



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Opposition to Assembly Bill 155 (Mendoza) Local Government: Bankruptcy Proceedings

**MEETING DATE:** May 5, 2010

**PREPARED BY:** Blair King, City Manager

**RECOMMENDED ACTION:** Authorize the Mayor, on behalf of the City Council, to send a letter of opposition to Assembly Bill 155 (Mendoza) Local Government: Bankruptcy Proceedings.

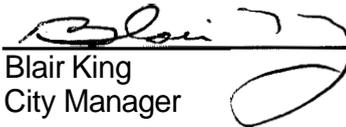
**BACKGROUND INFORMATION:** The City was asked by the League of California Cities, and League Representative Council Member Mounce, to oppose AB 155 (Mendoza) and send a letter of opposition regarding the same to specific members of the Legislature.

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, and sets forth specific conditions and processes for the same.

A copy of the proposed bill and a draft letter of opposition, are attached for your consideration.

**FISCAL IMPACT:** Not Applicable.

**FUNDING AVAILABLE:** Not Applicable.

  
Blair King  
City Manager

APPROVED:   
Blair King, City Manager

CITY COUNCIL

PHIL KATZAKIAN, Mayor  
SUSAN HITCHCOCK.

Mayor Pro Tempore  
BOB JOHNSON  
JOANNE MOUNCE  
LARRY HANSEN

# CITY OF LODI

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BLAIR KING, City Manager

RANDI JOHL, City Clerk

D. STEPHEN SCHWABAUER  
City Attorney

May 5, 2010

The Honorable Tony Mendoza  
Member of the Assembly  
State Capitol, Room 2188  
Sacramento, California 95814

SUBJECT:     Notice of Opposition to AB 155 (Mendoza) Municipal Bankruptcy  
—Inserts Politics Into the Bankruptcy Process

Dear Assembly Member Mendoza,

The City of Lodi regrets to inform you that the City ~~strongly oppose any~~ attempt to remove our ability to make our own financial decisions. That is exactly why we oppose AB 155—the bill attempts to prevent any local government from filing for bankruptcy under Chapter 9 of the federal bankruptcy code without first receiving the permission of the State of California.

This On Top of the State Budget? 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.

For these reasons the City of Lodi is opposed to your **AB 155**.

Sincerely,

Phil Katzakian  
Mayor

C: Brian Weinberger, Consultant, Senate Local Government Committee  
Michael Prozio, Secretary & Deputy Chief of Staff, Governor's Office  
Natasha Karl, Legislative Representative, League of California Cities

BILL NUMBER: AB 155 AMENDED  
BILL TEXT

AMENDED IN SENATE JULY 1, 2009  
AMENDED IN ASSEMBLY JUNE 1, 2009  
AMENDED IN ASSEMBLY MARCH 27, 2009

INTRODUCED BY Assembly Member Mendoza  
(Principal coauthor: Assembly Member Torrico)  
(Coauthors: Assembly Members Brownley, Coto, De Leon, Fuentes,  
Furutani, Krekorian, Lieu, Ma, Nava, John A. Perez, V. Manuel Perez,  
Price, and Yamada)  
(Coauthors: Senators DeSaulnier, Liu, and Wiggins)

JANUARY 26, 2009

An act to amend Section 53760 of, and to add Sections 8860, 8861,  
8862, 8863, ~~and 8864~~ 8864, and 8865 to,  
the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Mendoza. Local government: bankruptcy proceedings.

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, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The California Constitution and current statutory law provide for a continuity and interdependence between state and local government entities. Seeking financial relief through the provisions of Chapter 9 (commencing with Section 901 of Title 11) of the United States Code imposes costs on a municipality, potentially exceeding \$1 million. It can reduce service levels to the taxpayers and residents of a municipality. In some circumstances, it can have major short- and long-term fiscal consequences to the municipality, the surrounding local public entities, and the state. In 2009, bond counsel stated that "filing for bankruptcy protection under Chapter 9 should be considered a last resort, to be effected only after every effort has been made to avoid it."

(b) The Legislature has an interest in monitoring the conditions under which local entities seek Chapter 9 protection. The relief provided through the federal courts can affect state and municipal government service levels, debt, and contracts. The Legislature also has a strong interest in ensuring adequate disclosure of the conditions under which a municipality may seek Chapter 9 protection.

(c) To the extent financial relief granted through Chapter 9 can affect debt service payments, the state's investors and bondholders

have a direct interest in the Bankruptcy Court's decisions.

