



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Scott P. Johnson

SUBJECT: SEE BELOW

DATE: May 17, 2010

Approved

Date

5/19/10

**SUBJECT: ASSEMBLY BILL NO. 155 (MENDOZA) LOCAL GOVERNMENT
BANKRUPTCY PROCEEDINGS**

RECOMMENDATION

It is recommended that:

1. Pursuant to the City's streamlined bill process for responding quickly to legislative proposals, approve a position to oppose Assembly Bill No. 155 (Mendoza) which was opposed by the City on November 3, 2009, as Senate Bill No. 88 (DeSauliner).
2. Recommend a one-week turnaround to the City Council so that the Council can re-affirm the City's opposition to AB 155.

OUTCOME

If the Rules and Open Government Committee and the City Council accept staff's recommendation, the City's representative in Sacramento will continue to seek opposition to Assembly Bill No. 155 (Mendoza) - Local Government Bankruptcy Proceedings.

BACKGROUND

On November 3, 2009, the City took a "oppose" position on SB 88 which would have required municipalities seeking Chapter 9 federal bankruptcy protection to first obtain approval from the California Debt and Investment Advisory Committee prior to filing a bankruptcy petition with a federal bankruptcy court. Due to the nearly identical nature of AB 155 to SB 88, the City's lobbyist notified the bill's author that the City opposes the concept of a public entity having to seek permission from the State to file for federal bankruptcy.

AB 155 (Mendoza) – Local Government Bankruptcy Proceedings would require municipalities seeking federal bankruptcy protection to obtain approval from a state committee (the California Debt and Investment Advisory Committee, “CDIAC”) with no experience in federal bankruptcy law. The Senate Local Government Committee first considered AB 155 at its July 8, 2009 hearing. The bill was held by the Senate Local Government Committee since last fall because of opposition of then-committee member Sen. Lois Wolk (D-Davis) and the two Republicans on the committee. Since then, Senate pro Tem Darrell Steinberg (D-Sacramento) removed both Sen. Wolk and Sen. Pat Wiggins (D-Santa Rosa), replacing them with Sen. Mark DeSaulnier (D-Concord) and Sen. Curren Price (D-Los Angeles). On Monday, April 19, 2010, the three Democrats on the Senate Local Government Committee cast 'aye' votes in support of AB 155 (Mendoza).

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 develop repayment plans for debt obligations. Currently a municipality receiving chapter 9 bankruptcy protection is shielded from creditor claims while the municipality works to restructure outstanding debt with its creditors. The debt restructuring plan can involve a reduction to amounts owed, an extension of debt repayments, or a refinancing of debt. Creditors can include holders of municipal debt, vendors, and counterparties to contracts. 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 eleven 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 AB 155 which 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 SB 88 (DeSaulnier), which was re-referred by the Assembly to the Committee on Transportation on

May 6, 2010. The main reasons for opposing AB 155 cited by the League of California Cities are as follows:

- **Exacerbates State Budget Impacts on Local Government** The State, this past year, adopted a budget that borrowed \$2 billion in property taxes from local governments, confiscated more than \$2 billion in local redevelopment revenues, and included 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.
- **Inserts Politics Into a Financial Decision.** AB 155 inserts politics into the bankruptcy process. The bill gives a state appointed commission the authority to deny, approve, or set conditions on a city's application to proceed into bankruptcy. This is a process that is currently conducted by neutral and expert bankruptcy judges who are not subject to political pressure. AB 155 substitutes a deliberative process for what will become a political one.
- **State Liability Question Still Unanswered.** The State cannot afford to be liable to a local agency's creditors in the event CDIAC denies an entity's petition. Who will provide the services that a city will no longer be able to provide if CDIAC denies or imposes erroneous conditions on a city's legitimate petition to file for bankruptcy? What will happen to a city that cannot restructure its debt under Chapter 9? This bill puts all local services dangerously at risk by denying or restricting a local agency's ability to restructure debt through the bankruptcy process.
- **Municipal Bankruptcy is Rarely Used.** The record shows that cities will use any means necessary to avoid bankruptcy. Since the adoption of Chapter 9 of the State Bankruptcy Code in 1949—60 years ago—only two cities have petitioned for its use: the City of Desert Hot Springs in 1994, and in 2008 the City of Vallejo. Bankruptcy is not an attractive alternative for local communities, nor is it an easy process. In fact, it is an option of last resort.

Opponents

Counties of Butte, Imperial, Nevada,
Madera, Orange, Riverside, San Bernardino,
San Luis Obispo, Yolo, Cities of Antioch,
Adelanto, Apple Valley, Atascadero,
Arvin, Bellflower, Belmont, Benicia,
Berkeley, Beverly Hills, Blythe, Brea,
Burbank, Burlingame, California City,
Calistoga, Camarillo, Carmel-by-the-Sea,
Carson, Carlsbad, Chowchilla, Clayton,
Cloverdale, Clovis, Coalinga,

Commerce, Concord, Costa Mesa, Cotati,
Covina, Cypress, Daly City, 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, Irwindale, Kingsburg, La Palma, La

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Puente, La Verne, Laguna Hills, Lake Forest, Lafayette, Lakewood, 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, Novato, Oakdale, Oakland, Ontario, Oroville, Palmdale, Palo Alto, Paradise, Pasadena, Patterson, Pinole, Placentia, Pleasanton, Pomona, Rancho Cordova, Rancho Cucamonga, Reedley, Ridgecrest, Rialto, Rio Vista, Rohnert Park, Rolling Hills Estates, Rosemead, Salinas, Sanger, San Luis Obispo, San Marcos, San Pablo, Santa Cruz, Santa Maria, Santa Rosa, Seaside, Sebastopol, Shafter, Signal Hill, Stockton, Tehachapi Tiburon, Torrance, Tracy, Tulare, Tustin, Vacaville Vallejo, Villa Park, Visalia, Vista, Walnut Creek, Wasco, West Covina, West Hollywood, Westminster, Windsor, Woodlake, Woodland, Yorba Linda, Yountville, and Yucaipa, Ambrose Recreation and Park District, Bell Canyon Community Services

District, El Dorado Hills Community Services District, Goleta Sanitary District, Lincoln rural County Fire Protection District, Mountain House Community District, Squaw Valley Public Service District, Stallion Springs Community Services District, Vista Irrigation District, Association of California Health Care Districts, Association of California Water Agencies, California Chamber of Commerce, California Contract Cities Association, California Public Securities Association, California Society of Municipal Finance Officers, California State Association of Counties, California Special Districts Association, 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, South Bay Cities Council of Governments.

Supporters

California Professional Firefighters, CDF Firefighters Local 2881, California Labor Federation, California State Treasurer Bill Lockyer, AARP, Federation of State, County and Municipal Employees, AFL-CIO, Association for Los Angeles Deputy Sheriffs, California Alliance for Retired Americans, Association of Highway Patrolmen, California Conference Board of the Amalgamated Transit Union, AFL-CIO, California Nurses Association, 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 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.

PUBLIC OUTREACH/INTEREST

- Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This document will be posted on the City's website for the May 26, 2010 Rules and Open Government Committee where Council and the public have the opportunity to comment.

COORDINATION

Per the City's expedited bill recommendation process, 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.

POLICY ALIGNMENT

The attached analysis is consistent with the Council adopted 2010 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. 9. 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 through Strategic Economic Development, 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."

/s/
SCOTT P. JOHNSON
Director, Finance

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