Study D-1100 June 21, 2000

First Supplement to Memorandum 2000-38

Municipal Bankruptcy (Kevane Letter)

Attached to this memorandum are some comments from Henry Kevane on the municipal bankruptcy background study. Mr. Kevane has also forwarded correspondence relating to Senator Kopp's SB 349 in 1996 and his proposed statutory revisions.

We will discuss this material at the meeting in connection with Professor Tung's background study.

Respectfully submitted,

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MEMORANDUM

By Facsimile -- 650/494-1827

TO: California Law Revision Commission

FROM: Henry C. Kevane, Esq.

RE: Municipal Bankruptcy -- Study D-1100

DATE: June 21, 2000

I have reviewed Professor Tung's excellent background study on the California eligibility standards for municipal bankruptcies under Chapter 9 of the Bankruptcy Code. Although I would like the opportunity to address in detail some of the premises and conclusions reached by Professor Tung, in the interests of time, I'd like to respond solely to his core recommendation that a State officer (such as the Governor) have the authority to permit or reject Chapter 9 petitions on a case-by-case basis. Although I generally agree with Professor Tung's reason for early State involvement in the municipal bankruptcy process, I disagree with his view that a "gatekeeper" mechanism is best suited to furthering the State's involvement and allaying the State's legitimate concerns. I think it is important to separate the *access* issue (who **can** file) from the *process* issue (who **should** file). In my view, the former should be an easy, speedy and non-politicized decision that balances only the interests of the taxpayers, creditors and employees of the municipality. The latter should be the arena for the State's interest to come into play, **after** the full extent of the municipality's problems can be dispassionately analyzed and creditors have been organized and informed.

The interests of taxpayers and creditors of the municipality (and, in exigent circumstances, the municipality itself) are best served by free access to the bankruptcy court. The commencement of a Chapter 9 case invokes the automatic stay under the Bankruptcy Code. The automatic stay serves two, interrelated purposes -- it gives the municipality a breathing spell and it protects all creditors by not rewarding the swiftest creditors (*i.e.*, those who enforce their remedies and exercise offset rights). I am also concerned that the pre-approval process could exacerbate a municipality's condition by triggering a "race to the courthouse" by creditors (who learn about the municipality's request for bankruptcy approval). In addition, the State's denial of access to Chapter 9 may create the implication that the State has assumed responsibility (at a moral level, if not otherwise) for the debts of the distressed municipality.

Once the municipality is afforded relief, the issue of whether that particular filing will affect State interests (*e.g.*, credit markets), or whether that particular filing is a single-issue dispute that can best be resolved outside of bankruptcy (to reduce the bankruptcy costs to the debtor), can be addressed by a flexible trusteeship mechanism. The State, under established law, can withdraw and re-delegate certain municipal powers as necessary or appropriate to further the State's interests. In some cases, this may mean a prompt dismissal of the bankruptcy case. In other cases, it may mean direct state involvement in the formulation and confirmation of a plan of adjustment. All of these options can be considered with the full input of each affected constituency (creditors, local governing bodies, other agencies, employees and residents). The State will always be able to exercise its paramount interests through the trustee, who would supplant (to the extent necessary) local officials.

For the Commission's information, I have attached as an **Exhibit** my prior correspondence and memorandum concerning SB 348, Senator Kopp's 1996 eligibility legislation. Attached at the end of my memo to Senator Kopp is my suggested language for a trusteeship mechanism that would obviate the need for a gatekeeper.

I look forward to assisting the Commission as it works to clarify and improve this vital area of the law. I am available at the Commission's convenience to answer any questions or provide any additional information.

MEMORANDUM

TO: Randall Henry, Office of Senator Quentin L. Kopp

FROM: Henry C. Kevane

DATE: May 31, 1996

RE: SB 349 (as of February 26, 1996) -- Legislation Respecting State Authorization for Relief Under Chapter 9 of the Bankruptcy Code

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I. Overview

Chapter 9 of the Bankruptcy Code was carefully crafted by Congress to accommodate the reserved sovereign rights of the states and the debt adjustment powers of federal law. On the one hand, as instrumentalities of a state, Chapter 9 debtors necessarily enjoy substantial freedom from federal interference. This freedom derives from the Tenth Amendment to the United States Constitution, which provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const., amend. X. On the other hand, only federal law can overcome the constitutional prohibition on the impairment by states of the obligation of contracts. U.S. Const., art. I, § 10, cl. 1. Thus, the powerful debt restructuring tools under the Bankruptcy Code--such as the automatic stay and the avoidance of preferential transfers--are available exclusively in federal court.

