The original documents are located in Box 42, folder "1976/04/08 HR10624 Bankruptcy Act Amendments" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
APR 8 - 1976

4/8/76

ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: April 9

April 5, 1976

Routed 4/9/76 330 pm
To Archives 4/9/76

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 10624 - Bankruptcy Act Amendments

Attached for your consideration is H.R. 10624, sponsored by Representative Rodino and five others. The enrolled bill amends the Bankruptcy Act to provide revised procedures under which a financially distressed municipality or other subdivision or agency of a State may seek the protection of the Federal courts while negotiating a plan of reorganization and adjustment of its debts with its creditors.

A discussion of the provisions of the bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus), Bill Seidman, Alan Greenspan and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 10624 at Tab B.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 10624 - Bankruptcy Act amendments
Sponsor - Rep. Rodino (D) New Jersey and 5 others

Last Day for Action

April 9, 1976 - Friday

Purpose

To amend chapter IX of the Bankruptcy Act to establish revised procedures for municipalities filing for bankruptcy.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Health, Education and Welfare	Approval
Department of the Treasury	No objection
Department of Commerce	No objection
Advisory Commission on Intergovernmental Relations	No objection
Securities and Exchange Commission	No objection (Informally)

Discussion

The enrolled bill provides revised procedures under which a financially distressed municipality or other subdivision or agency of a State may seek the protection of the Federal courts while negotiating a plan of reorganization and adjustment of its debts with its creditors. It establishes the rules by which a Federal district court may protect a municipality from creditor action and sets forth the conditions under which law suits against a city may be tried in an orderly fashion.

H.R. 10624 is similar in intent to legislation submitted by the Administration to the Congress in October 1975 when it appeared that New York City was facing imminent financial collapse. The Administration's bill was prepared because the existing

legislation relating to municipal bankruptcy procedures (chapter IX of the Bankruptcy Act) was outdated and ineffective for cities the size of New York; it was designed to ensure the eventual solvency of the affected city as well as to protect the interests of its creditors.

The major provisions of H.R. 10624 would

-- eliminate the requirement in current law that 51 percent of a city's creditors give prior consent before a bankruptcy petition could be filed. This was proposed by the Administration since this requirement effectively precludes cities such as New York from seeking relief before a bankruptcy court. Even assuming that 51 percent of New York City's creditors would consent to a bankruptcy filing, it would be impossible to locate this number of creditors since much of the city's debt is in the form of bearer bonds and the identity of the creditor is unknown.

-- provide a detailed description of the powers, limitations and jurisdiction of the court in which a bankruptcy petition is filed. Among other powers, the court may, after a bankruptcy petition has been filed, permit the petitioner to reject executory contracts (including collective bargaining agreements) and unexpired leases. The court may also permit the issuance of certificates of indebtedness; such certificates are obligations of the petitioner which generally have priority in payment over other debts. Unless the petitioner consents, or the plan for the adjustment of the petitioner's debts so provides, the court may not interfere with the political or governmental powers or with the property or revenues of the petitioner.

-- protect the power of the States to control the governmental functions of their political subdivisions. The intent of this provision is to clarify and reaffirm the sovereignty of the States, pursuant to the Tenth Amendment, in any municipal bankruptcy proceeding. However, the bill also preserves the rights of the creditors to consent to any plan of adjustment a State may prescribe for one of its agencies seeking bankruptcy relief.

-- require a distressed petitioner to meet one of four conditions before it is eligible for bankruptcy relief. A petitioner would not be eligible for relief unless

(1) it successfully negotiated a plan of adjustment of its debts with its major creditors; or

(2) it negotiated in good faith but has failed to obtain the agreement of its major creditors; or

(3) such negotiation is impracticable; or

(4) it has a reasonable fear that a creditor may attempt to obtain a preference.

This provision would limit access to the bankruptcy court without restricting such access so severely as to preclude relief in cases where the petitioner is confronted with stubborn or overly hasty creditors, or creditors whose identity is unknown because of the existence of a large number of bonds in bearer form. The Administration bill restricted access to bankruptcy relief to cities with over 1 million residents. The enrolled bill would permit any State's political subdivision or public agency, to petition for bankruptcy relief if it is authorized to do so by State law.

-- prescribe the rules governing the filing of a petition and the procedures to be followed in the administration and adjudication of a bankruptcy case by the court.

Such rules and procedures involve the preparation and filing of a list of the names, addresses and claims of all creditors, the payment of a $100 filing fee, and the notification of the parties concerned that a petition has been filed and the nature of such petition.

The filing of a petition would operate as an automatic stay of any judicial or other proceeding against the petitioner and its property. The court is required to designate classes of creditors, based on the similarity of their claims, and to define the priorities in the payment of claims with respect to each class of creditors. Prior to the payment of any creditor's claim, the administrative costs incident to filing the petition, debts owed for services and materials

actually provided within 3 months of the filing of the petition, and debts which have priority under Federal statute must be first paid in full.

-- require that the petitioner file a plan of adjustment of its debts. Within 90 days creditors are to accept, modify or reject the plan. Such plan may be confirmed by the court only if it is accepted by creditors holding at least two-thirds of the amount of claims in each class and by creditors holding more than 50 percent in the number of claims in each class. Objections to the confirmation of the plan may be filed prior to ten days before the date of the hearing on the plan set by the court. The court must confirm the plan if six conditions, dealing with the fairness and reasonableness of the plan, have been met.

Legislative history made during the floor debate on the enrolled bill clarified the congressional intent that these conditions of confirmation encompass the requirement that the petitioner's budget be in balance within a reasonable period after adoption of the plan. This requirement was explicitly stated in the Administration's bill.

As the attached Justice Department views letter notes, the enrolled bill differs from the Administration bill in five major regards:

-- the enrolled bill would replace chapter IX of the Bankruptcy Act as the exclusive remedy available for all municipalities. The Administration bill left standing the existing provision of chapter IX and added a new chapter XVI (incorrectly cited as chapter XI in the attached Justice letter) limiting access to bankruptcy to cities with over 1 million residents.

-- the enrolled bill would require that a city make a good faith attempt at negotiating a plan of composition; the Administration bill required that the municipality <u>file</u> a good faith plan of composition with its petition.

-- the enrolled bill contains no explicit balanced budget requirement, although, as noted before, legislative history on the bill indicates that such a requirement is "implicit" in the bill's provisions. The Administration bill contained an explicit balanced budget requirement.

-- the enrolled bill does not require that a municipality must be specifically authorized by a State to file a petition of bankruptcy. The Administration bill included such an explicit provision.

-- the enrolled bill would require for confirmation of a plan of composition the approval of two-thirds in amount and half by number, of each class of affected creditors voting. The Administration bill simply required the approval of two-thirds in amount of each class of creditors.

Despite these differences between the Administration bill and the enrolled bill, the Justice Department notes that H.R. 10624 is "fundamentally sound" and recommends approval. We concur in that recommendation.

James M. Frey

Assistant Director
for Legislative Reference

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

April 6, 1976

MEMORANDUM FOR JAMES M. CANNON

SUBJECT: H.R. 10624 - Bankruptcy Act Amendments

This is in response to your request for the Council's comments on enrolled bill, H.R. 10624, to amend Chapter IX of the Bankruptcy Act. The changes in bankruptcy proceedings for municipalities contained in H.R. 10624 would on the whole be beneficial for three reasons. First, it would allow distressed municipalities to seek relief more quickly, so that economic uncertainty of the sort which attended the drawn-out New York City crisis would likely be less severe. Second, the role of Federal assistance to municipalities required by prolonged financial trouble might be reduced. Finally, increasing the probability of bankruptcy is likely to cause the financial markets to be more careful in assessing a municipality's credit worthiness, which in turn should encourage more prudent financial management by municipalities.

Alan Greenspan

ASSISTANT ATTORNEY GENERAL

Department of Justice

Washington, D.C. 20530

APPROVED

MAR 2 3 23 AM '76

OFFICE OF
MANAGEMENT & BUDGET

Honorable James T. Lynn
Director, Office of Management
and Budget
252 Old Executive Office Bldg.
17th & Pennsylvania Ave., N.W.
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for the comments of the Department of Justice on the enrolled bill, H.R. 10624, to amend Chapter IX of the Bankruptcy Act.

The bill contains alterations from the Administration's proposal on this subject (H.R. 10457) which are too numerous to bear mention. Only the following are in our view sufficiently fundamental as possibly to warrant consideration of a veto or a reservation in the signing statement:

1. The Administration bill was framed as a new Chapter XI of the Bankruptcy Act, which would be available (in addition to the existing Chapter IX) only to cities with a population in excess of 1,000,000. The present enrolled bill, on the other hand, would replace Chapter IX as the exclusive bankruptcy remedy available for all municipalities. The latter course was thought undesirable by the Administration for a number of reasons. First and foremost, facilitation of bankruptcy--which was the principal objective of the Administration's proposal--was not thought necessarily desirable with regard to smaller governmental units, since the existing provisions, though in some respects cumbersome, were feasible for them, and since further liberalization might have the effect of impairing the marketability of their securities. Second, it was feared that extension of the legislation to small municipalities would make it impossible to include certain protections deemed necessary only with respect to major municipalities--for example, the requirement for specific State consent to the bankruptcy petition, discussed below. Third, it was felt that a full revision of Chapter IX would consume more congressional time than New York City had available to wait. Finally, there was

the marginal consideration that commerce clause justification for the somewhat expanded bankruptcy powers which the bill created could more easily be sustained if the bill applied only to major cities, rather than to all water districts.

2. The Administration bill (Sec. 804(b)(1)) required the municipality to file a good faith plan of composition with its petition. It was felt that this would impose some discipline upon the municipality, and create an atmosphere of hard reality at the very outset of the proceeding. This requirement has been eliminated in the enrolled bill, although the city must establish that it has attempted the negotiation of such a plan or that such negotiation is impracticable (Sec. 84).

3. The Administration bill required that the petition be accompanied by a statement of the municipality's projected revenues and expenditures adequate to establish that its budget would be in balance within a reasonable time after adoption of the plan (Sec. 804(b)(2)); and required a specific finding that the municipality's budget would be in balance within a reasonable time as a condition to court approval of the final plan (Sec. 816(d)(7)). The enrolled bill eliminates both these requirements. Its legislative history, however, might be read to establish the latter of them. The version of the bill adopted by the Senate originally contained a "balanced budget" requirement for confirmation of the plan; it was eliminated in conference; and an exchange on the Senate floor between Senator Burdick, who headed the Senate's conference committee delegation, and Senator Hruska, indicates that the deletion was agreed to because it was felt that the requirement would in any event be imposed by the bill's requirement that no plan can be confirmed unless it is "feasible." See Attachment A. If this legislative history is accepted at face value it would achieve the same result as the Administration's bill; it is in our view doubtful, however, whether on the basis of this history alone the courts would impose quite such rigorous conditions as they would if the statute specifically referred to a "balanced budget."

4. The Administration bill (Sec. 803(a)) required as a condition of filing that the municipality be "specifically authorized by the State to file a petition." As indicated in testimony by Administration spokesmen, this was meant to require

explicit State approval for the particular filing. Such a requirement was thought desirable both because, in the case of a city over 1,000,000, a step of such enormous consequence to the State should not be taken on the basis of an old and general authorization; and because, with respect to the insolvency of such a large city, no final composition would be feasible without active State assistance and cooperation. This provision has been eliminated in the enrolled bill. It is, of course, unnecessary with respect to the smaller municipalities which this bill now covers, and indeed would probably be entirely infeasible with respect to them.

5. The Administration bill (Sec. 814(a)) required for confirmation of a plan the approval of two-thirds in amount, by class, of all affected creditors voting. The enrolled bill (Sec. 92) requires the approval of two-thirds in amount and half in number, by class, of all affected creditors voting. We believe this change is not objectionable to the Administration, since our object in requiring two-thirds rather than (as some had proposed) merely one-half in amount was to render approval more difficult and thus enhance the attractiveness of municipal securities. The additional requirement merely increases the difficulty of approval and strengthens the security of the small stockholder in particular. It could be urged that this additional requirement of 50 per cent in number will render approval extraordinarily difficult with respect to municipalities whose shares are widely held in small amounts; but since the percentage only applies to those voting rather than all those who hold stock, this fear is probably exaggerated.

Apart from these basic policy issues, and some essentially technical improvements which we had urged, we believe the bill is fundamentally sound. There is in our view no prospect of sustaining a veto with respect to this bill. Moreover, if a veto did succeed, we would be left with the pressing need to obtain some legislation of this sort to meet the problems of New York City. It is extremely unlikely that our support on the Hill--which worked hard to preserve as much as possible of the Administration bill--would be able

to fare any better in a second go-round. We recommend that the bill be signed without comment.

Sincerely,

Michael M. Uhlmann
Assistant Attorney General
Office of Legislative Affairs

Enclosure

After July 1, 1940, membership in my pension or retirement system of the State or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.

That is the State constitution.

The section in question seeks, I believe—of course, the Senator from North Dakota will give us the answer—to preserve that right by its language which reads 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 political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures thereof, provided, however, that no State law prescribing a method of compensation of indebtedness of such agencies shall be binding upon any creditor who does not consent to such composition and no judgment shall be ordered under such State law which will bind the creditor to such composition without his consent.

The meaning, it seems to me, clearly, then, of that section—and that is what I would like the confirmation of the Senator about—will preserve the right of an individual pensioner drawing his pension so that it will not be subjected to the Bankruptcy Act and one whose pension is vested in terms of the State law or State Constitution not being affected by the bankruptcy of that particular governmental entity.

Mr. BURDICK. The due process clause of the U.S. Constitution, of course, preserves the rights of a person which have become vested in his pension plan, if the pension plan is fully executed. Under New York law it would be, at the very least, a paramount claim on any assets of the bankruptcy.

Mr. JAVITS. I thank my colleague very much. His answer will give great assurance to many employees who have served faithfully and thought they had something until they ran into the present financial problems.

I thank him further.

Mr. BURDICK. Mr. President, I move that the Senate agree to the conference report in disagreement.

The PRESIDING OFFICER. The question is on the motion of the Senator from North Dakota.

The motion was agreed to.

Mr. CURTIS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. JAVITS. I move to lay tha motion on the table.

The motion to lay on the table was agreed to.

Mr. HRUSKA. Will the distinguished Senator from North Dakota yield for a question about the intent of a portion of the legislation?

Mr. BURDICK. I will yield to the question from the distinguished Senator from Nebraska.

Mr. HRUSKA. The conference report and statement of managers are silent on the rejection of a collective bargaining agreement by a municipality. Could you explain the intent of the legislation in that regard?

Mr. BURDICK. Yes. The Senate report in its version of the bill, S. 2597, makes this clear on page 15. The House report has similar language on pages 8–9. The bill provides in section 82(b)(1) that the court shall have the power to permit the rejection of executory contracts by the petitioner. It is contemplated that all continuing obligations of the petitioner including collective bargaining agreements will be considered executory contracts.

Mr. HRUSKA. But, does not the House report imply that local laws, such as those governing the negotiation and renegotiation of collective bargaining laws, might apply in such a case?

Mr. BURDICK. I am familiar with the language to which you refer. To use an example, it is my understanding that some States have laws which require the negotiation or renegotiation in good faith of all collective bargaining agreements and that during the period of negotiation and renegotiation the employees must remain on their jobs at the same salaries, conditions and terms. It is the intent of this legislation that any such laws should not be allowed to frustrate the purposes of the bankruptcy proceedings.

Mr. HRUSKA. Would these statutes be given no weight because of the bankruptcy and supremacy clauses of the Constitution?

Mr. BURDICK. I think that is certainly the case but it should be made clear that notwithstanding the constitutional considerations it is the intent of the legislation that if a State has such laws they would not apply to the petitioner negotiating or renegotiating any collective bargaining agreement during the bankruptcy proceedings.

Mr. HRUSKA. Does the distinguished Senator read section 83 of the chapter to limit section 82(b)(1)? Section 83 is the section which states that no provision of this chapter shall limit a State in the exercise of its political or governmental powers. Could a State labor law passed before the enactment of this bill and which prohibits the rejection of a collective bargaining agreement of a municipality as an unfair labor practice be deemed to supersede the power of rejection in section 82(b)(1)?

Mr. BURDICK. Definitely not. The power to reject executory contracts in section 82(b)(1) is an integral part of the legislation and is not in any way limited by section 83. The latter section is merely being carried over in this bill in deference to the Supreme Court's decisions in *Ashton* v. *Cameron Water Improvement District No. 1*, 298 U.S. 513 (1936) and *Bekins* v. *United States*, 304 U.S. 27 (1938) and is intended to have no new application because of this bill and to be construed as narrowly as possible.

