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Memorandum

To: Sen. Joseph Baldacci, Chair
Rep. Ann Matlack, Chair
Members of the Joint Standing Committee on State and Local Government

From: Stephen Gorden, Chair
MCCA

Date: March 16, 2021

Re: ***LD 434, An Act To Clarify the Bonding Authority of Counties for Capital Maintenance Projects -- Follow-up Information to Committee***

During the public hearing on LD 434, several questions and issues arose about the bill. We have sought to address each of these issues in the memorandum below.

1. **Breakdown of Annual Capital Maintenance Borrowing Authority, by County, under LD 434**

LD 434 would permit each county in Maine to borrow funds for capital maintenance projects without separate voter referendum, up to an established amount set forth in the bill. The formula established in the bill is based on 1/10 of one mil of the statewide property valuation of each county. Based on this formula, the borrowing limitation for each county is noted below.

COUNTY	ORGANIZED MUNICIPALITY	UNORGANIZED TERRITORIES	TOTAL VALUATION	1/10 OF ONE MIL
ANDROSCOGGIN	$ 9,013,650,000		$ 9,013,650,000	$ 901,365,000
AROOSTOOK	$ 4,800,500,000	$ 808,550,000	$ 5,609,050,000	$ 560,905,000
CUMBERLAND	$ 53,139,300,000		$ 53,139,300,000	$ 5,313,930,000
FRANKLIN	$ 4,316,000,000	$ 308,200,000	$ 4,624,200,000	$ 462,420,000
HANCOCK	$ 13,918,900,000	$ 252,350,000	$ 14,171,250,000	$ 1,417,125,000
KENNEBEC	$ 11,786,900,000	$ 6,850,000	$ 11,793,750,000	$ 1,179,375,000
KNOX	$ 7,905,150,000	$ 21,350,000	$ 7,926,500,000	$ 792,650,000
LINCOLN	$ 8,065,400,000	$ 16,700,000	$ 8,082,100,000	$ 808,210,000
OXFORD	$ 7,531,800,000	$ 314,100,000	$ 7,845,900,000	$ 784,590,000
PENOBSCOT	$ 11,625,950,000	$ 397,750,000	$ 12,023,700,000	$ 1,202,370,000
PISCATAQUIS	$ 1,847,450,000	$ 903,900,000	$ 2,751,350,000	$ 275,135,000
SAGADAHOC	$ 5,232,100,000		$ 5,232,100,000	$ 523,210,000
SOMERSET	$ 4,851,300,000	$ 920,400,000	$ 5,771,700,000	$ 577,170,000
WALDO	$ 4,922,300,000	$ 2,300,000	$ 4,924,600,000	$ 492,460,000
WASHINGTON	$ 3,387,650,000	$ 396,300,000	$ 3,783,950,000	$ 378,395,000
YORK	$ 38,444,400,000		$ 38,444,400,000	$ 3,844,440,000
TOTAL	$ 190,788,750,000	$ 4,348,750,000	$ 195,137,500,000	$ 19,513,750,000

2. County Government is analogous to Council-Governed Municipalities, many of whom permit limited borrowing without going out to the voters

During the public hearing, the Maine Municipal Association stated that municipalities must go out to the voters whenever they borrow money. This is only partially correct, and varies from municipality to municipality. For towns with town meeting forms of government, borrowing is generally subject to approval at a town meeting. However, county government in Maine is not conducted pursuant to a “county meeting” in the manner of a “town meeting”; rather, counties in Maine are all governed by county boards of commissioners, which is more analogous to a city or town council. For municipalities with city or town councils, budget decisions rest with the elected representatives, not the voters. And in the case of borrowing, council-governed municipalities commonly have charters that allow for borrowing up to a dollar threshold without the need to go out to the voters. So, to imply that all municipalities conduct town-wide votes for all borrowing is not accurate.

3. Most Maine Counties do not have Charters

During the public hearing, a suggestion was raised that, rather than having legislation passed in Augusta, counties could simply modify their charters to give themselves the ability to borrow limited amounts of funds for capital maintenance projects. It was further noted that this is how municipalities with council forms of government are able to engage in certain borrowing without voter approval. However, this argument overlooks an important point – most counties in Maine do not have charters, hence the only way they could obtain the right to borrow certain amounts without voter approval is with approval from the Maine Legislature. That is why passing a bill on this issue is essential to putting counties on an even footing with municipalities when it comes to local borrowing.

