

## REFERENCES IN TEXT

Section 3 of the Federal Deposit Insurance Act, referred to in par. (2), is classified to section 1813 of Title 12, Banks and Banking.

Section 25A of the Federal Reserve Act, referred to in par. (3), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in par. (3), is classified to section 4422 of Title 12, Banks and Banking.

**§ 782. Selection of trustee**

(a) IN GENERAL.—

(1) APPOINTMENT.—Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Board designates an alternative trustee.

(2) SUCCESSOR.—The Board may designate a successor trustee if required.

(b) AUTHORITY OF TRUSTEE.—Whenever the Board appoints or designates a trustee, chapter 3 and sections 704 and 705 of this title shall apply to the Board in the same way and to the same extent that they apply to a United States trustee.

(Added Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-394.)

**§ 783. Additional powers of trustee**

(a) DISTRIBUTION OF PROPERTY NOT OF THE ESTATE.—The trustee under this subchapter has power to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter.

(b) DISPOSITION OF INSTITUTION.—The trustee under this subchapter may, after notice and a hearing—

(1) sell the clearing bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the clearing bank among the consortium);

(2) merge the clearing bank with a depository institution;

(3) transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

(4) transfer assets or liabilities to a depository institution; and

(5) transfer assets and liabilities to a bridge depository institution as provided in paragraphs (1), (3)(A), (5), and (6) of section 11(n) of the Federal Deposit Insurance Act, paragraphs (9) through (13) of such section, and subparagraphs (A) through (H) and subparagraph (K) of paragraph (4) of such section 11(n), except that—

(A) the bridge depository institution to which such assets or liabilities are transferred shall be treated as a clearing bank for the purpose of this subsection; and

(B) any references in any such provision of law to the Federal Deposit Insurance Cor-

poration shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

(c) CERTAIN TRANSFERS INCLUDED.—Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

(Added Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-395; amended Pub. L. 110-289, div. A, title VI, §1604(b)(3), July 30, 2008, 122 Stat. 2829.)

## REFERENCES IN TEXT

Section 11 of the Federal Deposit Insurance Act, referred to in subsec. (b)(3), (5), is classified to section 1821 of Title 12, Banks and Banking.

## AMENDMENTS

2008—Subsec. (b)(5). Pub. L. 110-289, which directed amendment of this section by substituting “bridge depository institution” for “bridge bank”, was executed by making the substitution in introductory provisions and subpar. (A) of subsec. (b)(5), to reflect the probable intent of Congress.

**§ 784. Right to be heard**

The Board or a Federal reserve bank (in the case of a clearing bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.

(Added Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-395.)

**CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY**

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## AMENDMENTS

1988—Pub. L. 100-597, §11, Nov. 3, 1988, 102 Stat. 3030, added items 927 to 929 and redesignated former item 927 as 930.

## SUBCHAPTER I—GENERAL PROVISIONS

**§ 901. Applicability of other sections of this title**

(a) Sections 301, 344, 347(b), 349, 350(b), 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(2), 509, 510, 524(a)(1), 524(a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, 555, 556, 557, 559, 560, 561, 562, 1102, 1103, 1109, 1111(b), 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), 1123(d), 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

(b) A term used in a section of this title made applicable in a case under this chapter by subsection (a) of this section or section 103(e)<sup>1</sup> of this title has the meaning defined for such term for the purpose of such applicable section, unless such term is otherwise defined in section 902 of this title.

(c) A section made applicable in a case under this chapter by subsection (a) of this section that is operative if the business of the debtor is authorized to be operated is operative in a case under this chapter.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2621; Pub. L. 98–353, title III, §§ 353, 490, July 10, 1984, 98 Stat. 361, 383; Pub. L. 100–597, § 3, Nov. 3, 1988, 102 Stat. 3028; Pub. L. 109–8, title V, § 502, title XII, § 1216, title XV, § 1502(a)(5), Apr. 20, 2005, 119 Stat. 118, 195, 216.)

## HISTORICAL AND REVISION NOTES

## LEGISLATIVE STATEMENTS

Chapter 9 of the House amendment represents a compromise between chapter 9 of the House bill and 9 of the Senate amendment. In most respects this chapter follows current law with respect to the adjustment of debts of a municipality. Stylistic changes and minor substantive revisions have been made in order to conform this chapter with other new chapters of the bankruptcy code. There are few major differences between the House bill and the Senate amendment on this issue. Section 901 indicates the applicability of other sections of title 11 in cases under chapter 9. Included are sections providing for creditors' committees under sections 1102 and 1103.

## HOUSE REPORT NO. 95–595

Section 901 makes applicable appropriate provisions of other chapters of proposed title 11. The general rule set out in section 103(e) is that only the provisions of chapters 1 and 9 apply in a chapter 9 case. Section 901 is the exception, and specifies other provisions that do apply. They are as follows:

§ 301. *Voluntary cases.* Application of this section makes clear, as under current chapter IX [chapter 9 of former title 11], that a municipal case can be commenced only by the municipality itself. There are no involuntary chapter 9 cases.

§ 344. *Self-incrimination; immunity.* Application of this section is of no substantive effect for the administration of the case, but merely provides that the general rules in part V [§ 6001 et seq.] of title 18 govern immunity.

§ 347(b). *Unclaimed property.* This provision currently appears in section 96(d) of chapter IX [section 416(d) of former title 11].

§ 349. *Effect of dismissal.* This section governs the effect of a dismissal of a chapter 9 case. It provides in

substance that rights that existed before the case that were disturbed by the commencement of the case are reinstated. This section does not concern grounds for dismissal, which are found in section 926.

§ 361. *Adequate protection.* Section 361 provides the general standard for the protection of secured creditors whose property is used in a case under title 11. Its importance lies in its application to sections 362 and 364.

§ 362. *Automatic stay.* The automatic stay provisions of the general portions of the title are incorporated into chapter 9. There is an automatic stay provided in current Bankruptcy Act § 85(e) [section 405(e) of former title 11]. The thrust of section 362 is the same as that of section 85(e), but, of course, its application in chapter 9 is modernized and drafted to conform with the stay generally applicable under the bankruptcy code. An additional part of the automatic stay applicable only to municipal cases is included in section 922.

