

113TH CONGRESS
2D SESSION

H. R. 5133

To amend chapter 9 of title 11 of the United States Code to improve protections for employees and retirees in municipal bankruptcies.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2014

Mr. CONYERS (for himself, Mr. JOHNSON of Georgia, Ms. JACKSON LEE, and Mr. COHEN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 9 of title 11 of the United States Code to improve protections for employees and retirees in municipal bankruptcies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Employees
5 and Retirees in Municipal Bankruptcies Act of 2014”.

1 **SEC. 2. DETERMINATION OF MUNICIPALITY ELIGIBILITY**
2 **TO BE A DEBTOR UNDER CHAPTER 9 OF**
3 **TITLE 11 OF THE UNITED STATES CODE.**

4 (a) REQUIREMENTS.—Section 109(c) of title 11,
5 United States Code, is amended—

6 (1) in paragraph (5)—

7 (A) in subparagraph (B) by inserting
8 “(but with respect to creditors who are employ-
9 ees or retirees of such entity, the term ‘good
10 faith’ shall have the same meaning as such
11 term has in the National Labor Relations Act)”
12 after “creditors” the first place it appears,

13 (B) in subparagraph (C) by striking “im-
14 practicable” and inserting “impossible”, and

15 (C) in subparagraph (D) by striking the
16 period at the end and inserting a semicolon,
17 and

18 (2) by adding at the end the following:

19 “and establishes by clear and convincing evidence that it
20 satisfies the requirements of this subsection.”.

21 (b) REPEAL OF LIMITATION ON AUTHORITY TO
22 ISSUE STAY PENDING APPEAL.—The first sentence of
23 section 921(e) of title 11, United States Code, is amended
24 by striking “; nor” and all that follows through “appeal”.

1 (c) DIRECT IMMEDIATE APPEAL TO COURT OF AP-
2 PEALS.—Section 158(d) of title 28, United States Code,
3 is amended by adding at the end the following:

4 “(3) The appropriate court of appeals shall have ju-
5 risdiction of an appeal of a determination made by a bank-
6 ruptcy court under section 109(c) of title 11 that an entity
7 is eligible to be a debtor under chapter 9 of title 11 and
8 shall consider and determine such appeal on an expedited
9 basis. Such appeal shall be a direct appeal to be reviewed
10 and heard de novo on the merits. The doctrine of equitable
11 mootness shall not apply to appeals under this para-
12 graph.”.

13 **SEC. 3. PROTECTING EMPLOYEES AND RETIREES.**

14 Section 943 of title 11, United States Code, is
15 amended—

16 (1) in subsection (b)—

17 (A) in paragraph (6) by striking “and” at
18 the end,

19 (B) by redesignating paragraph (7) as
20 paragraph (8), and

21 (C) by inserting after paragraph (6) the
22 following:

23 “(7) in a case in which the plan modifies a col-
24 lective bargaining agreement, or modifies a retiree
25 benefit, including an accrued pension, retiree health,

1 or other retirement benefit otherwise protected by
2 State or municipal law, or a retiree benefit as de-
3 fined in section 1114(a), in any manner otherwise
4 prohibited by nonbankruptcy law, the authorized
5 representative of the employees covered by such
6 agreement, or the authorized representative of indi-
7 viduals receiving the retiree benefits, as the case
8 may be, agrees to the plan; and”, and

9 (2) by adding at the end the following:

10 “(c)(1) For purposes of this section, and except as
11 provided in paragraphs (2) and (3), the authorized rep-
12 resentative of those individuals receiving any retiree ben-
13 efit covered by any collective bargaining agreement shall
14 be the labor organization that is signatory to such agree-
15 ment unless such organization no longer represents active
16 employees in the bargaining unit the retirees belonged to
17 when they were active employees. In such case, the labor
18 organization that currently represents active employees in
19 that bargaining unit shall be the authorized representative
20 of such individuals.

21 “(2) Paragraph (1) shall not apply if—

22 “(A) such labor organization elects not to serve
23 as the authorized representative of such individuals;
24 or

1 “(B) the court, upon a motion by a party in in-
2 terest, after notice and hearing, determines that dif-
3 ferent representation of such individuals is appro-
4 prium.

5 “(3) In a case in which the labor organization re-
6 ferred to in paragraph (2) elects not to serve as the au-
7 thorized representative of those individuals receiving any
8 retiree benefits covered by any collective bargaining agree-
9 ment to which that labor organization is signatory, or in
10 a case where the court, pursuant to paragraph (2) finds
11 different representation of such individuals appropriate,
12 the court, upon a motion by a party in interest, and after
13 notice and a hearing, shall order the United States trustee
14 to appoint a committee of retired employees if the debtor
15 seeks to modify or not pay the retiree benefits or if the
16 court otherwise determines that it is appropriate, from
17 among such individuals, to serve as the authorized rep-
18 resentative of such individuals under this section. The
19 party requesting such relief has the burden of proof.

20 “(d) For retired employees not covered by a collective
21 bargaining agreement, the court, upon a motion by a party
22 in interest, and after notice and a hearing, shall issue an
23 order requiring the United States trustee to appoint a
24 committee of retired employees if the debtor seeks to mod-
25 ify or not pay the retiree benefits, or if the court otherwise

1 determines that it is appropriate, to serve as the author-
2 ized representative under this section of such employees.
3 Such party has the burden of proof with respect to such
4 motion.

5 “(e) To comply with an order issued under subsection
6 (c)(3) or (d), notwithstanding any other provision of this
7 chapter, the United States trustee shall appoint, on a pro-
8 portional basis per capita based on organization member-
9 ship, individuals chosen from among members of organiza-
10 tions that represent the retirees with respect to whom such
11 order is entered.

12 “(f) Members of a committee appointed under sub-
13 section (c)(3) or (d) may not recommend modification of
14 any right to a retiree benefit unless not less than $\frac{2}{3}$ of
15 such members vote in support of such recommendation.”.

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