

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1692

Introduced by Assembly Member Wieckowski

February 15, 2012

An act to amend Sections 53760.1 and 53760.3 of the Government Code, relating to bankruptcy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1692, as amended, Wieckowski. Bankruptcy.

~~Existing law suspended various activities of redevelopment agencies and prohibited those agencies from incurring indebtedness for a specified period. Existing law dissolved redevelopment agencies on February 1, 2012, and provides for the designation of successor agencies, as defined. Existing law requires successor agencies to wind down the affairs of the dissolved redevelopment agencies and to, among other things, repay enforceable obligations, as defined, and to remit unencumbered balances of redevelopment agency funds, including housing funds, to the county auditor-controller for distribution to taxing entities.~~

Existing law authorizes a local public entity, as defined, to file a petition and exercise powers pursuant to applicable federal bankruptcy law, subject to specified procedures, including participation in a neutral evaluation process with interested parties, as defined, or upon a declaration of fiscal emergency, as specified. Existing law prohibits the neutral evaluation established by this process from ~~lasting~~ *exceeding* more than 60 days following the date the neutral evaluator is selected,

unless the local public entity or a majority of participating interested parties elect to extend the process for up to 30 additional days.

~~This bill would authorize a successor agency to file for bankruptcy under applicable federal bankruptcy law, subject to existing procedures.~~

This bill would revise and recast the bankruptcy procedures that apply to the neutral evaluation process. The bill would authorize the neutral evaluator to toll the limitation period for the neutral evaluation process based upon a finding that the local public entity or any interested parties' conduct in presenting information required under this process prevented the parties from effectively proceeding in the neutral evaluation process. The bill would authorize the neutral evaluator to request and control the process of an independent investigation, as specified. ~~The bill would further authorize the neutral evaluator to grant an extension of the process beyond 90 days if requested by the majority of the participating interested parties.~~ The bill would provide that the neutral evaluation process shall end upon a specified circumstance.

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. Section 53760.1 of the Government Code is
- 2 amended to read:
- 3 53760.1. As used in this article the following terms have the
- 4 following meanings:
- 5 (a) "Chapter 9" means Chapter 9 (commencing with Section
- 6 901) of Title 11 of the United States Code.
- 7 (b) "Creditor" means either of the following:
- 8 (1) An entity that has a noncontingent claim against a
- 9 municipality that arose at the time of or before the commencement
- 10 of the neutral evaluation process and whose claim represents at
- 11 least five million dollars (\$5,000,000) or comprises more than 5
- 12 percent of the local public entity's debt or obligations, whichever
- 13 is less.
- 14 (2) An entity that would have a noncontingent claim against the
- 15 municipality upon the rejection of an executory contract or
- 16 unexpired lease in a Chapter 9 case and whose claim would
- 17 represent at least five million dollars (\$5,000,000) or comprises
- 18 more than 5 percent of the local public entity's debt or obligations,
- 19 whichever is less.

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

3 (d) “Good faith” means participation by a party in the neutral
4 evaluation process with the intent to negotiate toward a resolution
5 of the issues that are the subject of the neutral evaluation process,
6 including the timely provision of complete and accurate
7 information to provide the relevant parties through the neutral
8 evaluation process with sufficient information, in a confidential
9 manner, to negotiate the readjustment of the municipality’s debt.

10 (e) “Interested party” means a trustee, a committee of creditors,
11 an affected creditor, an indenture trustee, a pension fund, a
12 bondholder, a union that, under its collective bargaining
13 agreements, has standing to initiate contract or debt restructuring
14 negotiations with the municipality, or a representative selected by
15 an association of retired employees of the public entity who receive
16 income from the public entity convening the neutral evaluation.
17 A local public entity may invite holders of contingent claims to
18 participate as interested parties in the neutral evaluation if the local
19 public entity determines that the contingency is likely to occur and
20 the claim may represent five million dollars (\$5,000,000) or
21 comprise more than 5 percent of the local public entity’s debt or
22 obligations, whichever is less.

23 (f) “Local public entity” means any county, city, district, public
24 authority, public agency, ~~a successor agency, as defined in Section~~
25 ~~34171 of the Health and Safety Code~~, or other entity, without
26 limitation, that is a municipality as defined in Section 101(40) of
27 Title 11 of the United States Code (bankruptcy), or that qualifies
28 as a debtor under any other federal bankruptcy law applicable to
29 local public entities. For purposes of this article, “local public
30 entity” does not include a school district.