§ 364(c), 364(d), 364(e). *Obtaining credit.* This section governs the borrowing of money by a municipality in reorganization. It is narrower than a comparable provision in current law, section 82(b)(2) [section 402(b)(2) of former title 11]. The difference lies mainly in the removal under the bill of the authority of the court to supervise borrowing by the municipality in instances in which none of the special bankruptcy powers are involved. That is, if a municipality could borrow money outside of the bankruptcy court, then it should have the same authority in bankruptcy court, under the doctrine of *Ashton v. Cameron Water District No. 1*, 298 U.S. 513 (1936) [Tex.1936, 56 S.Ct. 892, 80 L.Ed. 1309, 31 Am.Bankr.Rep.N.S. 96, rehearing denied 57 S.Ct. 5, 299 U.S. 619, 81 L.Ed. 457] and *National League of Cities v. Usery*, 426 U.S. 833 (1976) [Dist.Col.1976, 96 S.Ct. 2465, 49 L.Ed.2d 245, on remand 429 F. Supp. 703]. Only when the municipality needs special authority, such as subordination of existing liens, or special priority for the borrowed funds, will the court become involved in the authorization.

§ 365. *Executory contracts and unexpired leases.* The applicability of section 365 incorporates the general power of a bankruptcy court to authorize the assumption or rejection of executory contracts or unexpired leases found in other chapters of the title. This section is comparable to section 82(b)(1) of current law [section 402(b)(1) of former title 11].

§ 366. *Utility service.* This section gives a municipality the same authority as any other debtor with respect to continuation of utility service during the proceeding, provided adequate assurance of future payment is provided. No comparable explicit provision is found in current law, although the case law seems to support the same result.

§ 501. *Filing of proofs of claims.* This section permits filing of proofs of claims in a chapter 9 case. Note, however, that section 924 permits listing of creditors' claims, as under chapter 11 and under section 85(b) of chapter IX [section 405(b) of former title 11].

§ 502. *Allowance of claims.* This section applies the general allowance rules to chapter 9 cases. This is no change from current law.

§ 503. *Administrative expenses.* Administrative expenses as defined in section 503 will be paid in a chapter 9 case, as provided under section 89(1) of current law [section 409(1) of former title 11].

§ 504. *Sharing of compensation.* There is no comparable provision in current law. However, this provision applies generally throughout the proposed law, and will not affect the progress of the case, only the interrelations between attorneys and other professionals that participate in the case.

§ 506. *Determination of secured status.* Section 506 specifies that claims secured by a lien should be separated, to the extent provided, into secured and unsecured claims. It applies generally. Current law follows this result, though there is no explicit provision.

§ 507(1). *Priorities.* Paragraph (1) of section 507 requires that administrative expenses be paid first. This rule will apply in chapter 9 cases. It is presently found in section 89(1) [section 409(1) of former title 11]. The two

<sup>1</sup> See References in Text note below.

other priorities presently found in section 89 have been deleted. The second for claims arising within 3 months before the case is commenced, is deleted from the statute, but may be within the court's equitable power to award, under the case of *Fosdick v. Schall*, 99 U.S. 235 (1878) [25 L.Ed. 339]. Leaving the provision to the courts permits greater flexibility, as under railroad cases, than an absolute three-month rule. The third priority under current law, for claims which are entitled to priority under the laws of the United States, is deleted because of the proposed amendment to section 3466 of the Revised Statutes [former 31 U.S.C. 191, see 31 U.S.C. 3713(a)] contained in section 321(a) of title III of the bill, which previously has given the United States an absolute first priority in chapter X [chapter 10 of former title 11] and section 77 [section 205 of former title 11] cases. Because the priority rules are regularized and brought together in the bankruptcy laws by this bill, the need for incorporation of priorities elsewhere specified is eliminated.

§ 509. *Claims of codebtors.* This section provides for the treatment of sureties, guarantors, and codebtors. The general rule of postponement found in the other chapters will apply in chapter 9. This section adopts current law.

§ 510. *Subordination of claims.* This section permits the court to subordinate, on equitable grounds, any claim, and requires enforcement of contractual subordination agreements, and subordination of securities rescission claims. The section recognizes the inherent equitable power of the court under current law, and the practice followed with respect to contractual provisions.

§ 547. *Preferences.* Incorporation of section 547 will permit the debtor to recover preferences. This power will be used primarily when those who gave the preferences have been replaced by new municipal officers or when creditors coerced preferential payments. Unlike Bankruptcy Act § 85(h) [section 405(h) of former title 11], the section does not permit the appointment of a trustee for the purpose of pursuing preferences. Moreover, this bill does not incorporate the other avoiding powers of a trustee for chapter 9, found in current section 85(h).

§ 550. *Liability of transfers.* Incorporation of this section is made necessary by the incorporation of the preference section, and permits recovery by the debtor from a transferee of an avoided preference.

§ 551. *Automatic preservation of avoided transfer.* Application of section 551 requires preservation of any avoided preference for the benefit of the estate.

§ 552. *Postpetition effect of security interest.* This section will govern the applicability after the commencement of the case of security interests granted by the debtor before the commencement of the case.

§ 553. *Setoff.* Under current law, certain setoff is stayed. Application of this section preserves that result, though the setoffs that are permitted under section 553 are better defined than under present law. Application of this section is necessary to stay the setoff and to provide the offsetting creditor with the protection to which he is entitled under present law.

§ 1122. *Classification of claims.* This section is derived from current section 88(b) [section 408(b) of former title 11], and is substantially similar.

§ 1123(a)(1)–(4), (b). *Contents of plan.* The general provisions governing contents of a chapter 11 plan are made applicable here, with two exceptions relating to the rights of stockholders, which are not applicable in chapter 9 cases. This section expands current law by specifying the contents of a plan in some detail. Section 91 of current law [section 411 of former title 11] speaks only in general terms. The substance of the two sections is substantially the same, however.

§ 1124. *Impairment of claims.* The confirmation standards adopted in chapter 9 are the same as those of chapter 11. This changes current chapter IX [chapter 9 of former title 11], which requires compliance with the fair and equitable rule. The greater flexibility of proposed chapter 11 is carried over into chapter 9, for there appears to be no reason why the confirmation standards for the two chapters should be different, or why

the elimination of the fair and equitable rule from corporate reorganizations should not be followed in municipal debt adjustments. The current chapter IX rule is based on the confirmation rules of current chapter X [chapter 10 of former title 11]. The change in the latter suggests a corresponding change in the former. Section 1124 is one part of the new confirmation standard. It defines impairment, for use in section 1129.

§ 1125. *Postpetition disclosure and solicitation.* The change in the confirmation standard necessitates a corresponding change in the disclosure requirements for solicitation of acceptances of a plan. Under current chapter IX [chapter 9 of former title 11] there is no disclosure requirement. Incorporation of section 1125 will insure that creditors receive adequate information before they are required to vote on a plan.

