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The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278, S. 2328)

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Summary

Representative Duffy introduced H.R. 5278, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), on May 18, 2016. This bill is a revised version of H.R. 4900, introduced by Representative Duffy on April 12, 2016. The House Committee on Natural Resources marked up H.R. 5278 on May 25, 2016. Amendments include technical corrections and extensions of certain studies on the Puerto Rico government and economy. The major provisions of the bill were unaffected. The House passed an amended version of H.R. 5278, which is organized into seven titles, on June 9, 2016, (297-127). The Senate approved the measure (S. 2328) on June 29, 2016 (68-30). On June 30, 2016, President Obama signed the bill into law.

The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278) would create a structure for exercising federal oversight over the fiscal affairs of territories. PROMESA would establish an Oversight Board with broad powers of budgetary and financial control over Puerto Rico. PROMESA also would create procedures for adjusting debts accumulated by the Puerto Rico government and its instrumentalities and potentially for debts of other territories. Finally, PROMESA would expedite approvals of key energy projects and other "critical projects" in Puerto Rico.

The current version of PROMESA (H.R. 5278) differs from the previous version (H.R. 4900) in several ways, although most sections are similar or identical. Many changes clarified or modified existing provisions, although some provisions were added or altered and others were dropped. For instance, H.R. 4900 would have allowed other territories, through normal political processes, to request setup of an Oversight Board.

The structure and appointment process for the board was modified to allow the President to select one board member at his sole discretion. The process by which congressional leaders would submit lists of potential board members was specified in more detail. H.R. 5278 also specifies that the board could only begin to establish bylaws and take other major actions once all members were appointed. In H.R. 4900, by contrast, the board could act in certain ways, such as setting a schedule for formulation of Fiscal Plans, once four members were appointed. The powers of the board were also modified in some ways and the independence of the board was strengthened.

Other changes include a new provision that empowers the Chief Justice of the U.S. Supreme Court to appoint a presiding judge for Title III debt adjustment cases in which the territory is a party, while the chief judge of the applicable Court of Appeals would appoint the presiding judge for cases involving only the instrumentalities of the territory. The relationship between Title VI collective action procedures to reach debt modification agreements and the Title III debt adjustment process was also modified. A provision to allow a transfer of certain federally controlled parts of Vieques Island to Commonwealth control was dropped. The time period that the Puerto Rico governor could propose, subject to board approval, to set a training wage below the usual federal minimum wage but above a $4.25/hour floor was shortened from five to four years, or when the Oversight Board terminates, if sooner. A public comment period provision was added to the Title V expedited approval process. Mandates for reports from a congressional task force and the Government Accountability Office (GAO) were also added.

The report presents a brief description of Puerto Rico, its relationship with the federal government, and its fiscal challenges. A short overview of the bill, along with a comparison with previous legislation involving control boards, follows. The body of the report provides a section-by-section description of H.R. 5278. **Appendix A** gives a background on Puerto Rico's fiscal

situation and aspects relevant to H.R. 4900. **Appendix B** contains a summary of provisions of the federal Bankruptcy Code cited in H.R. 5278.

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This report provides a summary and analysis of H.R. 5278, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which Representative Duffy introduced on May 18, 2016.[1] This bill is a revised version of H.R. 4900, which Representative Duffy had introduced on April 12, 2016.[2] The House Committee on Natural Resources had circulated two discussion drafts in late March 2016 similar in structure to H.R. 4900 and H.R. 5278.[3]

The House Committee on Natural Resources marked up H.R. 5278 on May 25, 2016.[4] Amendments agreed to include technical corrections and extensions of certain studies on the Puerto Rico government and economy, among others. The major provisions of the bill, however, were unaffected.[5] Most sections are similar or identical. Many changes clarified or modified existing provisions, although some new provisions were added and other provisions were dropped. The measure is organized into seven titles, which are summarized below.

The House Rules Committee issued a rule (H.Res. 770) that made consideration of eight amendments in order.[6] The House passed an amended version of H.R. 5278 on June 9, 2016, by a 297-127 vote. Seven amendments were agreed to, but a proposal to strike a minimum wage provision (§403) was not. According to that rule, the text of the measure was inserted into an unrelated Senate-passed bill (S. 2328) upon House passage. The Senate then concurred with the House amendment to S. 2328 on June 29, 2016, by a 68-30 vote, thus approving PROMESA. The President signed the bill on June 30, 2016.

A brief description of Puerto Rico, its relationship with the federal government, and its fiscal challenges is presented below. A short overview of the bill, along with a comparison with previous legislation involving control boards, follows. The body of the report provides a section-by-section description of H.R. 5278. **Appendix A** also describes other measures introduced to address Puerto Rico's fiscal condition. **Appendix A** gives a background on Puerto Rico's fiscal situation and aspects relevant to H.R. 4900. **Appendix B** contains a summary of provisions of the federal Bankruptcy Code cited in H.R. 5278.

Brief Overview

The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278) would create a structure for exercising federal oversight over the fiscal affairs of territories. PROMESA would establish an Oversight Board with broad powers of budgetary and financial control over Puerto Rico. PROMESA also would create procedures for adjusting debts accumulated by the Puerto Rico government and its instrumentalities. PROMESA would also expedite approvals of key energy projects and other "critical projects" in Puerto Rico.

[1] The word "promesa" means promise in Spanish.

[2] An earlier congressional distribution memorandum that analyzed H.R. 4900 is available to congressional clients from the Coordinator upon request.

[3] One discussion draft was released on March 24, 2016, and the second was released on March 29, 2016.

[4] U.S. Congress, House Committee on Natural Resources, Puerto Rico Oversight, Management, and Economic Stability Act, 114th Cong., 2nd sess., June 3, 2016, H.Rept. 114-602 (Washington: GPO, 2016).

[5] H.R. 5278 was referred to the House Committees on Natural Resources as well as the committees on Judiciary; Education and the Workforce; and Small Business. The latter committees could have considered provisions falling within each of their jurisdictions.

[6] U.S. Congress, House Committee on Rules, Providing for Consideration of the Bill (H.R. 5278) to Establish an Oversight Board to Assist the Government of Puerto Rico, 114th Cong., 2nd sess., June 8, 2016, H.Rept. 114-610 (Washington: GPO, 2016).

Changes in H.R. 5278 Compared to H.R. 4900

The current version of PROMESA (H.R. 5278) differs from the previous version (H.R. 4900) in several ways. The structure and appointment process for the board was modified to allow the President to select one board member at his sole discretion. The process for nominating and appointing board members was modified and specified in greater detail.

The powers of the board were also modified in some ways. For example, H.R. 5278 specifies that the board could only begin to establish bylaws and take other major actions once all members were appointed. In H.R. 4900, by contrast, the board could take certain actions, such as setting a schedule for formulation of Fiscal Plans, once four members were appointed (§201). Other changes would strengthen the independence of the board. The board was also empowered to investigate how Puerto Rico government bonds were sold to small investors.[7]

Other changes include a new provision that empowers the Chief Justice of the U.S. Supreme Court to appoint a presiding judge to conduct Title III debt adjustment cases in which the territory is a party. For cases involving only the instrumentalities of the territory, the chief judge of the applicable Court of Appeals would appoint the presiding judge (§308). The relationship between Title VI collective action procedures to reach debt modification agreements and the Title III debt adjustment process was also modified. A provision to allow a transfer of certain federally controlled parts of Vieques Island to Commonwealth control was dropped. The time limit on a provision to allow a training wage below the usual federal minimum wage was changed from five to four years, or until the Oversight Board terminated. A provision (§407) was added to bar inter-debtor transactions that would violate applicable law.

H.R. 5278 also included provisions to study fiscal issues in federal territories. Mandates for a report from a congressional task force on economic growth in Puerto Rico and a report from the Government Accountability Office (GAO) on small business programs in Puerto Rico were added. A mandate for another GAO report on debt levels of territorial governments and of debt policy for subnational governments was added during the House Natural Resources Committee markup.[8] Title VII, also added during that markup, expresses the sense of Congress that any solution to Puerto Rico's fiscal and economic crisis should include permanent, pro-growth fiscal reforms.[9]

Seven amendments were agreed to during House deliberations.[10] An amendment offered by Representative Bishop, Chairman of the Committee on Natural Resources, made technical corrections; dropped a provision that would have allowed other territories to request establishment of an Oversight Board;[11] accelerated deadlines for appointment of Oversight Board members; modified the provision of funding for the Oversight Board; modified treatment of certain preexisting agreements with creditors; and would empower the Oversight Board to rescind laws enacted by the Puerto Rico government from May 4, 2016, until all members of the board were appointed. The latter provision would allow the board to rescind the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act (PREMFRA; Act 21 of

[7] That provision was added by an amendment offered by Representative Graves and Representative Beyer at the House Committee on Natural Resources markup.

[8] The mandate for that GAO report was added by an amendment offered by Representative Graves and Representative Polis.

[9] Title VII was added by an amendment offered by Representative MacArthur.

[10] For text of amendments see U.S. Congress, House Committee on Rules, Providing for Consideration of the Bill (H.R. 5278) to Establish an Oversight Board to Assist the Government of Puerto Rico, 114th Cong., 2nd sess., June 8, 2016, H.Rept. 114-610 (Washington: GPO, 2016).

[11] H.R. 4900 would have allowed other territories to request establishment of an Oversight Board through normal political processes. Inclusion of that provision appeared to reflect constitutional issues involving uniformity. The judicial remedy for such potential uniformity issues, according to Section 3 of H.R. 5278, would be to extend relevant provisions to other territories.

2016).[12] An amendment offered by Representative Graves stressed the need to "preserve and maintain federally funded mass transportation assets," such as San Juan's Tren Urbano. An amendment offered by Representative Byrne would require GAO to submit regular reports on debt levels and other fiscal information of territory governments.

CBO Cost Estimate

The Congressional Budget Office (CBO) judged that the Oversight Board that H.R. 5278 would establish should be considered part of the federal budget according to the "unified budget concept" set forth in the 1967 President's Commission on Budget Concepts.[13] CBO estimated that operating the Oversight Board for Puerto Rico would cost $370 million over the period FY2017-FY2022. Section 107 of H.R. 5278 mandates that the territory's government designate a dedicated funding source for the board, which (under the unified budget concept) would increase federal revenues by an estimated $370 million. The net effect on the federal budget, therefore, is estimated to be zero.

Oversight Board

Title I of PROMESA would set up a Financial Management and Oversight Board with broad fiscal powers with seven voting members, along with the Puerto Rico governor (or designee) who would serve as an ex officio non-voting member. The President, as noted above, would appoint one member at his sole discretion. Congressional leaders would then each submit lists of candidates. The Speaker would submit two lists, with one restricted to candidates residing or doing business in Puerto Rico. The President would then choose members from those lists, although he could choose other candidates before September 1, 2016.[14] Those candidates would be subject to Senate confirmation.

Title II charges the Oversight Board with powers to approve, for territory governments or instrumentalities of those governments (such as public corporations or municipal governments):

- Fiscal Plans;
- Budgets;
- Voluntary agreements with bondholders;
- Debt restructuring plans; and
- Critical projects eligible for expedited permitting processes.

The Oversight Board in some ways resembles the District of Columbia Financial Responsibility and Management Assistance Authority, more commonly known as the DC Control Board.[15] The Oversight Board that PROMESA would establish, however, differs in many important aspects from the structure and

[12] See **Appendix A** for details.

[13] CBO, "H.R. 5278: Puerto Rico Oversight, Management, and Economic Stability Act, As ordered reported by the House Committee on Natural Resources on May 25, 2016," June 3, 2016; https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr5278.pdf. Also see President's Commission on Budget Concepts, *Report*, (Washington, DC; October 1967), which stated (at p. 25) that "The budget should, as a general rule, be comprehensive of the full range of federal activities. Borderline agencies and transactions should be included in the budget unless there are exceptionally persuasive reasons for exclusion."

[14] This deadline was changed from September 30, 2016, by an amendment offered by Representative Bishop, Chairman of the Committee on Natural Resources, during House deliberations.

[15] The DC Control Board was set up by the District of Columbia Financial Responsibility and Management Assistance Act of 1995 (P.L. 104-8). The DC Control Board is currently dormant.

responsibilities of the DC Control Board, which are spelled out in detail in the section-by-section analysis.

Adjustment of Debts

Title III of PROMESA would set up a process for adjustment of debts by a territorial government or an instrumentality of a territorial government. Eligibility for the restructuring process would first require approval of at least five of the seven voting members of the Oversight Board to issue a "restructuring certificate."[16] Under terms of H.R. 5278, the Oversight Board would take the place of a debtor government or instrumentality in the proceedings to adjust debts. Thus, the roles of filing the petition and proposing a plan would be taken by the Oversight Board, not the debtor.

The debt restructuring process, in general, is set up to ensure fair and equitable treatment of creditors. The treatment of public sector pensions is not addressed explicitly, although pensions are typically included when governments undergo debt restructuring processes.[17] The Oversight Board may order a study of pension systems if it determines that they are underfunded.

Title VI would create a process for creditor collective actions, which resemble collective actions clauses (CACs) that are a common feature of sovereign debt contracts. CACs typically allow some subset of creditors holding a supermajority of the face value of a given debt category to enter into an agreement that would bind remaining creditors within that category. Title VI would require the Oversight Board, in consultation with the Puerto Rico government and its subunits that have outstanding debts, to set up voting pools for the CAC process. Separate pools, in general, would correspond to the relative priority or security arrangements of bondholders. Triggering the Title VI CAC provision for a voting pool would require a two-thirds vote (by value of eligible debt), in which holders of at least half of the eligible debt participated. Creditors in those voting pools not assenting to a modification agreement would retain certain rights, which might be affected by a subsequent Title III debt restructuring. Creditors agreeing to a Title VI CAC provision, in general, would then avoid Title III debt restructuring.

Other Provisions in H.R. 5278

Title IV of PROMESA includes several diverse provisions. Puerto Rico's right to determine its future political status is affirmed (§402). The Governor, with board approval, could reduce the minimum wage for most workers in Puerto Rico under the age of 25 for a four-year period (§403). Title IV also includes an automatic stay on litigation (§405). H.R. 5278 lacks a provision in H.R. 4900 that would have allowed a transfer of certain parts of Vieques Island from federal to Commonwealth control.[18]

Title V provides for accelerated processes for the review and permitting of infrastructure projects designated as "Critical Projects." A Revitalization Coordinator would be appointed by the Puerto Rico Governor from a list provided by the Oversight Board. The Revitalization Coordinator would oversee the selection and review of Critical Projects, in consultation with the Governor. H.R. 5278 includes a new provision for a public comment period. The Revitalization Coordinator would have to respond to those comments before proceeding with a project. A previous Puerto Rico Governor, Luis Fortuño Burset, invoked similar authorities in 2010 and 2011.[19] Some contend that Puerto Rico has had difficulty in

[16] By contrast, a municipality seeking protection under chapter 9 of the Bankruptcy Code would require approval by a state government and a federal judge.

[17] Section 201 requires that a Fiscal Plan "provide adequate funding."

[18] Issues related to Vieques Island can be addressed by David M. Bearden, Specialist in Environmental Policy.

[19] See Executive Order OE-2010-034, July 19, 2010: http://app.estado.gobierno.pr/Ordenes_Ejecutivas/2010/OE-2010-034.pdf; and Preamble of Act 32-2011, March 14, 2011; http://www.oslpr.org/download/en/2011/A-0032-2011.pdf.

completing major infrastructure projects in the past.[20] Others argued that environmental consequences of those projects were not evaluated with sufficient care.[21]

Section-by-Section Summary and Analysis of H.R. 5278

Basic Legal Information

The first seven sections set out basic legal information regarding H.R. 5278.