(d) The state has established a statewide system of public employee collective bargaining for state and local government employers and employees intended to protect the state's interest in promoting peaceful and harmonious labor relations and preventing work stoppages. The validity and enforceability of contracts arrived at through collective bargaining are essential to maintaining labor peace and the uninterrupted delivery of vital public services, and these agreements may be subject to review and amendment or rescission in the event of a Chapter 9 bankruptcy proceeding.

(e) The state has established and administers statewide pension systems that provide retirement and health benefits to state and local agency employees, many of whose benefits rely on contracts negotiated between local agencies and the California Public Employees' Retirement System, and that may be subject to review and amendment or rescission in the event of a Chapter 9 bankruptcy proceeding.

(f) California is one of only 12 states that grants blanket authority for its municipalities to petition for bankruptcy and offers no opportunity for its municipalities to receive state-level, prebankruptcy guidance, oversight, or assistance for those jurisdictions that are truly insolvent and face no other alternative to bankruptcy.

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

(h) Given the connection between state allocations and local budgets, the state has a role in mitigating possible local bankruptcy.

(i) It is the duty of all state and local elected officials to ensure that governments provide essential services to the communities they are elected to serve.

(j) California's taxpayers who rely on public safety, senior, park, and library services, as well as those who own and operate businesses in our communities deserve every effort that state and local government can make to avoid the long-term devastation of bankruptcy.

(k) The California Debt and Investment Advisory Commission is the appropriate body to provide the expert oversight and guidance sought by local public agencies who find themselves in a fiscal crisis, given its current statutory duties to collect municipal finance data, conduct research, administer educational seminars, and provide information and technical assistance on behalf of local public agencies and their finance professionals, and given the commission's diverse membership that includes state and local government financial experts.

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

8860. (a) The commission shall, upon request of a local public entity, advise and, if deemed appropriate by the commission, grant approval to the entity to exercise its rights pursuant to Section 53760, which may include conditions prescribed by the commission.

(b) Upon request under subdivision (a), the local public entity shall submit all of the following to the commission:

(1) A resolution or ordinance, adopted by that governing body at a public hearing held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), that does both of the following:

(A) Requests authority pursuant to Section 53760 to petition the federal bankruptcy court for financial relief under the provisions of Chapter 9 (commencing with Section 901 of Chapter 11) of the United States Code.

(B) Acknowledges that the state's fiscal and financial responsibilities are not changed by the application or the commission's decision pursuant to Section 8861.

(2) A thorough analysis of the entity's request to petition under Chapter 9 (commencing with Section 901 of Title 11) of the United States Code. In addition to any other information it may provide, the entity shall do all of the following:

(A) Demonstrate that it is or will be unable to pay its undisputed debts.

(B) Demonstrate that it has exhausted all options to avoid seeking relief under Chapter 9.

(C) Detail a specific plan for restoring the soundness of the entity's financial plans.

(3) An itemization of creditors that may be impaired or may seek damages as a result of the proposed plan.

(4) Evidence of irreparable harm that may result during the 30-day evaluation period, pursuant to subdivision (d), and the 15 days allotted for a hearing, pursuant to subdivision (e).

~~(c) The local entity may request, and the commission chair may approve, an expedited evaluation. The commission chair may approve the expedited evaluation if the entity sufficiently demonstrates a need for improved cashflow or protection from creditors claim. If the request is approved, the expedited evaluation shall be completed within 5 days.~~

~~(d)~~

(c) (1) Upon receipt of the information required by subdivision (b), the commission shall evaluate the information presented and within 5 days, notify the local public entity of one of the following results:

(A) Approval of the request.

(B) The commission intends to proceed with a further evaluation based on a finding that the local public entity did not provide sufficient evidence pursuant to paragraph (4) of subdivision (b).

(2) If the commission determines that it will proceed with a further evaluation, pursuant to subparagraph (B) of paragraph (1), the commission shall publish its evaluation within 30 business days, or, in the case of an expedited request pursuant to subdivision (c), within 5 days. In conducting its evaluation, days. If the commission does not respond to the request within five days of receipt of the request, the request shall be deemed approved.

(d) After noticing the local public agency of the commission's intent to further evaluate the request, the commission staff shall specifically evaluate the extent to which the local public entity has done the following:

(1) Demonstrated that it has exhausted other remedies.

(2) Demonstrated that it has taken sufficient steps to reduce the negative consequences of its proposed bankruptcy relief.

(3) Has anticipated the transfer of service responsibility to other governments or parties and to what extent the entity has documented the consequences for the transfer of municipal and other government services.

(4) Documented the likely effect a successful petition will have on state and local finances, including the impact on credit access and debt service.

