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EXTENSION OF BENEFITS TO INDUCTEES UNDER UNIVERSAL MILITARY TRAINING AND SERVICE ACT

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SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1918

Former provisions on this subject were contained in the Soldiers' and Sailors' Civil Relief Act of 1918, set out as former act' 101 et seq. of this Appendix.

§ 501. Short title.

This Act (sections 501 to 548 and 500 to 590 of this Appendix) may be cited as the Soldiers' and Sailors' Civil Relief Act of 1940. (Oct. 17, 1940, ch. 888, § 1, 54 Stat. 1178.)

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENTS OF 1942

Act Oct. 6, 1942, ch. 881, § 1, 56 Stat. 769, provided: "That this Act (affecting sections 513—517, 525, 526, 530—535, 540—554, 560, 569, 572, 574, and 590 of this Appendix) may be cited as the Soldiers' and Sailors' Civil Relief Act Amendments of 1942."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 510 to 548 and 560 to 590 of this Appendix.

ARTICLE I.—GENERAL PROVISIONS

§ 510. Purpose; suspension of enforcement of civil liabilities.

In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act (sections 501 to 548 and 560 to 590 of this Appendix) remains in force. (Oct. 17, 1940, ch. 888, § 100, 54 Stat. 1179.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 511 to 548 and 560 to 590 of this Appendix.

§ 511. Definitions.

(1) The term "persons in military service" and the term "persons in the military service of the United States", as used in this Act [sections 501 to 548 and 560 to 590 of this Appendix], shall include the following persons and no other: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act [said sections], shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act [sections 501 to 548 and 560 to 590 of this Appendix], shall include the time between the following dates: For persons in active service at the date of approval of this Act [Oct. 17, 1940] it shall begin with the date of approval of this Act [Oct. 17, 1940]; for persons entering active service after the date of this Act [Oct. 17, 1940], with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force.

(3) The term "person", when used in this Act [sections 501 to 548 and 560 to 590 of this Appendix], with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act [sections 501 to 548 and 560 to 590 of this Appendix], shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record. (Oct. 17, 1940, ch. 888, § 101, 54 Stat. 1179.)

WOMEN'S ARMY CORPS

The members of the Women's Army Auxiliary Corps were included among the "persons in military service" within the meaning of the Soldiers' and Sailors' Civil Relief Act by the amendment to subsec. 1 of this section by act of May 14, 1942, ch. 312, § 10, 56 Stat. 282, which was repealed by act of July 1, 1943, ch. 187, § 5, 57 Stat. 371. The Women's Army Auxiliary Corps established by the act of May 14, 1942, was superseded by the Women's Army Corps in the Army of the United States as established by the act of July 1, 1943, ch. 187, 57 Stat. 371 and repealed by act June 25, 1947, ch. 327, § 2 (a), 61 Stat. 451, eff. July 1, 1948. The effective date of the repeal was postponed until June 12, 1949, by act June 12, 1949, ch. 440, title I, § 110, 62 Stat. 303, section 101 of which established in the Regular Army a Women's Army Corps to be effective June 12, 1948.

The members of the Women's Army Corps, Regular Army, are entitled to the protection of all laws applicable to male commissioned officers, warrant officers, and enlisted men of the Regular Army; to former male commissioned officers, warrant officers and enlisted men of the

Regular Army; and to their dependents and beneficiaries, in view of section 107 of act June 12, 1948, ch. 42, title I, 62 Stat. 361, which superseded similar provisions contained in act July 1, 1943, ch. 187, § 2, 57 Stat. 371 [formerly set out as section 1552 of this Appendix].

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510, 512 to 548 and 560 to 590 of this Appendix.

§ 512. Territorial application; jurisdiction of courts; form of procedure.

(1) The provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix] shall apply to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States, and to proceedings commenced in any court therein, and shall be enforced through the usual forms of procedure obtaining in such courts or under such regulations as may be by them prescribed.

(2) When under this Act [sections 501 to 548 and 560 to 590 of this Appendix], any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court. (Oct. 17, 1940, ch. 888, § 102, 54 Stat. 1179; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.)