§ 1126(a), (b), (c), (e), (f), (g). *Acceptance of plan.* Section 1126 incorporates the current chapter IX [chapter 9 of former title 11] acceptance requirement: two-thirds in amount and a majority in number, Bankruptcy Act § 92 [section 412 of former title 11]. Section 1125 permits exclusion of certain acceptances from the computation if the acceptances were obtained in bad faith or, unlike current law, if there is a conflict of interest motivating the acceptance.

§ 1127(d). *Modification of plan.* This section governs the change of a creditor's vote on the plan after a modification is proposed. It is derived from current section 92(e) [section 412(e) of former title 11].

§ 1128. *Hearing on confirmation.* This section requires a hearing on the confirmation of the plan, and permits parties in interest to object. It is the same as Bankruptcy Act §§ 93 and 94(a) [sections 413 and 414(a) of former title 11], though the provision, comparable to section 206 of current chapter X [section 606 of former title 11], permitting a labor organization to appear and be heard on the economic soundness of the plan, has been deleted as more appropriate for the Rules.

§ 1129(a)(2), (3), (b), (b)(1), (2). *Confirmation of plan.* This section provides the boiler-plate language that the plan be proposed in good faith and that it comply with the provisions of the chapter, and also provides the financial standard for confirmation, which replaces the fair and equitable rule. See § 1124, supra.

§ 1142(b). *Execution of plan.* Derived from Bankruptcy Act § 96(b) [section 416(b) of former title 11], this section permits the court to order execution and delivery of instruments in order to execute the plan.

§ 1143. *Distribution.* This section is the same in substance as section 96(d) [section 416(d) of former title 11], which requires presentment or delivery of securities within five years, and bars creditors that do not act within that time.

§ 1144. *Revocation of order of confirmation.* This section permits the court to revoke the order of confirmation and the discharge if the confirmation of the plan was procured by fraud. There is no comparable provision in current chapter IX [chapter 9 of former title 11].

#### REFERENCES IN TEXT

Section 103(e) of this title, referred to in subsec. (b), was redesignated section 103(f) and a new section 103(e) was added by Pub. L. 106–554, §1(a)(5) [title I, §112(c)(5)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A–394.

#### AMENDMENTS

2005—Subsec. (a). Pub. L. 109–8, §1502(a)(5), substituted “507(a)(2)” for “507(a)(1)”.

Pub. L. 109–8, §1216, inserted “1123(d),” after “1123(b),”.

Pub. L. 109–8, §502, inserted “555, 556,” after “553,” and “559, 560, 561, 562,” after “557,”.

1988—Subsec. (a). Pub. L. 100–597 inserted “1129(a)(6),” after “1129(a)(3),”.

1984—Subsec. (a). Pub. L. 98–353 inserted “557,” after “553,” and substituted “1111(b),” for “1111(b)”.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases

commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-597 effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100-597, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

### § 902. Definitions for this chapter

In this chapter—

(1) “property of the estate”, when used in a section that is made applicable in a case under this chapter by section 103(e)<sup>1</sup> or 901 of this title, means property of the debtor;

(2) “special revenues” means—

(A) receipts derived from the ownership, operation, or disposition of projects or systems of the debtor that are primarily used or intended to be used primarily to provide transportation, utility, or other services, including the proceeds of borrowings to finance the projects or systems;

(B) special excise taxes imposed on particular activities or transactions;

(C) incremental tax receipts from the benefited area in the case of tax-increment financing;

(D) other revenues or receipts derived from particular functions of the debtor, whether or not the debtor has other functions; or

(E) taxes specifically levied to finance one or more projects or systems, excluding receipts from general property, sales, or income taxes (other than tax-increment financing) levied to finance the general purposes of the debtor;

(3) “special tax payer” means record owner or holder of legal or equitable title to real property against which a special assessment or special tax has been levied the proceeds of which are the sole source of payment of an obligation issued by the debtor to defray the cost of an improvement relating to such real property;

(4) “special tax payer affected by the plan” means special tax payer with respect to whose real property the plan proposes to increase the proportion of special assessments or special taxes referred to in paragraph (2) of this section assessed against such real property; and

(5) “trustee”, when used in a section that is made applicable in a case under this chapter by section 103(e)<sup>1</sup> or 901 of this title, means debtor, except as provided in section 926 of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2622; Pub. L. 98-353, title III, § 491, July 10, 1984, 98 Stat. 383; Pub. L. 100-597, § 4, Nov. 3, 1988, 102 Stat. 3028.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 902(2) of the Senate amendment is deleted since the bankruptcy court will have jurisdiction over

all cases under chapter 9. The concept of a claim being materially and adversely affected reflected in section 902(1) of the Senate amendment has been deleted and replaced with the new concept of “impairment” set forth in section 1124 of the House amendment and incorporated by reference into chapter 9.

#### SENATE REPORT NO. 95-989

There are six definitions for use in chapter 9. Paragraph (1) defines what claims are included in a chapter 9 case and adopts the definition now found in section 81(1) [section 401(1) of former title 11]. 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 [title 26], 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 on 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. 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.R. 12073 (statement by Mr. Don Edwards, floor manager of the bill in the House). Paragraph (2) defines the court which means the federal district court or federal district judge before which the case is pending. Paragraph (3) [enacted as (1)] specifies that when the term “property of the estate” is used in a section in another chapter made applicable in chapter 9 cases, the term means “property of the debtor”. Paragraphs (4) and (5) [enacted as (2) and (3)] adopt the definition of “special taxpayer affected by the plan” that appears in current sections 81(10) and 81(11) of the Bankruptcy Act [section 401(10) and (11) of former title 11]. Paragraph (6) [enacted as (4)] provides that “trustee” means “debtor” when used in conjunction with chapter 9.

#### HOUSE REPORT NO. 95-595

There are only four definitions for use only in chapter 9. The first specifies that when the term “property of the estate” is used in a section in another chapter made applicable in chapter 9 cases, the term will mean “property of the debtor”. Paragraphs (2) and (3) adopt the definition of “special taxpayer affected by the plan” that appears in current sections 81(10) and 81(11) [section 401(10) and (11) of former title 11]. Paragraph (4) provides for “trustee” the same treatment as provided for “property of the estate”, specifying that it means “debtor” when used in conjunction with chapter 9.

