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TO: MEMBERS, SENATE GOVERNANCE & FINANCE COMMITTEE

FROM: JOHN HORN, 2011 PRESIDENT

RE: AB 506 (WIECKOWSKI) – SUPPORT, SET FOR HEARING 7.6.11

DATE: JUNE 30, 2011

On behalf of the CDRC, I write to you regarding their SUPPORT position on yo AB 506 relating to local government bankruptcies and the proposed neutral evaluation process. CDRC was organized in 1994 to advocate for fair, accessible, and effective alternative dispute resolution processes before the legislature, state administrative agencies, and the courts. The membership of the CDRC consists of several hundred individual ADR neutrals, together with community dispute resolution organizations and providers of ADR services which, taken together, represent more than 15,000 mediators and arbitrators in California. CDRC positions do not represent the views of any individual member.

CDRC wishes to acknowledge the substantial amendments that the author has made to the bill in response to the technical concerns expressed by CDRC. The amendments improve the bill with respect to formulating a neutral evaluation process in order to avoid costly and time consuming legal bankruptcy proceedings for local governments. CDRC especially acknowledges the amendments that cease to refer to the process as mediation as it is a practice of Alternative Dispute Resolution that has a distinct body of case law and statutory law.

The final major issue that CDRC respectfully had requested that you amend in your measure has been addressed relating to the exception to the Rule of Evidence for Mediator confidentiality. Mediator and Mediation confidentiality are based on core practice principles of this form of ADR. The policy is built on the notion that parties that participate in mediations do so voluntarily and with a high degree of self-determination. In other words, if parties are required to participate rather than opt in to this process, it changes the dynamic. If parties are unhappy with the proceedings for any reason, they may end them at any time. Thus, mediation confidentiality was structured to attract the parties to resolve their conflicts knowing that anything said or written as part of the process is protected by a strict confidentiality exception in the rules of evidence.

CDRC Administration

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CDRC - AB 506 SUPPORT

June 30, 2011

Page 2

CDRC points out to the committee members that you amended your bill to strike the provisions relating to the mediation confidentiality provisions and did structure a separate confidentiality exception to the usual rules of evidence with your specific neutral evaluation process in mind. CDRC has one remaining request for an amendment which your office has indicated that you will accept.

Section 53761(c) requires the neutral evaluator to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict interest. But there is no reference to what the neutral evaluator must do after making this reasonable inquiry.

CDRC proposes adding the following: "The neutral evaluator shall disclose these facts in writing to the parties and if either party objects to the neutral evaluator within fifteen days after receiving the information, the neutral evaluator shall withdraw and another neutral evaluator shall be chosen".

For the reasons stated above, the CDRC supports AB 506. If you have any questions or concerns, please do not hesitate to contact the CDRC Sacramento lobbyist Donne Brownsey at 448.1222.

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