Mr. HRUSKA. It is my understanding that there are some recent cases which hold that in chapter XI cases a debtor in possession may reject collective bargaining agreements on the grounds that there is no conflict in the bankruptcy and labor laws because the debtor in possession is a new entity and not a party to the collective bargaining agreement. Would the holdings of those cases limit the power of the petitioner in chapter IX to reject any contract or collective bargaining agreement?

Mr. BURDICK. No. In the context of chapter IX the petitioner is as much a new entity as the debtor in possession in chapter XI. The bill recognizes this in section 85(h) where the avoiding powers are given to the petitioner to set aside its own previous transactions. In any case where the labor laws conflict with the powers of the petitioner under this Act, it is the intent of the legislation that the Federal, State, and local labor laws should be overridden.

Mr. HRUSKA. As a practical matter do you not expect that the petitioning municipality will renegotiate most rejected collective bargaining agreements much in the same manner of its prebankruptcy experience?

Mr. BURDICK. Yes, but I want to make it clear that it will not be obligated to follow State or local law in that regard.

Mr. HRUSKA. Thank you for clarifying this matter.

Mr. BURDICK. Will the distinguished Senator from Nebraska answer a question about the intent of another portion of the legislation?

Mr. HRUSKA. Yes, I would be pleased to do so.

Mr. BURDICK. The Senate version of the legislation, S. 2597, required the court to find as a condition to confirmation that "it appears from petitioner's current and projected revenues and expenditures that the budget of the petitioner will be in balance within a reasonable time after adoption of the plan." What is the intent of the legislation in this regard?

Mr. HRUSKA. The balanced budget requirement as an enumerated requirement was deleted in conference between the House and Senate on the bill. This was done upon the premise that the fair, equitable and feasible requirement which is enumerated requirement section 94(b)(1) will encompass the balanced budget requirement. The court will be required to consider whether the petitioner's plan will balance its budget within a reasonable time after adoption of the plan as an essential part of its finding that the plan is fair, equitable, and feasible.

Mr. BURDICK. The House bill did not contain such a requirement and the House report at pages 32–33 contained citations to cases interpreting the "fair, equitable and feasible requirement." Is it the intent of the legislation to limit the court to those cases in applying the balanced budget requirement of the legislation?

Mr. HRUSKA. No. The intent is that the court should make the determination on a case-by-case basis and not be limited by any prior case law. The court probably will be required to have the benefit of expert testimony as to the projected balance or inbalance of petitioner's budget, based upon generally accepted accounting principles.

Mr. BURDICK. The distinguished Senator will remember that the Senate receded from its position which would have permitted the court to enforce the conditions attached to certificates of indebtedness as in section 805(g) of the Senate bill. What is the intent of the legislation with respect to enforcement

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
OFFICE OF CONSUMER AFFAIRS
WASHINGTON, D.C. 20201

March 31, 1976

MEMORANDUM FOR: James M. Frey
Assistant Director for
Legislative Reference
Office of Management & Budget

FROM: Michael A. Sterlacci
General Counsel
Office of Consumer Affairs

SUBJECT: Enrolled Bill H.R. 10624, an act to amend chapter IX of the Bankruptcy Act to provide by voluntary reorganization procedures for the adjustment of the debts of municipalities

Donald Hirsch has asked me to respond for the Department of Health, Education, and Welfare to your request for views on the Enrolled Bill, H.R. 10624.

Although the Office of Consumer Affairs has not been deeply involved in the legislative development of this bill, we do support the concept it embodies and would recommend that the President approve the legislation.

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

MAR 30 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 10624, "To amend chapter IX of the Bankruptcy Act to provide by voluntary reorganization procedures for the adjustment of the debts of municipalities."

The enrolled enactment would permit any political subdivision or public agency or instrumentality that was authorized by a State to file a petition for relief if it were insolvent or unable to meet its debts as they mature. To be eligible for relief, the entity must have attempted to negotiate a plan of adjustment with its creditors unless such negotiation was impracticable, or there was a reasonable fear that a creditor would attempt to obtain a preference.

Section 89 as added by the enrolled enactment would enumerate priorities and require to be paid in full in advance of any distribution to creditors under the plan for the adjustment of the entity's debts, the following debts in order: (1) costs of administration subsequent to the filing of a petition; (2) debts for services and materials provided within 3 months before the date of the filing of the petition; and (3) debts which other laws of the United States entitle to priority.

The Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,

Robert H. Mundheim
General Counsel

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

MAR 31 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H.R. 10624, an enrolled enactment

> "To amend chapter IX of the Bankruptcy Act to provide by voluntary reorganization procedures for the adjustment of the debts of municipalities."

This Department would have no objection to approval by the President of H.R. 10624.

Enactment of this legislation will not involve the expenditure of any funds by this Department.

Sincerely,

General Counsel

ADVISORY
COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, D.C. 20575

March 30, 1976

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C.

Dear Mr. Frey:

The Advisory Commission on Intergovernmental Relations recommended in its study, City Financial Emergencies, that the Federal bankruptcy provisions relating to local governments be updated and clarified--which is the apparent intent of the enrolled bill amending Title IX of the Bankruptcy Act.

The Commission has not considered the language of the amendments contained in the enrolled bill, but they deal with several issues the Commission specifically recommended, namely, the definition of "creditor," parties and conditions of involuntary filings, and the duration and scope of court supervision.

On the whole, the enrolled bill incorporates the Commission recommendations. The amendments do not authorize the appropriate State agency supervising local government operations to initiate an involuntary filing. They do not provide for a written annual progress report on the status of the plan for the adjustment of the petitioner's debt. These two items were specifically mentioned by the Commission as desirable.

Nevertheless, considering the importance the Commission attached to the updating of Title IX, it is assumed that the Commission would want the President to sign the enrolled bill.

Perhaps as experience is gained with the operation of this legislation, the merits of the Commission's specific suggestions about the appropriate State supervisory agency initiating an involuntary filing and the provision of annual reports of progress on the confirmed plan will be recognized.

Sincerely,

John Shannon
Assistant Director

OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO Mr. Linder

- [ ] Take necessary action
- [ ] Approval or signature
- [ ] Comment
- [ ] Prepare reply
- [ ] Discuss with me
- [ ] For your information
- [ ] See remarks below

FROM Dottie Evans

DATE 4/5/76

REMARKS

Securities & Exchange Commission views letter on Enrolled Bill H.R. 10624, for inclusion in the file sent to you Friday, 4/2/76.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

April 1, 1976

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Jim:

This is in response to the March 29, 1976 request for the Commission's views on H.R. 10624, a bill to amend Chapter IX of the Bankruptcy Act, dealing with the adjustment of municipal debts. The Congress recently passed this legislation, and we understand that your office will shortly advise the President whether he should sign or veto it. We realize that your advice to the President depends upon your assessment of the merits of the legislation as a whole, and that the Commission's expertise in bankruptcy reorganization does not extend to adjustment of the debts of municipalities.

While the Commission for that reason is not in a position to suggest a veto of H.R. 10624, we are concerned about the possible effect of some of its provisions on the trading markets for municipal bonds and on the persons who underwrite offerings of those securities.

A principal shortcoming of the bill is its failure to restrict and safeguard access by municipalities to the bankruptcy courts. The bill does not appear to require the states to determine whether a proposed municipal bankruptcy petition filing is both necessary and appropriate. This omission is all the more serious in light of the restrictions placed upon the bankruptcy courts under the bill.

As a result, a bill with a salutary purpose may be utilized by some municipalities as an expedient remedy for problems that could be corrected less drastically.

In view of the present uncertainties regarding the stability of municipal issues, we are concerned that this consequence would adversely affect the ability of underwriters to perform their appropriate roles.

Two other sections of the bill, which relate to the public interest, also are matters that merit comment.

Section 85(d) provides in pertinent part that a creditor may file a request for notices of any matter arising in the proceeding in which the creditor "has a direct and substantial interest," a provision similar to those in the pending legislative proposals to amend present Chapters X and XI of the Bankruptcy Act (S. 235 and 236; and H.R. 31 and 32). In its report to the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary, the Commission noted that it is difficult for the ordinary investor to identify at the beginning of a case the issues that might arise or the possible importance of those issues to him. The same is true in cases involving investors in municipal securities.

Under Section 85(e)(4), the commencement or continuation of any other legal proceeding may be stayed or enjoined by the bankruptcy court, "upon notice to the person against whom such order would apply, and for cause shown." We assume that, as in present practice under Chapter X reorganizations and Chapter XI arrangements, the Commission would be able to file an injunctive action against a municipality subject to a Chapter IX proceeding if that were necessary to the effectuation of its enforcement responsibilities. Since the burden of enjoining the Commission's filing of an injunctive action would rest on the municipality, we would not anticipate that it would unduly interfere with our enforcement of the federal securities laws.

With best regards,

Sincerely,

Roderick M. Hills
Chairman

To- J. Cavanaugh 4-2-76 5:30 p.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 2 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 10624 - Bankruptcy Act amendments
Sponsor - Rep. Rodino (D) New Jersey and 5 others

Last Day for Action

April 9, 1976 - Friday

Purpose

To amend chapter IX of the Bankruptcy Act to establish revised procedures for municipalities filing for bankruptcy.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval
Department of Health, Education and Welfare	Approval
Department of the Treasury	No objection
Department of Commerce	No objection
Advisory Commission on Intergovernmental Relations	No objection
Securities and Exchange Commission	No objection (Informally)

Discussion

The enrolled bill provides revised procedures under which a financially distressed municipality or other subdivision or agency of a State may seek the protection of the Federal courts while negotiating a plan of reorganization and adjustment of its debts with its creditors. It establishes the rules by which a Federal district court may protect a municipality from creditor action and sets forth the conditions under which law suits against a city may be tried in an orderly fashion.

H.R. 10624 is similar in intent to legislation submitted by the Administration to the Congress in October 1975 when it appeared that New York City was facing imminent financial collapse. The Administration's bill was prepared because the existing

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: April 2 Time:

FOR ACTION: Bill Seidman
Max Friedersdorf
Steve McConahey
Paul Leach
Alan Greenspan
Dawn Bennett

cc (for information): Jim Cavanaugh
Ed Schmults
Ken Lazarus ✓

FROM THE STAFF SECRETARY

DUE: Date: April 5 Time: 500pm

SUBJECT:

H.R. 10624 - Bankruptcy Act Amendments

ACTION REQUESTED:

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

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Recommend approval. Ken Lazarus 4/5/76

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 M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: April 2 Time:

FOR ACTION: Bill Seidman
Max Friedersdorf
Steve McConahey ✓
Paul Leach
Alan Greenspan
Dawn Bennett

cc (for information): Jim Cavanaugh
Ed Schmults
Ken Lazarus

FROM THE STAFF SECRETARY

DUE: Date: April 5 Time: 500pm

SUBJECT:

H.R. 10624 - Bankruptcy Act Amendments

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x
____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Recommend President sign. Ideally, I would like the provisions relating to a plan of composition, a balanced budget and eligibility to be more strict and explicit along the lines of the Administration's bill. However, the differences do not justify a veto in my judgment.

Called into Judy 4/5
4:05 P.M.

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 M. Cannon
For the Presid[illegible]

THE WHITE HOUSE

WASHINGTON

April 5, 1976

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX L. FRIEDERSDORF M.L.F.

SUBJECT: H.R. 10624 - Bankruptcy Act Amendments

The Office of Legislative Affairs concurs with the agencies that the subject bill be signed.

Attachments

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: April 2 Time:

FOR ACTION: Bill Seidman ✓
Max Friedersdorf
Steve McConahey
Paul Leach
Alan Greenspan
Dawn Bennett

cc (for information): Jim Cavanaugh
Ed Schmults
Ken Lazarus

FROM THE STAFF SECRETARY

DUE: Date: April 5 Time: 500pm

SUBJECT:

H.R. 10624 - Bankruptcy Act Amendments

ACTION REQUESTED:

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

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Approval
JWS

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 M. Cannon
For the President

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94-938

MUNICIPAL BANKRUPTCY LAW REVISION

MARCH 22, 1976.—Ordered to be printed

Mr. EDWARDS of California, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 10624]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10624) to revise chapter IX of the Bankruptcy Act, having met, after full and free conference, have been unable to agree.

DON EDWARDS,
JOHN SEIBERLING,
ROBERT F. DRINAN,
HERMAN BADILLO,
CHRISTOPHER J. DODD,
M. CALDWELL BUTLER,
THOMAS N. KINDNESS,
Managers on the Part of the House.

QUENTIN BURDICK,
PHILLIP A. HART,
JIM ABOUREZK,
ROMAN L. HRUSKA,
HIRAM L. FONG,
Managers on the Part of the Senate.

57-006 O

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10624) to revise chapter IX of the Bankruptcy Act, report that the conferees have been unable to agree.

The House bill and the Senate amendments make access to the court of bankruptcy by a municipality that is unable to pay its debts as they mature virtually limitless. The managers have concluded that access to the court of bankruptcy should be limited, by requiring a distressed municipality to meet one of four conditions before it may petition a court of bankruptcy for relief. This requirement is discussed in the analysis of section 84, *infra*. However, addition of this provision is beyond the authority of the managers on the part of the House and the Senate, because it is not within the scope of the matters committed to conference.

On all other matters, the managers on the part of the House and the Senate have agreed. The substance of the agreement is contained in a draft of House amendments to the Senate amendments, set forth in full below. The managers on the part of the House will offer a motion to agree to the amendments of the Senate with these amendments. The motion will be: That the House agrees to the amendments of the Senate to the bill (H.R. 10624) entitled "An Act to revise chapter IX of the Bankruptcy Act," with the following

HOUSE AMENDMENTS TO SENATE AMENDMENTS:

In lieu of the matter proposed to be inserted by the Senate engrossed amendment to the text of the bill insert: That chapter IX of the Bankruptcy Act is amended to read as follows:

"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 as to amount, 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 political subdivision or public agency or instrumentality 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) 'lien' means security interest in property, lien obtained on property by levy, sequestration, or other legal or equitable process, statutory or common law lien on property, or any other variety of charge against property to secure the performance of an obligation;

"(7) 'person' includes a corporation or a partnership, the United States, the several States, and political subdivisions and public agencies and instrumentalities of the several States;

"(8) 'petitioner' means agency, instrumentality, or subdivsion which has filed a petition under this chapter;

"(9) 'plan' means plan filed under section 90;

"(10) '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 of obligations issued by the petitioner to defray the costs of local improvements; and

"(11) 'special tax payer affected by the plan' means 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 (10) 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 leases 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, and over costs and expenses of administration, not including operating expenses of the petitioner, 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 stay, 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) the petitioner's use or enjoyment of any income-producing property.

"(d) DESIGNATION OF JUDGE.—After 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 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.

"SEC. 84. ELIGIBILITY FOR RELIEF.—Any State's political subdivision or public agency or instrumentality, which is generally authorized to file a petition under this chapter by the legislature, or by a governmental officer or organization empowered by State law to authorize the filing of a petition, 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. An entity is not eligible for relief under this chapter unless—

"(1) it has successfully negotiated a plan of adjustment of its debts with creditors holding at least a majority in amount of the claims of each class which are claims affected by that plan;

"(2) it has negotiated in good faith with its creditors and has failed to obtain, with respect to a plan of adjustment of its debts, the agreement of creditors holding at least a majority in amount of the claims of each class which are claims affected by that plan;

"(3) such negotiation is impracticable; or

"(4) it has a reasonable fear that a creditor may attempt to obtain a preference.

"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 an answer to the petition 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. Upon the filing of such an answer, the court may dismiss the petition after hearing on notice if the petitioner did not file the petition in good faith, or if the petition does not meet the requirements of this chapter. The court shall not, on account of an appeal from a finding of jurisdiction, delay any proceeding under this chapter in the case in which the appeal is being taken; nor shall any court order a stay of such proceeding pending such appeal. The reversal on appeal of a finding of jurisdiction shall not affect the validity of any certificate of indebtedness authorized by the court and issued in such case.

"(b) LIST.—The petitioner shall file with the court a list of the petitioner's creditors, insofar as practicable. The list shall include for each known creditor, to the extent practicable, the name of the creditor, the address of the creditor so far as known to the petitioner, and a description of any claim of the creditor, showing the amount and character of the claim, the nature of any security for the claim, and whether the claim is disputed, contingent or unliquidated as to amount. If an identification of any of the petitioner's creditors is impracticable, the petitioner shall state the reason such identification is impracticable and the character of the claims of the creditors involved. The petitioner shall supplement the list as creditors who were unknown or unidentified at the time the list was filed become known or identified to the petitioner. 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, sets.