This balancing act is reflected in the stringent eligibility requirements for Chapter 9. The eligibility requirements are set forth in a five-prong test under section 109(c) of the Bankruptcy Code. One of the five eligibility requirements is specific, state-by-state authorization to file a Chapter 9 case. As a result, the ability of a municipality to seek federal relief is committed to the exclusive control of each state. Although approximately 20 states permit Chapter 9 cases, some with detailed pre-conditions or prior consent, the remaining states are silent on the subject and two states (Georgia and Iowa) expressly prohibit the bankruptcy option.

In 1994, Congress amended the Bankruptcy Code to require that municipalities be "specifically authorized" under state law to file a petition under Chapter 9. 11 U.S.C. § 109(c)(2) ("Section 109(c)"). Previously, a municipality was eligible if it was "generally authorized" to file for bankruptcy under state law. Case law was split over whether the authority to file could be inferred from the delegation by some states of traditional "home rule" powers to their municipalities (e.g., to issue debt, control finances or sue and be sued), or whether more detailed, express permission was necessary. The amendment was intended to clarify this uncertainty. By amending the eligibility statute, Congress has expressly invited each state to revisit the types of local agencies that may seek federal relief.

California law presently permits "any taxing agency or instrumentality" of the state to file a petition and "prosecute to completion all proceedings permitted" under the former Bankruptcy Act of 1898. Cal. Gov't Code § 53760 ("Section 53760").[1] The statute refers to the definition of "taxing agency or instrumentality" contained in the 1898 Act. Section 53760 has not been amended since it was enacted in 1949.

The existing statute is plainly outdated and, thus, merits amendment on purely technical grounds. Accordingly, the statute should be revised to conform to the current Bankruptcy Code and should contain a statement confirming that the statute reflects the intent of the state to permit Chapter 9 relief. In addition, responding to the invitation of Congress, it would also be worthwhile to re-examine the eligibility threshold for federal bankruptcy relief. Section 109(c) permits the threshold to be either (a) defined in the statute, or (b) delegated for case-by-case determination to a state official or agency.

Given the extraordinary proliferation of local agencies in California (according to the Constitution Revision Commission, there are over 7,000 special government agencies in California), the Legislature may wish to analyze whether certain special or limited purpose entities should be authorized to attempt to impair their contractual obligations in federal bankruptcy courts. Should a "citrus pest control district" or a "storm drainage district" be permitted to seek Chapter 9 relief?

II. Other Legislation

In addition to SB 349, other bills on this subject have been introduced following the Orange County case. They are: (a) AB 2XX (Caldera), (b) AB 29XX (Archie-Hudson), and (c) SB 1274 (Killea). Generally speaking, these bills propose to:

a. update the reference to the current Bankruptcy Code and incorporate the definition of "municipality" utilized in Section 101(40) of the Bankruptcy Code;

b. require some form of prior legislative approval before filing a Chapter 9 petition, or prior legislative review of a proposed plan of adjustment; and

c. permit the appointment of a state trustee to prosecute or supervise the Chapter 9 case.

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[1] Section 53761 of the Government Code provides that the "state consents to the adoption of [the applicable provisions of the Bankruptcy Act] and consents to their application to the taxing agencies and instrumentalities of this State." This "consent" provision is redundant to the "authorization" granted under Section 53760 and should probably be repealed or amended.

III. Comments

A. Use of Defined Term "Municipality"

As amended by SB 349, Section 53760 would permit "any municipality in this state" to file a petition under Chapter 9. The statute would incorporate the definition of "municipality" contained in Section 101(40) of the Bankruptcy Code. That term is defined to mean "political subdivision, public agency or instrumentality" of a state. But those three terms are not defined elsewhere in the Bankruptcy Code and, except for a recent decision by the bankruptcy court in the Orange County case, there are no reported bankruptcy court decisions construing these categories. See In re County of Orange, 183 B.R. 594, 601 n.14 (Bankr. C.D. Cal. 1995).

