

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

§ 1172. Contents of plan

(a) In addition to the provisions required or permitted under section 1123 of this title, a plan—

(1) shall specify the extent to and the means by which the debtor's rail service is proposed to be continued, and the extent to which any of the debtor's rail service is proposed to be terminated; and

(2) may include a provision for—

(A) the transfer of any or all of the operating railroad lines of the debtor to another operating railroad; or

(B) abandonment of any railroad line in accordance with section 1170 of this title.

(b) If, except for the pendency of the case under this chapter, transfer of, or operation of or over, any of the debtor's rail lines by an entity other than the debtor or a successor to the debtor under the plan would require approval by the Board under a law of the United States, then a plan may not propose such a transfer or such operation unless the proponent of the plan initiates an appropriate application for such a transfer or such operation with the Board and, within such time as the court may fix, not exceeding 180 days, the Board, with or without a hearing, as the Board may determine, and with or without modification or condition, approves such application, or does not act on such application. Any action or order of the Board approving, modifying, conditioning, or disapproving such application is subject to review by the court only under sections 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of title 5.

(c)(1) In approving an application under subsection (b) of this section, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section 11326(a) of title 49.

(2) Nothing in this subsection shall be deemed to affect the priorities or timing of payment of employee protection which might have existed in the absence of this subsection.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2644; Pub. L. 96-448, title II, § 227(b), Oct. 14, 1980, 94 Stat. 1931; Pub. L. 104-88, title III, § 302(2), Dec. 29, 1995, 109 Stat. 943; Pub. L. 109-8, title XII, § 1218, Apr. 20, 2005, 119 Stat. 195.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1172 of the House amendment is derived from section 1171 of the House bill in preference to section 1170 of the Senate amendment with the exception that section 1170(4) of the Senate amendment is incorporated into section 1172(a)(1) of the House amendment.

Section 1172(b) of the House amendment is derived from section 1171(c) of the Senate amendment. The section gives the Interstate Commerce Commission the exclusive power to approve or disapprove the transfer of, or operation of or over, any of the debtor's rail lines over which the Commission has jurisdiction, subject to review under the Administrative Procedures Act [5 U.S.C. 551 et seq. and 701 et seq.]. The section does not apply to a transfer of railroad lines to a successor of the debtor under a plan of reorganization by merger or otherwise.

The House amendment deletes section 1171(a) of the Senate amendment as a matter to be determined by the Rules of Bankruptcy Procedure. It is anticipated that the rules will specify the period of time, such as 18 months, within which a trustee must file with the court a proposed plan of reorganization for the debtor or a report why a plan cannot be formulated. Incorporation by reference of section 1121 in section 1161 of title 11 means that a party in interest will also have a right to file a plan of reorganization. This differs from the position taken in the Senate amendment which would have permitted the Interstate Commerce Commission to file a plan of reorganization.

SENATE REPORT NO. 95-989

Section 1170 adds to the general provisions required or permitted in reorganization plans by section 1123. Subsection (1) requires that a reorganization plan under the railroad subchapter specify the means by which the value of the claims of creditors and the interests of equity holders which are materially and adversely affected by the plan are to be realized. Subsection (2) permits a plan to include provisions for the issuance of warrants. Subsection (3) requires that the plan provide for fixed charges by probable earnings for their payment. Subsection (4) requires that the plan specify the means by which, and the extent to which, the debtor's rail service is to be continued, and shall identify any rail service to be terminated. Subsection (5) permits other appropriate provisions not inconsistent with the chapter. With the exception of subsection (4), the requirements are comparable to those of present section 77(b) [section 205(b) of former title 11]; subsection (4) emphasizes the public interest in the preservation of rail transportation.

Section 1171 imposes on the court, rather than the Interstate Commerce Commission, as in present section 77 [section 205 of former title 11], the responsibility for the plan of reorganization. The Commission is empowered to make final decisions subject only to review by the court under the standards of the Administrative Procedure Act [5 U.S.C. 551 et seq. and 701 et seq.] as to any part of the plan which deals with transportation matters, such as the grant of operating rights of or over, or transfer of, the debtor's rail lines to other carriers.

Subsection (a) requires the trustee to file a plan of reorganization within 18 months after the petition is filed, and permits the court, for good cause shown, to extend such time limit. Subsection (b) permits a plan to be proposed by any interested person, and permits the trustee to revise his plan at any time before it is approved by the court.

Subsections (c), (d) and (e) require the court, when a plan is submitted by the trustee or, if the court deems it worthy of consideration, a plan submitted is proposed by any other person proposes the transfer of, or operation of or over, any of the debtor's lines by other carriers, to refer to such provisions of the plan to the Interstate Commerce Commission. The Commission, within 240 days, and after a hearing if the Commission so determines, is to report to the court the effects of such provisions of the plan in the light of national transportation policy and sections 5(3)(f)(A), (B), and (D), (F)-(I) of the Interstate Commerce Act [49 U.S.C. 11350(b)(1), (2), (4), (6)-(9)]. The report of the Commission is conclusive in all further hearings on the plan by the court, subject only to review pursuant to 5 U.S.C. 706(2)(A)-(D).

HOUSE REPORT NO. 95-595

[Section 1171 (enacted as section 1172)] A plan in a railroad reorganization case may include provisions in addition to those required and permitted under an ordinary reorganization plan. It may provide for the transfer of any or all of the operating railroad lines of the debtor to another operating railroad.