#### REFERENCES IN TEXT

Section 103(e) of this title, referred to in pars. (1) and (5), was redesignated section 103(f) and a new section 103(e) was added by Pub. L. 106-554, § 1(a)(5) [title I, § 112(c)(5)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A-394.

#### AMENDMENTS

1988—Pars. (2) to (5). Pub. L. 100-597 added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

1984—Par. (2). Pub. L. 98-353 substituted “legal or equitable title to real property against which a special assessment or special tax has been levied” for “title, legal or equitable, to real property against which has been levied a special assessment or special tax”.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-597 effective Nov. 3, 1988, but not applicable to any case commenced under this

<sup>1</sup> See References in Text note below.

title before that date, see section 12 of Pub. L. 100-597, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

**§ 903. Reservation of State power to control municipalities**

This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but—

(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and

(2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2622; Pub. L. 98-353, title III, § 492, July 10, 1984, 98 Stat. 383.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 903 of the House amendment represents a stylistic revision of section 903 of the Senate amendment. To the extent section 903 of the House bill would have changed present law, such section is rejected.

SENATE REPORT NO. 95-989

Section 903 is derived, with stylistic changes, from section 83 of current Chapter IX [section 403 of former title 11]. It sets forth the primary authority of a State, through its constitution, laws, and other powers, over its municipalities. The proviso in section 83, prohibiting State composition procedures for municipalities, is retained. Deletion of the provision would "permit all States to enact their own versions of Chapter IX [chapter 9 of former title 11]", *Municipal Insolvency*, 50 *Am.Bankr.L.J.* 55, 65, which would frustrate the constitutional mandate of uniform bankruptcy laws. Constitution of the United States, Art. I, Sec. 8.

This section provides that the municipality can consent to the court's orders in regard to use of its income or property. It is contemplated that such consent will be required by the court for the issuance of certificates of indebtedness under section 364(c). Such consent could extend to enforcement of the conditions attached to the certificates or the municipal services to be provided during the proceedings.

AMENDMENTS

1984—Par. (2). Pub. L. 98-353 struck out "to" before "that does not consent".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

**§ 904. Limitation on jurisdiction and powers of court**

Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with—

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

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

(3) the debtor's use or enjoyment of any income-producing property.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2622.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

This section adopts the policy of section 82(c) of current law [section 402(c) of former title 11]. The only change in this section from section 82(c) is to conform the section to the style and cross-references of S. 2266.

HOUSE REPORT NO. 95-595

This section adopts the policy of section 82(c) of current law [section 402(c) of former title 11]. The *Usery* case underlines the need for this limitation on the court's powers. The only change in this section from section 82(c) is to conform the section to the style and cross-references of H.R. 8200. This section makes clear that the court may not interfere with the choices a municipality makes as to what services and benefits it will provide to its inhabitants.

SUBCHAPTER II—ADMINISTRATION

AMENDMENTS

1984—Pub. L. 98-353, title III, § 493, July 10, 1984, 98 Stat. 383, substituted "SUBCHAPTER" for "SUBCHAPER".

**§ 921. Petition and proceedings relating to petition**

(a) Notwithstanding sections 109(d) and 301 of this title, a case under this chapter concerning an unincorporated tax or special assessment district that does not have such district's own officials is commenced by the filing under section 301 of this title of a petition under this chapter by such district's governing authority or the board or body having authority to levy taxes or assessments to meet the obligations of such district.

(b) The chief judge of the court of appeals for the circuit embracing the district in which the case is commenced shall designate the bankruptcy judge to conduct the case.

(c) After any objection to the petition, the court, after notice and a hearing, may dismiss the petition if the debtor did not file the petition in good faith or if the petition does not meet the requirements of this title.

(d) If the petition is not dismissed under subsection (c) of this section, the court shall order relief under this chapter notwithstanding section 301(b).

(e) The court may not, on account of an appeal from an order for relief, 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 does not affect the validity of any debt incurred that is authorized by the court under section 364(c) or 364(d) of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2622; Pub. L. 98-353, title III, § 494, July 10, 1984, 98 Stat. 383; Pub. L. 109-8, title V, § 501(a), Apr. 20, 2005, 119 Stat. 118.)

## HISTORICAL AND REVISION NOTES

## LEGISLATIVE STATEMENTS

Section 905 of the Senate amendment is incorporated as section 921(b) of the House amendment with the difference that the chief judge of the circuit embracing the district in which the case is commenced designates a bankruptcy judge to conduct the case in lieu of a district judge as under present law. It is intended that a municipality may commence a case in any district in which the municipality is located, as under present law. Section 906 of the Senate amendment has been adopted in substance in section 109(c) of the House amendment.

## SENATE REPORT NO. 95-989

Section 905 [enacted as section 921(b)] adopts the procedures for selection of the judge for the chapter 9 case as found in current section 82(d) [section 402(d) of former title 11]. It is expected that the large chapter 9 case might take up almost all the judicial time of the presiding judge and involve very complex legal questions. Selection should not be left to chance or the luck of the draw. This provision will insure that calendar demands and levels of experience can be considered in the selection of the judge in a chapter 9 case.

## HOUSE REPORT NO. 95-595

Subsection (a) is derived from section 85(a) [section 405(a) of former title 11], second sentence, of current law. There is no substantive change in the law. The subsection permits a municipality that does not have its own officers to be moved into chapter 9 by the action of the body or board that has authority to levy taxes for the municipality.

Subsection (b) permits a party in interest to object to the filing of the petition not later than 15 days after notice. This provision tracks the third sentence of section 85(a) [section 405(a) of former title 11], except that the provision for publication in section 85(a) is left to the Rules (see Rule 9-14), and therefore the determinative date is left less definite.

Subsection (c) permits the court to dismiss a petition not filed in good faith or not filed in compliance with the requirements of the chapter. This provision is the fourth sentence of section 85(a) [section 405(a) of former title 11].

Subsection (d) directs the court to order relief on the petition if it does not dismiss the case under subsection (c).

Subsection (e) contains the fifth and sixth sentences of section 85(a) [section 405(a) of former title 11].

## AMENDMENTS

2005—Subsec. (d). Pub. L. 109-8 inserted “notwithstanding section 301(b)” before period at end.

1984—Subsec. (a). Pub. L. 98-353, § 494(c), substituted “109(d)” for “109(c)”.

Subsec. (c). Pub. L. 98-353, § 494(a), substituted “any” for “an”, and “petition if the debtor did not file the petition in good faith” for “petition, if the debtor did not file the petition in good faith.”.

