The original documents are located in Box 79, folder "New York City, November 1975 – July 1976 (6)" of the L. William Seidman Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

December 10, 1975

MEMORANDUM FOR: JIM CONNOR

FROM: JIM CAVANAUGH

SUBJECT: President's Letter to Governor Carey

The draft is fine. However, I have suggested two changes. The change in the second paragraph is mainly one of perception.

I feel quite strongly, however, about the change in the first paragraph where I have substituted "provide" in place of "enable us to supply."

Attachment

THE WHITE HOUSE

WASHINGTON

Dear Hugh:

Thank you for your letter of November 26. It is my judgment that, under your leadership, New York officials, union and financial leaders have now initiated a plan which, if effectively implemented, can return the City to a position of financial solvency. I am pleased that the Congress, in response to my request, is moving swiftly to provide a temporary line of credit to the State of New York to enable us to supply seasonal financing to New York City.

Much effort has been expended on this problem, and I was pleased to work with you and others in developing a realistic approach consistent with the national interest. Although the steps taken in recent days in Albany and Washington will provide resources needed to alleviate the City's financial distress, responsibility to complete the unfinished task of putting the City's financial affairs in order must continue to rest in New York.

My compliments to you, Felix Rohatyn and others on your accomplishments in moving toward a solution of this difficult matter.

Sincerely,

The Honorable Hugh L. Carey
Governor of New York
Albany, New York 12224

NYC 12/75

A BILL

To authorize the Secretary of the Treasury to provide and facilitate seasonal financing for the City of New York.

WHEREAS it is necessary for the City of New York to obtain seasonal financing from time to time because the City's revenues and expenditures, even when in balance on an annual basis, are not received and disbursed at equivalent rates throughout the year; and

WHEREAS the Congress finds that at the present time the City is or may be unable to obtain such seasonal financing from its customary sources; and

WHEREAS the Congress finds that it is necessary to assure such seasonal financing, in order that the City of New York may maintain essential governmental services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "New York City Seasonal Financing Act of 1975".

Section 1. Definitions.

The words and phrases used in the Act have the following meanings:

(a) The terms "City" and "State" mean the City and State of New York, respectively.

(b) The term "Financing Agent" means any agency duly authorized by State law to act on behalf or in the interest of the City with respect to the City's financial affairs.

(c) The term "Secretary" means the Secretary of the Treasury.

Section 2. Loans.

(a) Upon written request of the City or a Financing Agent, the Secretary may make loans to the City or such Financing Agent subject to the provisions of this Act, provided that in the case of loans to a Financing Agent, the City and such Agent shall be jointly and severally liable thereon.

(b) Each such loan shall mature not later than the last day of the fiscal year of the City in which it was made, and shall bear interest at an annual rate determined by the Secretary at the time of the loan, based upon the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such loans, adjusted to the nearest one-eighth of one percentum, plus one percentum per annum.

Section 3. Security for Loans.

In connection with any loan under this Act, the Secretary may require the City and any Financing Agent and, where necessary, the State, to provide such security as he deems appropriate. The Secretary may take such steps as are necessary to realize upon any collateral in which the United States has a security interest pursuant to this section to enforce any claim the United States may have against the City or any

Financing Agent pursuant to this Act. Notwithstanding any other provision of law, the Secretary may withhold any payments from the United States to the City, either directly or through the State, which may be or may become due pursuant to any law and offset such withheld amounts against any claim the Secretary may have against the City or any Financing Agent pursuant to this Act.

Section 4. Limitations and Criteria.

(a) A loan may be made under this Act only if the Secretary determines that there is a reasonable prospect of repayment of the loan in accordance with its terms and conditions. In making the loan, the Secretary may require such terms and conditions as he may deem appropriate to insure repayment. The Secretary is authorized, without regard to Section 8, to agree to any modification, amendment or waiver of any such term or condition as he deems desirable to protect the interests of the United States.

(b) At no time shall the outstanding amount of loans hereunder exceed in the aggregate $2,300,000,000.

(c) No loan shall be provided under this Act unless: (i) the City and all Financing Agents shall have repaid according to their terms all prior loans under this Act which have matured, and (ii) the City and all Financing Agents shall be in compliance with the terms of any such outstanding loans.

Section 5. Remedies.

The remedies of the Secretary prescribed in this Act shall be cumulative and not in limitation of or substitution for any other remedies available to the Secretary or the United States.

Section 6. Funding.

For the purpose of making any loan or the payment of any expenses under this Act, the Secretary is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act are extended to include the making of such loans and payments.

The Secretary is authorized to sell, assign or otherwise transfer any note or other evidence of any such loan to the Federal Financing Bank and, in addition to its other powers, such Bank is authorized to purchase, receive, or otherwise acquire the same.

Section 7. Inspection of Documents.

At any time a request for a loan is pending or a loan is outstanding under this Act, the Secretary is authorized to inspect and copy all accounts, books, records, memoranda, correspondence, and other documents of the City or any Financing Agent relating to its financial affairs.

Section 8. Termination.

The authority of the Secretary to make any loan under this Act terminates on June 30, 1978. Such termination does not affect the carrying out of any transaction entered into pursuant to this Act prior to that date,

or the taking of any action necessary to preserve or protect the interests of the United States arising out of any loan under this Act.

NYC 12/75

SECTION BY SECTION ANALYSIS OF NEW YORK CITY SEASONAL FINANCING ACT OF 1975

SECTION 1. Definitions. This section defines certain terms that are used in the bill. The term "Financing Agent" means any agency authorized by State law to act on behalf of the City with respect to its financial affairs.

SECTION 2. Loans. This section authorizes the Secretary of the Treasury to make loans to the City or a Financing Agent, subject to the provisions of the Act. Loans will mature no later than the last day of the City's fiscal year in which they were issued and will bear interest at a rate of one percent over the cost of the Treasury for comparable borrowings.

SECTION 3. Security for Loans. In connection with any loan, the Secretary may require the City, any Financing Agent and, where necessary, the State, to provide such security as he deems appropriate. The Secretary may take such action as may be necessary to realize upon any collateral to enforce any claim the United States may have against the City or any Financing Agent. Notwithstanding any other provision of law, the Secretary may withhold any payments owing under any law from the United States to the City, either directly or through New York State, and offset such withheld payments against any claim the United States may have under the Act.

SECTION 4. Limitations and Criteria. A loan may be made only if the Secretary determines that there is reasonable prospect of repayment. Loans will have such terms and conditions as may be established by the Secretary to insure repayment. The Secretary may agree to modify any such term or condition. At no time may the outstanding loans under the Act exceed in the aggregate $2.3 billion. No loan will be provided under the Act unless the City and all Financing Agents have repaid in accordance with their terms all loans made under the Act which have matured and unless the City and all Financing Agents are in compliance with the terms of any such outstanding loans.

SECTION 5. Remedies. This section provides that the remedies prescribed in the Act are cumulative and not limitations of or substitutions for any other remedies available to the Secretary or to the United States.

SECTION 6. Funding. This section provides that the Secretary of the Treasury may use the proceeds from the sale of securities under the Second Liberty Bond Act to make any loans under section 2 or any payment of expenses. The Secretary is also authorized to sell any note or other evidence of any such loan to the Federal Financing Bank and such Bank is authorized to purchase the same.

SECTION 7. Inspection of Documents. This section authorizes the Secretary to inspect the books and records of the City and any Financing Agent in connection with loans under the Act.

SECTION 8. Termination of Authority. The authority of the Secretary of the Treasury to enter into any new loans under the Act will terminate on June 30, 1978. Such termination does not affect the carrying out of any transactions entered into pursuant to the Act prior to that date or the taking of any action to preserve or protect the interests of the United States thereunder.

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

MEMORANDUM

December 8, 1975

To: Charlie Leppert
From: Ken Klee
Re: Holtzman Amendments to H.R.10624

Here are three sets of Holtzman amendments to H.R. 10624. The 12/8 draft is the version that will be offered on the Floor with the 12/8 fallback offered if the other set fails.

The 12/8 draft is a revision of the 12/5 draft which we discussed over the phone.

Amendment to H.R. 10624, As Reported

Offered by Ms. Holtzman

Page 3, line 23, beginning immediately after "debtedness", strike out all down through "equitable" on page 4, line 3, and insert in lieu thereof the following:

the payment of interest and principal of which may be guaranteed by the United States in accordance with section 99.

Amendment to H.R. 10624, As Reported

Offered by Ms. Holtzman

Page 2, line 24, strike out "and".

Page 3, strike out the period in line 5 and insert in lieu thereof "; and".

Page 3, immediately after line 5, insert the following new paragraph:

"(10) 'certificate of indebtedness' means certificate issued under section 82 (b) (2), the payment of interest and principal of which may be guaranteed by the United States in accordance with section 99.

12/3 DRAFT

Amendments to H.R. 10624, As Reported

Offered by Ms. Holtzman

Page 23, immediately after line 8, insert the following new sections:

"Sec. 99. Certificates of Indebtedness.--

"(a) Certificates of indebtedness permitted by the court under section 82(b)(2) shall be issued for such consideration as is approved by the court, upon such terms and conditions, and with the highest security and priority over existing obligations, secured or unsecured, as in the particular case may be equitable.

"(b) The guarantee fee for any certificate of indebtedness shall be determined by the court but shall not exceed 3-1/2 per centum per annum of the total principal amount outstanding.

"(c) The Secretary of the Treasury shall be given notice of and shall have the right to appear at any hearing on the issuance of certificates of indebtedness.

"(d) The value of certificates of indebtedness outstanding in a particular case at any one time shall not exceed $2 billion, and the maturity of any certificate of indebtedness issued under this chapter shall not exceed one year.

"(e) If the court finds that any or all certificates of indebtedness in a particular case can be sold without a guarantee by the United States, the court may permit the issuance of such certificates without such guarantee. The limitations and requirements imposed by subsections (b), (c) and (d) shall not apply to such unguaranteed certificates.

"Sec. 99a. Appropriations.-- There are authorized to be appropriated such sums as may be necessary from time to time for payments required as a consequence of the guarantee under this chapter of any certificate of indebtedness.

Page 23, line 9, strike out "99" and insert in lieu thereof "100"

Amendments to H.R. 10624, As Reported

Offered by Ms. Holtzman

Page 2, line 24, strike out "and".

Page 3, strike out the period in line 5 and insert in lieu thereof "; and".

Page 3, immediately after line 5, insert the following new paragraph:

"(10) 'certificate of indebtedness' means certificate issued under section 82(b)(2), which constitutes a bill or note of the issuing county, district, political subdivision, or municipality for the purposes of 12 U.S.C. § 355.

12/8

Amendments to H.R. 10624, As Reported

Offered by Ms. Holtzman

Page 23, immediately after line 8, insert the following new section:

"Sec. 99. Certificates of Indebtedness. -- Certificates of indebtedness permitted by the court under section 82(b)(2) shall constitute the bills or notes of the issuing county, district, political subdivision, or municipality for the purposes of 12 U.S.C. § 355.

Page 23, line 9, strike out "99" and insert in lieu thereof "100".

THE WHITE HOUSE

WASHINGTON

December 9, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: L. WILLIAM SEIDMAN

SUBJECT: Holtzman Amendments to Bankruptcy Act

The EPB Executive Committee, the Domestic Council, and the Counsel's Office have reviewed and unanimously oppose a proposed amendment to the Bankruptcy Act by Representative Holtzman which provides for Federal guarantees of certificates of indebtedness authorized by a Bankruptcy Court.

Insofar as New York City is concerned, the new Seasonal Financing Act makes this provision unnecessary. The loans, under the new Act, are available whether or not the City is in bankruptcy. We are also informed that Chairman Rodino and Representative Edwards, Chairman of the Subcommittee oppose the Holtzman amendment. Strong Administration opposition to the amendment, we believe, would kill it. In our view, no "veto signal" is necessary.

THE WHITE HOUSE

WASHINGTON

December 9, 1975

MEMORANDUM FOR: MAX FRIEDERSDORF

FROM: ED SCHMULTS

Attached are some talking points for the bankruptcy bill. With respect to your call to Jim Buckley, you should emphasize the point made in the second paragraph that New York City will still be eligible for seasonal financial assistance under the recently passed legislation, even if the City goes into bankruptcy. Bill Seidman is checking the attached points with the President and will give you clearance to make the call.

Charlie Leppert should be advised to give the appropriate signal to the House before the Holtzman amendments are considered on the Floor, which is anticipated to be about 1 PM today.

cc: Bill Seidman

The President is deeply concerned about certain provisions of and proposed amendments to H. R. 10624. H. R. 10624 as reported would allow any governmental unit, irrespective of size, to use the procedures provided for thereunder. The President's proposal was carefully restricted only to cities of 1,000,000 and more in population. As has been pointed out unanimously by the leaders of the municipal bond industry, enactment of the legislation without the limitation could have serious adverse effects on the market for state and local bonds.

Of even greater concern are the Holtzman amendments which would allow the court to guarantee debt certificates in amounts up to $2 billion for any city in bankruptcy. These amendments would provide affirmative incentives to bankruptcy since they would make bankruptcy a condition to substantial federal assistance. Moreover, the amendments are not necessary for New York City. If New York City were to require the protection of bankruptcy, the New York City Seasonal Financing Assistance Act would provide the necessary funds. The Administration strongly opposes these amendments.

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

MEMORANDUM

December 8, 1975

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From: Ken Klee
Re: Holtzman Amendments to H.R.10624

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1218 004

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the payment of interest and principal of which may be guaranteed by the United States in accordance with section 99.

1248
Offered

Amendment to H.R. 10624, As Reported

Offered by Ms. Holtzman

Page 2, line 24, strike out "and".

Page 3, strike out the period in line 5 and insert in lieu thereof "; and".

Page 3, immediately after line 5, insert the following new paragraph:

"(10) 'certificate of indebtedness' means certificate issued under section 82 (b) (2), the payment of interest and principal of which may be guaranteed by the United States in accordance with section 99.

Amendments to H.R. 10624, As Reported

Offered by Ms. Holtzman

Page 23, immediately after line 8, insert the following new sections:

"Sec. 99. Certificates of Indebtedness.--

"(a) Certificates of indebtedness permitted by the court under section 82(b)(2) shall be issued for such consideration as is approved by the court, upon such terms and conditions, and with the highest security and priority over existing obligations, secured or unsecured, as in the particular case may be equitable.

"(b) The guarantee fee for any certificate of indebtedness shall be determined by the court but shall not exceed 3-1/2 per centum per annum of the total principal amount outstanding.

"(c) The Secretary of the Treasury shall be given notice of and shall have the right to appear at any hearing on the issuance of certificates of indebtedness.

"(d) The value of certificates of indebtedness outstanding in a particular case at any one time shall not exceed $2 billion, and the maturity of any certificate of indebtedness issued under this chapter shall not exceed one year.

"(e) If the court finds that any or all certificates of indebtedness in a particular case can be sold without a guarantee by the United States, the court may permit the issuance of such certificates without such guarantee. The limitations and requirements imposed by subsections (b), (c) and (d) shall not apply to such unguaranteed certificates.

"Sec. 99a. Appropriations.-- There are authorized to be appropriated such sums as may be necessary from time to time for payments required as a consequence of the guarantee under this chapter of any certificate of indebtedness.

Page 23, line 9, strike out "99" and insert in lieu thereof "100"

Amendments to H.R. 10624, As Reported

Offered by Ms. Holtzman

Page 2, line 24, strike out "and".

Page 3, strike out the period in line 5 and insert in lieu thereof "; and".

Page 3, immediately after line 5, insert the following new paragraph:

"(10) 'certificate of indebtedness' means certificate issued under section 82(b)(2), which constitutes a bill or note of the issuing county, district, political subdivision, or municipality for the purposes of 12 U.S.C. § 355.

12/8: FALLOWS POSITION

Amendments to H.R. 10624, As Reported

Offered by Ms. Holtzman

Page 23, immediately after line 8, insert the following new section:

"Sec. 99. Certificates of Indebtedness. -- Certificates of indebtedness permitted by the court under section 82(b)(2) shall constitute the bills or notes of the issuing county, district, political subdivision, or municipality for the purposes of 12 U.S.C. § 355.

Page 23, line 9, strike out "99" and insert in lieu thereof "100".

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-686

CHAPTER IX BANKRUPTCY REVISION

DECEMBER 1, 1975.—Ordered to be printed

Mr. EDWARDS of California, from the Committee on the Judiciary, submitted the following

REPORT

together with

SEPARATE AND SUPPLEMENTAL VIEWS

[To accompany H.R. 10624]

The Committee on the Judiciary, to whom was referred the bill (H.R. 10624) to revise chapter IX of the Bankruptcy Act, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 4, immediately after line 12, insert the following new subsection:

> (d) DESIGNATION OF JUDGE.—Upon the filing of a petition the chief judge of the court in the district in which the petition is filed shall immediately notify the chief judge of the circuit court of appeals of the circuit in which the district court is located, who shall designate the judge of the district court to conduct the proceedings under this chapter.

Page 4, line 19, strike out the colon and all that follows down through but not including the period in line 25.

Page 5, line 16, strike out "mailing" and insert "publication" in lieu thereof.

Page 7, line 10, insert "as soon as practicable after the filing of the petition" after "published" and before the comma.

Page 8, line 17, strike out "of" and insert "to" in lieu thereof.

Page 9, immediately after line 3, insert the following new subsection:

> (g) RECOVERY OF SET-OFF.—Any set-off which relates to a contract, debt, or obligation of the petitioner and which set-off was effected within four months prior to the filing of the petition, is voidable and recoverable by the petitioner after

hearing on notice. The court may require as a condition to recovery that the petitioner furnish adequate protection for the realization by the person or entity against whom or which recovery is sought of the claim which arises by reason of the recovery.

Page 14, line 16, strike out "or times".

Page 14, line 20, insert "affected by the plan" after "creditors" and before the comma.

Page 16, beginning in line 22, strike out ", if entitled to accept or reject the plan,".

Page 21, line 21, strike out the close quotation mark and the period which follows.

Reasons for Amendments

The first amendment specifies that the Chief Judge of the circuit in which the district in which the petition is filed is located shall designate the judge that will hear the case. For an especially large case, this allows greater flexibility in selection of a judge, for the Chief Judge of the circuit may appoint a judge that is retired, or does not sit in the district in which the petition was filed. The Chief Judge may thus manage the flow of judicial business better, because he may select from any judge in the circuit, depending on the volume of business pending in various parts of the circuit.

The second amendment deletes the proviso found in current section 83(i), which was added in 1946 to overrule *Faitoute Iron and Steel Co.* v. *City of Asbury Park*.[1] Though it is desireable to have a procedure that adjusts the rights of security holders be uniform throughout the country, the Committee feels that the Contracts Clause of the Constitution places such close restrictions on what the States may accomplish through their own composition procedures, that any nonuniformity that might result from the deletion of the restriction would be minimal and would not outweigh the interests of the States in the management of their own fiscal affairs, where they are able to manage effectively without the aid of a Federal municipal adjustments statute.

The third and fourth amendments fix the time within which creditors may object to a petition more precisely than is currently in the bill, and expedite the publishing of notice required by section 85(d). They also expedite the hearing on the petition by preventing any delay in the filing of the list of creditors required by section 85(b) from delaying a hearing on the petition, and the determination of the propriety of the filing.

The fifth amendment conforms language to bankruptcy style.

The sixth amendment allows the petitioner to void and to recover any set-off effected within four months prior to the filing of the petition. The purpose of this amendment is to protect the petitioner from the creditors' race that often occurs before the filing of a petition. Creditors of the petitioner are put on notice that any set-off which they attempt within four months prior to the filing of the petition is voidable and recoverable by the petitioner, and are thereby discouraged from attempting to assert the right of set-off. This subsection accords with section 85(e)(1), which stays set-off after the filing of the petition.

[1] 316 U.S. 502 (1942).

Set-off also may give a creditor an unfair advantage over other creditors, and could subvert the fair and equitable requirement of section 94(b)(1).[2]

The court may require as a condition to recovery that the petitioner provide adequate protection for the realization by the creditor against whom recovery is sought of the claim which arises by reason of the recovery. That is, a creditor that offset amounts owing prior to the filing of the petition would have a claim against the petitioner for the amount of the pre-set-off claim, minus the amount offset. After recovery, the creditor's claim would increase by the amount of the recovery. The court may require that the petitioner protect the increase in that creditor's claim that arose by reason of the recovery. Such protection might be appropriate where the creditor set-off an amount that was held under a compensating balance agreement that was a term of a loan to the petitioner. The compensating balance held by the creditor is essentially collateral for the loan, so that any recovery of set-off by the petitioner under this amendment would amount to use by the petitioner of its creditors' collateral. Such a result is permitted in reorganization cases,[3] but the courts have generally required that the secured creditor be given some protection for the realization by him of the security or its value where the security may, because of its nature, be diminished in value or depleted by the petitioner's use. That is the purpose of the power granted to the court here. In other cases, such as where the creditor is a creditor by virtue of the purchase of the petitioner's securities on the open market for its own portfolio, and is at the same time a depository of the petitioner's funds, recovery of the amount offset would not be a recovery of collateral held by the creditor, and adequate protection of the claim that arises by reason of that recovery might be neither required nor appropriate. The decision in each case is left to the sound discretion of the court.

The seventh amendment is purely technical in nature. It deletes "or times" from the phrase "time or times," as unnecessary, because under Title I of the United States Code, the singular includes the plural.

The eighth amendment delimits the creditors to which the plan and any modifications are to be transmitted. The amendment specifies that the plan and any modification be transmitted only to creditors who are affected by the plan. The phrase added by the amendment was inadvertently omitted in the drafting of the bill. This conforms the language to section 93, which defines who may object to the plan, and to section 92(d) which specifies creditors whose acceptance is not required for confirmation. The change will result in potentially great savings in time and in printing and postage costs.

The ninth amendment deletes a redundant and confusing phrase from section 92(e). No substantive change is intended or accomplished.

The final amendment corrects a printing error in the bill.

Purpose of the Bill

The bill amends Chapter IX of the Bankruptcy Act. Chapter IX provides a procedure for the adjustment of debts of political subdivi-

[2] *Baker* v. *Gold Seal Liquors, Inc.*, 417 U.S. 467 (197).

[3] In re *Yale Express Systems, Inc.*, 370 F.2d 433 (2d Cir. 1966); In re *Bermec Corp.*, 445 F.2d 367 (2d Cir. 1971). See Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974).

sion and public agencies and instrumentalities. The procedure is hopelessly archaic and unworkable for all but the smallest entitles. It has not been amended since 1946. In this time of financial crises of many of the country's cities, most notably New York City, but including others as well, the need for a workable reorganization procedure is vital.

The need for and the purpose of the bill have remained unchanged in the 42 years since the first Municipal Bankruptcy Act was passed. As the Committee on the Judiciary of the House said then:

> The controlling purpose of the bill is to provide a forum where distressed cities, counties, and minor political subdivisions, . . . of their own volition, free from all coercion, may meet with their creditors under the necessary judicial control and assistance in an effort to effect an adjustment of their financial matters upon a plan deemed mutually advantageous.[4]

The Committee that reported the second Municipal Bankruptcy Act explained further:

> This bill is intended to remove an apparent impasse, and the committee believes that it will be welcomed by debtors and creditors. When a municipality or a taxing district is insolvent, the creditors cannot foreclose their mortgage, or cause public property to be sold and the proceeds distributed. They must look to the exercise of the taxing power over a period of years, or, in cooperation with the debtor district, must grant extensions. This often involves reorganization of part or all, of the debt structure, and hinges upon agreement by debtor and creditor, or on the existence of a Federal statute which may force recalcitrant minority creditors into agreement. Otherwise the creditors of a municipality or a taxing district must resort to mandamus proceedings, which have not been adequate remedies. In fact, the trend of recent decisions has been to deny the writ of mandamus wherever sound judicial discretion justifies denial. Hence, creditors have been unable to obtain unjust advantage, but the problem of the municipality or taxing district has remained unsolved. *Christmas* v. *City of Asbury Park* (78 Fed. (2d) 1003). For an embarrassed debtor without the remedy afforded by this bill, the only effective recourse is the repeal of its charter by the State legislature, in which event creditors are generally left without any remedy. *Meriwether* v. *Garrett* (102 U.S. 472, 501).
>
> There is no hope for relief through statutes enacted by the States, because the Constitution forbids the passing of State laws impairing the obligations of existing contracts. Therefore, relief must come from Congress, if at all. . . .
>
> . . . [B]ankruptcy statutes were . . . intended to provide methods whereby insolvent and failing debtors could be relieved of overwhelming burdens and thus be enabled to make a new start under favorable conditions. . . .[5]

[4] H.R. REP. No. 207, 73d Cong., 1st Sess. 1 (1933).
[5] H.R. REP. No. 517, 75th Cong., 1st Sess. 3–4 (1937).

HISTORY OF THE BILL

The first municipal debt provisions of the Bankruptcy Act were enacted as emergency legislation for the relief of distressed minor subdivisions of the states and became effective on May 24, 1934.[6] These provisions were to be operative for a two-year period from that date but this period was later extended to January 1, 1940, by an amendment approved April 10, 1936.[7] The original enactment contained three sections, numbered 78, 79 and 80, and was denominated as Chapter IX. This statute, however, was declared unconstitutional in its entirety by the United States Supreme Court in *Ashton* v. *Cameron County Water Improvement District No. 1*,[8] and it was to overcome the effect of this decision that an amended statute containing sections 81, 82, 83, and 84 was added by the Act of August 16, 1937.[9] Originally the amended statute constituted Chapter X of the Bankruptcy Act. This, however, was changed to Chapter IX by the Chandler Act of June 22, 1938.[10]

Chapter IX was amended again twice in 1940, and once in 1946. It has not been revised or updated since then. The first attempt at a major revision of Chapter IX came in 1970, when Congress established the Commission on the Bankruptcy Laws of the United States, by Public Law 91–354, effective July 24, 1970. Mr. Edwards of California and Mr. Wiggins were appointed by the Speaker to serve on the Commission. It became operational June 1, 1970, and on July 30, 1973, filed its final report with the President, the Congress and the Chief Justice of the United States. The result of the Commission's efforts was introduced by Mr. Edwards and Mr. Wiggins in this Congress as H.R. 31. The National Conference of Bankruptcy Judges also proposed a major revision of the bankruptcy laws. Their bill was also introduced by Mr. Edwards and Mr. Wiggins as H.R. 32. They are both presently before the Subcommittee on Civil and Constitutional Rights.

The Subcommittee has spent much time over the past two years studying and developing ways to modernize the Bankruptcy Act. It expects to complete a major and total revision and report out recommendations and a bill to the full Committee in the spring of next year. A part of its work on the total revision of the Bankruptcy Act has of course been the consideration of a mechanism to manage the financial troubles of a municipality.

It now seemed appropriate, in light of recent developments concerning prospective financial difficulties of some municipalities, to separate one chapter of the bills dealing with a major revision of the Act and deal with it in advance of the rest. This is the chapter on municipal financial adjustments, Chapter IX of the existing Act.

The bill, which the Committee reported out on November 18, 1975, by a recorded vote of 32 ayes, 0 nays, is the product of those years of study on the revision of the Bankruptcy Act in full; of the thoughts of the Commission on the Bankruptcy Laws of the United

[6] 48 Stat. 798.
[7] 49 Stat. 1198.
[8] 298 U.S. 513 (1936).
[9] 50 Stat. 654. The former provisions, however, were not repealed. *See* § 83(h).
[10] Additional Provisions, section 3(a), 52 Stat. 839.

States; of the two bills, H.R. 9926 and H.R. 9998, introduced by Badillo of New York; and the thoughts of the National Conference of Bankruptcy Judges.

Description of the Bill

The bill amends Chapter IX of the Bankruptcy Act to provide a workable procedure so that a municipality of any size that has encountered financial difficulty may work with its creditors to adjust its debts. Though the bill amends the Bankruptcy Act and is proposed under the bankruptcy power,[11] the term "bankruptcy" in its strict sense is really a misnomer for Chapter IX proceedings.

Chapter IX provides essentially for Federal court supervision of a settlement between the petitioner municipality and a majority of its creditors. A municipal unit cannot liquidate its assets to satisfy its creditors totally and finally. Therefore, the primary purpose of a Chapter IX is to allow the municipal unit to continue operating while it adjusts or refinancies creditor claims with minimum (and in many cases, no) loss to its creditors.

Because Chapter IX is a procedural mechanism, most of the changes in the proposed revision center on procedural matters. An effort has been made throughout the drafting of this statute to follow current law as much as possible, in order that the bill not be such a departure from settled principles that the changes would have an unsettling effect on other municipalities and their bondholders.

The bill and the changes proposed from current law may be best understood by a description of what occurs when Chapter IX, as it is proposed to be amended by the bill, is utilized. This section reviews in summary form the steps taken and the process which occurs after the filing of a petition for relief under Chapter IX.

