

Memorandum 2001-86

Municipal Bankruptcy (Comments on Tentative Recommendation)

We have received only one letter commenting on the Tentative Recommendation on *Municipal Bankruptcy* (September 2001). (A copy of the tentative recommendation is attached for Commissioners.)

Bankruptcy Judge Alan Ahart approves the recommendation. (See attached letter.) He also suggests two technical revisions that we would implement as follows (revisions shown in bold underscore and strikeout):

Gov't Code § 53760 (added). Authorization for municipal bankruptcy

SEC. 4. Section 53760 is added to the Government Code, to read:

53760. (a) Except as otherwise provided by statute, a local public entity in this state may file a petition and exercise powers pursuant to applicable federal bankruptcy law.

(b) As used in this section, "local public entity" means any 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 political subdivisions of the state.

Water Code § 25115 (amended). Irrigation districts, approval of bondholders

SEC. 8. Section 25115 of the Water Code is amended to read:

25115. The approval of the holders of outstanding refunding bonds affected by the modification shall be evidenced by either of the following:

(a) The written consent of all of the owners and holders of the bonds.

(b) ~~A decree of any United States District Court in accordance with the provisions of the National Bankruptcy Act, as amended~~ **An order under federal bankruptcy law, which decree provides that the modification order is binding upon the holders and owners of all of the outstanding refunding bonds affected.**

The staff recommends approval of the tentative recommendation as a final recommendation, with the above revisions and any needed editorial corrections. If the Commission approves this material, the staff will prepare the

recommendation for printing and seek introduction of legislation in the 2002 legislative year.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

United States Bankruptcy Court
CENTRAL DISTRICT OF CALIFORNIA
ROYBAL BUILDING
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ALAN M. AHART
JUDGE

(213) 894-3745

October 3, 2001

Law Revision Commission
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File: _____

Mr. Stan Ulrich
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Tentative Recommendation on Municipal Bankruptcy

Dear Mr Ulrich:

I heartily approve the Tentative Recommendation that would modify the relevant California statutes to reflect changes in federal bankruptcy law since 1979. I have only two minor drafting suggestions:

First, in new Government Code Section 53760, you may wish to add the words "as a debtor" in the third line of subdivision (b) to clarify that the qualification therein refers to eligibility to be a debtor under federal bankruptcy law.

Second, in amended Water Code Section 25115, subdivision (b) you probably should change "decree" each time it is used to "order." The word "order" is commonly used to describe federal court rulings other than "judgments." (See Federal Rule of Bankruptcy Procedure 5003, which expressly refers to orders and judgments but not decrees). Also, when a Chapter 9 plan is confirmed, it is invariably an "order" that confirms the plan and makes the plan binding on the debtor and all creditors.

Sincerely,



ALAN M. AHART

AMA:dds