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Research Brief

TO: Senator Donald Olson
FROM: Chuck Burnham, Legislative Analyst
DATE: March 1, 2013
RE: Municipal Bankruptcy Provisions in Alaska Law
LRS Report 13.253

You asked if Alaska law provides for municipal bankruptcies.

Briefly, Alaska law does not specifically authorize or otherwise provide a process by which municipal bankruptcies are allowed. As a result, Alaska is among the 24 states in which municipal bankruptcies are prohibited under provisions of federal law.

Bankruptcies in the United States are governed primarily by federal law at 11 USC 101, et seq. Provisions regarding municipal bankruptcies are delineated at section 109 of that chapter. As one would expect, municipal bankruptcies—known as “Chapter 9” filings—differ from those of private entities because they are political subdivisions of the states, which enjoy a substantial degree of sovereignty under the 10th Amendment and a number of other sections of the U.S. Constitution. Recognizing this, 11 USC 901(c) requires that, among other things, municipalities be specifically authorized under state statute to seek bankruptcy protection. That section reads as follows:

- (c) An entity may be a debtor under chapter 9 of this title if and only if such entity
- (1) is a municipality;
 - (2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;
 - (3) is insolvent;
 - (4) desires to effect a plan to adjust such debts; and
 - (5) (A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter ;

(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(C) is unable to negotiate with creditors because such negotiation is impracticable;
or

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

The National Association of Bond Lawyers compiled a guide to municipal bankruptcy that you may find to be useful at http://www.nabl.org/uploads/cms/documents/municipal_bankruptcy_a_guide_for_public_finance_attorneys.pdf.

We hope this is helpful. If you have questions or need additional information, please let us know.