



Senator Marianne Moore

3 State House Station

Augusta, ME 04333-0003

(207) 287-1505

Marianne.Moore@legislature.maine.gov

LD 2009 - An Act to Allow a Political Subdivision to Enter into Federal Bankruptcy Proceedings

Good morning, Senator Baldacci, Representative Salisbury and distinguished members of the Joint Standing Committee on State and Local Government. My name is Marianne Moore. I proudly represent Senate District 6 which includes all of Washington County and 16 Communities in Eastern Hancock County as well.

Thank you for the opportunity to introduce *LD 2009 - An Act to Allow a Political Subdivision to Enter into Federal Bankruptcy Proceedings*. I'd like to start out by explaining what started the conversation regarding this bill and its intent.

BACKGROUND:

This past fall, you might recall the media coverage of the financial situation Washington County found itself in, facing a shortfall of funds and the possibility of having to default on its Tax Anticipation Note (TAN) with Machias Savings Bank.

To give you a little background, it all started with the change in the accounting rules in 2019 whereby carry-over amounts in a department's budget were being shown as revenue, not considering overspent line items; add in the \$6.1 million in American Rescue Plan Act (ARPA) funds in 2021 which were placed in a separate savings account to fund the new Sheriff's Building; complicated when the previous Finance Administration began to use the funds to cover the cash flow shortage, transferring between the savings account and the general fund; throw in the years without financial audits to further skew the actual funds available to run the County. Years of using this 'carry forward' method artificially suppressed the amount of money needed to operate the county, making the impact lower on communities than it should have been to provide services the County was mandated to provide, and depleting all cash resources the County had on hand.

The result? When the 2021 Audit was finally completed, it was estimated the County would be unable to repay its 2025 TAN of \$7.6 million plus interest. When combined with years of overspending nearly \$1.4 million per year on average since 2021 and the year's projected revenue shortfall, Washington County was estimated to be underwater by about \$11 million which led to the decision to ask the voters to approve a Bond for \$11 million. To meet the September Ballot Deadline, the Referendum Article was written and placed on the November Ballot, ultimately failing.

In the meantime, in an effort to help the County Commissioners "find" a solution, my staff researched potential financial "bailouts" I might be able to submit for consideration to meet the September Cloture Date which resulted in the introduction of this bill as another "tool" in their bailout efforts. Our research discovered the U.S. Bankruptcy Code (Title 11), Chapter 9, governs municipal bankruptcy, allowing financially distressed cities, towns, and public agencies (but not states) to reorganize their departments with creditors through court-supervised proceedings, focusing on debt adjustment plans rather than liquidation, a process unique for public entities seeking financial relief while preserving state sovereignty. Research indicates that 30 states permit political subdivisions to file for Chapter 9 relief; Maine does NOT, and this bill seeks to change that.

(I will add, I did submit another bill requesting one-time funding from the State to cover the TAN; however, it was not approved by the Legislative Council.)

I know a lot of financial institutes, including Machias Savings Bank, are concerned about the implications of this bill. I am reminded, on a grander scale, any time a business defaults on installment interest or the principal of a bond or loan, alarm bells go off with its creditors who could force it into bankruptcy. If it's a public company – much like what Maine experienced with the bankruptcy filing of ModivCare, the company that provides non-emergency transportation services across the state – that could cause ripples in governments, stock markets and even entire industries.

But what if it's a municipal government? There have been examples over the years when political subdivisions such as cities or counties had to declare bankruptcy. Cities like Detroit, Michigan, Stockton and San Bernadino in California, and Harrisburg, Pennsylvania, all went through a Chapter 9 bankruptcy, the chapter that is applicable to municipalities.

While it's rare for counties, there have been a few and the largest bankruptcy ever by a county was that of Jefferson County in Alabama in 2011. Saddled with over \$4 billion in debt, a series of events involving corruption, bribery and fraud related to a failed sewer system project led to the county's financial collapse, which is not the case in Washington County.