Subsec. (d). Pub. L. 98-353, § 494(b), (d), redesignated subsec. (e) as (d) and substituted “subsection (c)” for “subsection (d)”. No former subsec. (d) had been enacted.

Subsecs. (e), (f). Pub. L. 98-353, § 494(b), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section

552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

**§ 922. Automatic stay of enforcement of claims against the debtor**

(a) A petition filed under this chapter operates as a stay, in addition to the stay provided by section 362 of this title, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against an officer or inhabitant of the debtor that seeks to enforce a claim against the debtor; and

(2) the enforcement of a lien on or arising out of taxes or assessments owed to the debtor.

(b) Subsections (c), (d), (e), (f), and (g) of section 362 of this title apply to a stay under subsection (a) of this section the same as such subsections apply to a stay under section 362(a) of this title.

(c) If the debtor provides, under section 362, 364, or 922 of this title, adequate protection of the interest of the holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection such creditor has a claim arising from the stay of action against such property under section 362 or 922 of this title or from the granting of a lien under section 364(d) of this title, then such claim shall be allowable as an administrative expense under section 503(b) of this title.

(d) Notwithstanding section 362 of this title and subsection (a) of this section, a petition filed under this chapter does not operate as a stay of application of pledged special revenues in a manner consistent with section 927 of this title to payment of indebtedness secured by such revenues.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2623; Pub. L. 98-353, title III, § 495, July 10, 1984, 98 Stat. 384; Pub. L. 100-597, § 5, Nov. 3, 1988, 102 Stat. 3029.)

## HISTORICAL AND REVISION NOTES

## HOUSE REPORT NO. 95-595

The automatic stay provided under section 362 of title 11 is incomplete for a municipality, because there is the possibility of action by a creditor against an officer or inhabitant of the municipality to collect taxes due the municipality. Section 85(e)(1) of current chapter IX [section 405(e)(1) of former title 11] stays such actions. Section 922 carries over that protection into the proposed chapter 9. Subsection (b) applies the provisions for relief from the stay that apply generally in section 362 to the stay under section 922.

## AMENDMENTS

1988—Subsecs. (c), (d). Pub. L. 100-597 added subsecs. (c) and (d).

1984—Subsec. (a)(1). Pub. L. 98-353 substituted “a judicial” for “judicial”, and “action or proceeding” for “proceeding”.

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-597 effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100-597, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section

552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

### § 923. Notice

There shall be given notice of the commencement of a case under this chapter, notice of an order for relief under this chapter, and notice of the dismissal of a case under this chapter. Such notice shall also be published at least once a week for three successive weeks in at least one newspaper of general circulation published within the district in which the case is commenced, and in such other newspaper having a general circulation among bond dealers and bondholders as the court designates.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2623.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 923 of the House amendment represents a compromise with respect to the notice provisions contained in comparable provisions of the House bill and Senate amendment. As a general matter, title 11 leaves most procedural issues to be determined by the Rules of Bankruptcy Procedure. Section 923 of the House amendment contains certain important aspects of procedure that have been retained from present law. It is anticipated that the Rules of Bankruptcy Procedure will adopt rules similar to the present rules for chapter IX of the Bankruptcy Act [chapter 9 of former title 11].

##### HOUSE REPORT NO. 95-595

The notice provisions in section 923 are significantly more sparse than those provided under section 85(d) of chapter IX [section 405(d) of former title 11]. The exact contours of the notice to be given under chapter 9 are left to the Rules. Because the Rules deal with notice in a municipal case (Rule 9-14), and because section 405(d) of title IV of the bill continues those Rules in effect to the extent not inconsistent with the bill, the notice provisions of current law and Rules would continue to apply.

### § 924. List of creditors

The debtor shall file a list of creditors.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2623.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 924 of the House amendment is derived from section 924 of the House bill with the location of the filing of the list of creditors to be determined by the rules of bankruptcy procedure. The detailed requirements of section 724 [probably should be "924"] of the Senate bill are anticipated to be incorporated in the rules of bankruptcy procedure.

##### SENATE REPORT NO. 95-989

This section adopts the provision presently contained in section 85(b) of Chapter IX [section 405(b) of former title 11]. A list of creditors, as complete and accurate as practicable, must be filed with the court.

##### HOUSE REPORT NO. 95-595

This section directs the debtor to file a list of creditors with the court. A comparable provision is presently contained in section 85(b) of chapter IX [section 405(b) of former title 11]. The Rules, in Rule 9-7, copy the provisions of section 85(b), with additional matter. As noted above, section 405(d) of title IV will continue those Rules in effect. Because the form, time of filing, and nature of the list, are procedural matters that may call for some flexibility, those details have been left to the Rules.

### § 925. Effect of list of claims

A proof of claim is deemed filed under section 501 of this title for any claim that appears in the list filed under section 924 of this title, except a claim that is listed as disputed, contingent, or unliquidated.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2623.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 925 of the Senate amendment regarding venue and fees has been deleted.

##### SENATE REPORT NO. 95-989

Section 926 [enacted as section 925] follows the policy contained in section 88(a) of the present Act [section 408(a) of former title 11], though certain details are left to the Rules. The language of section 926 is the same as that of proposed 11 U.S.C. 1111, which applies in chapter 11 cases. The list of creditors filed under section 924 is given weight as prima facie evidence of the claims listed (except claims that are listed as disputed, contingent, or unliquidated), which are deemed filed under section 501, obviating the need for listed creditors to file proofs of claim.

### § 926. Avoiding powers

(a) If the debtor refuses to pursue a cause of action under section 544, 545, 547, 548, 549(a), or 550 of this title, then on request of a creditor, the court may appoint a trustee to pursue such cause of action.

(b) A transfer of property of the debtor to or for the benefit of any holder of a bond or note, on account of such bond or note, may not be avoided under section 547 of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2623; Pub. L. 100-597, §6, Nov. 3, 1988, 102 Stat. 3029.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 926 of the House amendment is derived from section 928 of the Senate bill. The provision enables creditors to request the court to appoint a trustee to pursue avoiding powers if the debtor refuses to exercise those powers. Section 901 of the House amendment makes a corresponding change to incorporate avoiding powers included in the Senate amendment, but excluded from the House bill.

