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L E G I S L A T I V E A L E R T

September 8, 2009

To: Members of the Legislature

From: Jean Kinney Hurst, California State Association of Counties
Paul Smith, Regional Council of Rural Counties
Jolena Voorhis, Urban Counties Caucus

Re: **SB 88 (DeSaulnier) As amended 9/03/09 – OPPOSE**

On behalf of California's 58 counties, we write to communicate our strong opposition to SB 88, Senator DeSaulnier's newly amended measure to require state authorization for local agencies to seek federal bankruptcy protection. This measure is very similar to AB 155 (Mendoza), which remains in the Senate Local Government Committee after it was unable to garner the necessary votes to secure passage.

We join our local government colleagues in urging your "no" vote on this unwise and unwarranted intrusion into local fiscal affairs, particularly with so little time until the close of the legislative session.

At its foundation, SB 88 undermines the principal benefits of federal bankruptcy protection: the automatic stay of financial obligations and time to allow a debtor some "breathing space" to formulate a debt readjustment plan. As a result, SB 88 may lead local agencies to default, precisely the result that bankruptcy protection seeks to avoid. And there is no good answer to the question: what happens to a local agency that is insolvent and cannot proceed to a bankruptcy filing?

It is particularly ironic to consider, under the current circumstances with a state budget that relies considerably on local revenues, delays, cost shifts, and cuts, that a county would be required to ask the state's permission prior to seeking bankruptcy protection when the state's historic failure to deal with its own fiscal issues has essentially created, at least in part, the fiscal problems faced by that county.

Finally, SB 88 requires a careful warning: be careful what you wish for. The bill may say that the state absolves itself from any liabilities associated with the financial failure of a local agency. However, it is far from clear that this is the reality. Counties provide services on the state's behalf that must be provided under state and federal law. If a county is not solvent and cannot provide such services, those responsibilities fall squarely upon the state. While these services alone would pose considerable financial and practical difficulties for the state, imagine the myriad other services provided at the

local level that must be provided by some entity. It is very likely that the state would be under significant pressure to provide some sort of remedy.

In conclusion, counties strongly oppose submitting the bankruptcy decision to any state agency, board, or commission, including California Debt Invest Advisory Commission, which has no direct responsibility to the voters of the local community. The Commission, which is prescribed to review local agency petitions for permission to seek bankruptcy protection under SB 88, is not responsible for the day-to-day operations of local agencies; it has no perception of community needs or priorities in order to make responsible choices about spending scarce government resources. The Commission does not have to balance competing fiscal priorities at the local level and is not charged with preserving the overall economic stability within the local community.

Counties strongly urge your “no” vote on SB 88, a dubious means to “reform” in these last days of the legislative session.