THE BILL:

As indicated by the title, this bill would allow a Political Subdivision to enter into Federal Bankruptcy Proceedings.

A Political Subdivision is defined as a local, separate legal governmental entity created by a state to exercise specific governmental functions, such as counties, cities, townships, school districts, or special districts (like water or utility districts), operating under state authority for local administration and services. These entities derive their powers from state law and manage powers like taxation or eminent domain at a local level.

As we all know, filing for Bankruptcy is a serious matter and is not something taken lightly. As I mentioned before Title 11, Chapter 9 Bankruptcy is NOT liquidation but rather debt reorganization. To avoid frivolous filings, I attempted to put guardrails in place:

1. The County/Municipality has exhausted all reasonable alternatives to resolving its debt obligations.
2. If the County/Municipality is a participating local district in a plan under Title 5, part 20, that has an unfunded actuarial liability, the County/Municipality has satisfied its portion of the unfunded actuarial liability as determined by the chief executive officer of the Maine Public Employees Retirement System. [NOTE: At the request of Maine PERS, this was added to the amended version of the bill attached to my testimony.]
3. The County/Municipality has been determined to be insolvent by the State Auditor.
4. A majority of the County Commissioners/Municipal Officers have voted to approve the filing of the petition.

While Washington County is not out of the woods yet, they have taken major steps to correct the situation and to prevent this from happening again; however, we continue to receive reports from counties and municipalities that are struggling to make ends meet; therefore, I have decided to move forward with this bill.

Again, filing for Chapter 9 Bankruptcy should not be taken lightly. I have attempted to put the guardrails in place to protect the financial institutions AND the political subdivisions from going into total state receivership.

I ask for your support in passing LD 2009 - An Act to Allow a Political Subdivision to Enter into Federal Bankruptcy Proceedings.

Thank you! I would be happy to answer any questions you may have!

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Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, counties and municipalities are in increasingly difficult financial circumstances due to factors including rapidly rising property valuations and a sharp increase in the cost of living; and

Whereas, it is necessary for this legislation to take effect before the expiration of the 90-day period in order to provide counties and municipalities with an additional means of managing financial obligations as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §939 is enacted to read:

§939. Insolvency

A county is authorized to file a petition for relief under 11 United States Code, chapter 9 if:

1. 4. Exhausted alternatives. The county has exhausted all reasonable alternatives to resolving its debt obligations;

1.2. Unfunded actuarial liability satisfied. If the county is a participating local district in a plan under Title 5, part 20, that has an unfunded actuarial liability, the county has satisfied its portion of the unfunded actuarial liability as determined by the chief executive officer of the Maine Public Employees Retirement System;

32. Determined insolvent. The county has been determined to be insolvent by the State Auditor; and

43. County commissioners approve. A majority of county commissioners, as defined in section 1302, subsection 1, has voted to approve the filing of the petition.

Sec. 2. 30-A MRSA §5705-A is enacted to read:

§5705-A. Insolvency

A municipality is authorized to file a petition for relief under 11 United States Code, chapter 9 if:

1. 4. Exhausted alternatives. The municipality has exhausted all reasonable alternatives to resolving its debt obligations;

2. Unfunded actuarial liability satisfied. If the municipality is a participating local district in a plan under Title 5, part 20, that has an unfunded actuarial liability, the municipality has satisfied its portion of the unfunded actuarial liability as determined by the chief executive officer of the Maine Public Employees Retirement System;

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23. Determined insolvent. The municipality has been determined to be insolvent by the State Auditor; and

34. Municipal officers approve. A majority of municipal officers has voted to approve the filing of the petition.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill authorizes counties and municipalities to enter into federal bankruptcy proceedings upon exhausting all reasonable alternatives to avoid bankruptcy, satisfying its portion of any unfunded actuarial liability, a determination by the State Auditor that the county or municipality is insolvent and approval by the county commissioners or municipal officers.