In Orange County, the bankruptcy court dismissed the filing by the County's commingled investment pool on the grounds that it did not qualify as a "municipality." The court's decision relied on a 1937 "laundry list" of entities that were previously permitted under the old Bankruptcy Act to file for municipal debt adjustment. Id. at 601 n.16 & 602-603. According to the court, a municipality includes only: (a) a **political subdivision of a state**, meaning an entity with the ability to exercise sovereign powers such as the police power, the power to tax or the power of eminent domain; (b) a **public agency of a state**, meaning an entity "organized for the purposes of maintaining or operating a revenue producing enterprise;" or (c) an **instrumentality of a state**, meaning a water, sewer, road, port, school or similar public improvement district. Since the investment pool did not qualify as one of these discrete entities, it was not a municipality and its bankruptcy case was therefore dismissed. The court also dismissed the case because the state had not specifically authorized an investment fund to file a petition under Chapter 9.

1. Potential Ambiguities

The issues raised by incorporating the federal definition of "municipality" in the state statute are whether (a) the definition adequately reflects the Legislature's views on the scope of eligibility, and (b) whether future federal judicial construction of the term might conflict with the Legislature's views. By incorporating the federal definition into the state statute, the state faces the principal risk that the term might be construed too narrowly (to exclude presumptively eligible entities). This problem would arise in each Chapter 9 case and might be subject to conflicting interpretations based on the venue of the case (there are four federal districts in California). If, on the other hand, the Legislature intends to restrict the "universe" of California public agencies that may file for bankruptcy, the opposite problem might arise. The federal definition might be construed over-inclusively, to permit Chapter 9 relief for entities that the state would prefer to exclude. To date, the state has not explicitly identified any entities for which access should be denied so this may be only a theoretical problem. (The only exception that I am aware of is SB 1993 (Calderon) which would prohibit the California Earthquake Authority from commencing a Chapter 9 bankruptcy case.) Under either scenario, by using the federal definition the state cedes some control over the eligibility threshold.

The reason for potentially varying interpretations of the federal term is that Section 109(c) requires that each entity must individually qualify as a "municipality" under the federal definition to be eligible for Chapter 9. Unlike a Chapter 11 case, the bankruptcy court must independently examine the eligibility issue each time a Chapter 9 case is commenced. Other parties in interest have the opportunity to seek the dismissal of the case if the municipality does not qualify under the 5-prong eligibility test. As a result, bankruptcy courts will continue to construe the meaning of the term "municipality" in most filings, particularly those where creditors are seeking dismissal. The use of the federal term under state law, therefore, may generate unintended results depending on the Legislature's intent.

2. Narrow Interpretation of "Municipality"

Presently, the federal term "municipality" may not include various types of local government agencies or the instrumentalities of those agencies (as opposed to instrumentalities of the state). For instance, it is unclear whether the federal definition of "municipality" would include joint power arrangements under §§ 6500 of the Government Code. This is because federal law permits Chapter 9 only for instrumentalities of the state, not instrumentalities of local agencies. A JPA is formed by two or more local agencies and may not be considered an arm of the state. Other examples include non-profit corporations or trusts established by local agencies. Indeed, the Orange County court rejected the notion that an instrumentality of a municipality (as opposed to an instrumentality of the state) could qualify as a municipality. This interpretation may effectively excludes authorities and agencies created by municipal entities (including joint power authorities) from seeking Chapter 9 relief. Id. at 603.

3. Broad Interpretation of "Municipality"

California has experienced an explosion of local agencies, many with redundant service areas and overlapping bureaucracies. For instance, a bill that was chaptered into law last year provided certain benefits to over 100 separate and distinct types of "public bodies" created under California law, ranging from "A" (air pollution control districts) to "Z" (zones of any public body). Another bill introduced by Senator Kopp (SB 1474) would have permitted the consolidation of regional transit services in the Bay Area. Similarly, a bill introduced by Assembly Members Pringle and Baugh (AB 2109) would provide, subject to electoral approval, for the consolidation of twenty-five separate Orange County special water districts into a single entity--the "Orange County Water and Sanitation District." Should each of these many entities, if they qualify as municipalities, be permitted to file for Chapter 9 relief? One criticism of the Orange County case is that its decision to file was hasty and that the bankruptcy could have been avoided. The enormous expense and delays inherent in any bankruptcy case would probably merit some restriction on the ability of some special purpose districts to seek Chapter 9 relief.