"(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 petitioner or such other person as the court designates 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 included in the list of creditors required by subsection (b) or in any supplement to that list. 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 deems 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 a 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 any 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 or a lien on or arising out of taxes or assessments due 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 subsection, 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 shall set a hearing for the earliest possible date. 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 against whom such order would apply, and for cause shown. The court may issue an order under this paragraph without requiring the petitioner to give security as a condition to that order.

"(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 chapter 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 against whom or which recovery is sought of the claim which arises by reason of the recovery.

"(h) AVOIDING POWERS.—Sections 60a, 60c, 67a, 67d, 70c, 70e(1), and 70e(2), and the first three sentences of section 60b shall apply in cases under this chapter as though the petitioner were the bankrupt, debtor, or trustee. If the petitioner refuses to pursue a cause of action under a section or sentence made applicable to this chapter by this subsec-

tion, the court may, upon the application of any creditor, appoint a trustee to pursue such cause of action.

"SEC. 86. REPRESENTATION OF CREDITORS.—

"(a) REPRESENTATION AND DISCLOSURE.—Any creditor may act in that creditor's own behalf or by an attorney or a duly authorized agent or committee. Every person, not including governmental entities, 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 incident to the case, received or 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, not including governmental entities, 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, EXPENSES, 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. An appeal may be taken from any order allowing compensation to the United States court of appeals for the circuit in which the case under this chapter is pending, independently of any other appeal which may be taken in the case. The court of appeals shall hear and determine such appeal summarily.

"(c) JOINT ADMINISTRATION.—If two or more petitions by related entities are pending in the same court, the court may order 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 as to amount, and that appears in the list or in a supplement to 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 or any supplement to the list under section 85(b), the court shall give written notice to each person whose claim is listed as disputed, contingent, or unliquidated as to amount, informing each such person 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 $250 for reasons of administrative convenience. If there is a controversy over the classification of a creditor, the court shall, after hearing on notice, summarily determine such controversy.

"(c) DAMAGES UPON REJECTION OF EXECUTORY CONTRACTS.—If an executory contract or an unexpired lease is rejected under the 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 convenant 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 any distribution to creditors under the 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 owed for services or materials actually provided within three months before the date of the filing of the petition under this chapter.

"(3) Debts owing to any person, 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, sets. At any time prior to the confirmation of a plan, the petitioner, or any creditor, if the petitioner has consented in writing to the modification to be filed by the creditor, may file a modification of the plan; but the modification shall comply with the provisions of this chapter.

"(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 set a time, which shall be ninety days from the filing of the plan or any modification of the plan, unless the court, for good cause, sets some other time, within which creditors may accept or reject the plan and any modification of the plan. The petitioner or such other person as the court designates 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 creditor whose claim is affected by the plan, to each special tax payer affected by the plan, and to any party in interest that the court designates. Upon request by a recipient of such summary and notice, the petitioner or such other person as the court designates shall transmit by mail a copy of the plan or modification to that recipient. The court shall, after hearing on notice, determine any controversy as to whether a claim of a creditor or class of creditors is a claim affected by the plan and as to whether a special tax payer is a special tax payer affected by the plan.

"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 of a creditor who is included in the list or in a supplement to 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, or of a security holder of record as of the date of the transmittal of information under section 90(b), has been disallowed or is not a claim affected by the plan, that creditor or security holder may accept or reject the plan

and any modification of the plan within the time set 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 provided in subsection (d), 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 allowed under section 88 and more than 50 percent in number of the claims of each class allowed under section 88.

"(c) COMPUTING ACCEPTANCE.—The two-thirds majority required by subsection (b) is two-thirds in amount of the claims allowed under section 88 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). The more than 50 percent required by subsection (b) is more than 50 percent in number of the claims allowed under section 88 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 who holds a claim affected by the plan or a special tax payer affected by the plan may file with the court an objection to the confirmation of the plan. The Securities and Exchange Commission may also file with the court an objection to the confirmation of the plan, but in the case of an objection filed under this section, the Securities and Exchange Commission may not appeal or file any petition for appeal. An objection 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 set 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 the 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. The court may, for cause shown, permit a labor union or employees' association, that represents employees of the petitioner, to be heard on the economic soundness of the plan affecting the interests of the represented employees.

"(b) CONDITIONS FOR CONFIRMATION.—The court shall confirm the plan if—

"(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) the plan has been accepted as required by section 92;

"(4) all amounts to be paid by the petitioner or by any person, not including other governmental entities, for services and expenses in the case or incident to the plan 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 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 any creditor who had timely notice or actual knowledge of the petition or plan, whether or not such creditor's claim has been allowed under section 88, and whether or not such creditor has 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 money, securities, or other 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 neither the petition nor the 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. The court may direct the

petitioner and other necessary parties to execute and deliver or to join in the execution and delivery of any instrument required to effect a transfer of property under the plan and to perform such other acts including the satisfaction of a lien, as the court determines to be necessary for the consummation of 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.—

"(a) PERMISSIVE 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; or

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

"(A) if the petitioner 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.

"(b) MANDATORY DISMISSAL.—The court shall dismiss the case if confirmation is refused.".

SEC. 2. 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.

SEC. 3. If the amendment made by this Act is judicially finally determined to be unconstitutional then chapter IX of the Bankruptcy Act, as such chapter IX existed on the day before the date of enactment of this Act, is revived and shall have full force and effect with respect to cases filed after such determination.

In lieu of the amendment to the title contained in the Senate engrossed amendment insert:

Amend the title so as to read "An Act to amend chapter IX of the Bankruptcy Act to provide by voluntary reorganization procedures for the adjustment of the debts of municipalities.".

DESCRIPTION OF THE PROPOSED AMENDMENTS TO THE SENATE AMENDMENTS

The first proposed amendment amends the text of the bill. The second proposed amendment accepts the third Senate amendment, which amended the title of the bill, with an amendment to conform it to the amendment proposed by the first House amendment. There is no amendment to the second Senate amendment, which inserted a preamble after the title of the bill, because the Managers on the part of the House propose to recede from the House's disagreement with the Senate on the preamble.

DISCUSSION OF FIRST PROPOSED HOUSE AMENDMENT TO THE SENATE AMENDMENTS

The first Senate amendment struck out all after the enacting clause of the bill, H.R. 10624, and inserted in lieu thereof the text of a Senate bill, S. 2597, as amended. This first proposed amendment adopts this Senate amendment with an amendment. The amendent is the proposed text of a compromise bill, set out above. What follows is a section-by-section analysis of the proposed text.

PREAMBLE

The Senate amendment contained a preamble. The House bill had no comparable provision. The proposed text adopts the Senate language.

CHAPTER

The House bill amended current Chapter IX of the Bankruptcy Act. The Senate amendment added a new Chapter XVI to the Bankruptcy Act. The proposed text adopts the House version.

SECTION 81

The Senate amendment defined "attorney." S. § 802(1).[1] The House bill did not define the term. The proposed text adopts the House position.

[1] This citation, and all others beginning "S." are to the sections of the Senate amendment to the text of the House bill.

Paragraph (1) defines what claims are included in a chapter IX case. The House bill defined "claim" in general terms, H.R. § 81(1)[2]; H. Rep. 15.[3] The Senate amendment defined "claim" by enumeration of examples of claims. S. § 802(2). The proposed text adopts the House language. Because of the broad definition, all claims against the petitioner generally will be included, with one significant exception. Municipalities are authorized, under section 103(c) of the Internal Revenue Code of 1954, as amended, to issue tax-exempt industrial development revenue bonds to provide for the financing of certain projects for privately owned companies. The bonds are sold on the basis of the credit of the company on whose behalf they are issued, and the principal, interest and premium, if any, are payable solely from payments made by the company to the trustee under the bond indenture and do not constitute claims against the tax revenues or other funds of the issuing municipalities. The municipality merely acts as the vehicle to enable the bonds to be issued on a tax-exempt basis. It is not the intent of the Committee of Conference to include these industrial development bonds in a chapter IX case. Claims that arise by virtue of these bonds are not among the claims defined by this paragraph and amounts owed by private companies to the holders of industrial development revenue bonds are not to be included among the assets of the municipality that would be affected by the plan. See Cong. Record, 94th Cong., 1st Sess. H. 12073 (Statement by Mr. Don Edwards, Floor Manager of the bill in the House).

The House bill defined "debt". H.R. § 81(5); H. Rep. 16. The Senate amendment did not define the term. The proposed text adopts the House language.

The Senate amendment defined "lien" in sweeping terms designed to cover all types of liens and security interests. S. § 802(5). The House bill did not define the term. The proposed text adopts the Senate definition.

The House bill did not define "person". The Senate amendment defined "person" to include governmental entities. S. § 802 (7). The proposed text adopts the Senate definition.

The House bill defined "petitioner". H.R. § 81(6); H. Rep. 16. The Senate amendment did not define the term. The proposed text adopts the House language.

The House bill defined "special taxpayer affected by the plan". H.R. § 81(8), (9); H. Rep. 16. The Senate amendment did not define the term S. § 809(b). The proposed text adopts the House language.

SECTION 82

The House bill allowed certificates of indebtedness such priority over existing obligations as was equitable. H.R. § 82(b)(2); H. Rep. 17. The Senate amendment allowed such priority over existing obligations, and "other expenses of administration" as the court approved. S. § 811; S. Rep. 19.[4] The proposed text allows such priority over existing obligations and over costs and expenses of administration, not including operating expenses of the petitioner, as is equitable.

[2] This citation, and all others beginning "H.R." are to the sections of the House bill.
[3] This citation, and all others beginning "H. Rep." are to the committee report that accompanied the House bill, H. Rep. 94–686, 94th Cong., 1st sess. (1975).
[4] This citation, and all others beginning "S. Rep." are to the committee report that accompanied the Senate bill, S. 2597, whose text became the text of the Senate amendment to the text of the House bill, S. Rep. 94–458, 94th Cong., 1st sess. (1975).

The Senate amendment permitted the court to enforce the conditions attached to certificates of indebtedness, notwithstanding the limitation on the court's power prohibiting it from interfering with municipal powers in § 82(c); S. § 805(g); S. Rep. 17. The House bill had no comparable provision. The proposed text adopts the House version. The deletion of this provision from the Senate amendment is not meant to remove from the court of bankruptcy the jurisdiction or power to hear and decide disputes over noncompliance with certificates of indebtedness. Rather, because certificates are generally issued as short-term obligations, payable before or at confirmation of the plan, because the court is given exclusive personal jurisdiction over the petitioner for the purposes of this chapter under subsection (a), and because all judicial proceedings in other courts are stayed under section 85(e)(1), it is contemplated that the court of bankruptcy will be the only forum in which such disputes are determined.

The House bill vitiated the limitation on the court's power when the petitioner consented to a court action. H.R. § 82(c); H. Rep. 18. The Senate amendment contained no comparable provision. The proposed text adopts the House version.

The House bill prohibited any "order or decree" of the court from interfering with the petitioner's governmental powers. H.R. § 82(c); H. Rep. 18. The Senate amendment prohibited any "stay, order or decree" from so interfering. S. § 805(g). The proposed text adopts the Senate version as a clarification that the limitation on the court's power includes a limitation on the automatic stay of section 85(e)(1), which is not imposed by a court "order or decree".

The House bill prohibited court interference with "property of the petitioner". H.R. § 82(c)(2); H. Rep. 18–19. The Senate amendment prohibited court interference with "property of the petitioner necessary for essential governmental services". S. § 805(g). The proposed text adopts the House version.

The House bill prohibits court interference with any "income producing property". H.R. § 82(c); H. Rep. 18–19. The Senate amendment prohibits court interference with "the petitioner's use or enjoyment of any income producing property". S. § 805(g). The proposed text adopts the Senate version. See H. Rep. 18–19.

SECTION 83

The House bill deleted the proviso in current § 83(i) that prohibits state composition procedures. H.R. § 83; H. Rep. 2, 19. The Senate amendment retained the proviso. S. § 801(d); S. Rep. 15. The proposed text adopts the Senate version.

SECTION 84

This section defines which entities are eligible for relief under this chapter. The House bill included a "political subdivision or public agency or instrumentality". H.R. § 84; H. Rep. 20. The Senate amendment included the same terms, plus "municipality". S. § 803(a); S. Rep. 16. The proposed text adopts the House version.

The House bill required only that an entity not be "prohibited by state law from filing a petition under this chapter". H.R. § 84; H. Rep.

20. The Senate amendment required that the entity be "specifically authorized to file by the chief executive, the legislature or such other governmental officer or organization empowered under State law to authorize filing". S. § 803(a); S. Rep. 16. The proposed text requires general authorization by the legislature, or by a governmental officer (which includes the chief executive) or governmental organization (such as a Municipal Finance Commission) empowered by State law to authorize filing.

The House bill assumed the possibility of a filing by an entity subordinate to one already in a Chapter IX case. H.R. § 84, 85(a), 87(c); H. Rep. 20, 25–26. The Senate amendment made this explicit. S. § 803(b). The proposed text adopts the House version, because of the elimination from both bills of any restriction on the size of the entity that is eligible for relief under this chapter.

An additional eligibility requirement is inserted in the proposed text. It requires that the petitioner meet one of four conditions before it may seek relief under the chapter. The purpose of the provision is to limit accessibility to the bankruptcy court somewhat, as does current law, without making the accessibility requirement so stringent as to preclude relief in a situation in which the petitioner is confronted with stubborn or overly hasty creditors, or creditors whose identities are unknown because of the existence of a large number of bonds in bearer form.

SECTION 85

The House bill gave the governing body of an entity with no officials of its own the power to file a petition under this chapter. H.R. § 85(a); H. Rep. 20. The Senate amendment made no comparable provision. The proposed text adopts the House provision.

The House bill allowed 15 days from the completion of the publication of notice for filing a complaint objecting to the petition. H.R. § 85(a); H. Rep. 20–21. The Senate amendment allowed 30 days from the filing of the petition. S. § 806(a); S. Rep. 18. The proposed text adopts the House provision.

The House bill required the court to hear any objections to the petition in a single proceeding to the extent practicable. H.R. § 85(a); H. Rep. 21. The Senate amendment contained no similar requirement. The proposed text adopts the Senate version.

The Senate amendment allowed dismissal of the petition if it did not meet the provisions of the chapter, or if the petitioner did not file the petition in good faith. S. § 806(1); S. Rep. 18. The House bill had no comparable provision. H.R. § 84; H. Rep. 20. The proposed text adopts the Senate language.

The Senate amendment prohibited interlocutory appeals from a finding of jurisdiction, in order to prevent delay in the proceedings and increase the marketability of certificates of indebtedness. The House bill had no comparable provision. S. § 806(c); S. Rep. 18. The proposed text includes compromise language designed to achieve the same result. It prohibits any delay of the proceedings because of an appeal from a finding of jurisdiction, and any stay pending such an appeal. It also specifies, in an attempt to codify the result currently achieved in chapter X, that the reversal on appeal of a finding of juris-

diction shall not, in and of itself, affect the validity of any certificate of indebtedness.

Subsection (b) describes the requirements of the list of creditors. The House bill required a list of all of the petitioner's creditors. H.R. § 85(b); H. Rep. 21. The Senate amendment required a list of only those creditors who would be affected by the plan; S. § 804(a); S. Rep. 17; and added the requirement that the list of creditors contain the name, address, and character of the claim of each creditor; S. § 809(a). The proposed text adopts the House position plus the Senate addition, but eliminates the requirement in the House bill that the petitioner state in the petition the reason an identification of a creditor is impracticable.

The Senate amendment also required that the list of creditors contain the character of the claims of unidentified creditors; S. § 809(a); and required that the list of creditors be supplemented as the petitioner became able to identify previously unidentified creditors. S. § 809(a). S. Rep. 19. The House bill contained no similar requirement. H. Rep. 21. The proposed text adopts the Senate language, in order to accommodate the identification of holders of bearer bonds.

The House bill made the list and notice requirements mandatory, H.R. § 81(8), (9), 85(b), (d), 90(b); H. Rep. 21, 22, 29. The Senate amendment permitted the court to modify these requirements. S. § 809(c); S. Rep. 19. The proposed text adopts the House version.

The House bill required the court to give all notices. H.R. § 85(d); H. Rep. 22. The Senate amendment required the petitioner, or such other person as the court designated, to give notice. S. § 807(a); S. Rep. 18. The proposed text adopts the Senate language.

The Senate amendment required mailing of notice to creditors who were identified after the initial mailing of notice. S. § 807(a). The House bill had no comparable provision. The proposed text adopts the Senate version.