CODIFICATION

The clause "including the Philippine Islands while under the sovereignty of the United States" following the words "and all territory subject to the jurisdiction of the United States" in subdivision (1) was omitted pursuant to 1946 Proc. No. 2695, which recognized the independence of the Philippine Islands as of July 4, 1946, and is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510, 511, 518 to 548 and 560 to 590 of this Appendix.

§ 513. Protection of persons secondarily liable.

(1) Whenever pursuant to any of the provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix] the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment, or decree, or the performance of any other act, may be stayed, postponed, or suspended, such stay, postponement, or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers, accommodation makers, and others, whether primarily or secondarily subject to the obligation or liability, the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside in whole or in part, as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix], the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree was entered.

(3) Whenever, by reason of the military service of a principal upon a criminal bail bond the sureties upon such bond are prevented from enforcing the attendance of their principal and performing their

obligation the court shall not enforce the provisions of such bond during the military service of the principal thereon and may in accordance with principles of equity and justice either during or after such service discharge such sureties and exonerate the bail.

(4) Nothing contained in this Act [sections 501 to 548 and 560 to 590 of this Appendix], shall prevent a waiver in writing of the benefits afforded by subsections (1) and (2) of this section by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability, except that after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942] no such waiver shall be valid unless it is executed as an instrument separate from the obligation or liability in respect of which it applies, and no such waiver shall be valid after the beginning of the period of military service if executed by an individual who subsequent to the execution of such waiver becomes a person in military service, or if executed by a dependent of such individual, unless executed by such individual or dependent during the period specified in section 106 [section 516 of this Appendix]. (Oct. 17, 1940, ch. 888, § 103, 54 Stat. 1179; Oct. 6, 1942, ch. 581, §§ 2, 3, 56 Stat. 769.)

REFERENCES IN TEXT

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in subsec. (4), amended, among other sections, this section. For other sections affected, see note under section 501 of this Appendix.

AMENDMENTS

1942—Subsec. (1). Act Oct. 6, 1942, § 2(a), substituted "accommodation makers, and others, whether primarily or secondarily" for "and others".

Subsec. (2). Act Oct. 6, 1942, § 2(b), substituted "accommodation maker, or other person whether primarily or secondarily" for "or other person".

Subsecs. (3) and (4). Act Oct. 6, 1942, § 3 added subsecs. (3) and (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 512, 514 to 548 and 560 to 590 of this Appendix.

§ 514. Extension of benefits to citizens serving with forces of war allies.

Persons who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act [sections 501 to 548 and 560 to 590 of this Appendix] remains in force and who immediately prior to such service were citizens of the United States shall, except in those cases provided for in section 512 [section 572 of this Appendix], be entitled to the relief and benefits afforded by this Act [sections 501 to 548 and 560 to 590 of this Appendix] if such service is similar to military service as defined in this Act [said sections], unless they are dishonorably discharged therefrom, or it appears that they do not intend to resume United States citizenship. (Oct. 17, 1940, ch. 888, § 104, as added Oct. 6, 1942, ch. 581, § 4, 56 Stat. 770.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 512, 514 to 548 and 560 to 590 of this Appendix.

§ 515. Notice of benefits to persons in and persons entering military service.

The Secretary of the Army and the Secretary of the Navy shall make provision, in such manner as each may deem appropriate for his respective Department, to insure the giving of notice of the benefits accorded by this Act [sections 501 to 548 and 560 to 590 of this Appendix] to persons in and to persons entering military service. The Director of Selective Service shall cooperate with the Secretary of the Army and the Secretary of the Navy in carrying out the provisions of this section. (Oct. 17, 1940, ch. 888, § 105, as added Oct. 6, 1942, ch. 581, § 4, 56 Stat. 770.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer of certain functions insofar as they pertain to the Air Force, and to the extent that they were not previously transferred to the Secretary of the Air Force and Department of the Air Force from the Secretary of the Army and Department of the Army, see Secretary of Defense Transfer Order No. 40 [App. A (112)], July 22, 1949.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 514, 516 to 548 and 560 to 590 of this Appendix.