Section 1: Short Title[22]

Section 1 of H.R. 5278 (hereinafter "bill") provides that this bill may be cited as the "Puerto Rico Oversight, Management, and Economic Stability Act" or "PROMESA." The bill contains seven titles: Title I (Establishment and Organization of Oversight Board), Title II (Responsibilities of Oversight Board), Title III (Adjustments of Debts), Title IV (Miscellaneous Provisions), Title V (Puerto Rico Infrastructure Revitalization), Title VI (Creditor Collective Action); and Title VII (Sense of Congress Regarding Permanent, Pro-Growth Fiscal Reforms).

Section 2: Effective Date

Section 2 provides that the bill's provisions shall take effect on the date of enactment, except that Title III (Adjustment of Debts) shall apply to cases commenced under that title on or after the date of enactment, and Title III and IV (Miscellaneous Provisions) shall apply with respect to debts, claims, and liens created before, on, or after such date.

Section 3: Severability

Section 3 contains a severability clause, which provides that if any provision of the bill is held invalid, the remainder of the bill or any application thereof will not be affected, except that Title III is not severable from Titles I or II, and Titles I or II are not severable from Title III. If any provision of the bill is held invalid on the ground that the provision fails to treat similarly situated territories uniformly, then the court shall, in granting a remedy, order that the provision of the bill or the application thereof be extended to any other similarly situated territory, provided that the legislature of that territory adopts a resolution signed by the territory's governor requesting the establishment and organization of a Financial Oversight and Management Board pursuant to Section 101.

Sections 4 and 5: Supremacy and Definitions

Section 4 provides that the provisions of the bill will prevail over any general or specific provision of territorial law, state law, or regulation that is inconsistent with the bill, and Section 5 provides definitions for various terms used in the bill.[23]

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[20] For instance, a Puerto Rico Electric Power Authority (PREPA) document claimed that "Instability of board and management due to political cycles has complicated long-term planning required for key infrastructure projects that would have diversified PREPA's fuel mix and facilitated environmental compliance." Others contend that planning for some of those projects did not evaluate potential environmental consequences sufficiently carefully. See PREPA, PREPA's Transformation: A Path to Sustainability, June 1, 2015; http://www.gdb-pur.com/documents/PREPARecoveryPlan6-1-15.pdf.

[21] Carmelo Ruiz-Marrero, "Puerto Rico Divided Over Energy Future." *Guardian*, January 26, 2012; http://www.theguardian.com/environment/2012/jan/26/puerto-rico-clean-energy.

[22] Summary of Sections 1 through 7 was authored by Kenneth Thomas, Legislative Attorney.

[23] Definitions relevant to other sections of the bill are discussed elsewhere in this report.

Sections 6 and 7: Placements and Compliance with Federal Laws

Section 6 indicates where the bill language should be placed in the United States Code, while Section 7 provides that nothing in the bill should be construed as impairing or relieving a territorial government or instrumentality from compliance with federal laws or requirements or territorial laws and requirements implementing a federally authorized or federally delegated program, protecting the health, safety, or environment of persons in such territory.

Title I: Establishment and Organization of Oversight Board[24]

Title I would create an oversight board for Puerto Rico and would allow for the creation of such boards in other territories.[25]

Section 101: Territory Financial Oversight and Management Board

Section 101 of this title would establish a Financial Oversight and Management Board (Oversight Board) for the Commonwealth of Puerto Rico and would allow for the creation of such oversight boards in other U.S. territories only if enabling legislation is passed by the legislative body of that territory and is signed by the territory's governor. The act identifies Article IV, Section 3 of the Constitution as granting Congress plenary authority and power to "dispose of and make all needful Rules and Regulations respecting the Territory.... " An oversight board established under H.R. 5278 would be an entity of the territorial government and not an agency, department, or instrumentality of the U.S. government. The bill would grant to an oversight board, established in accordance with its provisions, the power to designate any territorial instrumentality[26] as subject to the provisions of the act.

References to the Oversight Board below generally mean the board that H.R. 5278 would establish for Puerto Rico, although most provisions would also apply to oversight boards that might be set up in the future for other territories.

The bill would require the governor, at the discretion of the Oversight Board, to include the budget of any covered territorial instrumentality subject to legislative approval in the Territory Budget. The bill would also require the governor to submit to the Oversight Board monthly and quarterly reports regarding a covered territorial instrumentality. However, the bill would exclude any covered territorial instrumentality from inclusion in the Territory Budget if the applicable territory law does not require legislative approval of the budget of the covered territorial instrumentality.

The bill would require the governor of the territory to include certain territorial instrumentalities, whose budget is subject to review and approval by the territory's legislature, in its Fiscal Plan. Under provisions of the bill, the Oversight Board could require, at its discretion, the governor of a territory to develop separate budgets and fiscal plans for territorial instrumentalities whose budget is not subject to legislative approval. The Oversight Board, at its discretion, also may exclude any territorial instrumentality from requirements of this bill.

Term and Appointments

Under provisions of the bill, the members of the Board would serve concurrent three-year terms, but could continue to serve beyond the three-year period until a successor has been appointed. An oversight

[24] Analysis of Title I was authored by Eugene Boyd, Analyst in Federalism & Economic Development Policy.

[25] The possibility of creating a process for establishing oversight boards for other territories, according to discussion at the May 25, 2016, markup, may reflect concern that a lack of uniformity might present constitutional issues.

[26] Section 5(19)(A) of the bill defines territorial instrumentality as "any political subdivision, public agency, instrumentality, or public corporation of a territory, and this term should be broadly construed to effectuate the purposes of this Act."

board created under the provisions of the bill would be comprised of seven (7) voting members with six (6) selected by the President from a list of recommendations submitted by House and Senate leadership. The President, if acting with sufficient promptness, could also select names not on those lists, although those nominees would be subject to Senate confirmation. If the President appointed an individual from a list, Senate confirmation would not be required.

- The Speaker of the House would submit two separate lists of at least three (3) names. One of the lists shall be comprised of individuals whose primary residence or primary business is in Puerto Rico.
- The Senate majority leader would submit the names of at least four (4) individuals.
- The minority leader of the House would submit the names of three (3) individuals; and
- The minority leader of the Senate would submit the names of at least three (3) individuals.[27]

The President would select two individuals from the Senate majority leader's list and one individual from each of the other lists. The President could also name members not on those lists, although those appointments would have to be made with the advice and consent of the Senate. If all appointments were not made by September 1, 2016, however, then the President would be mandated to choose nominees to fill remaining vacancies from appropriate lists by September 15, 2016.[28]

The governor of the territory or his designee shall serve as an eighth non-voting (*ex officio*) member of the Oversight Board. Thus, the governor could participate in deliberations, but would not vote on decisions of the board. The bill would allow the appointed members of the board, at their discretion, to conduct the business of the Oversight Board in executive session effectively barring the public and the governor from participating in such sessions.

The Oversight Board would select a chair from among the seven voting members. Members of the Oversight Board would serve without compensation, although they may be reimbursed for reasonable and necessary expenses incurred in the performance of their duties. The President could only remove a member for cause. The Oversight Board would be charged with developing and approving its own bylaws, rules, and procedures needed to carry out its responsibilities under the bill. In order to meet this directive, the Oversight Board may hire professionals to assist in the process. The adopted bylaws, rules, and procedures are to be submitted to the governor, territorial legislature, the President, and Congress and are to be considered public documents. The bill would require an affirmative vote of the majority of the members of the Oversight Board in order to (1) approve a fiscal plan under Section 201 of the bill; (2) approve a budget under Section 202 of the bill; (3) cause legislative acts not to be enforced under Section

[27] By contrast, the act (P.L. 104-8) that created the District of Columbia control board (formally known as the Financial Responsibility and Management Assistance Authority) required that the control board be comprised of five members appointed by the President after consulting with the chairs of the appropriation committees of the House and Senate and the Chair of the Committee on Government Reform and Oversight of the House of Representatives and the Chair of the Senate Governmental Affairs Committee. The President, in appointing members of the control board, was required to designate one of the five appointees, chair of the control board. Members of the initially appointed control board served three-year terms. Subsequently appointed board members served staggered terms with one member serving a one-year term, two members serving two-year terms, and two members serving three-year terms. The act creating the District's control board also included expanded responsibilities for the office of inspector general. The act established the office as an independent agency, responsible for identifying issues of waste, fraud and abuse, and included the powers to issue subpoenas and to refer findings of investigations and audits for criminal prosecution. H.R. 5278 includes no similar provision.

[28] An amendment offered by Representative Bishop during House deliberations changed the first deadline from September 30, 2016, and the second deadline from December 1, 2016.

204 of the bill; or (4) approve or disapprove an infrastructure project as a Critical Project as defined by Section 503 of the bill.

Qualifications of Board Members

The bill would require that the President appoint individuals who meet the following two qualifications. Each must

- have expertise in finance, municipal bond markets, management, law, or the organization and operations of business or government; and
- not be a candidate for elected office nor an elected or appointed official, nor an employee of the territorial government, nor a former elected official of the territorial government.[29]

The latter qualification would prohibit a voting member of the Oversight Board from being a candidate for elected office, as an elected or an appointed official could be perceived as being in conflict with the provision designating the governor, or his designee, as an *ex officio* member of the Oversight Board. Although nonvoting, the governor, or his designee, could, at the discretion of the Oversight Board, participate in the deliberations of the board when the board is not in executive session.

Section 102: Location of Oversight Board

The bill would require that oversight boards, including the board to be established for Puerto Rico, maintain an office in the territory and such additional offices as it deems appropriate. The bill also would allow the board to request the use of the facilities of any department or agency of the United States. The head of each federal agency may set the terms and conditions allowing for the use of the agency's facilities by the Oversight Board.

Section 103: Executive Director and Staff of Oversight Board

The Chair of the Board, with the consent of Board members, would be charged with hiring an Executive Director (ED). The Board would be responsible for establishing salary compensation for the ED. The bill does not establish a ceiling or limits on the amount of compensation to be paid the ED. The bill conveys to the ED the power to hire and fix the pay of additional personnel employed by the Board. However, no one hired by the ED may be paid at a rate greater than the salary paid to the ED. The bill specifically identifies the position of Revitalization Coordinator, as identified in Title V, among the staff to be hired by the governor based on nominations submitted by the Oversight Board.

Section 104: Powers of the Board

The bill would exempt the Board and its staff from the laws of Puerto Rico governing procurement and allow for the detailing of employees of federal agencies and agencies of the Puerto Rico government to the Board on a reimbursable or non-reimbursable basis. The Board would have the power to

- hold hearings and seek testimony;

[29] The DC Control Board Act required that control board members: (1) maintain a primary residence or a primary place of business in the District of Columbia; (2) possessed expertise in finance, management, law, or the organization and operations of business or government; (3) did not provide goods or services to the government of the District of Columbia; and (4) was not an officer or employee of the District of Columbia.

- obtain information, including written and electronic documents and data from federal agencies (with the consent of the agency head) and agencies and entities of the government of Puerto Rico;
- accept, use, and dispose of gifts, bequests, and donations of real and personal property for the purpose of aiding the work of the board;[30]
- issue subpoenas;
- request administrative support services from the U.S. General Services Administration (GSA);
- enter into contracts;
- enforce laws of Puerto Rico prohibiting public sector employees from participating in a labor strike or lockout;
- initiate civil actions to carry out its responsibilities; and
- investigate how Puerto Rico government bonds were sold to small investors.[31]

The bill would allow the Oversight Board to obtain information on the nature and aggregate amount of claims held by each creditor or organized group of creditors from those creditors seeking to participate in voluntary negotiations regarding debt restructuring.

Most importantly, the bill would grant an Oversight Board, at its sole discretion, the power to certify voluntary debt restructuring agreements entered into between the territory or territorial instrumentality and holders of its debt instruments. Upon review of such an agreement, the Oversight Board must certify that the agreement provides for a sustainable level of debt and is in conformance with the territory or territorial instrumentality's certified Fiscal Plan. The act would grandfather in voluntary agreements executed before its enactment.

Title I also includes a provision that would make it a misdemeanor to knowingly provide false and misleading information, including projections and estimates to the Board, or to refuse or fail to take any action ordered by the Board. Such violations are subject to a $1,000 fine or one-year imprisonment or both, in addition to administrative disciplinary actions, which may include suspension from duty without pay or removal from office by order of the Governor or the Board. Should such a violation occur by an officer or employee of the government of Puerto Rico, the Governor would be required to report all pertinent facts to the Board, including a statement of actions taken.

Section 105: Exemption from Liability for Claims

Section 105 would shield the board and its employees from liability claims.

Section 106: Treatment of Actions Arising from Act

Section 106 would mandate that any legal actions against the board are to be brought before the U.S. District Court for the covered territory or the U.S. District Court for the District of Hawaii in instances where the covered territory does not have a district court. The bill would provide expedited judicial review by the courts, including the Supreme Court, of legal challenges to the act or the actions of an Oversight Board. The bill would prohibit any court orders providing declaratory judgment or injunctive relief against an Oversight Board from taking effect during the time the court challenge is pending before

[30] The bill would require the Oversight Board to publicly disclose the identity of donors within 30 days of the receipt of a gift, bequest, or donation. P.L. 104-8, creating the District of Columbia control board, included similar language allowing for the acceptance of gifts, bequest, and donations; however, P.L. 104-8 did not require the public disclosure of the identities of donors.

[31] This provision was added during the House Committee on Natural Resources markup.

a court, or the period during which an appeal could be filed, or before a court may render a decision on appeal, except for court orders intended to remedy constitutional violations. The bill would exempt from judicial challenges Oversight Board certifications of voluntary debt restructuring agreements.

Section 107: Funding of Board Operations

Section 107 of the bill would require the Oversight Board to submit an annual budget to the President, the House Committee on Natural Resources, the Senate Committee on Energy and Natural Resources, and the legislature and governor of Puerto Rico or any covered territory. The bill would allow the Oversight Board to use its powers to ensure that there are sufficient funds to cover its operations. At its discretion, the Oversight Board could submit a budget to the governor and legislature of Puerto Rico. The bill would require the government of Puerto Rico, within 30 days of enactment of the bill, to designate a dedicated funding source for the operations of the Oversight Board. The source of funding for the operations of the Oversight Board, once initially approved, would not be subject to subsequent legislative appropriations.[32]

Unlike the act creating the District of Columbia control board, which established target dates for the submission of proposed budgets to the President for transmittal to Congress for its approval, H.R. 5278 would convey to an Oversight Board for Puerto Rico the "sole and exclusive discretion" in determining its annual budget.

Section 108: Autonomy of the Oversight Board

Section 108 of the bill would prohibit the governor or the legislature of Puerto Rico from enacting any laws or taking any actions that would interfere with or attempt to nullify the actions or activities of the Oversight Board.

Section 109: Ethics

Section 109 of the bill would subject members of an Oversight Board and its staff to federal conflict of interest and financial disclosure requirements under 18 U.S.C. §208, which is the principal conflict of interest law for all executive branch officials. However, it is unclear if these provisions, as well as the financial disclosure provisions of the Ethics in Government Act of 1978, would apply to an oversight board since such a board would not be a federal agency and its members would not be federal officials for these purposes.

Title II: Responsibilities of Oversight Board[33]

This title lays out the process for the submission, approval, and certification of fiscal plans and budgets for Puerto Rico and its territorial instrumentalities.