Paragraph (1) contemplates a liquidating plan for the debtor's rail lines, much as occurred in the Penn Cen-

tral case by transfer of operating lines to ConRail. Such a liquidating plan is not per se contrary to the public interest, and the court will have to determine on a case-by-case basis, with the guidance of the Interstate Commerce Commission and of other parties in interest, whether the particular plan proposed is in the public interest, as required under proposed 11 U.S.C. 1172(3).

The plan may also provide for abandonment in accordance with section 1169, governing abandonment generally. Neither of these provisions in a plan, transfer or abandonment of lines, requires ICC approval. Confirmation of the plan by the court authorizes the debtor to comply with the plan in accordance with section 1142(a) notwithstanding any bankruptcy law to the contrary.

AMENDMENTS

2005—Subsec. (c)(1). Pub. L. 109-8 substituted “section 11326(a)” for “section 11347”.

1995—Subsecs. (b), (c)(1). Pub. L. 104-88 substituted “Board” for “Commission” wherever appearing.

1980—Subsec. (c). Pub. L. 96-448 added subsec. (c).

EFFECTIVE DATE OF 2005 AMENDMENT

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

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-448 effective Oct. 1, 1980, see section 710(a) of Pub. L. 96-448, set out as a note under section 1170 of this title.

NONAPPLICATION OF SUBSEC. (c)

For provision that subsec. (c) of this section does not apply to Amtrak and its employees, see section 142(d) of Pub. L. 105-134, set out in an Employee Protection Reforms note under section 24706 of Title 49, Transportation.

§ 1173. Confirmation of plan

(a) The court shall confirm a plan if—

(1) the applicable requirements of section 1129 of this title have been met;

(2) each creditor or equity security holder will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the value of property that each such creditor or equity security holder would so receive or retain if all of the operating railroad lines of the debtor were sold, and the proceeds of such sale, and the other property of the estate, were distributed under chapter 7 of this title on such date;

(3) in light of the debtor’s past earnings and the probable prospective earnings of the reorganized debtor, there will be adequate coverage by such prospective earnings of any fixed charges, such as interest on debt, amortization of funded debt, and rent for leased railroads, provided for by the plan; and

(4) the plan is consistent with the public interest.

(b) If the requirements of subsection (a) of this section are met with respect to more than one

plan, the court shall confirm the plan that is most likely to maintain adequate rail service in the public interest.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2644; Pub. L. 98-353, title III, § 523, July 10, 1984, 98 Stat. 388.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1173 of the House amendment concerns confirmation of a plan of railroad reorganization and is derived from section 1172 of the House bill as modified. In particular, section 1173(a)(3) of the House amendment is derived from section 1170(3) of the Senate amendment. Section 1173(b) is derived from section 1173(a)(8) of the Senate amendment.

SENATE REPORT NO. 95-989

Section 1173 adapts the provisions dealing with reorganization plans generally contained in section 1130 to the particular requirements of railroad reorganization plans, as set out in present section 77(e) [section 205(e) of former title 11]. Subsection (a) specifies the findings which the court must make before approving a plan: (1) The plan complies with the applicable provisions of the chapter; (2) the proponent of the plan complies with the applicable provisions of the chapter; (3) the plan has been proposed in good faith; (4) any payments for services or for costs or expenses in connection with the case or the plan are disclosed to the court and are reasonable, or, if to be paid later, are subject to the approval of the court as reasonable; (5) the proponent of the plan has disclosed the identity and affiliations of the individuals who will serve as directors, officers, or voting trustees, such appointments or continuations in office are consistent with the interests of creditors, equity security holders, and the proponent of the public, and has disclosed the identity and compensation of any insider who will be employed or retained under the plan; (6) that rate changes proposed in the plan have been approved by the appropriate regulatory commission, or that the plan is contingent on such approval; (7) that confirmation of the plan is not likely to be followed by further reorganization or liquidation, unless it is contemplated by the plan; (8) that the plan, if there is more than one, is the one most likely to maintain adequate rail service and (9) that the plan provides the priority traditionally accorded by section 77(b) [section 205(b) of former title 11] to claims by rail creditors for necessary services rendered during the 6 months preceding the filing of the petition in bankruptcy.

Subsection (b) continues the present power of the court in section 77(e) [section 205(e) of former title 11] to confirm a plan over the objections of creditors or equity security holders who are materially and adversely affected. The subsection also confirms the authority of the court to approve a transfer of all or part of a debtor’s property or its merger over the objections of equity security holders if it finds (1) that the “public interest” in continued rail transportation outweighs any adverse effect on creditors and equity security holders, and (2) that the plan is fair and equitable, affords due recognition to the rights of each class, and does not discriminate unfairly against any class.

Subsection (c) permits modification of a plan confirmed by a final order only for fraud.

HOUSE REPORT NO. 95-595

[Section 1172] This section [enacted as section 1173] requires the court to confirm a plan if the applicable requirements of section 1129 (relating to confirmation of reorganization plans generally) are met, if the best interest test is met, and if the plan is compatible with the public interest.

The test in this paragraph is similar to the test prescribed for ordinary corporate reorganizations. However, since a railroad cannot liquidate its assets and sell them for scrap to satisfy its creditors, the test fo-