutral evaluator, within 15 days of receipt of the notice from  
16 the neutral evaluator, the neutral evaluator shall withdraw and a  
17 new neutral evaluator shall be selected pursuant to subdivisions  
18 (a) and (b) of Section 53761.3.

19     ~~(2)~~

20     (g) Prior to the neutral evaluation process, the neutral evaluator  
21 shall not establish another relationship with any of the parties in  
22 a manner that would raise questions about the integrity of the  
23 neutral evaluation, except that the neutral evaluator may conduct  
24 further neutral evaluations regarding other potential local public  
25 entities that may involve some of the same or similar constituents  
26 to a prior mediation.

27     ~~(d)~~

28     (h) The neutral evaluator shall conduct the neutral evaluation  
29 process in a manner that promotes voluntary, uncoerced  
30 decisionmaking in which each party makes free and informed  
31 choices regarding the process and outcome.

32     ~~(e)~~

33     (i) The neutral evaluator shall not impose a settlement on the  
34 parties. The neutral evaluator shall use his or her best efforts to  
35 assist the parties to reach a satisfactory resolution of their disputes.  
36 Subject to the discretion of the neutral evaluator, the neutral  
37 evaluator may make oral or written recommendations for settlement  
38 or plan of readjustment to a party privately or to all parties jointly.

39     ~~(f)~~

1 (j) The neutral evaluator ~~has a duty to instruct and~~ shall inform  
2 the local public entity and all parties of the ~~limitations provisions~~  
3 of Chapter 9 relative to other chapters of the bankruptcy codes.  
4 This instruction shall highlight the limited authority of United  
5 States bankruptcy judges in Chapter 9 such as the lack of flexibility  
6 available to judges to reduce or cram down debt repayments and  
7 similar efforts not available to reorganize the operations of the city  
8 that may be available to a corporate entity.

9 ~~(g)~~

10 (k) The neutral evaluator may request from the parties  
11 documentation and other information that the neutral evaluator  
12 believes may be helpful in assisting the parties to address the  
13 obligations between them. *This documentation may include the*  
14 *status of funds of the local public entity that clearly distinguishes*  
15 *between general funds and special funds, and the proposed plan*  
16 *of readjustment prepared by the local public entity.*

17 (l) *The neutral evaluator shall provide counsel and guidance*  
18 *to all parties, shall not be a legal representative of any party, and*  
19 *shall not have a fiduciary duty to any party.*

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

26 (i) ~~The neutral evaluator shall provide counsel and guidance to~~  
27 ~~all parties and shall not be a legal representative of any party and~~  
28 ~~shall not have a fiduciary duty to any party.~~

29 ~~(j)~~

30 (m) In the event of a settlement with all interested parties, the  
31 neutral evaluator may assist the parties in negotiating a  
32 prepetitioned, preagreed plan of readjustment in connection with  
33 a potential Chapter 9 filing.

34 ~~(k) The California Debt and Investment Advisory Commission,~~  
35 ~~in accordance with its mission to provide information, education,~~  
36 ~~and technical assistance on debt issuance and public fund~~  
37 ~~investments to local public agencies, shall maintain on its Internet~~  
38 ~~Web site a list of qualified neutral evaluators. Inclusion on the list~~  
39 ~~shall be determined based on whether a potential neutral evaluator~~  
40 ~~meets the minimum requirements described in subdivision (a).~~

1     ~~SEC. 7.—Section 53761.3 is added to the Government Code, to~~  
2     ~~read:~~

3     ~~53761.3.—(a) The parties may select a neutral evaluator from~~  
4     ~~the list of qualified evaluators pursuant to Section 53761 through~~  
5     ~~a mutually agreed upon process.~~

6     ~~(b) If the public entity and interested parties fail to agree on an~~  
7     ~~evaluator within five days of the public entities governing board~~  
8     ~~or council passing a resolution to initiate the neutral evaluation~~  
9     ~~process, the public entity shall select seven qualified evaluators~~  
10    ~~from the list created pursuant to subdivision (k) of Section 53761,~~  
11    ~~and the three largest creditors shall alternately strike names from~~  
12    ~~the list, with the first interested party to strike names being~~  
13    ~~determined by the value of the undisputed claim each holds against~~  
14    ~~the public entity.~~