(5) Has proposed a remedy that is appropriate and proportionate to the entity's fiscal problems.

(e) ~~The~~ After the commission conducts the evaluation, pursuant to paragraph (2) of subdivision (c) and

publishes its evaluation, the commission shall conduct a hearing and publish a decision within 15 days of, but not less than 10 days after, the publication of the staff evaluation conducted pursuant to subdivision (d). The hearing shall be conducted according to the provisions of Section 8861. The commission hearing on the application shall be held in convenient proximity of the entity filing the application.

(f) A governing board of a local public entity may reapply if its request was denied pursuant to Section 8861. In making the reapplication, the local public entity shall adopt another resolution and submit documentation to address the deficiencies identified by the commission pursuant to Section 8861.

(g) A county that has requested approval to file under subdivision (a) may require local agencies with funds invested in the county treasury to provide a five-day notice of withdrawal before the county is required to comply with a request for withdrawal of funds by that local agency.

~~(g)~~

(h) As used in this chapter, "local public entity" means any city, county, city and county, district public authority, public agency, or other entity that is a "municipality" within the meaning of paragraph (40) of Section 101 of Title 11 of the United States Code, or that qualifies as a debtor under any federal bankruptcy law applicable to local public entities.

SEC. 3. Section 8861 is added to the Government Code, to read:

8861. (a) The commission shall hold a public hearing to consider a request made pursuant to Section 8860. The hearing shall provide sufficient time for public testimony.

(b) The commission shall, in a recorded vote on the date of the hearing, approve or deny the request.

(c) If the commission approves a request, it may order the entity, as a condition of approving the request, to limit the nature and extent of relief provided through Chapter 9 bankruptcy proceedings, including all of the following:

(1) The commission may limit the changes to a contract.

(2) The commission may prohibit the abrogation of contracts.

(3) The commission may limit the amount of relief to ensure the protection of debt service payments.

(d) If the commission disapproves a request, the commission shall adopt specific findings that address the deficiencies of the application.

(e) The hearing shall be subject to the provisions of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2). At the same time that the notice and agenda for the hearing is posted to comply with the requirements of the Bagley-Keene Open Meeting Act, then the commission shall do all of the following:

(1) Post the notice in a location in the entity that is freely accessible to members of the public.

(2) Deliver the notice personally, by United States mail, or by facsimile transmission, to each local newspaper of general circulation whose circulation area reasonably includes the local public entity.

(3) Deliver the notice by United States mail, or by facsimile transmission, to each radio or television station that has requested notice in writing.

(4) Request publication of the notice in the daily file of each house of the Legislature at least 24 hours prior to the date of the meeting, if the Legislature is in session.

SEC. 4. Section 8862 is added to the Government Code, to read:

8862. (a) After the commission receives a request pursuant to Section 8860, the executive director shall record costs incurred by the commission to make and publish the evaluation pursuant to Section 8860 and conduct the hearing required under Section 8861. The director shall report those costs to the commission at the next regularly scheduled commission hearing.

(b) Upon denial of the request, the executive director or commission may assess the requesting entity a fee to cover some *or* all the costs associated with making the findings and conducting the hearing. Fee revenue shall be deposited in the California Debt and Investment Advisory Commission Fund.

(c) The commission may propose regulations to govern the request and review process required under Sections 8860 and 8861.

SEC. 5. Section 8863 is added to the Government Code, to read:

8863. In enacting Sections 8860, 8861, 8862, and the changes in Section 53760, the state assumes no new *or* additional fiscal responsibilities for local entities that may apply to the commission *for* review pursuant to this chapter.

SEC. 6. Section 8864 is added to the Government Code, to read:

8864. This chapter shall only apply to a local public entity on or after the effective date of this chapter.

SEC. 7. Section 8865 is added to the Government Code , to read:

8865. If a member of the California Debt and Investment Advisory Commission is also employed as a local government finance officer *by* an entity requesting approval pursuant to Section 8860, the Treasurer shall replace that member, for purposes of the application of the local government that also employs the member, with a person employed by a city, county, or city and county, within the state, experienced in the issuance and sale of municipal *bonds* and nominated by associations affiliated with these agencies, to preside over that application.

~~SEC. 7.~~ SEC. 8. Section 53760 of the Government Code is amended to read:

53760. (a) Except as otherwise provided by statute, a local public entity in this state may, with the approval of the California Debt and Investment Advisory Commission, under the terms and conditions that the commission may impose pursuant to Section 8861, file a petition and exercise powers pursuant to applicable federal bankruptcy law.

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