Subsection (e) grants an automatic stay of actions seeking to enforce claims. The House bill stayed "a proceeding against the petitioner, its property or any officer or inhabitant of the petitioner, which seeks to enforce any claim against the petitioner." H.R. § 85(e)(1); H. Rep. 22–23. The Senate amendment stayed a "proceeding against the petitioner, its property or any officer or inhabitant of the petitioner, or which seeks to enforce any claim against the petitioner"; S. § 805(a); S. Rep. 17; or which seeks to enforce a lien on taxes or assessments; *id.* The proposed text adopts the House provision for the first portion, but adds and amplifies the second portion on taxes.

The House bill and the Senate amendment required a hearing on a complaint seeking relief from the automatic stay. H.R. § 85(e)(3); H. Rep. 23. S. § 805(d). Only the Senate amendment required the hearing at the earliest possible date. S. § 805(d). The proposed text adopts the Senate provision.

Subsection (e) also specifies conditions to additional stays. The House bill prohibited the court from requiring the petitioner to post security as a condition to an additional stay. H.R. § 85(e)(4); H. Rep. 23. The Senate amendment made security discretionary with the court. S. § 805(e); S. Rep. 17. The proposed text adopts the Senate version.

Subsection (g) allows recovery of set-offs effected before the filing of the petition. The House bill made set-offs within four months of the petition recoverable. H.R. § 85(g); H. Rep. 2. The Senate amendment set the time at three months. S. § 805(b)(2); S. Rep. 17. The proposed text adopts the House provision.

This subsection also specifies the protection the court may require the petitioner to furnish as a condition to recovery of a set-off. The House bill allowed "protection for the realization by the person against whom recovery is sought of the claim which arises by reason of the recovery". H.R. § 85(g); H. Rep. 3. The Senate amendment allowed "such protection as will adequately protect the person who is asserting the right of set-off". S. § 805(b)(2). The proposed text adopts the House version.

Subsection (h) makes some of the avoiding powers of the Bankruptcy Act available in Chapter IX. The Senate amendment made applicable sections 60a, 60b, 60c, 67, 70c, and 70e. S. § 801(e); S. Rep. 16. The House bill contained no comparable provision. The proposed text makes only sections 60a, 60c, 67a, 67d, 70c, 70e(1), and 70e(2), and the first three sentences of section 60b apply. The exclusion of only the last sentence of section 60b and of section 70(e)(3) is meant to confer exclusive jurisdiction of actions under the applicable sections on the federal district courts, and to withdraw concurrent jurisdiction from the State courts. These sections apply as though the petitioner were the trustee, debtor or bankrupt, thus transferring the avoiding powers to the petitioner itself, without the need for the appointment of an independent trustee. However, if the petitioner refuses to pursue a cause of action based on those sections, this section permits the court, on the application of a creditor, to appoint a trustee to pursue the cause of action. The trustee is given no other powers. The definition of person in section 81(7) is not intended to enlarge the scope of the avoiding powers when applied in Chapter IX. The definition of person found in section 1(23) of the Bankruptcy Act continues to be the proper definition in the construction of those sections when applied in this chapter.

SECTION 87

Subsection (a) allows special reference of certain matters. The House bill allowed reference only to a referee in bankruptcy. H.R. § 87(a); H. Rep. 25. Reference is to be the exception and not the rule, *id.* The Senate amendment allowed reference to referees and to special masters, S. § 822(a); S. Rep. 22; and allowed compensation for special masters, *id.* The proposed text adopts the House version.

The Senate amendment provided that appeals from orders granting or denying compensation in the case should be heard summarily. S. § 822(b); S. Rep. 22. The House bill contained no comparable provision. The proposed text adopts the Senate language.

Subsection (e) allows joint administration of cases filed by related entities. The House bill allowed such joint administration. H.R. § 87(c); H. Rep. 25–26. The Senate amendment allowed joint administration only of cases filed by subordinate entities. S. § 803(b); S. Rep. 16. The proposed text adopts the House version.

SECTION 88

Subsection (b) requires classification of creditors. The House bill provided the criteria of substantially similar claims and rights. H.R. § 88(b); H. Rep. 27. The Senate amendment used the existing chapter XI criteria. S. § 814(c); S. Rep. 20. The proposed text adopts the House language.

Subsection (b) also allows classification of small claims in a single class for administrative convenience. The House bill allowed such classification for claims under $100. H.R. § 88(b); H. Rep. 27. The Senate amendment allowed no such classification. S. § 814(c). The proposed text adopts the House version, but compromised the amount at $250.

The Senate amendment required a court hearing and determination of any dispute over the classification of creditors. S. § 814(d). The House bill had no comparable provision. The proposed text adopts the Senate provision.

SECTION 89

Paragraph (2) gives a priority to debts owed for services and materials provided shortly prior to the petition. The House bill gave the priority for "debts or consideration owed for services and materials actually provided within four months" before the date of filing the petition. H.R. § 89(2); H. Rep. 28–29. The Senate amendment gave the priority for "debts owed for services and materials directly provided within two months" prior to the petition. S. § 812(2); S. Rep. 20. The proposed text allows a priority for "debts owed" (Senate language), in order to make clear that the claim involved must be liquidated; for "services and materials actually provided" (House language); "within three months" (compromise language).

SECTION 90

The House bill allowed only the petitioner to modify the proposed plan. H.R. § 90(a); H. Rep. 29. The Senate amendment allowed the petitioner or any creditor, with the petitioner's consent, to propose a modification of the plan, and required a court hearing. S. § 815; S. Rep. 21. The proposed text allows the petitioner or any creditor, with the petitioner's consent, to modify, but does not require a court hearing.

Subsection (b) specifies the time within which creditors must accept or reject the plan. The House bill directed the court to set a time. H.R. § 90(b); H. Rep. 29. The Senate amendment set the time at 90 days from the time of filing the plan, unless the court, for good cause, set some other time. S. § 807(b). The proposed text adopts the Senate provision.

The Senate amendment required that the court hold a hearing and determine any dispute over whether a claim is affected by the plan. S. § 814(d). The House bill had no comparable provision. The proposed text adopts the Senate provision.

SECTION 92

Subsection (b) specifies the acceptances required to confirm a plan. The House bill required acceptances of creditors holding two-thirds in amount of the claims of each class with respect to which an acceptance or rejection was filed. H.R. § 92(b); H. Rep. 30. The Senate amendment required acceptances by two-thirds in amount, and 51% in number. S. § 814(a); S. Rep. 20–21. The proposed text requires two-thirds in amount and "more than fifty percent in number". S. Rep. 21.

The House bill permitted temporary allowance of claims for the purpose of accepting or rejecting the plan. H.R. § 92(a); H. Rep. 30. The Senate amendment did not permit temporary allowance. The proposed text permits temporary allowance, as in the House bill, but does not permit acceptances or rejections filed for such temporarily allowed claims to be counted in computing the acceptances required for confirmation unless the claim has been finally allowed under section 88. See § 92 (b) and (c).

Subsection (d) describes those creditors whose acceptances are not required. The House bill followed the current Chapter IX provision. H.R. § 92(d); H. Rep. 31. The Senate amendment adopted the Chapter X provision. S. § 814(a); S. Rep. 21. The proposed text adopts the House version.

SECTION 93

The House bill allows the S.E.C. to object to a plan. H.R. § 93; H. Rep. 31. The Senate amendment did not permit the S.E.C. to object. S. § 816. The proposed text adopts the House provision.

The Senate amendment required service of a complaint objecting to the plan on the petitioner and others designated by the court. S. § 816. The House bill had no comparable provision. The proposed text adopts the House version.

SECTION 94

The Senate amendment required the court, for cause shown, to permit a labor organization to be heard on the economic soundness of a plan affecting employees. S. § 808(b); S. Rep. 18. The House bill had no comparable provision. The proposed text adopts the Senate version, but makes the hearing permissive.

The House bill required the plan to be "fair and equitable and feasible". H.R. § 94(b)(1); H. Rep. 32–33. The Senate amendment required that it appear "from the petitioner's current and projected revenues and expenditures that the budget of the petitioner will be in balance within a reasonable time after adoption of the plan". S. § 817(c)(7); S. Rep. 21. The proposed text adopts the House version on the premise that the Senate's balanced budget requirement will be a factor that must be considered by the court as part of the court's determination that the plan is "fair and equitable and feasible".

The House bill required that the petitioner not be prohibited by law from taking any action required to be taken under the plan. H.R. § 94(b)(5); H. Rep. 33–34. The Senate amendment required that the

petitioner be authorized by law to take such action. S. § 817(c)(6); S. Rep. 21. The proposed text adopts the House version.

SECTION 95

The House bill required the court to appoint a disbursing agent. H.R. § 95(b); H. Rep. 34. The Senate amendment made no comparable provision. The proposed text adopts the House provision.

The House bill discharged the petitioner from its debts. H.R. § 95(b); H. Rep. 34. The Senate amendment extinguished the petitioner's debts. S. § 818(b); S. Rep. 21–22. The proposed text adopts the House language.

The House bill granted a discharge only after confirmation of the plan, deposit of consideration, and court determination of the validity of the consideration. H.R. § 95(b)(1); H. Rep. 34. The Senate amendment granted a discharge at the time of confirmation. S. § 818(b); S. Rep. 21–22. The proposed text adopts the House version, but expands the deposit requirement to "money, securities or other consideration".

The House bill did not discharge claims of creditors who had neither actual knowledge nor constructive notice of the case. H.R. § 95(b)(2)(B); H. Rep. 34. The senate amendment discharged such claims. S. § 818(b). The proposed text adopts the House version.

SECTION 96

The House bill required the court to fix a time for deposit of the consideration to be distributed under the plan. H.R. § 96(a); H. Rep. 34. The Senate amendment contained no similar requirement. The proposed text adopts the House provision.

The Senate amendment permitted the court to direct the petitioner to take certain actions to execute the plan. S. § 819(e). The House bill had no comparable provision. H. Rep. 34. The proposed text adopts the Senate language.

Subsection (e) allows the court to retain jurisdiction of the case after confirmation of the plan. The House bill allowed retention only to assure successful execution of the plan. H.R. § 96(e); H. Rep. 35. The Senate amendment also allowed retention to assure discharge of securities issued under the plan. S. § 821; S. Rep. 22. The proposed text adopts the House version with the understanding that the court retain jurisdiction over any action on any security issued under the plan or certificate of indebtedness issued in the case.

SECTION 97

The House bill validated the pre-petition exchange of debt securities under a proposed plan. H.R. § 97; H. Rep. 35. The Senate amendment made no comparable provision. The proposed text adopts the House provision.

OTHER MATTERS

The Senate amendment invalidated all State laws which would have had the effect of depriving a petitioner of the effect of confirmation. S. § 824. The House bill made no comparable provision. The proposed text deletes the Senate provision, and instead relies on the case of *Perez* v. *Campbell*, 400 U.S. 818 (1971).

The Senate amendment allowed conversion of a case from a chapter IX to a chapter XVI case. The House bill has no comparable provision. The proposed text adopts the House version.

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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. Rey.* 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.
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> . . . [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 catch-all 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.

O

Calendar No. 447

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-458

ADDITION OF A NEW CHAPTER PROVIDING FOR THE ADJUSTMENT OF THE DEBTS OF MAJOR MUNICIPALITIES

NOVEMBER 18, 1975.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2597]

The Committee on the Judiciary to which was referred the bill (S. 2597) to improve judicial machinery by adding a new chapter to Title II of the United States Code providing for the adjustment of the debts of major municipalities, having considered the same, reports favorably on S. 2597, with amendments, and recommends that the bill, as amended, do pass.

AMENDMENTS

The Committee proposes amendments to the bill as follows:

1. Following the title and prior to the enactment clause insert the following:

Whereas the Congress finds and declares this Act and proceedings thereunder providing for the composition of indebtedness of, or authorized by, municipalities to be within the subject of bankruptcies under Article I, Section 8, Clause 4 of the U.S. Constitution; and

Whereas the Congress finds that the impracticability of existing Federal bankruptcy remedies for use by municipalities increases the likelihood of their default and will aggravate the adverse effects thereof; and

Whereas the Congress finds that the financial disruptions and dislocations resulting from default of such municipalities without availability of a Federal procedure to restructure their indebtedness in such fashion as to avoid continuing insolvency would have a substantial adverse effect on interstate commerce within the meaning of Article I, Section 8, Clause 3 of the U.S. Constitution, by reason of the commercial importance of the municipalities involved.

2. On page 1, line 3, delete "1893" and substitute in lieu thereof "1898".

3. Beginning at page 2, line 1, delete all of the bill through line 2 on page 20, and substitute in lieu thereof the following:

"CHAPTER XVI—ADJUSTMENT OF INDEBTEDNESSES OF MAJOR MUNICIPALITIES

"Sec.
"801. Jurisdiction, powers of the court, and reservation of powers.
"802. Definitions.
"803. Eligibility for relief.
"804. Petition for filing.
"805. Stay of proceedings.
"806. Contest and dismissal of petition.
"807. Notices.
"808. Representation of creditors.
"809. List of claims and persons adversely affected.
"810. Proofs of claim.
"811. Certificates of indebtedness.
"812. Priorities.
"813. Provisions of plan and filing.
"814. Voting on acceptance of plan.
"815. Modification of plan.
"816. Standing to object to plan.
"817. Hearing on confirmation of plan.
"818. Effect of confirmation.
"819. Duty of petitioner and distribution under plan.
"820. Dismissal.
"821. Retention of jurisdiction.
"822. Reference of issues and compensation.
"823. Conversion to chapter XVI.

"JURISDICTION, POWERS OF THE COURT, AND RESERVATION OF POWERS

SEC. 801. (a) 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 or extension of the debts of certain public agencies of instrumentalities or political subdivisions. The court in which the petition is filed in accordance with subsection 804(c) shall exercise exclusive jurisdiction for the adjustment of petitioner's debts and, for purposes of this chapter, shall have exclusive jurisdiction of petitioner and its property, wherever located.

"(b) Upon filing of a petition the court may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it (1) permit the rejection of executory contracts of the petitioner, upon notice to the parties to such contracts and to such other parties in interest as the court may designate; (2) exercise such other powers not inconsistent with the provisions of this chapter.

"(c) 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.

"(d) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control by legislation or otherwise, any public agency or instrumentality or political subdivision of

the State in the exercise of its political or governmental powers, including expenditure 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.

"(e) Subsections 60 (a), (b), (c), section 67 and subsections 70(c) (e) of this Act shall apply in proceedings under this chapter, except that all functions of the trustee thereunder shall be assumed by the petitioner.

"DEFINITIONS

"SEC. 802. The words and phrases used in this chapter have the following meanings unless they are inconsistent with the context:

"(1) The term 'attorney' means an attorney licensed to practice law by any State and includes a law partnership or corporation.

"(2) 'Claims' shall include bonds, notes, judgments, and demands, liquidated or unliquidated, and other evidence of indebtedness, either secured or unsecured, and certificates of beneficial interest in property.

"(3) The term 'court' means United States district court sitting in bankruptcy, and the terms 'clerk' and 'judge' shall mean the clerk and judge of such court.

"(4) The term 'creditor' means any person who owns a claim against the petitioner and any person injured by the rejection of an executory contract or an unexpired lease pursuant to this chapter or pursuant to a plan under this chapter, and may include such person's authorized agent.

"(5) The term 'lien' means a security interest in property, a lien obtained on property by levy, sequestration or other legal or equitable process, a statutory or common-law lien on property, or any other variety of charge against property to secure performance of an obligation.

"(6) The term 'plan' means a plan proposed in a case under this chapter.

"(7) The term 'person' includes a corporation or a partnership, the United States, the several States, and public agencies, instrumentalities, and political subdivisions thereof.

"ELIGIBILITY FOR RELIEF

SEC. 803. (a) Any municipality, public agency, instrumentality or political subdivision of the State is eligible for relief under this chapter, if the municipality is first specifically authorized to file a petition initiating a proceeding under this chapter by the chief executive, legislature, or such other governmental officer or organization empowered under State law to authorize the filing of such a petition.

"(b) Any public agency or instrumentality or political subdivision subordinate to such municipality or whose responsibilities are restricted to the geographical limits thereof, including incorporated authorities, commissions and districts, for whose debts such municipality is not otherwise liable, is eligible for relief as a separate petitioner and a petition seeking relief shall be jointly administered in the same proceeding in which such municipality seeks relief under this chapter if such agency, instrumentality, or subdivision is not prohibited from filing a petition by applicable State law.