A political subdivision or public agency or instrumentality that is eligible for relief may file a petition for relief under this chapter with a district court in whose jurisdiction it is located. It is eligible if it is not prohibited by State law from filing, is insolvent or unable to meet its debts as they mature, and desires to effect a plan of adjustment of its debts. The requirement of obtaining consent from 51% in amount of its creditors to a plan of adjustment prior to filing a petition for relief that exists in current law has been eliminated. This is perhaps the most major change from current law. It is reflected in three sections of the bill—section 84, which describes eligibility requirements, section 90, which specifies when a plan must be filed, and section 85(b), which specifies when the petitioner must file a list of its creditors. The reason for the change is two-fold. First, as the Commission on the Bankruptcy Laws stated in its Report

> The Commission is of the opinion that [the prior consent] requirement is unwise. It allows the petitioner to submit a fait accompli to the judge, thereby creating substantial pressure on the judge to confirm the plan. It also gives those who would seek to depress the market price of the securities of an eligible petitioner for improper purposes an excuse for doing so.[12]

[11] U.S. Constitution, Art. I, sec 8, cl. 4.

[12] The Commission on the Bankruptcy Laws of the United States, Report, H. Doc. No. 93–137, 93d Cong., 1st Sess. 274 (1973).

The elimination of the requirement also allows Chapter IX relief to a petitioner who is sorely besieged by its creditors, but who is unable to obtain the required consents, perhaps because of recalcitrant bond holders, or because its creditors are holders of bearer bonds and are unknown to the petitioner.

The prior consent requirement worked well when municipal bond refundings were accomplished with the assistance of the Reconstruction Finance Corporation, which bought a large portion of the outstanding bonds at the proposed composition rate directly from their holders, and then voted those bonds in favor of the plan. With one entity in control of such a large block of votes, obtaining the 51% prior consent was not difficult. Now, however, the requirement makes little sense, and prevents a petitioner from seeking the shelter of a bankruptcy court while it attempts to negotiate with its creditors a plan of adjustment. Without that shelter, it is not unlikely that set-offs against a petitioner or other creditor actions, both judicial and otherwise, or actions by its suppliers or employees could prevent the performance of governmental functions. A similar requirement was eliminated from § 323 of Chapter XI in 1958 because it was found to be "unrealistic and has resulted in either a pro forma compliance by the filing of a hastily drafted plan, or the adoption by some judges of extralegal practices permitting the filing of the petition without an accompanying plan. It takes time and careful study to work out a realistic appropriate plan . . ." [13]

The filing of the petition operates as an automatic stay of all actions, judicial or otherwise, and of the commencement or continuation of any action which seeks to enforce a lien against the petitioner, its property, its officers, or its inhabitants. This feature is new as well. It gives the petitioner the breathing spell it may need to get back on its feet financially, and the time it needs to negotiate and develop a plan of adjustment with its creditors.

The filing of a petition also makes unenforceable certain contractual provisions, such as those that terminate or modify, or permit a party to a contract other than the petitioner to terminate or modify, the contract for the reason that the petitioner is insolvent or has filed a petition for relief under the Bankruptcy Act. These clauses, known generally as ipso facto clauses, are often found in the commercial context. Their existence and enforceability may severely hamper a successful reorganization or arrangement proceeding under Chapter X or XI, so they are made unenforceable in those chapters. It is unknown how widespread such clauses are in the municipal context, because they are usually included only when there is some suspicion on the part of one contracting party that the other may become insolvent, and seldom is such an occurrence found in the municipal context. Nevertheless, it is felt that their existence could be detrimental to a successful municipal adjustment, and they are made unenforceable in Chapter IX in the same way as in Chapter X and XI—only if past defaults in performance are cured and adequate assurance of future performance is provided. This gives protection to the other contracting party, who may have entered into the contract relying on the petitioner's credit, which, after a filing, is markedly reduced.

[13] S. Rep. No. 2094, 85th Cong., 2d Sess., 3805 (1958); *see* 8 *Collier, Bankruptcy* 4.06[6], at 390 (14th rev. ed. 1975).

After the filing of the petition, the court must give notice to the petitioner's creditors. The notice is by publication, and by mailing to those creditors whose addresses are known. Notice is also given to the Securities and Exchange Commission, and to the State in which the petitioner is located. The notice to the S.E.C. is designed to allow it to participate in an investor protection role. The municipal bond market is sufficiently interstate in character, involving investors in much the same way that the corporate bond market does, that it is felt that the S.E.C. may have an investor protection role to play in municipal adjustments the same as it does in corporate reorganizations.

The state is formally notified for two reasons. First, because the language of the eligibility section, section 84, allows an entity to file if the state has not prohibited it; and because withdrawal of State consent at any time will terminate the case, it is felt that the State should formally be put on notice so that it may object if it does not wish its subdivisions to proceed under a Chapter IX. Second, if the State does permit the municipality to proceed, the State is notified in order that it may participate with the municipality in formulating and implementing a plan of adjustment in a case in which the petitioner is unable to effect a feasible plan without the State's assistance. The intent is to make the proceeding a cooperative one with the State involved to the extent necessary to make the petitioner's plan success. full.

Any creditor or party in interest may file a complaint within 15 days after the mailing of notice is completed. The court is directed to hear and determine such complaints, to the extent practicable, in a single proceeding, in order to expedite the determination of the propriety of the petition. The grounds for objection to a petition are basically that the petitioner does not meet the eligibility requirement of section 84.

The bill grants the court two powers which a bankruptcy court has under Chapters X and XI, and under section 77, but which had not previously been granted under Chapter IX. The first is the power to permit the petitioner to reject executory contracts. Section 88(c) makes the rejection of an executory contract a breach of the contract as of the date of the petition, giving rise to a claim for damages. A landlord's claim for rejection of a lease of real property is limited, however, to the rent reserved under the lease for the year following surrender of the premises or reentry of the landlord. In some instances, it will be necessary for the petitioner to renegotiate a contract which has been rejected with the approval of the court. Such renegotiation and formulation of a new contract would, of course, have to be in accordance with applicable Federal, State or municipal law. For example, if a collective bargaining agreement had been rejected, applicable law may provide a process or procedure for the renegotiation and formation of a new collective bargaining agreement. A rejection would also be sufficiently similar to a termination of such a contract so that again, applicable law, if any, would apply to the rights of the other contracting party between rejection and conclusion of the bargaining process. For example, if State or other applicable law requires maintenance of terms and conditions of employment existing under a terminated or rejected contract, during the interim period, that applicable law would apply under section 83 to a contract rejected

under the bill. That section does not permit Chapter IX to interfere with or derogate from any State law that regulates the way in which municipalities may execute this governmental function.

The second power the court is given is the power to authorize the petitioner to issue certificates of indebtedness, with such priority and security as the court determines to be equitable. The process of the issuance of certificates of indebtedness is a method which enables a financially embarrassed municipality to enter the private credit market again. The municipality seeks out a private lender who is willing to lend for either a short or long term. Because the petitioner is in a Chapter IX case, few if any lenders would be willing to lend without some assurance of payment. The court can supply that assurance by giving the lender security and priority over existing obligations. Normally, a priority over a previous secured lender might run afoul of the Due Process Clause.[14] But as the Supreme Court explained in the Regional Rail Reorganization Act Cases,[15] by facilitating borrowing to meet current expenses, the court was actually preserving former secured creditors' collateral by preserving the business as a going entity. Thus, there was no actual or effective taking of property prohibited by the Fifth Amendment in giving new security that would prime the former liens of secured creditors. In the municipal context, this reasoning is similarly applicable. While the "business" of government will continue whether it is insolvent or not, without cash to continue to provide essential governmental services, the only asset available for the creditors, the municipality's tax base, may be seriously eroded by flight of the city's businesses and residents. In any case, the requirement that the court may only give security and priority to the extent equitable incorporates this constitutional requirement, and renders it immune from constitutional attack.

The powers of the court are subject to a strict limitation—that no order or decree may in any way interfere with the political or governmental powers of the petitioner, the property or revenue of the petitioner, or any income-producing property. The purpose of this limitation derives from *Ashton* v. *Cameron Water Improvement District No. 1*,[16] which held the first Municipal Bankruptcy Act unconstitutional on the basis of infringement of State sovereignty. This limitation was included in the second Act, and was relied upon in *Bekins* v. *United States*,[17] which upheld the second municipal adjustments statute. The Court quoted extensively from the Committee Report on this point:

> In *Ashton* v. *Cameron County District, supra* the court considered that the provisions of Chapter IX authorizing the bankruptcy court to entertain proceedings for "readjustment of the debts" of "political subdivisions" of a State "might materially restrict its control over its fiscal affairs," and was therefore invalid; that if obligations of States or their political subdivisions might be subjected to the interference con-

[14] *Louisville Joint Stock Land Bank* v. *Radford*, 295 U.S. 555 (1935) declaring first Frazier-Lemke Act unconstitutional); *Wright* v. *Vinton Branch of Mountain Bank*, 300 U.S. 440 (1937) (upholding second Frazier-Lemke Act); *Wright* v. *Union Central Life Ins. Co.*, 311 U.S. 273 (1940).
[15] 419 U.S. 102 (1974).
[16] 298 U.S. 513 (1936).
[17] 304 U.S. 27 (1938).

templated by Chapter IX, they would no longer be "free to manage their own affairs."

In enacting Chapter [IX] the Congress was especially solicitous to afford no ground for this objection. In the report of the Committee on the Judiciary of the House of Representatives, which was adopted by the Senate Committee on the Judiciary, in dealing with the bill proposing to enact Chapter [IX], the subject was carefully considered. The Committee said:

"...

"The Committee on the Judiciary is not unmindful of the sweeping character of the holding of the Supreme Court above referred to [in the *Ashton* case], and believes that H.R. 5969 is not invalid or contrary to the reasoning of the majority opinion. . . .

"The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties. No interference with the fiscal or governmental affairs of a political subdivision is permitted. The taxing agency itself is the only instrumentality which can seek the benefits of the proposed legislation. No involuntary proceedings are allowable, and no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill. . . ."

We are of the opinion that the Committee's points are well taken and that Chapter [IX] is a valid enactment. The statute is carefully drawn so as not to impinge upon the sovereignty of the State. The State retains control of its fiscal affairs.[18]

The Supreme Court and the Courts of Appeals have made it very clear that the jurisdiction of the court "is strictly limited to disapproving or to approving and carrying out a proposed composition."[19] The bill follows these holdings and retains the limitation on the court's power.

During this entire process, the petitioner negotiates with its creditors to develop a plan of adjustment of its debts that meets the statutory requirements. Because of the flexibility of the process under the Bankruptcy Act, there is no limit to the nature of negotiation that the petitioner may undertake, save only that the negotiation be voluntary—the court may not order the petitioner to take any action without its consent. The petitioner remains in control of its own operations at all times. Of course, if the State has deprived the petitioner of certain of its powers, such as under a State law that transfers fiscal management to a State board upon the filing of a petition or upon some other event, then the petitioner is subject to such State control. Neither the Bankruptcy Act nor the court may interfere with the distribution and delegation of power established by State law.

The court, based on the list of creditors filed by the petitioner and on proofs of claims filed by creditors, determines who the petitioner's

[18] *United States* v. *Bekins*, 304 U.S. at 49–51 (footnotes omitted).
[19] *Leco Properties* v. *R. E. Crummer & Co.*, 128 F. 2d 110, 113 (5th Cir. 1942).

creditors are. The court must also designate classes of creditors whose claims are of substantially similar character and the members of which class enjoy substantially similar rights.

The classification is designed to facilitate the negotiation process and the counting of consents to the plan as finally developed. Under current law, two restrictions are put on the classification process—that claims that are payable out of the same source be placed in the same class, and that claims for which security has been pledged be placed in a separate class. This scheme works well for very small entities whose debt structure is simple. But in the case of a large entity with many different sorts of notes, bonds, and trade creditors, the power of the court to classify must be correspondingly expanded and generalized. Indeed, the limits on the present classification scheme could actually prevent proper classification by requiring that too many creditors with different rights be lumped in the same class because their claims are payable out of the same source. What is intended by the classification requirements in the bill is the same general rule that applies in Chapters X and XI, expressed in language drafted by the Commission on Bankruptcy Laws of the United States.[20]

The classification of creditors assists in the negotiation process because it establishes distinct groups with which the petitioner must negotiate in order to arrive at a plan for the adjustment of its debts. In a reorganization proceeding, the debtor usually negotiates with representatives of each class of creditors. To facilitate this purpose, the bill specifically authorizes creditors to appear in the case either in person or by duly authorized attorney, agent or committee. For example, it may be appropriate for bond holders to elect their indenture trustee as their representative if the trustee was not already so designated in the indenture, or for employees who have become creditors of the petitioner in their capacity as employees to elect their collective bargaining representative as their representative for the Chapter IX case, or for pensioners to elect their pension fund trustee as their representative. The creditors' committees that are formed are the usual vehicles for representation of creditors both in court and in the negotiations. The court is permitted to allow compensation of these committees for their actual and necessary expenses incurred in connection with the preparation and execution of the plan, and these expenses become administrative expenses under the priorities section, described below.

The plan of adjustment must be developed and filed with the court, either with the petition or within such time as the court, upon its own motion or upon application of the petitioner, determines. The time fixed by the court supplies the necessary incentives to both sides in the negotiations to arrive at a mutually agreeable plan within a reasonable time. The court, of course, may extend the time, but it is unlikely that the court would tolerate purposeful delay or bad faith negotiation that resulted in delay. The power to extend would undoubtedly be exercised only when it could be shown that progress toward a plan was being made, and more time was necessary to complete the process.

[20] Commission on the Bankruptcy Laws of the United States, Report, H.R. Rep. No. 93–137, 93d Cong., 1st Sess., section 7–303, at 241 (1973).

As soon as practicable after the plan is filed, the court must transmit copies of the plan or a summary of the plan, along with any analysis of the plan, to all of the petitioner's creditors and to all special tax payers affected by the plan. The latter category is derived from current law, and is defined in section 81. A special tax payer is one whose land is subject to a special tax or assessment that is the sole source of revenue used to defray the cost of a local improvement, such as a water, irrigation, levee, or drainage district project. A special tax payer is affected by a plan when the plan proposes to change the assessment on his property disproportionately to any change in the assessment of other property in the district. A general change in all assessments or in the tax rate would not qualify any property holder in the district as a special tax payer affected by the plan.

The bill gives broad discretion to the petitioner and the court in developing and approving the plan. The plan may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire, including the rejection of executory contracts and unexpired leases. The later provisions are governed by the same standards as rejection under section 82(b)(1), described above in terms of the powers of the court. The former provisions, modifying or altering the rights of creditors, refers to the rights of pre-petition creditors, and only to their rights as creditors, not any rights they may have in a different capacity, such as employee, pensioner, or officer or inhabitant of the petitioner. The rights that may be modified include amount, time, and method of payment, and interest on the obligation, and any other rights that may attach to a debt from the petitioner to the creditors. For example, if an employee holds bonds of the petitioner, or is owed back wages, the plan may propose to alter his rights as a creditor, but it could not thereby affect his status as an employee by altering terms or conditions of employment merely because he happened to be a creditor of the petitioner. Any such alteration would have to be accomplished through "such other agreement as the parties may desire," but this need not and most likely would not be effected through the plan.

The petitioner is also permitted to file modifications of the plan with the court at any time before the plan is confirmed. These modifications are transmitted to creditors and to special tax payers the same as the plan.

After the plan is filed and transmitted, but before the date set for confirmation, creditors may file written acceptances or rejections of the plan and any modifications. Only creditors whose claims have not been disallowed and who are materially and adversely affected by the plan may file such acceptances or rejections.

In order for the plan to be confirmed, it must have been accepted by creditors holding at least two-thirds in amount of the claims of each class. The reason for a two-thirds requirement was thoughtfully stated in the Jackson Report of Receivership and Bankruptcy Proceedings in the United States Courts: [21]

> The necessity for vigilance and activity of creditors in ordinary insolvency proceedings is enhanced in [reorganization cases] by the requirement that two-thirds of the creditors shall actively consent to the adoption of a reorganization plan.

[21] S. Doc. No. 268, 74th Cong., 2d sess. 24–25 (1936).

This two-thirds requirement is not two-thirds of the total amount of claims of each class, but is two-thirds in amount of the claims with respect to which an acceptance or rejection has been filed, not including claims owned, held or controlled by the petitioner. This computation method is new.

Another group that is not eligible to vote, and is not included in the computation of the requisite majority, is that group of creditors that is provided for under section 92(d). Under this section, any creditor or class of creditors (1) whose claims are not affected by the plan, (2) if the plan makes provision for the payment of their claims in cash in full, or (3) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class, is not required to consent to the plan. This section provides a method of settling with nonassenting classes. It exists solely to facilitate confirmation of a plan where consents cannot be obtained. It appears in both Chapter X and in section 77. It is by no means constitutionally required. However, its content is constitutionally required, and is defined by the Fifth Amendment Due Process and Just Compensation Clauses. In basic outline, the requirement is that the bankruptcy court may not take property from a creditor without his consent.[22] Since the provision is used only when there is no consent, it must provide for the realization by the creditor of his claim, either in cash in full, or by such other method as will protect his interest, claim or lien against the petitioner or its property. Further definition is difficult. The courts have frequently grappled with this language and its counterpart, the fair and equitable rule. The bill adopts the language of the current Chapter IX; no change is intended from the cases interpreting this standard.

After the filing of the plan and any modifications, the court must set a date for a hearing on confirmation of the plan. This date must be within a reasonable time after the expiration of the time within which the plan many be accepted or rejected. The court notifies all parties entitled to object to the confirmation of the plan of the date of the hearing. These include creditors and special tax payers affected by the plan, and the Securities and Exchange Commission. The addition of the Securities and Exchange Commission is new, and is derived from Chapter X. In this time of nationwide trading in municipal bonds, the Committee feel that the S.E.C. has a legitimate public investor protection role when the rights of securities holders are sought to be altered, even though the S.E.C. does not currently have any role at the time of issue of the securities. A complaint objecting to confirmation must be filed before ten days prior to the hearing.

After the hearing, the court must confirm the plan if it is satisfied of the existence of five conditions: (1) the plan must be fair and equitable, feasible, and must not discriminate unfairly in favor of any creditor or class of creditors; (2) the plan must comply with the provisions of this chapter; (3) all amounts to be paid by the petitioner or

[22] *Louisville Joint Stock Land Bank* v. *Radford*, 295 U.S. 555 (1935) (declaring first Frazier-Lemke Act unconstitutional); *Wright* v. *Vinton Branch of Mountain Bank*, 300 U.S. 440 (1937) (upholding second Frazier-Lemke Act); *Wright* v. *Union Central Life Ins. Co.*, 311 U.S. 273 (1940)); *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974).

by any person for services and expenses in the case or incident to the plan have been fully disclosed and are reasonable; (4) the offer of the plan and its acceptance are in good faith; (5) the petitioner is not prohibited by law from taking any action necessary to be taken by it to carry out the plan. This has been changed from the current law, which requires that the petitioner be authorized by law to take such action. The new requirement is more flexible, and allows the petitioner to proceed without, for example, going to the state legislature for specific authority to perform under the requirements of the plan. The details of these five requirements are explained in the section-by-section analysis. The best interests of creditors test formerly found in Chapter IX is deleted as redundant. The fair and equitable rule in effect incorporates the best interests test, zoth in Chapter X, where it does not appear explicitly, and in Chapter IX, where it has appeared. The bill conforms the Chapter IX language to that in Chapter X.

If the court is satisfied that the plan meets these five requirements, then it must confirm the plan. The confirmation of the plan is binding on all creditors who had timely notice or actual knowledge of the petition or plan, whether or not their claims were allowed, and whether or not they accepted the plan. The plan operates as a discharge of all the petitioner's debts, except those excepted from discharge under the plan, and those whose holders had neither timely notice nor actual knowledge of neither the petition nor the plan.

After confirmation, the petitioner is directed to comply with the terms of the plan, and to take any action necessary to execute the plan. Distribution of the consideration deposited by the petitioner with the disbursing agent is made in accordance with the terms of the plan to those creditors whose claims have been allowed or deemed allowed, and to security holders of record as of the date of the order confirming the plan whose claims have not been disallowed. If participation under the plan requires the deposit of securities or other action, creditors must take such action not later than five years after the date of the order confirming the plan. Creditors that do not are barred from participation under the plan, and the property that was to be distributed to them reverts to the petitioner. The court may retain jurisdiction over the case for as long as it determines is necessary to the successful execution of the plan.

Finally, at any time during the case, the court may dismiss for five different reasons: want of prosecution, failure to propose a plan within the time fixed by the court, failure to have a plan accepted within the time fixed by the court, failure to have the plan confirmed, and where the court has retained jurisdiction after confirmation, default on the terms of the plan, or termination of the plan by reason of the happening of a condition specified in the plan. Voluntary dismissal on the petitioner's own application is always available in a court of equity, after hearing on notice.

If the petitioner has attempted to obtain consents from its creditors to a plan of adjustment outside of Chapter IX, any exchange of securities incident to that attempt may be counted in the computation of acceptances required for confirmation in a case under the chapter.

Section-By-Section Analysis

SECTION 81

Paragraph (1), the definition of claims, is derived from Chapter X, section 106(1). This is a change from current Chapter IX in two ways. First, current Chapter IX uses the term "securities" in Section 82 rather than "claim" as a vehicle for defining claims against the petitioner. This was appropriate in the context in which current Chapter IX was written—for the aid of revenue districts and small municipalities whose debts weer primarily represented by securities. Yet the definition of securities was rather broad as written, and was further broadened by *Poinsett Lumber Co.* v. *Drainage District No. 7*, F. 2d. 270 (8th Cir. 1941), thus rendering any limitation on scope of claims resulting from the definition in section 82 virtually meaningless. That supplies the reason for the second change: the adoption of the Chapter X definition of claims. Rather than use the list in section 82, the Committee has adopted the broad general definition from Chapter X. The Chapter X definition is "sweeping in its scope." *6 Collier, Bankruptcy* § 2.05, at 311 (14th rev. ed. 1975).

> Within its purview is any character of a claim against the debtor or its property . . . whether secured or unsecured, liquidated or unliquidated, fixed or contingent. . . . [I]t should be given a broad construction with respect to claims and creditors in order to dispose of all liabilities of the debtor. . . .

6 Collier, *supra*, at 312–13. It includes as well claims arising out of the rejection of executory contracts under section 88(c).

Paragraph (2) defines court as the court of bankruptcy in which the case is pending, or the judge of that court. This incorporates the definition in section 1(10), which defines court of bankruptcy as the United States District Court, and follows the form of the definition in section 1(9), which defines court to include the judge of the court of bankruptcy. This definition is necessary to make clear that a case under Chapter IX is to be conducted in the district court, before a district judge, rather than before a referee in bankruptcy. *See* section 87, *infra*, which provides for special reference to a bankruptcy referee.

Paragraph (3) defines creditor as the holder of a claim. This includes, where applicable, the United States, a State or a subdivision of a State. The language in section 82, paragraph 5, that included the United States has been generalized and placed in the definition of creditor, and States and their subdivisions have been included. No change is intended from current law under which a government agency may purchase numerous claims for less than face value and then vote those securities at full face value. *West Coast Life Insurance Co.* v. *Merced Irr. Dist.*, 114 F. 2d 654 (9th Cir. 1940), *cert. denied* 311 U.S. 718 (1941). (Reconstruction Finance Corporation financed refunding of petitioner's debt by purchasing securities from former holders and voting them in support of plan which proposed to

pay both the R.F.C. and the security holders who did not sell to the R.F.C. the same amount that the R.F.C. had paid for its holdings.) In the corporate context, a creditor who acquired a security at less than face value is still a creditor to the full amount of the obligation. No reason is apparent why a different result should obtain in Chapter IX. Language is found in current Chapter IX, section 82, which makes this explicit, but is deleted in this bill as unnecessary.

Paragraph (4) defines claim affected by the plan as a claim as to which the rights of its holder are proposed to be materially and adversely adjusted or modified. This paragraph is derived from current section 82, paragraph 5. The term "adversely" is added to conform the language to that used in Chapters X and XI (*See* sections 107, 308). By analogy to "claim affected by the plan" and to sections 107 and 308, "creditor affected by the plan" as used throughout the bill has the same meaning—one whose claim is proposed to be materially and adversely adjusted or modified by the plan.

Paragraph (5) defines debt as a claim allowable under section 88(a). This definition is primarily for convenience, equating debt and claim, as defined. However, the phrase "allowable under section 88(a)" does potentially limit the definition. The broad definition of claim, and the broad allowability rules of section 88(a) make this limitation more theoretical than real. To the extent that it exists, it is a limitation on the claims which may be dealt with by the plan, *see* section 91.

Paragraph (6) defines petitioner for convenience only. No substantive or limiting result is intended.

Paragraph (7) defines plan for convenience only. It makes clear that any reference to a plan is to a plan filed under this chapter.

Paragraphs (8) and (9) define special tax payer affected by the plan. They are derived from section 83(a), paragraph 2, of the current law, and are included to provide continuity with that law. The purpose of their inclusion at all in a case under this chapter is to protect their rights as tax payers against a change without a hearing in the assessed valuation of their land. A special tax payer is one who pays a special tax, that is, a tax the proceeds of which are the sole source of payment of a bond issue. This form of financing was common prior to the first municipal bankruptcy act, and the inclusion of a provision for special tax payers was to meet that need. The financing was done in connection with irrigation, drainage, or other sorts of districts, where the local improvement that was financed by the bond issue benefited the land served by the district. That is why the revenue for their repayment was derived from a tax based on the value of the land. Under the definition, a special tax payer is affected by the plan only if the plan proposes to change the assessed value of his land out of proportion to any other changes in assessed value proposed by the plan generally for the owners of land liable for the special tax.

SECTION 82

Section 82 delimits the powers and the jurisdiction of the court in a Chapter IX case. Subsection (a), derived from § 81 of the current law, gives the court in which the petition is filed exclusive original subject matter jurisdiction for the adjustment of the petitioner's debts, that is, exclusive original jurisdiction over Chapter IX cases. The term "original" is inserted to make clear that the jurisdiction of the court is exclusive only with respect to original jurisdiction; the apellate procedures defined in section 24 of the Bankruptcy Act are not disturbed. Matters arising in a Chapter IX case are appealable to the courts of appeal and to the Supreme Court, the same as in any other chapter case. The court in which the petition is filed is also given exclusive personal jurisdiction over the petitioner and its property, wherever located, for the purposes of this chapter. This restates prior case law, *Poinsett Lumber & Mfg. Co.* v. *Drainage Dist. No. 7*, 119 F.2d 270, 272 (8th Cir. 1941) ("Upon the approval of the debtor's petition as properly filed the resources of the debtor come within the exclusive jurisdiction of the bankruptcy court."). This does not mean that the court has exclusive jurisdiction over the petitioner with respect to all cases, but rather only for the purposes of this chapter. That might include such matters as disputes over property subject to a lien, or disputes concerning claims against the petitioner that could be dealt with under Chapter IX. *5 Collier, Bankruptcy* § 81.10, at 1572 (14th rev. ed. 1975) (" . . . [T]he resources of the debtor come within the exclusive jurisdiction of the bankruptcy court. That court has exclusive and nondelegable control over the administration of the debtor's estate within the terms of Chapter IX, and ordinarily, therefore, the court is the proper place to litigate and adjudicate claims against the debtor."). The language of this subdivision is virtually identical to that of § 111 (Chapter X) and § 311 (Chapter XI) of the present Act.