Section 201: Approval of Fiscal Plans

The Oversight Board, upon the selection and appointment of all of its members and the chair of the board, shall submit to the Governor of Puerto Rico a notice delineating a schedule for the development, submission, approval, and certification of fiscal plans, including revisions to fiscal plans that had been

[32] This provision is a significant departure from the provisions governing funding of operations of the District of Columbia control board. P.L. 104-8 required the District's control board to submit an annual budget for its operations to the President for inclusion in the District's annual budget, which must be approved by Congress, by a date certain (May1) prior to the first day the fiscal year. In the case of the FY1995 budget, the year in which the measure was enacted, no later than July 15, 1995.

[33] Analysis of Title II was authored by Eugene Boyd, Analyst in Federalism & Economic Development Policy.

previously certified. Although the Oversight Board may consult with the Governor regarding the schedule, it is the sole responsibility of the Oversight Board. Under provisions of the bill, a fiscal plan developed by the Oversight Board would cover, at minimum, a period of five fiscal years and would focus on improving the territory's access to capital markets. Section 201(b) identifies 14 specific components and objectives a fiscal plan should address.[34]

The bill outlines three means by which a fiscal plan may be certified as compliant with the 14 requirements outlined in Section 201(b) of the bill. They include the following:

- **A fiscal plan submitted by the governor and approved by the Oversight Board.** If the fiscal plan meets the requirements outlined in the bill, as determined by the Oversight Board, then the board shall certify the fiscal plan as approved. If the fiscal plan is found to be deficient then the Oversight Board could issue a "notice of violation" which includes recommendations to correct the deficiencies.
- **A fiscal plan developed and approved by the Oversight Board.** Should the governor fail to take corrective action to address deficiencies identified by the Oversight Board within the timeframe specified by the Oversight Board, then the Oversight Board, at its sole discretion, could develop and submit a fiscal plan together with a compliance certificate to the governor and legislature of Puerto Rico and the plan would be considered approved.
- **Fiscal plan jointly developed by the Oversight Board and the Governor.** The bill would allow the Oversight Board and Governor to work collaboratively to develop a consensus fiscal plan.

Section 202: Approval of Budgets

Section 202 would mandate that the Oversight Board, upon the selection and appointment of all of its members and the chair, submit to the Governor of Puerto Rico a notice delineating a schedule for the development, submission, approval, and certification of proposed budgets to be submitted by the Governor and legislature for the Oversight Board approval. The Oversight Board, at its discretion, would be responsible for determining the number of fiscal years to be covered by the budget submission.

The Oversight Board would be responsible for submitting revenue estimates for the period covered by the proposed budgets to the Governor and legislature for use by the Governor in developing budgets to be submitted for review and approval to the Oversight Board.[35] The bill outlines three means by which a proposed budget could be approved.

- **Budget Submission by Governor**. If the Oversight Board determines that the proposed budget is compliant with the applicable fiscal plan then the bill would allow the Oversight Board to approve the proposed budget and submit it to the legislature for approval. If the proposed budget is found to be non-compliant with the applicable fiscal plan then the bill would allow the Oversight Board to issue a "notice of violation" which would include recommendations to correct the deficiencies.

[34] This includes providing realistic revenue and expenditure estimates; funding essential public services, sufficiently funding public pension systems, eliminating structural deficits and providing sustainable debt service; improving financial controls and oversight; investing in capital projects that promote economic growth; adopting and implementing management reforms recommended by the oversight board; ensuring that assets of the covered territory or covered territorial instrumentality are not misused; and that a fiscal plan respect the lawful priorities and lawful liens in effect before the enactment of the bill.

[35] Under P.L. 104-8, it is the responsibility of the Chief Financial Officer to develop and submit revenue estimates to the mayor to assist in the formula of a budget.

- **Oversight Board Budget**. Should the governor fail to submit a compliant budget then the bill would permit the Oversight Board to develop and submit to the Governor and legislature a revised compliant budget for the territory, and only to the Governor in the case of a territorial instrumentality.
- **Budget Adopted by Legislature.** The bill would direct the territory's legislature to adopt a proposed budget for submission to the Oversight Board. If the proposed budget is found to be non-compliant with the applicable fiscal plan then the Oversight Board may issue a "notice of violation" which includes recommendations to correct the deficiencies.
- **Oversight Board Budget**. Should the legislature fail to submit a compliant budget then the bill would allow the Oversight Board to develop and submit to the Governor and legislature a revised compliant budget for the territory.
- **Certification of Budget as Compliant.** Under provisions of the bill, if the Governor and legislature approve a territorial budget that is compliant, or if the Governor develops a budget for a territorial instrumentality that is compliant with the applicable fiscal plan then the Oversight Board could issue a certificate of compliance. If the Governor and legislature fail to develop and approve a territorial budget that would be compliant, then the Oversight Board could develop and submit a territorial budget to the Governor and legislature and such budget would be deemed approved by the Governor and the legislature. In the case of a territorial instrumentality, only the Governor could submit a proposed budget for review by the Oversight Board.
- **Budget jointly developed by the Oversight Board, the Governor, and Legislature**. The bill would allow the Oversight Board, the Governor, and the legislature to work collaboratively to develop a consensus budget for the territorial government. In the case of a territorial instrumentality, the bill would allow the Oversight Board and the Governor to work collaboratively to develop a budget.

Section 203: Effect of Finding of Noncompliance with Budget

Section 203 of the bill would establish requirements intended to identify and address inconsistencies in the projected and actual revenues and expenditures. The bill would require the Governor to submit quarterly financial reports to the Oversight Board that would identify actual cash revenues, cash expenditures, and cash flows as compared to projected cash revenues, cash expenditures, and cash flows identified in approved and certified budget. Inconsistencies in the actual and projected revenues and expenditures, if unexplained or inconsistent with the approved projections, could require the territorial government to take corrective action. If the territorial government fails to take corrective action then the Oversight Board would be required to notify House and Senate committees of jurisdiction (House Committee on Natural Resources and Senate Committee on Energy and Natural Resources), in addition to the Governor and legislature. Under provisions of the bill, the Board could direct the territorial government to take corrective action. If it failed to do so, the Oversight Board could take remedial actions designed to address the inconsistency, including reductions in nondebt expenditures, hiring freezes, and prohibiting the territorial government or territorial instrumentality from entering into any contract or financial transaction not previously approved by the board.

Section 204: Review of Activities to Ensure Compliance with Fiscal Plans

Section 204 of the bill would grant the Oversight Board the power to review any proposed legislation and all enacted laws passed by the territorial government for consistency with the budget and fiscal plan. If an enacted law is found to be inconsistent with or will interfere with the enactment of the fiscal plan and budget then the Oversight Board may take action to prevent the enforcement or application of the law.

The bill would require the Oversight Board to maintain a registry of contracts and would grant the Oversight Board the power to review all contracts and rules for compliance with the approved fiscal plan. The bill would allow the Oversight Board to take any action necessary to ensure that any contract, rule, executive order, or regulation will not adversely affect compliance with the fiscal plan. In addition, the bill would prohibit a covered territory or covered territorial instrumentality from taking any action or enacting any law that would permit the transfer of funds or assets outside the normal course of business during the period following enactment of the bill but prior to the appointment of all Oversight Board members. Any action taken by the Governor or legislature authorizing the movement of assets during the interim period between the enactment of the bill and the appointment of all the members of the Oversight Board may be subject to review and reversal by the Oversight Board. The Oversight Board may not take any action that would impede the territory's ability to comply with court or administrative orders with respect to carrying out a federal program or implementing territorial laws that execute federal requirements and standards.

Section 205: Recommendations on Financial Stability and Management Responsibility

Section 205 would permit the Oversight Board to submit to the Governor and legislature recommendations intended to improve the delivery of services, to ensure compliance with the fiscal plan, and to promote financial stability and economic growth. If the territorial government rejects the management reform recommendations of the Oversight Board then the Governor or the legislature would be required to submit a statement to the President and Congress explaining why the recommendation was rejected.

Section 206: Oversight Board Responsibilities Related to Restructuring

Section 206 would mandate that the Oversight Board review and approve debt restructuring agreements, provided that the agreements meet certain requirements. The bill would also require that at least five of the six voting members of the Oversight Board approve a debt restructuring agreement.

Section 207: Oversight Board Authority Related to Debt Issuance[36]

Section 207 would bar the government of Puerto Rico from issuing or guaranteeing debt, or taking other actions to restructure debts without the prior approval of the Oversight Board, as long as that body remains in operation. The Oversight Board would not be empowered to borrow on behalf of the Puerto Rico government.[37] The power to "contract and to authorize the contracting of debts," according to Article VI, Section 2 of the Puerto Rico Constitution, is to be exercised by the Puerto Rico Legislature.[38]

Section 208: Required Reports

Section 208 of the bill would require the Oversight Board to submit annual reports to Congress, the President, the Governor, and the legislature describing (1) the progress made in meeting the objectives of this act; (2) assistance provided to the territorial government; and (3) recommendations that would assist the territorial government in complying with the fiscal plan for the year. In addition, the bill would require

[36] This section authored by D. Andrew Austin, Analyst in Economic Policy.

[37] The March 29, 2016, House Natural Resources Committee discussion draft included a bracketed (i.e., not agreed to) provision that would have empowered the Oversight Board to borrow on behalf of the territorial government.

[38] Constitution of the Commonwealth of Puerto Rico; http://welcome.topuertorico.org/constitu.shtml. For more on legal and constitutional issues related to public debts of Puerto Rico, see Sergio Marxuach, "The Endgame: An Analysis of Puerto Rico's Debt Structure and the Arguments in Favor of Chapter 9," Center for a New Economy working paper, November 30, 2015.

the Governor to submit to the Oversight Board, within six months of its establishment, a report documenting all existing tax abatement agreements. The Oversight Board would also issue quarterly reports, if feasible, on cash flows available to pay debt service affected by a stay or moratorium.

Section 209: Termination of Oversight Board

The Oversight Board would terminate when the Oversight Board finds that the territorial government has

- access to short-term and long-term credit markets at reasonable rates of interest; and
- achieved balanced budgets for four consecutive years.

Section 210: No Full Faith and Credit of the United States[39]

Section 210 states that the "full faith and credit" of the U.S. government is not pledged to pay any obligation issued by a covered territory government or instrumentality; nor is the U.S. government responsible or liable for any such payment. If the United States were to be held liable for some claim, payment would be subject to appropriation. A provision was added during the House Natural Resources Committee markup to emphasize that the act would not authorize payment of federal funds for any liability of a territorial government or territorial instrumentality.[40]

Section 211: Pensions[41]

Section 211 of H.R. 5278 would require the Oversight Board to conduct an analysis of any territorial pension system that the Oversight Board determines to be materially underfunded. The analysis would be conducted by an independent actuary. The analysis would include (1) a study of the pension plan's benefit obligations and funding strategy over 30 years; (2) sources of funding to cover future benefit obligations; (3) a review of existing benefits and their sustainability; (4) a review of the system's legal structure and operational arrangements; and (5) any other studies of the pension system that the Oversight Board deems necessary. Additionally, the bill would require the of future benefit obligation to be measured using an appropriate discount rate, as determined by the Oversight Board.[42]

Section 212: Intervention in Litigation[43]

Section 212 provides that the Oversight Board may intervene in any litigation filed against the territorial government, although the section is not intended to provide an independent basis for injunctive relief. A similar provision was included as Section 408 in H.R. 4900.

[39] This section authored by D. Andrew Austin, Analyst in Economic Policy.

[40] This provision was added by an amendment offered by Representative Graves.

[41] This section authored by John J. Topoleski, Analyst in Income Security.

[42] The Commonwealth of Puerto Rico and its instrumentalities operate several pension funds for its employees: The Employees Retirement System (for government employees); the Puerto Rico System of Annuities and Pensions for Teachers; the Commonwealth Judiciary Retirement System; the Retirement System of the University of Puerto Rico; and the Employees Retirement System of the Puerto Rico Electric Power Authority.

[43] This section authored by Kenneth Thomas, Legislative Attorney.

Title III: Adjustments of Debts[44]

Although not included in the U.S. Bankruptcy Code[45] (Bankruptcy Code), the provisions of this title are, in many ways, similar to the chapters 9 and 11, two of the operative chapters of the Bankruptcy Code. Chapter 9 of the Bankruptcy Code governs adjustments of municipal debts. Chapter 11 governs reorganization of businesses and, in rare cases, certain individuals. Generally, such adjustment or reorganization is effectuated through a "plan" proposed by the debtor,[46] voted on by creditors, and confirmed by the court. Title III of PROMESA includes a provision for a plan of adjustment to be proposed by the debtor, voted on by the creditors, and confirmed by the court.

Section 301: Applicability of Other Laws; Definitions

Subsection (a) would make many sections of the Bankruptcy Code applicable to the process of adjusting debts under PROMESA. As a general matter, the Bankruptcy Code, in chapters 1, 3, and 5, establishes general procedures that are applicable to the operative chapters. The Bankruptcy Code sections made applicable to Title III of PROMESA are listed and described in **Appendix B**.

Section 302: Who May Be a Debtor

Neither a territory nor its instrumentalities would be eligible to be a debtor unless the territory had either requested that an Oversight Board be established or had had it established for it under Section 101 of PROMESA. The section uses the term "instrumentality" rather than "municipality"—the term used in the Bankruptcy Code. As used in the Bankruptcy Code, "municipality" includes an "instrumentality" as well as a political subdivision and a public agency.[47]

Section 303: Reservation of Territorial Power to Control Territory and Territorial Instrumentalities

Section 303 is very similar to Section 903 of the Bankruptcy Code. It states that, except for some limitations in Titles I and II of PROMESA, Title III would not impair or limit the territory's power to control itself or its instrumentalities. Similar to the Bankruptcy Code's Section 903, this section would prohibit a territorial law that would bind a creditor to a method of composition of indebtedness unless the creditor consents to it, but only to the extent that the proposed modification prohibits the payment of principal or interest by an entity not described in Section 109(b)(2) of the Bankruptcy Code. These entities are generally domestic insurance companies, banks, savings banks, cooperative banks, and similar institutions.[48]

The bill's third subsection would preempt any "unlawful executive orders" altering, amending, or modifying the rights of those holding any debt of the territory or territorial instrumentality, or diverting funds from a territorial instrumentality to either the territory or another territorial instrumentality.

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[44] This section authored by Carol A. Pettit, Legislative Attorney.

[45] 11 U.S.C. §101 *et seq.*

[46] In chapter 11 cases, creditors may propose a plan if the debtor has failed to do so within a prescribed period of time. Creditors do not have this option in chapter 9 or under Title III of PROMESA.

[47] 11 U.S.C. §101(40).

[48] It is currently unclear whether the Government Development Bank would be considered to be an entity described in Section 109(b)(2) of the Bankruptcy Code.

Section 304: Petition and Proceedings Relating to Petition

A voluntary case would begin when the Oversight Board filed a petition with the appropriate district court. The court may dismiss a petition, after notice and hearing, to which an objection has been filed. However, such dismissal cannot occur during the first 120 days after the petition has been filed. The commencement of the case would constitute an order for relief. An appeal from an order of relief would not authorize a court to delay any proceeding in the case nor to order a stay of the proceeding pending the appeal. Any debt incurred that was authorized by the court would remain valid even after a reversal on appeal.

This section would provide for joint filing of both petitions and plans as well as joint administration of affiliated cases when those cases are filed separately. Additionally, the section clarifies that PROMESA cannot be construed to permit discharge of various obligations arising under federal laws, including those related to the environment and public health or safety as well as to territorial laws enforcing federal regulations. Finally, the section clarifies that nothing in Section 304 would prevent claim holders from voting on or consenting to a proposed modification of their claim under title VI of PROMESA.