15    ~~(c)~~

16    ~~(n) If at any time during the neutral evaluation process the local~~  
17    ~~public entity and a majority of the representatives of the interested~~  
18    ~~parties participating in the neutral evaluation wish to remove the~~  
19    ~~neutral evaluator, the local public entity or any interested party~~  
20    ~~may make a request to the other interested parties to remove the~~  
21    ~~neutral evaluator. If the local public entity and the majority of the~~  
22    ~~interested parties agree that the neutral evaluator should be~~  
23    ~~removed, the parties shall select a new neutral evaluator pursuant~~  
24    ~~to subdivisions (a) and (b).~~

25    ~~SEC. 8.—Section 53761.5 is added to the Government Code, to~~  
26    ~~read:~~

27    ~~53761.5.—At the request of the neutral evaluator, the local public~~  
28    ~~entity and any party participating in the neutral evaluation shall~~  
29    ~~produce all documents including current financial information and~~  
30    ~~projections addressing future financial obligations affecting the~~  
31    ~~local public entity. The neutral evaluator shall keep this information~~  
32    ~~confidential and shall not disclose to parties participating in the~~  
33    ~~neutral evaluation process without first obtaining the consent of~~  
34    ~~the public entity or the interested parties participating in the neutral~~  
35    ~~evaluation that provided the information. The neutral evaluator~~  
36    ~~may request the submission or exchange of memoranda on issues,~~  
37    ~~including the underlying interests, and the history of the parties'~~  
38    ~~prior negotiations.~~

39    ~~SEC. 9.—Section 53762 is added to the Government Code, to~~  
40    ~~read:~~

1 ~~53762. (a) At the request of the neutral evaluator, each~~  
2 ~~interested party shall provide at least one~~

3 ~~(o) The local public entity and all interested parties participating~~  
4 ~~in the neutral evaluation process shall negotiate in good faith.~~

5 ~~(p) The local public entity and interested parties shall provide~~  
6 ~~a representative of each party to attend all neutral evaluation~~  
7 ~~conferences. Each party's sessions. Each representative shall have~~  
8 ~~the authority to settle and resolve disputes or shall be in a position~~  
9 ~~to present any proposed settlement or plan of readjustment to the~~  
10 ~~governing body or membership for approval and implementation.~~

11 ~~(b) The local public entity shall provide a local public entity~~  
12 ~~representative who shall represent the local public entity's interest~~  
13 ~~in the neutral evaluation and who shall be in a position to present,~~  
14 ~~recommend, and advocate for any proposed settlement or plan of~~  
15 ~~readjustment to the governing body of the local public entity.~~

16 ~~(e) An interested party may be represented by legal counsel,~~  
17 ~~but shall inform all parties of the representation, and shall attend~~  
18 ~~the sessions in person. parties participating in the neutral~~  
19 ~~evaluation.~~

20 ~~(d)~~

21 ~~(q) The parties shall maintain the confidentiality of the neutral~~  
22 ~~evaluation process and shall not disclose statements made,~~  
23 ~~information disclosed, or documents prepared or produced, during~~  
24 ~~the neutral evaluation process, as specified in Section 53762.7.~~  
25 ~~This subdivision shall not apply to documents that were not~~  
26 ~~confidential prior to the start of the neutral evaluation process.~~

27 ~~SEC. 10. Section 53762.1 is added to the Government Code,~~  
28 ~~to read:~~

29 ~~53762.4. The neutral evaluation process shall end if any of the~~  
30 ~~following occur:~~

31 ~~(a) The parties execute an agreement of settlement.~~

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

34 ~~(e) The neutral evaluator certifies in writing that one or more~~  
35 ~~of the parties has not participated in good faith, that no resolution~~  
36 ~~has been reached, and that further efforts at the neutral evaluation~~  
37 ~~process would not contribute to a resolution of the parties' dispute.~~

38 ~~(d) The neutral evaluator certifies in writing that the parties~~  
39 ~~have participated in good faith but the parties have reached an~~  
40 ~~impasse.~~

1 ~~(e) The neutral evaluator certifies in writing that a neutral~~  
2 ~~evaluation was initiated by the local public entity but that no~~  
3 ~~interested parties participated. at the conclusion of the neutral~~  
4 ~~evaluation process or during any bankruptcy proceeding unless~~  
5 ~~either of the following occur:~~