§ 516. Extension of benefits to persons ordered to report for induction or military service.

Any person who has been ordered to report for induction under the Selective Training and Service Act of 1940, as amended, shall be entitled to the relief and benefits accorded persons in military service under articles I, II, and III of this Act [sections 510 to 517, 520 to 527, and 530 to 536 of this Appendix] during the period beginning on the date of receipt of such order and ending on the date upon which such person reports for induction; and any member of the Enlisted Reserve Corps who is ordered to report for military service shall be entitled to such relief and benefits during the period beginning on the date of receipt of such order and ending on the date upon which he reports for such service. (Oct. 17, 1940, ch. 888, § 106, as added Oct. 6, 1942, ch. 581, § 4, 56 Stat. 770.)

REFERENCES IN TEXT

The Selective Training and Service Act of 1940, as amended, referred to in text, was formerly set out as sections 301—303, 304, 305, 306—309, 310, and 311—318 of this Appendix. Similar provisions are now contained in the Universal Military Training and Service Act, set out as sections 451, 452, 454, 455, 456 and 458—471 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 515, 517 to 548 and 560 to 590 of this Appendix.

§ 517. Effect on rights, remedies, etc., pursuant to written agreements entered after commencement of military service.

Nothing contained in this Act [sections 501 to 548 and 560 to 590 of this Appendix] shall prevent—

(a) the modification, termination, or cancellation of any contract, lease, or bailment or any obligation secured by mortgage, trust deed, lien, or other security in the nature of a mortgage, or

(b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property which is security for any obligation or which has been purchased or received under a contract, lease, or bailment,

pursuant to a written agreement of the parties thereto (including the person in military service concerned, or the person to whom section 106 [section 516 of this Appendix] is applicable, whether or not such person is a party to the obligation), or their assignees, executed during or after the period of military service of the person concerned or during the period specified in section 106 [section 516 of this Appendix]. (Oct. 17, 1940, ch. 888, § 107, as added Oct. 6, 1942, ch. 581, § 4, 56 Stat. 770.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 516, 518 to 548 and 560 to 590 of this Appendix.

ARTICLE II.—GENERAL RELIEF

§ 520. Default judgments; affidavits; bonds; attorneys for persons in service.

(1) In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act [sections 501 to 548 and 560 to 590 of this Appendix]. Whenever, under the laws applicable with respect to any court, facts may be evidenced, established, or proved by an unsworn statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury, the filing of such an unsworn statement, declaration, verification, or certificate shall satisfy the requirement of this subsection that facts be established by affidavit.

(2) Any person who shall make or use an affidavit

required under this section or a statement, declaration, verification, or certificate certified or declared to be true under penalty of perjury permitted under subsection (1), knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.

(3) In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this Act [sections 501 to 548 and 560 to 590 of this Appendix], to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

(4) If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix], shall not impair any right or title acquired by any bona fide purchaser for value under such judgment. (Oct. 17, 1940, ch. 888, § 200, 54 Stat. 1180; Sept. 8, 1960, Pub. L. 86-721, §§ 1, 2, 74 Stat. 820.)

AMENDMENTS

1960—Subsec. (1). Pub. L. 86-721, § 1, permitted the establishment of certain facts by a declaration under penalty of perjury in lieu of an affidavit.

Subsec. (2). Pub. L. 86-721, § 2, inserted after "affidavit required under this section," the words "or a statement, declaration, verification, or certificate certified or declared to be true under penalty of perjury permitted under subsection (1)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 517, 521 to 548 and 560 to 590 of this Appendix.

§ 521. Stay of proceedings where military service affects conduct thereof.

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix] unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his

military service. (Oct. 17, 1940, ch. 888, § 201, 54 Stat. 1181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 520, 522 to 548 and 560 to 590 of this Appendix.

§ 522. Fines and penalties on contracts, etc.