"PETITION AND FILING

"SEC. 804. (a) Any entity eligible for relief under section 803 may file a voluntary petition under this chapter. The petition shall state that the petitioner is eligible to file a petition, that the petitioner is insolvent or unable to pay its debts as they mature, and that it desires to effect a plan for the composition or extension of its debts. The petitioner shall file with its petition, or within such time as the court may prescribe, lists of its creditors and of other persons who may be adversely affected by a proposed plan and if an identification of all the petitioner's creditors is impracticable, the petitioner shall state the reason therefor.

"(b) The petition shall be filed with any court in whose territorial jurisdiction the municipality or any part thereof is located, and shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in lieu of the fee required to be collected by the clerk under other applicable chapters of this title, as amended.

"STAY OF PROCEEDINGS

"SEC. 805. (a) A petition filed under section 804 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the petitioner, its property or any officer or inhabitant of the petitioner, or which seeks to enforce any claim against the petitioner; as a stay of any act or the commencement or continuation of any court proceeding to enforce any lien on taxes or assessments, or to reach any property of the petitioner; and as a stay of the application of any setoff or enforcement of any counterclaim relating to any contract, debt, or obligation of the petitioner.

"(b)(1) A petition filed by a petitioner eligible for relief under this chapter shall operate to stay recognition or enforcement of the setoff of any claim owing by the petitioner effected or attempted to be effected within three months prior to the date of the petition or thereafter against any obligation owing to the petitioner until the stay is terminated by the court or the case is dismissed. Such stay shall not affect the right of the creditor to withhold payments to or on the order of the petitioner, except when otherwise ordered pursuant to subdivision (2).

"(2) After hearing on notice to the person asserting the right of setoff, the court may order such persons to pay to the petitioner or to its order the amount of the obligation sought to be offset if the stay is not terminated pursuant to subdivision (d). However, the court may require as a condition of the order that the petitioner furnish such protection as will adequately protect the person who is asserting the right of setoff.

"(c) Except as it may be terminated, annulled, modified, or conditioned by the court under the terms of this section, the stay provided for herein 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.

"(d) On the filing of a compliant seeking relief from a stay provided in this section, the court shall set a hearing for the earliest possible date. The court may, for cause shown, terminate, annul, modify, or condition such stay.

"(e) The commencement or continuation of any act or proceeding other than described in subsection (a) of this section may be stayed, restrained, or enjoined pursuant to rule 65 of the Federal Rules of Civil Procedure, except that a temporary restraining order or preliminary injunction may be issued without compliance with subdivision (c) of that rule.

"(f) 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) No stay, order, or decree of the court may interfere with (1) any of the political or governmental powers of the petitioner; or (2) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (3) the petitioner's use or enjoyment of any income-producing property: Provided, however, That the court shall enforce the conditions attached to certificates of indebtedness issued under section 811 and the provisions of the plan.

"CONTEST AND DISMISSAL OF PETITION

"SEC. 806. (a) Any creditor may file a complaint in the bankruptcy court contesting the petition for relief under this chapter. The complaint may be filed within thirty days following the filing of the petition.

"(b) The court may, upon notice to the creditors and a hearing following the filing of such a complaint, dismiss the proceeding if it finds that the petition was not filed in good faith or that it does not meet the provisions of this chapter.

"(c) A finding of jurisdiction shall be considered an interlocutory order for purposes of appeal. No appeal pursuant to section 1292 of title 28, United States Code, shall be allowed.

"NOTICES

"SEC. 807. (a) The petitioner or such other person as the court shall designate shall give prompt notice of the commencement of a proceeding or dismissal of the petition under this chapter to the State in which the petitioner is located and to the Securities and Exchange Commission and to creditors. As creditors and other persons who may be materially and adversely affected by the plan are identified, the petitioner or such other person as the court shall designate shall give such persons notice of the commencement of the proceeding, a summary of the provisions of the plan and any proposed modification of the plan, and of their right to request a copy of the plan, or modification. 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.

"(b) The petitioner or such other person as the court shall designate shall also give notice to all creditors of the time permitted for accepting or rejecting a plan or any modification thereof. Such time shall be ninety days from the filing of the plan or modification unless the court for good cause shall set some other time.

"(c) The petitioner or such other person as the court shall designate shall also give notice to all creditors (1) of the time permitted for filing a complaint objecting to confirmation of a plan, (2) of the date set for hearing objections to such complaint, (3) of the date of hearing of a complaint seeking dismissal of the petition, and (4) of the date of the hearing on confirmation of the plan.

"(d) All notices given by the petitioner or such other person as the court shall designate shall be given in the manner directed by the court; however, the court may issue an order at any time subsequent to the first notice to creditors directing that those persons desiring written notice file a request with the court. If the court enters such an order persons not so requesting will receive no further written notice of proceedings under the chapter.

"(e) Cost of notice shall be borne 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.

"REPRESENTATION OF CREDITORS

"SEC. 808. (a) For all purposes of this chapter any party in interest 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, giving the name and address of each and describing the amount and character of the claim of each; copies of the instrument or instruments in writing signed by such creditors conferring the authority for representation; and a copy of the contract or contracts of agreement entered into between such committee, organization, group, or individual and the represented creditors, which contract or contracts shall disclose all compensation to be received, directly or indirectly for such representation, which agreed compensation shall be subject to modification and approval by the court.

"(b) The judge shall, for cause shown, permit a labor organization or employee association representative of employees of the debtor municipality, public agency, instrumentality, or political subdivision to be heard on the economic soundness of the plan affecting the interests of the represented employees.

"LIST OF CLAIMS AND PERSONS ADVERSELY AFFECTED

"SEC. 809. (a) The list of claims filed as required in Sec. 804(a) shall include, to the extent practicable, the name of each known creditor to be materially and adversely affected by the plan, his address so far as known to the petitioner, and a description of each claim showing its amount and character, the nature of any security therefor and if the claim is disputed, contingent or unliquidated as to amount. With respect to creditors not identified, the petition shall set forth the reasons identification is not practicable, and shall specify the character of claim involved. The list shall be supplemented as petitioner becomes able to identify additional creditors.

"(b) If the proposed plan requires revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect at the date the petition is filed, the holders of record of title, legal or equitable, to such real property shall be deemed persons adversely affected and shall be similarly listed.

"(c) The court may for cause modify the requirements of subsections (a) and (b) of this section.

"PROOF OF CLAIM

"SEC. 810. (a) In the absence of an objection made by any party in interest, the claim of a creditor that is not disputed, contingent, or unliquidated, is established by the list of claims filed pursuant to section 809. The court may set a date by which proofs of claim of unlisted creditors and of creditors whose listed claims are disputed, contingent, or unliquidated, must be filed. If the court does not set such a date, the proofs must be filed before the entry of the order of confirmation. The petitioner or such other person as the court shall designate shall give notice to each person whose claim is listed as disputed, contingent, or unliquidated, in the manner directed by the court.

"(b) If an executory contract or an unexpired lease is rejected under a plan or under section 801(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 next year 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.

"CERTIFICATES OF INDEBTEDNESS

"SEC. 811. At any time after a petition has been filed, the court may upon cause shown, authorize the petitioner to issue certificates of indebtedness for cash, property or other consideration, under such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured and other expenses of administration as the court may approve. Notwithstanding any other provision of law including section 821 of this chapter, the court shall have exclusive jurisdiction of any action which may be brought against petitioner to enforce compliance with the terms of any such certificates of indebtedness.

"PRIORITIES

"SEC. 812. 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 cost and expenses of administration which are incurred by the petitioner subsequent to the filing of a petition under this chapter.

"(2) Debts owed for services and materials directly provided within two 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.

"PROVISIONS OF PLAN AND FILING

"SEC. 813. (a) A petitioner's plan under 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, including, but not limited to provisions for the rejection of any executory contract and unexpired leases.

"(b) The petitioner may file a plan with its petition or at such later time as may be prescribed by the court.

"VOTING ON ACCEPTANCE OF PLAN

"SEC. 814. (a) A plan may be confirmed only if, of the creditors voting in writing to accept or reject the plan, those holding two-thirds in amount and 51 per centum in numbers of each class materially and adversely affected have voted to accept: Provided, however, That no such acceptance shall be required from any class which, under the plan, is to be paid in cash the value of its claims or is to be afforded such method of protection as will, consistent with the circumstances of the particular case, equitably and fairly provide for the realization of the value of its claims.

"(b) Unless his claim has been disallowed, any creditor who is included on the list filed pursuant to Section 809 or who files a proof of claim pursuant to section 810 is entitled to vote to accept or reject a plan or modification thereof within the time set pursuant to subsection 807(b). Claims owned, held or controlled by the petitioner are not eligible to vote.

"(c) For the purposes of the plan and its acceptance, the court may fix the division of creditors into classes and, in the event of controversy, the court shall after hearing upon notice summarily determine such controversy.

"(d) If any controversy shall arise as to whether any creditor or class of creditors shall or shall not be materially and adversely affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

"MODIFICATION OF PLAN

"SEC. 815. Before a plan is confirmed, changes and modifications may be made therein after hearing and upon such notice to creditors as

the judge may direct, subject to the right of any creditor who has previously accepted the plan to withdraw his acceptance in writing, within a period to be fixed by the judge, if, in the opinion of the judge, the change or modification will materially and adversely affect 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.

"STANDING TO OBJECT TO PLAN

"SEC. 816. Any creditor or other person materially and aversely affected by the plan may file a complaint with the court objecting to the confirmation of the plan. Such complaint may be filed any time up to ten days before hearing on the confirmation of the plan or within such other time as prescribed by the court. The complaint shall be served on the petitioner and such other persons as may be designated by the court.

"HEARING ON CONFIRMATION OF PLAN

"SEC. 817. (a) Within a reasonable time after the expiration of the time within which a plan and any modifications thereof may be accepted or rejected, the court shall set a hearing on the confirmation of the plan and modifications, and the petitioner and such other persons as may be designated by the court shall give notice of the hearing and time allowed for filing objections as provided in section 807(c).

"(b) Before concluding the hearing on confirmation of the plan the judge shall inquire whether 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 creditor, and shall take evidence under oath to ascertain whether any practice obtains. After such examination the judge shall make an adjudication of this issue, and if he finds that any such practice obtains, he shall forthwith dismiss the proceeding and tax all of the costs against such person, 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.

"(c) The court shall confirm the plan if satisfied that (1) it is fair, equitable, feasible, and not unfairly discriminatory in favor of any creditor or class of creditors; (2) it complies with the provisions of this chapter; (3) it has been accepted by creditors and provision has been made for nonaccepting creditors as required in section 814; (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; (6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan; and (7) it appears from petitioner's current and projected revenues and expenditures that the budget of the petitioner will be in balance within a reasonable time after adoption of the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding.

"EFFECT OF CONFIRMATION

"SEC. 818. (a) The provisions of a confirmed plan shall be binding on the petitioner and on all creditors, whether or not they are affected by it, whether or not their claims have been listed, filed, or allowed, and whether or not they have accepted the plan.

"(b) The confirmation of a plan shall extinguish all claims against the petitioner provided for by the plan other than those excepted from discharge by the plan or order confirming the plan.

"DUTY OF PETITIONER AND DISTRIBUTION UNDER PLAN

"SEC. 819. (a) The petitioner shall comply with the provisions of the plan and the orders of the court relative thereto and shall take all actions necessary to carry out the plan.

"(b) Subject to the provisions of subsection (c), distribution shall be made in accordance with the provisions of the plan to creditors (1) whose proofs of claim have been filed and allowed or (2) whose claims have been listed and are not disputed. Distribution to creditors holding securities of record shall be made to the recordholders as of the date the order confirming the plan becomes final.

"(c) When a plan requires presentment or surrender of securities or the performance of any other act as a condition to participation under the plan, such action must be taken not later than five years after the entry of the order of confirmation. Persons who have not within such time presented or surrendered their securities or taken such other action shall not participate in the distribution under the plan. Any securities, moneys, or other property remaining unclaimed at the expiration of the time allowed for presentment or surrender of securities or the performance of any other act as a condition to participation in the distribution under a confirmed plan shall become the property of the petitioner.

"(d) 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.

"(e) The court may direct the petitioner and other necessary parties to execute and deliver or to join in the execution and delivery of any instruments required to affect a transfer of property pursuant to the confirmed plan and to perform such other acts, including the satisfaction of liens, as the court may determine to be necessary for the consummation of the plan.

"DISMISSAL

"SEC. 820. The court shall enter an order dismissing 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; or (4) if a confirmed plan is not consummated.

"RETENTION OF JURISDICTION

"SEC. 821. The court may retain jurisdiction of a proceeding under this chapter for such period as it determines it necessary to assure execution of the plan and discharge of the securities issued under the plan.

"REFERENCE OF ISSUES AND COMPENSATION

"SEC. 822. (a) The judge may refer any special issues of fact to a referee in bankruptcy, or 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 reference 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 finding of specific facts.

"(b) The court may allow reasonable compensation for the services performed by any such special master who is not a salaried Federal employee, 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 adjustment. An appeal may be taken from any order making such determination or award to the United States 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.

"CONVERSION TO CHAPTER XVI

"SEC. 823. (a) A petitioner eligible for relief under chapter XVI who has filed a petition under chapter IX of this Act may at any time file an application to have the case proceed under chapter XVI; Provided, however, that any petition filed by a municipality, public agency, instrumentality or political subdivision of the State after the effective date of this Act must be filed under chapter XVI of the Bankruptcy Act as added by this Act.

"(b) After hearing on notice to the petitioner, the Securities and Exchange Commission, creditors and such other persons as the court may direct, the court shall, if it finds that the case may properly proceed under chapter XVI of the Act, approve the application and order the case to proceed under that chapter.".

"SEC. 2. The table of organization of title 11, United States Code, is amended by inserting after the reference to chapter 15, the following:

"Chapter 16. Adjustment of Indebtednesses of Major Municipalities."

SEPARABILITY

SEC. 3. If any provision of chapter XVI of the Bankruptcy Act as added by this Act, 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.

EFFECTIVE DATE

SEC. 4. This Act shall become effective as of the date of its enactment.

4. Amend the title of the bill to read as follows:

To amend the Bankruptcy Act to add a new chapter thereto providing *by voluntary reorganization* procedures for the adjustment of the debts of major municipalities.

PURPOSE OF THE AMENDMENT

1. The purpose of the first amendment is to include in the bill a recital of findings by the Congress to the effect that an insolvency of a municipality affects commerce within the meaning of Article I, Section 8, Clause III of the United States Constitution.

2. The second amendment merely corrects an error in the original bill's reference to the Bankruptcy Act of 1898.

3. The third amendment proposed by the Committee on the Judiciary is in the nature of a clean bill which incorporates, in the judgment of the Committee, the best features of the several bills studied by the Committee, to wit, S. 235, S. 236, S. 2579, S. 2586, and S. 2597, all as explained in the body of the report.

4. The fourth amendment changes the title of the bill to more accurately describe the bankruptcy proceedings as "a voluntary reorganization" of the financial affairs of the municipality.

PURPOSE OF THE BILL

The purpose of the Bill as amended is to amend the procedure by which the debts of municipalities are adjusted. (11 U.S.C. 401.) The Bill would add a new Chapter XVI to Title II which would provide a new, feasible means of enabling a city to function in an orderly fashion while an adjustment of its debts is negotiated with its creditors.

STATEMENT

HISTORY

The use of debt reorganization proceedings to assist municipal governments in adjusting their indebtedness is not a new concept. The first effective municipal bankruptcy statute was enacted in 1937. An earlier statute had been declared unconstitutional, *Ashton* v. *Cameron Water Improvement District, 298 U.S. 513 (1936)*. Since the enactment of the present Chapter IX in 1937 some 350 or more cases have been filed involving over $207 million of admitted debts.

The provisions of the present law have recently received intensive study. The Bankruptcy Commission included Chapter IX in its consideration and its recommendations are embodied in S. 236 which was first introduced as S. 2565 in October 1973. One year later a legislative committee of the National Conference of Bankruptcy Judges set forth similar proposals which are included in S. 235. (This bill was first introduced in September 1974 as S. 4049.) A preliminary draft of proposed bankruptcy rules was submitted for Supreme Court approval by the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States in April 1974. Most recently both the Senate and House of Representatives have conducted hearings on the municipal debt reorganization provisions of S. 235 and S. 236.

NEED

While Chapter IX has no doubt performed a valuable function during the period of its existence, in recent years it has become clear that amendment is necessary if it is to provide an adequate vehicle for reorganization of a troubled municipality. The report of the Commission on the Bankruptcy Laws of the United States concluded that while the concept of municipal reorganization should be retained in the bankruptcy statutes, certain amendments were needed to simplify and expedite proceedings under this Chapter.