Section 305: Limitation on Jurisdiction and Powers of Court

Generally, the court would not be able to interfere in any way with any of the debtor's political or governmental powers; property or revenues; or use and enjoyment of any income-producing property unless the Oversight Board either consented to such interference or allowed it within the plan proposed by the Oversight Board. However, limitations in titles I and II of PROMESA may override this limitation.

Section 306: Jurisdiction

District courts would have original and exclusive jurisdiction of a case under Title III except:

- As provided in paragraph (2), which gives the district courts original but *not* exclusive jurisdiction of all civil proceedings arising under this title or arising in or related to cases under this title; and
- As provided in paragraph (b), which provides that the district court shall have exclusive jurisdiction of all property, wherever located, of the debtor as of the commencement of the case.

The section also would provide for removal, remand, and transfer of claims or cases,[49] as well as appeal[50] and reallocation of court staff to assure proper case management.[51]

Section 307: Venue

Generally, venue would be in the district court for the location of the territory or the covered territorial instrumentality. If the territory does not have a district court, venue would be proper in the U.S. District Court for the District of Hawaii. However, if the Oversight Board were to determine that those venues will not provide sufficiently for proper case management, venue would be proper in the jurisdiction outside the territory in which the Oversight Board maintained an office.

[49] H.R. 5278, §306(d).

[50] *Id.* at §306(e).

[51] *Id.* at §306(f).

Section 308: Selection of Presiding Judge

For those cases in which the debtor is a territory, the Chief Justice of the U.S. Supreme Court would designate a district court judge to conduct the case. The chief judge of the court of appeals for the circuit would appoint a district court judge in other cases—other than those in which there is a motion for joint administration with the territory.

Section 309: Abstention

This section clarifies that a district court, in the interests of justice, may abstain from hearing a proceeding related to a case under title III.

Section 310: Applicable Rules of Procedure

The Federal Rules of Bankruptcy Procedure would apply to any case under Title III as well as to all related civil proceedings.

Section 311: Leases

Leases would not be treated as executory contracts or unexpired leases under Sections 365 or 502(b)(6) of the Bankruptcy Code simply because the lease is subject to termination if the debtor fails to appropriate rent.

Section 312: Filing of Plan of Adjustment

The Oversight Board would be the only party allowed to file a plan of adjustment, but only after the Oversight Board had issued certification. The court would set the time when the debtor would be required to file the plan if it was not filed with the petition.

Section 313: Modification of Plan

Section 313 of the bill describes the conditions under which a plan may be modified.[52]

Section 314: Confirmation

This section closely mirrors Section 943 of the Bankruptcy Code.

A "special tax payer"[53] would be able to object to the confirmation of a plan. However, the court would have to confirm the plan if it complied with provisions of the Bankruptcy Code (made applicable here by Section 301 of Title III of PROMESA) and the provisions of Title III of PROMESA; the debtor would not be prohibited by law from taking any action necessary to carry out the plan; each holder of a priority claim for administrative costs and fees or charges assessed against the estate would receive full payment of the allowed amount of the claim unless the holder had agreed to different treatment; all legislative, regulatory, or electoral approval legally necessary to carry out any provision in the plan had been obtained or such provision was expressly conditioned on obtaining such approval; the plan was feasible and in the best interests of the creditors; the plan was consistent with the applicable Fiscal Plan certified by the

[52] Notably, Section 301(a) of PROMESA makes Sections 942 and 1127(d) of the Bankruptcy Code, which also deal with modifications to a plan, applicable to Title III of PROMESA, and there is no indication of how these various provisions will be reconciled.

[53] "Special tax payer" is defined in 11 U.S.C. §902(3), which is applicable via §301 of Title III of PROMESA.

Oversight Board under Title II of PROMESA; and all amounts owed by the debtor or any person for services or expenses in the case or incident to the plan were reasonable and had been fully disclosed.

In considering whether a plan was feasible and in the best interest of creditors, the court would be required to consider whether other remedies available under the constitution and non-bankruptcy laws of the territory would provide greater recovery for creditors.

In cases where there was only one class of impaired creditors, the court would be permitted to confirm a plan even if that class had not accepted the plan. The general requirements for confirmation[54] would continue to apply, including the requirements that the plan is fair and equitable and does not discriminate unfairly with respect to the impaired class.

Section 315: Role and Capacity of Oversight Board

The Oversight Board would be the representative of the debtor. Generally, the Oversight Board could take any action necessary on behalf of the debtor to prosecute the debtor's case, including filing a petition, submitting or modifying a plan of adjustment, and submitting filings with the court.

Section 316: Compensation of Professionals

The court would be allowed to authorize reasonable payments to various professionals connected to a Title III proceeding.

Section 317: Interim Compensation

This section would provide the authority for the court to allow payments to professionals connected to a Title III proceeding while the case is pending.

Title IV: Miscellaneous Provisions

Section 401: Rules of Construction[55]

Section 401 provides that nothing in the bill is intended, or may be construed, to limit the authority of Congress over the territories; to authorize the issuance of subpoenas by the Oversight Board to judicial officers or employees of territorial courts pursuant to Section 104(f) of the bill; to alter, amend, or abrogate the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States; or to alter, amend, or abrogate the treaties of cession regarding certain islands of American Samoa.

Section 402: Right of Puerto Rico to Determine Its Future Political Status[56]

As with H.R. 4900, Section 402 of H.R. 5278 states that "nothing in this Act shall be interpreted to restrict Puerto Rico's right to determine its future political status." This includes a future plebiscite (popular vote), which Congress funded in the FY2014 omnibus appropriations law.[57] As noted above,

[54] These general requirements would not include those in Section 1129(a)(8) & (10), which require acceptance by either all of the classes of impaired creditors or at least one such class.

[55] This section authored by Kenneth Thomas, Legislative Attorney.

[56] This section authored by R. Sam Garrett, Specialist in American National Government.

[57] P.L. 113-76; 128 Stat. 61.

Section 401 of the bill (and of H.R. 4900) also contains status provisions related to American Samoa and the Commonwealth of the Northern Mariana Islands (CNMI).

Section 403: First Minimum Wage in Puerto Rico[58]

Section 403 would amend the Fair Labor Standards Act of 1938 (29 U.S.C. 206(g)) to allow the Puerto Rico Governor, with the approval of the Oversight Board, to set a minimum wage less than the federal minimum wage of $7.25 per hour for workers who are under the age of 25 and initially employed after enactment of the act for a period of four years or until the termination of the Oversight Board.[59] H.R. 4900 would have allowed for a five-year period with a minimum wage of $4.25 per hour for workers who are under the age of 25. Puerto Rico enacted a minimum wage for women in 1919, although enforcement and coverage of that standard were uneven.[60] The Fair Labor Standards Act of 1938 (FLSA; 5 Stat. 1062) initially applied to Puerto Rico, but was soon supplanted by a system of Special Industry Committees that set industry-specific minimum wage levels.[61] In the mid-1970s, Congress amended FLSA to bring Puerto Rico wage standards closer to mainland levels.[62] In 1989, the special industry committee system was eliminated and a step-by-step transition process was established to bring minimum wage levels to federally established levels by April 1, 1996.[63] A report authored by three former International Monetary Fund (IMF) economists argued that the federal minimum wage was high relative to the local wage level and presented more of a binding constraint on employment than on the mainland.[64] In September 2015, the Working Group for the Fiscal and Economic Recovery of Puerto Rico proposed exempting workers aged 25 and younger from future increases in the federal minimum wage for a 10-year period.[65]

Section 404: Application of Regulation to Puerto Rico[66]

Section 404 would prevent the application in Puerto Rico of the Department of Labor's proposed July 6, 2015, overtime rule and any final rule that is subsequently issued until the Comptroller General completes a report that examines the economic conditions of the Commonwealth, and the Secretary of Labor indicates in a written determination to Congress that the application of the rule in Puerto Rico would not have a negative impact on its economy.[67] The Comptroller General would have to complete the report and transmit it to Congress within two years of PROMESA's enactment. Section 404 also expresses the sense of Congress that the Bureau of the Census should conduct a study to determine the feasibility of

[58] This section authored by D. Andrew Austin, Analyst in Economic Policy.

[59] The provision would those covered under 29 U.S.C. 206(a)), which are employees "engaged in commerce or the production of goods for commerce" or "employed in an enterprise engaged in commerce or in the production of goods for commerce."

[60] Lindley D. Clark, "Minimum-Wage Laws of the United States," *Monthly Labor Review*, vol. 12, no. 3, March 1921, pp. 1-20. Also see David Neumark and William L. Wascher, *Minimum Wages* (MIT Press: Cambridge, MA, 2008).

[61] See archived CRS Report RL30235, *Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act*, by William G. Whittaker.

[62] Fair Labor Standards Amendments of 1974 (P.L. 93-259) and 1977 (P.L. 95-151).

[63] P.L. 101-157, Section 4. See Whittaker, op. cit.

[64] Anne O. Krueger, Ranjit Teja, and Andrew Wolfe, *Puerto Rico: A Way Forward*, June 29, 2015, p. 6.

[65] Working Group for the Fiscal and Economic Recovery of Puerto Rico, *Puerto Rico Fiscal and Economic Growth Plan*, September 9, 2015, p. 23; http://www.bgfpr.com/documents/PuertoRicoFiscalandEconomicGrowthPlan9.9.15.pdf.

[66] This section authored by Jon Shimabukuro, Legislative Attorney.

[67] *See* Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 80 Fed. Reg. 38,516 (July 6, 2015) (to be codified at 29 C.F.R. pt. 541). The Department of Labor's final overtime rule was published on May 23, 2016. *See* Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 81 Fed. Reg. 32,391 (May 23, 2016) (to be codified at 29 C.F.R. pt. 541).

expanding data collection to include Puerto Rico and the other U.S. territories in the Current Population Survey.

The Department of Labor's new overtime rule implements the Fair Labor Standards Act's exemption for bona fide executive, administrative, professional, computer, and outside sales employees. The new rule raises the salary threshold that must be met before an employee may be considered exempt from the statute's minimum wage and overtime requirements. Under the agency's old rule, an employee would have to be compensated on a salary basis at a rate of not less than $455 a week and perform specified duties to be deemed exempt from the minimum wage and overtime requirements. The new rule raises the salary threshold to not less than $913 a week.

Section 405: Automatic Stay upon Enactment[68]

Unlike the automatic stay that is part of the Bankruptcy Code (and applicable to Title III as specified in Section 301), this stay would take effect upon enactment of PROMESA. In general, it would prevent

- the commencement or continuation of an action or proceeding against the Government of Puerto Rico[69] that was or could have been commenced before the enactment of PROMESA, or to recover a Liability Claim against the Government of Puerto Rico that arose before the enactment of PROMESA;[70]
- enforcement of a judgment obtained before the enactment of PROMESA against the Government of Puerto Rico or its property;
- any act to obtain property of or from the Government of Puerto Rico or to exercise control over property of the Government of Puerto Rico;
- any act to create, perfect, or enforce any lien against property of the Government of Puerto Rico;
- any act to create, perfect, or enforce against property of the Government of Puerto Rico any lien to the extent that the lien secures a Liability Claim that arose before the enactment of PROMESA;
- any act to collect, assess, or recover a Liability Claim that arose before PROMESA's enactment; and
- setoff of any debt owed to the Government of Puerto Rico that arose before PROMESA's enactment against any Liability Claim against the Government of Puerto Rico.[71]

Generally,[72] the stay would continue until the earlier of

- February 15, 2017, or six months after the Oversight Board is established for Puerto Rico, whichever is later; or

[68] This section authored by Carol A. Pettit, Legislative Attorney.

[69] The term "Government of Puerto Rico" includes all of Puerto Rico's instrumentalities. Section 5(11) of PROMESA. Additionally, for purposes of Section 405, the term includes the directors, officers, and employees of the Government of Puerto Rico who are acting in their official capacities on behalf of the Government of Puerto Rico, as well as the Oversight Board, and its directors, officers, and employees when acting in their official capacities on behalf of the Oversight board.

[70] Although Section 405 provides that the stay will be effective upon enactment of PROMESA, Section 405(c) provides that establishing an Oversight Board for the Commonwealth of Puerto Rico under Title I, Section 101 of PROMESA does not act as a stay of the continuation of an action against the Government of Puerto Rico that began on or before December 18, 2015.

[71] The bill does not specify that the Liability Claim against the Government of Puerto Rico must have arisen before PROMESA's enactment; however, other provisions of this section require that.

[72] Relief from the stay may be granted under Section 405(e)-(g).

- the date on which a case would be filed by or on behalf of the government of the Commonwealth of Puerto Rico or its applicable instrumentalities with respect to the entity filing a case.[73]

However, if either the Oversight Board or the district court confirms that additional time is needed to complete a voluntary process under Title VI of the bill, the first date above[74] would be extended by 60 days if the extension is triggered by the district court or 75 days if triggered by the Oversight Board.

PROMESA would provide that the stay may not be treated as a default under existing contracts or laws. However, to the extent feasible—as determined by the Oversight Board—the Government of Puerto Rico would be required to make timely interest payments on outstanding debts throughout the duration of the stay. This section would also make void any act in violation of the stay.

The stay would not act to prevent any holder of a liability claim from voting on or consenting to any proposed modification of such claim under Title VI of PROMESA.

Section 406: Purchases by Territory Governments

Only federal agencies, organizations, and entities authorized to make purchases through the General Services Administration (GSA) are eligible to do so. Presently, the government of Puerto Rico is not authorized to make purchases using GSA's federal supply schedules (schedules),[75] or its other acquisition programs.[76]

Section 406 would amend 48 U.S.C. §1469e by, among other things, adding the government of Puerto Rico to the list of territory governments authorized to make purchases through GSA.[77]

Section 407: Protection from Inter-Debtor Transfers[78]

While the Oversight Board is in operation, territorial instrumentalities would be barred from transferring property encumbered by liens or security interests in violation of applicable law. A transferee would be liable for the value of the property. A creditor could bring suit in U.S. District Court in Puerto Rico once the stay imposed by Section 405 expired or was lifted. No similar provision was included in H.R. 4900. Inclusion of this provision follows shortly after a bond insurer sued the Puerto Rico Highways and Transportation Authority after the latter extended a toll concession agreement for 10 years.[79] The Puerto

[73] Although the stay provided by PROMESA's Section 405 would end for a particular entity when a case was filed under Title III on behalf of that entity, the Bankruptcy Code's automatic stay provision, 11 U.S.C. §362, would go into effect immediately upon the filing of the petition. That section of the Bankruptcy Code is incorporated into Title III in Section 301 and is substantially similar to the stay described in PROMESA's Section 405.

[74] The later of February 15, 2017, or six months after the Oversight Board is established for Puerto Rico.

[75] GSA presently has 34 schedules. Each schedule is akin to an online catalogue and focuses on a particular category of goods or services (or both). Examples of schedules include schedule 23 V, Automotive Superstore; 58 I, Professional Audio/Video Telemetry/Tracking, Recording/Reproducing and Signal Data Solutions; 71, Furniture; 76, Publication Media; and 81 I B, Shipping, Packaging and Packing Supplies. The entire list of schedules is available at http://www.gsaelibrary.gsa.gov/ElibMain/scheduleList.do.

[76] Other GSA acquisition programs include GSA Global Supply, Assisted Acquisition, and a variety of technology products and services. U.S. General Services Administration, "How to Buy Through GSA," at http://www.gsa.gov/portal/category/26760.

[77] Section 406 also includes the governments of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands.