I would suggest, therefore, that the Legislature consider using state, not federal, law as a reference point for determining the entities that are specifically authorized to file under Chapter 9. Although these entities would still need to separately qualify as "municipalities" under Section 109(c), the Legislative determination would be a persuasive starting point for defining the scope of that term in California. Moreover, the use of a state law definition would reduce the risk that certain entities might be permitted or precluded from filing based on shifting federal interpretations of the term "municipality."

B. Statement of Intent

It may be appropriate to include a brief statement of intent declaring that Section 53760, as amended, provides the "specific authorization" required by Congress under Section 109(c). See AB 29XX and AB 2XX. For example: "This subsection expresses the specific authorization of the state to permit a municipality to be a debtor under Chapter 9 of Title 11 of the United States Code."

C. Pre-Filing Approval

Under the amended version of Section 109(c), each state may now specifically authorize a local agency "in its capacity as a municipality or by name" to be a debtor under Chapter 9. The statute also permits the state to create a gatekeeper in the form of a "governmental officer or organization empowered by state law to authorize such entity to be a debtor." Various states currently use a gatekeeper to regulate entry to Chapter 9. Connecticut requires the prior written consent of the governor and New Jersey requires the prior approval of a municipal finance commission. Kentucky requires the pre-approval of a proposed plan by certain state officers before a county may file and Pennsylvania has a detailed list of bankruptcy triggers. Other groups considering reform of Chapter 9 in the wake of Orange County have suggested that Congress further amend Section 109(c) to require pre-filing approval by, or some form of prior notice to, the state.

SB 349 would (a) require the pre-filing written approval of the Local Agency Bankruptcy Committee ("Local Committee") before a municipality could file a petition, and (b) permit the imposition of additional "terms and conditions" for the petition.

There are various potential difficulties with this "gatekeeper" provision:

1. The bill does not contain any standards for admission to Chapter 9. The Local Committee is comprised of elected and appointed state officials. There is a risk that the approval process could become unduly politicized, possibly exacerbating a genuine fiscal emergency.

2. Although a five-day approval period is contemplated, this period may not accommodate a genuine emergency.

3. Are the decisions of the Local Committee reviewable? Are they permanent? May the public agency reapply immediately after denial of access or should there be a waiting period?

4. What "terms and conditions" are contemplated? Must the Legislature ratify such terms if they affect the privileges or powers of the public agency?

5. What responsibilities, if any, does the state assume if the Local Committee denies its consent to file a petition under Chapter 9? Does the state have any liability to creditors of the public agency if access is denied?

6. What are the contents of a municipality's request for consent to file? What evidence is contemplated, if any?

7. The public notice period may cause undue disruption in the public capital markets, perhaps precipitating collection measures that might heighten liquidity problems. If creditors have advance notice of a future filing, they would probably exercise setoff, withdrawal, foreclosure, and other enforcement remedies. Under Chapter 9, prepetition payments on account of bonds or notes are not recoverable as preferences.

As drafted, the gatekeeper provisions of SB 349 have the advantage of flexibility. The price of this flexibility may be such a level of discretion in the approval process that it effectively limits access through sheer uncertainty. The gatekeeping function should be revised in favor of (i) a more thorough examination of the entities permitted to seek Chapter 9 relief, and (ii) creation a trusteeship mechanism capable of promptly dismissing the Chapter 9 case if it is inconsistent with the best interests of the state.

D. Trusteeship

Trusteeship provisions for local agencies, although controversial, are not unusual. It is a fundamental precept of municipal law that local agencies, created by the state, exist principally as instrumentalities for (a) the orderly exercise of state functions and (b) the convenient delivery of state services. Notwithstanding the growth of public agencies in California, the state retains plenary control over their duties and powers. For example, according to the California constitution, the "Legislature shall provide for county powers" and "shall prescribe uniform procedures for city formation and provide for city powers." Cal. Const. art. XI, § 1(b), § 2(a). Even charter cities and counties should remain subject to state control. Although a charter is deemed to supersede the general laws adopted by the Legislature, the "provisions of a charter are the law of the State and have the force and effect of legislative enactments." Cal. Const. art. XI, § 3(a).