Subsection (b) grants the court powers similar to those granted to the reorganization court in sections 77(b), (c)(3); 116(1), (2); and 313(1) and 344—to permit the rejection of executory contracts, and the issuance of certificates of indebtedness after hearing on notice. *See Texas Importing Co.* v. *Banco Popular de Puerto Rico*, 360 F.2d 582 (5th Cir. 1966). The powers designated here are considered necessary to the continued functioning and subsequent rehabilitation of the petitioner. Accordingly, the language of subparagraph (1) is broad in scope. See generally, Countryman, Executory Contracts in Bankruptcy: Part II, 58 Minn. L. Rev. 479 (1974). Certificates of indebtedness are common in debtor-relief cases, see. e.g., In Re Third Avenue Transit Corp., 198 F.2d 703 (2d Cir. 1952); In Re Prima Co., 88 F.2d 785 (7th Cir. 1937); *8 Collier, Bankruptcy* § 6.40(4), at 970 (14th rev. ed. 1975) ("Section 344 is usually resorted to where the business is being operated, but it essentially contemplate transactions of an unusual character, although not actually limited to such."), as is the rejection of executory contracts. The abundant case law surrounding these two provisions is meant to be incorporated into Chapter IX. For example, the court may permit the rejection only after hearing on notice, *Texas Importing*, supra, and only for the reasons that have been established by case law under Chapters X and XI. In summary, these reasons are that the contract is onerous and burdensome, and its rejection will aid the petitioner in its reorganization and rehabilitation attempt. With respect to labor contracts, the courts have taken a slightly different position on the grounds for rejection, requiring a showing of a greater burden on the petitioner. *Shopmen's Local No. 455* v. *Kevin Steel Products, Inc.*, *1 Bankr. Ct. Dec.* 1432 (2d Cir. 7-24-75); *Brotherhood of Railway Employees* v. *REA Express, Inc.*,

1 Bankr. Ct. Dec. 1237 (5th Cir. 8-27-75); In Re Overseas Airways, 238 F. Supp. 359 (E.D. N.Y. 1965).

Under paragraph (3), the court may also exercise such other powers as are not inconsistent with the provisions of Chapter IX. This paragraph supplements section 2 of the Bankruptcy Act by giving the court those powers not mentioned in section 2 yet necessary to the disposition of cases under Chapter. IX

Subsection (c) repeats and broadens the limitation in section 83(c), paragraph 1, of current law on the power granted to the court under subsection (b) and elsewhere in the chapter, by prohibiting any interference by the court, by any order or decree, in any of the political or governmental powers of the petitioner; any of the property or revenues of the petitioner, or any income producing property of the petitioner, or which is used or enjoyed by the petitioner. The Committee feels that this limitation is required by *Ashton* v. *Cameron Water Imp. Dist. No. 1*, 298 U.S. 513 (1936), and *United States* v. *Bekins*, 304 U.S. 27, *rehearing denied*, 304 U.S. 589 (1938), which defined the limits of Congress' power under the bankruptcy clause, and the extent to which Congress may grant power to the courts to assist in the management of the affairs of a distressed municipality.

The changes in this subsection are two; first, the phrase "unless the petitioner consents" is added in order to codify the result of the case of *Leco Properties* v. *R. E. Crummer*, 128 F. 2d 110 (5th Cir. 1942), in which a municipality that had failed to have a composition confirmed was ordered, and consented to, leave the amount deposited with the court for distribution under the plan with the court so that it might distribute that portion to creditors in an orderly fashion; and the case of *Ware* v. *R. E. Crummer & Co.*, 128 F. 2d 114 (5th Cir.) *cert. denied*, 317 U.S. 644 (1942), in which the Court of Appeals reversed a similar order where the petitioner did not consent. The phrase is not intended, however, to overrule the result of *Spellings* v. *Dewey*, 122 F. 2d 652 (8th Cir. 1941), in which the Court of Appeals reversed the District court's injunction against the election of Drainage District Commissioners upon the allegation of the incumbent Commissioners that the challengers would not execute the proposed plan, even though the incumbent Commissioners were, in effect, the District itself for the purpose of determining whether the petitioner consented to an order of the court.

The second change broadens the limitation by eliminating the phrase "necessary for essential governmental services" from the second paragraph of the subsection. The phrase was deleted for three reasons. First, the words "necessary" and "essential" were conducive to litigation. Second, and more importantly, the Supreme Court in *New York* v. *United States*, 326 U.S. 572 (1946), abolished the distinction between governmental and proprietary functions. Thus, it is now appropriate to prohibit interference by the court in any of the municipalities' functions, for they are all equally governmental functions.

Third, the limitation, on interference with any income-producing property, seems to deprive the qualification "essential for necessary governmental services" of any effect. Under one, the court is denied the power to interfere with property necessary for governmental services; under the other, the court may not interfere with any income-producing property. There is conceivably a third category of property, non-

income-producing property that is not necessary for essential governmental services, but the existence of that category does not warrant the potential for litigation that exists with the old language. In any case, no constitutional problem is anticipated, because the power of the court to interfere with the petitioner is further limited by the change.

The phrase "any income-producing property" appears broad. It is copies from current law without qualification, because there exists some ambiguity in its meaning. Rather than attempting to define it to eliminate the ambiguity, it was left as is so that the courts might interpret it as they have done in the past consistent with the purposes of Chapter IX and the powers of the court.

SECTION 83

The purpose of section 83, copied from present section 83(i), is the same as that of section 82(c). It is to prevent the statute or the court from interfering with the power constitutionally reserved to the State by the Tenth Amendment. This section makes it clear that the chapter may not be construed to limit or impair the power of the State to control, by legislation or otherwise, any municipality, political subdivision or public agency or instrumentality in the exercise of its governmental functions. Any State law that governs municipalities or regulates the way in which they may conduct their affairs controls in all cases. Likewise, any State agency that has been given control over any of the affairs of a municipality will continue to control the municipality in the same way, in spite of a Chapter IX petition.

The proviso in current section 83(i), retained here, prohibiting state composition procedures was enacted in response to, and overruled the holding of the Supreme Court in, *Faitoute Iron & Steel Co.* v. *City of Asbury Park*, 316 U.S. 502 (1942). In that case, the court upheld a New Jersey statute that permitted a binding composition of a municipality's debts upon the acceptance of a plan by 85% of the municipality's creditors. The composition dealt only with unsecured obligations, and the state statute prohibited reduction in the principal amount of the outstanding obligations. The Court refused to go beyond the facts of the case, holding only that the Contracts Clause of the Constitution did not prohibit that particular composition.

The proviso is retained for the same reason it was enacted by Congress:

> State adjustment acts have been held to be valid, but a bankruptcy law under which the bondholders of a municipality are required to surrender or cancel their obligations should be uniform throughout the [United] States, as the bonds of almost every municipality are widely held. Only under a Federal law should a creditor be forced to accept such an adjustment without his consent. H.R. REP. No. 2246, 79th Cong., 2d Sess. 4 (1946).

SECTION 84

Section 84 is derived in part from current section 81. It sets the eligibility requirements for relief under Chapter IX. The entity that files must be a political subdivision or public agency or public instrumen-

tality of a State. This is not meant to be limiting language, but rather is meant to be a description of general categories that cover all of the various entities now listed in section 81 of current law. The bill also omits any limiting reference to the manner by which the indebtness of the entity is payable. The intention of these two changes is to broaden the applicability of Chapter IX as much as possible. The entity must not be prohibited from filing by state law. The reference to a prohibition by state law recognizes a limitation frequently expressed in the cases and literature. *Faitoute Iron & Steel Co.* v. *City of Asbury Park*, 316 U.S. 502 (1942); *5 Collier* 81.04 (1964); Biern, *A Survey of Municipal Bankruptcy Law and procedure*, *38 Brooklyn L. Rev.* 478. 485–87 (1971). It must also be insolvent, or unable to meet its debts as they mature, and the entity must desire to effect a plan to adjust its debts. The decision on whether a petitioner meets these requirements will be made by the court after the filing of a complaint and a hearing after notice, under section 85(a). These last two requirements are simple and, except for insolvency or inability to meet debts, are easily provable in most cases. They are derived from current section 83(a), paragraph 1.

SECTION 85

Section 85 governs the filing of the petition and all events that are triggered by the filing. Subsection (a) describes who may file a petition. It is derived from current section 83(a), paragraph 1. The petitioner itself must file, unless control of the petitioner has been assumed by some state agency. In the case of an entity with no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of the district. The petition must allege the facts that make the entity eligible under section 84 for relief under this chapter. Any party in interest may file a complaint objecting to the filing of the petition at any time up to 15 days after the completion of the mailing of the notice required by subsection (d). The deadline obviates the problem of dilatory creditors who might challenge a petition long after negotiations for a plan have been concluded. The possibility for relay exists here, but the court is given adequate flexibility to expedite matters. For example, if the petitioner cannot identify all of its creditors reasonably soon, the court may hear and determine a number of complaints that are filed soon after the petition is filed before waiting for the completion of the mailing of notice. Creditors would still be allowed to come in and object to the petition up to 15 days after the mailing of notice is completed, even though the court may have heard and determined earlier complaints on the same subject. Due Process would appear to require that every creditor that wishes be allowed his day in court. Nevertheless, the early determination by the court that the petition meets certain requirements, even if only a preliminary determination on early complaints, and not res judicata as to complaints by later identified creditors, could settle the propriety of the petition adequately to enable the court to proceed to administer the case as needed. In order to expedite matters further, the court might bar a complaint by a creditor that was filed more than fifteen days after the mailing of notice to that creditor, even though the mailing to all creditors had not been completed at the time of the filing of the

complaint. Of course, the court would be bound by all Due Process requirements, and may, if it decided to pursue such a course, enclose in the notice to each creditor a notice of the date by which a complaint by that creditor against the filing of the petition must be filed.

The grounds for a complaint may generally include only a lack of eligibility under section 84 of the petitioner to file, though there may be other grounds that a court of equity might hear. The section 84 requirements include: insolvency or inability to meet debts as they mature; lack of a state prohibition against seeking relief under the Act; the intention of the petitioner to effect a plan of adjustment. Any lack of good faith on the petitioner's part in filing the petition would undoubtedly be tested under this last requirement. To the extent practicable, the court must hear and determine all complaints in a single proceeding. For example, if several complaints allege that the petitioner is not insolvent or unable to meet its debts, it might be appropriate for the court to hear all such complaints in a single proceeding. More specificity is not stated in the bill and the implementation of this mandate, which is intended to help the court expedite the hearings on various complaints, is left to the sound discretion of the court.

Subsection (b), derived from present section 83(a), paragraphs 1 and 2, requires that the petitioner file with its petition a list of all of its creditors. If it is not practicable for the petitioner to file the list with its petition, for example, if the petitioner's creditors are primarily holders of bearer bonds whose whereabouts or even whose identities are unknown, then the petitioner may file the list at such later time as the court, upon application of the petitioner, fixes. If the petitioner does not apply to the court to fix a time, then the court may fix a time on its own motion. Of course, it is always within the power of the court to deny the petitioner's application on the grounds that the petitioner's reason for not filing the list with the petition is inadequate. As the author of the Proposed Bankruptcy Rules and Official Forms under Chapter IX, the Advisory Committee on Bankruptcy Rules of the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, said in the note accompanying proposed Rule 9–7, dealing with the filing of the list of creditors:

> [D]ue regard must be given to the constitutional limits placed on the court. Bearer bonds would be included on the list required to be filed . . . although the names of the holders are unknown. By so listing, the claim would be deemed filed and allowed [under section 88(a)]. . . . The holder thereof would thus be entitled to participate in any distribution without filing a claim. One could, however, file a claim if he desired.

The court, of course, remains under the Fifth Amendment Due Process requirement that governs whether the plan is binding, as is recognized in sections 95(a) and 95(b)(2)(B).

The petition and any accompanying papers, such as the list or the plan, are to be filed with a court in a district in which the petitioner is located. This is drawn from section 83(a), paragraph 1. Generally, a petitioner will be located in only one district. In some cases, however, where the petitioner's jurisdiction covers a very large geographical area, it may be located in two or more districts. The venue provision

in this subsection is designed to afford such a petitioner the flexibility to file in the most appropriate district, usually the district in which the petitioner's executive's office is located. However, this broad venue provision is not intended to supersede the transfer provisions otherwise found in the Judicial Code or the inherent power of a court to require filing in a different district under the doctrine of forum non conveniens. The filing fee, set at $100, is the same as under present section 83(a), paragraph 1.

The notice provisions of the bill are carried forward substantially intact from current law, section 83(b). Added are the requirements of formal notice to the State in which the petitioner is located and to the Securities and Exchange Commission. The notice must be published as soon as practicable after the filing of the list of creditors, at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other papers having a general circulation among bond dealers and bond holders as may be designated by the court. The court is given authority to require additional publication where the circumstances warrant. The intent is to meet the constitutional notice requirement set out by the Supreme Court in *Mullane* v. *Central Hanover Bank*, 339 U.S. 306 (1950), and *Eisen* v. *Carlisle-Jacquelin*, 94 S. Ct. 2140 (1974). This requirement assumes even greater importance in light of the automatic stay provision of subsection (e). To satisfy the constitutional standard, the bill requires that a copy of the notice be mailed to each of the petitioner's creditors included on the list of creditors required by subsection (b). If a creditor is included in the list, but his address is not given in the list, and his address cannot with reasonable diligence be ascertained, then the court may, if it so determines, order the mailing of notice to that creditor addressed as the court may prescribe. The notice must include not only the fact that a case has been filed, but also a notice that the creditor will receive no further notice unless he files a request with the court, setting forth the nature of his claim, and his name and address. If he files such a request, the court must notify him of all other matters in which he has a direct and substantial interest. The petitioner bears all cost of notice, unless the court for good cause determines that the cost of notice in a particular instance should be borne by another party.

Subsection (e) provides that the filing of a petition under this chapter operates as an automatic stay of all actions, judicial or otherwise, against the petitioner, its property, its officers, or its inhabitants, which seek to enforce a claim against the petitioner, or a lein on the petitioner's property. The stay provision is derived from section 83(c), paragraph 1, but, in accordance with the changes made by the Rules of Bankruptcy Procedure in Chapters X, XI and XII, Rules 10–601, 11–44, 12–43, and by Proposed Chapter IX Rule 9–4, the petitioner need not take affirmative action to obtain the benefit of the stay. The stay is made automatic on the filing of the petition. The automatic stay prevents the creditors' race that often ensures when a debtor fails to meet its obligation, and it requires that all actions against the petitioner be handled in the bankruptcy court, where they can be controlled and harmonized. The automatic stay provision of the subsection is very broad, including a stay of any action that allows a creditor to obtain any portion of the claim due him, other than under the plan,

or with the petitioner's consent. It includes a stay of all set-offs and counterclaims relating to any debt, contract or obligation of the petitioner. *Baker* v. *Gold Seal Liquors, Inc.*, 417 U.S. 467 (1974), supplies the authority and the rationale for such a provision. The Court's held that the right to set-off subverted the twin policy goals of railroad reorganization, rehabilitation of a going enterprise, and fair and equitable distribution to creditors:

> The problem of the bankruptcy Reorganization Court is somewhat different. Liquidation is not the objective. Rather, the aim is by financial restructuring to put back into operation a going concern. That entails two basic considerations: First is the collection of amounts owed the bankrupt to keep its cash inflow sufficient for operating purposes, at least at the survival levels. The second is to design a plan which creditors and other claimants will approve, which will pass scrutiny of the Interstate Commerce Commission, which will meet the fair-and-equitable standards required by the Act for court approval, and which will preserve an ongoing railroad in the public interest. 417 U.S., at 470–71 (footnotes omitted).

The Court's concern in *Baker* with the "fair and equitable" standard is applicable to Chapter IX as well, section 94(b)(1), and the public interest in preserving a viable operating entity is paramount.

The stay continues in force until the court terminates, modifies, annuls or conditions it, or the property subject to the lien which is sought to be enforced, is, with the approval of the court, transferred or abandoned. Anyone subject to the stay may seek relief by filing a complaint with the court, and the court may, for cause shown, after hearing on notice, terminate, annul, modify or condition the stay. The "cause shown" requirement is derived from section 116 of Chapter X and has an abundant case law behind it. Because of the broad nature of the automatic stay, the petitioner should inform the court as soon as possible of those actions with respect to which the petitioner will consent to relief from the stay, in order to expedite and perhaps obviate the need for complaints for relief.

The fourth paragraph also permits the stay of other actions or proceedings, the commencement or continuation of which would be detrimental to the purposes of Chapter IX, such as attempting to enforce a claim against the petitioner by a judicial action or by set-off or counter-claim against a wholly-owned or public corporation of the petitioner that is, at least for financial purposes, independent, and not liable for the petitioner's obligations. The petitioner, when it seeks this additional stay, is not required to give security as a condtion to such a stay, as would otherwse be required by Federal Rule of Civil Procedure 65(c). The breadth of this provision is not intended to overrule other, specific Federal legislation that prohibits Federal courts from issuing injunctions, such as the Norris-LaGuardia Act.

Subsection (f) makes unenforceable certain contractual provisions, commonly called "ipso facto" or "bankruptcy" clauses, or applicable nonbankruptcy laws that invalidate or allow termination of contracts or leases upon the insolvency of one of the parties to the contract. The purpose of these clauses is to protect the solvent contracting party from a decline in the quality of the other party's credit when the contract establishes a creditor/debtor relationship. The purpose of

this section, derived in part from section 70(b) of the Bankruptcy Act, is to allow the petitioner to continue to operate in spite of the filing of the petition, the consequent decline in the petitioner's credit, and the possible cessation of delivery of services or supplies by any of the petitioner's suppliers. This subsection requires that past defaults in performance be cured, and adequate assurance of future performance be provided before the petitioner may insist on further performance of the contract. "Adequate assurance" is adopted from section 2–609(1) of the Uniform Commercial Code. What constitutes "adequate assurance" must be determined by the facts of each case, but may, for example, in the case of a lease, be simply the security or rental deposit under the lease. In addition, any credit extended under the contract after the filing of the petition would be accorded a first priority under section 89(1). These two requirements, adequate assurance and first priority, substitute for the ipso facto clause in assuring the solvent contracting party of the other party's ability to perform, and prevent the continued performance under the contract by the petitioner from becoming burdensome to the solvent party.

SECTION 86

This section governs the appearance of creditors before the court, and in negotiations with the petitioner. Subsection (a) permits any creditor to appear in person or by a duly authorized agent, attorney or committee. This is derived from section 83(a), paragraph 5. In Chapter cases, it usually happens that creditors of the same class elect committees to represent them for most purposes. This codifies that result. The subsection requires, however, financial disclosure by those committees and those who represent the committees, such as the committee's attorney or agent. This is routinely done in cases filed under other chapters, and is incorporated here. It is not intended that any attorney representing anyone in the case disclose his compensation to the court, and that the court have an opportunity to rule on it. In a large Chapter IX case, the paperwork attendant upon such a result would effectively grind the proceedings to a halt. The general language of this subsection is intended merely as a guide to the courts and an indication that the courts should apply the same standards currently used in other chapters for disclosure of representation of and compensation by the petitioner and official creditor representatives.

Subsection (b) relates to multiple compensation by both the petitioner and one or more creditors in the promotion of the plan. It is meant to codify the result of the Supreme Court case of *American Mutual Life Ins. Co.* v. *City of Avon Park*, 311 U.S. 138 (1940). The language is derived from section 83(e), paragraphs 1 and 2, and, with style changes, is modernized and streamlined. The substantive intent is the same as under current law. It is not intended to upset other arrangements, whereby a person receives compensation from both the petitioner and one of its creditors, not in return for promoting the plan, but rather as part of an ordinary employment relationship outside of the Chapter IX case.

SECTION 87

Section 87 of the bill deals with administrative matters in the case. Subsection (a) allows special reference of various matters to a referee in bankruptcy. The reference provision is derived from section 83(b) of the present law, with two changes. First, references may be made only to referees in bankruptcy, rather than to referees or special masters. The bankruptcy bench has grown both in numbers and expertise since the current law was enacted in 1937, such that it is now preferable to refer any special matters to referees who are familiar with and experienced in the conduct and the problems of bankruptcy proceedings. The second change adopts a sentence and the substance of form of Federal Rule of Civil Procedure 53(b) that reference shall be the exception and not the rule. Though a general test is set out in the subsection for when a judge may refer a special matter, the addition of this sentence makes it clear that the judge should make every effort to hear each proceeding himself, and not rely on a referee in his district to handle most of the factual matters that arise in a Chapter IX case. The section retains the current limitation that reference shall be only for special findings of fact, not of law, and that a general reference of the case, as is done in Chapter XI or in straight liquidation cases, shall not be made.

Subsection (b) allows the court to grant reasonable compensation for the actual and necessary expenses incurred in connection with the case, including services that relate to developing, obtaining confirmation of, and executing the plan. This is normally done in other chapter cases, and the court will undoubtedly rely on the broad experience and case law in connection with cases under those chapters. The section, derived from current section 83(b), paragraph 4, with only style changes (and the elimination of allowance of compensation for special masters in conformity with the change made in subsection (a)), is directed at the court's allowing compensation by the petitioner as an administrative expense for the services covered. It is not intended that the court should pass on all fees paid by anyone incident to the case. Where private parties and their attorneys or agents arrive at a private compensation agreement, the court should not upset it, for it does not bear in any way on the plan of adjustment or on the petitioner's expenses. In accordance with the limitation imposed by section 82(c), the court may only allow the compensation—it may not be assessed against the petitioner unless the petitioner has made provision for the payment of those expenses in the plan.

Subdivision (c) is new, but is derived from Rule of Bankruptcy Procedure 117(b), which recognizes the appropriateness of joint administration in certain kinds of cases, for example, Chapter IX filings of both a municipality and one of its wholly-owned public, but independent, corporations. Joint administration has as its objective the joint handling of purely administrative matters in order to expedite the cases. Joint administration should be distinguished from consolidation, which is neither prohibited nor authorized by this subsection. The appropriateness of consolidation, which results in a pooling of the assets, revenues, liabilities and expenses of the two entities,

depends upon substantive considerations which affect the substantive rights of the creditors of the different entities. See Seligson & Mandell, Multi-Debtor Petitions—Consolidation of Debtors and Due Process of Law, 73 Com. L. J. 341 (1968).

SECTION 88

Subsection (a) specifies how claims against the petitioner are allowed, that is, how they are established for purposes of computation of acceptances, distribution under the plan and all other purposes under the chapter. Generally, the list of creditors filed by the petitioner will determine most of the claims against the petitioner.

The Note accompanying Proposed Chapter IX Rule 9–22 describes the procedure and its advantages:

> The inconvenience and expense to numerous and widespread creditors will be obviated as will the burdens of collecting and registering such claims on the part of the court or petitioner. Bearer bonds would be included on the lists filed . . . and the holders thereof would not have to file claims to participate since under this rule their claims would be deemed filed and allowed.
>
> . . . [O]nly creditors whose claims are disputed, contingent, or unliquidated, or creditors as to whom it is determined advisable, need file proofs of claim. In any event, any creditor may file a claim. The court may but need not fix a bar date for the filing of proofs with respect to any or all creditors. If a claim is required to be filed, failure to do so within the time fixed precludes that creditor from voting on a plan or participating in distribution. . . .

If the court does not set a date, then proofs of those other claims must be filed before the entry of an order confirming the plan. The subsection also specifies that the court must mail notice to each of the creditors whose claim is listed on the list of creditors as disputed, contingent or unliquidated, informing him of the time fixed by the court for the filing of proofs of claims. Of course, if the court does not set a date, then the statutory standard applies, and the creditors are on constructive notice that proofs of claims must be filed before the entry of an order confirming the plan. These creditors presumably will receive notice of the date set for the hearing on conformation, and that should be adequate to alert them to the time within which they must file their proofs of claim. If for any reason, such as the sheer volume of notices that must be mailed, the court is unable to complete the mailing within the statutory thirty days, no penalty is provided. As long as creditors are given adequate notice of the time within which to file proofs of claims, the noncompliance with the thirty-day mandate should present no Due Process problems. The purpose of the thirty-day limit is to expedite matters as much as possible.

If there is no objection to a proof of claim, the claim is deemed allowed. If there is an objection, the court must hear and determine the objection. After the hearing, the court allows or disallows the claim. The reason for the use of the term "deemed allowed" is to reduce paperwork for the court. The court need not enter an order allowing each and every claim if there is no objection or dispute.

Subsection (b), derived from present section 83(b), paragraph 2, requires the court to designate classes of creditors whose claims are of substantially similar character and the members of which enjoy substantially similar rights. The rights of creditors and the nature of the claims are determined by State law. It is possible that a single creditor with several claims may be placed into multiple classes. The classification standards in current law are far too restrictive to accomplish a fair classification of creditors. The new language is intended to allow the court greater flexibility, within the confines of the Due Process Clause, and greater guidance than the terse "according to the nature of their claims" standard found in Chapters X and XI, sections 197 and 351. The substantive result, however, will probably not differ from that currently achieved in those chapters. "Differences in treatment [will] be just and reasonably necessary to effectuate the [plan]." *Bartle* v. *Markson Bros. Inc.*, 314 F.2d 303, 305 (2d Cir. 1963). "Such classification . . . must be necessary and proper and made on a reasonable basis. . . . Ordinarily, a creditor is not entitled to better treatment merely because he holds a small claim rather than a large one." In re *Hudson-Ross, Inc.*, 175 F. Supp. 111, 112 (N.D. Ill. 1959). Also added to the subsection is a sentence which permits the court to classify creditors holding unsecured claims of less than $100 in the same class for administrative convenience. This is currently done in Chapter XI cases; this sentence codifies that result. It has the effect of reducing the size of certain classes of creditors measurably, and thus expediting proceedings. These creditors are usually paid in full, so that they are not deemed "affected by the plan," 9 Collier, Bankruptcy. ¶ 9.01, at 230 (14th rev. ed. 1975). Because of the de minimis nature of these claims, their placement in a separate class should not upset the classification standards set out above.

Subsection (c) makes clear that the rejection of an executory contract under section 82(b)(1) or under section 91 gives rise to a claim for damages against the petitioner, and that the claim may be asserted in the case so that the injured party can recover under the plan. It is derived from section 202 of Chapter X. The rejection constitutes a breach as of the date of the commencement of the case. This prevents any claim arising from such a rejection from rising to the status of an administrative claim entitled to priority under section 89, and requires that it be dealt with in the plan, if at all. The claim of a landlord for rejection of an unexpired lease is limited to the rent reserved, without acceleration, or the damages or indemnity under a covenant in the lease for the year following the date of the surrender of the premises or the reentry of the landlord, whichever occurs first, plus any unpaid accrued rent up to the date of the surrender or reentry. This provision is a limitation to prevent a landlord with a long-term lease from consuming a large portion of the estate by a claim for damages in a State in which there is no duty to mitigate damages resulting from the breach of a lease. As the court said in *Oldden* v. *Tonto Realty Corp.* 143 F.2d 916, 920 (2d Cir. 1944), landlords are "not in the same position as other general creditors" and should not "be treated on a par with them." See Newman, Rent Claims in Bankruptcy and Corporate Reorganization. 43 Colum. L. Rev. 317 (1943). The one year limitation is derived from section 63(a)(9) of the Bankruptcy Act. There is no corresponding limit on the amount of damages for the rejection of any other executory contract.

SECTION 89

Section 89 is new. There is no provision in current law for priorities. However, there are indications, such as in current section 83(b), paragraph 4, and in section 83(e), paragraphs 1, 2, and 3(4), that petitioners under Chapter IX regularly pay administrative expenses, or those that are incident to the confirmation and consummation of a plan. In keeping with the policy that the court not interfere with the petitioner in any of its expenditures, it was most likely contemplated under current law that the petitioner would pay its operating expenses and those incident to the plan either currently or under the plan, and thus there was no need for a specific priority section. The addition of such a priority section in this bill is more to protect the second and third priorities rather than the first, administrative expenses, for as noted, it is most likely that the first would be paid in any event. Without some assurance of payment, the petitioner's suppliers, employees and those connected with formulating and executing the plan could not be expected to perform at all. That is why operating and administrative expenses (somewhat redundantly) are given a first priority under this section.

With the petitioner relieved of the burden of debt service by the filing of the petition, in most cases the petitioner will be able to pay all operating expenses currently, or under credit terms which obtained prior to the filing of the petition. If the petitioner cannot meet such payments currently, the bill provides in section 82(b)(2) for the issuance of certificates of indebtedness to finance any short-fall in revenues. Certificates of indebtedness is the method for such financing, not delay of payment to post-petition suppliers. Such delay could seriously jeopardize the financial position of the suppliers. Their insolvency might similarly jeopardize supplies and services to the petitioner. For example, the petitioner's utility suppliers must maintain service if the petitioner is to continue to operate and to provide governmental services to its inhabitants. Late payment to the utility suppliers would be manifestly unfair to a utility that had no effective choice but to continue service, because discontinuing would paralyze the municipality. As under section 85(f), the petitioner should give adequate assurances of future performance under the terms of the pre-petition contract for any suppliers that continue to serve the petitioner.

The second priority is to reassure suppliers and employees that any arrearages due them will be cured in full. Without such assurance, these creditors may insist on cash payments for goods and services prior to the filing of a petition when it begins to appear that the petitioner is in financial trouble. Such creditor action could precipitate a filing, and even greater financial difficulties. This priority makes clear that they may continue to supply the petitioner with no fear of loss for the four months prior to the filing of a petition. This idea is based upon the "six-months rule" which originated in Federal railroad receiverships. *Fosdick* v. *Schall*, 99 U.S. 235 (1878). "The rule is grounded on both considerations of public policy, in that there is a public interest in maintaining uninterrupted the business of a corporation which is public or semi-public in character, and also on considerations of equity and good conscience, in that secured creditors must be deemed to have agreed to a prior payment of those current expenses

which maintain the business and which are inherently essential to the protection and preservation of the security." 6A Collier Bankruptcy. 9.13, at 250–51 (14th rev. ed. 1975). The same public policy considerations are applicable to a Chapter IX case.