6 *(1) All persons that 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 information is deemed necessary by a judge presiding*  
11 *over a bankruptcy proceeding pursuant to Chapter 9 of Title 11*  
12 *of the United States Code to determine eligibility of a municipality*  
13 *to proceed with a bankruptcy proceeding pursuant to Section*  
14 *109(c) of Title 11 of the United States Code.*

15 *(r) The neutral evaluation established by this process shall not*  
16 *last for more than 60 days following the date the evaluator is*  
17 *selected, unless the local public entity or a majority of interested*  
18 *parties want to continue and agree to an extension.*

19 *(s)The local public entity shall pay 50 percent of the costs of*  
20 *neutral evaluation, including but not limited to the fees of the*  
21 *evaluator, and the creditors shall pay the balance, unless otherwise*  
22 *agreed to by the parties.*

23 *(t) The neutral evaluation process shall end if any of the*  
24 *following occur:*

25 *(1) The parties execute an settlement agreement.*

26 *(2) The parties reach an agreement or proposed plan of*  
27 *readjustment that requires the approval of a bankruptcy judge.*

28 *(3) The neutral evaluation process has exceeded 60 days*  
29 *following the date the neutral evaluator was selected, the parties*  
30 *have not reached an agreement, and the parties do not agree on*  
31 *extension of the neutral evaluation process past the initial 60 day*  
32 *time period.*

33 *(4) The neutral evaluator confirms that a neutral evaluation*  
34 *was initiated by the local public entity but that no interested parties*  
35 *participated.*

36 *(5) The fiscal condition of the local public entity deteriorates*  
37 *to the point that a fiscal emergency is declared pursuant to Section*  
38 *53076.5 and necessitates the need to file a petition and exercise*  
39 *powers pursuant to applicable federal bankruptcy law.*

1 (u) If the 60 day time period for neutral evaluation has expired,  
2 including any extension agreed to by the local public entity, and  
3 the neutral evaluation is complete with differences resolved, the  
4 neutral evaluation shall be concluded. If the neutral evaluation  
5 process does not resolve all pending disputes with creditors the  
6 local public entity may file a petition and exercise powers pursuant  
7 to applicable federal bankruptcy law if, in the opinion of the  
8 governing board of the local public entity, a bankruptcy filing is  
9 necessary.

10 SEC. 4. Section 53760.5 is added to the Government Code, to  
11 read:

12 53760.5. Notwithstanding Section 53760.3, a local public entity  
13 may file a petition and exercise powers pursuant to applicable  
14 federal bankruptcy law, if the local public entity declares a fiscal  
15 emergency and adopts a resolution by a majority vote of the  
16 governing board at a noticed public hearing that includes findings  
17 that the financial state of the local public entity jeopardizes the  
18 health, safety, or well-being of the residents of the local public  
19 entity's jurisdiction or service area absent the protections of  
20 Chapter 9. The resolution shall make findings that the public entity  
21 is or will be unable to pay its obligations within the next 60 days.  
22 Prior to a declaration of fiscal emergency and adoption of a  
23 resolution, the local public entity shall place an item on the agenda  
24 of a noticed public hearing on the fiscal condition of the entity to  
25 take public comment.

26 ~~SEC. 11. Section 53762.5 is added to the Government Code,~~  
27 ~~to read:~~

28 ~~53762.5. (a) Notwithstanding Section 53760, if the financial~~  
29 ~~difficulties of the local public entity jeopardize the health, safety,~~  
30 ~~or well-being of the residents of the local public entity's jurisdiction~~  
31 ~~or service area absent the protections of Chapter 9, the local public~~  
32 ~~entity may, with the written approval of the Local Agency~~  
33 ~~Bankruptcy Committee, under the terms and conditions that the~~  
34 ~~committee may impose, file for adjustment of debts pursuant to~~  
35 ~~Chapter 9.~~

36 ~~(b) The Local Agency Bankruptcy Committee shall consist of~~  
37 ~~the Treasurer, the Controller, and the Director of Finance.~~

38 ~~(c) The Local Agency Bankruptcy Committee shall provide its~~  
39 ~~written approval or denial of consent to file a petition and exercise~~  
40 ~~powers pursuant to applicable federal bankruptcy law not later~~

1 than five calendar days from receipt of the request of the local  
2 public entity. If the Local Agency Bankruptcy Committee  
3 determines that the local public entity's financial difficulties have  
4 or will result in an emergency as described in subdivision (a), the  
5 local public entity may proceed with a Chapter 9 filing without  
6 having convened or completed a neutral evaluation process.