4. County budgets and borrowings have municipal oversight

During the public hearing, there was discussion regarding the extent to which municipalities had oversight with regard to borrowing by counties. The further implication was that, since municipalities send out the property tax bill, the Legislature should exercise caution before allowing county commissioners to engage in limited borrowing without a voter referendum. However, this argument overlooks a critical point – all counties in Maine have budget committees that have an opportunity to participate in all county budget and borrowing decisions, and these committees are comprised of municipal officials in most counties.[1] As a result, if this bill were to pass and counties were allowed to engage in limited capital maintenance borrowing without going out to the voters, county budget committees – comprised of municipal officials in most counties -- would be at the table in every instance. Moreover, it cannot be emphasized enough that county governments in Maine are run by elected officials who must stand before the voters, which is the essence of representative democracy. County commissioners should therefore be trusted to make prudent decisions in the best interests of voters.

5. County residents are able to access county government, even though they may not live in the county seat

During the public hearing, it was mentioned that it is difficult for county residents to engage with the county commissioners because they are located in the county seat, and many residents live in communities outside the county seat. We do not dispute that many county residents do not live in the county seat, but that

[1] Aroostook County, for example, has a budget committee comprised of non-partisan elected officials elected from each county commissioner district in the county.

should not stand as a reason to limit the scope of authority of county commissioners. First, county commissioners are accessible by phone, email, and social media, just like any other elected official in Maine. Second, all county commissioner meetings are publicly noticed and open to the public, just like all other meetings of elected officials in Maine. Third, over the past year, many county commissioner meetings have gone virtual, which helps close any distance gaps and allows county residents to participate in commissioner meetings from their homes or offices. Likewise, some counties – like Aroostook – rotate the physical location of their commissioner meetings to different parts of their county to enhance public access. Finally, the fact that some people do not live in the seat of government is not a reason to limit the authority of the governing body; after all, very few people live in Augusta, our state capitol, yet none of us would dispute the authority or appropriateness of having the Maine Legislature vote on budgets and bonding, only some of which is sent out to the voters. In fact, the Maine Legislature routinely approves bonding without going out to the voters, including borrowing for housing, government facilities, water district loans, and student lending. Only in the limited case of general obligation bonds secured by the full faith and credit of the State are bonds actually sent out to the voters. And this occurs – appropriately – based on principles of representative democracy even though most Mainers do not live in the state capitol.

6. Allowing limited capital maintenance borrowing without a voter referendum will save money.

This is really the most salient point of LD 434. Currently, counties are not able to borrow money for small capital maintenance projects without going out to the voters, which is costly and time-consuming. Hence, counties are incentivized to defer capital maintenance until the condition of county facilities is sufficiently degraded, and the required amount of the borrowing high enough, to warrant the time and expense of going out to the voters. At this point, voters typically approve the bond issue, but the overall cost to county taxpayers is higher than if the county had been able to borrow smaller amounts of money each year -- or so -- to keep their facilities in good working order. By approving LD 434, and allowing counties to borrow more regularly for capital maintenance projects, county taxpayers will save money.

7. Proposed Amendment re Budget Committee Approval

To address the questions raised about the degree of oversight related to bonding decisions that would be permitted under this bill, MCCA remains confident that county commissioners with input from county budget committees will be able to make prudent bonding decisions in the best interest of county decisions, decisions that will save county taxpayers in the long-run. However, because some counties have budget committees that are advisory in nature, we would suggest a modification to the bill that would ensure that approval of a county budget committee must be obtained before any capital maintenance bonding could be approved by a county under this bill. This would not change the basic financial structure for all other financial and budget decision-making within a county, just the decision-making for this limited instance. The modified bill would therefore be amended as follows:

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

§939. Bonding for capital maintenance projects

Notwithstanding any county charter provision to the contrary except as set forth in this section, a county board of commissioners may issue tax-supported bonds, notes or other securities and financial instruments of the county for capital maintenance projects in any year in an amount up to 1/10 of one mill based upon the county's property valuation or in a greater amount if the amount is specified in the county charter or upon approval through a county bond referendum election. ***Any bond, note, security or financial instrument issued by a county under this section must also be approved by the county***

budget committee unless the issuance of such instruments by the county commissioners, without such approval by the county budget committee, is otherwise allowed pursuant to the county charter or has been approved through a county bond referendum election.

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We hope the foregoing information is helpful to the Committee as it evaluates this bill. We also hope that the suggested committee amendment helps address any concerns about the bond approval process under this bill. Once again, we believe this bill represents a prudent fiscal step that will reduce property taxes, and we hope the Committee sees fit to give this bill an "ought to pass as amended" report.

cc: Rep. R. Danny Martin, Sponsor
Commissioner Brian Hobart, Chair, MCCA Legislative Committee
James I. Cohen, Verrill Dana, LLP, MCCA Legislative Counsel