##### SENATE REPORT NO. 95-989

This section [928 (enacted as section 926)] adopts current section 85(h) [section 405(h) of former title 11] which provides for a trustee to be appointed for the purpose of pursuing an action under an avoiding power, if the debtor refuses to do so. This section is necessary because a municipality might, by reason of political pressure or desire for future good relations with a particular creditor or class of creditors, make payments to such creditors in the days preceding the petition to the detriment of all other creditors. No change in the elected officials of such a city would automatically occur upon filing of the petition, and it might be very awkward for those same officials to turn around and demand the return of the payments following the filing of the petition. Hence, the need for a trustee for such purpose.

The general avoiding powers are incorporated by reference in section 901 and are broader than under current law. Preference, fraudulent conveyances, and other kinds of transfers will thus be voidable.

Incorporated by reference also is the power to accept or reject executory contracts and leases (section 365).

Within the definition of executory contracts are collective bargaining agreements between the city and its employees. Such contracts may be rejected despite contrary State laws. Courts should readily allow the rejection of such contracts where they are burdensome, the rejection will aid in the municipality's reorganization and in consideration of the equities of each case. On the last point, "[e]quities in favor of the city in chapter 9 will be far more compelling than the equities in favor of the employer in chapter 11. Onerous employment obligations may prevent a city from balancing its budget for some time. The prospect of an unbalanced budget may preclude judicial confirmation of the plan. Unless a city can reject its labor contracts, lack of funds may force cutbacks in police, fire, sanitation, and welfare services, imposing hardships on many citizens. In addition, because cities in the past have often seemed immune to the constraint of "profitability" faced by private businesses, their wage contracts may be relatively more onerous than those in the private sector." Executory Contracts and Municipal Bankruptcy, 85 Yale L. J. 957, 965 (1976) (footnote omitted). Rejection of the contracts may require the municipalities to renegotiate such contracts by state collective bargaining laws. It is intended that the power to reject collective bargaining agreements will pre-empt state termination provisions, but not state collective bargaining laws. Thus, a city would not be required to maintain existing employment terms during the renegotiation period.

#### AMENDMENTS

1988—Pub. L. 100-597 designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-597 effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100-597, set out as a note under section 101 of this title.

#### § 927. Limitation on recourse

The holder of a claim payable solely from special revenues of the debtor under applicable non-bankruptcy law shall not be treated as having recourse against the debtor on account of such claim pursuant to section 1111(b) of this title.

(Added Pub. L. 100-597, §7(2), Nov. 3, 1988, 102 Stat. 3029.)

#### PRIOR PROVISIONS

A prior section 927 was renumbered section 930 of this title.

#### EFFECTIVE DATE

Section effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100-597, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

#### § 928. Post petition effect of security interest

(a) Notwithstanding section 552(a) of this title and subject to subsection (b) of this section, special revenues acquired by the debtor after the commencement of the case shall remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

(b) Any such lien on special revenues, other than municipal betterment assessments, derived from a project or system shall be subject to the necessary operating expenses of such project or system, as the case may be.

(Added Pub. L. 100-597, §8, Nov. 3, 1988, 102 Stat. 3029.)

#### EFFECTIVE DATE

Section effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100-597, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

#### § 929. Municipal leases

A lease to a municipality shall not be treated as an executory contract or unexpired lease for the purposes of section 365 or 502(b)(6) of this title solely by reason of its being subject to termination in the event the debtor fails to appropriate rent.

(Added Pub. L. 100-597, §9, Nov. 3, 1988, 102 Stat. 3030.)

#### EFFECTIVE DATE

Section effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100-597, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

#### § 930. Dismissal

(a) After notice and a hearing, the court may dismiss a case under this chapter for cause, including—

- (1) want of prosecution;
- (2) unreasonable delay by the debtor that is prejudicial to creditors;
- (3) failure to propose a plan within the time fixed under section 941 of this title;
- (4) if a plan is not accepted within any time fixed by the court;
- (5) denial of confirmation of a plan under section 943(b) of this title and denial of additional time for filing another plan or a modification of a plan; or
- (6) if the court has retained jurisdiction after confirmation of a plan—

- (A) material default by the debtor with respect to a term of such plan; or
- (B) termination of such plan by reason of the occurrence of a condition specified in such plan.

(b) The court shall dismiss a case under this chapter if confirmation of a plan under this chapter is refused.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2623, §927; Pub. L. 98-353, title III, §496, July 10, 1984, 98 Stat. 384; renumbered §930, Pub. L. 100-597, §7(1), Nov. 3, 1988, 102 Stat. 3029.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 927(b) of the House amendment is derived from section 927(b) of the Senate bill. The provision requires mandatory dismissal if confirmation of a plan is refused.

The House amendment deletes section 929 of the Senate amendment as unnecessary since the bankruptcy court has original exclusive jurisdiction of all cases under chapter 9.

The House amendment deletes section 930 of the Senate amendment and incorporates section 507(a)(1) by reference.

##### SENATE REPORT NO. 95-989

Section 927 conforms to section 98 of current law [section 418 of former title 11]. The Section permits dismissal



sal by the court for unreasonable delay by the debtor, failure to propose a plan, failure of acceptance of a plan, or default by the debtor under a conformed plan. Mandatory dismissal is required if confirmation is refused.

## HOUSE REPORT NO. 95-595

Section 926 [enacted as section 927] generally conforms to section 98(a) [section 418(a) of former title 11] of current law. Stylistic changes have been made to conform the language with that used in chapter 11, section 1112. The section permits dismissal by the court for unreasonable delay by the debtor that is prejudicial to creditors, failure to propose a plan, failure of confirmation of a plan, or material default by the debtor under a confirmed plan. The only significant change from current law lies in the second ground. Currently, section 98(a)(2) provides for dismissal if a proposed plan is not accepted, and section 98(b) *requires* dismissal if an accepted plan is not confirmed. In order to provide greater flexibility to the court, the debtor, and creditors, the bill allows the court to permit the debtor to propose another plan if the first plan is not confirmed. In that event the debtor need not, as under current law, commence the case all over again. This could provide savings in time and administrative expenses if a plan is denied confirmation.

## AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 substituted “confirmation of a plan under this chapter” for “confirmation”.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

## SUBCHAPTER III—THE PLAN

**§ 941. Filing of plan**

The debtor shall file a plan for the adjustment of the debtor's debts. If such a plan is not filed with the petition, the debtor shall file such a plan at such later time as the court fixes.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2624.)

## HISTORICAL AND REVISION NOTES

## SENATE REPORT NO. 95-989

Section 941 gives the debtor the exclusive right to propose a plan, and directs that the debtor propose one either with the petition or within such time as the court directs. The section follows section 90(a) of current law [section 410(a) of former title 11].