7 (d) If the Local Agency Bankruptcy Committee does not respond  
8 to the request within seven days after the receipt of the request,  
9 the request shall be considered approved.

10 (e) A local public entity that has requested approval to file under  
11 subdivision (a) may require local agencies with funds invested in  
12 the local public entity's treasury to provide a seven-day notice of  
13 withdrawal before the county is required to comply with a request  
14 for withdrawal of funds by a local public entity.

15 (f) Notwithstanding subdivision (a) of Section 11125, the Local  
16 Agency Bankruptcy Committee shall provide notice of its meeting  
17 at least 24 hours in advance of the meeting. The notice shall be  
18 posted in a location within the local public entity that is freely  
19 accessible to members of the public. The notice shall be delivered  
20 personally, by United States mail, electronic mail, or by facsimile  
21 transmission to each local newspaper of general circulation whose  
22 circulation area reasonably includes the municipality and shall  
23 similarly be delivered to each radio or television station that has  
24 requested notice in writing. The notice shall be received by the  
25 newspaper, radio, or television station at least 24 hours prior to  
26 the date of the meeting specified in the notice. In addition, if the  
27 Legislature is in session, the committee shall request that the  
28 meeting notice be published in the daily file of each house at least  
29 24 hours prior to the date of the meeting.

30 (g) The Local Agency Bankruptcy Committee's approving or  
31 denying of a filing under this section, shall not obligate the state,  
32 in any manner, regarding financing a plan for adjustment of the  
33 municipality's debts or any act relating to that financing.

34 (h) This section shall apply only to a local public entity that  
35 files as a debtor, as specified in subdivision (a), on or after the  
36 effective date of this article.

37 SEC. 12. Section 53762.7 is added to the Government Code,  
38 to read:

39 53762.7. (a) Evidence of anything said or any admission made  
40 for the purpose of, in the course of, or pursuant to, a neutral

1 ~~evaluation shall not be admissible or subject to discovery, and~~  
2 ~~disclosure of the evidence shall not be compelled, in any~~  
3 ~~arbitration, administrative adjudication, civil action, or other~~  
4 ~~noncriminal proceeding in which, pursuant to law, testimony can~~  
5 ~~be compelled to be given.~~

6 ~~(b) Any writing, as defined in Section 250 of the Evidence Code,~~  
7 ~~that is prepared for the purpose of, in the course of, or pursuant to~~  
8 ~~a neutral evaluation shall not be admissible or subject to discovery,~~  
9 ~~and disclosure of the writing shall not be compelled, in any~~  
10 ~~arbitration, administrative adjudication, civil action, or other~~  
11 ~~noncriminal proceeding in which, pursuant to law, testimony can~~  
12 ~~be compelled to be given.~~

13 ~~(c) Any communication, negotiation, or settlement discussion~~  
14 ~~by and between participants in the course of a neutral evaluation~~  
15 ~~shall remain confidential.~~

16 ~~(d) Evidence otherwise admissible or subject to discovery~~  
17 ~~outside of a neutral evaluation shall not be or become inadmissible~~  
18 ~~or protected from disclosure solely by reason of its introduction~~  
19 ~~or use in a neutral evaluation.~~

20 ~~(e) A neutral evaluator or any other person shall not be allowed~~  
21 ~~to submit to a court or other adjudicative body, and a court or other~~  
22 ~~adjudicative body shall not consider, any report, assessment,~~  
23 ~~evaluation, recommendation, or finding of any kind by the neutral~~  
24 ~~evaluator concerning a neutral evaluation conducted by the neutral~~  
25 ~~evaluator.~~

26 ~~(f) A communication or a writing, as defined in Section 250 of~~  
27 ~~the Evidence Code, that is made or prepared for the purpose of,~~  
28 ~~or in the course of, or pursuant to, a neutral evaluation is not made~~  
29 ~~inadmissible, or protected from disclosure, by this chapter if either~~  
30 ~~of the following conditions is satisfied:~~

31 ~~(1) All persons that conduct or otherwise participate in the~~  
32 ~~neutral evaluation expressly agree in writing, or orally in~~  
33 ~~accordance with Section 1118 of the Evidence Code, to disclosure~~  
34 ~~of the communication, document, or writing.~~