As witnesses indicated in their testimony on S. 2597 any chapter for public debtors needs certain provisions if it is to accommodate municipalities within its scope.

The provisions of the chapter should provide ready access to the bankruptcy courts. It is during the first steps of reorganization that delay could cause the most permanent harm. Provisions must be made to insure that the city has the use of existing deposits and can raise money to meet the ongoing expense for essential city services pending acceptance and functioning of the plan. Uniformity of performance under the plan must be assured although city administration may change.

None of the above capabilities are contained in the present act. The provisions of Chapter IX of the present Bankruptcy Act prevent a municipal bankruptcy proceeding from being commenced until the city has obtained approval of 51% of its creditors for the proposed plan of adjustment. Any municipality would ordinarily have a volume and dispersal of debt obligations which would make merely locating a majority of creditors within a short period of time very difficult. It is incomparably harder to then try to obtain the requisite approval of a majority of creditors.

The notice provisions of Chapter IX are cumbersome when large numbers of creditors, many of whom have substantial interests, are involved. Chapter IX also requires that the terms of the plan itself be mailed to each creditor and other persons obviously affected. The burden caused by the printing, handling and mailing would be stagger-

ing. Present law requires written proof of each claim by each creditor. The paper burden in the case of a major city, would be enormous.

The approval of the plan of adjustment is difficult to obtain as the present requirement is for approval of two-thirds of all creditors. In a large city it is quite likely that many creditors would either be unreachable or uninterested in voting. The two-thirds requirement might under these circumstances, amount to 80 to 85 percent of those voting.

The present Chapter IX makes no provision for the issuance of debtors certificates. This is a most serious omission as the municipal debtors must maintain essential city services directed to public safety and public health during the reorganization proceeding.

The municipal debtor is constantly faced with problems in maintaining the necessary cash flow for salaries for essential personnel. The city could not expect to issue fresh bonds as there would be no takers. Neither can quarterly or semi-annual collection of tax monies always be sufficiently timely to be of assistance.

The issuance of debt certificates can be the key factor maintaining a city's vital cash flow. The use of these certificates in commercial rehabilitation has successfully enabled businesses to operate during the pendency of arrangement proceedings. No reason surfaced during the hearings held by the Subcommittee on October 31st and November 4th which would indicate that certificates of indebtedness would be or should be any less available to municipalities in need.

Provisions of the Proposed Bill

A municipality desiring to proceed under Chapter XVI would file a petition stating that the petitioner is eligible to file a petition, that the petitioner is insolvent or unable to pay its debts as they mature, and that it desires to affect a plan of composition or extension of its debts. The only other requirement that might be imposed is that a list of creditors be filed.

The filing of the petition would operate as a stay of the commencement or continuation of any court or other proceeding against the debtor. The importance of this provision was stressed by Assistant Attorney General Antonin Scalia who appeared before the Subcommittee on Friday, October 31, 1975. He stated:

> The indispensable effect of a proceeding is to permit a stay of all legal actions, in both state and federal courts, and a stay of private self-help remedies, such as the set-off by banks of the value of their claims against city payroll funds on deposit, which would have the effect of throwing the city into disorder.

While the city is negotiating with its creditors so as to work out a suitable plan, the city would remain under the management of whatever form of government is provided by state law. The court would have no power to interfere with the governmental functions of the city. The city, in order to offset the fact that its tax revenues are seasonal while its expenditures are constant could be authorized to issue certificates of indebtedness to supplement available funds. The Committee anticipates, of course, that the court would not authorize the issuance of those certificates unless the borrowing was for short term funding essential governmental services.

After the city had the opportunity to negotiate with its creditors a final proposed plan would be sent to all creditors for their vote of approval or disapproval. The plan would not be confirmed unless each class of creditor approves by a vote of two-thirds in amount and 519 in number of the class actually voting.

If the city should delay in the filing of the plan or in seeking approval of the creditors the court may dismiss the petition.

Conclusion

Municipal debt reorganization is not impractical. The debt structure of a municipality, while complex in many respects, is no more complicated than the debt structure of major corporations. The ability of a city to propose a workable plan in good faith, which is fair, equitable and feasible has not seriously been questioned.

Nor are the provisions of the Bill untried. The vast majority of the provisions are derived from the present bankruptcy Act, the Rules of Bankruptcy Procedure, S. 235 and S. 236, and recommendations of the National Bankruptcy Conference.

No member of the Committee welcomes the default and insolvency of any American municipality, but the Committee deems it altogether imperative, in light of recent events, to provide the necessary legal machinery to assist any municipality unable to meet its debts.

Cost

This legislation does not involve any additional expenditure of public funds.

Section-by-Section Analysis

Section 801. Jurisdiction, Powers of the Court, and Reservation of powers

Subsection 801(a) of the bill provides that proceedings under Chapter XVI are within the subject of bankruptcies and gives the court receiving a petition broad power to deal with the resulting proceedings. Compare Section 81 of the Bankruptcy Act, 11 U.S.C. 401. Original jurisdiction is provided for the composition and extension of debts under this Chapter.

Subsection 801(b) is based upon § 116(1) and (2) and upon §§ 313(1) and 344 of the present Act. The powers designated here are considered necessary to the continued functioning and subsequent rehabilitation of the petitioner. The Committee contemplates that all continuing obligations of the petitioner will be considered executory contracts, including collective bargaining agreements. Subsection 801(c) provides that the selection procedure used in 3 judge courts as provided in 28 USC 2284 would provide an appropriate method of selection. In the Committee's opinion the magnitude of the cases under this chapter require that the selection process will be conducted carefully and at the highest level.

Subsection 801(d) reserves to the states the power to control public agencies of the states. Such a reservation is desirable to avoid questions of the constitutionality of the proceedings. See *Ashton* v. *Cameron County Improvement District*, 298 U.S. 518. This follows the language of Section 83(i) of the Bankruptcy Act, 11 U.S.C. 403(i).

Subsection 801(d) allows the petitioner the usual bankruptcy powers, usually exercised by trustees, to set aside fraudulent conveyances and preferences.

Section 802. Definitions

This section follows closely the definitions set forth in proposed Chapter XI Rule 9–33 of the Rules of Bankruptcy Procedure; § 82 of the present act, and the suggested definitions in S. 235 and S. 236. The Note of the Advisory Committee on Bankruptcy Rules to proposed Chapter IX Rule 9–33 is relevant:

> Pursuant to the Act and these rules, a Chapter IX case is not automatically referred to a referee in bankruptcy but proceeds in the United States District Court setting as a bankruptcy court. This rule indicates the meaning of words used in the Chapter IX Rules in this regard. The definition of "court" conforms with Chapter IX of the (present) Act. Normally, under the Act, it includes the referee in bankruptcy; in Chapter IX, however, it means only the district court.

Section 803. Eligibility for Relief

Subsection 803(a) provides that any municipality or other entities named in this subsection are eligible for relief under this Chapter if the petitioner is first specifically authorized by the State to file a petition under this Chapter. The Committee considered it questionable whether the affirmative consent of the state is constitutionally required. If not for constitutional reasons, the Committee believed as a policy matter that such consent should be obtained. A general statutory provision which may have been enacted prior to this Chapter is thought by the Committee to meet the requirement of specific consent. In the absence of general statutory consent, 803(a) authorizes the chief executive, legislature or any other governmental officer or organizations, so empowered under state law, to authorize the filing of such a petition.

Subsection 803(b) would permit any public agency, instrumentality or political subdivision subordinate to the municipality, or whose responsibility are restricted to the geographical limits of the municipality, for whole debts the municipality is not otherwise liable, to file a petition for debt relief in the same proceeding. While separate plans of debt adjustments would be required, the bankruptcies would be jointly administered, before the same judge. This is desirable to enable overall consideration of the problems of all local governmental entities which may be affected by the bankruptcy of a city, but which are legally autonomous.

Section 804. Petition and Filing

Section 804(a) requires the petitioner to recite that it is eligible to file a petition under this Chapter, that it is insolvent or unable to pay its debts as they mature and that it desires to effect a plan of composition or extension of its debts. The requirement of Chapter IX of the current law, that the petitioner have the acceptances of 51% of the creditors to the terms of a proposed plan as a condition of filing is eliminated, since a municipality could rarely if ever qualify on such terms.

The petitioner must file lists of its creditors and other persons who may be adversely affected by a proposed plan. The lists must be filed either with the petition or as soon thereafter as the court shall allow. Should it be impracticable for the petitioner to identify all its creditors it must file the lists of those creditors it can identify and state that it is impracticable to identify the remainder, giving the reason therefor.

Subdivision (a) is derived from § 83(a) of the present Act and, to the extent it refers to a plan for an extension, is derived from § 8–202(a) of S. 236 and § 9–202(a) of S. 235. *See also* proposed Form No. 9–F1 of the proposed Chapter IX Rules.

Subdivision (b) specifies the court in which the petitioner may file. This section differs from § 83(a) of the present Act and from § 9–202 (b) of S. 235 in its venue provisions in that the petition may be filed with any court in whose territorial jurisdiction the municipality of any part thereof is located. It was the Committee's opinion that the petitioner should be allowed to select the court most physically convenient where the municipality might be located in more than one judicial district. The filing fee of $100, prescribed by § 83(a) of the present Act, is retained.

Section 805. Stay of Proceedings

Section 805, subsections (a) and (c) are derived from proposed Chapter IX Bankruptcy Rule 9–4, provides for an automatic stay of creditor actions, offsets and lien enforcement proceedings. Relief can be obtained from the stay as provided in Subsection (d). Obtaining other stays would require the showing specified in Rule 65 of the Federal Rules of Civil Procedure as modified by Subsection (e). If an automatic stay were not provided for, essential governmental services might be seriously interrupted by creditors' actions. Section 805, subsection (b) is derived from the Report of the National Bankruptcy Conference, October 1975. This provision (7–204 of said Report) insures that the municipality can use its deposits and other assets during the debt reorganization proceedings. Subsection (f) provides a method by which the petitioner can be assisted in continuing its operations. Under present law certain contract and lease provisions provide for the automatic termination of a lease or contract because of bankruptcy or insolvency. The cancellation of leases and contracts would seriously impede the attempt to effectuate the reorganization of the city's financial affairs.

The rights of the creditor are protected as the city has certain obligations. Past defaults must be cured and adequate assurance of future performance must be provided to the court.

The proposed amendment is adopted from 4–602(b)(2) of S. 236. The language suggested by the Bankruptcy Commission in S. 236 is adopted from the Uniform Commercial Code § 2–609 (1972 Ed.).

Subsection (g) is correlated with Section 811 and Subsection 819(d). Aside from the court authority which the petitioner agrees to in obtaining the benefits of borrowing with court-sanctioned debt certificates, and the court authority to enforce the final plan of composition or extension which the petitioner agrees to, no court action would interfere with the political or governmental powers of the petitioner.

It is the opinion of the Committee that a finding pursuant to 817(c)(7) does not interfere with the political or governmental power of the

petitioner. No power is given to the court to compel the petitioner to do any act to meet that requirement as in subsection 819(d) but merely that the court shall decide from the plan voluntarily filed by the petitioner that such requirement has been met. If the requirement of subsection 817(c)(7) is not met the court has no power to compel the modification of the plan presented to satisfy that requirement but must instead dismiss the petition.

Section 806. Contest and Dismissal of Petition

Subsection 806(a) would permit any creditor to contest the petition. However, unlike sec. 8–203, S. 236, this provision only allows the complaint to be filed within 30 days following the petition. The time provision has been limited so that all contests to the sufficiency of the petition may be promptly resolved.

Subsection 806(b) would permit dismissal of the petition for grounds set forth. An example of a lack of good faith is if the petition was filed without an intention to ever file a plan as required by this Chapter.

Subsection 806(c) prevents unnecessary delay in the filing of the plan and the consideration of the merits of the plan. Interlocutory appeals will not be allowed to contest, at that stage, a finding of jurisdiction or that the petition is properly filed by the court.

Section 807. Notices

Section 807 covers notice requirements. Such notices are to be given by the petitioner in the manner directed by the court. Both the State and SEC would be notified in order that necessary State actions can be taken and the public interest may be protected. In order to reduce the great expense and burden of giving all creditors notice of every possible matter in which they could conceivably have an interest, Subsection (d) permits the court, after issuance of an appropriate order, to suspend all or some notices to those who do not specify an interest in receiving them. Compare proposed Chapter IX Bankruptcy Rule 9–14(e).

It should be noted that in subsection 807(a) provision is made for notice by publication. The Committee anticipates that a large municipality would find it impossible to give personal notice to many of its bond holders because the bonds are negotiable and the owners will be difficult to identify.

Notice shall in the first instance be given by the petitioner. The court may designate any other person, including the clerk, to give any notice required by this section.

Sec. 808. Representation of Creditors

Section 808(a) dealing with the details of representing creditors in the proceeding, is derived from Section 83(a) of the Bankruptcy Act, 11 U.S.C. 403(a). Section 860(b) contemplates that a labor organization may be heard on the economic soundness of the plan. No right of contest vote or appeal is granted by this subsection.

Sec. 809. List of Claims and Persons Adversely Affected

Section 809 describes the contents of the list of claims which must be filed under Subsection 804(a). If some creditors cannot be identified the reasons why identification is not practical will have to be given

together with a characterization of the claims involved. If the lists filed with the petition cannot be complete, they can be supplemented as specified by the court. The court could modify the detail required in reporting of creditors claims and persons adversely affected.

Sec. 810. Proofs of Claim

Section 810(a) governs the filing of proofs of claim. Unless there is objection by a party in interest, the claims listed by the petitioner as undisputed would be accepted as valid. This would substantially expidite the handling of these proceedings. Proof of claim for claims not listed or listed as disputed, contingent or unliquidated, are to be filed by a date set by the court or, if no date is set, before the order confirming the plan.

The procedure prescribed by this section is similar to that provided for and by proposed Chapter IX Rule 9–22. The Note of the Advisory Committee on Bankruptcy Rules is most relevant:

> . . . This rule (9–22) permits the use of the lists filed under Rule 9–7 (Sec. 804(a) of this bill) to determine the claims of creditors in place of a formal proof of claim. 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. See also definition of "claims" in Rule 9–33 (Sec. 802 of this bill).

Section 810(b) provides a measure of damages for landlords. It has long been settled in bankruptcy law that landlords are "not in the same position as other general creditors" and should not "be treated on a par with them." *Oldden* v. *Tonto Realty Corp.* 143 F.2d 916 (2d Cir. 1944).

This section is derived from § 63 of the present Act and from § 4–602(c) of S. 235. The one year limitation on a landloard's damage claim for the rejection of breach of a real property lease is derived from § 63(a)(9) of the present Act and from § 4–403(b)(6) of S. 235.

Section 811. Certificates of Indebtedness

Section 811 is an important provision not found in existing law for the adjustment of debts of municipalities. Tax revenues are not collectible day by day, but are periodic. It is common practice for a municipality to make short-term borrowings, secured by anticipated tax revenues, to obtain operating funds until the tax receipts are available. By permitting the court to authorize the issuance of debt certificates on special terms, including priority over existing creditors, this necessary means of providing short term funding for essential governmental services can be preserved. To enhance the marketability of these debt certificates, the court is given exclusive jurisdiction over disputes involving their enforcement.

Section 812. Priorities

This section is derived from § 64a of the present Act, which is applicable to bankruptcy and Chapter XI cases. Section 812 establishes priorities for the payment of certain claims. In practice the

first priority is observed already. Third priority claims currently are entitled to a first priority in municipal debt adjustment proceedings by virtue of 31 U.S.C. 191, subject to the practice of paying administration expenses first. The second priority is included to cover most prepetition debt claims of those rending personal services or furnishing necessary supplies to the petitioner, often those least able to afford the loss or writedown of their claims.

It should be noted that the second priority is limited to two months. The Committee feels hat two months is sufficient to serve the public policy that provides that there is a public interest in maintaining uninterrupted the business of a corporation which is public or semipublic 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 securitv.

Section 813. Provisions of Plan and Filing

Section 813 includes standard language concerning the provisions of a plan for debt adjustment. See the third paragraph of Section 83(a) of the Bankruptcy Act, 11 U.S.C. 403(a).

Subdivision (a) also follows closely the language of § 8–302(a) of S. 236 and § 9–302(a) of S. 235. It goes further, however, by permitting the rejection of any executory contract as part of the petitioner's plan. Such a provision is permissible in a Chapter X reorganization plan (§ 216(4) of the Bankruptcy Act) and in Chapter XI plan (§ 357(2) of the Bankruptcy Act).