Local agencies, thus, are creatures of only limited and enumerated powers. Based on this principle, it seems indisputable that the state may, at its pleasure, modify or withdraw any delegated powers and exercise them directly. Trusteeship provisions were signed into law for Orange County (SB 1276, Killea) and were proposed for Los Angeles County (AB 53, Bowen, et al.).

In addition, existing California law requires the appointment of a state administrator to exercise the powers and responsibilities of the governing board of an insolvent school district. This administrator has the authority to "implement substantial changes in the district's fiscal policies and practices, including, if necessary, the filing of a petition under Chapter 9 of the federal Bankruptcy Act for the adjustment of indebtedness." Cal. Educ. Code § 41325(c). See also In re Richmond Unified School Dist., 133 B.R. 221 (Bankr. N.D. Cal. 1991). A recent bill introduced by Assembly Member McDonald (AB 2415) would clarify the scope of the state administrator's authority.

Similar trusteeship provisions exist for health care districts whose indebtedness is insured under the Cal-Mortgage Loan Insurance Program. The Office of Statewide Health Planning and Development is authorized to request that the Secretary of the Health and Welfare Agency appoint a trustee capable of exercising "all the powers of the officers and directors of the borrower, including the filing of a petition for bankruptcy." Cal. Health & Safety Code § 129173. A recent bill introduced by Senator Wright (SB 1922) would clarify the scope of the trustee's liability for other debts of the health care agency.

Although the availability of a trusteeship is an excellent idea, because it would avoid a political dispute and possible legislative delays over whether a trustee should be authorized in a particular case, the provisions of SB 349 raise some concerns:

1. Immediate appointment of a trustee upon the filing of the petition would "bifurcate" the case into two forums, perhaps spurring creditors to ignore the bankruptcy forum in the hopes of seeking a more favorable resolution from the trustee; this could cause unnecessary delay and expense in the bankruptcy case. Although the potential for a trustee should probably exist in every case, the conditions for appointment should be tied to specific bankruptcy milestones that implicate the interests of the state, e.g., rejection of the plan, inability to timely confirm a plan, impairment of public debt, or misconduct by public officials.

2. The trustee qualifications should incorporate some of the provisions of SB 1276, particularly respecting the trustee's status as a public official.

3. When should the trusteeship expire?

4. The delegation of powers provision should (a) permit the trustee to assume all or only specified local powers, with the corresponding

authority to refer or withdraw specified powers to or from local officials as and when required or appropriate; and (b) expressly authorize the trustee in all instances to exercise any or all powers of the municipality with respect to the conduct of the Chapter 9 case (e.g., filing a plan, issuing debt on behalf of the municipality, dismissing the case).

5. Would the trusteeship apply to charter cities and counties? Although a duly adopted charter has the force and effect of a legislative enactment, and would thus seem capable of being superseded or amended by the Legislature, some charter cities and counties dispute the validity of a trustee.

6. Although some form of trustee oversight is probably appropriate, the requirement that all "significant actions" must be reported by the trustee to the Local Committee is vague and could impede the conduct of the case. Parties might rely to their detriment on actions of the trustee which could then be overruled by the Local Committee. This would exacerbate the "dual forum" problem mentioned above.

Attached to this memo is suggested language for a trusteeship mechanism that creates the potential for a trustee in every case yet ties the actual appointment to an event that affects the interests of the state. Also, a trustee could be appointed within a brief window at the commencement of the case for the sole purpose of dismissing the case. Thus, the state would retain the ability to act as a "gatekeeper" without creating undue barriers to entry in meritorious cases. I would expect that the appointment of a trustee for purposes of immediate dismissal should be accompanied by some form of state relief (equivalent to the tacit responsibilities of the Local Committee if consent to file is denied).

IV. Conclusion

I believe the amendments proposed to Section 53760 under SB 349 would (i) update the statute to the current version of the Bankruptcy Code, (ii) clarify that "specific authorization" is being granted pursuant to Section 109(c), (iii) clarify the scope of eligible entities and, correspondingly, revise the ad hoc gatekeeper function, and (iv) create a flexible trusteeship mechanism for all municipalities which would be triggered based on specified criteria or time periods. The essential purpose of the trusteeship would be to enable the state to direct the conduct of the Chapter 9 case when it would serve the interests of other municipalities and the people of the state. The trusteeship mechanism would conform to provisions of the Bankruptcy Code which permit the state to "control" its municipalities and, correspondingly, prevent any bankruptcy court interference with the political or governmental powers of the municipality. 11 U.S.C. §§ 903, 904.