**§ 942. Modification of plan**

The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of this chapter. After the debtor files a modification, the plan as modified becomes the plan.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2624.)

## HISTORICAL AND REVISION NOTES

## LEGISLATIVE STATEMENTS

The House amendment deletes section 942 of the Senate amendment in favor of incorporating section 1125 by cross-reference. Similarly, the House amendment does not incorporate section 944 or 945 of the Senate amendment since incorporation of several sections in chapter 11 in section 901 is sufficient.

## SENATE REPORT NO. 95-989

Section 942 permits the debtor to modify the plan at any time before confirmation, as does section 90(a) of current law [section 410(a) of former title 11].

**§ 943. Confirmation**

(a) A special tax payer may object to confirmation of a plan.

(b) The court shall confirm the plan if—

(1) the plan complies with the provisions of this title made applicable by sections 103(e)<sup>1</sup> and 901 of this title;

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

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

(4) the debtor is not prohibited by law from taking any action necessary to carry out the plan;

(5) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan each holder of a claim of a kind specified in section 507(a)(2) of this title will receive on account of such claim cash equal to the allowed amount of such claim;

(6) any regulatory or electoral approval necessary under applicable nonbankruptcy law in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval; and

(7) the plan is in the best interests of creditors and is feasible.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2624; Pub. L. 98-353, title III, § 497, July 10, 1984, 98 Stat. 384; Pub. L. 100-597, § 10, Nov. 3, 1988, 102 Stat. 3030; Pub. L. 109-8, title XV, § 1502(a)(6), Apr. 20, 2005, 119 Stat. 216.)

## HISTORICAL AND REVISION NOTES

## LEGISLATIVE STATEMENTS

Section 943(a) of the House amendment makes clear that a special taxpayer may object to confirmation of a plan. Section 943(b) of the House amendment is derived from section 943 of the House bill respecting confirmation of a plan under chapter 9. It must be emphasized that these standards of confirmation are in addition to standards in section 1129 that are made applicable to chapter 9 by section 901 of the House amendment. In particular, if the requirements of sections 1129(a)(8) are not complied with, then the proponent may request application of section 1129(b). The court will then be required to confirm the plan if it complies with the “fair and equitable” test and is in the best interests of creditors. The best interests of creditors test does not mean liquidation value as under chapter XI of the Bankruptcy Act [chapter 11 of former title 11]. In making such a determination, it is expected that the court will be guided by standards set forth in *Kelley v. Everglades Drainage District*, 319 U.S. 415 (1943) [Fla.1943, 63 S.Ct. 1141, 87 L.Ed. 1485, rehearing denied 63 S.Ct. 1444, 320 U.S. 214, 87 L.Ed. 1851, motion denied 64 S.Ct 783, 321 U.S. 754, 88 L.Ed. 1054] and *Fano v. Newport Heights Irrigation Dist.*, 114 F.2d 563 (9th Cir. 1940), as under present law, the bankruptcy court should make findings as detailed as possible to support a conclusion that this test has been met. However, it must be emphasized that un-

<sup>1</sup> See References in Text note below.

like current law, the fair and equitable test under section 1129(b) will not apply if section 1129(a)(8) has been satisfied in addition to the other confirmation standards specified in section 943 and incorporated by reference in section 901 of the House amendment. To the extent that *American United Mutual Life Insurance Co. v. City of Avon Park*, 311 U.S. 138 (1940) [Fla.1940, 61 S.Ct. 157, 85 L.Ed. 91, 136 A.L.R. 860, rehearing denied 61 S.Ct. 395, 311 U.S. 730, 85 L.Ed. 475] and other cases are to the contrary, such cases are overruled to that extent.

## SENATE REPORT NO. 95-989

Section 946 [enacted as section 943] is adopted from current section 94 [section 414 of former title 11]. The test for confirmation is whether or not the plan is fair and equitable and feasible. The fair and equitable test tracts current chapter X [chapter 10 of former title 11] and is known as the strict priority rule. Creditors must be provided, under the plan, the going concern value of their claims. The going concern value contemplates a “comparison of revenues and expenditures taking into account the taxing power and the extent to which tax increases are both necessary and feasible” Municipal Insolvency, supra, at p. 64, and is intended to provide more of a return to creditors than the liquidation value if the city’s assets could be liquidated like those of a private corporation.

## HOUSE REPORT NO. 95-595

In addition to the confirmation requirements incorporated from section 1129 by section 901, this section specifies additional requirements. Paragraph (1) requires compliance with the provisions of the title made applicable in chapter 9 cases. This provision follows section 94(b)(2) [section 414(b)(2) of former title 11]. Paragraph (2) requires compliance with the provisions of chapter 9, as does section 94(b)(2). Paragraph (3) adopts section 94(b)(4), requiring disclosure and reasonableness of all payments to be made in connection with the plan or the case. Paragraph (4), copied from section 92(b)(6) [probably should be “94(b)(6)” which was section 414(b)(6) of former title 11], requires that the debtor not be prohibited by law from taking any action necessary to carry out the plan. Paragraph (5) departs from current law by requiring that administrative expenses be paid in full, but not necessarily in cash. Finally, paragraph (6) requires that the plan be in the best interest of creditors and feasible. The best interest test was deleted in section 94(b)(1) of current chapter IX from previous chapter IX [chapter 9 of former title 11] because it was redundant with the fair and equitable rule. However, this bill proposes a new confirmation standard generally for reorganization, one element of which is the best interest of creditors test; see section 1129(a)(7). In that section, the test is phrased in terms of liquidation of the debtor. Because that is not possible in a municipal case, the test here is phrased in its more traditional form, using the words of art “best interest of creditors.” The best interest of creditors test here is in addition to the financial standards imposed on the plan by sections 1129(a)(8) and 1129(b), just as those provisions are in addition to the comparable best interest test in chapter 11, 11 U.S.C. 1129(a)(7). The feasibility requirement, added in the revision of chapter IX last year, is retained.

## REFERENCES IN TEXT

Section 103(e) of this title, referred to in subsec. (b)(1), was redesignated section 103(f) and a new section 103(e) was added by Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A-394.

## AMENDMENTS

2005—Subsec. (b)(5). Pub. L. 109-8 substituted “507(a)(2)” for “507(a)(1)”.

1988—Subsec. (b)(6), (7). Pub. L. 100-597 added par. (6) and redesignated former par. (6) as (7).

1984—Subsec. (b)(4). Pub. L. 98-353, §497(1), struck out “to be taken” after “necessary”.