[78] Summaries of Sections 407, 408, 409, 410, and 411 were written by D. Andrew Austin, Analyst in Economic Policy.

[79] Amended Complaint, Ambac Assurance Corp. v. P.R. Highways and Transp. Auth., 16-cv-1893 (JAG) (U.S.D.P.R. May 16, 2016).

Rico government stated that it used initial proceeds of $100 million to pay for essential services "in consideration of the complicated situation of liquidity that confronts the Commonwealth."[80]

Section 408: GAO Report on Small Business Administration Programs in Puerto Rico

Section 408 would mandate the Government Accountability Office (GAO) to report to House and Senate committees with jurisdiction over small business policy within 180 days after enactment. The report would examine Administration contracting activities, including HUBZone programs, as well as any provisions in federal law that might hinder those activities.[81] No similar provision was included in H.R. 4900.

Section 409: Congressional Task Force on Economic Growth in Puerto Rico

Section 409 would establish a Congressional Task Force on Economic Growth in Puerto Rico. The Task Force would have eight members. Two members would be appointed by the Speaker of the House in coordination with the chairman of the House Natural Resources Committee. Two members would be appointed by the House minority leader in coordination with the ranking Member of the House Natural Resources Committee. Two members would be appointed by the Senate majority leader in coordination with the chairman of the Senate Energy and Natural Resources Committee, and the remaining two members would be appointed by the Senate minority leader in coordination with the ranking Member of the Senate Energy and Natural Resources Committee. Appointments would be made within 15 days after enactment.

The Task Force would be charged with issuing a report by December 31, 2016, that would examine

- the relation of federal laws and economic growth in Puerto Rico;
- economic consequences of a Puerto Rico Department of Health Regulation 346,[82] which relates to natural products, natural supplements, and dietary supplements;[83] and would
- recommend changes to federal laws to spur sustainable, long-term economic growth;
- recommend changes to federal law and programs that would reduce child poverty;[84] and
- include additional information as deemed necessary.

The Task Force would also provide Congress with a status update during the first half of September 2016.

The Task Force would be encouraged to reflect the shared views of all eight members to the greatest extent practicable. The Task Force would consult with the Puerto Rico legislature, the Puerto Rico Department of Economic Development and Commerce, and private sector participants. The Task Force would terminate once its report was issued. No similar provision was included in H.R. 4900.

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[80] See P.R. Executive Order OE-2016-017, May 17, 2016, p. 4; http://estado.pr.gov/es/ordenes-ejecutivas/.

[81] For a description of the HUBZone program, see CRS Report R41268, *Small Business Administration HUBZone Program*, by Robert Jay Dilger.

[82] Puerto Rico Department of Health, Administrative Order 346; http://www.salud.gov.pr/Estadisticas-Registros-y-Publicaciones/rdenes%20Administrativas/346-PARA%20ESTABLECER%20LA%20POLITICA%20PUBLICA%20EN%20TORNO%20A%20LA%20DISTRIBUCION%20DE%20PRODUCTOS%20NATURALES%20O%20SUPLEMENTOS%20NUTRICIONALES.pdf. That regulation was issued under authorities granted in the Puerto Rico Pharmacy Act (Act 247 of 2004); http://www.oslpr.org/download/en/2004/0247.pdf.

[83] This provision was added by an amendment offered by Representative Zinke.

[84] This provision was added by an amendment offered by Representative Jolly and Representative Curbelo.

Several reports and studies have examined Puerto Rico's economic development since the island encountered a sharp slowdown of economic growth in the early 1970s. In 1974, then Governor Rafael Hernández Colón appointed a Committee to Study Puerto Rico's Finances headed by Yale economist James Tobin.[85] The U.S. Department of Commerce coordinated an economic study of the Puerto Rico economy that issued a report in December 1979.[86] The Brookings Institution and the San Juan-based Center for a New Economy together produced a set of papers on Puerto Rico's economy in 2006.[87] The Federal Reserve Bank of New York has issued a 2012 report and a 2014 update on the competitiveness of Puerto Rico's economy.[88] The current Puerto Rico government commissioned a report by three former International Monetary Fund (IMF) economists that described Puerto Rico's fiscal situation, along with issues presented by problems in its budget execution, public administration, and tax structure.[89]

Section 410: Report

Section 410 would task the Government Accountability Office (GAO) to develop and submit a report to the House Committee on Natural Resources and to the Senate Committee on Energy and Natural Resources describing debt accumulations by territorial governments. The report would also assess the financial consequences of policies of those governments and would recommend actions to avert future indebtedness of subnational governments. As noted above, Puerto Rico's fiscal policies have been studied before.

Section 411: Report on Territorial Debt

Section 411 would require GAO to submit reports on debts of territorial governments and other fiscal data. The initial report would be due within a year of enactment and later reports would be issued at least every two years.[90]

Puerto Rico, Guam, and the U.S. Virgin Islands once participated in the U.S. Census Bureau's Census of Governments.[91] The Census of Governments, which takes place in years ending in "2" or "7", provides extensive data on government organization and finances. The Census Bureau also conducts a Survey of Governments in other years.

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[85] Committee to Study Puerto Rico's Finances, *Report to the Governor*, December 11, 1975; http://rafaelhernandezcolon.org/Libros%20Digitales/Report%20to%20the%20Governor/REPORTGOVERNOR.html.

[86] U.S. Department of Commerce, *Economic Study of Puerto Rico: Report to the President*, December 1979; https://catalog.hathitrust.org/Record/007413166.

[87] Susan M. Collins, Barry P. Bosworth, and Miguel A. Soto-Class, eds., *The Economy of Puerto Rico: Restoring Growth* (Brookings: Washington, DC, 2006).

[88] Federal Reserve Bank of New York, *Report on the Competitiveness of Puerto Rico's Economy*, 2012. Available in English at http://www.newyorkfed.org/regional/puertorico/index.html. Federal Reserve Bank of New York, *An Update on the Competitiveness of Puerto Rico's Economy*, July 31, 2014; https://www.newyorkfed.org/medialibrary/media/outreach-and-education/puerto-rico/2014/Puerto-Rico-Report-2014.pdf.

[89] Anne O. Krueger, Ranjit Teja, and Andrew Wolfe, *Puerto Rico: A Way Forward*, June 29, 2015, http://recend.apextech.netdna-cdn.com/docs/editor/Informe%20Krueger.pdf.

[90] This section was added by an amendment offered by Representative Byrne during House deliberations.

[91] For instance, see U.S. Department of Commerce, Bureau of the Census, *1982 Census of Governments: Puerto Rico, Virgin Islands, and Guam*, Topical Studies, vol. 6, no. 2, October 1984; http://www2.census.gov/govs/pubs/cog/1982/1982_vol6_no2_fin_puerto_rico_vi_&_guam.pdf.

Title V: Puerto Rico Infrastructure Revitalization[92]

Title V of the proposed legislation, the "Puerto Rico Revitalization Act," would overhaul the processes for review and permitting of certain infrastructure projects within the Commonwealth. Title V would create the position "Revitalization Coordinator"; grant the Revitalization Coordinator a role in reviewing and permitting "Critical Projects"; establish an expedited review process for such projects; and add related provisions intended to ease the permitting process and increase the federal oversight role.

Section 501: Definitions

Section 501 sets out definitions used in Title V. Some of these definitions are described in the section summaries below.

Section 502: Position of the Revitalization Coordinator

Section 502 would establish a new position, the Revitalization Coordinator, to be appointed by the Governor of Puerto Rico from among a group of nominees selected by the Puerto Rico Financial Oversight and Management Assistance Board. Section 502 would direct the Oversight Board to select nominees with backgrounds in planning, financing, and development of infrastructure projects. Section 502 also would set forth a framework for support staff and compensation for the Revitalization Coordinator.

Section 503: Critical Projects

Section 503 would authorize Project Sponsors to submit applications to the Revitalization Coordinator and to "relevant Puerto Rico agencies" for consideration for classification as a "Critical Project." Section 501(2) defines a "Critical Project" as one that is "intimately related to addressing an emergency whose approval, consideration, permitting and implementation shall be expedited and streamlined according to the statutory process provided by Act 76, or otherwise adopted pursuant to this title." Act 76 is a Puerto Rico law that establishes a process by which Puerto Rico agencies may accelerate review and permitting of works and projects that are related to or respond to a declared emergency as defined by the act.

Section 503(a)(1) provides a number of criteria by which proposed Critical Projects would be evaluated,[93] including the impact the project would have on an emergency; the availability of funds to implement the project; the cost of the project (including the cost to the government of Puerto Rico); environmental and economic benefits provided by the project; the current status of the project; and additional criteria related to energy production and conservation that the Revitalization Coordinator deems appropriate.

Pursuant to Section 503(a)(3), Puerto Rico agencies that receive a Critical Project submission would be required to set forth an "Expedited Permitting Process." This Expedited Permitting Process must be filed with the Revitalization Coordinator within 20 days of receipt of the project submission. Failure to do so would trigger a requirement that the Revitalization Coordinator consult with the Governor of Puerto Rico to develop such a process for the agency within 20 days. The section further instructs the Revitalization Coordinator to require the relevant Puerto Rico agencies to implement that Expedited Permitting Process. In addition, Section 503(a)(3) provides that "Critical Projects shall be prioritized to the maximum extent possible in each Puerto Rico Agency regardless of any agreements transferring or delegating permitting authority."

[92] The analysis of Title V was authored by Adam Vann, Legislative Attorney.

[93] Note that the bill initially categorizes the list found at Section 503(a)(1) as required items to be included in a submission, but subsequently references the items as criteria to be considered by the Revitalization Coordinator.

With respect to the Critical Project determination, Section 503(b) would require the Revitalization Coordinator to consult with the Puerto Rico agencies and develop a "Critical Project Report" within 60 days of submission that includes an assessment of how well the project meets the criteria for a Critical Project and a recommendation from the Governor regarding the Critical Project determination, as well as findings from the Planning Board regarding land use and/or from the Puerto Rico Electric Power Authority, where applicable. Once the Report is completed, the public would be given a 30-day period to submit comments, and the Revitalization Coordinator would have 30 days thereafter to respond to public comments. The Revitalization Coordinator would then submit the Report to the Oversight board within five days of the conclusion of the response to public comments. The Oversight Board would be required to take action within 30 days of receipt. An approval would classify the project as a Critical Project, while a vote of disapproval must be accompanied by a statement to the Revitalization Coordinator explaining the reasons for disapproval.

Section 504: Miscellaneous Provisions

Section 504(a) would establish the "Interagency Environmental Subcommittee" to "evaluate environmental documents required under Puerto Rico law for any Critical Project within the Expedited Permitting Process." The subcommittee would consist of the Revitalization Coordinator along with representatives of various Puerto Rico agencies chosen by the governor in conjunction with the Revitalization Coordinator.

Section 504(b) is titled "Length of Expedited Permitting Process" and provides that for a Critical Project, Puerto Rico agencies would be required to operate as if there has been a declared emergency under Act 76. Section 504(b) also provides that "any transactions, processes projects, works or programs essential to the completion of the Critical Project" are to continue even if the Oversight Board is terminated pursuant to Section 209 of this act.

Section 504(c) would give the Oversight Board the power to take enforcement action upon complaint for the failure of a Puerto Rico agency or the Revitalization Coordinator to adhere to the Expedited Permitting Process.

Section 504(d) would require the Puerto Rico Governor to notify the Oversight Board of any duly enacted law that might "affect the Expedited Permitting Process." The Oversight Board would then be required to review the law and, if it would "adversely impact" the process, the law would be deemed "significantly inconsistent with the applicable Fiscal Plan."

Section 504(e) would bar Puerto Rico agencies from including terms or conditions in permits, certificates, or other authorizations for Critical Projects not required by applicable Puerto Rico law, if the Revitalization Coordinator determines that "the term or condition would prevent or impair the expeditious construction, operation or expansion of the Critical Project."

Section 504(f) would require that all Critical Project reports and justifications for approval or denial of Critical Projects be made publicly available.

Section 505: Federal Agency Requirements

Section 505 would require, at the request of the Revitalization Coordinator, federal agencies with jurisdiction over permitting or administrative or environmental review for projects in Puerto Rico to name a "Point of Contact." This requirement would not be limited to Critical Projects, but would apply to agencies with jurisdiction over any public and private projects in the Commonwealth. For Critical Projects, Section 505 would direct the Revitalization Coordinator to cooperate with the relevant Point of Contact concerning a pending or potential federal grant for the project. In addition, all reviews by federal agencies related to a Critical Project would be expedited so as to comply with the deadlines established by

the Expedited Permitting Process, although those deadlines would not be considered as binding on a federal agency.

Section 506: Judicial Review

Section 506 provides that claims arising under Title V would have to be brought no later than 30 days after the decision or action giving rise to the claim. If the claim is brought in the U.S. District Court for the District of Puerto Rico, the court would have to set any such action for expedited consideration.

Section 507: Savings Clause

Section 507 provides that Title V is not intended to change or alter any other federal legal requirements or laws. Savings clauses of this nature are common and are intended to provide insurance against unintended consequences with respect to interpretation and application of existing statutes.

Title VI: Creditor Collective Action[94]

The first section of Title VI (§601) would establish a process for creditor collective action that could *retroactively* change individual creditor rights for a portion of Puerto Rico's outstanding bonded debt. "Collective action clauses" (CACs) are a feature of sovereign bonds that, while long-standing in London-issued sovereign debt, became more common for debt issued under New York law around 15 years ago.[95] The second section (§602) states that the process would be governed by U.S. law, without regard to any foreign or international law.

CACs have been used to expedite the restructuring of sovereign debt. CACs allow a supermajority of bondholders (usually 75%) to agree to a debt restructuring that is legally binding on all bondholders.

Without CACs, some bondholders may have incentives to try to hold out for better terms, slowing down the negotiations.[96] CACs describe a procedure a country may use once it decides it must restructure its debt. In general, CACs include:

- *A majority action clause.* This clause would allow a super-majority of creditors to change the terms of the contract, which is then binding on the minority. In this way, a small minority of creditors could not delay or disrupt a restructuring agreement.
- *A clause describing the process through which debtors and creditors come together to negotiate a restructuring.* This clause would specify how the creditors would be represented and the data that the debtor must provide to the creditors' representative. The creditors' representative would negotiate with the debtor and would have authority to initiate litigation (on instructions of a certain proportion of the creditors).

[94] Analysis of Title VI authored by Martin Weiss, Specialist in International Trade and Finance.

[95] For a discussion of the debates that lead to the proliferation of CACs in the early 2000s, see CRS Report RL31451, *Managing International Financial Crises: Alternatives to "Bailouts," Hardships and Contagion*, by Arlene E. Wilson and Martin A. Weiss. Also see Mitu Gulati and W. Mark Weidermaier, "A People's History of Collective Action Clauses," Virginia Journal of International Law, vol. 54, no. 1 (2013); and Anna Gelpern, "Building a Better Seating Chart for Sovereign Restructurings," Emory Law Journal, vol. 53 (2004).

[96] See Federal Reserve Bank of San Francisco, "Resolving Sovereign Debt Crises with Collective Action Clauses," *Economic Letter*, No. 2004-06 (February 20, 2004); http://www.frbsf.org/economic-research/files/el2004-06.pdf. See also International Monetary Fund, *Sovereign Debt Restructuring—Recent Developments and Implications for the Fund's Legal and Policy Framework: Executive Summary*, April 26, 2013, pp. 27-28; https://www.imf.org/external/np/pp/eng/2013/042613.pdf.