The words "debts or consideration owed" are used instead of "wages" as in section 64(a)(2) of the Bankruptcy Act in order to make clear that the result of *United States* v. *Embassy Restaurant, Inc.*, 359 U.S. 29 (1959) is not to apply to wages and fringe benefits which fall within the second priority in Chapter IX. That case held that "wages" did not include fringe benefits, such as vacation or sick leave, and pension or retirement fund contributions owed by an employer on behalf of his employees. The third priority is not really a priority at all, but is rather a subordination. Under certain Federal laws, notably Revised Statutes section 3466, the United States has a first priority whenever one of its debtors becomes insolvent. The debts owed to the United States would prime all other debts, even administrative expenses, without this specification that they are to be paid in full before any payments under the plan, but not ahead of administrative expenses and second priority debts.

SECTION 90

Subsection (a) is derived from current sections 83(a), paragraph 1, and 83(e), paragraph 4. The subsection requires that the petitioner file with its petition a plan for the adjustments of its debts. The contents of the plan are specified by section 91. If the petitioner does not file the plan with its petition, then it must file it within such time as the court, on its own motion or upon application of the petitioner, prescribes.

The subsection also permits the petitioner to file a modification of its plan at any time prior to the confirmation of the plan. This is found in current section 83(e), paragraph 4. The requirement that the petitioner obtain court approval is deleted as unnecessary, because the petitioner no longer need obtain consents to the plan before filing, nor the approval of the court that the plan and the petition meet the requirements of present section 83(a).

Subsection (b) requires that the court, as soon as practicable after the filing of the plan, fix a time within which creditors may accept or reject the plan. This date becomes important in computing the requisite number of acceptances of the plan. A notice of this time is included with the copies or summary of the plan that the court transmits. The court should consider such factors as the time it will take to transmit the plan to all who are entitled to receive a copy, and the time within which it is reasonable to expect that a creditor can examine the plan and make an informed decision. After the court fixes the time, it must transmit the plan or a summary of the plan to each of the petitioner's creditors, to each of the special tax payers affected by the plan, and to each such other party in interest as the court may designate. With the copy or summary, the court must include any analysis of the plan that has been prepared and filed with the court, and notice of the time fixed for acceptance or rejection, and of the right of the recipient of a summary to receive a copy of the plan itself, upon request. The procedure for transmission of a modification of the plan filed by the petitioner is the same as for transmission of the original plan itself.

SECTION 91

This section is derived from current section 83(a), paragraph 3. It gives the same broad latitude to a petitioner to formulate a plan to adjust its pre-petition debts as is presently given in Chapter IX petitioner or a Chapter X or XI debtor. There is one substantive change from current law, along with minor style changes. That is the addition of a provision that permits the petitioner to reject executory contracts as part of the plan. Such rejection as part of the plan is permissible in Chapter X, section 216(4), and Chapter XI, section 357(2), and is added here in conjunction with section 82(b)(1) of the bill.

SECTION 92

Subsection (a), derived from current section 83(d) defines who is entitled to accept or reject a plan. Every creditor whose claim has been allowed or deemed allowed under section 88 and who is materially and adversely affected by the plan may file a written acceptance or rejection of the plan with the court. That includes all creditors whose claims are included on the list filed under section 85(b) and whose claims are not disputed, contingent or unliquidated as to amount; all creditors who file proofs of claims under section 88(a) and whose claims are not then disputed, contingent or unliquidated as to amount; all creditors whose claims are allowed by the court after objection by a party in interest after the filing of a proof of claim; and all security holders of record as of the date of the transmittal of the plan or modification under section 90(b); as long as they are materially and adversely affected by the plan. The subsection also allows the court to allow temporarily any claim over which there is a dispute, in such amount as the court deems proper, in order that the ceditor holding that claim be allowed to accept or reject the plan. The provision is derived from Rules of Bankruptcy Procedure 10–305(a) and 11–37(a). It gives the court some flexibility and expedites acceptance of the plan, because it means that the court does not need to determine finally all objections to claims before the plan may be transmitted for acceptance or rejection.

Subsection (b) sets out the general rule for the acceptance required. In order for a plan to be confirmed, it must have been accepted in writing by creditors holding two-thirds in amount of the claims of each class. That is, the acceptances and rejections must be computed separately for each class of creditors designated by the court under section 88(b), and creditors holding two-thirds of the claims of each class must accept the plan before it may be confirmed.

Subsection (c) defines the computation method. The court must compute the two-thirds required by subsection (b) on the basis of the total amount of claims with respect to which a written acceptance or rejection has been filed. This is a change in two ways from current law, which requires that there be acceptance by creditors holding two-thirds of the aggregate amount of all claims of all classes, whether or not holders of some claims have filed acceptances or rejections. Subsection (c) also directs the court not to include in the computation of the requisite majority any acceptances or rejections filed by the petitioner or a ny person or entity which, for purposes of accepting or rejecting the plan, are controlled by the petitioner. *See American Mutual Life Ins. Co.* v. *City of Avon Park*, 311 U.S. 138 (1940). Also excluded in the computation of the two-thirds majority are claims of creditors who are provided for under subsection (d).

Subsection (d) specifies those creditors whose acceptances are not required for confirmation of the plan. The section is taken verbatim (except for the introductory clause) from the current section 83(d) proviso. It permits the court to dispense with acceptances from a class of creditors (or a single creditor if he is in a class by himself) whose claims are not affected by the plan, if the plan makes provision for the payment of their claims in cash in full, or if provision is made in the plan for the protection of the interests, claims or lien of such creditor or class of creditors. This subsection permits the court to confirm a plan even in the face of a recalcitrant class of creditors, if the petitioner makes provision in the plan for them as specified, or if it pays them in cash in full. In essence, the three paragraphs of the subsection specifying the modes in which the petitioner may dispense with the acceptances of a particular class amount to a codification of the constitutional Due Process standard for the protection of the property of a class of creditors that does not consent to the plan. It is important to recognize that the section does not contemplate that a minority of non-assenting creditors within a class may be bought off. They are bound by the decision of two-thirds of their class. The cram-down instead contemplates that a class of creditors that does not consent to the plan by the requisite two-thirds (or, if a class consists of only one creditor, that creditor who does not consent) may be settled with as a whole.

Subsection (e) sets out the requirements for the acceptance of a proposed modification of the plan. A proposed modification must be accepted in the same manner as the plan itself. However, the subsection posits several presumptions about the acceptance of modifications. These are designed to save paper work and expedite acceptance. They are that any creditor who has accepted the plan and is not affected materially and adversely by the modification (as determined by the court) is deemed to have accepted the modification; and that any creditor who is materially and adversely affected by the proposed modification and who has accepted the plan is deemed to have accepted the modification unless he files a written rejection of the modfiication within the time fixed by the court. The subjection requires that the court give notice to creditors who are materially and adversely affected by the proposed modification of the modification and of the time within which the creditor must file a rejection. The modification must be accepted as the plan by the same majority of each class affected.

SECTION 93

Section 93, derived from section 83(b), paragraph 2, specifies who may object to the plan. Any creditor affected by the plan, any special tax payer affected by the plan, and the Securities and Exchange Commission may object to the plan. The S.E.C. is denied the right to appeal from any order of the court relating to confirmation of the plan, as in § 208 of Chapter X. Objection to the plan is by a com-

plaint which alleges that the plan does not meet one or more of the statutory requirements set out in section 94(b).

SECTION 94

Subsection (a) is derived from current section 83(a), paragraphs 1, 2, and 3. It requires the court to hold a hearing on the confirmation of the plan (with any modifications) within a reasonable time after the expiration of the time set by the court under section 92(a) and 92(d) for the acceptance or rejection of the plan and any modifications. The court must give notice of the hearing to all parties entitled to object under section 93. The court will probably find it easiest to fix the time for the hearing before it transmits the plan, in order that it may include the notice of the hearing with the notice transmitting the plan or any modification.

Subsection (b) lists the requirements for confirmation of the plan. It is copied from present section 83(e), paragraph 3, with minor style, but no substantive, changes. The first requirement is that the plan be fair and equitable, and feasible, and not discriminatory in favor of any creditor or class of creditors. There is abundant case law behind these requirements. Fair and equitable is an equitable doctrine. It incorporates the absolute priority rule from *Northern Pacific Ry.* v. *Boyd*, 228 U.S. 482 (1912) and from *Case* v. *Los Angeles Lumber Products*, 308 U.S. 106 (1939), which requires that senior creditors be paid in full before any creditor junior to them may be paid at all. The court determines these priorities based on State law. Fair and equitable in Chapter IX also has included the feasibility standard expicitly stated in Chapter X and XI, but not presently found in Chapter IX. *Kelley* v. *Everglades Drainage District*, 319 U.S. 412 (1943). It is included in the bill as a codification of the case law requirement. The feasibility requirement means that there is a reasonable prospect that the petitioner will be able to perform under the plan. That is, it must appear to the court, based on the petitioner's past and projected future tax revenues and expenses that it will have enough to make the payments required by the plan.

> [W]here future tax revenues are the only source to which creditors can look for payment of their claims, considered estimates of those revenues consitute the only available basis for appraising the respective interests of different classes of creditors. In order that a court may determine the fairness of the total amount of cash or securities offered to creditors by the plan, the court must have before it data which will permit a reasonable, and hence an informed, estimate of the probable future revenues available for the satisfaction of creditors.
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> . . . . Appropriate facts which might have been considered . . . are the revenues which have in the past been received from each source of taxation, the present assessed value of property subject to each tax, the tax rates currently prescribed, the probale effect on future revenues of a revision in the tax structure adopted in 1941, the extent of past tax delinquencies, and any general economic conditions of the District which may reasonably be expected to affect the percentage of future delinquencies . . . .

Fair and equitable has additional consent in Chapter IX. The petitioner must exercise its taxing power to the fullest extent possible for the benefit of its creditors, *Fano* v. *Newport Heights Irr. Dist.*, 144 F. 2d 563 (9th Cir. 1940). The court must find that the amount proposed to be paid under the plan was all that the creditors could reasonably expect under the circumstances. In addition,

> the fact that the vast majority of security holders may have approved a plan is not the test of whether that plan satisfies the statutory standard (of fairness). The former is not a substitute for the latter; they are independent.

American Mutual Life Ins. Co. v. *City of Avon Park*, 311 U.S. 138, 148 (1940). Fair and equitable also requires that the plan embody a fair and equitable bargain, openly arrived at and devoid of overreaching. *Town of Bellair* v. *Groves*, 132 F. 2d 542 (5th Cir. 1942), *cert. denied*, 318 U.S. 769 (1943). Other case law that surrounds the fair and equitable doctrine in Chapter IX is retained in the bill. This paragraph also requires that the plan not discriminate unfairly in favor of any creditor or class of creditors. This is another aspect of the fair and equitable rule, more specifically stated. It prohibits special treatment of any creditor, such as a fiscal agent or resident of the taxing district. *See American United Mutual Life Ins. Co.* v. *City of Avon Park, supra.*

The second paragraph contains the requirement that the plan comply with all of the provisions of this chapter. This is currently the third requirement in section 83(e) of Chapter IX. The most important of these is the consent requirement found in section 92, which is the current second requirement in section 83(e). The current second requirement has been deleted as redundant, because section 92 requires that the plan be accepted by the requisite number of creditors before it may be confirmed. No substantive change is intended, in either the current second or third requirements. Equally important is the requirement that the petitioner pay priority creditors in full in advance of any payment under the plan under section 89.

The third standard for confirmation is copied from current section 83(e), paragraph 3(4), and merely requires that the court determine that all amounts to be paid by the petitioner incident to the plan or in the case have been disclosed and are reasonable. The inclusion of the phrase "by any person" is intended solely to prevent the petitioner from circumventing the requirement of this paragraph by making payments indirectly through some third person for the benefit of the petitioner. It is not intended that the court examine all payments made to all attorneys and agents that are in any way connected with the case. That might take far too much time for the expeditious confirmation of the plan.

The fourth requirement is copied from current law, and requires that the offer of the plan and its acceptance be in good faith. The final requirement is derived from current law, but is made more flexible by the use of the phrase "not prohibited from" in place of "authorized

to." The change is meant to make it easier for the court to make the requisite finding, for it may be the case that the petitioner proposes to take some action which is not prohibited by law, but is not clearly authorized either. This, along with the requirement of section 95(b)(1)(C), that securities issued under the plan be valid, are all that the Committee feel are required to validate the plan.

SECTION 95

Section 95, derived from section 83(f), states the effect of the confirmation of the plan. The provisions of the plan are binding on all of the petitioner's creditors who had timely notice or actual knowledge of the pendency of the case, whether or not they have accepted the plan, and whether or not their claims have been allowed under section 88.

Subsection (b) discharges the petitioner from and claims against it that are provided for in the plan as of the time when the plan is confirmed, the petitioner deposits the consideration to be distributed under the plan with the disbursing agent appointed by the court, and the court has determined that any security so deposited will constitute, upon distribution, a valid legal obligation of the petitioner, and that any provision made to pay or secure the security is valid. When these three events have occurred, the petitioner is discharged from the debts provided for in the plan. This requires that the court appoint a disbursing agent. The disbursing agent may be any person or entity, including the court or the petitioner, that the court chooses. The petitioner is not discharged, however, from any claim excepted from discharge by the plan or the order confirming the plan, or from any claim the holder of which had neither timely notice nor actual knowledge neither of the petition nor of the plan. It is only fair, and most likely required by the Due Process Clause, that a creditor's claim not be discharged if the creditor knew nothing of the case. Thus, if he knew of either the petition or the plan, either through timely notice from the court or the petitioner, or through his actual knowledge, then his claim is discharged. Otherwise, it is not.

SECTION 96

This section, largely derived from current section 83(f), is a catchall for rules for post-confirmation matters. Subsection (a) requires the court to fix a time within which the petitioner must deposit with the disbursing agent appointed by the court the consideration to be distributed under the plan. This is the same disbursing agent required by section 95(b), and it is the deposit required by this subsection that meets the requirement of section 95(b)(1)(B).

Subsection (b) directs the petitioner to comply with the plan and the orders of the court relative to the plan, and to take all actions necessary to carry out the plan. The Committee feels that this section does not in any way interfere with the sovereignty of the state, nor the limitation on the court's interference with the petitioner's political or governmental functions found in section 82(c). Of course, there is no sanction for failure to comply with this subsection, save dismissal of the case (see section 98(1)). The subsection merely requires compliance, and is subject to all of the limitations found in sections 82(c) and 83.

Subsection (c) governs distribution under the plan. It directs that distribution be made by the disbursing agent in accordance with the provisions of the plan to creditors whose claims have been allowed (or deemed allowed) under section 88(a). It also permits distribution to security holders of record whose claims have not been disallowed.

Subsection (d) establishes a bar date of five years. If the plan requires presentment or surrender of old securities or the performance of any other action as a condition to participation under the plan, the creditor must take that action within five years after the entry of the order of confirmation. If the creditor does not, then the consideration held by the disbursing agent for distribution to that creditor becomes the property of the petitioner, and the creditor is barred from participation under the plan.

Subsection (e) is new. It allows the court to retain jurisdiction over the case for as long as it determines is necessary to the successful execution of the plan, and inures that the court may enforce the terms of any confirmed plan. In some cases, this could be as long as the longest term of any security issued under the plan, as occurred in the case of Fort Lee, New Jersey.

Subsection (f) copies current section 83(g), with minor stylistic changes. The subsection makes a certified copy of any order or decree in the case evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the order was made. It also makes a certified copy of an order providing for the transfer of property dealt with by the plan evidence of the transfer of title accordingly, and specifies that a certified copy of the order, if reordered as deeds are recorded, imparts the same notice that a deed, if recorded, would impart.

SECTION 97

Section 97 is copied from current section 83(j). It was originally added to the statute by the Chandler Act in 1938 to overrule the result of *In Re City of West Palm Beach, Fla.*, 96 F.2d 85 (5th Cir. 1938), in which acceptances of a plan of composition obtained by the exchange of debt securities before filing of the petition in Chapter IX were held not to count toward the amount of acceptances required for confirmation of the plan. With the elimination of the 51% prior consent requirement in the bill, this section is even more important than it was when added to present Chapter IX. The section contains minor style, but no substantive changes.

SECTION 98

Section 98 is derived from, and is an expansion upon, section 83(b), paragraph 6, of current law. It also consolidates various other provisions in present law. It gives the court power to dismiss the case for five reasons: 1) want of prosecution; 2) if no plan is proposed within the time fixed or extended by the court; 3) if no proposed plan is accepted within the time fixed or extended by the court; 4) if confirmation is refused and no further time is granted for the proposal of other plans; or 5) where the court has retained jurisdiction atfer confirmation, if the debtor defaults on any of the terms of the plan, or if the plan terminates by reason of the occurrence of a condition specified in the plan. Reasons two through four are specific examples of want of prosecution, and are not intended in any way to limit the scope of the

first reason. Subparagraph (5) is new, and more adequately provides for the petitioner's failure to consummate a plan. In addition, the list of five reasons is nonexclusive. The court may dismiss for other grounds as well. Its power there is defined by the inherent power of a court of equity.

SECTION 99

The last section of the bill is a separability clause. It follows present section 81. It specifies that if any provision of the chapter is held invalid, the remainder of the chapter shall not be affected by that holding. The section merely restates a rule of construction nearly universally followed by the court, *cf. Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936), and eliminates any uncertainty as to the legislative intent, *United States* v. *Jackson*, 390 U.S. 570, 585 (1968).

Cost of Legislation

Pursuant to the requirement of Clause 7 of Rule XIII of the Rules of the House of Representatives, it is estimated that no additional costs will be incurred in carrying out the provisions of this bill.

The bill provides for changes in existing law but does not alter or change the existing judicial structure already in place to handle the filings and the various Chapters of the Bankruptcy Act.

Statements Under Clause 2(1)(3) of Rule X of the Rules of the House of Representatives

A. *Oversight Statement.* No oversight findings or recommendations have previously been filed with respect to this area.

B. *Budget Statement.* Clause 2(1)(3)(B) of rule XI is not applicable. Section 308(a) of the Congressional Budget Act of 1974 will not be implemented this year. See last paragraph of House Report No. 94–25, 94th Congress, 1st Session (1975).

C. No estimate or comparison from the Director of the Congressional Budget Office was received.

D. No related oversight findings and recommendations have been made by the Committee on Government Operations under clause 2(g)(2) of rule X.

Statement Under Clause 2(1)(4), of Rule XI of the Rules of the House of Representatives Concerning Any Inflation Impact on Prices and Costs in the Operation of the National Economy

The committee concludes that there will be no inflationary impact on prices and costs in the operation of the national economy.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

CHAPTER IX OF THE BANKRUPTCY ACT

[CHAPTER IX

[SEC. 81. This Act and proceedings thereunder are found and declared to be within the subject of bankruptcies and, in addition to the jurisdiction otherwise exercised, courts of bankruptcy shall exercise original jurisdiction as provided in this chapter for the composition of indebtedness of, or authorized by, any of the agencies or instrumentalities hereinafter named, payable (a) out of assessments or taxes, or both, levied against and constituting liens upon property in any of said agencies or instrumentalities, or (b) out of property acquired by foreclosure of any such assessments or taxes or both, or (c) out of income derived by such agencies or instrumentalities from any income-producing property, whether or not secured by a lien upon such property: (1) Drainage, drainage and levee, reclamation, water, irrigation, or other similar districts, commonly designated as agricultural improvement districts or local improvement districts, organized or created for the purpose of constructing, improving, maintaining, and operating certain improvements or projects devoted chiefly to the improvement of lands therein for agricultural purposes; or (2) local improvement districts, such as sewer, paving, sanitary, or other similar districts, organized or created for the purposes designated by their respective names; or (3) local improvement districts, such as road, highway, or other similar districts, organized or created for the purpose of grading, paving, or otherwise improving public streets, roads, or highways; or (4) public-school districts or public-school authorities organized or created for the purpose of constructing, maintaining, and operating public schools or public-school facilities; or (5) local improvement districts, such as port, navigation, or other similar districts, organized or created for the purpose of constructing, improving, maintaining, and operating ports and port facilities; or (6) incorporated authorities, commissions, or similar public agencies organized for the purpose of constructing, maintaining, and operating revenue-producing enterprises; or (7) any county or parish or any city, town, village, borough, township, or other municipality: *Provided, however,* That if any provision of this chapter, or the application thereof to any such agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different circumstances, shall not be affected by such holding.

[SEC. 82. The following terms as used in this chapter, unless a different meaning is plainly required by the context, shall be construed as follows:

[The term "petitioner" shall include any agency or instrumentality referred to in section 81 of this chapter.

[The term "security" shall include bonds, notes, judgments, claims, and demands, liquidated or unliquidated, and other evidences of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

[The term "creditor" means the holder of a security or securities.

[Any agency of the United States holding securities acquired pursuant to contract with any petitioner under this chapter shall be deemed a creditor in the amount of the full face value thereof.

[The term "security affected by the plan" means a security as to which the rights of its holder are proposed to be adjusted or modified materially by the consummation of a composition agreement.

[The singular number includes the plural and the masculine gender the feminine.

[SEC. 83. (a) Any petitioner may file a petition hereunder stating that the petitioner is insolvent or unable to meet its debts as they mature and that it desires to effect a plan for the composition of its debts. The petition shall be filed with the court in whose territorial jurisdiction the petitioner or the major part thereof is located, and, in the case of any unincorporated tax or special-assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations to be affected by the plan of composition. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in lieu of the fees required to be collected by the clerk under other applicable chapters of this title, as amended. The petition shall state that a plan of composition has been prepared, is filed and submitted with the petition, and that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner) have accepted it in writing. There shall be filed with the petition a list of all known creditors of the petitioner, together with their addresses so far as known to petitioner, and description of their respective securities showing separately those who have accepted the plan of composition, together with their separate addresses, the contents of which list shall not constitute admissions by the petitioner in a proceeding under this chapter or otherwise. Upon the filing of such a petition the judge shall enter an order either approving it as properly filed under this chapter, if satisfied that such petition complies with this chapter and has been filed in good faith, or dismissing it, if not so satisfied.

[Whenever the petition seeks to effect a plan for the composition of obligations represented by securities, or evidences in any form of rights to payment, issued by the petitioner to defray the cost of local improvements and which are payable solely out of the proceeds of special assessments or special taxes levied by the petitioner, or issued by the petitioner to finance one or more revenue-producing enterprises payable solely out of the revenues of such enterprise or enterprises, it shall be sufficient if the petitioner aver that the property liable for, or the revenues pledged to the payment of such securities, principal, and interest is not of sufficient value, or that the revenues of the enterprise or enterprises are inadequate to pay same, and that the accrued interest on such securities is past due and in default; and the list of creditors to be filed with such petition need contain only the known claimants of rights based on those securities evidencing the obligations sought to be composed under this chapter, and such list shall include separately the names and addresses of those creditors who have accepted the plan of composition. If the plan of composition sought to be effected requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some of the lands will be different from the proportion in effect at

the time the petition is filed, a list of the record owners or holders of title, legal or equitable, to any real estate adversely affected in the proceeding shall also be filed with the petition, and such record owners or holders of title shall be notified in the manner provided in this section for creditors and be entitled to hearing by the court upon reasonable application therefor.

[The "plan of composition", within the meaning of this chapter, may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire.

[No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

[For all purposes of this chapter any creditor may act in person or by an attorney or a duly authorized agent or committee. Where any committee, organization, group, or individual shall assume to act for or on behalf of creditors, such committee, organization, group, or individual shall first file with the court in which the proceeding is pending a list of the creditors represented by such committee, organization, group, or individual, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the security held by him, and attach thereto copies of the instrument or instruments in writing signed by the owners of the bonds showing their authority, and shall file with the list a copy of the contract or agreement entered into between such committee, organization, group, or individual and the creditors represented by it or them, which contract shall disclose all compensation to be received, directly or indirectly, by such committee, organization, group, or individual, which agreed compensation shall be subject to modification and approval by the court.

[(b) Upon approving the petition as properly filed, or at any time thereafter, the judge shall enter an order fixing a time and place for a hearing on the petition, which shall be held within ninety days from the date of said order, and shall provide in the order that notice shall be given to creditors of the filing of the petition and its approval as being properly filed, and of the time and place for the hearing. The judge shall prescribe the form of the notice, which shall specify the manner in which claims and interests of creditors shall be filed or evidenced, on or before the date fixed for the hearing. The notice shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other paper or papers having a general circulation among bond dealers and bondholders as may be designated by the court, and the judge may require that it may be published in such other publication as he may deem proper. The judge shall require that a copy of the notice be mailed, postage prepaid, to each creditor of the petitioner named in the petition at the address of such creditor given in the petition, or, if no address is given in the

petition for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice shall be mailed, postage prepaid, to such creditor addressed to him as the judge may prescribe. All expense of giving notice as herein provided shall be paid by the petitioner. The notice shall be first published, and the mailing of copies thereof shall be completed, at least sixty days before the date fixed for the hearing.

[At any time not less than ten days prior to the time fixed for the hearing, any creditor of the petitioner affected by the plan may file an answer to the petition controverting any of the material allegations therein and setting up any objection he may have to the plan of composition. The judge may continue the hearing from time to time if the percentage of creditors required herein for the confirmation of the plan shall not have accepted the plan in writing, or if for any reason satisfactory to the judge the hearing is not completed on the date fixed therefor. At the hearing, or a continuance thereof, the judge shall decide the issues presented and unless the material allegations of the petition are sustained shall dismiss the proceeding. If, however, the material allegations of the petition are sustained, the judge shall classify the creditors according to the nature of their respective claims and interest: *Provided, however*, That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors.

[At the hearing or a continuance thereof the judge may refer any special issues of fact to a referee in bankruptcy or a special master for consideration, the taking of testimony, and a report upon such special issues of fact, if the judge finds that the condition of his docket is such that he cannot take such testimony without unduly delaying the dispatch of other business pending in his court, and if it appears that such special issues are necessary to the determination of the case. Only under special circumstances shall references be made to a special master who is not a referee in bankruptcy. A general reference of the case to a master shall not be made, but the reference, if any, shall be only in the form of requests for findings of specific facts.

[The court may allow reasonable compensation for the services performed by such referee in bankruptcy or special master, and the actual and necessary expenses incurred in connection with the proceeding, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work may have been done by the petitioner or by committees or other representatives of creditors, and may allow reasonable compensation for the attorneys or agents of any of the foregoing: *Provided, however*, That no fees, compensation, reimbursement, or other allowances for attorneys, agents, committees, or other representatives of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan of composition. An appeal may be taken from any order making such

determination or award to the United States circuit court of appeals for the circuit in which the proceeding under this chapter is pending, independently of other appeals which may be taken in the proceeding, and such appeal shall be heard summarily.

[Such compensation of referees in bankruptcy and special masters shall not be governed by section 40 of this Act.

[On thirty days' notice by any creditor to petitioner, the judge, if he finds that the proceeding has not been prosecuted with reasonable diligence, or that it is unlikely that the plan will be accepted by said proportion of creditors, may dismiss the proceeding.

[(c) Upon entry of the order fixing the time for the hearing, or at any time thereafter, the judge may upon notice enjoin or stay, pending the determination of the matter, the commencement or continuation of suits against the petitioner, or any officer or inhabitant thereof, on account of the securities affected by the plan, or to enforce any lien or to enforce the levy of taxes or assessments for the payment of obligations under any such securities, or any suit or process to levy upon or enforce against any property acquired by the petitioner through foreclosure of any such tax lien or special assessment lien, except where rights have become vested, and may enter an interlocutory decree providing that the plan shall be temporarily operative with respect to all securities affected thereby and that the payment of the principal or interest, or both, of such securities shall be temporarily postponed or extended or otherwise readjusted in the same manner and upon the same terms as if such plan had been finally confirmed and put into effect, and upon the entry of such decree the principal or interest, or both, of such securities which have otherwise become due, or which would otherwise become due, shall not be or become due or payable, and the payment of all such securities shall be postponed during the period in which such decree shall remain in force, but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; or (b) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (c) any income-producing property, unless the plan of composition so provides.