Subsec. (b)(5). Pub. L. 98-353, §497(2), substituted provisions requiring the plan to provide payment of cash in an amount equal to the allowed amount of a claim except to the extent that the holder of a particular claim has agreed to different treatment of such claim, for provisions which required the plan to provide for payment of property of a value equal to the allowed amount of such claim except to the extent that the holder of a particular claim has waived such payment on such claim.

## EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-597 effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100-597, set out as a note under section 101 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

## § 944. Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and any creditor, whether or not—

- (1) a proof of such creditor’s claim is filed or deemed filed under section 501 of this title;
- (2) such claim is allowed under section 502 of this title; or
- (3) such creditor has accepted the plan.

(b) Except as provided in subsection (c) of this section, the debtor is discharged from all debts as of the time when—

- (1) the plan is confirmed;
- (2) the debtor deposits any consideration to be distributed under the plan with a disbursing agent appointed by the court; and
- (3) the court has determined—

(A) that any security so deposited will constitute, after distribution, a valid legal obligation of the debtor; and

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

(c) The debtor is not discharged under subsection (b) of this section from any debt—

- (1) excepted from discharge by the plan or order confirming the plan; or
- (2) owed to an entity that, before confirmation of the plan, had neither notice nor actual knowledge of the case.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2624.)

## HISTORICAL AND REVISION NOTES

## SENATE REPORT NO. 95-989

[Section 947] Subsection (a) [enacted as section 944(a)] makes the provisions of a confirmed plan binding on the debtor and creditors. It is derived from section 95(a) of chapter 9 [section 415(a) of former title 11].

Subsections (b) and (c) [enacted as section 944(b) and (c)] provide for the discharge of a municipality. The discharge is essentially the same as that granted under section 95(b) of the Bankruptcy Act [section 415(b) of former title 11].

**§ 945. Continuing jurisdiction and closing of the case**

(a) The court may retain jurisdiction over the case for such period of time as is necessary for the successful implementation of the plan.

(b) Except as provided in subsection (a) of this section, the court shall close the case when administration of the case has been completed.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2625; Pub. L. 98-353, title III, § 498, July 10, 1984, 98 Stat. 384.)

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Section 948 [enacted as section 945] permits the court to retain jurisdiction over the case to ensure successful execution of the plan. The provision is the same as that found in section 96(e) of Chapter 9 of the present Act [section 416(e) of former title 11].

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 substituted “implementation” for “execution”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

**§ 946. Effect of exchange of securities before the date of the filing of the petition**

The exchange of a new security under the plan for a claim covered by the plan, whether such exchange occurred before or after the date of the filing of the petition, does not limit or impair the effectiveness of the plan or of any provision of this chapter. The amount and number specified in section 1126(c) of this title include the amount and number of claims formerly held by a creditor that has participated in any such exchange.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2625.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment deletes section 950 of the Senate amendment as unnecessary. The constitutionality of chapter 9 of the House amendment is beyond doubt.

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[Section 949] This section [enacted as section 946], which follows section 97 of current law [section 417 of former title 11], permits an exchange of a security before the case is filed to constitute an acceptance of the plan if the exchange was under a proposal that later becomes the plan.

**CHAPTER 11—REORGANIZATION**

**SUBCHAPTER I—OFFICERS AND ADMINISTRATION**

- Sec. 1101. Definitions for this chapter.
- 1102. Creditors' and equity security holders' committees.
- 1103. Powers and duties of committees.
- 1104. Appointment of trustee or examiner.
- 1105. Termination of trustee's appointment.
- 1106. Duties of trustee and examiner.
- 1107. Rights, powers, and duties of debtor in possession.
- 1108. Authorization to operate business.

- Sec. 1109. Right to be heard.
- 1110. Aircraft equipment and vessels.
- 1111. Claims and interests.
- 1112. Conversion or dismissal.
- 1113. Rejection of collective bargaining agreements.
- 1114. Payment of insurance benefits to retired employees.
- 1115. Property of the estate.
- 1116. Duties of trustee or debtor in possession in small business cases.

**SUBCHAPTER II—THE PLAN**

- 1121. Who may file a plan.
- 1122. Classification of claims or interests.
- 1123. Contents of plan.
- 1124. Impairment of claims or interests.
- 1125. Postpetition disclosure and solicitation.
- 1126. Acceptance of plan.
- 1127. Modification of plan.
- 1128. Confirmation hearing.
- 1129. Confirmation of plan.

**SUBCHAPTER III—POSTCONFIRMATION MATTERS**

- 1141. Effect of confirmation.
- 1142. Implementation of plan.
- 1143. Distribution.
- 1144. Revocation of an order of confirmation.
- 1145. Exemption from securities laws.
- 1146. Special tax provisions.

**SUBCHAPTER IV—RAILROAD REORGANIZATION**

- 1161. Inapplicability of other sections.
- 1162. Definition.
- 1163. Appointment of trustee.
- 1164. Right to be heard.
- 1165. Protection of the public interest.
- 1166. Effect of subtitle IV of title 49 and of Federal, State, or local regulations.
- 1167. Collective bargaining agreements.
- 1168. Rolling stock equipment.
- 1169. Effect of rejection of lease of railroad line.
- 1170. Abandonment of railroad line.
- 1171. Priority claims.
- 1172. Contents of plan.
- 1173. Confirmation of plan.
- 1174. Liquidation.

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Chapter 11 of the House amendment is derived in large part from chapter 11 as contained in the House bill. Unlike chapter 11 of the Senate amendment, chapter 11 of the House amendment does not represent an extension of chapter X of current law [chapter 10 of former title 11] or any other chapter of the Bankruptcy Act [former title 11]. Rather chapter 11 of the House amendment takes a new approach consolidating subjects dealt with under chapters VIII, X, XI, and XII of the Bankruptcy Act [chapters 8, 10, 11, and 12 of former title 11]. The new consolidated chapter 11 contains no special procedure for companies with public debt or equity security holders. Instead, factors such as the standard to be applied to solicitation of acceptances of a plan of reorganization are left to be determined by the court on a case-by-case basis. In order to insure that adequate investigation of the debtor is conducted to determine fraud or wrongdoing on the part of present management, an examiner is required to be appointed in all cases in which the debtor's fixed, liquidated, and unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed \$5 million. This should adequately represent the needs of public security holders in most cases. However, in addition, section 1109 of the House amendment enables both the Securities and Exchange Commission and any party in interest who is creditor, equity security holder, indenture trustee, or any committee representing