

Illinois bankruptcy bills steal pages from California and learn from Detroit

By Gunjan Banerji

3 February, 2016

Illinois lawmakers began publicly discussing bankruptcy legislation for local governments in the spring of 2015, said **Chicago** CFO Carole Brown in a statement to *Debtwire Municipals*. Those discussions have produced three proposals currently kicking around the statehouse.

“[Chicago] sought to educate itself on the impacts to local government should the State adopt legislation that allowed it to put local governments into restructuring. Kirkland and Ellis provided preliminary advice to the City on this subject,” said Brown. “This was a pro bono educational exercise, and no formal report or advice was developed or provided to the City of Chicago or Chicago Public Schools.”

Kirkland & Ellis did not respond to a request for comment.

Governor Bruce Rauner (R) supports the three state takeover and bankruptcy bills, according to his office, while Mayor Rahm Emanuel (D) and the City of Chicago oppose any plan for bankruptcy and state takeover for the **Chicago Board of Education** (CBOE), Brown said. The new legislation wouldn't address fundamental financial challenges stemming from inequitable state funding for CBOE, she added.

New legislation

Illinois' three recently unveiled bankruptcy bills pull from existing Chapter 9 law and court decisions, said one of the bills' sponsors, Representative Ron Sandack (R), in an interview with *Debtwire Municipals*.

HB 4500 provides bankruptcy access to municipalities throughout Illinois, while HB 4499 specifically provides Chicago and CBOE access to the restructuring mechanism. HB 4498 allows the state superintendent of education to remove members of school districts' boards throughout Illinois and provides for transitions to an elected school board rather than an appointed board.

HB 4499 creates the Chicago Bankruptcy Neutral Evaluation Act. If Chicago or CBOE is unable to meet its financial needs, the act authorizes them to initiate a "neutral evaluation process" and, if necessary, ultimately file for Chapter 9 bankruptcy. Mayor Emanuel oversees both entities.

The bills are modeled after California's bankruptcy bill, Sandack said, which also requires a neutral evaluator. Illinois lawmakers also kept the **City of Detroit's** historic bankruptcy in mind, he added.

In Detroit's Chapter 9 case, bondholders did the “heavy lifting,” said Sandack, referring to the haircut that GO bondholders faced. He stated that the statutory lien included in HB 4499 provides bondholders with more security.

Sandack's previous proposal was deemed “bondholder friendly,” although some investors are reluctant to place all their faith in bond documents, given the little precedent in municipal bankruptcy, market participants said.

Clark Hill's John Schomberg pointed out there is no legal mechanism in Illinois at the moment that precludes the neutral evaluation process detailed in the newest bankruptcy bills. The neutral evaluation process is a form of non-binding mediation. HB 4499 would allow the entities to formally file for bankruptcy if parties couldn't reach agreement in this process.

"The twist here is that if you don't resolve matters through the neutral evaluation process, then the city or CBOE can declare bankruptcy," Schomberg said.

Several Illinois communities "need some options on the table," said the Illinois Municipal League's Brad Cole of the bankruptcy bill. Communities are seeking more options as they go to the bargaining table with unions or lay out their financial projections.

The bills simply provide entities with the bankruptcy option if financial burdens grow unmanageable, said Sandack, adding that the state cannot force any municipality to file for bankruptcy.