[Any agency or instrumentality referred to in section 81 of this chapter may file a petition for a preliminary stay with the court referred to in section 83(a) stating (a) that the petitioner is insolvent or unable to meet its debts as they mature; (b) that it desires to effect a plan for the composition of its debts, a copy of which is filed and submitted with the petition; (c) that a creditor of the petitioner holding a security affected by the plan or a person claiming to be such a creditor (naming him and giving his address and the name and address of his attorney of record, if any), is attempting or threatening to obtain payment of said security in preference to other creditors by means of the commencement or continuation of a suit or process of the class hereinbefore in this section 83(c) described; (d) that efforts are being made in good faith to the end that creditors of the petitioner owning not less than 51 per centum in amount of the securities affected by the plan (excluding, however, any such securities owned, held, or controlled by the petitioner) shall accept it in writing; (e) that there

is a reasonable prospect of such acceptance within a reasonable time; (f) that upon such acceptance the petitioner intends to file a petition under section 83(a) of this chapter; and (g) that the petitioner prays that the judge will upon notice enjoin or stay the commencement or continuation of said suit or process. A single petition may seek the preliminary stay of several suits or processes brought or threatened by the same or different creditors or persons claiming to be creditors. The petition shall be accompanied by the filing fee required in section 83(a) of this chapter, unless such fee shall have been paid upon the filing of an earlier petition for a preliminary stay involving the same plan, and no further fee shall be required upon the subsequent filing of a petition under said section 83(a). Upon such petition the judge shall fix a time and place for hearing and direct that notice thereof shall be given in such manner as he shall prescribe to said creditor or person claiming to be a creditor and to any other person deemed by him to be interested. After such hearings, and upon being satisfied of the truth of the allegations of the petition, the judge may, in his discretion, except where rights have become vested, enjoin or stay the commencement and continuation of said suit or process until a date fixed by him in his order not exceeding sixty days from the date of entry thereof. The judge shall retain jurisdiction to vacate said injunction or stay, or to extend the period thereof for one additional period of not exceeding sixty days, upon good cause shown.

[(d) The plan of composition shall not be confirmed until it has been accepted in writing, by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes affected by such plan and which have been admitted by the petitioner or allowed by the judge, but excluding claims owned, held, or controlled by the petitioner: *Provided, however*, That it shall not be requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors (a) whose claims are not affected by the plan; or (b) if the plan makes provision for the payment of their claims in cash in full; or (c) if provision is made in the plan for the protection of the interests, claims, or lien of such creditors or class of creditors.

[(e) Before concluding the hearing, the judge shall carefully examine all of the contracts, proposals, acceptances, deposit agreements and all other papers relating to the plan, specifically for the purpose of ascertaining if the fiscal agent, attorney, or other person, firm, or corporation promoting the composition, or doing anything of such a nature, has been or is to be compensated, directly or indirectly, by both the petitioner and the creditors thereof, or any of such creditors—either by fee, commission, or other similar payment, or by transfer or exchange of bonds or other evidence of indebtedness whereby a profit could accrue—and shall take evidence under oath to make certain whether or not any such practice obtains or might obtain.

[After such examination the judge shall make an adjudication of this issue, as a separate part of his interlocutory decree, and if it be found that any such practice exists, he shall forthwith dismiss the proceeding and tax all of the costs against such fiscal agent, attorney, or other person, firm, or corporation promoting the composition, or doing anything of such a nature, or against the petitioner, unless such plan be modified within the time to be allowed by the judge so as to eliminate

the possibility of any such practice, in which event the judge may proceed to further consideration of the confirmation of the plan. If it be found that no such practice exists, then the judge may proceed to further consideration of the confirmation of the plan.

[At the conclusion of the hearing, the judge shall make written findings of fact and his conclusions of law thereon, and shall enter an interlocutory decree confirming the plan if he finds and is satisfied that (1) it is fair, equitable, and for the best interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; (2) complies with the provisions of this chapter; (3) has been accepted and approved as required by the provisions of subdivision (d) of this section; (4) all amounts to be paid by the petitioner for services or expenses incident to the composition have been fully disclosed and are reasonable; (5) the offer of the plan and its acceptance are in good faith; and (6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding. No case shall be reversed or remanded for want of specific or detailed findings unless it is found that the evidence is insufficient to support one or more of the general findings required in this section.

[Before a plan is confirmed, changes and modifications may be made therein with the approval of the judge after hearing upon such notice to creditors as the judge may direct, subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor, and if any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified: *Provided, however*, That the plan as changed or modified shall comply with all the provisions of this chapter and shall have been accepted in writing by the petitioner. Either party may appeal from the interlocutory decree as in equity cases. In case said interlocutory decree shall prescribe a time within which any action is to be taken, the running of such time shall be suspended in case of an appeal until final determination thereof. In case said decree is affirmed, the judge may grant such time as he may deem proper for the taking of such action.

[(f) In an interlocutory decree confirming the plan is entered as provided in subdivision (e) of this section, the plan and said decree of confirmation shall become and be binding upon all creditors affected by the plan, if within the time prescribed in the interlocutory decree, or such additional time as the judge may allow, the money, securities, or other consideration to be delivered to the creditors under the terms of the plan shall have been deposited with the court or such disbursing agent as the court may appoint or shall otherwise be made available for the creditors. And thereupon the court shall enter a final decree determining that the petitioner has made available for the creditors affected by the plan the consideration provided for therein and is discharged from all debts and liabilities dealt with in the plan except as provided therein, and that the plan is binding upon all creditors affected by it, whether secured or unsecured, and whether or not their

claims have been filed or evidenced, and, if filed or evidenced, whether or not allowed, including creditors who have not, as well as those who have, accepted it. If securities are deposited by the petitioner with the court or disbursing agent for delivery to the creditors, such final decree shall not be entered unless the court finds and adjudicates that said securities have been lawfully authorized and, upon delivery, will constitute valid obligations of the petitioner, and that the provisions made to pay and secure payment thereof are valid.

[(g) A certified copy of the final decree, or of any other decree or order entered by the court or the judge thereof, in a proceeding under this chapter, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the decree or order was made. A certified copy of an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly, and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

[(h) This chapter shall not be construed as to modify or repeal any prior existing statute relating to the refinancing or readjustment of indebtedness of municipalities, political subdivisions, or districts: *Provided, however*, That the initiation of proceedings or the filing of a petition under section 80 of this Act shall not constitute a bar to the same agency or instrumentality initiating a new proceeding under section 81 of this chapter.

[(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor: *Provided, however*, That no State law prescribing a method of composition of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition, and no judgment shall be entered under such State law which would bind a creditor to such composition without his consent.

[(j) The partial completion or execution of any plan of composition as outlined in any petition filed under the terms of this Act by the exchange of new evidences of indebtedness under the plan for evidences of indebtedness covered by the plan, whether such partial completion or execution of such plan of composition occurred before or after the filing of said petition, shall not be construed as limiting or prohibiting the effect of this title, and the written consent of the holders of any securities outstanding as the result of any such partial completion or execution of any plan of composition shall be included as consenting creditors to such plan of composition in determining the percentage of securities affected by such plan of composition.]

Chapter IX

ADJUSTMENT OF DEBTS OF POLITICAL SUBDIVISIONS AND PUBLIC AGENCIES AND INSTRUMENTALITIES

Sec. 81. Chapter IX Definitions.—As used in this chapter the term—

(1) "claim" includes all claims of whatever character against the petitioner or the property of the petitioner, whether or not

such claims are provable under section 63 of this Act and whether secured or unsecured, liquidated or unliquidated, fixed or contingent;

(2) "court" means court of bankruptcy in which the case is pending, or a judge of such court;

(3) "creditor" means holder (including the United States, a State, or subdivision of a State) of a claim against the petitioner;

(4) "claim affected by the plan" means claim as to which the rights of its holder are proposed to be materially and adversely adjusted or modified by the plan;

(5) "debt" means claim allowable under section 88(a);

(6) "petitioner" means agency, instrumentality, or subdivision which has filed a petition under this chapter;

(7) "plan" means plan filed under section 90;

(8) "special tax payer" means record owner or holder of title, legal or equitable, to real estate against which has been levied a special assessment or special tax the proceeds of which are the sole source of payment for obligations issued by the petitioner to defray the costs of local improvements; and

(9) "special tax payer affected by the plan" means a special tax payer with respect to whose real estate the plan proposes to increase the proportion of special assessments or special taxes referred to in paragraph (8) of this section assessed against that real estate.

Sec. 82. Jurisdiction and Powers of Court.—

(a) Jurisdiction.—The court in which a petition is filed under this chapter shall exercise exclusive original jurisdiction for the adjustment of the petitioner's debts, and for the purposes of this chapter, shall have exclusive jurisdiction of the petitioner and its property, wherever located.

(b) Powers.—After the filing of a petition under this chapter the court may—

(1) permit the petitioner to reject executory contracts and unexpired leases of the petitioner, after hearing on notice to the parties to such contracts and to such other parties in interest as the court may designate;

(2) during the pendency of a case under this chapter, or after the confirmation of the plan if the court has retained jurisdiction under section 96(e), after hearing on such notice as the court may prescribe and for cause shown, permit the issuance of certificates of indebtedness for such consideration as is approved by the court, upon such terms and conditions, and with such security and priority in payment over existing obligations, secured or unsecured, as in the particular case may be equitable; and

(3) exercise such other powers as are not inconsistent with the provisions of this chapter.

(c) Limitation.—Unless the petitioner consents or the plan so provides, the court shall not, by any order or decree, in the case or otherwise, interfere with—

(1) any of the political or governmental powers of the petitioner;

(2) any of the property or revenues of the petitioner; or

(3) any income-producing property.

(d) DESIGNATION OF JUDGE.—Upon the filing of a petition the chief judge of the court in the district in which the petition is filed shall immediately notify the chief judge of the circuit court of appeals of the circuit in which the district court is located, who shall designate the judge of the district court to conduct the proceedings under this chapter.

SEC. 83. RESERVATION OF STATE POWER TO CONTROL GOVERNMENTAL FUNCTIONS OF POLITICAL SUBDIVISIONS.—Nothing contained in the chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

SEC. 84. ELIGIBILITY FOR RELIEF.—Any State's political subdivision or public agency or instrumentality which is not prohibited by State law from filing a petition under this chapter is eligible for relief under this chapter if it is insolvent or unable to meet its debts as they mature, and desires to effect a plan to adjust its debts.

SEC. 85. PETITION AND PROCEEDINGS RELATING TO PETITION.—

(a) PETITION.—An entity eligible under section 84 may file a petition for relief under this chapter. In the case of an unincorporated tax or special assessment district having no officials of its own, the petition may be filed by its governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of the district. Any party in interest may file a complaint with the court, not later than 15 days after the publication of notice required by subsection (d) is completed, objecting to the filing of the petition. The court shall, to the extent practicable, hear and determine all such complaints in a single proceeding.

(b) LIST.—The petitioner shall file with the court a list of the petitioner's creditors, insofar as practicable. If an identification of any of the petitioner's creditors is impracticable, the petitioner shall state in the petition the reasons such identification is impracticable. If the list is not filed with the petition, the petitioner shall file the list at such later time as the court, upon its own motion or upon application of the petitioner, prescribes.

(c) VENUE AND FEES.—The petition and any accompanying papers, together with a filing fee of $100, shall be filed with a court in a district in which the petitioner is located.

(d) NOTICE.—The court shall give notice of the filing or dismissal of the petition to the State in which the petitioner is located, to the Securities and Exchange Commission, and to creditors. The notice shall also state that a creditor who files with the court a request, setting forth that creditor's name and address and the nature and amount of that creditor's claim, shall be given notice of any other matter in which that creditor has a direct and substantial interest. The notice required by the first sentence of this subsection shall be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the jurisdiction of the court, and in such other papers having a general circulation among bond dealers and bondholders as may be designated by the court. The court may require that it be published in such other publication as the court may deem proper. The court shall require that a copy of the notice required by

the first sentence of this subsection be mailed, postage prepaid, to each creditor named in the list required by subsection (b) at the address of such creditor given in the list, or, if no address is given in the list for any creditor and the address of such creditor cannot with reasonable diligence be ascertained, then a copy of the notice may, if the court so determines, be mailed, postage prepaid, to such creditor addressed as the court may prescribe. All expense of giving notice required by this subsection shall be paid by the petitioner, unless the court for good cause determines that the cost of notice in a particular instance should be borne by another party. The notice shall be first published as soon as practicable after the filing of the petition, and the mailing of copies of the notice shall be completed as soon as practicable after the filing of the list required by subsection (b).

(e) STAY OF ENFORCEMENT OF CLAIMS AGAINST PETITIONER.—

(1) EFFECT OF FILING A PETITION.—A petition filed under this chapter shall operate as a stay of the commencement or the continuation of a judicial or other proceeding against the petitioner, its property, or an officer or inhabitant of the petitioner, which seeks to enforce any claim against the petitioner, or of an act or the commencement or continuation of a judicial or other proceeding which seeks to enforce a lien upon the property of the petitioner, and shall operate as a stay of the enforcement of any set-off or counterclaim relating to a contract, debt, or obligation of the petitioner.

(2) DURATION OF AUTOMATIC STAY.—Except as it may be terminated, annulled, modified, or conditioned by the court under the terms of this section, the stay provided for in this subsection shall continue until the case is closed or dismissed, or the property subject to the lien is, with the approval of the court, abandoned or transferred.

(3) RELIEF FROM AUTOMATIC STAY.—Upon the filing of a complaint seeking relief from a stay provided for by this section, the court may, for cause shown, terminate, annul, modify, or condition such stay.

(4) OTHER STAYS.—The commencement or continuation of any other act or proceeding may be stayed, restrained, or enjoined by the court, upon notice to each person and entity against whom such order would apply, and for cause shown. The petitioner shall not be required to give security as a condition to an order under this paragraph.

(f) UNENFORCEABILITY OF CERTAIN CONTRACTUAL PROVISIONS.—A provision in a contract or lease, or in any law applicable to such a contract or lease, which terminates or modifies, or permits a party other than the petitioner to terminate or modify, the contract or lease because of the insolvency of the petitioner or the commencement of a case under this Act is not enforceable if any defaults in prior performance of the petitioner are cured and adequate assurance of future performance is provided.

(g) RECOVERY OF SET-OFF.—Any set-off which relates to a contract, debt, or obligation of the petitioner and which set-off was effected within four months prior to the filing of the petition, is voidable and recoverable by the petitioner after hearing on notice. The court may

require as a condition to recovery that the petitioner furnish adequate protection for the realization by the person or entity against whom or which recovery is sought of the claim which arises by reason of the recovery.

SEC. 86. REPRESENTATION OF CREDITORS.—

(a) REPRESENTATION AND DISCLOSURE.—Any creditor may act in person or by an attorney or a duly authorized agent or committee. Every person representing more than one creditor shall file with the court a list of the creditors represented by such person, giving the name and address of each such creditor, together with a statement of the amount, class, and character of the claim held by that creditor, and shall attach to the list a copy of the instrument signed by the holder of such claim showing such person's authority, and shall file with the list a copy of the contract or agreement entered into between such person and the creditors represented by that person. Such person shall disclose all compensation to be received, directly or indirectly, by that person. That compensation shall be subject to modification and approval by the court.

(b) MULTIPLE COMPENSATION.—The court shall examine all of the contracts, proposals, acceptances, deposit agreements, and all other papers relating to the plan, specifically for the purpose of ascertaining if any person promoting the plan, or doing anything of such a nature, has been or is to be compensated, directly or indirectly, by both the petitioner and any of its creditors, and shall take evidence under oath to determine whether any such compensation has occurred or is to occur. After such examination the court shall make an adjudication of this issue, and if it be found that any such compensation has occurred or is to occur, the court shall dismiss the petition and tax all of the costs against the person promoting the plan or doing anything of such a nature and receiving such multiple compensation, or against the petitioner, unless such plan is modified, within the time to be allowed by the court, so as to eliminate the possibility of such compensation, in which event the court may proceed to further consideration of the confirmation of the plan.

SEC. 87. REFERENCE AND JOINT ADMINISTRATION.—

(a) REFERENCE.—The court may refer any special issue of fact to a referee in bankruptcy for consideration, the taking of testimony, and a report upon such special issue of fact, if the court finds that the condition of its docket is such that it cannot take such testimony without unduly delaying the dispatch of other business pending in the court, and if it appears that such special issue is necessary to the determination of the case. A reference to a referee in bankruptcy shall be the exception and not the rule. The court shall not make a general reference of the case, but may only request findings of specific facts.

(b) EXPENSES.—The court may allow reasonable compensation for the actual and necessary expenses incurred in connection with the case, including compensation for services rendered and expenses incurred in obtaining the deposit of securities and the preparation of the plan, whether such work has been done by the petitioner or by a representative of creditors, and may allow reasonable compensation for an attorney or agent of any of them. No fee, compensation, reimbursement, or other allowances for an attorney, agent, or representative of creditors shall be assessed against the petitioner or paid from any revenues, property, or funds of the petitioner except in the manner and in such sums, if any, as may be provided for in the plan.

(c) JOINT ADMINISTRATION.—If more than one petition by related entities are pending in the same court, the court may order a joint administration of the cases.

SEC. 88. CLAIMS.—

(a) ALLOWANCE OF CLAIMS.—In the absence of an objection by a party in interest, or of a filing of a proof of claim, the claim of a creditor that is not disputed, contingent, or unliquidated, and appears in the list filed by the petitioner under section 85(b) shall be deemed allowed. The court may set a date by which proofs of other claims shall be filed. If the court does not set a date, such proofs of other claims shall be filed before the entry of an order confirming the plan. Within thirty days after the filing by the petitioner of the list under section 85(b), the court shall give written notice to each person and entity whose claim is listed as disputed, contingent, or unliquidated, informing each such person or entity that a proof of claim must be filed with the court within the time fixed under this subsection. If there is no objection to such claim, the claim shall be deemed allowed. If there is an objection, the court shall hear and determine the objection.

(b) CLASSIFICATION OF CREDITORS.—The court shall designate classes of creditors whose claims are of substantially similar character and the members of which enjoy substantially similar rights, consistent with the provisions of section 89, except that the court may create a separate class of creditors having unsecured claims of less than $100 for reasons of administrative convenience.

(c) DAMAGES UPON REJECTION OF EXECUTORY CONTRACTS.—If an executory contract or an unexpired lease is rejected under a plan or under section 82(b), any person injured by such rejection may assert a claim against the petitioner. The rejection of an executory contract or unexpired lease constitutes a breach of the contract or lease as of the date of the commencement of the case under this chapter. The claim of a landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be allowed, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by such lease for the year next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid accrued rent, without acceleration, up to the date of such surrender or reentry. The court shall scrutinize the circumstances of an assignment of a future rent claim and the amount of the consideration paid for such assignment in determining the amount of damages allowed the assignee of that claim.

SEC. 89. PRIORITIES.—The following shall be paid in full in advance of the payment of any distribution to creditors under a plan, in the following order:

(1) The costs and expenses of administration which are incurred subsequent to the filing of a petition under this chapter.

(2) *Debts or consideration owed for services or materials actually provided within four months before the date of the filing of the petition under this chapter.*

(3) *Debts owing to any person or entity, which by the laws of the United States (other than this Act) are entitled to priority.*

Sec. 90. Filing and Transmission of Plan and Modifications.—

(a) *Filing.— The petitioner shall file a plan for the adjustment of the petitioner's debts. If such plan is not filed with the petition, the petitioner shall file the plan at such later time as the court, upon its own motion or upon application of the petitioner, prescribes. At any time prior to the confirmation of a plan, the petitioner may file a modification of the plan.*

(b) *Transmission of plan and modifications.—As soon as practicable after the plan or any modification of the plan has been filed, the court shall fix a time within which creditors may accept or reject the plan and any modification of the plan, and shall transmit by mail a copy of such plan or modification, or a summary and any analysis of such plan or modification, a notice of the time within which the plan or modification may be accepted or rejected, and a notice of the right to receive a copy, if it has not been sent, of such plan or modification, to each of the creditors affected by the plan, to each of the special tax payers affected by the plan, and to each such other party in interest as the court may designate. Upon request by a recipient of such summary and notice, the court shall transmit by mail a copy of the plan or modification to that recipient.*

Sec. 91. Provisions of Plan.—A petitioner's plan may include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire, including provisions for the rejection of any executory contract or unexpired lease.

Sec. 92. Acceptance.—

(a) *Who may accept or reject.—Unless a claim has been disallowed or is not materially and adversely affected, any creditor included on the list filed under section 85(b) or who files a proof of claim and whose claim is not then disputed, contingent, or unliquidated as to amount, and any security holder of record as of the date of the transmittal of information under section 90(b), may accept or reject the plan and any modification of the plan within the time fixed by the court. Notwithstanding an objection to a claim, the court may temporarily allow such claim in such amount as the court deems proper for the purpose of acceptance or rejection under this section.*

(b) *General rule.—Except as otherwise provided in this section, the plan may be confirmed only if it has been accepted in writing by or on behalf of creditors holding at least two-thirds in amount of the claims of each class.*

(c) *Computing acceptance.—The two-thirds majority required by subsection (b) is two-thirds in amount of the claims of creditors who file an acceptance or rejection within the time fixed by the court, but not including claims held, or controlled by the petitioner, or claims of creditors specified in subsection (d).*

(d) *Exception.—It is not requisite to the confirmation of the plan that there be such acceptance by any creditor or class of creditors—*

(1) *whose claims are not affected by the plan;*

(2) *if the plan makes provision for the payment of their claims in cash in full; or*

(3) *if provision is made in the plan for the protection of the interests, claims, or lien of such creditor or class of creditors.*

(e) *Acceptance of modification.—If the court finds that a proposed modification does not materially and adversely affect the interest of a creditor, the modification shall be deemed accepted by that creditor if that creditor has previously accepted the plan. If the court determines that a modification does materially and adversely affect the interest of a creditor, that creditor, shall be given notice of the proposed modification and the time allowed for its acceptance or rejection. The number of acceptances of the plan as modified required by subsection (b) shall be obtained. The plan as modified shall be deemed to have been accepted by any creditor who accepted the plan and who fails to file a written rejection of the modification with the court within such reasonable time as shall be allowed in the notice to that creditor of the proposed modification.*

Sec. 93. Objection to Plan.—A creditor affected by the plan or a special tax payer affected by the plan may file a complaint with the court objecting to the confirmation of the plan. The Securities and Exchange Commission may also file a complaint with the court objecting to the confirmation of the plan, but in the case of a complaint filed under this section, the Securities and Exchange Commission may not appeal or file any petition for appeal. A complaint objecting to the confirmation of the plan may be filed with the court any time prior to ten days before the hearing on the confirmation of the plan, or within such other time as prescribed by the court.

Sec. 94. Confirmation.—

(a) *Hearing on confirmation.—Within a reasonable time after the expiration of the time set by the court within which a plan and any modifications of the plan may be accepted or rejected, the court shall hold a hearing on the confirmation of the plan and any modifications of the plan. The court shall give notice of the hearing and of the time allowed for filing objections to all parties entitled to object under section 93.*

(b) *Conditions for confirmation.—The court shall confirm the plan if satisfied that—*

(1) *the plan is fair and equitable and feasible and does not discriminate unfairly in favor of any creditor or class of creditors;*

(2) *the plan complies with the provisions of this chapter;*

(3) *all amounts to be paid by the petitioner or by any person for services and expenses in the case or incident to the plan have been fully disclosed and are reasonable;*

(4) *the offer of the plan and its acceptance are in good faith; and*

(5) *the petitioner is not prohibited by law from taking any action necessary to be taken by it to carry out the plan.*

Sec. 95. Effect of Confirmation.—

(a) *Provisions of plan binding.—The provisions of a confirmed plan shall be binding on the petitioner and on all creditors who had*

timely notice or actual knowledge of the petition or plan, whether or not their claims have been allowed under section 88, and whether or not they have accepted the plan.

(b) DISCHARGE.—

(1) The petitioner is discharged from all claims against it provided for in the plan except as provided in paragraph (2) of this subsection as of the time when—

(A) the plan has been confirmed;

(B) the petitioner has deposited the consideration to be distributed under the plan with a disbursing agent appointed by the court; and

(C) the court has determined—

(i) that any security so deposited will constitute upon distribution a valid legal obligation of the petitioner; and

(ii) that any provision made to pay or secure payment of such obligation is valid.

(2) The petitioner is not discharged under paragraph (1) of this subsection from any claim—

(A) excepted from discharge by the plan or order confirming the plan; or

(B) whose holder, prior to confirmation, had neither timely notice nor actual knowledge of the petition or plan.

SEC. 96. POSTCONFIRMATION MATTERS.—

(a) TIME ALLOWED FOR DEPOSIT UNDER THE PLAN.—Prior to or promptly after confirmation of the plan, the court shall fix a time within which the petitioner shall deposit with the disbursing agent appointed by the court any consideration to be distributed under the plan.

(b) DUTIES OF PETITIONER.—The petitioner shall comply with the plan and the orders of the court relative to the plan, and shall take all actions necessary to carry out the plan.

(c) DISTRIBUTION.—Distribution shall be made in accordance with the provisions of the plan to creditors whose claims have been allowed under section 88. Distribution may be made at the date the order confirming the plan becomes final to holders of securities of record whose claims have not been disallowed.

(d) COMPLIANCE DATE.—When a plan requires presentment or surrender of securities or the performance of any other action as a condition to participation under the plan, such action shall be taken not later than five years after the entry of the order of confirmation. A person who has not within such time presented or surrendered that person's securities or taken such other action required by the plan shall not participate in any distribution under the plan, and the consideration deposited with the disbursing agent for distribution to such person shall become the property of the petitioner.

(e) CONTINUING JURISDICTION.—The court may retain jurisdiction over the case for such period of time as the court determines is necessary for the successful execution of the plan.

(f) ORDER OR DECREE AS EVIDENCE AND NOTICE.—A certified copy of any order or decree entered by the court in a case under this chapter shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and the fact that the order was made. A certified copy of

an order providing for the transfer of any property dealt with by the plan shall be evidence of the transfer of title accordingly, and, if recorded as conveyances are recorded, shall impart the same notice that a deed, if recorded, would impart.

SEC. 97. EFFECT OF EXCHANGE OF DEBT SECURITIES BEFORE DATE OF THE PETITION.—The exchange of new debt securities under the plan for claims covered by the plan, whether the exchange occurred before or after the date of the petition, does not limit or impair the effectiveness of the plan or of any provision of this chapter. The written consents of the holders of any securities outstanding as the result of any such exchange under the plan shall be included as acceptances of such plan in computing the acceptance required under section 92.

SEC. 98. DISMISSAL.—The court may dismiss the case after hearing on notice—

(1) for want of prosecution;

(2) if no plan is proposed within the time fixed or extended by the court;

(3) if no proposed plan is accepted within the time fixed or extended by the court;

(4) if confirmation is refused and no further time is granted for the proposal of other plans; or

(5) where the court has retained jurisdiction after confirmation of a plan—

(A) if the debtor defaults in any of the terms of the plan; or

(B) if a plan terminates by reason of the happening of a condition specified therein.

SEC. 99. SEPARABILITY—If any provision of this chapter or the application thereof to any agency, instrumentality, or subdivision is held invalid, the remainder of the chapter, or the application of such provision to any other agency or instrumentality or political subdivision shall not be affected by such holding.

SEPARATE VIEWS OF HON. ELIZABETH HOLTZMAN ON H.R. 10624

The Committee bill, as far as it goes, is a well-drafted, technically sound revision of the law on municipal bankruptcy. I supported it, however, only with the gravest misgivings.

I. The Bill Fails To Provide Operating Cash

This bill has a serious, if not fatal, flaw. It fails to provide any effective mechanism for a municipality to raise operating cash while in bankruptcy.

The Judiciary Committee recognized the need to provide a mechanism for raising operating capital. It understood that operating capital is essential if a municipability in bankruptcy is to survive—that is, to provide such services as police and fire protection, garbage pick-ups, and education. If New York City, for example, had defaulted in early December, even if it had stopped all payments for debt service, it would have had a net operating deficit for the subsequent five months of $1.2 billion.

The Judiciary Committee allows a municipality to raise operating capital through the device of "certificates of indebtedness." Thus, the Committee contemplates that after bankruptcy, a municipality would with court approval sell its bonds—now called certificates of indebtedness—and thereby raise operating cash. But as a practical matter, certificates of indebtedness of a bankrupt municipality are not likely to be marketable in the absence of a federal guarantee.

The Subcommittee on Civil and Constitutional Rights held no hearings on the marketability of unguaranteed certificates. We do know, however, that in the 1930's, when the first municipal bankruptcy provisions were enacted, municipalities needed loans or loan guarantees from the Reconstruction Finance Corporation in order to continue to operate. More recently, trustee's certificates in the Penn Central bankruptcy were not salable without a federal guarantee.

A mechanism for guaranteeing bonds of a municipality in bankruptcy is contained in the House Banking and Currency bill, H.R. 10481. If, however, the Judiciary Committee's bill (H.R. 10624) reaches the floor without any such mechanism provided in an accompanying bill, I will offer an amendment to ensure that federal guarantees are available for a bankrupt municipality in need of operating cash.

Any bankruptcy bill that fails to provide an effective mechanism for a municipality to raise operating cash during bankruptcy is an illusory remedy—a court-supervised road to disaster.

II. Municipal Bankruptcy Is Unsound National Policy

Bankruptcy does not represent a sensible national policy for dealing with the fiscal problems of municipalities.