Subdivision 813(b) gives the court the discretion to provide for the time of filing of the plan based on the situation of the petitioner.

Section 814. Voting on Acceptance of Plan

Subsection 814(a) requires the affirmative vote of two-thirds in amount of each class of claims for confirmation of a plan, unless a particular class is provided for as set forth in the proviso to the Subsection. Compare Section 83(d) of the Bankruptcy Act, 11 U.S.C. 403(d). Subsection (c), governing the division of creditors into classes is taken from Sec. 751 Title 11 U.S.C. Under Subsection (b) claims listed pursuant to Subsections 804(a) and 809(a) or for which proofs of claim have been filed pursuant to Section 810 may be voted except to the extent claims have been disallowed. Claims owned, held or controlled by the petitioner, are disqualified from voting, as in existing law. Also, Subsection (a) limits voting to creditors whose claims are materially and adversely affected by the proposed plan. Subsection (d) assures fairness in resolving disputes over whether particular claims are in fact materially and adversely affected.

The two-thirds vote requirement of existing law is not reduced in Subsecton (a), in order to avoid making municpal bankruptcy too easy. This could have a drastic effect on the marketability of municipal bonds and the cost of borrowing money by municipalities. However, under the present bill the two-thirds requirement is computed not on the basis of two-thirds of all eligible to vote, but on the basis of two-thirds of those eligible who have in fact voted. It would be impossible for most municipalities to obtain the required majority without this

reasonable limitation. Security holders are too widely dispersed and may not choose to vote even when they know of the proceedings. Special attention should be paid the provision in 814(a) that provides that approval of 51% of the voting numbers of each class is necessary for approval. This is intended to balance the power of the large creditors who could otherwise control the proceeding. The "cram down" called for by the proviso to Subsection (a) is comparable to Subsection 8–302(b) of H. Doc. 93–137, Part II. The valuation of claims for purpose of "cram down" would require a considered estimate based on a proper factual foundation of the estimated revenues of the municipality. *Kelley* v. *Everglades Drainage District*, 319 U.S. 415. Consideration would also have to be given to nonincome producing assets of the municipality which could appropriately be made to yield income or which, if currently not used, could be sold.

Section 815. Modification of Plan

Section 815, governing modification of the plan, is taken from existing law. See the fourth paragraph of Subsection 83(e) of the Bankruptcy Act, 11 U.S.C. 403(e).

Section 816. Standing to Object to Plan

This section, based up §§ 8–203 and 8–307(b) of S. 236 and §§ 9–203 and 9–307(b) of S. 235 eliminates the provision in the second paragraph of § 83(b) of the present Act which permits a creditor to answer a petition filed under Chapter IX, but not to object to confirmation.

In contrast, this section permits a creditor to object to confirmation, thereby giving a creditor affected by the plan a more meaningful remedy. Because a proposed plan need not be filed with the petition commencing a Chapter IX case, as provided in Sec. 813(b) the creditor's right to object to confirmation, rather than to the petition, is more significant under this section. Provision is made to provide that a person materially and adversely affected by the plan need not be a creditor to object to the plan. *See also* proposed Chapter IX Rule 9–27 (a)(1).

Section 817. Hearing on confirmation

The language of Subsections 817 (a) and (b) are derived in part from Section 8–307 of S. 236. Subsection (c) is adapted from language in the first paragraph of Subsection 83(e) of the Bankruptcy Act, 11 U.S.C. setting forth the finding and conclusions which the court must make before approving the plan, is adapted from the second paragraph of Subsection 83(e) of the present Act with the addition of protective language in Item (7) to assure that petitioner is making the adjustments necessary to achieve fiscal responsibility. If this is not done, the petition is to be dismissed.

No restrictions upon the refiling of a new petition following dismissal are made. The Committee believes this to be more desirable than allowing the Court to set a time for the petitioner to propose a new plan if confirmation is denied. The dismissal provision insures that the plan proposed by the petitioner will be the best possible plan in the first instance.

Section 818. Effect of confirmation

Subsection 818(a) contains a necessary provision for the binding effect of an approved plan. Subsection (b) provides for the extinguish-

ment of claims affected by the approved plan other than those excepted from discharge by the plan itself. The language of Section 818 is substantially the same as that recommended by the Commission on Bankruptcy Laws. See Section 8–308 of H. Doc. 93–137, Part II.

Section 819. Duty of petitioner and distribution under the plan

Section 819, governing the duties of the petitioner under the plan and distributions which are to be made thereunder, is derived in substantial part from Section 8–309 of the legislative proposal of the Commission on the Bankruptcy Laws.

Section 820. Dismissal

Section 820 sets forth the grounds on which a petition can be dismissed. See Proposed Rules of Chapter IX—Bankruptcy, 9–28(a).

Section 821. Retention of jurisdiction

Section 821 permits the court to retain jurisdiction to insure proper execution of the plan. However, the court may terminate jurisdiction at an earlier date if it is satisfied that the plan will be satisfactorily completed.

Section 822. Reference of issues and compensation

Section 822, permitting the reference of fact issues to a special master and governing the allowance of reasonable compensation, is derived in substantial part from existing law. See the third and fourth paragraphs of Section 83(b) of the Bankruptcy Act, 11 U.S.C. 403(b).

Section 823. Conversion to Chapter XVI

Section 823 is provided in the eventuality that a municipality may already have commenced reorganization proceedings. The provisions for transfers are similar to those regulating transfer from Chapter XI to Chapter X.

Section 2. Table of organization

This section provides for the appropriate amendment of the table of organization of Title 11.

Section 3. Separability

Section 825 provides for separability in the event any portion of this chapter or its application is held invalid. Compare the proviso to Section 81 in existing law, 11 U.S.C. 401.

Section 4. Effective date

The Committee felt that the Act should have immediate effect on enactment because of the nature of this legislation.

Changes in Existing Law

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law is shown in roman, matter repealed enclosed in black brackets, and new matter is printed in italic):

TITLE 11, UNITED STATES CODE

* * * * * * *

Chapter 16—Adjustment of Indebtedness of Municipalities

* * * * * * *

"Chapter XVI—Adjustment of Indebtednesses of Major Municipalities

"Sec.

"801. Jurisdiction, powers of the court, and reservation of powers.
"802. Definitions.
"803. Eligibility for relief.
"804. Petition and filing.
"805. Stay of proceedings.
"806. Contest and dismissal of petition.
"807. Notices.
"808. Representation of creditors.
"809. List of claims and persons adversely affected.
"810. Proofs of claim.
"811. Certificates of indebtedness.
"812. Priorities.
"813. Provisions of plan and filing.
"814. Voting on acceptance of plan.
"815. Modification of plan.
"816. Standing to object to plan.
"817. Hearing on confirmation of plan.
"818. Effect of confirmation.
"819. Duty of petitioner and distribution under plan.
"820. Dismissal.
"821. Retention of jurisdiction.
"822. Reference of issues and compensation.
"823. Conversion to chapter XVI.

"Jurisdiction, powers of the court, and reservation of powers

"Sec. 801. (a) 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 or extension of the debts of certain public agencies of instrumentalities or political subdivisions. The court in which the petition is filed in accordance with subection 804(c) shall exercise exclusive jurisdiction for the adjustment of petitioner's debts and, for purposes of this chapter, shall have exclusive jurisdiction of petitioner and its property, wherever located.

"(b) Upon the filing of a petition the court may, in addition to the jurisdiction, powers, and duties hereinabove and elsewhere in this chapter conferred and imposed upon it (1) permit the rejection of executory contracts of the petitioner, upon notice to the parties to such contracts and to such other parties in interest as the court may designate; (2) exercise such other powers not inconsistent with the provisions of this chapter.

"(c) 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.

"(d) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control by legislation or otherwise, any public agency or instrumentality or political subdivision of the State in the exercise of its political or governmental powers, including expenditure 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.

"(e) Subsections 60 (a), (b), (c), section 67 and subsections 70 (c) (e) of this Act shall apply in proceedings under this chapter, except that all functions of the trustees thereunder shall be assumed by the petitioner.

"DEFINITIONS

"SEC. 802. The words and phrases used in this chapter have the following meanings unless they are inconsistent with the context:

"(1) The term 'attorney' means an attorney licensed to practice law by any State and includes a law partnership or corporation.

"(2) 'Claims' shall include bonds, notes, judgments, and demands, liquidated or unliquidated, and other evidence of indebtedness, either secured or unsecured, and certificates of benficial interest in property.

"(3) The term 'court' means United States district court sitting in bankruptcy, and the terms 'clerk' and 'judge' shall mean the clerk and judge of such court.

"(4) The term 'creditor' means any person who owns a claim against the petitioner and any person injured by the rejection of an executory contract or an unexpired lease pursuant to this chapter or pursuant to a plan under this chapter, and may include such person's authorized agent.

"(5) The term 'lien' means a security interest in property, a lien obtained on property by levy, sequestration or other legal or equitable process, a statutory or common-law lien on property, or any other variety of charge against property to secure performance of an obligation.

"(6) The term 'plan' means a plan proposed in a case under this chapter.

"(7) The term 'person' includes a corporation or a partnership, the United States, the several States, and public agencies, instrumentalities, and political subdivisions thereof.

"ELIGIBILITY FOR RELIEF

"SEC. 803. (a) Any municipality public agency, instrumentality or political subdivision of the State is eligible for relief under this chapter, if the municipality is first specifically authorized to file a petition initiating a proceeding under this chapter by the chief executive, legislature, or such other governmental officer or organization empowered under State law to authorize the filing of such a petition.

"(b) Any public agency or instrumentality or political subdivision subordinate to such municipality or whose responsibilities are restricted to the geographical limits thereof, including incorporated authorities, commissions and districts, for whose debts such municipality is not

otherwise liable, is eligible for relief as a separate petitioner and a petition seeking relief shall be jointly administered in the same proceeding in which such municipality seeks relief under this chapter if such agency, instrumentality, or subdivision is not prohibited from filing a petition by applicable State law.

"PETITION AND FILING

"SEC. 804 (a) Any entity eligible for relief under section 803 may file a voluntary petition under this chapter. The petition shall state that the petitioner is eligible to file a petition, that the petitioner is insolvent or unable to pay its debts as they mature, and that it desires to effect a plan for the composition or extension of its debts. The petitioner shall file with its petition, or within such time as the court may prescribe, lists of its creditors and of other persons who may be adversely affected by a proposed plan and if an identification of all the petitioner's creditors is impracticable, the petitioner shall state the reason therefor.

"(b) The petition shall be filed with any court in whose territorial jurisdiction the municipality or any part thereof is located, and shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in lieu of the fee required to be collected by the clerk under other applicable chapters of this title, as amended.

"STAY OF PROCEEDINGS

"SEC. 805. (a) A petition filed under section 804 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the petitioner, its property or any officer or inhabitant of the petitioner, or which seeks to enforce any claim against the petitioner; as a stay of any act or the commencement or continuation of any court proceeding to enforce any lien on taxes or assessments, or to reach any property of the petitioner; and as a stay of the application of any setoff or enforcement of any counterclaim relating to any contract, debt, or obligation of the petitioner.

"(b) (1) A petition filed by a petitioner eligible for relief under this chapter shall operate to stay recognition or enforcement of the setoff of any claim owing by the petitioner effected or attempted to be effected within three months prior to the date of the petition or thereafter against any obligation owing to the petitioner until the stay is terminated by the court or the case is dismissed. Such stay shall not affect the right of the creditor to withhold payments to or on the order of the petitioner, except when otherwise ordered pursuant to subdivision (2).

"(2) After hearing on notice to the person asserting the right of setoff, the court may order such persons to pay to the petitioner or to its order the amount of the obligation sought to be offset if the stay is not terminated pursuant to subdivision (d). However, the court may require as a condition of the order that the petitioner furnish such protection as will adequately protect the person who is asserting the right of setoff.

"(c) Except as it may be terminated, annulled, modified, or conditioned by the court under the terms of this section, the stay provided

for herein 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.

"(d) On the filing of a complaint seeking relief from a stay provided in this section, the court shall set a hearing for the earliest possible date. The court may, for cause shown, terminate, annul, modify, or condition such stay.

"(e) The commencement or continuation of any act or proceeding other than described in subsection (a) of this section may be stayed, restrained, or enjoined pursuant to rule 65 of the Federal Rules of Civil Procedure, except that a temporary restraining order or preliminary injunction may be issued without compliance with subdivision (c) of that rule.

"(f) 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) No stay, order, or decree of the court may interfere with (1) any of the political or governmental powers of the petitioner; or (2) any of the property or revenues of the petitioner necessary for essential governmental purposes; or (3) the petitioner's use or enjoyment of any income-producing property: Provided, however, That the court shall enforce the conditions attached to certificates of indebtedness issued under section 811 and the provisions of the plan.

"CONTEST AND DISMISSAL OF PETITION

"SEC. 806. (a) Any creditor may file a complaint in the bankruptcy court contesting the petition for relief under this chapter. The complaint may be filed within thirty days following the filing of the petition.

"(b) The court may, upon notice to the creditors and a hearing following the filing of such a complaint, dismiss the proceeding if it finds that the petition was not filed in good faith or that it does not meet the provisions of this chapter.

"(c) A finding of jurisdiction shall be considered an interlocutory order for purposes of appeal. No appeal pursuant to section 1922 of title 28, United States Code, shall be allowed.

"NOTICES

"SEC. 807. (a) The petitioner or such other person as the court shall designate shall give prompt notice of the commencement of a proceeding or dismissal of the petition under this chapter to the State in which the petitioner is located and to the Securities and Exchange Commission and to creditors. As creditors and other persons who may be materially and adversely affected by the plan are identified, the petitioner or such other person as the court shall designate shall give such persons notice of the commencement of the proceeding, a summary of the provisions of the plan and any proposed modification of

the plan, and of their right to request a copy of the plan, or modification. 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.

"(b) The petitioner or such other person as the court shall designate shall also give notice to all creditors of the time permitted for accepting or rejecting a plan or any modification thereof. Such time shall be ninety days from the filing of the plan or modification unless the court for good cause shall set some other time.

"(c) The petitioner or such other person as the court shall designate shall also give notice to all creditors (1) of the time permitted for filing a complaint objecting to confirmation of a plan, (2) of the date set for hearing objections to such complaint, (3) of the date of hearing of a complaint seeking dismissal of the petition, and (4) of the date of the hearing on confirmation of the plan.

"(d) All notices given by the petitioner or such other person as the court shall designate shall be given in the manner directed by the court; however, the court may issue an order at any time subsequent to the first notice to creditors directing that those persons desiring written notice file a request with the court. If the court enters such an order persons not so requesting will receive no further written notice of proceedings under the chapter.

"(e) Cost of notice shall be borne 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.

"REPRESENTATION OF CREDITORS

"SEC. 808. (a) For all purposes of this chapter any party in interest 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, giving the name and address of each and describing the amount and character of the claim of each; copies of the instrument or instruments in writing signed by such creditors conferring the authority for representation; and a copy of the contract or contracts of agreement entered into between such committee, organization, group, or individual and the represented creditors, which contract or contracts shall disclose all compensation to be received, directly or indirectly for such representation, which agreed compensation shall be subject to modification and approval by the court.

"(b) The judge shall, for cause shown, permit a labor organization or employee association representative of employees of the debtor municipality, public agency, instrumentality, or political subdivision to be heard on the economic soundness of the plan affecting the interests of the represented employees.

"LIST OF CLAIMS AND PERSONS ADVERSELY AFFECTED

"SEC. 809. (a) The list of claims filed as required in Sec. 804(a) shall include, to the extent practicable, the name of each known creditor to be materially and adversely affected by the plan, his address so far as known to the petitioner, and a description of each claim showing its amount and character, the nature of any security therefor and if the claim is disputed, contingent or unliquidated as to amount. With respect to creditors not identified, the petition shall set forth the reasons identification is not practicable, and shall specify the character of claim involved. The list shall be supplemented as petitioner becomes able to identify additional creditors.

"(b) If the proposed plan requires revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect at the date the petition is filed, the holders of record of title, legal or equitable, to such real property shall be deemed persons adversely affected and shall be similarly listed.

"(c) The court may for cause modify the requirements of subsections (a) and (b) of this section.

"PROOF OF CLAIM

"SEC. 810. (a) In the absence of an objection made by any party in interest, the claim of a creditor that is not disputed, contingent, or unliquidated, is established by the list of claims filed pursuant to section 809. The court may set a date by which proofs of claim of unlisted credtiors and of creditors whose listed claims are disputed, contingent, or unliquidated, must be filed. If the court does not set such a date, the proofs must be filed before the entry of the order of confirmation. The petitioner or such other person as the court shall designate shall give notice to each person whose claim is listed as disputed, contingent, or unliquidated, in the manner directed by the court.