- *A clause describing how the sovereign country would initiate the restructuring.* This clause would allow for a suspension of payments between the time the sovereign had requested a restructuring and the time the creditors' representative would be chosen.

H.R. 5278 loosely borrows the CAC model from recent sovereign debt experience and attempts to apply it toward Puerto Rico's outstanding bonded debt. In contrast to recent trends in sovereign CACs, which have been to create larger voting pools by allowing a vote to be aggregated across different series of bonds in to facilitate reaching consensus on a restructuring, H.R. 5278 Section 601(d) would establish separate voting pools corresponding to the relative priority (senior vs. subordinate lien, for example) or security arrangements (guaranteed vs. non-guaranteed debt, or debt with a dedicated revenue stream) of each holder of bonds against each issuer.[97] H.R. 5278 Section 601(j) specifies that a restructuring would require the support of two-thirds of the aggregate outstanding principal amount of the outstanding bonds in a pool.

Antonio Weiss, Counselor to the Treasury Secretary, criticized H.R. 4900's CAC language in an April 13, 2016, hearing before the House Committee on Natural Resources. According to his testimony, H.R. 4900, "imposes an unworkable, mandatory process that will only delay the ability to reach a comprehensive resolution. Under the proposed approach, all of Puerto Rico's numerous debtors would have to complete a complicated process before any single entity could begin to restructure."[98] Given the large size and complexity of Puerto Rico's outstanding bonded debt, H.R. 4900 would, Mr. Weiss argues, create a large number of voting pools, making it nearly impossible to reach the super-majority required for a restructuring. Other critics argue that H.R. 4900 provides insufficient protections for senior creditors and that the threshold for creditor acceptance of CACs should be increased from two-thirds to 85%.[99]

Treasury Secretary Jacob Lew, in a statement released the day after H.R. 5278 was introduced, stated that "We are pleased the bill reintroduced in the House last night includes restructuring tools for Puerto Rico that are comprehensive and workable."[100]

Title VII: Sense of Congress Regarding Permanent, Pro-Growth Fiscal Reforms

Title VII's sole section (§701) expresses the sense of Congress that "any durable solution for Puerto Rico's fiscal and economic crisis should include permanent, pro-growth fiscal reforms that feature, among other elements, a free flow of capital between possessions of the United States and the rest of the United States."

[97] International Capital Markets Association, "Standard Aggregated Collective Action Clauses ("CACs") for the terms and conditions of sovereign notes governed by New York Law," May 2015. See also, Mark Sobel, "Strengthening Collective Action Clauses: Catalysing Change—the Back Story," *Capital Markets Law Journal*, January 2016.

[98] Testimony of Antonio Weiss, Counselor to the Treasury Secretary, in U.S. Congress, House Committee on Natural Resources, "The Puerto Rico Oversight, Management, and Economic Stability Act," hearings, 114th Cong., 2nd sess., April 13, 2016; https://www.treasury.gov/press-center/press-releases/Pages/jl0417.aspx.

[99] Conversation with Cate Long, Puerto Rico Clearinghouse, April 19, 2016.

[100] U.S. Department of the Treasury, "Statement From Secretary Lew on Puerto Rico Legislation," press release, May 19, 2016; https://www.treasury.gov/press-center/press-releases/Pages/jl0461.aspx.

Appendix A. Legislative Context

Representative Sean Duffy, as noted at the first section of this report, introduced the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA; H.R. 5278) on May 18, 2016.[101] This bill is a revised version of H.R. 4900, which Representative Duffy had introduced on April 12, 2016.[102] The House Natural Resources Committee issued a discussion draft with the same title on March 24, 2016, and a revised discussion draft on March 29, 2016. The committee held a hearing and heard opening statements for a markup on H.R. 4900 on April 13, 2016. The continuation of the markup on the following day was postponed. The House Committee on Natural Resources marked up H.R. 5278 on May 25, 2016.[103] Amendments agreed to include technical corrections and extensions of certain studies on the Puerto Rico government and economy, among others. The major provisions of the bill, however, were unaffected. The House passed an amended version of H.R. 5278 on June 9, 2016, by a 297-127 vote. The Senate approved the measure (S. 2328) on June 29, 2016, by a 68-30 vote. President Obama signed the measure into law on June 30, 2016.

Other Proposals to Address Puerto Rico's Fiscal Crisis

In October 2015, the U.S. Department of the Treasury set out a reform framework and called on Congress to pass legislation to aid Puerto Rico. Resident Commissioner Pierluisi introduced H.R. 870 on March 16, 2015, that would restore the island's access to chapter 9 of the Bankruptcy Code. Senator Blumenthal introduced a similar measure (S. 1774) on July 15, 2015. Representative Duffy introduced H.R. 4199, a measure to provide fiscal oversight and a process for debt restructuring, on December 9, 2015. Senator Hatch introduced a similar measure (S. 2381) on the same day. On December 18, 2015, Representative Pelosi introduced H.R. 4290, a measure to stay debt-related litigation. Senator Warren introduced a companion measure (S. 2436) on the same day. On March 14, 2016, Senator Menendez introduced the Puerto Rico Recovery Act of 2016 (S. 2675) and the Puerto Rico Stability Act of 2016 (S. 2676). Both measures would create ways to adjust Puerto Rico's debt. On June 9, 2016, Senator Sanders introduced S. 3044, which would establish a Puerto Rico Reconstruction Finance Corporation, restore the island's access to chapter 9 of the Bankruptcy Code, and make changes in federal health care and economic development programs to benefit Puerto Rico. **Table A-1** summarizes measures introduced to address Puerto Rico's fiscal difficulties.

Several other measures have been introduced to alter federal programs' eligibility rules or levels of benefits available to Puerto Rico residents. For example, Resident Commissioner Pierluisi has also introduced several measures (including H.R. 1225, H.R. 1417, H.R. 1418, H.R. 1822, H.R. 2635, H.R. 3552, H.R. 3553, and H.R. 4163) that would remove various limitations on federal health care funding, refundable tax credits, and social insurance programs.[104] Increased federal funding for health or income security programs could mitigate the Puerto Rico government's fiscal pressures, although such funding would require an increase in federal revenues, reduction in other federal spending, or additional federal borrowing, or some combination of those means.

[101] The word "promesa" means promise in Spanish.

[102] An earlier congressional distribution memorandum that analyzed H.R. 4900 is available to congressional clients from the Coordinator upon request.

[103] U.S. Congress, House Committee on Natural Resources, *Puerto Rico Oversight, Management, and Economic Stability Act*, 114th Cong., 2nd sess., June 3, 2016, H.Rept. 114-602 (Washington: GPO, 2016).

[104] See CRS Report R44275, *Puerto Rico and Health Care Finance: Frequently Asked Questions*, coordinated by Annie L. Mach.

Table A-1. Selected Measures to Address Puerto Rico's Fiscal Situation

Sponsor	Measure	Title	Date	Summary
Res. Comm. Pierluisi	H.R. 870	Puerto Rico Chapter 9 Uniformity Act	March 16, 2015	Amends the Bankruptcy Code to treat Puerto Rico as a state under chapter 9.
Sen. Blumenthal	S. 1774	Puerto Rico Chapter 9 Uniformity Act	July 15, 2015	Amends the Bankruptcy Code to treat Puerto Rico as a state under chapter 9.
Rep. Duffy	H.R. 4199	Puerto Rico Financial Stability and Debt Restructuring Choice Act	December 9, 2015	Establishes the Puerto Rico Financial Stability Council, if enacted by the Puerto Rico Legislature Assembly and Governor. Council would approve financial plans, budgets, and borrowing. Amends Bankruptcy Code to treat Puerto Rico as a state, among other provisions.
Sen. Hatch	S. 2381	Puerto Rico Assistance Act	December 9, 2015	Establishes the Puerto Rico Financial Responsibility and Management Assistance Authority, which would approve financial plans and budgets, and could issue bonds. Also creates payroll tax holidays and requires reports on pension plans, among other provisions.
Rep. Pelosi	H.R. 4290	Puerto Rico Emergency Financial Stability Act	December 18, 2015	Grants a temporary stay until April 1, 2016, on litigation related to Puerto Rico's debts.
Sen. Warren	S. 2436	Puerto Rico Emergency Financial Stability Act	December 18, 2015	Grants a temporary stay until April 1, 2016, on litigation related to Puerto Rico's debts.
Sen. Menendez	S. 2675	Puerto Rico Recovery Act	March 14, 2016	Makes Puerto Rico residents eligible for earned income and child tax credits; removes certain limitations on federal health funding to territories, among other provisions.
Sen. Menendez	S. 2676	Puerto Rico Stability Act	March 14, 2016	Permits Puerto Rico to restructure its public debt through a Fiscal Stability and Reform Board, a Chief Financial Officer, and a fiscal plan. Amends Bankruptcy Code to treat Puerto Rico as a state under chapter 9, among other provisions.
Rep. Duffy	H.R. 4900	Puerto Rico Oversight, Management, and Economic Stability Act	April 12, 2016	A CRS memorandum that summarizes provisions of H.R. 4900 is available to congressional clients from the coordinator upon request.
Rep. Duffy	H.R. 5278	Puerto Rico Oversight, Management, and Economic Stability Act	May 18, 2016	See section-by-section summary above in this report.
Sen. Sanders	S. 3044	Puerto Rico Humanitarian Relief and Reconstruction Act	June 9, 2016	Establishes a Puerto Rico Reconstruction Finance Corporation, amends Bankruptcy Code to treat Puerto Rico as a state under chapter 9, removes certain limitations on federal health funding to territories, and expands economic development programs available to benefit Puerto Rico, among other provisions.

Source: CRS.

Brief Background on Puerto Rico and its Political Status[105]

The United States acquired Puerto Rico from Spain in 1898, at the conclusion of the Spanish-American War.[106] The island is the largest of the five[107] major U.S. territories and lies approximately 1,000 miles southeast of Miami. The Territory Clause of the U.S. Constitution grants Congress plenary authority over Puerto Rico and other territories.[108] Specifically, this includes "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."[109] Congress has enacted various statutes to address specific matters concerning the island's *political status*—a term of art referring to the political relationship between the federal government and a territorial government. In particular, Congress recognized island authority over matters of internal governance in 1950 through the Federal Relations Act (FRA) and when it approved the island's Constitution in 1952.[110]

Puerto Rico's Fiscal Challenges

The Puerto Rico government has been facing serious liquidity challenges despite several measures taken by the island's government to reduce spending, increase revenues, and restructure its obligations.[111] Those liquidity challenges are the result of long-standing problems of stagnant economic growth, persistent structural budgetary imbalances, and governance problems, among other contributing factors.

Structure of Puerto Rico's Government and Debt

Puerto Rico's public sector is composed of a Commonwealth government, some 50 public corporations (described in more detail below), and municipal governments, among other instrumentalities. In general, the Puerto Rico Office of Management and Budget oversees agencies of the Commonwealth, but not public corporations or municipalities. Debt issuances or guarantees backed by the full faith and credit of the Commonwealth government are often called general obligation (GO) debt. The Commonwealth government has also issued non-GO debt.[112]

Role of Public Corporations

Public corporations play a prominent role in the economy and public sector of Puerto Rico. H.R. 5278 includes provisions that would allow, in certain cases, separate oversight of public

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[105] For additional discussion, see CRS Report R42765, *Puerto Rico's Political Status and the 2012 Plebiscite: Background and Key Questions*, by R. Sam Garrett; and CRS In Focus IF10241, *Puerto Rico: Political Status and Background*, by R. Sam Garrett. This paragraph was written by R. Sam Garrett.

[106] Treaty of Paris, Art. II; 30 Stat. 1754-1755.

[107] The other four inhabited territories are American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the U.S. Virgin Islands.

[108] For background discussion of the Territory Clause, see CRS, *The Constitution of the United States of America: Analysis and Interpretation*, available on the CRS website under the Quick Link "Constitution Annotated."

[109] U.S. Const., Art. IV, §3, cl. 2.

[110] See 64 Stat. 319 (popularly known as "P.L. 600" (P.L. 81-600)); and 66 Stat. 327 respectively.

[111] For details, see CRS Report R44095, *Puerto Rico's Current Fiscal Challenges*, by D. Andrew Austin.

[112] For further information, a congressional distribution memorandum on Puerto Rico's public sector debt is available to congressional clients from D. Andrew Austin upon request.

corporations and other instrumentalities of the Puerto Rico government.[113] Public corporations in Puerto Rico serve a broad variety of purposes and activities, including public infrastructure, banking, real estate, insurance, industrial development, health care, transportation, electric power, broadcasting, education, arts, and tourism, among others.[114] Some public corporations resemble public authorities of state governments, although in some cases, have responsibilities more akin to public agencies.[115] Puerto Rico's electric power utility, as described in the next section, has been negotiating with its creditors since the summer of 2014.

Current Negotiations with Creditors

H.R. 5278, as noted above, allows for separate voluntary agreements between public corporations and their creditors, subject to certain conditions.[116] The Puerto Rico Electric Power Authority (PREPA) entered into a restructuring and forbearance agreement in August 2014 with major creditors,[117] prompted by the need to maintain sufficient financing for fuel purchases.[118] PREPA and a large proportion of its creditors have signed a Restructuring Support Agreement (RSA) that would create a surcharge on electricity consumers' bills. The Energy Commission of Puerto Rico approved the PREPA revitalization surcharge on June 21, 2016.[119] Proceeds of the surcharge would be used to help fund debt service payments for new bonds that would be exchanged with existing PREPA debt. The proposed bond exchange would allow PREPA to lower its debt service costs and would extend the maturity of its debt.

A proposal to use a similar strategy for Puerto Rico's water and sewer public corporation (Puerto Rico Aqueduct and Sewer Authority; PRASA) has passed both the Puerto Rico House of Representatives and Senate, which have agreed to conference to resolve differences.[120] The Puerto Rico government and the Government Development Bank have put forth two bond exchange proposals.[121]

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[113] §101(d)(1)(E) authorizes the Oversight Board to designate a "covered territorial instrumentality" that would be subject to an Instrumentality Fiscal Plan separate from the Territory Fiscal Plan. §101(d)(2) allows the Oversight Board to exclude a territorial instrumentality from requirements of the act.

[114] For one listing of public corporations, see Commonwealth of Puerto Rico, *Budget Proposal for 2013-2014*, Consolidated Budget by Agency for FY2011-FY2014 (Estado Libre Asociado de Puerto Rico, *Presupuesto Recomendado 2013-2014*, Presupuesto Consolidado por Agencia), http://www2.pr.gov/presupuestos/Presupuesto2013-2014/Tablas%20Estadsticas/04.pdf.

[115] The Government Development Bank and the University of Puerto Rico, while considered public corporations for some purposes, are usually considered as part of the Commonwealth government in financial reports.

[116] §104(i)(1) allows the Oversight Board to approve voluntary debt negotiations between territorial instrumentalities and debtholders. Voluntary debt agreements consummated before enactment, according to §104(i)(2), will be deemed to comply with the act's requirements.

[117] Government Development Bank, Forbearance Agreement: Executive Version, August 14, 2014, http://www.gdbpr.com/documents/BondholderForbearanceAgreementEXECUTED.pdf.

[118] Mary Williams Walsh, "Puerto Rico Power Supplier Saved From Cash Squeeze," *New York Times*, August 14, 2014. Reuters, "Puerto Rico Power Authority Weighs Financing Options as Bank Deadline Nears," July 30, 2014, http://www.reuters.com/article/2014/07/30/usa-puertorico-prepa-idUSL2N0Q52GQ20140730.