Many large municipalities in this country are in serious trouble. The basic reasons are: an increasing welfare burden, high unemployment and the steady flight of middle class taxpayers and business which has eroded the city's tax base. These problems are rooted in national policy and are the direct result of federal action or inaction. While fiscal mismanagement of cities can aggrevate these problems and bring crises to a head, the economic viability of our cities cannot be assured until these underlying problems are resolved.

Bankruptcy provides no answer to the root causes of municipal fiscal troubles or the problems of mismanagement. In fact, bankruptcy, with its uncertainties and stigma, may well aggravate these problems. If municipal services continue to deteriorate and taxes continue to rise, the departure of business and the middle class will undoubtedly accelerate. Thus, the affected city will become even less capable than before of meeting the needs of its citizens.

Bankruptcy is an exceedingly complex, time consuming, and cumbersome mechanism for resolving a cities problems with its creditors. It is reported that the average corporate reorganization case in the Southern District of New York takes eight years to resolve. How much longer will it take to resolve a municipal bankruptcy under a new and untried bankruptcy law? What assurance is there that the well being of 8 million people will be adequately protected during this protracted litigation?

Finally, making it easier for municipalities to go into bankruptcy takes us down an unknown and possibly dangerous path. Municipal bonds may now become a vastly more risky investment. If so, it may be more difficult and costly for municipalities to borrow money in order to build schools, hospitals, and other public buildings, or even to bridge the seasonal gaps between revenues and expenditures. The consequences of such a reduction in municipal credit for the nation's economy and taxpayers are potentially enormous.

Despite all these misgivings, I supported H.R. 10624 because we on the Judiciary Committee were forced to choose between the wrong answer to the fiscal problems of major municipalities and no answer at all. Congress does not face the same choice. I hope it will act wisely, in the long term interest of all Americans, to produce legislation designed to remedy the basic causes of the crisis of our cities—legislation designed to prevent rather than facilitate municipal bankruptcy.

Elizabeth Holtzman.

SUPPLEMENTAL VIEWS OF MESSRS. BUTLER, KINDNESS, HUTCHINSON, McCLORY, MOORHEAD OF CALIFORNIA, AND HYDE, WITH MR. WIGGINS CONCURRING IN PART AND DISSENTING IN PART

H.R. 10624, which revises Chapter IX of the Bankruptcy Act, represents a bipartisan effort to modernize a highly technical law. Original proposals of the administration and Democrat leadership were melded into a bill that was favorably reported by a unanimous House Committee on the Judiciary on November 18, 1975, the result of careful deliberations of both the Subcommittee and full Committee. Forty amendments were offered, of which twenty-five were accepted, most often unanimously. The finished product contains clearly indicated improvements in the present law and is one in which all Members of the House Committee on the Judiciary can take pride.

While there are areas of disagreement and concern, the need for the legislation is clear and we urge its immediate adoption. We do think it appropriate, however, to point out certain concerns which remain.

I

Re Rejection of Executory Contracts

Chapter X of the Bankruptcy Act concerns corporate reorganizations; Chapter XI concerns arrangements in bankruptcy; and Chapter XIII permits wage earner extensions and compositions. In each of these instances the trustee in bankruptcy or the debtor in possession, as the case may be, is permitted to reject executory contracts. No such power exists under Chapter IX of the present Bankruptcy Act which is, of course, concerned with municipal bankruptcy.

Section 82(b)(1) of the legislation now before us permits the petitioning municipality, upon filing its petition and thereafter, to reject executory contracts with the permission of the court.

Although there are no standards in the legislation for determining the circumstances under which rejection of executory contracts will be permitted by the court, existing case law makes it clear that executory contracts must be burdensome or onerous before they may be rejected. Although there are problems involved in determining exactly what constitutes an executory contract, it is apparent that the term encompasses substantially all contractual obligations of the petitioning municipality including vendor contracts and collective bargaining agreements.

The Committee report indicates that even though executory collective bargaining agreements may be rejected, certain collective bargaining agreement may have to be renegotiated pursuant to State law and existing terms and conditions of employment would have to be maintained subsequent to rejection because of certain provisions of State law.

Nothing could be further from the truth. No evidence was taken or memoranda of law submitted to the Committee for discussion on that point. No discussion of this matter took place in the Subcommittee or the full Committee.

We understand that conversations took place between certain members of the Committee staff and representatives of one or more municipal employee unions of the City of New York in an unsuccessful effort to obtain agreement to exclude by amendment collective bargaining agreements from those executory contracts which may be rejected.

The language included in the Committee report with reference to the mandatory renegotiation of collective bargaining agreements was inserted after this effort failed. We emphasize again, however, that no discussion took place in the Committee or Subcommittee with reference to this point. The language in the report, at the request of the union representatives, is most inappropriate, unnecessary, and inaccurate.

The legislation before us is authorized by article I, § 8, cl. 4 of the Constitution empowering the Congress of the United States to establish a uniform system of bankruptcy. The bankruptcy law of the United States is a law made pursuant to the Constitution of the United States which is expressly stated in article VI thereof to be the supreme law of the land.

It may appear that Sections 82(c) and 83 of the proposed legislation indicate that State laws are intended to limit the specific power of the court to permit the rejection of executory contracts under Section 82 (b)(1). This is not the case.

Section 82(c) provides as follows:

> *Unless the petitioner consents* or the plan so provides, the court shall not, by any order or decree, in the case or otherwise, interfere with—
>
> (1) any of the political or governmental powers of the petitioner;
>
> (2) any of the property or revenues of the petitioner; or
>
> (3) any income-producing property. (Emphasis added.)

It is apparent from the underlined portion of the above that the limitation in Section 82(c) is contingent specifically upon the petitioner's consent. Therefore, when the petitioning municipality consents to an interference with its governmental powers by requesting the court to permit it to reject an executory contract, the limitation in Section 82(c) is inapplicable.

Section 83 provides as follows:

> Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor.

The identical language appears in § 83(i) of Chapter IX of the present Bankruptcy Act. It was inserted in 1937 to overcome an earlier determination that the legislation was unconstitutional. It is being retained because of the Committee's reluctance to remove tested language from existing law and has no relevance to the power of the

court to permit a petitioning municipality to reject an executory contract.

II

Re Power To Issue Certificates of Indebtedness

One of the principal reasons that this legislation could be of particular benefit to distressed municipalities is the power of the court, upon the filing of the petition, to permit the petitioning municipality to issue certificates of indebtedness upon such terms and conditions and with such priority as the court finds equitable. This gives the court great leverage to encourage the petitioner to comply with conditions such as rejecting contracts, raising taxes, or cutting expenses, that the court may feel are necessary and equitable.

This power is new to municipal bankruptcy. It was not included in prior legislation and was not included in legislation revising the entire Bankruptcy Act recommended by the Commission on the Bankruptcy Laws of the United States or by the National Conference of Bankruptcy Judges.

The untested nature of this innovation suggests to the undersigned the wisdom of limiting the applicability of this legislation to the immediate problem before the Congress—the distressed condition of our largest city. This is discussed more fully in paragraph V below.

III

Re A Balanced Budget

The purpose of municipal bankruptcy is to give the municipality an opportunity to get its house in order and make whatever adjustments or arrangements are indicated with existing indebtedness so that it may emerge from the bankruptcy under circumstances in which it can survive. No municipality can survive unless its projected revenues, regardless of source, and projected expenditures, regardless of purposes, are in balance. We do not think that Congress intends to make available the extreme remedies of a stay of all adverse proceedings and involuntary compositions of the debts of objecting creditors and of other benefits of Chapter IX in the absence of a clear municipal intent to balance its budget.

We are concerned that the proposed revision of Chapter IX does not make this absolutely clear. Section 94(b)(1) requires that a plan cannot be confirmed unless it is fair and equitable and feasible. We are encouraged by Chapter IX case law that has interpreted the fair and equitable requirement which is currently in Chapter XI to include findings that a petitioner will be able to meet obligations proposed under the plan. *Kelley* v. *Everglades Drainage District*, 319 U.S. 415 (1943). The attention given by the Court to past and *projected* tax revenues and operating expenses is reassuring.

We are also encouraged by the additional requirement of "feasibility" which is new in the context of municpal bankruptcy but which has a well defined meaning in Chapters X and XI dealing with corporate reorganizations and arrangements.

The reservations which we have about the absence of an express statutory requirement that the budget be balanced within a reasonable time has been amplified by the expression of Professor Vern

Countryman in a supplement to his testimony before the Senate committee considering municipal bankruptcy legislation wherein he stated that, "[f]easibility, and not budget-balancing, is all that is required by § 221(2) of Chapter X for corporate reorganizations."

The apparent distinction this noted authority makes between "feasibility" and "budget-balancing" is disturbing.

We recognize the argument that the terms fair, equitable, and feasible when interpreted in light of the case law mean a balance budget, but we cannot understand the reluctance to make perfectly clear the congressional intent to require that a plan for adjustment of municipal indebtedness which is to receive the blessing of a federal court must include a requirement that the budget of the rescued municipality must be in balance within a reasonable period of time after confirmation of the plan.

Such an amendment was rejected in Committee and Subcommittee. It may again be offered on the Floor.

IV

Re Dismissal

Section 98 of the bill was added during the course of subcommittee discussion on order to make clear the power of the court to dismiss the petition under the circumstances therein set forth. This was not intended to be an exclusive list of the bases for dismissal.

It was clearly established that the petitioner itself may withdraw its petition at any time for any reason whether the court permits it or not.

An appropriate concern was expressed in Committee and Subcommittee to avoid abuse of the broad privileges granted by this legislation and to make certain that a frivilous petition could not long survive.

Section 83(a) of present Chapter IX requires a determination at the time of filing that the petition was filed in good faith, and the judge to approve the petition as properly filed in compliance with Chapter IX. The removal of these jurisdictional and procedural approval requirements was not intended to imply that petitions may be filed in the absence of good faith. On the contrary, the objection procedure in Section 85(a) and the dismissal provision in Section 98 were intended to preclude the filing of frivilous petitions.

No one seriously questioned during subcommittee or committee discussions the power of the court to dismiss on its own motion a petition not being prosecuted with the appropriate diligence.

V

Re Substitute

An abundance of innovative provisions are included as proposed changes in this municipal bankruptcy legislation. We can reasonably anticipate that serious questions will be raised as to its constitutionality.

The membership is assured that all of the undersigned are satisfied that what we are undertaking to do is constitutionally permissible and appropriate, but we are influenced and we are concerned that what we are doing is untested and subject to constitutional challenge.

A memorandum prepared by the attorneys for the City of New York expressly states that this legislation may be challenged in the following language:

> There are State constitutional limitations on the amount and type of permitted debt. Under the 10th amendment, contentions may be made that a federal statute cannot preempt these limitations, and, accordingly, that both the plan of composition as well as any interim financing have to comply with these limitations. This may be a source of litigation.

This is consistent with what was pointed out in paragraph II that the control the bankruptcy court retains over the power of the municipality to issue certificates of indebtedness could be the basis for constitutional challenge.

The constitutionality of existing Chapter IX has been established. It is a workable piece of legislation for smaller municipalities. It is only when we get to the larger and more complex financial structure of cities such as the size of New York that its shortcomings become apparent.

It is well to point out that section 108 of title I of the United States Code provides that if the new Chapter IX is repealed that it does not revive the previous legislation. The repeal is effective then regardless of what subsequent constitutional development occurs.

Accordingly, if the proposed Chapter IX is enacted and found to be unconstitutional, the replaced Chapter IX would in all probability not be revived and the municipalities of the country would be left without any available remedy in the bankruptcy court.

Of greater significance however is the effect of a constitutional challenge during the period of its litigation. We may very well be facing a time in which there will be more financial distress of municipalities or other governmental entities than ever before. It would be ironical indeed if our efforts to provide relief for them should place even the present remedies out of reach because of litigation in which the powers bestowed by this Chapter are in question. It is unreasonable to think that certificates of indebtedness issued under proposed Chapter IX would be marketable as long as their validity was subject to pending litigation challenging the constitutionality of the new Chapter IX.

In view of the almost certain constitutional challenge of the provisions of proposed Chapter IX and the importance of maintaining existing remedies, and in further view of the fact that the legislation which we have before us was created and tailored for the one purpose of protecting the City of New York, it is most appropriate to limit the exposure to constitutional challenge and to limit the adverse effects of a successful challenge.

Accordingly, it is our present intention to offer an amendment in the nature of a substitute which would incorporate all the changes in the proposed legislation with one addition: instead of revising existing Chapter IX, the legislation would create an additional Chapter XVI with remedies limited in scope to cities with a population exceeding one million people.

In addition to limiting exposure to challenge, there are at least two other reasons why it is appropriate that this be done:

1. The legislation which we are undertaking to enact at this moment makes it quite easy for a municipality to abrogate either temporarily

or permanently, in one way or another, its contractual obligations; and every municipality that has the potential of receiving the benefits of this Act also has the comparable benefits of an easy way to get out from under its indebtedness. Under these circumstances, securities are going to be less marketable and interest costs greater.

There is no real reason why well managed municipalities should pay the high costs that will result from changes designed to benefit New York City. Chapter IX has worked well for municipalities with a manageable number of creditors and it should continue to do so.

2. Limiting the availability of this relief to cities with populations of at least one million persons will allow the constitutionality of this bill to rest on the commerce power as well as upon the bankruptcy power.

Cities with populations of at least one million persons clearly impact the commerce of the country. Such is not the case with many small sewer or drainage districts eligible for relief under Chapter IX.

The legitimate impact on commerce caused by the bankruptcy of a major municipality justifies use of the commerce power to infringe State sovereignty by allowing the rejection of executory contracts and the issuance of certificates of indebtedness. While it may be argued that these powers may impair State sovereignty beyond the scope of the bankruptcy power, they are clearly constitutional under the commerce power.

VI

Re Preferences

A matter of concern has been the problem of prepetition set-offs and preferential transfers whereby a creditor is made better off than he would be in bankruptcy. An amendment was accepted by the Committee protecting the petitioner against set-offs within four months of bankruptcy. Subsequent reflection indicates that even this does not go far enough.

There is no real reason why the power to set aside transfers prior to bankruptcy under appropriate circumstances should not be the same in municipal bankruptcy as it is in other bankruptcies. We note with interest that the Senate Judiciary Committee has so concluded.

Accordingly, we intend to offer an amendment to incorporate into the legislation before us the avoiding powers of Sections 60 (a), (b), (c), 67, 70 (c) and (e) of the Bankruptcy Act. These avoiding powers are presently available in straight bankruptcy and under Chapters X, XI, XII, and XIII of the Bankruptcy Act.

The undersigned Members ascribe to the above stated views.

M. Caldwell Butler.
Thomas N. Kindness.
Edward Hutchinson.
Robert McClory.
Carlos J. Moorhead.
Henry J. Hyde.

The undersigned Member concurs in all but paragraph III of the above stated views.

Charles E. Wiggins.

○

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-686

CHAPTER IX BANKRUPTCY REVISION

DECEMBER 1, 1975.—Ordered to be printed

Mr. EDWARDS of California, from the Committee on the Judiciary, submitted the following

REPORT

together with

SEPARATE AND SUPPLEMENTAL VIEWS

[To accompany H.R. 10624]

The Committee on the Judiciary, to whom was referred the bill (H.R. 10624) to revise chapter IX of the Bankruptcy Act, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 4, immediately after line 12, insert the following new subsection:

(d) DESIGNATION OF JUDGE.—Upon the filing of a petition the chief judge of the court in the district in which the petition is filed shall immediately notify the chief judge of the circuit court of appeals of the circuit in which the district court is located, who shall designate the judge of the district court to conduct the proceedings under this chapter.

Page 4, line 19, strike out the colon and all that follows down through but not including the period in line 25.

Page 5, line 16, strike out "mailing" and insert "publication" in lieu thereof.

Page 7, line 10, insert "as soon as practicable after the filing of the petition" after "published" and before the comma.

Page 8, line 17, strike out "of" and insert "to" in lieu thereof.

Page 9, immediately after line 3, insert the following new subsection:

(g) RECOVERY OF SET-OFF.—Any set-off which relates to a contract, debt, or obligation of the petitioner and which set-off was effected within four months prior to the filing of the petition, is voidable and recoverable by the petitioner after

Rec. 12/9/75
5:50 pm

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: December 9, 1975 Time:

FOR ACTION:
Jim Cannon (Jim Falk)
Max Friedersdorf
Bob Hartmann
Jack Marsh

cc (for information):
Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, December 10 Time: 10 A.M. Please

SUBJECT:

Proposed Letter to Governor Hugh L. Carey
of New York (prepared by Bill Seidman)

ACTION REQUESTED:

____ For Necessary Action
____ Prepare Agenda and Brief
X For Your Comments
X For Your Recommendations
____ Draft Reply
____ Draft Remarks

REMARKS:

for whom?

It has been requested that this letter be sent tomorrow while the news on New York is still in the papers.

Thank you.

1. See notes on draft.
2. I don't see how any great good comes from this, but if as a matter of courtesy Gov. Carey's letter has to be acknowledged, I would omit the whole second paragraph which just rubs NY's nose in it.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor
For the President

THE WHITE HOUSE

WASHINGTON

Dear Hugh:

Thank you for your letter of November 26, ~~It is my judgment~~ advising me that, under your leadership, New York officials, union and financial leaders have now initiated a plan which, if effectively implemented, can return the City to a position of financial solvency. I am ~~pleased~~ glad that the Congress, in response to my request, is moving swiftly to provide a temporary line of credit to the State of New York to enable us to supply seasonal financing to New York City.

Much effort has been expended on this problem, ~~and~~ I was ~~pleased~~ glad to work with you and others in developing a realistic approach consistent with the national interest. Although the steps taken in recent days in Albany and Washington will provide resources needed to alleviate the City's financial distress, responsibility to complete the unfinished task of putting the City's financial affairs in order must continue to rest in New York.

My compliments to you, Felix Rohatyn and others on your accomplishments in moving toward a solution of this difficult matter.

Sincerely,

The Honorable Hugh L. Carey
Governor of New York
Albany, New York 12224

nyc

THE WHITE HOUSE

WASHINGTON

December 12, 1975

MEMORANDUM FOR JAMES E. CONNOR

FROM: L. WILLIAM SEIDMAN

SUBJECT: Proposed Letter to Governor Hugh Carey of New York

The attached proposed letter to Governor Hugh Carey has been revised in accordance with the comments received from Bob Hartmann and Jim Cavanaugh and has been reviewed and approved by Max Friedersdorf.

Attachment

THE WHITE HOUSE

WASHINGTON

Dear Hugh:

Thank you for your letter of November 26 advising me that, under your leadership, New York officials, union and financial leaders have now initiated a plan which, if effectively implemented, can return the City to a position of financial solvency. I am glad that the Congress, in response to my request, has moved swiftly to assure a temporary line of credit to the State of New York to provide seasonal financing to New York City.

My compliments to you, Felix Rohatyn and others on your accomplishments in moving toward a solution of this difficult matter.

Sincerely,

The Honorable Hugh L. Carey
Governor of New York
Albany, New York 12224

THE WHITE HOUSE

WASHINGTON

December 10, 1975

MEMORANDUM FOR: L. WILLIAM SEIDMAN

FROM: JAMES E. CONNOR JEC

SUBJECT: Proposed Letter to Governor Hugh Carey of New York

Staffing of your proposed letter to Governor Hugh Carey resulted in the following comments:

Approved by Jim Cannon and Paul Theis.

Max Friedersdorf -- The Office of Legislative Affairs recommends that proposed letter not be sent until checked with Barber Conable, Jack Wydler, Bill Stanton, John Tower et al.

Jim Cavanaugh - See comments attached

Bob Hartmann - See comments attached

This letter is returned to you with the request that it be reviewed in the light of the comments received in staffing.

NYC
EFBC

CREDIT AGREEMENT

by and among

UNITED STATES OF AMERICA

and

STATE OF NEW YORK,
THE CITY OF NEW YORK, and
NEW YORK STATE EMERGENCY FINANCIAL CONTROL BOARD

including undertakings by

MUNICIPAL ASSISTANCE CORPORATION FOR
THE CITY OF NEW YORK

Dated as of December 30, 1975

CREDIT AGREEMENT

This CREDIT AGREEMENT is made and entered into as of the 30th day of December, 1975, by and among the United States of America, acting by and through the Secretary of the Treasury (the "Secretary") on the one hand; and the State of New York (the "State"), The City of New York (the "City") and the New York State Emergency Financial Control Board (the "Board") on the other hand (the State, the City, and the Board being sometimes collectively called the "parties").

RECITALS

1. The New York City Seasonal Financing Act of 1975, Public Law 94-143, authorizes until June 30, 1978, the Secretary upon request of the City or a Financing Agent to make loans to the City or a Financing Agent, with specified maturity dates and interest rates provided that he determines that there is a reasonable prospect that such loans will be repaid in accordance with their terms and conditions, and the Secretary may require the City and any Financing Agent and, where he deems necessary, the State to provide such security as he deems appropriate.

2. Public Law 94-143 authorizes $2,300,000,000 for the making of loans by the Secretary to the City or a Financing Agent and for that purpose $2,300,000,000 has been appropriated by the Congress.

3. Pursuant to the New York State Municipal Assistance Act, as amended, the Municipal Assistance Corporation For The City of New York (the "Corporation") is empowered to provide financial assistance to the City to the extent and in the manner provided in such Act.

4. The Legislature of the State has adopted and the Governor of the State has signed legislation entitled the New York State Financial Emergency Act for The City of New York (the "State Financial Emergency Act") pursuant to which the Board has been created.

5. Pursuant to the State Financial Emergency Act, the City has developed and the Board has adopted a financial plan for the City for the fiscal years ending June 30, 1976, 1977 and 1978 which, among other things, projects amounts and sources of revenues and projects expenditures of the City during such period.

6. The State Financial Emergency Act empowers the Board to approve aggregate expenditures and borrowings by the City.

7. The Secretary and the parties desire to restore investor receptivity to the obligations of the City prior to June 30, 1978.

In consideration of the loans to be made by the United States to or for the benefit of the City as set forth in the foregoing recitals, and the mutual covenants and agreements herein contained, the Secretary and the parties agree as follows:

ARTICLE 1. DEFINITIONS

Section 1.1 Definitions. The following terms shall have the following meanings:

"Account": any account established with a bank, approved by the Secretary and having its principal office in the City, by any of the parties to this Agreement for the benefit of the Secretary with irrevocable instructions that no payments may be made from such account except to or with the consent of the Secretary as set forth in Section 6.3.

"Act": Public Law 94-143, the New York City Seasonal Financing Act of 1975, as from time to time amended.

"Agreement": this Credit Agreement.

"Banking Days": days on which the Federal Reserve Bank of New York is open for business.

"Borrower": the City or a Financing Agent; as of the date of this Agreement no Financing Agent has the authority to be a Borrower.

"Borrowing Laws of the State": the Constitution and laws of the State authorizing and providing for the issuance and sale of notes and bonds of a Borrower, including, without limitation, Article VIII of the Constitution of the State and the provisions of the Local Finance Law.

"City Financial Plan": the three-year financial plan for the City as approved by the Board on October 20, 1975 as amended and in effect on the date of this Agreement, including a revised plan for providing the required moneys when approved by the Board, as it may from time to time hereafter be amended, including material revisions presently contemplated; any such approval, amendment or revision hereafter to be made upon notice to the Secretary in accordance with Section 6.2.

"Financing Agent": any agency duly authorized by State law to act on behalf or in the interest of the City with respect to the City's financial affairs.

"Fiscal Year": as applied to the City, the period from July 1 in any calendar year until June 30 of the next following calendar year.

"Initial Credit": the credit described in Section 2.1.

"Note": any note of a Borrower issued in accordance with this Agreement.

"Subsequent Credit": the credit described in Section 2.2.

Section 1.2 Other Definitions. The terms set forth below are defined elsewhere in this Agreement, as indicated, and shall have the respective meanings so defined:

Term	Definition
"Board"	Preamble
"Borrowing and Payment Schedule"	3.1
"City"	Preamble
"Closing Date"	2.1, 2.2
"Corporation"	Recital 3
"event of default"	7.1
"Loan Request"	2.8
"Official Statement"	5.2
"parties"	Preamble
"Secretary"	Preamble
"State"	Preamble
"State Financial Emergency Act"	Recital 4
"Stated Maturity Date"	2.3
"temporary note"	2.1

Section 1.3 Interpretation. As used in this Agreement the singular shall include the plural and the plural shall include the singular unless the context otherwise requires. The masculine gender shall include the feminine.

Section 1.4 References and Headings. References in this Agreement to Articles, Exhibits or Sections are to Articles, Exhibits or Sections of this Agreement unless the context otherwise requires. The headings of the Articles, Exhibits and Sections are inserted for convenience of reference only and are not a part of this Agreement.

ARTICLE 2. THE CREDIT

Section 2.1 The Initial Credit. Prior to June 30, 1976, subject to all of the terms and conditions of this Agreement and so long as there shall exist no default hereunder or under any Note, the Secretary will from time to time lend to a Borrower on a Banking Day designated by such Borrower (each of which days shall be a "Closing Date") such amount (in integral multiples of $10,000,000) as the Borrower may request, and as the Secretary may approve, by a Loan Request made by the City to the Secretary at least five

Banking Days prior to the Closing Date, the proceeds of which shall be applied as provided in Section 2.7, against delivery to the Secretary of a Note of the Borrower in the aggregate principal amount of the loan; *provided, however,* that the aggregate principal amount of all Notes outstanding at any one time prior to June 30, 1976 shall not exceed $1,300,000,000.

Upon the execution and delivery of this Agreement, a Note shall be issued to the United States in exchange for the $130,000,000 note issued to the United States on December 18, 1975 (the "temporary note"). Such Note so issued in exchange shall be in the same aggregate principal amount and shall evidence the same loan as the temporary note, shall be dated the date of the temporary note, shall bear interest from December 18, 1975 at the rate stated in the temporary note, and shall be payable on demand for payment by the Secretary or on the 20th day of April, 1976, whichever date is earlier. The Note and the loan evidenced thereby shall constitute a Note issued and a loan made in accordance with this Agreement and shall be subject to and entitled to all the benefits of all the terms and conditions hereof.

Section 2.2 The Subsequent Credit. After June 30, 1976 and prior to June 30, 1978, subject to all of the terms and conditions of this Agreement and so long as there shall exist no default hereunder or under any Note, the Secretary will from time to time lend to a Borrower on a Banking Day designated by such Borrower (each of which days shall be a "Closing Date") such amount (in integral multiples of $10,000,000) as the Borrower may request, and as the Secretary may approve, by a Loan Request made by the City to the Secretary at least five Banking Days prior to the Closing Date, the proceeds of which shall be applied as provided in Section 2.7, against delivery to the Secretary of a Note of the Borrower in the aggregate principal amount of the loan; *provided, however,* that the aggregate principal amount of all Notes outstanding at any one time during such period shall not exceed $2,300,000,000.

Section 2.3 Notes; Closings. Each Note issued by the City (i) shall be a general obligation of the City for the payment of principal and interest on which the faith and credit of the City is pledged, (ii) shall be issued pursuant to the Borrowing Laws of the State, (iii) shall be executed by the duly authorized officers of the City, (iv) shall describe on its face the revenues in anticipation of which it is issued, and (v) shall be in substantially the form prescribed in the Local Finance Law and set forth in Exhibit 2.3.

Each Note issued by any Borrower shall be dated the Closing Date (except for the Note issued in exchange for the temporary note), shall bear interest at a rate computed in accordance with Section 2.4, and shall be payable on demand for payment by the Secretary and, in the absence of demand, on such date as the Secretary, the City and the Borrower may agree (the "Stated Maturity Date"), but not later than the last day of the Fiscal Year in which it is issued.

Each Note issued by any Borrower other than the City shall be in conformity with the Act, shall be issued under the applicable law of the State in effect at the time of issuance thereof and shall contain such other provisions as may be agreed upon by the Secretary, the City and such Borrower.

All payments of principal and interest on the Notes shall be made in federal funds by wire transfer at the Federal Reserve Bank of New York, for credit to the account of the United States Treasury, crediting accounting station 20-18-0006, Washington, D.C. 20226. If a principal or interest payment falls due on a date that is not a Banking Day, then interest shall be computed to and principal and interest shall be paid on the next succeeding Banking Day. The closing of each loan hereunder shall take place at the office of the Secretary in Washington, D.C. at 11:00 o'clock in the forenoon on the Closing Date, or at such other time and place as the Borrower and the Secretary may agree. Each loan shall be made by crediting federal funds to an account of the Borrower at a bank designated in the Loan Request and approved by the Secretary.

Section 2.4 Interest. Interest on each Note shall be at an annual rate to be stated in the Note which is 1% per annum greater than the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the Stated Maturity Date of the Note, as of the close of a Banking Day shortly prior to the Closing Date with respect thereto, as determined by the Secretary. Interest shall be computed on a 365-day year. Upon request by the Borrower, the Secretary will furnish the basis upon which the interest rate was determined.