"(b) If an executory contract or an unexpired lease is rejected under a plan or under section 801(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 next year 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.

"CERTIFICATES OF INDEBTEDNESS

"SEC. 811. At any time after a petition has been filed, the court may upon cause shown, authorize the petitioner to issue certificates of indebtedness for cash, property or other consideration, under such terms and conditions and with such security and priority in payment over existing obligations, secured or unsecured and other expenses of administration as the court may approve. Notwithstanding any other provision of law including section 821 of this chapter, the court shall have exclusive jurisdiction of any action which may be brought against petitioner to enforce compliance with the terms of any such certificates of indebtedness.

"PRIORITIES

"SEC. 812. 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 cost and expenses of administration which are incurred by the petitioner subsequent to the filing of a petition under this chapter.

"(2) Debts owed for services and materials directly provided within two 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.

"PROVISIONS OF PLAN AND FILING

"SEC. 813. (a) A petitioner's plan under 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, including, but not limited to provisions for the rejection of any executory contract and unexpired leases.

"(b) The petitioner may file a plan with its petition or at such later time as may be prescribed by the court.

"VOTING ON ACCEPTANCE OF PLAN

"SEC. 814. (a) A plan may be confirmed only if, of the creditors voting in writing to accept or reject the plan, those holding two-thirds in amount and 51 per centum in numbers of each class materially and adversely affected have voted to accept: Provided, however, That no such acceptance shall be required from any class which, under the plan, is to be paid in cash the value of its claims or is to be afforded such method of protection as will, consistent with the circumstances of the particular case, equitably and fairly provide for the realization of the value of its claims.

"(b) Unless his claim has been disallowed, any creditor who is included on the list filed pursuant to Section 809 or who files a proof of claim pursuant to section 810 is entitled to vote to accept or reject a plan or modification thereof within the time set pursuant to subsection 807(b). Claims owned, held or controlled by the petitioner are not eligible to vote.

"(c) For the purposes of the plan and its acceptance, the court may fix the division of creditors into classes and, in the event of controversy, the court shall after hearing upon notice summarily determine such controversy.

"(d) If any controversy shall arise as to whether any creditor or class of creditors shall or shall not be materially and adversely affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested.

"MODIFICATION OF PLAN

"SEC. 815. Before a plan is confirmed, changes and modifications may be made therein after hearing and upon such notice to creditors as the judge may direct, subject to the right of any creditor who has previously accepted the plan to withdraw his acceptance in writing, within a period to be fixed by the judge, if, in the opinion of the judge, the change or modification will materially and adversely affect 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.

"STANDING TO OBJECT THE PLAN

"SEC. 816. Any creditor or other person materially and adversely affected by the plan may file a complaint with the court objecting to the confirmation of the plan. Such complaint may be filed any time up to ten days before the hearing on the confirmation of the plan or within such other time as prescribed by the court. The complaint shall be served on the petitioner and such other person as may be designated by the court.

"HEARING ON CONFIRMATION OF PLAN

"SEC 817. (a) Within a reasonable time after the expiration of the time within which a plan and any modifications thereof may be accepted or rejected, the court shall set a hearing on the confirmation of the plan and modifications, and the petitioner and such other persons as may be designated by the court shall give notice of the hearing and time allowed for filing objections as provided in section 807(c).

"(b) Before concluding the hearing on confirmation of the plan the judge shall inquire whether 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 creditor, and shall take evidence under oath to ascertain whether any practice obtains. After such examination the judge shall make an adjudication of this issue, and if he finds that any such practice obtains, he shall forthwith dismiss the proceeding and tax all of the costs against such person, 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.

"(c) The court shall confirm the plan if satisfied that (1) it is fair, equitable, feasible, and not unfairly discriminatory in favor of any

creditor or class of creditors; (2) it complies with the provisions of this chapter; (3) it has been accepted by creditors and provision has been made for non-accepting creditors as required in section 814; (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; (6) the petitioner is authorized by law to take all action necessary to be taken by it to carry out the plan; and (7) it appears from petitioner's current and projected revenues and expenditures that the budget of the petitioner will be in balance within a reasonable time after adoption of the plan. If not so satisfied, the judge shall enter an order dismissing the proceeding.

"EFFECT OF CONFIRMATION

"SEC. 818. (a) The provisions of a confirmed plan shall be biding on the petitioner and on all creditors, whether or not they are affected by it, whether or not their claims have been listed, filed, or allowed, and whether or not they have accepted the plan.

"(b) The confirmation of a plan shall extinguish all claims against the petitioner provided for by the plan other than those excepted from discharge by the plan or order confirming the plan.

"DUTY OF PETITIONER AND DISTRIBUTION UNDER PLAN

"SEC. 819. (a) The petitioner shall comply with the provisions of the plan and the orders of the court relative thereto and shall take all actions necessary to carry out the plan.

"(b) Subject to the provisions of subsection (c), distribution shall be made in accordance with the provisions of the plan to creditors (1) whose proofs of claim have been filed and allowed or (2) whose claims have been listed and are not disputed. Distribution to creditors holding securities of record shall be made to the recordholders as of the date the order confirming the plan becomes final.

"(c) When a plan requires presentment or surrender of securities or the performance of any other act as a condition to participation under the plan, such action must be taken not later than five years after the entry of the order of confirmation. Persons who have not within such time presented or surrendered their securities or taken such other action shall not participate in the distribution under the plan. Any securities, moneys, or other property remaining unclaimed at the expiration of the time allowed for presentment or surrender of securities or the performance of any other act as a condition to participation in the distribution under a confirmed plan shall become the property of the petitioner.

"(d) 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.

"(e) The court may direct the petitioner and other necessary parties to execute and deliver or to join in the execution and delivery of any in-

struments required to affect a transfer of property pursuant to the confirmed plan and to perform such other acts, including the satisfaction of liens, as the court may determine to be necessary for the consummation of the plan.

"DISMISSAL

"SEC. 820. The court shall enter an order dismissing 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; or (4) if a confirmed plan is not consummated.

"RETENTION OF JURISDICTION

"SEC. 821. The court may retain jurisdiction of a proceeding under this chapter for such period as it determines is necessary to assure execution of the plan and discharge of the securities issued under the plan.

"REFERENCE OF ISSUES AND COMPENSATION

"SEC 822. (a) The judge may refer any special issues of fact to a referee in bankruptcy, or 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 reference 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.

"(b) The court may allow reasonable compensation for the services performed by any such special master who is not a salaried Federal employee, 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 adjustment. An appeal may be taken from any order making such determination or award to the United States 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.

"CONVERSION TO CHAPTER XVI

"SEC. 823 (a) A petitioner eligible for relief under chapter XVI who has filed a petition under chapter IX of this Act may at any time

file an application to have the case proceed under chapter XVI; Provided, however, that any petition filed by a municipality, public agency, instrumentality or political subdivision of the State after the effective date of this Act must be filed under Chapter XVI of the Bankruptcy Act is added by this Act.

"(b) After hearing on notice to the petitioner, the Securities and Exchange Commission, creditors and such other persons as the court may direct, the court shall, if it finds that the case may properly proceed under chapter XVI of the Act, approve the application and order the case to proceed under that chapter.".

SEC. 2. The table of organization of title 11, United States Code, is amended by inserting after the reference to chapter 15, the following:

"Chapter 16. Adjustment of Municipalities."

SEPARABILITY

SEC. 3. If any provision of chapter XVI of the Bankruptcy Act as added by this Act, 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.

RECOMMENDATION

The Committee believes that S. 2597, as amended, is meritorious and recommends it do pass.

O

H. R. 10624

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To amend chapter IX of the Bankruptcy Act to provide by voluntary reorganization procedures for the adjustment of the debts of municipalities.

Whereas the Congress finds and declares this Act and proceedings thereunder providing for the composition of indebtedness of, or authorized by, municipalities to be within the subject of bankruptcies under article I, section 8, clause 4 of the United States Constitution; and

Whereas the Congress finds that the impracticability of existing Federal bankruptcy remedies for use by municipalities increases the likelihood of their default and will aggravate the adverse effects thereof; and

Whereas the Congress finds that the financial disruptions and dislocations resulting from default of such municipalities without availability of a Federal procedure to restructure their indebtedness in such fashion as to avoid continuing insolvency would have a substantial adverse effect on interstate commerce within the meaning of article I, section 8, clause 3 of the United States Constitution, by reason of the commercial importance of the municipalities involved.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter IX of the Bankruptcy Act is amended to read as follows:

"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 as to amount, 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 political subdivision or public agency or instrumentality 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) 'lien' means security interest in property, lien obtained on property by levy, sequestration, or other legal or equitable process, statutory or common law lien on property, or any other variety of charge against property to secure the performance of an obligation;

"(7) 'person' includes a corporation or a partnership, the United States, the several States, and political subdivisions and public agencies and instrumentalities of the several States;

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

"(9) 'plan' means plan filed under section 90;

"(10) '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 of obligations issued by the petitioner to defray the costs of local improvements; and

"(11) 'special tax payer affected by the plan' means 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 (10) 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 leases 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, and over costs and expenses of administration, not including operating expenses of the petitioner, 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 stay, 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) the petitioner's use or enjoyment of any income-producing property.

"(d) DESIGNATION OF JUDGE.—After 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 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.

"SEC. 84. ELIGIBILITY FOR RELIEF.—Any State's political subdivision or public agency or instrumentality, which is generally authorized to file a petition under this chapter by the legislature, or by a governmental officer or organization empowered by State law to authorize the filing of a petition, 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. An entity is not eligible for relief under this chapter unless—

"(1) it has successfully negotiated a plan of adjustment of its debts with creditors holding at least a majority in amount of the claims of each class which are claims affected by that plan;

"(2) it has negotiated in good faith with its creditors and has failed to obtain, with respect to a plan of adjustment of its debts, the agreement of creditors holding at least a majority in amount of the claims of each class which are claims affected by that plan;

"(3) such negotiation is impracticable; or

"(4) it has a reasonable fear that a creditor may attempt to obtain a preference.

"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 an answer to the petition 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. Upon the filing of such an answer, the court may dismiss the petition after hearing on notice if the petitioner did not file the petition in good faith, or if the petition does not meet the requirements of this chapter. The court shall not, on account of an appeal from a finding of jurisdiction, delay any proceeding under this chapter in the case in which the appeal is being taken; nor shall any court order a stay of such proceeding pending such appeal. The reversal on appeal of a finding of jurisdiction shall not affect the validity of any certificate of indebtedness authorized by the court and issued in such case.

"(b) LIST.—The petitioner shall file with the court a list of the petitioner's creditors, insofar as practicable. The list shall include for each known creditor, to the extent practicable, the name of the creditor, the address of the creditor so far as known to the petitioner, and a description of any claim of the creditor, showing the amount and character of the claim, the nature of any security for the claim, and whether the claim is disputed, contingent or unliquidated as to amount. If an identification of any of the petitioner's creditors is impracticable, the petitioner shall state the reason such identification is impracticable and the character of the claims of the creditors involved. The petitioner shall supplement the list as creditors who were unknown or unidentified at the time the list was filed become known or identified to the petitioner. 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, sets.

"(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 petitioner or such other person as the court designates 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 included in the list of creditors required by subsection (b) or in any supplement to that list. 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 deems 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 a 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 any 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 or a lien on or arising out of taxes or assessments due 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 subsection, 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 shall set a hearing for the earliest possible date. 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 against whom such order would apply, and for cause shown. The court may issue an order under this paragraph without requiring the petitioner to give security as a condition to that order.

"(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 chapter 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 against whom or which recovery is sought of the claim which arises by reason of the recovery.

"(h) AVOIDING POWERS.—Sections 60a, 60c, 67a, 67d, 70c, 70e(1), and 70e(2), and the first three sentences of section 60b shall apply in cases under this chapter as though the petitioner were the bankrupt, debtor, or trustee. If the petitioner refuses to pursue a cause of action under a section or sentence made applicable to this chapter by this subsection, the court may, upon the application of any creditor, appoint a trustee to pursue such cause of action.

"SEC. 86. REPRESENTATION OF CREDITORS.—

"(a) REPRESENTATION AND DISCLOSURE.—Any creditor may act in that creditor's own behalf or by an attorney or a duly authorized agent or committee. Every person, not including governmental entities, 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 incident to the case, received or 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, not including governmental entities, 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, EXPENSES, 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. An appeal may be taken from any order allowing compensation to the United States court of appeals for the circuit in which the case under this chapter is pending, independently of any other appeal which may be taken in the case. The court of appeals shall hear and determine such appeal summarily.

"(c) JOINT ADMINISTRATION.—If two or more petitions by related entities are pending in the same court, the court may order 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 as to amount, and that appears in the list or in a supplement to 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 or any supplement to the list under section 85(b), the court shall give written notice to each person whose claim is listed as disputed, contingent, or unliquidated as to amount, informing each such person 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 $250 for reasons of administrative convenience. If there is a controversy over the classification of a creditor, the court shall, after hearing on notice, summarily determine such controversy.

"(c) DAMAGES UPON REJECTION OF EXECUTORY CONTRACTS.—If an executory contract or an unexpired lease is rejected under the 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 convenant 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 any distribution to creditors under the 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 owed for services or materials actually provided within three months before the date of the filing of the petition under this chapter.

"(3) Debts owing to any person, 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, sets. At any time prior to the confirmation of a plan, the petitioner, or any creditor, if the petitioner has consented in writing to the modification to be filed by the creditor, may file a modification of the plan; but the modification shall comply with the provisions of this chapter.

"(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 set a time, which shall be ninety days from the filing of the plan or any modification of the plan, unless the court, for good cause, sets some other time, within which creditors may accept or reject the plan and any modification of the plan. The petitioner or such other person as the court designates 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 creditor whose claim is affected by the plan, to each special tax payer affected by the plan, and to any party in interest that the court designates. Upon request by a recipient of such summary and notice, the petitioner or such other person as the court designates shall transmit by mail a copy of the plan or modification to that recipient. The court shall, after hearing on notice, determine any controversy as to whether a claim of a creditor or class of creditors is a claim affected by the plan and as to whether a special tax payer is a special tax payer affected by the plan.

"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 of a creditor who is included in the list or in a supplement to 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, or of a security holder of record as of the date of the transmittal of information under section 90(b), has been disallowed or is not a claim affected by the plan, that creditor or security holder may accept or reject the plan and any modification of the plan within the time set 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 provided in subsection (d), 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 allowed under section 88 and more than 50 percent in number of the claims of each class allowed under section 88.

"(c) COMPUTING ACCEPTANCE.—The two-thirds majority required by subsection (b) is two-thirds in amount of the claims allowed under section 88 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). The more than 50 percent required by subsection (b) is more than 50 percent in number of the claims allowed under section 88 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 who holds a claim affected by the plan or a special tax payer affected by the plan may file with the court an objection to the confirmation of the plan. The Securities

and Exchange Commission may also file with the court an objection to the confirmation of the plan, but in the case of an objection filed under this section, the Securities and Exchange Commission may not appeal or file any petition for appeal. An objection 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 times set 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 the 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. The court may, for cause shown, permit a labor union or employees' association, that represents employees of the petitioner, to be heard on the economic soundness of the plan affecting the interests of the represented employees.

"(b) CONDITIONS FOR CONFIRMATION.—The court shall confirm the plan if—

"(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) the plan has been accepted as required by section 92;

"(4) all amounts to be paid by the petitioner or by any person, not including other governmental entities, for services and expenses in the case or incident to the plan 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 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 any creditor who had timely notice or actual knowledge of the petition or plan, whether or not such creditor's claim has been allowed under section 88, and whether or not such creditor has 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 money, securities, or other 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 neither the petition nor the 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. The court may direct the petitioner and other necessary parties to execute and deliver or to join in the execution and delivery of any instrument required to effect a transfer of property under the plan and to perform such other acts including the satisfaction of a lien, as the court determines to be necessary for the consummation of 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.—

"(a) PERMISSIVE 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; or

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

"(A) if the petitioner 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.

"(b) MANDATORY DISMISSAL.—The court shall dismiss the case if confirmation is refused.".

SEC. 2. 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.

SEC. 3. If the amendment made by this Act is judicially finally determined to be unconstitutional then chapter IX of the Bankruptcy Act, as such chapter IX existed on the day before the date of enactment of this Act, is revived and shall have full force and effect with respect to cases filed after such determination.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

March 29, 1976

Dear Mr. Director:

The following bills were received at the White House on March 29th:

H.J. Res. 857
H.R. 10624 ✓
H.R. 12490

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C.