



COUNCIL AGENDA: 11-03-09
ITEM: 2.8

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Lee Price, MMC
City Clerk

SUBJECT: SEE BELOW

DATE: 10-29-09

**SUBJECT: SENATE BILL NO. 88 (DESAULNIER) LOCAL GOVERNMENT
BANKRUPTCY.**

RECOMMENDATION

As recommended by the Rules and Open Government Committee on October 28, 2009 and outlined in the attached memo previously submitted to the Rules and Open Government Committee, oppose Senate Bill No. 88 (DeSaulnier) Local Government Bankruptcy which would prevent local governments from filing for bankruptcy under Chapter 9 of the federal bankruptcy code without first receiving the approval of the California Debt and Investment Advisory Commission.



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Scott P. Johnson

SUBJECT: SEE BELOW

DATE: October 22, 2009

Approved

Date

10/22/09

**SUBJECT: SENATE BILL NO. 88 (DESAULNIER) LOCAL GOVERNMENT
BANKRUPTCY**

RECOMMENDATION

It is recommended that:

1. The City Council oppose Senate Bill No. 88 (DeSaulnier) which would prevent local governments from filing for bankruptcy under Chapter 9 of the federal bankruptcy code without first receiving the approval of the California Debt and Investment Advisory Commission.
2. Direct the Committee to provide a one-week turnaround for Mayor and City Council review.

OUTCOME

If the Rules and Open Government Committee and the City Council accept staff's recommendation, the City's representative in Sacramento could begin seeking opposition to Senate Bill No. 88.

BACKGROUND

Senate Bill No. 88 ("SB 88") was introduced by Senator DeSaulnier on January 20, 2009. SB 88 was amended in the Assembly on September 4, 2009, and passed out of the Assembly on a vote of 47-28 on September 10, 2009. SB 88 was then re-referred to the Senate Rules Committee for Committee assignment in January 2010.

Under existing law, any taxing agency or instrumentality of the State may file a petition and prosecute to completion bankruptcy proceedings permitted under the laws of the United States. This bill would provide that a local public entity may only file under federal bankruptcy law with the approval of the California Debt and Investment Advisory Commission ("CDIAC"), or if the local public entity has adopted a resolution to override the findings of the commission.

Federal bankruptcy law for public agencies (Chapter 9) gives government debtors time to come up with repayment plans, providing them a breathing spell from creditors' collection efforts. Unlike private bankruptcy law (Chapter 11), however, municipal bankruptcy law must respect the States' sovereign powers. Consequently, the States can control their local agencies' access to federal bankruptcy protection. Like 11 other States, California grants its local public agencies the broadest possible access to federal bankruptcy protection available.

The State statutes broadly authorizing bankruptcy filings by local governments were first enacted in 1939 (SB 338 [Phillips], 1939) and codified in 1949 (SB 768 [Cunningham], 1949). In 2001, after studying the State statutes authorizing bankruptcy filings by local public entities, the California Law Revision Commission recommended revisions to conform the statutes to changes in federal bankruptcy law and to reaffirm the intent of the statute to provide the broadest possible access to municipal debt relief under federal law. Legislators approved the Commission's recommendations the following year (SB 1323 [Ackerman], 2002).

ANALYSIS

Local governments strongly oppose SB 88 which was gutted, amended, and would prevent local governments from filing for bankruptcy under Chapter 9 of the federal bankruptcy code without first receiving the permission of the State of California. Similar language was previously contained in AB 155 (Mendoza), which did not have the necessary votes to get out of the Senate Local Government Committee. The main reasons for opposing SB 88 cited by the League of California Cities in its Floor Alert dated September 9, 2009 are as follows:

Override Provision. The proponents of SB 88 will tell you that it contains a new override provision that allows local governments to proceed to federal bankruptcy court when the California Debt and Investment Advisory Commission (CDIAC) rejects the application. The amendments to this bill, however, are cleverly drafted and give CDIAC full authority to impose conditions on an approval of a local government's application for permission to file for bankruptcy. In other words, CDIAC can approve a local government's application, while also requiring the municipality to meet any number of conditions in order to pursue bankruptcy protection and local governments cannot override such conditions. As a result, the so called override provision is essentially useless to local governments in practice.

This On Top of the State Budget? The State has just adopted a budget that borrows \$2 billion in property taxes from local governments, confiscates more than \$2 billion in local redevelopment revenues, and includes a variety of delays, cost shifts, and program cuts to locals. Like the State, this economic recession has had a profound impact on local governments' revenues. The very local agencies that may need to seek the protections of federal bankruptcy court are likely ones that the State has helped put in that circumstance. Who will provide critical public services when a local government cannot pay to provide them because it was denied the option to restructure its debt via the bankruptcy process? This bill puts public services dangerously at risk by denying or restricting local agencies' ability to restructure debt through the bankruptcy process.

Inserts Politics Into a Financial Decision. SB 88 inserts politics into an apolitical process by giving CDIAC, a political body by its very nature, the authority to deny or conditionally approve a local government's application to proceed into bankruptcy. This is a process that is currently conducted by competent expert bankruptcy judges who are not subject to political pressure. SB 88 substitutes a deliberative process for what will become a political one.

Language Could Stall Bankruptcy Proceedings. SB 88 includes language that is confusing, contradictory, and inconsistent. It will only produce litigation that will stall a local jurisdiction's use of the bankruptcy laws. This is completely unacceptable, especially when a local agency faces a true fiscal emergency and must exercise its option of last resort. For the public sector, bankruptcy laws are a protection to the taxpayer and the public services provided in a community. SB 88 removes that protection.