Section 2.5 Payment. Payment of the entire unpaid principal amount of each Note and all accrued interest thereon shall be made as provided in the Note.

Section 2.6 Voluntary Prepayments. The Borrower may, at any time and from time to time, prepay (without penalty) all or any part of the unpaid principal amount of the Note (in integral multiples of $10,000,000) together with interest on the principal amount so prepaid accrued to the date of prepayment and theretofore unpaid, and from and after such prepayment interest thereon shall cease to accrue. Any voluntary prepayment under this Agreement shall be applied first to the Note of the Borrower making such prepayment which has the earliest Stated Maturity Date.

Section 2.7 Use of Proceeds. The City agrees that the proceeds of each loan hereunder, whether made to the City or to a Borrower other than the City, shall be used by the City as seasonal financing for the maintenance of essential governmental services of the City.

Section 2.8 Loan Request. Each request for a loan hereunder (the "Loan Request") shall be signed by the City, and approved by the Board, and each request by the City for a loan to any Borrower other than the City shall also be signed by such Borrower, and shall be in such form as the Secretary may from time to time require. Each Loan Request shall include (i) a statement of the amount of the requested loan, (ii) the Closing Date, (iii) the requested Stated Maturity Date for the loan, (iv) a representation that the amount of the loan is needed as a seasonal borrowing in order that the City may maintain essential governmental services, (v) an identification of the revenues in anticipation of which the loan is to be made showing any prior charges against, other debt issued in anticipation of and any other existing encumbrance on such revenues, and any anticipated or foreseeable reductions thereof, including such financial information as the Secretary may reasonably request, and (vi) to the extent required by Section 6.11, a description of efforts to obtain other sources of seasonal financing.

Section 2.9 Source of Revenue. The identification in a Loan Request of the revenues in anticipation of which any Note is issued or to be issued, shall constitute, to the extent permitted by law, representations and warranties by the City and any Borrower other than the City that the items so identified have not been and will not be assigned, pledged or subjected to any prior lien or identified as a source of repayment of other borrowings, except under this Agreement, and will be applied only in accordance with the provisions of Section 6.3 except, in each case, as stated in such identification.

Section 2.10 Consequences of Board Approval. Approval of a Loan Request by the Board shall constitute representations and warranties by the Board (i) that the Loan Request and the loan are consistent with the City Financial Plan, and (ii) to the same effect as set forth in Section 2.9.

Section 2.11 Federal Payments. The Secretary, to the extent permitted by federal law, may pay into an Account any payment from the United States or any department or agency thereof which has been identified pursuant to Section 2.9 as direct or indirect revenues in anticipation of which any Note has been or is to be issued in accordance with this Agreement. The Secretary, to the extent permitted by federal law, may also pay into an Account, to the extent necessary to pay any Note that is in default, any payment from the United States or any department or agency thereof to or for the benefit of the City or any Borrower, whether or not such payment has been identified as revenues in anticipation of which any Note has been issued.

Section 2.12 Notice of Demand for Payment. Notwithstanding the terms of any Note, the Secretary will give at least ten Banking Days' notice to the Borrower before making demand for payment of any demand Note, except as stated in Article 7.

ARTICLE 3. CONDITIONS TO MAKING LOANS

The making of any loan pursuant to Article 2 shall be subject to compliance by the parties and any Borrower with their agreements contained herein and in any Note, and to the satisfaction of the following further conditions:

Section 3.1 Borrowing and Payment Schedule. There has heretofore been furnished to the Secretary a Borrowing and Payment Schedule prepared by the City and approved by the Board setting forth with

reasonable accuracy, based on available information, a schedule showing expected receipts and expenditures of the City, by major categories, for the balance of the present Fiscal Year and for the next Fiscal Year including (i) the amount and dates of anticipated borrowings, including borrowings to be made hereunder, (ii) the sources of the revenues in anticipation of which each borrowing is to be made showing any anticipated or foreseeable reductions, (iii) the amount and dates of anticipated receipts of such revenues together with the basis for determining same, and (iv) comparable information for such revenues for each of the three preceding Fiscal Years. There shall be furnished with each Loan Request a Borrowing and Payment Schedule for the then current Fiscal Year and the succeeding Fiscal Year revised to take into account any changes from the prior such Schedule.

Section 3.2 Secretary's Determination. The Secretary shall have determined that there is a reasonable prospect of repayment of the loan in accordance with its terms and conditions, such determination to be evidenced by the making of such loan.

Section 3.3 Payment of Notes When Due. All Notes under this Agreement which shall have matured shall have been repaid according to their terms.

Section 3.4 Certificates. The representations and warranties contained in this Agreement shall be true and correct on and as of the date of the making of each such loan with the same force as though made on and as of such date, except for changes which the Secretary determines are not materially adverse to the ability of the City or any Borrower to repay the loans hereunder, and no default shall have occurred under this Agreement or any Note by any of the parties or by any Borrower; and the Secretary shall have received on such date a certificate or certificates to the foregoing effects from such parties and any Borrower as the Secretary may designate.

Section 3.5 Proper Proceedings. All proper proceedings shall have been taken to authorize this Agreement, the loan, the Note and the other transactions contemplated hereby.

Section 3.6 Required Consents and Approvals. All necessary consents, approvals and authorizations of any governmental or administrative officer or agency to or of any of the transactions contemplated hereby shall have been obtained and shall be in full force and effect.

Section 3.7 Officers' Certificate. If requested by the Secretary, there shall have been furnished to the Secretary a certificate of such parties and any Borrower as the Secretary may designate, in such form and containing such representations and assurances as the Secretary may deem relevant, including in the case of the State, certification of the status of any and all appropriations for and payments to or for the benefit of the City, any Borrower and the Board.

Section 3.8 General. All instruments and legal proceedings in connection with the authorization and implementation of the transactions contemplated by this Agreement shall be satisfactory in form and substance to the Secretary, and the Secretary shall have received copies of all documents, including records of proceedings and opinions of counsel, satisfactory to the Secretary, which the Secretary may have requested in connection therewith, such documents where appropriate to be certified by proper governmental or administrative authorities.

Section 3.9 Validity of Notes. Each Note shall have been validly authorized, executed, issued and delivered and shall conform to the requirements of Section 6.1.

ARTICLE 4. REPAYMENT OF LOANS

The United States shall, for the purposes of assuring repayment of the Notes, have a claim, to the extent permitted by law, on such revenues of the City as may be necessary to repay the Notes according to their terms, including, without limitation, the revenues in anticipation of which any Note has been issued.

Section 4.1 Obligations of the Mayor. The Mayor hereby covenants and agrees that, to the extent permitted by law, he will fully comply with all terms and conditions of any Loan Request or Note, including, without limitation, the taking of any and all actions necessary to insure that the revenues identified in the Loan Request as revenues in anticipation of which a Note has been issued are used only as provided in Section 6.3. In the event the Mayor believes or has reason to believe that such revenues will not be available or sufficient to repay any such Note according to its terms, the Mayor shall promptly

notify the Secretary, setting forth the reasons he believes such revenues will be unavailable or insufficient, identifying alternative sources of repayment he reasonably believes to be adequate to pay the Note in full according to its terms and reciting his agreement to carry out the provisions of the first sentence of this Section 4.1 with respect to such alternative sources of repayment as if such alternative sources were originally identified as revenues in anticipation of which the Note had been issued, or if he does not believe that there are any alternative sources of repayment, then so stating. The Mayor shall take or cause to be taken, to the extent permitted by law, any action necessary to permit or facilitate any action required to be performed by any party under this Article 4.

Section 4.2 Obligations of the City Comptroller. The City Comptroller hereby covenants and agrees that, to the extent permitted by law, he will fully comply with all terms and conditions of any Loan Request or Note, including, without limitation, the taking of any and all actions necessary to insure that the revenues identified in the Loan Request as revenues in anticipation of which a Note has been issued are used only as provided in Section 6.3. In the event the City Comptroller believes or has reason to believe that such revenues will not be available or sufficient to repay any such Note according to its terms, the City Comptroller shall promptly notify the Secretary, setting forth the reasons he believes such revenues will be unavailable or insufficient, identifying alternative sources of repayment he reasonably believes to be adequate to pay the Note in full according to its terms and reciting his agreement to carry out the provisions of the first sentence of this Section 4.2 with respect to such alternative sources of repayment as if such alternative sources were originally identified as revenues in anticipation of which the Note had been issued, or if he does not believe that there are any such alternative sources of repayment, then so stating. The City Comptroller shall take or cause to be taken, to the extent permitted by law, any action necessary to permit or facilitate any action required to be performed by any party under this Article 4.

Section 4.3 Obligations of the Board. The Board hereby covenants and agrees that, to the extent permitted by law, it will fully comply with all terms and conditions of any Loan Request or Note, including, without limitation, the authorization of the establishment and maintenance of an Account for the purposes set forth in Section 6.3 and elsewhere herein, and the taking of any and all actions necessary to insure that the revenues identified in the Loan Request as revenues in anticipation of which a Note has been issued are used only as provided in Section 6.3. In the event the Board believes or has reason to believe that such revenues will not be available or sufficient to repay any such Note according to its terms, the Board shall promptly notify the Secretary, setting forth the reasons it believes such revenues will be unavailable or insufficient, identifying alternative sources of repayment it reasonably believes to be adequate to pay the Note in full according to its terms and reciting its agreement to carry out the provisions of the first sentence of this Section 4.3 with respect to such alternative sources of repayment as if such alternative sources were originally identified as revenues in anticipation of which the Note had been issued, or if it does not believe that there are any such alternative sources of repayment, then so stating. The Board shall take or cause to be taken, to the extent permitted by law, any action necessary to permit or facilitate any action required to be performed by any party under this Article 4.

Section 4.4 Obligations of the State. If, at any time, the Secretary has reason to believe that any Note will not be repaid according to its terms, the Secretary may notify the Governor and the State Comptroller in writing of such belief. Upon receipt of such notice, the Governor and the State Comptroller shall take or cause to be taken any and all actions, to the extent permitted by law, to prevent the disbursement by the State to the City of any revenues identified in the Loan Request as revenues in anticipation of which such Note had been issued except as provided in this Section. In the event such notice is received prior to the Stated Maturity Date of such Note, any such revenues shall be placed, to the extent permitted by law, in an Account until the amount of revenues in such Account equals all amounts due on the Stated Maturity Date of such Note. If such notice is received on or after the Stated Maturity Date, the Governor and the State Comptroller shall cause such revenues to be paid, to the extent permitted by law, directly to the Secretary until the amounts so paid to the Secretary equal all amounts due under the Note to which the notice relates. The State Comptroller hereby agrees to conduct or, at his election, to cause an independent certified public accountant to conduct an audit of the books and records of the City as at June 30, 1978 and to furnish a copy of the auditor's report to the Secretary. The City, the Board and each Borrower hereby authorizes and consents, to the extent permitted by law, to the carrying out of the provisions of this Section 4.4.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

Each party and each Borrower severally represents and warrants with respect to itself that:

Section 5.1 Authority. It has all necessary power and has taken all action, including consenting to action taken by others, required to make valid each provision of this Agreement applicable to it. This Agreement has been duly executed by a duly authorized officer and is its legal, valid and binding obligation.

Section 5.2 Litigation. Except as disclosed in an Official Statement of the Corporation dated November 26, 1975, as supplemented December 16, 1975 and used in this Agreement solely for purposes of describing certain matters referred to therein and for no other purpose (the "Official Statement") or in a document delivered to the Secretary and identified by reference to this Section, there is no litigation and no legal or administrative proceeding pending or threatened against it, or any of its officers, or by which it would be bound, which questions the validity of or compliance by it with the terms of this Agreement or of any action taken or to be taken pursuant hereto or in connection herewith, including, without limitation, the payment of any Note issued pursuant hereto.

Section 5.3 No Legal Obstacle to Agreement. Except as disclosed in the Official Statement or in a document delivered to the Secretary and identified by reference to this Section, neither the execution and delivery of this Agreement nor the consummation of any transaction herein referred to or contemplated hereby nor the fulfillment of the terms hereof or of any agreement or instrument referred to in this Agreement has constituted or resulted in or will constitute or result in a breach of the provisions of any agreement to which it is a party or by which it is bound, or the violation of any judgment, decree or governmental order, rule or regulation applicable to it, or will result in the creation under any agreement or instrument of any security interest, lien, charge or encumbrance upon any of the assets or properties of, or held for the benefit of, it.

Section 5.4 Official Statement. The Official Statement contains under the subheading "Proposed Sources of Required Moneys" under the heading "Three-Year Financial Plan" a fair description of the material purported to be set forth therein, comprising a portion (which has not been approved by the Board) of the City Financial Plan as defined in Section 1.1 prior to contemplated revision.

ARTICLE 6. COVENANTS

Section 6.1 General Obligations. The City covenants and agrees that each Note issued by the City hereunder will be the general obligation of the City, and the faith and credit of the City will upon the issuance of each such Note be pledged to the repayment of the principal of and interest on each Note. Each Borrower other than the City covenants and agrees that each Note issued by such Borrower hereunder will be the general obligation of such Borrower and shall be additionally secured in such manner as required by the Act and as shall be satisfactory to the Secretary.

Section 6.2 City Financial Plan. The City and the Board each covenants and agrees that until all Notes shall have been paid in full and until June 30, 1978, it will not modify, amend or change the City Financial Plan except upon written notice to the Secretary, in advance when feasible and in any event promptly thereafter, will observe the terms and conditions of the City Financial Plan as from time to time so modified, amended or changed, and will use its best efforts to see that the City Financial Plan is carried out and that the assumptions contained in the City Financial Plan will be fulfilled.

Section 6.3 Payments. Each of the City, any Borrower and the Board hereby agrees to furnish to the governmental or administrative agency or official responsible for paying to or for the benefit of the City the revenues identified in the Loan Request as revenues in anticipation of which any Note has been issued an irrevocable instruction to pay all such revenues, to the extent such revenues were not theretofore subjected to any prior claim, directly to a specified Account and shall use its best efforts to secure and furnish to the Secretary the consent of each such payor to make payment in accordance with such instruction. All such revenues shall be paid into such Account, either by the payor pursuant to such an instruction or by the recipient thereof immediately upon receipt. Subject to the right of the City to make voluntary prepayments pursuant to Section 2.6, the bank maintaining the Account shall be given irrevocable instructions to pay

sums in such Account to the Secretary as Notes become due for application to the payment of the Notes and such sums shall be so paid. So long as no demand has been made, no default under this Agreement or any Note has occurred and no Note has matured and is unpaid, the Secretary hereby consents (subject to the making of satisfactory arrangements for the establishment and maintenance of an Account implementing the provisions of this Section 6.3) to the use of any sums in any Account in accordance with the City Financial Plan. Upon demand or the occurrence of a default under this Agreement or any Note, such consent shall automatically and immediately terminate and upon notice by the Secretary to the bank all funds in any Account to the extent of Notes then due shall be paid to the Secretary for application to the payment of such Notes. Each of the parties, each Borrower and the Secretary agrees to cooperate and use its and his best efforts to implement the intent and purpose of this Section 6.3. Amounts held in the Account from time to time may be invested in obligations of the United States or in certificates of deposits secured by obligations of the United States, as the Secretary may approve, such approval not to be unreasonably withheld.

Section 6.4 Restrictions on Liens and Borrowings. Each of the parties and any Borrower covenants and agrees, to the extent permitted by law, that no lien or assignment or other financial covenant will be made or allowed to continue which in any way restricts or subjects to any prior claim the use of revenues in anticipation of which any Note has been or is about to be issued, to the extent not theretofore otherwise restricted or subjected to any prior claim, all as set forth in the Loan Request, and that no borrowings will be made by or on behalf of the City, except those incorporated in the City Financial Plan as amended from time to time pursuant to Section 6.2.

Section 6.5 Audits. Each of the parties and any Borrower hereby authorizes the General Accounting Office and any representative of the Secretary to make such audits and review such financial and other information as may be deemed appropriate by either the Secretary or the General Accounting Office, including all accounts, books, records and transactions of each such party and any agency or instrumentality of each such party, and consents that the results of any such audits and reviews may be reported to the Secretary and the Congress. Each of the parties, other than the State, and any Borrower hereby authorizes the Secretary and any representative of the Secretary to inspect and copy all its accounts, books, records, memoranda, correspondence, and other documents relating to its financial affairs.

Section 6.6 Reports. The City and the Board covenant and agree to furnish to the Secretary the following:

6.6.1. As soon as available and in any event within thirty days after the end of each calendar month, a monthly certificate signed by the City and approved by the Board certifying (i) that there has been no material change in the City Financial Plan, and (ii) that there have been no material adverse developments in litigation pending and no new litigation challenging the Plan, this Agreement or any transaction contemplated by this Agreement; or if there has been any such change, material adverse development or new litigation, specifying the same and giving a reasonably precise description thereof.

6.6.2. As soon as available and in any event within forty-five days after the end of each of the calendar months of December, 1975 and January, February and March of 1976, and as soon as available and in any event within thirty days after the end of each calendar month thereafter, and within ninety days after the end of the final month of each Fiscal Year, a statement of the results of the operations of the City for such month and for the expired portion of the Fiscal Year then ended, setting forth substantially equivalent information as that required by the form attached as Exhibit 6.6.2 and in such form as may mutually be agreed upon with the Secretary, certified by the City and approved by the Board.

6.6.3. As soon as available and in any event by March 1, 1976, a Statement of Financial Position of the City as of December 31, 1975 prepared in substantially the form set forth on Exhibit 6.6.3 and annually thereafter a Statement of Financial Position of the City as of the end of the City's Fiscal Year as soon as available and in any event by September 30, certified by the City and approved by the Board. The Statement of Financial Position as at June 30, 1976 shall show comparable information as at December 31, 1975 and each annual Statement thereafter shall show comparable information for the preceding Fiscal Year. Such Statement shall include a written explanation of its contents.

6.6.4. Commencing July 31, 1976 and on each January 31 and July 31 thereafter a written statement on behalf of the City by the Mayor evaluating the then current overall economic condition of the City, including, without limitation, the following:

(i) the condition of the real estate tax base describing changes in the tax base, abandonments, delinquency rates in tax payments, and assessing the impact thereon of the laws and regulations of the City and the State;

(ii) the condition of the business tax base, including, to the extent known, identification of major business establishments which have ceased to do business within the City and the reasons therefor;

(iii) obligations under the welfare, medicaid and similar assistance programs; and

(iv) any other significant event or development affecting the tax bases, other sources of revenue, expenditures or obligations of the City.

Section 6.7 Accounting System and Independent Audit. The City, with the approval and encouragement of the Board, has retained consultants to assist in designing a new system of financial and accounting practices, records and controls to be fully implemented in the City's Fiscal Year beginning July 1, 1977. The City and the Board hereby agree to pursue with diligence the design and implementation of such new accounting system and further agree that by July 1, 1977 the City will have established an accounting system which will establish adequate records and controls which would enable an auditor to perform an annual audit and render an opinion thereon. The City hereby agrees that an audit may be made as at June 30, 1978 by the State Comptroller, or at his election by an independent certified public accountant, and that a copy of the auditor's report may be furnished to the Secretary.

The City agrees to establish an accounting system for the Fiscal Year beginning July 1, 1977 that is in accordance with the accounting principles set forth in the State Comptroller's Uniform System of Accounts for Municipalities, as the same may be modified by the State Comptroller in consultation with the City Comptroller. The system of accounting will be adapted as needed to the applicable rules or regulations hereafter adopted for registration or sale of municipal securities by the Securities and Exchange Commission or any other federal agency whether pursuant to new legislation or otherwise.

Pending the full implementation of the new accounting system, the City and the Board each agrees to use its best efforts continuously to improve the reliability of the City's existing financial records and the reports generated therefrom, including timely adoption of a system of internal controls over receipt and expenditure of City funds. In pursuing such interim system, the City and the Board agree to give careful consideration to the recommendations of the Secretary, the General Accounting Office and any consultant retained by either.

Section 6.8 Additional Information. Each of the parties and any Borrower hereby covenants and agrees to furnish to the Secretary such other information and reports as the Secretary may from time to time reasonably request that are related to the finances or accounting matters of the City, to revenues in anticipation of which Notes have been issued hereunder, or to the ability of the City and any other Borrower to repay loans hereunder, and that the officers and representatives of each will be available to discuss with the Secretary and his representatives their affairs, finances and accounts and advise them as to the same. Within ten days after any such request by the Secretary, the party or Borrower of whom such request is made shall cause to be furnished to the Secretary, by the officer or officers so requested, the information sought, or a statement as to why the information is not readily available and, if such information is reasonably available to the party or the Borrower, a commitment to furnish the same within a reasonable time.

Section 6.9 Further Assurances. From time to time, at the request of the Secretary, each of the parties and any Borrower covenants and agrees to make, execute, acknowledge and deliver such further instruments as the Secretary may reasonably request in connection with this Agreement in order to implement the same, and shall file and record, if appropriate, in the proper filing and recording places, any and all such instruments.

Section 6.10 Signatures and Certifications. Loan Requests, certificates, reports, notices, communications, financial statements and budgets required under this Agreement shall be signed and certified as correct by the authorized officers of each of the appropriate parties and any Borrower, as follows (except as herein otherwise specifically provided): in the case of the City, by the Mayor and the Comptroller of the City; in the case of the Board, by its Chairman; in the case of the State, by the Governor and the Comptroller of the State; and in the case of any other person, such officer or officers as the Secretary may designate. Notes issued by the City shall be signed by the Comptroller of the City and attested by the City Clerk and shall bear the certificate of the Board signed by its Chairman. Any officer required to sign or certify as aforesaid may delegate such responsibility to another authorized person, with the prior approval of the Secretary. With respect to the certification of financial information to be furnished pursuant hereto by two or more officers of a party or a Borrower, each of such officers may disclaim information in the certification which is not within his responsibility so long as all information so disclaimed is certified by another officer competent to do so.

Section 6.11 Outside Borrowings. The City shall use its best efforts on and after July 1, 1977 to meet the seasonal borrowing needs of the City without resort to borrowings under this Agreement, and the Board shall in all respects cooperate with the City to that end. Each Loan Request after July 1, 1977 shall include a certificate of the City stating what efforts to such end have been made and describing the results thereof.

ARTICLE 7. DEFAULTS AND DEMAND FOR PAYMENT

Section 7.1 Defaults. If any one or more of the following events (herein termed "events of default") shall happen:

7.1.1. Any payment of principal or interest on any Note is not made when due;

7.1.2. Default shall be made by any of the parties or any Borrower, respectively, in the performance or observance of any covenant, agreement or provision to be performed or observed by it under this Agreement or any Note, or if any representation or warranty of any one or more of them made in or in connection with this Agreement shall be materially false; and, in each case, such default shall not have been cured within ten days after notice from the Secretary;

7.1.3. The City or the Corporation or any Borrower shall be involved in financial difficulties as evidenced:

(a) in the case of the Corporation or any Borrower other than the City, by its admitting in writing its inability to pay its debts generally as they become due; or

(b) by its filing a petition seeking a composition of indebtedness under the federal bankruptcy laws, or under any other applicable law or statute of the United States or the State;

7.1.4. Default shall be made by any of the parties or any Borrower on any outstanding indebtedness for borrowed money such as would entitle the holder thereof to demand immediate payment under applicable law;

7.1.5. An adverse decision is rendered in litigation, which shall not be vacated, set aside or stayed within ten days from the date thereof, whether in a case pending on the date of this Agreement or subsequently brought, or any other development takes place, materially and adversely affecting the likelihood of fulfillment of the City Financial Plan; or

7.1.6. There occurs a material and adverse departure from the projections contained in the City Financial Plan, including the assumptions on which the City Financial Plan is based;

then, and in each and every such event, the Secretary may demand payment immediately in accordance with the terms of any demand Note, without notice and without regard to Section 2.12, and may proceed to protect and enforce the rights of the United States by suit in equity, action at law or other appropriate proceeding.

The remedies prescribed in this Agreement shall be cumulative and not in limitation of or substitution for any other remedies available to the Secretary or to the United States.

Section 7.2 Annulment of Defaults and Waivers by Secretary. The Secretary may waive any provision of this Agreement or any Note and may consent to such modification of any term hereof or thereof as he may deem appropriate. An event of default shall be deemed not to be in existence for any purpose of this Agreement if the Secretary shall have waived such event in writing either before or after the occurrence, or stated in writing that the same has been cured to his reasonable satisfaction, but no such waiver shall extend to or affect any prior or subsequent event of default or impair any right of the Secretary upon the occurrence thereof except as expressly provided therein.

Section 7.3 Waivers by Parties. To the extent permitted by applicable law, the parties hereto and any Borrower each hereby agrees to waive, and does hereby absolutely and irrevocably waive and relinquish, the benefit and advantage of, and does hereby covenant not to assert against the Secretary any stay, extension, or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any right under this Agreement or under the judgment, order or decree of any court in favor of the Secretary based upon this Agreement, and also any requirement for presentation, protest or further demand or notice with respect to a Note already due by its terms.

Section 7.4 Course of Dealing. No course of dealing by the Secretary shall operate as a waiver of any rights in respect of this Agreement or any Note. No delay or omission on the part of the Secretary in exercising any right in respect of this Agreement or any Note shall operate as a waiver of such right or any other right thereunder. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. No waiver or consent shall be binding unless it is in writing. The making of any loan hereunder during the existence of an event of default shall not constitute a waiver thereof.

ARTICLE 8. ADDITION OF BORROWERS

If the Secretary shall designate or approve a Borrower which is not a party to this Agreement, accession of such Borrower to this Agreement, as it may be amended from time to time, to the extent permitted by law, shall be a condition of any loan to such Borrower. The parties and any prior Borrower, respectively, hereby consent to the inclusion of any such Borrower as a party hereto and to such changes in this Agreement as shall be necessary to incorporate such Borrower into its provisions; *provided, however,* that no changes not separately consented to shall increase the duties and responsibility of any of the parties or any such prior Borrower hereunder.

ARTICLE 9. NOTICES

Any notice, demand, or other communication in connection with this Agreement shall be deemed to be given if in writing (which may be in the form of a telegram) and actually delivered at the respective addresses shown below or at such other address as may be specified in writing:

If to the Secretary, to him at

Department of the Treasury
15th Street and Pennsylvania Avenue
Washington, D. C. 20220

with a copy to

The General Counsel of the Treasury
Room 3000
15th Street and Pennsylvania Avenue
Washington, D. C. 20220

If to the City, to
Mayor of The City of New York
City Hall
New York, New York 10007

and to
Comptroller of The City of New York
Room 530
Municipal Building
New York, New York 10007

with copies to
Corporation Counsel
Room 1656
Municipal Building
New York, New York 10007

and to
Deputy Mayor for Finance
Room 1401
250 Broadway
New York, New York 10007

If to the State, to
Governor of the State of New York
Executive Chamber
Capitol Building
Albany, New York 12224

and to
Comptroller of the State of New York
Alfred E. Smith Building
Albany, New York 12224

with copies to
Attorney General of the State of New York
Room 4715
Two World Trade Center
New York, New York 10047

and to
Budget Director
Division of the Budget
Capitol Building
Albany, New York 12224

If to the Board, to
Emergency Financial Control Board
c/o Special Deputy Comptroller for The City of New York
18th Floor
270 Broadway
New York, New York 10007

with a copy to
Emergency Financial Control Board
c/o State of New York Executive Offices
1350 Avenue of the Americas
New York, New York 10019

If to the Corporation, to
Executive Director
Municipal Assistance Corporation for The City of New York
Room 4540
Two World Trade Center
New York, New York 10047

with a copy to
Paul, Weiss, Rifkind, Wharton & Garrison
345 Park Avenue
New York, New York 10022
Attention: Allen Thomas, Esq.

Copies of notices shall contemporaneously be sent to all parties, to the Secretary, to any Borrower and to the Corporation, if not the direct giver or recipient of the notice.

ARTICLE 10. MISCELLANEOUS

Section 10.1 Amendments. Except as provided in Article 8, amendments to this Agreement shall be made only upon the written consent of the Secretary and each of the parties.

Section 10.2 Survival of Covenants. All covenants, agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and shall remain in full force and effect until June 30, 1978 unless sooner terminated by mutual written consent, and thereafter for as long as any principal or interest of any Note remains unpaid. No investigation by or on behalf of the Secretary or audit by the Secretary or his representatives or by the General Accounting Office shall impair or waive the materiality of any such covenant, agreement, representation or warranty or the right of any person to rely thereon.