[119] Energy Commission of Puerto Rico, Restructuring Order CEPR-AP-2016-0001, June 21, 2016, http://energia.pr.gov/wp-content/uploads/2016/06/21-junio-2016-Restructuring-Order-English-1.pdf.

[120] Rebecca Banuchi, "Senado condiciona aprobación de proyecto de revitalización de la AAA (Senate Conditions its Approval of PRASA's Revitalization Project)," *El Nuevo Dia*, March 31, 2016, http://www.elnuevodia.com/noticias/locales/nota/senadocondicionaaprobaciondeproyectoderevitalizaciondelaaaa-2181120/. The measure is Proyecto de la Cámara 2786, "Ley para la Revitalización de la Autoridad de Acueductos y Alcantarillados de Puerto Rico (Act for the Revitalization of the Puerto Rico Aqueduct and Sewer Authority)."

[121] An overview of the latest proposal, released on April 11, 2016, is available here: http://www.gdb-pur.com/

Various creditor groups have also made proposals to restructure categories of Puerto Rico's debt.[122] The Puerto Rican government, along with the Government Development Bank (GDB) and other fiscal advisors, have engaged in a series of negotiations with different creditors and bond insurers. Proposals of the island government, according to documents released on June 21, 2016, were not accepted.[123]

H.R. 5278 includes provisions to allow for a carve-out for voluntary agreements reached between public corporations and bondholders that satisfy certain conditions.[124]

Why Now?

The government of Puerto Rico faces debt service payments that may be beyond its current capacity to pay. In August 2015, Puerto Rico defaulted on debt service payments for "moral obligation" bonds issued by the Public Finance Corporation, a subsidiary of the island's GDB, the island government's fiscal agent. Missed debt service payments for bonds with stronger investor protections could lead to serious legal and financial consequences. On May 1, 2016, Governor García Padilla issued an order to declare a moratorium on certain debt payments by the Government Development Bank (GDB), the government's fiscal agent, which was due to make a debt service payment of $423 million on May 2, 2016.[125]

Whether the Commonwealth government can make a larger debt service payment on July 1, 2016, is doubtful. The ratings agency Standard & Poors indicated that it believed a government default was "virtually certain."[126]

The proposed FY2017 budget, submitted on May 23, 2016, comes "at the hour of choice between paying money to the creditors and providing services to our people," according to Governor García Padilla.[127] Proposed payments for debt service in FY2017 are well below amounts due.[128] A federal district judge on March 28, 2016, held that the government of Puerto Rico "is insolvent and no longer able to pay its debts as they become due."[129] A local banking regulator, the Puerto

documents/WorkingGroupforPuertoRicoRestructuringCounterproposal.pdf.

[122] For a summary of proposals, see Joanisabel González, "Bonistas Dispuestos a Negociar (Bondholders Ready to Negotiate)," *El Nuevo Dia,* April 9, 2016, http://www.elnuevodia.com/negocios/finanzas/nota/bonistasdispuestosanegociar-2184880/.

[123] For details of those proposals, see GDB, "Public Disclosure Release," June 21, 2016, http://www.bgfpr.com/documents/PressReleaseGDB-FAFAA-06-21-16-Final.pdf.

[124] §101(d) allows for separate fiscal plans for territorial instrumentalities at the discretion of the Oversight Board.

[125] Executive Order OE-2016-014, "Executive Order of the Governor of Puerto Rico, Hon. Alejandro J. García Padilla under Terms of Articles 201, 202, and 203 of Act 21 of 2016, Known as the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act," May 1, 2016, http://www.fortaleza.pr.gov/content/orden-ejecutiva-moratoria-temporera-en-el-pago-de-la-deuda.

[126] Standard & Poor's, "Puerto Rico Debt Moratorium Could Lead to Default," April 6, 2016.

[127] Press Release, P.R. Office of Management and Budget, Gobernador presenta presupuesto para el próximo año fiscal (Governor Presents Budget for the Next Fiscal Year), (May 23, 2016). Original quoted sentence is "En momentos en que ya no es posible recurrir a aumentar la deuda pública y que dependemos exclusivamente del dinero que recauda Hacienda, este presupuesto es la mejor evidencia a la hora de escoger entre pagarle a los acreedores y dar servicio a nuestra gente, escogemos por nuestra gente."

[128] See Puerto Rico Office of Management and Budget, "Presupuesto Consolidado Por Concepto de Gasto y Origen de Recurso (Consolidated Budget by Outlays and Object Class)," May 23, 2016, http://www2.pr.gov/presupuestos/presupuesto2016-2017/Tablas%20Estadsticas/03.pdf.

[129] Walmart Puerto Rico Inc. v. Juan C. Zaragoza-Gomez, Secretary of the Puerto Rico Treasury, Opinion and Order, March 28, 2016, case No. 3:15-CV-03018 (JAF), http://www.noticel.com/uploads/gallery/documents/d7b90a9e684c342bffb267efc4dfadca.pdf.

Rico Commissioner of Financial Institutions, found that the GDB was insolvent in 2015, according to evidence collected in that case. While senior GDB officials contested some claims of the Commissioner, many considered it likely that a receiver could take control of the GDB, which could complicate financial operations of the Commonwealth.[130]

In the week following the release of that federal district court order and opinion, Puerto Rico enacted the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act (PREMFRA; Act 21 of 2016), that empowered the governor of Puerto Rico to declare a fiscal state of emergency and a moratorium on certain debt service payments that would extend to January 2017.[131] The act also modifies legal provisions regarding the receivership of the GDB and allows a bridge bank to be set up to assume many of the responsibilities and assets of the GDB. The act also stays legal actions against the Puerto Rico government while emergency powers are invoked.[132] On April 9, Governor Alejandro García Padilla invoked those authorities and declared an emergency period for the GDB in order to allow it to continue its operations.[133]

An amendment offered by Chairman Bishop and agreed to during House deliberations would empower the Oversight Board to rescind laws enacted by the Puerto Rico government from May 4, 2016, until all members of the board were appointed. The latter provision would allow the board to rescind PREMFRA and thus curtail emergency powers invoked by the Governor.[134] Two lawsuits have been filed to challenge PREMFRA in the U.S. District Court for Puerto Rico and one was filed in the Southern District Court of New York.[135] Some note that the former two cases make arguments similar to those used against the Puerto Rico Restructuring Act (discussed in following section).[136]

Treasury Secretary Jacob Lew, in a June 27, 2016, letter to congressional leaders, argued that a federal judge considering such cases could order Puerto Rico to pay constitutionally prioritized debt ahead of essential governmental services such as health, education, and public safety.[137] Secretary Lew further contended that "a retroactive stay on litigation passed by Congress a few days later would not reverse such a court order."

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[130] Ibid. Also see Carlos Antonio Otero, "Pulseo con la Posible Sindicatura del BGF (Wrestling with the Possible GDB Receivership)," *El Vocero*, March 30, 2016, http://elvocero.com/pulseo-con-la-posible-sindicatura-del-bgf/.

[131] Act 21 of 2016, http://www.oslpr.org/2013-2016/leyes/doc/ley-21-06-Abr-2016.doc at pp. 55-56.

[132] Act 21 of 2016, http://www.oslpr.org/2013-2016/leyes/doc/ley-21-06-Abr-2016.doc at p. 56.

[133] Executive Order OE-2015-010, April 9, 2016. Executive orders issued by the Puerto Rico governor are available at http://estado.pr.gov/en/executive-orders/.

[134] For the text of Chairman Bishop's amendment (H.Amdt. 1156) see U.S. Congress, House Committee on Rules, Providing for Consideration of the Bill (H.R. 5278) to Establish an Oversight Board to Assist the Government of Puerto Rico, 114th Cong., 2nd sess., June 8, 2016, H.Rept. 114-610 (Washington: GPO, 2016).

[135] Brigade Leveraged Capital Structures Fund Ltd. et al. v Government Development Bank of Puerto Rico, case 3:16-cv-01610, complaint, filed April 4, 2016, https://www.unitedstatescourts.org/federal/prd/125978/42-0.html. National Public Finance Guarantee Corporation v. García Padilla et al., case 3:16-cv-02101 (JAG), complaint, filed June 15, 2016, http://www.nationalpfg.com/pdf/PressRelease/MORATORIUM_ACT_COMPLAINT_351402.pdf. Jacana Holdings et al. v. Commonwealth of Puerto Rico, et al., case 1:16-cv-04702, complaint, filed June 21, 2016; http://www.noticel.com/uploads/gallery/documents/375a903a7fbfbeba7ddaddc79cc66bfc.pdf.

[136] John Mudd, "Puerto Rico Moratorium Law is Challenged in New York," blog post, June 21, 2016, https://johnmuddlaw.com/2016/06/21/the-pr-moratorium-law-is-challenged-in-new-york/.

[137] Treasury Secretary Jacob Lew, letter to Majority Leader Mitch McConnell, June 27, 2016, https://www.treasury.gov/connect/blog/Pages/Congress-Must-Act-Before-July-1-to-Help-Puerto-Rico.aspx.

Supreme Court and Puerto Rico Restructuring Act

In the face of an increasingly difficult fiscal environment and severe liquidity problems of the Puerto Rico Electric Power Authority (PREPA), the Puerto Rico government in June 2014 enacted a law (Act 71 of 2014) that would have allowed its public corporations to file for debt restructuring through Puerto Rico's legal system.[138] Act 71 set out two paths for restructuring debts of public corporations, one a consensual renegotiation with creditors, the other a judicial process.[139] In February 2015, a U.S. District Court struck down that act, an opinion upheld by the U.S. Court of Appeals for the First Circuit on July 6, 2015.[140] On March 22, 2016, the U.S. Supreme Court heard oral arguments for an appeal. The Supreme Court upheld the lower court's opinion on June 13, 2016, ruling that, although Puerto Rico has no access to chapter 9 of the Bankruptcy Code, a provision in that chapter[141] preempts Puerto Rico's attempt to establish its own vehicle for restructuring the debts of its instrumentalities.[142]

Alternative Approaches to Address Puerto Rico's Situation

Several elements of other proposals to address Puerto Rico's fiscal challenges are not included in H.R. 5278. Other federal responses could be considered in other legislation. In the one previous case when Congress established a control board for the District of Columbia with the enactment of the District of Columbia Financial Responsibility and Management Assistance Act (P.L. 104-8), it revisited and amended that legislation to adjust or extend federal responses.[143]

The Obama Administration's framework for responding to Puerto Rico's fiscal crisis had four major elements: broad restructuring authorities, independent oversight, adequate funding of health care services, and incentives to drive economic growth.[144] H.R. 4900, in the view of the U.S. Treasury, addresses the two most urgent elements, restructuring of obligations and oversight, but does not include health care funding measures or provisions that directly promote economic development.[145] Congress could consider other measures to address Puerto Rico's fiscal crisis as part of the FY2017 appropriations process or through other legislation. The Obama

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[138] English version of Act 71 of 2014 is available at http://www.oslpr.org/download/en/2014/A-071-2014.pdf.

[139] *See* CRS Legal Sidebar WSLG1289, *Fiscal Distress in Puerto Rico: Two Legislative Approaches*, by Carol A. Pettit.

[140] Franklin Cal.Tax-Free Trust v. Puerto Rico, 805 F.3d 322 (1st Cir. 2015), http://caselaw.findlaw.com/us-1st-circuit/1707047.html. For more information on the judicial challenge to the Recovery Act, *see* CRS Legal Sidebar WSLG1370, *UPDATED: First Circuit: Preemption Precludes Puerto Rico's Recovery Act*, by Carol A. Pettit, Aug. 31, 2015.

[141] 11 U.S.C. §903.

[142] Puerto Rico v. Franklin Cal. Tax-Free Trust, 579 U.S. ____(2016). http://www.supremecourt.gov/opinions/15pdf/15-233_i42j.pdf.

[143] The Chief Financial Officer, a position created by the act, is responsible for oversight and direct supervision of the financial and budgetary functions of the District government, including maintaining a coordinated financial management system; developing revenue and expenditure projections; tax collections; borrowing on behalf of the District and investing District funds; and producing the District's audited Comprehensive Annual Financial Report (CAFR).

[144] "Addressing Puerto Rico's Economic and Fiscal Crisis and Creating a Path to Recovery: Roadmap for Congressional Action," October 21, 2015, https://www.whitehouse.gov/sites/default/files/roadmap_for_congressional_action___puerto_rico_final.pdf.

[145] Testimony of Antonio Weiss, Counselor to the Treasury Secretary, in U.S. Congress, House Committee on Natural Resources, "The Puerto Rico Oversight, Management, and Economic Stability Act," hearings, 114th Cong., 2nd sess., April 13, 2016, https://www.treasury.gov/press-center/press-releases/Pages/jl0417.aspx.

Administration proposed an extension of the Earned Income Tax Credit (EITC) for Puerto Rico in its FY2017 budget plan.[146]

Some argued that the establishment of an Oversight Board would not improve Puerto Rico's fiscal management and governance capabilities, and that a "large scale" overhaul of public financial management systems, institutions, and practices was necessary.[147] Treasury Secretary Lew, on the other hand, has argued that federal oversight would play a "fairly important role" in helping develop stronger financial management and governmental management capabilities.[148] H.R. 5278, unlike legislation that established a control board for the District of Columbia, does not create a Chief Financial Officer (CFO) position.

International responses to fiscal and economic crises of sovereign governments typically include bridge financing to address short-term liquidity needs and an agreement to undertake structural reforms to enhance long-term growth prospects. The bill introduced by Senator Hatch (S. 2381 §501) provides an authorization of appropriations of $3 billion that with the approval of an Oversight Board could be used to enhance the "financial, fiscal, economic, and health care stability" of Puerto Rico. A rescission of funds (§501) provided by the Patient Protection and Affordable Care Act would provide an offset to those stability funds. H.R. 5278 does not provide such direct support, although the stay on litigation and debt restructuring measures could ease pressures on the Puerto Rico government's financial resources.

[146] Testimony of Treasury Secretary Jacob J. Lew, in U.S. Congress, House Appropriations Subcommittee on Financial Services and General Government, hearings, 114th Cong., 2nd sess., March 8, 2016; https://www.treasury.gov/press-center/press-releases/Pages/jjl0375.aspx.

[147] Eva Lloréns Vélez, "CNE's Marxuach: Financial Oversight Board Powers are Too Broad," *Caribbean Business*, April 8, 2016; http://cb.pr/cnes-marxuach-financial-oversight-board-powers-are-too-broad/.

[148] U.S. Treasury, "Secretary Lew: Congress Must Act on Puerto Rico to Avoid Bailout," press release, April 22, 2016; https://www.treasury.gov/press-center/press-releases/Pages/jl0440.aspx.

Appendix B. Sections of Title 11, U.S. Code Referenced in H.R. 5278 Section 301[149]

This appendix lists headings and provides a general description of the Bankruptcy Code sections made applicable to Title III of PROMESA. As a general matter, the Bankruptcy Code, in chapters 1, 3, and 5, establishes general procedures that are applicable to the operative chapters. Chapters 9 and 11 are operative chapters. Chapter 9 provides the mechanism for adjustment of municipal debts. Chapter 11 provides the mechanism for business reorganizations (although in rare instances, individuals may file under chapter 11). Generally, such adjustment or reorganization is effectuated through a "plan" proposed by the debtor, voted on by creditors, and confirmed by the court.

§101 (except as otherwise provided in Section 301 of PROMESA)—Definitions.

§102—Rules of construction. Provides nine rules of construction to be used in determining the meaning of individual sections of the Bankruptcy Code.

§104—Adjustment of dollar amounts. Provides timing for recommendations of adjustments to dollar amounts found in various code sections by the Judicial Conference of the United States.