Language to Remove State Liability is Irrelevant. The State cannot afford to be liable to a local agency's creditors in the event the CDIAC denies an entity's petition. By simply stating in statute that the State is not liable for its decisions does not mean that the courts are going to absolve the State of liability.

Opponents

Association of California Health Care Districts
Association of California Water Agencies
California Contract Cities Association
California Society of Municipal Finance Officers
Cities of Antioch, Adelanto, Apple Valley, Atascadero, Arvin, Bellflower, Belmont, Benicia, Berkeley, Beverly Hills, Blythe, Brea, Burbank, Burlingame, California City, Calistoga, Carmel-by-the-Sea, Carson, Carlsbad, Chowchilla, Clayton, Cloverdale, Clovis, Coalinga, Commerce, Concord, Cotati, Covina, Cypress, Danville, Diamond Bar, Dixon, El Segundo, Encinitas, Exeter, Fairfield, Fontana, Fountain Valley, Fowler, Fremont, Fullerton, Glendora, Greenfield, Guadalupe, Hanford, Healdsburg, Hermosa Beach, Highland, Hollister, Hughson, Huntington Park, Huntington Beach, Irvine, Kingsburg, La Palma, La Puente, La Verne, Laguna Hills, Lake Forest, Lafayette, Lathrop, Lawndale, Lemoore, Lindsay, Livermore, Long Beach, Madera, Mammoth Lakes, Manhattan Beach, Manteca, Merced, Mendota, Mill Valley, Modesto, Moreno Valley, Murrieta, Napa, Newport Beach, Norco, Norwalk, Oakdale, Oakland, Ontario, Oroville, Palmdale, Palo Alto,

California State Association of Counties
California Special Districts Association
Counties of Butte, Imperial, Nevada, Madera, Orange, Riverside, San Luis Obispo, Yolo

Paradise, Patterson, Pinole, Placentia, Pleasanton, Pomona, Rancho Cordova, Rancho Cucamonga, Reedley, Ridgecrest, Rialto, Rio Vista, Rohnert Park, Rolling Hills EStates, Rosemead, Salinas, San Francisco, Sanger, San Luis Obispo, San Marcos, San Pablo, Santa Cruz, Santa Maria, Santa Rosa, Seaside, Sebastopol, Shafter, Signal Hill, Stockton, Tehachapi, Torrance, Tracy, Tulare, Tustin, Vacaville, Villa Park, Visalia, Walnut Creek, Wasco, West Hollywood, Westminster, Windsor, Woodlake, Yorba Linda, Yountville, and Yucaipa

Howard Jarvis Taxpayers Association
League of California Cities
League of California Cities Inland Empire Division
League of California Cities Orange County Division
Marin County Council of Mayors and Councilmembers
Sacramento

Supporters

California Labor Federation (9/9/09 verified by letter)
California Professional Firefighters
California State Treasurer Bill Lockyer
CDF Firefighters Local 2881
AARP
American Federation of State, County and Municipal Employees, AFL-CIO

Association for Los Angeles Deputy Sheriffs
California Alliance for Retired Americans
California Association of Highway Patrolmen
California Conference Board of the Amalgamated Transit Union, AFL-CIO
California Nurses Association

RULES AND OPEN GOVERNMENT COMMITTEE

October 22, 2009

Subject: Senate Bill No. 88 (DeSaulnier)

Page 2

California Reinvestment Coalition
California School Employees Association
California State Employees Association
California State Firefighters' Association,
Inc.
California Teamsters Public Affairs Council
Consumer Federation of California
Engineers and Scientists of California
Glendale City Employees Association
International Longshore & Warehouse
Union
Kern County Fire Fighters Union, Inc.
Los Angeles County Probation Officers
Union
Livermore-Pleasanton Firefighters Local
1974
Los Angeles County Fire Fighters Local
1014
Los Angeles Police Protective League
National Nurses Organizing Committee
North Bay Labor Council, AFL-CIO
Orange County Employees Association
Orange County Professional Firefighters
Association
Board of Supervisors

Organization of SMUD Employees
Peace Officers Research Association of
California
Production Strategies, Inc.
Professional and Technical Engineers Local
21
Professional Engineers in California
Government
Riverside Sheriffs' Association
San Bernardino Public Employees
Association
San Diego Municipal Employee's
Association
San Francisco Labor Council
San Luis Obispo County Employees
Association
Santa Rosa City Employees Association
Service Employees International Union
State Building and Construction Trades
Council of California
UNITE HERE
United Food and Commercial Workers
Union
Western States Council
South Bay Cities Council of Governments.

POLICY ALIGNMENT

The attached analysis is consistent with the Council adopted 2009 Legislative Guiding Principles, and the Council-adopted guidelines, including under "A. Protect Local Control 1. Protect local government revenues by maintaining local authority over the collection of fees and generation of revenue. 10. Oppose legislation that reduces the authority and/or ability of local government to determine how best to effectively operate local programs, services and activities. B. Ensure Region's Competitiveness and Protect City Revenue Base: Support efforts, legislation and policies that: 5. Improve methods of assessment, collection and allocation of local revenues, and oppose efforts that threaten the sources and flexibility of revenues."

October 22, 2009

Subject: Senate Bill No. 88 (DeSaulnier)

Page 2

COORDINATION

This memorandum was coordinated with the City Attorney's Office, Finance, Intergovernmental Relations Director in the City Manager's Office, and the City's Legislative Representative in Sacramento.


SCOTT P. JOHNSON
Director, Finance

For questions please contact Julia H. Cooper, Deputy Director of Finance, at (408) 535-7011.