35 ~~(2) The communication, document, or writing was prepared by~~  
36 ~~or on behalf of fewer than all the neutral evaluation participants,~~  
37 ~~those participants expressly agree to its disclosure, and the~~  
38 ~~communication, document, or writing does not disclose anything~~  
39 ~~said or done or any admission made in the course of the neutral~~  
40 ~~evaluation.~~

1     ~~(g) A written settlement agreement prepared in the course of,~~  
2     ~~or pursuant to, a neutral evaluation, is not made inadmissible, or~~  
3     ~~protected from disclosure, by this section if the agreement is signed~~  
4     ~~by the settling parties and any of the following conditions are~~  
5     ~~satisfied:~~  
6     ~~(1) The agreement provides that it is admissible or subject to~~  
7     ~~disclosure, or words to that effect.~~  
8     ~~(2) The agreement provides that it is enforceable or binding, or~~  
9     ~~words to that effect.~~  
10    ~~(3) All parties to the agreement expressly agree to its disclosure.~~  
11    ~~(4) The agreement is used to show fraud, duress, or illegality~~  
12    ~~that is relevant to an issue in dispute.~~  
13    ~~(h) An oral agreement made in the course of, or pursuant to, a~~  
14    ~~neutral evaluation is not made inadmissible, or protected from~~  
15    ~~disclosure, by this chapter if any of the following conditions are~~  
16    ~~satisfied:~~  
17    ~~(1) The oral agreement is recorded by a court reporter or reliable~~  
18    ~~means of audio recording.~~  
19    ~~(2) The terms of the oral agreement are recited on the record in~~  
20    ~~the presence of the parties and the mediator, and the parties express~~  
21    ~~on the record that they agree to the terms recited.~~  
22    ~~(3) The parties to the oral agreement expressly state on the~~  
23    ~~record that the agreement is enforceable or binding, or words to~~  
24    ~~that effect.~~  
25    ~~(4) The recording is reduced to writing and the writing is signed~~  
26    ~~by the parties within 72 hours after it is recorded.~~  
27    ~~(5) The agreement is used to show fraud, duress, or illegality~~  
28    ~~that is relevant to an issue in dispute.~~  
29    ~~(i) Anything said, any admission made, or any writing that is~~  
30    ~~inadmissible, protected from disclosure, and confidential under~~  
31    ~~this chapter before a neutral evaluation ends, shall remain~~  
32    ~~inadmissible, protected from disclosure, and confidential to the~~  
33    ~~same extent after the neutral evaluation ends.~~  
34    ~~(j) If a person subpoenas or otherwise seeks to compel a neutral~~  
35    ~~evaluator to testify or produce a writing, as defined in Section 250~~  
36    ~~of the Evidence Code, and the court or other adjudicative body~~  
37    ~~determines that the testimony or writing is inadmissible under this~~  
38    ~~section, or protected from disclosure under this section, the court~~  
39    ~~or adjudicative body making the determination shall award~~

1 reasonable attorney's fees and costs to the neutral evaluator against  
2 the person seeking the testimony or writing.

3 ~~(k) Any reference to a neutral evaluation during any subsequent~~  
4 ~~trial is an irregularity in the proceedings of the trial for the purposes~~  
5 ~~of Section 657 of the Code of Civil Procedure. Any reference to~~  
6 ~~a neutral evaluation during any other subsequent noncriminal~~  
7 ~~proceeding is grounds for vacating or modifying the decision in~~  
8 ~~that proceeding, in whole or in part, and granting a new or further~~  
9 ~~hearing on all or part of the issues, if the reference materially~~  
10 ~~affected the substantial rights of the party requesting relief.~~

11 ~~SEC. 13.~~

12 ~~SEC. 5. The Legislature finds and declares that Sections 8 and~~  
13 ~~11 of this act, which add Sections 53761.5 and 53762.5~~ *Section 4*  
14 *of this act which adds Section 53760.3* to the Government Code,  
15 impose a limitation on the public's right of access to the meetings  
16 of public bodies or the writings of public officials and agencies  
17 within the meaning of Section 3 of Article I of the California  
18 Constitution. Pursuant to that constitutional provision, the  
19 Legislature makes the following findings to demonstrate the interest  
20 protected by this limitation and the need for protecting that interest:

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