§105—Power of the court. Outlines both the powers of the court as well as the limitations of the court's power in carrying out the provisions of Title 11.

§106—Waiver of sovereign immunity. Limits the extent to which a government unit can assert sovereign immunity.

§107—Public access to papers. In general, papers filed in a bankruptcy case are public records. Exceptions may be made to protect some interests of an entity or to protect a person with respect to scandalous or defamatory matter or to protect an individual from information being revealed that might lead to identity theft or other unlawful injury.

§108—Extension of time. Establishes criteria in which a period of time established outside of a bankruptcy case for various actions may be extended to allow the trustee to take the relevant action.

§112—Prohibition on disclosure of name of minor children. Debtor may not be required to provide the name of a minor child in the public record, but may be required to disclose the name of a minor child in a nonpublic record.

§333—Appointment of a patient care ombudsman. Debtors in chapters 7, 9, or 11 who are health care businesses generally must have an ombudsman appointed no later than 30 days after the case begins to monitor the quality of patient care and represent the patients' interests.

§344—Self-incrimination; immunity. Immunity may be granted under 18 U.S.C. part V to those required to testify or otherwise provide information in a bankruptcy case.

§347(b)—Unclaimed property. Property that remains unclaimed after the time allowed in a case in chapter 9, 11, or 12 may become the property of either the debtor or the entity that acquired the debtor's assets.

[149] This appendix was authored by Carol A. Pettit, Legislative Attorney.

§349—Effect of dismissal. Generally, dismissal of a case does not bar later discharge of debts that would have been dischargeable in the case dismissed. Dismissal also generally allows reversion to the status quo as it existed prior to the commencement of the case.

§350(b)—Closing and reopening cases. A closed case may be reopened to administer assets or accord relief to the debtor as well as for other causes.

§351—Disposal of patient records. Provides the procedure for disposing of records if the trustee in a case under chapter 7, 9, or 11 does not have enough funds to provide appropriate storage of the records under applicable federal or state law.

§361—Adequate protection. Outlines the ways in which adequate protection can be provided when it is required by Sections 362, 363, or 364 of the Bankruptcy Code.

§362—Automatic stay. Generally prevents various collection actions against a debtor after a petition has been filed under the Bankruptcy Code.

§364(c)—Obtaining credit. When a debtor has not been able to acquire unsecured credit, allows the court, after notice and hearing, to authorize the debtor to acquire credit or incur debt having priority over certain administrative expenses or secured by a lien.

§364(d)—Obtaining credit. When a debtor has not been able to acquire unsecured credit, allows the court, after notice and hearing, to authorize the debtor to acquire credit or incur debt secured by a senior or equal lien on property already subject to a lien when the existing lienholder's interest has adequate protection.

§364(e)—Obtaining credit. Reversal or modification of an authorization to obtain credit or incur debt generally does not affect the validity of relevant debt incurred or priority or lien granted to an entity that extended the credit in good faith.

§364(f)—Obtaining credit. With some exceptions, a security does not apply to the offer or sale under this section of a security that is not an equity security.

§365—Executory contracts and unexpired leases. Generally, subject to some limitations, a trustee may assume or reject any executory contract or unexpired lease of the debtor.

§366—Utility service. Subject to certain limitations, a utility may not alter, refuse, or discontinue service based solely on the filing of a bankruptcy petition or an amount owed by the debtor for services provided before the order of relief.

§501—Filing of proofs of claims or interests. Outlines who may file a proof of claim or proof of interest.

§502—Allowance of claims or interests. Generally, if not objected to by a party in interest, a claim or interest is deemed accepted. Outlines the procedures when there is an objection to a proof of claim or interest.

§503—Allowance of administrative expenses. Outlines the types of expenses that are considered administrative expenses.

§504—Sharing of compensation. Outlines the situations in which compensation or reimbursement can and cannot be shared with others.

§506—Determination of secured status. Generally, a secured debt is limited to the current value of the asset that secured that debt. If the amount of the debt exceeds the value of the property subject to a lien, an amount over that value is considered an unsecured debt.

§507(a)(2)—Priorities. Administrative expenses are in the second position of priority, coming after domestic support obligations. For most practical purposes, that means that administrative expenses have the highest priority in non-individual bankruptcies.

§509—Claims of codebtors. Outlines when a codebtor is and is not subrogated (when one is subrogated to the rights of another, one takes the place of the other) to the rights of a creditor.

§510—Subordination. Provides that a subordination agreement is enforceable in a bankruptcy case to the same extent as it would be enforceable under nonbankruptcy law, and outlines the circumstances in which a claim may be subordinated to other claims or interests.

§524(a)(l)—Effect of discharge. A discharge voids any judgment to the extent that the judgment is a determination of the personal liability of the debtor if the debt was discharged under Sections 727, 944, 1141, 1228, or 1328 of the Bankruptcy Code.

§524(a)(2)—Effect of discharge. A discharge acts as an injunction against attempts to recover a relevant debt of the debtor.

§544—Trustee as lien creditor and as successor to certain creditors and purchasers. Effective at the beginning of the case, the trustee has the rights of certain creditors and bona fide purchasers, even if those creditors or purchasers are hypothetical. At the same time, the trustee also has the powers of an actual creditor holding an unsecured claim.

§545—Statutory liens. Conditions under which the trustee may avoid (in bankruptcy, "to avoid" means to make legally void) the fixing of a statutory lien on the debtor's property.

§546—Limitation on avoiding powers. Conditions under which the trustee's powers of avoidance are limited.

§547—Preferences. Defines transfers that are considered preferences and which can be avoided by the trustee.

§548—Fraudulent transfers and obligations. Defines transfers and obligations that are considered fraudulent and which can be avoided by the trustee.

§549(a)—Postpetition transactions. In certain cases, a trustee may avoid a transfer that occurred after the commencement of the case.

§549(c)—Postpetition transactions. Despite subsection (a), a trustee may not avoid a transfer of an interest in real property to a good faith purchaser for present fair equivalent value with no knowledge of the commencement of the bankruptcy case except in certain circumstances.

§549(d)—Postpetition transactions. Time limit for commencing a postpetition transaction.

§550—Liability of transferee of avoided transfer. Defines situations in which the trustee has the ability to recover avoided transfers from the transferee.

§551—Automatic preservation of avoided transfer. Transfers avoided under relevant sections of the Bankruptcy Code and liens void under Section 506(d) generally are reserved for the benefit of the bankruptcy estate.

§552—Postpetition effect of security interest. Generally, property acquired after a case begins is not subject to any lien resulting from a security agreement entered into before the case began.

§553—Setoff. Allows a creditor to offset all or a portion of a claim with all or a portion of a debt owed by creditor to debtor; for example, a bank can offset all or part of a loan owed to it by retaining as its own up to an equivalent amount held in accounts in the bank that are owned by the debtor.

§555—Contractual right to liquidate, terminate, or accelerate a securities contract. Without authorization by the Securities and Exchange Commission (SEC), the contractual right to liquidate, terminate, or accelerate a securities contract cannot be stayed, avoided, or otherwise limited by any provision of the Bankruptcy Code.

§556—Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract. The contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract cannot be stayed, avoided, or otherwise limited by any provision of the Bankruptcy Code.

§557—Expedited determination of interests in, and abandonment or other disposition of grain assets. Applies only to cases in which the debtor owns or operates a grain storage facility and only regarding grain and its proceeds. Allows the court to expedite procedures for determining interests in and disposition of grain and its proceeds.

§559—Contractual right to liquidate, terminate, or accelerate a repurchase agreement. Exercise of a contractual right belonging to a repo participant or financial participant to cause the liquidation, termination, or acceleration of a repurchase agreement due to a condition in Section 365(e)(1) cannot be stayed, avoided, or otherwise limited by any provision of the Bankruptcy Code.

§560—Contractual right to liquidate, terminate, or accelerate a swap agreement. Exercise of a contractual right belonging to a swap participant or financial participant to cause the liquidation, termination, or acceleration of one or more swap agreements due to a condition in Section 365(e)(1) cannot be stayed, avoided, or otherwise limited by any provision of the Bankruptcy Code.

§561—Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15. Similar to Sections 559 and 560 but applicable to proceedings under chapter 15 (ancillary and cross-border cases) and extending to security contracts, commodity contracts, forward contracts, and master netting agreements as well as repurchase and swap agreements.

§562—Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements. If a trustee rejects or a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates one of these contracts or agreements, the date used to determine damages is the earlier of the date of rejection or the date(s) of liquidation, termination, or acceleration.

§902 (except as otherwise provided in Section 301 of PROMESA)—Definitions in this chapter.

§922—Automatic stay of enforcement of claims against the debtor. For chapter 9 debtors, this expands the parameters of the stay provided under Section 362.

§923—Notice. For chapter 9 cases, provision for notice of commencement of a case, order for relief, or a notice of dismissal.

§924—List of creditors. The debtor must file a list of creditors.

§925—Effect of list of claims. Any claim on the list filed under Section 924 is deemed to have a proof of claim filed under Section 501 unless the claim is listed as disputed, contingent, or unliquidated.

§926—Avoiding powers. If a debtor refuses to exercise avoidance powers available under certain sections of the Bankruptcy Code, the court may appoint a trustee to exercise those powers.

§927—Limitation on recourse. A holder of a claim that is payable only from special revenues does not have recourse (the ability to collect) based on that claim under Section 1111(b).

§928—Post petition effect of security interest. Special revenues received after the commencement of a case are subject to the lien from any security agreement entered into before the case began, except that such revenues generally may be subject to necessary operating expenses of the project or system through which the special revenues are derived.

§942—Modification of plan. The debtor in chapter 9 may modify the plan at any time prior to confirmation of the plan so long as the modification does not cause the plan to fail to meet the requirements of a chapter 9 plan.

§944—Effect of confirmation. Confirmation of a chapter 9 plan binds both debtor and creditor to the provisions of the plan. The debtor's debts are generally discharged.

§945—Continuing jurisdiction and closing of the case. The court shall close the chapter 9 case when administration of the case has been complete, except that the court may retain jurisdiction over the case so long as is necessary to implement the plan successfully.

§946—Effect of exchange of securities before the date of the filing of the petition. Whether an exchange of securities, under the plan for a claim covered by the plan, occurred before or after the filing of the bankruptcy petition does not limit or impair the effectiveness of the plan.

§1102—Creditors' and equity security holders' committees. The U.S. trustee shall appoint a committee of creditors with unsecured claims and may appoint additional committees as deemed appropriate by the U.S. trustee.

§1103—Powers and duties of committees. A committee may, with the court's approval, select and employ attorneys, accountants, or other agents to represent the committee or perform services for it.

§1109—Right to be heard. A party in interest, including the SEC, may raise, appear, and be heard on any issue in a case. However, the SEC may not appeal from any judgment, order, or decree entered in the case.

§1111(b)—Claims and interests. With certain exceptions, a claim secured by a lien on property of the bankruptcy estate shall be allowed or disallowed under Section 502 even if the holder of the claim did not have recourse against the debtor as a result of the claim.

§1122—Classification of claims or interests. Generally, a plan may place a claim or interest in a particular class only if it is substantially similar to other claims or interests in that class. However, for administrative convenience, the court may allow a plan to designate a separate class of claims that includes only all unsecured claims that are less than a specified dollar amount.

§1123(a)(l)—Contents of plan. A plan shall designate classes of claims and classes of interests.

§1123(a)(2)—A plan shall specify any class of claims or interests that is not impaired by the plan.

§1123(a)(3)—A plan shall specify the treatment of any class of claims or interests that is impaired by the plan.

§1123(a)(4)—A plan shall provide the same treatment for each claim or interest in a particular class, unless the holder of a claim or interest agrees to less favorable treatment for that claim or interest.

§1123(a)(5)—A plan shall provide adequate means for the plan's implementation.

§1123(b)—Outlines things a plan may do but is not required to do.

§1123(d)—If a plan proposes to cure a default, the amount needed to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

§1124—Impairment of claims or interests.—Defines when a class of claims or interests is impaired (generally, when the plan alters the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest subject to certain exceptions).

§1125—Postpetition disclosure and solicitation.—The court must approve a disclosure statement to be presented to holders of claims or interests before they may be solicited to accept or reject a plan unless such solicitation takes place before the petition is filed. However, in a small business case, the court may determine that the plan provides adequate information and that a separate disclosure statement is not required.

§1126(a)—Acceptance of plan.—The holder of a claim or interest may accept or reject a plan.

§1126(b)—The holder of a claim or interest who accepted or rejected the plan before the case began is included in the calculation in subsection 1126(c) if the acceptance or rejection came after solicitation of same that was in compliance with an applicable nonbankruptcy law, rule, or regulation regarding the adequacy of disclosure in connection with such solicitation or, in the absence of such law, etc., the solicitation came after disclosure of adequate information as defined in subsection 1125(a).

§1126(c)—A class of claims has accepted a plan if the plan has been accepted by creditors holding at least two-thirds of the amount of claims in the class and more than one-half of the number of claims in the class. Any entity designated in subsection (e) shall not be included in the calculations.

§1126(e)—The court may designate any entity whose acceptance or rejection of the plan was not in good faith or was not solicited or procured in good faith.

§1126(f)—Unimpaired classes of claims or interests are deemed to have accepted the plan.

§1126(g)—A class is deemed not to have accepted the plan if the plan provides that the holders of claims or interests are not entitled to any property under the plan.

§1127(d)—Modification of plan.—A proponent of a plan may modify it at any time prior to confirmation. The plan may also be modified after confirmation but before substantial consummation of the plan so long as it meets the requirements of Section 1122.

§1128—Confirmation hearing.—After notice, the court shall hold a confirmation hearing. A party in interest may object to the confirmation of the plan.

§1129(a)(2)—Confirmation of plan. The court shall confirm a plan only if the proponent of the plan complies with the applicable provisions of the Bankruptcy Code, and

§1129(a)(3)—the plan has been proposed in good faith and not by any means forbidden by law, and

§1129(a)(6)—any government regulatory commission with jurisdiction over the rates of the debtor after confirmation has approved any rate change provided for in the plan or the rate change is expressly conditioned on such approval, and

§1129(a)(8)—each class of claims or interests has either accepted the plan or is not impaired by it, and

§1129(a)(10)—if a class of claims is impaired under the plan, at least one class of impaired claims has accepted the plan.

§1129(b)(l)—"Cramdown." If all applicable requirements in subsection (a) are met other than paragraph (8), the court shall confirm the plan so long as the plan does not discriminate unfairly, and is fair and equitable, with respect to each class that is impaired under the plan and has not accepted the plan.

§1129(b)(2)(A)—The conditions under which a plan will be considered fair and equitable with respect to a class of secured claims.

§1129(b)(2)(B)—The conditions under which a plan will be considered fair and equitable with respect to a class of unsecured claims.

§1142(b)—Implementation of plan. The court may direct the debtor and any other necessary party to execute, deliver, or join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, as well as to perform any other act needed to consummate the plan, including satisfaction of any lien.

§1143—Distribution. To participate in distribution under the plan, any entity must complete any required presentment or surrender of a security or performance of any other required act within five years after the date of the entry of the order of confirmation.

§1144—Revocation of an order of confirmation. If so requested by a party in interest before 180 days after the entry of the order of confirmation, the court may revoke such order if, and only if, the order was obtained by fraud.

§1145—Exemption from securities laws. Makes many transfers, sales, etc., of various securities connected directly or indirectly with the debtor exempt from security laws.

§1146(a)—Special tax provisions. Transfers or similar transactions under a confirmed plan will not be subject to a stamp tax or any similar tax.

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