31 (g) “Local public entity representative” means the person or
32 persons designated by the local public agency with authority to
33 make recommendations and to attend the neutral evaluation on
34 behalf of the governing body of the municipality.

35 (h) “Neutral evaluation” is a form of alternative dispute
36 resolution that is imposed upon the parties and is a means whereby
37 a neutral evaluator considers the arguments and information
38 presented by the parties and offers a nonbinding opinion meant to
39 assist in the resolution of the issue or issues in dispute.

1 SEC. 2. Section 53760.3 of the Government Code is amended
2 to read:

3 53760.3. (a) A local public entity may initiate the neutral
4 evaluation process if the local public entity is or likely will become
5 unable to meet its financial obligations as and when those
6 obligations are due or become due and owing. The local public
7 entity shall initiate the neutral evaluation by providing notice by
8 certified mail of a request for neutral evaluation to all interested
9 parties as defined in Section 53760.1.

10 (b) Interested parties shall respond within 10 business days of
11 receipt of notice of the local public entity's request for neutral
12 evaluation indicating their agreement to participate in the neutral
13 evaluation process.

14 (c) (1) The local public entity and the interested parties agreeing
15 to participate in the neutral evaluation shall, through a mutually
16 agreed upon process, select the neutral evaluator to oversee the
17 neutral evaluation process and facilitate all discussions in an effort
18 to resolve their disputes. The process shall include, but not be
19 limited to, an opportunity for any interested party to submit neutral
20 evaluators for consideration by the interested parties.

21 (2) If the local public entity and interested parties fail to agree
22 on a neutral evaluator selection process pursuant to paragraph (1)
23 within seven days after the interested parties have responded to
24 the notification sent by the public entity, the public entity shall
25 select five qualified neutral evaluators and provide their names,
26 references, and backgrounds to the participating interested parties.
27 Within three business days, a majority of participating interested
28 parties may strike up to four names from the list. If a majority of
29 participating interested parties strikes four names, the remaining
30 candidate shall be the neutral evaluator. If the majority of
31 participating parties strikes fewer than four names, the local public
32 entity may choose which of the remaining candidates shall be the
33 neutral evaluator.

34 (d) A neutral evaluator shall have experience and training in
35 conflict resolution and alternative dispute resolution and shall meet
36 at least one of the following qualifications:

37 (1) At least 10 years of high-level business or legal practice
38 involving bankruptcy or service as a United States Bankruptcy
39 Judge.

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

- (A) Municipal organization.
- (B) Municipal debt restructuring.
- (C) Municipal finance dispute resolution.
- (D) Chapter 9 bankruptcy.
- (E) Public finance.
- (F) Taxation.
- (G) California constitutional law.
- (H) California labor law.
- (I) Federal labor law.

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

(f) The neutral evaluator shall avoid a conflict of interest or the appearance of a conflict of interest during the neutral evaluation process. The neutral evaluator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest. Notwithstanding subdivision (o), if the neutral evaluator is informed of the existence of any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest, the neutral evaluator shall disclose these facts in writing to the local public entity and all interested parties involved in the neutral evaluation. If any party to the neutral evaluation objects to the neutral evaluator, that party shall notify all other parties to the neutral evaluation, including the neutral evaluator, within 15 days of receipt of the notice from the neutral evaluator, the neutral evaluator shall withdraw and a new neutral evaluator shall be selected pursuant to subdivision (c) of Section 53761.3.

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

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

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

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

18 (k) The neutral evaluator may request from the parties
19 documentation and other information that the neutral evaluator
20 believes may be helpful in assisting the parties to address the
21 obligations between them. This documentation may include the
22 status of funds of the local public entity that clearly distinguishes
23 between general funds and special funds, and the proposed plan
24 of readjustment prepared by the local public entity. The neutral
25 evaluator may toll the limitation period for the neutral evaluation
26 process based upon a finding that the local public entity or any
27 interested parties' conduct in presenting information required
28 pursuant to this subdivision prevented the parties from effectively
29 proceeding in the neutral evaluation process.

30 (l) The neutral evaluator may request and control the process
31 of an independent investigation in an effort to obtain meaningful
32 financial information and explore other areas of recovery.