Suggested Language for Trusteeship Mechanism

Statement of Intent

It is intent of the Legislature to permit, under specified circumstances, the appointment of a trustee to manage the affairs of any public body that has commenced a case under Chapter 9 of Title 11 of the United States Code.

It is the further intent of the Legislature that the appointment of a trustee shall become effective when necessary to protect the health, safety and welfare of the residents of the state and the constituents of the public body, to foster the fiscal integrity of the state and its political subdivisions, to preserve access by the state and its political subdivisions to the public capital markets, or to otherwise expedite the timely confirmation of an acceptable plan of adjustment for the public body.

The trustee shall be vested with full and complete control over the public body and shall have the exclusive authority and discretion to direct the conduct of the Chapter 9 case and take any actions on behalf of the public body that are necessary and proper to formulate, confirm and implement an acceptable plan of adjustment.

It is the further intent of the Legislature that the trustee shall, to the extent practical depending on the circumstances of each case, defer to the officers or other governing board of the public body the principal responsibility to conduct the ordinary political and governmental functions of the public body.

Statute

(a) The Governor is authorized to appoint a trustee to oversee any public body that has commenced a case under Chapter 9 of Title 11 of the United States Code. The authority of the Governor may only be exercised upon the satisfaction of the conditions specified under subsection (c).

(b)(1) Upon the appointment of a trustee under subsection (a), all powers provided or granted by the Legislature to the public body, and all rights incident or essential to the exercise of those powers, shall be withdrawn and vested in the trustee. The trustee shall be immediately authorized to assume and exercise all powers of the public body, or direct the actions of the public body. Notwithstanding the foregoing, the trustee may at any time provide for the continued exercise by the officers and governing board of the public body of all or specified powers. The trustee shall attempt, to the extent practical depending on the circumstances of each case, to defer to the officers and governing board of the public body the principal responsibility for the conduct of the ordinary political and governmental functions of the public body. The trustee may reassume all or any powers of the public body whenever necessary or appropriate to the resolution of the Chapter 9 case.

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(2) The trustee shall supervise the conduct of the Chapter 9 case and may, at any time, dismiss the Chapter 9 case. The trustee shall be exclusively authorized to take or prescribe such actions in the Chapter 9 case that are necessary to promote the timely confirmation of an acceptable plan of adjustment. In exercising the foregoing powers, the trustee shall be serving the public purpose of a speedy and just resolution to the Chapter 9 case and the restoration of the fiscal integrity of the public body.

(3) This subsection shall not be construed to expand the privileges or powers delegated to any public body by the Legislature. The trustee may only assume those powers of a public body granted under the existing and subsequently enacted laws of the state, and may only exercise such powers in a manner consistent with such laws.

(c) The Governor may appoint a trustee under subsection (a) under the following circumstances:

(i) within 30 days following the commencement of the Chapter 9 case for the purpose of causing the public body to voluntarily dismiss its Chapter 9 case; or

(ii) at any time during the Chapter 9 proceedings if the Governor or his or her designee determines that (1) the public body is or will be unable to provide essential health, safety or welfare services to its constituents, (2) the financial status of the public body may jeopardize the ability or increase the costs of the state or its political subdivisions to issue debt or borrow money, (3) the principal creditors in the Chapter 9 case have failed to reach substantial agreement on the terms of a plan of adjustment, (4) the timely confirmation of an acceptable plan of adjustment appears unlikely, or (5) the appointment of a trustee is otherwise in the interests of the state, its residents and other public bodies within the State.

(d) The trustee shall exercise the powers conferred under this section until the later of (i) the date the Chapter 9 case is dismissed, (ii) the date a plan of adjustment is consummated, or (iii) any other date fixed by the Governor to promote the satisfactory resolution of the Chapter 9 case. In fixing a date for the expiration of the trustee, the Governor or his or her designee shall consult with the officers and governing body of the municipality and the representatives of creditors in the Chapter 9 case. The Governor may also terminate the services of the trustee if the trustee is unable or unwilling to carry out his or her duties as specified in this section. Upon the termination of the trustee, all powers vested in the trustee shall revert to the public body.

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