Section 10.3 Execution and Assignability. This Agreement may be executed in any number of counterparts which shall together constitute one instrument and shall inure only to the benefit of the Secretary and the parties hereto. The Secretary may assign or otherwise transfer any Note only to the Federal Financing Bank, which may not reassign or otherwise transfer any such Note, and in such case the Secretary shall act as its representative with respect to such Note. This Agreement shall take effect upon delivery to each of the parties and other signators, or their representatives, of copies hereof signed by the Secretary, he having previously received a copy or copies from and executed by each of the parties and other signators.

Section 10.4 Authority of Secretary. The Secretary represents and warrants that he has all necessary power and has taken all action required to make this Agreement a legal, valid and binding obligation of the United States of America. The Secretary may delegate any duty to be performed by him or right to be exercised by him or the United States of America to such person as he may designate.

Section 10.5 Severability. The provisions of this Agreement and of the Notes are separate and severable and if any one or more of the provisions contained in this Agreement or any Note should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall not in any way be affected or impaired.

ARTICLE 11. UNDERTAKINGS BY CORPORATION

The Corporation, although not a party to this Agreement, as an inducement to the Secretary to enter into this Agreement and to make loans to or for the benefit of the City, covenants, represents and warrants as follows:

Section 11.1 Notice and Consent to Borrowing. The Corporation has waived and hereby waives all notice required with respect to the borrowing evidenced by the Note being issued by the City contemporaneously with the execution of this Agreement in exchange for the temporary note and with respect to the borrowing evidenced by the Note to be issued on the first Closing Date, and to the extent

necessary has given its consent or approval thereto. The Corporation will not unreasonably withhold its consent or approval, if required, to future loans to be made pursuant to this Agreement, and will use its best efforts consistent with its statutory obligations to grant waivers of notice with respect to each such loan.

Section 11.2 Litigation. Except as described in Section 5.2, there is no litigation and no legal or administrative proceeding pending or threatened against the Corporation, or against any officer of the Corporation, or by which the Corporation would be bound, which questions the validity of this Agreement or any Note or of any action to be taken pursuant to or in connection with this Agreement or any Note.

Section 11.3 Agreement with Banks and Pension Funds. To the extent permitted by law, the Corporation will perform all of its obligations pursuant to the Amended and Restated Agreement made as of November 26, 1975 among the Corporation, certain New York City Commercial Banks, New York City Pension Funds and New York City Sinking Funds and will take all reasonable steps to assure performance of such agreement by each of the other parties thereto.

Section 11.4 Corporation as a Borrower. The Secretary and the Corporation recognize that it may become necessary or advisable in the future to assist the City by recourse to the resources of the Corporation as an eligible Borrower under the Act. At such time as the Corporation is authorized by state law to become a Borrower, is approved by the Secretary as a Borrower, and consents to become a Borrower, the Corporation shall become a party to this Agreement as a Borrower. Thereafter, upon the execution by the Corporation of a Loan Request, the Corporation shall be bound by all the covenants, agreements, conditions, representations and warranties applicable to a Borrower in this Agreement as it may be amended from time to time, and all loans made to the Corporation shall be made on the terms and subject to the conditions set forth herein.

UNITED STATES OF AMERICA

By _____
Secretary of the Treasury

STATE OF NEW YORK

Approved:

_____
Comptroller

By _____
Governor

and

By _____
Lieutenant Governor

Approved as to form:

_____
Attorney General

First Assistant Attorney General
Samuel A. Hirshowitz

Approved as to form:

_____
Corporation Counsel

THE CITY OF NEW YORK

By _____
Mayor

and

By _____
Comptroller

NEW YORK STATE EMERGENCY FINANCIAL CONTROL BOARD

By _____
Chairman

For the Purposes of Article 4 Only:

GOVERNOR OF THE STATE OF NEW YORK

COMPTROLLER OF THE STATE OF NEW YORK

MAYOR OF THE CITY OF NEW YORK

COMPTROLLER OF THE CITY OF NEW YORK

For the Purposes of Article 11 Only:

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK

By _____

City of New York
Credit Agreement
Note Form*

Exhibit 2.3

United States of America
State of New York
THE CITY OF NEW YORK

No. $

REVENUE ANTICIPATION NOTE FOR (description of Revenues in Anticipation of which Note is issued)

THE CITY OF NEW YORK (the "City"), a municipal corporation of the State of New York, hereby acknowledges itself indebted and for value received promises to pay to the United States of America, acting by and through the Secretary of the Treasury (the "Secretary") pursuant to the New York City Seasonal Financing Act of 1975, constituting Public Law 94-143 of the United States of America, on demand therefor made to the City by the Secretary or on the day of , 197 , whichever date is earlier (the "Maturity Date"), the sum of

MILLION DOLLARS ($)

in federal funds being lawful money of the United States of America, at the Federal Reserve Bank of New York, 33 Liberty Street, in the Borough of Manhattan, City and State of New York, for credit to the account of the United States Treasury, and to pay interest thereon on the Maturity Date from the date of this Note in such federal funds, at the rate of per centum (%) per annum, computed on a 365 day year, upon presentation of this Note at such Bank.

This Note is issued pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York, and Certificate Number of the City Comptroller authorizing the issuance of such Note in anticipation of (description of Revenues in Anticipation of which Note is issued).

This Note is the only Note of an authorized issue, the principal amount of which is $.

The City may, at any time and from time to time, prepay (without penalty) all or any part of the unpaid principal amount of this Note (in integral multiples of $10,000,000) together with interest on the principal amount so prepaid accrued to the date of prepayment and theretofore unpaid, and from and after such prepayment interest hereon or on the part prepaid shall cease to accrue.

This Note may not be converted into a bearer note.

This Note is issued as seasonal financing in order that the City may maintain essential governmental services.

The faith and credit of The City of New York are hereby irrevocably pledged for the punctual payment of the principal of and interest on this Note according to its terms.

---

* If the Borrower is other than the City, this form shall be suitably adapted.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts and things required by the Constitution and statutes of the State of New York to exist, to have happened and to have been performed precedent to and in the issuance of this Note, exist, have happened and have been performed, and that this Note, together with all other indebtedness of The City of New York, is within every debt and other limit prescribed by the Constitution and laws of such State.

IN WITNESS WHEREOF, The City of New York has caused this Note to be signed by its City Comptroller, and its corporate seal to be hereunto affixed and attested by its City Clerk, and this Note to be dated as of the day of , 197 .

THE CITY OF NEW YORK

City Comptroller

ATTEST:

City Clerk

CERTIFICATE OF EMERGENCY FINANCIAL CONTROL BOARD

I, as Chairman of the New York State Emergency Financial Control Board (the "Board"), hereby certify, recite and declare that the Board has by Resolution duly adopted and approved the borrowing evidenced by the within Note and the form, amount, terms, conditions and all matters incident to and stated in said Note.

Chairman of the Emergency
Financial Control Board

REPORT NO. 1
PAGE ____ OF _____
MONTH ____ FISCAL YEAR _____

NEW YORK CITY
FINANCIAL PLAN SUMMARY

REPORT REF.	DESCRIPTION	CURRENT MONTH			YEAR-TO-DATE			FISCAL YEAR – 75/76			FISCAL YEAR – 76/77 *			FISCAL YEAR – 77/78 *		
		Actual	Plan	Better/ (Worse)	Actual	Plan	Better/ (Worse)	Forecast	Plan	Better/ (Worse)	Forecast	Plan	Better/ (Worse)	Forecast	Plan	Better/ (Worse)
	REVENUE															
5	GENERAL FUND															
5	REAL ESTATE TAXES															
5	FEDERAL/STATE AID															
5	OTHER															
	TOTAL															
	EXPENDITURES															
8	PERSONAL SERVICES															
	OTHER PERSONAL SERVICES															
	OTHER THAN PERSONAL SERVICES															
7	TOTAL															
2	**SURPLUS (DEFICIT)**															
	EXPENDITURES INCLUDED IN CAPITAL BUDGET															
	TOTAL OTHER CAPITAL EXPENDITURES															
11	**TOTAL CAPITAL BUDGET**															

* Quarterly only

Exhibit 6.6.2
NEW YORK CITY
CREDIT AGREEMENT

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PAGE ____ OF _____
MONTH ____ FISCAL YEAR ___

NEW YORK CITY

ANALYSIS OF CHANGE IN FISCAL YEAR FORECAST

REPORT REFERENCE	DESCRIPTION	FISCAL YEAR 75/76	FISCAL YEAR * 76/77	FISCAL YEAR * 77/78
	PRIOR FORECAST OF FISCAL YEAR SURPLUS / (DEFICIT)			
	CHANGES DUE TO:			
	GENERAL FUND REVENUE			
	REAL ESTATE TAXES			
	FEDERAL GRANTS			
	STATE GRANTS			
	EXCESS DISALLOWANCES			
	OTHER REVENUE			
	TOTAL CHANGE DUE TO REVENUE			
	PERSONAL SERVICES			
	OTHER PERSONAL SERVICES			
	OTHER THAN PERSONAL SERVICES:			
	WELFARE & CONTRIBUTIONS			
	DEBT SERVICE			
	OTHER			
	TOTAL CHANGE DUE TO EXPENDITURES			
	TOTAL CHANGE			
1	**CURRENT FORECAST OF FISCAL YEAR SURPLUS / (DEFICIT)**			
	VARIANCE FROM PLAN			

* Other year projections are to be provided quarterly

REPORT NO. 3

PAGE ___ OF ___

MONTH ___ FISCAL YEAR ___

NEW YORK CITY

OVERALL CASH FLOW STATEMENT

REPORT REFERENCE	DESCRIPTION	CURRENT MONTH			YEAR TO DATE			FISCAL YEAR			2ND YEAR *			3RD YEAR *		
		ACTUAL	PLAN	Better/ (Worse)	ACTUAL	PLAN	Better/ (Worse)	Forecast	PLAN	Better/ (Worse)	Forecast	PLAN	Better/ (Worse)	Forecast	PLAN	Better/ (Worse)
	CASH BALANCE – BEGINNING															
4	**FINANCIAL PLAN**															
1, 2	SURPLUS (DEFICIT)															
	CAPITAL BUDGET															
	FUNDS RECEIVED															
1	(CAPITAL CONSTRUCTION)															
1	(EXPEND. IN CAP. BUDGET)															
	CAPITAL SURPLUS (DEFICIT)															
	TOTAL SURPLUS (DEFICIT)															
	ADDITIONAL SOURCES/USES															
	NEW TAXES															
	OTHER															
	ADJUSTED SHORTAGE (EXCESS)															
	ADVANCES & DEBT REQUIRED															
	FEDERAL – RECEIPTS															
	DISBURSEMENTS															
	MAC – RECEIPTS															
	DISBURSEMENTS															
	CITY – RECEIPTS															
	DISBURSEMENTS															
	INTEREST PAYMENTS RE ADDITIONAL DEBT															
	OTHER															
	TOTAL															
	CASH BALANCE – ENDING															

* To be updated quarterly

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PAGE ____ OF ____
MONTH _____ FISCAL YEAR _____

NEW YORK CITY
CASH FLOW MONTHLY FORECAST

REPORT REFERENCE	DESCRIPTION	REMAINING MONTHS IN FISCAL YEAR															
		YEAR-TO-DATE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL YEAR		
															Forecast	PLAN	B/(W)
	CASH BALANCE – BEGINNING																
	FINANCIAL PLAN																
3	SURPLUS (DEFICIT)																
	CAPITAL BUDGET																
	FUNDS RECEIVED																
	(CAPITAL CONSTRUCTION)																
	EXPENDITURES IN CAP. BUDGET																
	CAPITAL SURPLUS (DEFICIT)																
	TOTAL SURPLUS (DEFICIT)																
	ADDITIONAL SOURCES/(USES)																
	NEW TAXES																
	OTHER																
	ADJUSTED SHORTAGE (EXCESS)																
	ADVANCES & DEBT REQUIRED:																
	FEDERAL – RECEIPTS																
	(DISBURSEMENTS)																
	MAC – RECEIPTS																
	(DISBURSEMENTS)																
	CITY – RECEIPTS																
	(DISBURSEMENTS)																
	INTEREST PAYMENTS RE: ADDITIONAL DEBT																
	OTHER																
	TOTAL																
	CASH BALANCE – ENDING																

NEW YORK CITY

REVENUE DETAIL BY MAJOR AREA

REPORT NO. 5
PAGE 1 OF 3
MONTH ____ FISCAL YEAR ____

REPORT REFERENCE	DESCRIPTION	CURRENT MONTH			YEAR TO DATE			FISCAL YEAR		
		ACTUAL	PLAN	BETTER/ (WORSE)	ACTUAL	PLAN	BETTER/ (WORSE)	FORECAST	PLAN	BETTER/ (WORSE)
	GENERAL FUND									
	SALES TAX									
	UTILITY TAXES									
	COMM. RENT TAX									
	PERSONAL INCOME									
	CORPORATE INCOME									
	FINANCIAL TAX									
	STOCK TRANSFER TAX									
	FED. REV. SHARING									
	N.Y. STATE REV. SHARING									
	WATER CHARGES									
	ALL OTHER									
	(REFUNDS)									
1	TOTAL									
	REAL ESTATE TAXES									
	CURRENT YEAR									
	PRIOR YEARS									
1	TOTAL									

NEW YORK CITY

REVENUE DETAIL BY MAJOR AREA

REPORT NO. 5

PAGE 2 OF 3

MONTH _____ FISCAL YEAR _____

REPORT REFERENCE	DESCRIPTION	CURRENT MONTH			YEAR TO DATE			FISCAL YEAR		
		ACTUAL	PLAN	BETTER/ (WORSE)	ACTUAL	PLAN	BETTER/ (WORSE)	FORECAST	PLAN	BETTER/ (WORSE)
	FEDERAL/STATE AID									
	PUBLIC ASSISTANCE									
	CURRENT YEAR									
	PRIOR YEARS									
	TOTAL									
	MEDICARE/MEDICAID									
	CURRENT YEAR									
	PRIOR YEARS									
	TOTAL									
	EDUCATION									
	CURRENT YEAR									
	PRIOR YEARS									
	TOTAL									
	OTHER									
	CURRENT YEAR									
	PRIOR YEARS									
	TOTAL									
1	**TOTAL**									

NEW YORK CITY

REVENUE DETAIL BY MAJOR AREA

REPORT NO. 5
PAGE 3 OF 3
MONTH _____ FISCAL YEAR _____

REPORT REFERENCE	DESCRIPTION	CURRENT MONTH			YEAR TO DATE			FISCAL YEAR		
		ACTUAL	PLAN	BETTER/ (WORSE)	ACTUAL	PLAN	BETTER/ (WORSE)	FORECAST	PLAN	BETTER/ (WORSE)
	OTHER REVENUE									
	CURRENT YEAR									
	PRIOR YEARS									
1	**TOTAL**									
1	**TOTAL – FINANCIAL PLAN REVENUES**									
	OTHER CASH RECEIPTS									
	PENSION COSTS OF INDEPENDENT AGENCIES									
	PAYMENT FOR SERVICES									
	EXCESS PENSION INTEREST EARNINGS OVER 4%									
	SPECIAL ACCOUNT REVENUES									
	MISCELLANEOUS FUND REVENUES									
3	**TOTAL**									

NEW YORK CITY

REVENUE DETAIL BY MAJOR AREA

REPORT NO. 5
PAGE 3 OF 3
MONTH _____ FISCAL YEAR _____

REPORT REFERENCE	DESCRIPTION	CURRENT MONTH			YEAR TO DATE			FISCAL YEAR		
		ACTUAL	PLAN	BETTER/ (WORSE)	ACTUAL	PLAN	BETTER/ (WORSE)	FORECAST	PLAN	BETTER/ (WORSE)
	OTHER REVENUE									
	CURRENT YEAR									
	PRIOR YEARS									
1	**TOTAL**									
1	**TOTAL – FINANCIAL PLAN REVENUES**									
	OTHER CASH RECEIPTS									
	PENSION COSTS OF INDEPENDENT AGENCIES									
	PAYMENT FOR SERVICES									
	EXCESS PENSION INTEREST EARNINGS OVER 4%									
	SPECIAL ACCOUNT REVENUES									
	MISCELLANEOUS FUND REVENUES									
3	**TOTAL**									

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PAGE ___ OF _____
MONTH _____ FISCAL YEAR _____

NEW YORK CITY

ACCOUNTS RECEIVABLE & ADVANCE SUMMARY

REPORT REFERENCE	DESCRIPTION	ACCOUNTS RECEIVABLE	ADVANCES
	BALANCE – BEGINNING $		
	– NO. WEEKS EXPENDITURES		
	ADDED RECEIVABLES		
	EXPENDITURES RELATED TO ADVANCES		
	ADVANCES RECEIVED		
	REIMBURSEMENTS RECEIVED		
	BALANCE – ENDING $		
	– NO. WEEKS EXPENDITURES		

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MONTH ____ FISCAL YEAR ____

NEW YORK CITY

FINANCIAL PLAN -- EXPENDITURE ANALYSIS

REPORT REFERENCE	RESPONSIBILITY AREA	CURRENT MONTH			YEAR TO DATE			FISCAL YEAR		
		ACTUAL	PLAN	BETTER/ (WORSE)	ACTUAL	PLAN	BETTER/ (WORSE)	FORECAST	PLAN	BETTER/ (WORSE)
	SOCIAL SERVICES									
	EDUCATION									
	POLICE									
	HIGHER EDUCATION									
	ENVIRONMENTAL PROTECTION									
	FIRE									
	ETC.									
	ALL OTHER									
1	**TOTAL**									
	MEMO – O.T.P.S.									
9	ALL CONTRACTS									
	TOTAL									

REPORT NO. 8

PAGE _____ OF _____

MONTH _____ FISCAL YEAR _____

NEW YORK CITY

PERSONNEL CONTROL EXCEPTION REPORT

REPORT REFERENCE	RESPONSIBILITY AREA	CURRENT MONTH HEADCOUNT					PAYROLL COST						PROJECTED FOR FISCAL YEAR					
		FULL TIME HEADCOUNT		TOTAL FULL TIME EQUIVALENT HEADCOUNT			CURRENT MONTH			YEAR-TO-DATE			TOTAL FULL TIME EQUIV. HEADCOUNT			PAYROLL COST		
					BETTER/(WORSE)			BETTER/(WORSE)			Better/(Worse)			Better/(Worse)			Better/(Worse)	
		ACTUAL	BUDGET	ACTUAL	AMOUNT	%	ACTUAL	AMOUNT	%	Actual	Amount	%	Forecast	Amount	%	Forecast	Amount	%
	EDUCATION																	
	POLICE																	
	SOCIAL SERVICES																	
	HIGHER EDUCATION																	
	ENVIRONMENTAL PROTECTION																	
	FIRE																	
	OTHER (Exceptions only)																	
	ALL OTHER																	
1	TOTAL																	

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MONTH ____ FISCAL YEAR _____

NEW YORK CITY

STATUS OF CONTRACTS (NON-CAPITAL) AND OTHER EXPENSES RELATING TO PRIOR YEAR

REPORT REF.	DESCRIPTION	$ CONTRACTS IN PROGRESS (CURRENT YEAR)	$ PRIOR YEAR
	BEGINNING BALANCES OF APPROVED CONTRACTS		
	APPROVED ADDITIONS		
	ENDING BALANCES		
7	EXPENDITURES – MONTH		
7	– YEAR-TO-DATE		

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PAGE ____ OF ____
MONTH _____ FISCAL YEAR _____

NEW YORK CITY

PROGRAMMED EXPENSE REDUCTIONS

PROGRAM			CURRENT MONTH REDUCTION				YEAR-TO-DATE REDUCTION				FISCAL YEAR					
					CASH Better/(Worse)				CASH Better/(Worse)		PLANNED		FORECASTED ACTUAL			
NO.	DESCRIPTION	RESPONSIBLE AGENCY	Annualized	CASH	Amount	%	Annualized	CASH	Amount	%	Annualized	CASH	Annualized	CASH	CASH Better/(Worse) Amount	%
	List each program defined															
	TOTAL															

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MONTH ____ FISCAL YEAR _____

NEW YORK CITY

CAPITAL BUDGET AND EXPENDITURES REPORT

REPORT REF.	CAPITAL PROJECT		RESPONSIBLE AGENCY	FISCAL YEAR APPROVED	BUDGET		EXPENDITURES			PROJECTED EXPENDITURES			ESTIMATED TOTAL COST	BETTER (WORSE) THAN BUDGET
	NO.	DESCRIPTION			ORIGINAL	REVISED	TO DATE Total	TO DATE Current Year	CURRENT MONTH	CURRENT YEAR	NEXT YEAR	BEYOND		
					LIST SEPARATELY EACH PROJECT OVER $5 MILLION AND EACH PROJECT WITH A PROJECTED VARIANCE OVER $500,000.									
					LIST OTHER PROJECTS IN TOTAL BY FISCAL YEAR APPROVED									
1					GRAND TOTAL									

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MONTH ____ FISCAL YEAR ____

NEW YORK CITY
DEBT / DEBT SERVICE

REPORT REFERENCE	DEBT					DEBT SERVICE BY MONTH DUE DATES (12 MONTH ROLLING FORWARD)												
		ISSUE DATE	AMOUNT DUE			1 (Next mo.)	2	3	4	5	6	7	8	9	10	11	12	SUBSEQUENT
			Principal	Interest	Total Debt Service													
	FEDERAL: List each																	
	STATE AND MAC: List each																	
	OTHER:	X																
	TOTAL																	

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PAGE ___ OF _____

MONTH _____ FISCAL YEAR _____

NEW YORK CITY

EXPENDITURE AND REVENUE SOURCE DETAIL BY CATEGORY

CATEGORY _____ (Covered Organizations)

REPORT REFERENCE	DESCRIPTION	FISCAL YEAR BY MONTH												
		July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	TOTAL
	EXPENDITURES:													
	PLANNED EXPENDITURE													
	ACTUAL EXPENDITURE													
	VARIANCE													
	REVENUE:													
	TAX LEVY – PLAN													
	– ACTUAL													
	FEDERAL AID – PLAN													
	– ACTUAL													
	STATE AID – PLAN													
	– ACTUAL													
	CAPITAL PROGRAM – PLAN													
	– ACTUAL													
	OTHER – PLAN													
	– ACTUAL													
	TOTAL REVENUE: PLAN													
	ACTUAL													
	VARIANCE													
	MEMO: Accounts Payable Balance													

Note: one page per agency or category

EXHIBIT 6.6.3

THE CITY OF NEW YORK

CREDIT AGREEMENT

ILLUSTRATIVE CONSOLIDATED STATEMENT OF FINANCIAL POSITION

UNAUDITED ACCRUAL BASIS (NOTE 1)

JUNE 30, 197

LIABILITIES	In Thousands	
SHORT-TERM DEBT (Note 2):		
Revenue anticipation notes	$	
Bond anticipation notes		
Tax anticipation notes		
Other		$
SERIAL BONDS (Note 3):		
Maturing within one year	$	
Maturing in one year or more		
DEBT REDEEMABLE FROM SINKING FUNDS (Note 3)		
ACCRUED LIABILITIES (Note 4):		
Vouchers and accounts payable	$	
Payroll		
Interest on debt		
OTHER LIABILITIES:		
Advance collection of real estate taxes	$	
State aid received in advance		
Other		
Total liabilities		
ASSETS		
CASH		$
INVESTMENTS (Primarily U. S. Treasury bills)		
RECEIVABLES:		
Real estate taxes, less reserve of million (Note 5)		
Other (Note 6)-		
Federal government	$	
State of New York		
Water and sewer rents		
Other		
Less- Reserve for uncollectibles		
MORTGAGES AND RELATED ADVANCES (Note 7):		
Mortgages	$	
Advances		
Less- Reserve for uncollectibles		
SINKING FUNDS (Note 3)		
OTHER ASSETS		
Total assets		
LIABILITIES IN EXCESS OF ASSETS (Note 8)		$

The accompanying notes are an integral part of this statement.

THE CITY OF NEW YORK EXHIBIT 6.6.3

CREDIT AGREEMENT

NOTES TO ILLUSTRATIVE UNAUDITED

CONSOLIDATED STATEMENT OF FINANCIAL POSITION

AT JUNE 30, 197

(1) Sources and significance of data:

The accompanying statement has been prepared from the Consolidated Comparative Statement of Current Position appearing in the Annual Report of the Comptroller of the City of New York for the Fiscal Year 197 -197 . Adjustments have been made to the data therein reflected to remove budgetary accounts, add the current portion of long-term debt, accrue certain liabilities, provide reserves where appropriate and give recognition to other significant items as necessary to present data on an accrual basis.

The accompanying statement has not been audited. An audit examination might result in additional adjustments which would be required to present fairly the financial position of the City.

The accompanying statement excludes inventories and capital assets because the City does not account for these assets.

(2) Nonrecognition of subsequent events:

The accompanying statement does not give recognition to events occurring or policies adopted subsequent to June 30, 197 , which may have affected the financial position of the City as reported at June 30, 197 . Particularly, no recognition is given to loans from Municipal Assistance Corporation or to the moratorium declared with respect to payments of short-term debt.

(3) Funded debt:

At June 30, 197 , outstanding serial bonds aggregating $ have maturities as set forth below:

Fiscal Year	Principal	Interest Payments	Total Service
		(In thousands)	
1976	$	$	$
1977			
1978			
1979			
1980			
1981-1985			
1986-1990			
1991-1995			
1996 and thereafter			
	$	$	$

In addition, there were outstanding at June 30, 197 , $ of bonds redeemable from sinking funds. At June 30, 197 , the related sinking funds had investments of $ ($ of which were securities of the City). Current computations indicate that interest on sinking fund securities will be sufficient to provide the additional amounts necessary to fully repay sinking fund bonds as they mature.

(4) Accrued liabilities:

Since the City does not follow encumbrance accounting and since invoices and purchase orders are controlled at the agency level, centralized accounting is aware of accounts payable only to the extent of vouchers in process of payment, of which there were $ million at June 30, 197 . An additional $ million, which was estimated by the City as the liability for goods or nonpersonnel services received by agences but not yet submitted for payment as of June 30, 197 , has been accrued and included in vouchers and accounts payable in the accompanying statement.

The accrued payroll estimate provided by the City recognizes the liability for personnel services performed prior to July 1, 197 , but paid in July, 197 .

(5) Real estate taxes:

The City records each year's real estate tax levy as revenue and as receivable at the beginning of each fiscal year with no provision for uncollectible amounts. At June 30, 197 , the City's books reflected real estate taxes receivable of $ applicable to the fiscal years shown below:

	Receivable in Thousands
Levy for:	
1974-75	$
1973-74	
1972-73	
1971-72	
1970-71	
1939 through 1969-70	

Less- Adjustments resulting from audit by Office of the State Comptroller:	
Write-off of erroneous receivables	
Provision for uncollectible amounts	

Net receivable, per accompanying statement	$ ==========

(6) Other receivables:

The City receives partial reimbursement from the Federal government and from the State of New York for expenditures made in connection with certain programs. In addition to recording receivables for expenditures actually made, the City has recorded as receivable at June 30, 197 , reimbursements for programs budgeted for the fiscal year ended at that date but for which expenditures had not as yet been recorded; this is contrary to the matching of revenues and expenses achieved by proper accrual accounting.

During 197 , the Office of the State Comptroller reviewed recorded receivables for reimbursements for seven agencies of the City and determined that, of $373.2 million on the books as of March 31, 1975, which related to the fiscal years ended June 30, 1973 and 1974, only $48.7 million were valid receivables. At June 30, 197 , the City had recorded $ million of receivables for prior year reimbursables; this amount was reduced by $ million to reflect the review described above. In addition, a reserve of $ million has been provided in accordance with an estimate by the City to allow for the advance recognition of revenue at June 30, 197 , and to provide for possible disallowances.

The other accounts receivables at June 30, 197 , were:

	Thousands
Prior year reimbursables (after adjustment)	$
Miscellaneous current year reimbursables	
Receivable for urban renewal notes	
Assessments receivable	
Real estate taxes under Chapter 648	
	$

(7) Mortgages and advances:

In connection with housing programs, the City holds mortgages on certain real estate and has made advances to certain contractors for projects which will eventually be covered by mortgages. A large percentage of the mortgages is in a delinquent status at June 30, 197 . Furthermore, the City has expressed a desire to sell the mortgages at a discount. A reserve of $ million has been provided to reflect the probability that the City will not receive full payment for recorded mortgages. The City estimates that $ million of the recorded mortgages and advances will be collected within one year.

(8) Unrecorded liabilities and commitments:

The accompanying statement does not include any liability for pension expense, although it has been determined that the City's pension funds are underfunded on an actuarial basis by approximately $ billion.

The City leases many of the facilities in which it conducts its operations. To remove the cost of many of these leases from the expense budget, the City entered into three-year lease agreements to be funded by serial bonds. Authorizations for such leases for 197 -7 aggregated $ million, which as a result of the funding was not in the expense budget. All other leases to which the City is a party are for terms of one year or less.