33 (m) The neutral evaluator shall provide counsel and guidance
34 to all parties, shall not be a legal representative of any party, and
35 shall not have a fiduciary duty to any party.

36 (n) In the event of a settlement with all interested parties, the
37 neutral evaluator may assist the parties in negotiating a
38 prepetitioned, preagreed plan of readjustment in connection with
39 a potential Chapter 9 filing.

1 (o) If at any time during the neutral evaluation process the local
2 public entity and a majority of the representatives of the interested
3 parties participating in the neutral evaluation wish to remove the
4 neutral evaluator, the local public entity or any interested party
5 may make a request to the other interested parties to remove the
6 neutral evaluator. If the local public entity and the majority of the
7 interested parties agree that the neutral evaluator should be
8 removed, the parties shall select a new neutral evaluator.

9 (p) The local public entity and all interested parties participating
10 in the neutral evaluation process shall negotiate in good faith.

11 (q) The local public entity and interested parties shall provide
12 a representative of each party to attend all neutral evaluation
13 sessions. Each representative shall have the authority to settle and
14 resolve disputes or shall be in a position to present any proposed
15 settlement or plan of readjustment to the parties participating in
16 the neutral evaluation.

17 (r) The parties shall maintain the confidentiality of the neutral
18 evaluation process and shall not disclose statements made,
19 information disclosed, or documents prepared or produced, during
20 the neutral evaluation process, at the conclusion of the neutral
21 evaluation process or during any bankruptcy proceeding unless
22 either of the following occur:

23 (1) All persons that conduct or otherwise participate in the
24 neutral evaluation expressly agree in writing, or orally in
25 accordance with Section 1118 of the Evidence Code, to disclosure
26 of the communication, document, or writing.

27 (2) The information is deemed necessary by a judge presiding
28 over a bankruptcy proceeding pursuant to Chapter 9 of Title 11 of
29 the United States Code to determine eligibility of a municipality
30 to proceed with a bankruptcy proceeding pursuant to Section 109(c)
31 of Title 11 of the United States Code.

32 (s) ~~(t)~~—The neutral evaluation established by this process shall
33 not last for more than 60 days following the date the evaluator is
34 selected, unless the local public entity or a majority of participating
35 interested parties elect to extend the process for up to 30 additional
36 days. The neutral evaluation process shall not last for more than
37 90 days following the date the evaluator is selected unless the local
38 public entity and a majority of the interested parties agree to an
39 extension.

1 ~~(2) Notwithstanding paragraph (1), the neutral evaluator may~~
2 ~~grant an extension beyond 90 days if requested by the majority of~~
3 ~~the participating interested parties.~~

4 (t) The local public entity shall pay 50 percent of the costs of
5 neutral evaluation, including but not limited to the fees of the
6 evaluator, and the creditors shall pay the balance, unless otherwise
7 agreed to by the parties.

8 (u) The neutral evaluation process shall end if any of the
9 following occur:

10 (1) The parties execute a settlement agreement.

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

13 (3) The neutral evaluation process has exceeded 60 days
14 following the date the neutral evaluator was selected, the parties
15 have not reached an agreement, and neither the local public entity
16 or a majority of the interested parties elect to extend the neutral
17 evaluation process past the initial 60-day time period.

18 (4) The local public entity initiated the neutral evaluation process
19 pursuant to subdivision (a) and received no responses from
20 interested parties within the time specified in subdivision (b).

21 (5) The fiscal condition of the local public entity deteriorates
22 to the point that a fiscal emergency is declared pursuant to Section
23 53076.5 and necessitates the need to file a petition and exercise
24 powers pursuant to applicable federal bankruptcy law.

25 (6) The neutral evaluation process has exceeded the agreed upon
26 period pursuant to subdivision (s), the parties have not reached an
27 agreement, and neither the local public entity or a majority of the
28 interested parties elect to extend the neutral evaluation process
29 past the agreed upon period.

30 (v) If the 60-day time period for neutral evaluation has expired,
31 including any extension of the neutral evaluation past the initial
32 60-day time period pursuant to subdivision (s), and the neutral
33 evaluation is complete with differences resolved, the neutral
34 evaluation shall be concluded. If the neutral evaluation process
35 does not resolve all pending disputes with creditors the local public
36 entity may file a petition and exercise powers pursuant to applicable
37 federal bankruptcy law if, in the opinion of the governing board
38 of the local public entity, a bankruptcy filing is necessary.

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