When an action for compliance with the terms of any contract is stayed pursuant to this Act [sections 501 to 548 and 560 to 590 of this Appendix] no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred and that by reason of such service the ability of such person to pay or perform was thereby materially impaired. (Oct. 17, 1940, ch. 888, § 202, 54 Stat. 1181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 521, 523 to 548 and 560 to 590 of this Appendix.

§ 523. Stay or vacation of execution of judgments, attachments, etc.

In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service—

(a) Stay the execution of any judgment or order entered against such person, as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix]; and

(b) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this Act [said sections]. (Oct. 17, 1940, ch. 888, § 203, 54 Stat. 1181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 522, 524 to 548 and 560 to 590 of this Appendix.

§ 524. Duration and term of stays; codefendants not in service.

Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix] may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court may fix or otherwise. Where the person in military service is a codefendant with either the plaintiff may nevertheless by leave of court proceed against the others. (Oct. 17, 1940, ch. 888, § 204, 54 Stat. 1181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 522, 525 to 548 and 560 to 590 of this Appendix.

§ 525. Statutes of limitations as affected by period of service.

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Oct. 6, 1942) be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment. (Oct. 17, 1940, ch. 888, § 205, 54 Stat. 1181; Oct. 6, 1942, ch. 581, § 5, 56 Stat. 770.)

REFERENCES IN TEXT

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in the text, amended, among other sections, this section. For other sections affected, see note under section 501 of this Appendix.

AMENDMENTS

1942—Act Oct. 6, 1942, included proceedings before boards, bureaus, commissions, departments, or other agencies of government, and added provision for omission of service period in computing period for redemption of real property.

CROSS REFERENCES

Application of this section to any period of limitation prescribed by or under internal revenue laws, see section 527 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 524, 526 to 548 and 560 to 590 of this Appendix.

§ 526. Maximum rate of interest.

No obligation or liability bearing interest at a rate in excess of 6 per centum per annum incurred by a person in military service prior to his entry into such service shall, during any part of the period of military service which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Oct. 6, 1942), bear interest at a rate in excess of 6 per centum per annum unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of 6 per centum per annum is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) in respect of such obligation or liability. (Oct. 17, 1940, ch. 888, § 206, as added Oct. 6, 1942, ch. 581, § 6, 56 Stat. 771.)

REFERENCES IN TEXT

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in the text, amended, among other

sections, this section. For other sections affected, see note under section 501 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 526, 527 to 548 and 580 to 590 of this Appendix.

§ 527. Limitations prescribed by internal revenue laws as affected by period of service.

Section 205 of this Act [section 525 of this Appendix] shall not apply with respect to any period of limitation prescribed by or under the internal revenue laws of the United States. (Oct. 17, 1940, ch. 888, § 207, as added Oct. 21, 1942, ch. 619, title V, § 507(b) (2) (B), 56 Stat. 064.)

CROSS REFERENCES

Income taxes, deferment of collection, see section 573 of this Appendix and note thereunder.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 526, 527 to 548 and 580 to 590 of this Appendix.

ARTICLE III.—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS, LEASES

AMENDMENTS

1942—Article heading was amended by act Oct. 6, 1942, ch. 581, § 7, 56 Stat. 771. Article was formerly entitled "Rent, Installment Contracts, Mortgages".

§ 530. Eviction or distress during military service; stay; penalty for noncompliance; allotment of pay for payment.

(1) No eviction or distress shall be made during the period of military service in respect of any premises for which the agreed rent does not exceed \$150 per month, occupied chiefly for dwelling purposes by the wife, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession.

(2) On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service, stay the proceedings for not longer than three months, as provided in this Act [sections 501 to 548 and 580 to 590 of this Appendix], or it may make such other order as may be just. Where such stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application therefor, to relief in respect of such premises similar to that granted persons in military service in sections 301, 302, and 500 of this Act [sections 531, 532, and 580 of this Appendix] to such extent and for such period as may appear to the court to be just.

(3) Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subsection (1) hereof, or attempts so to do, shall be guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.

(4) The Secretary of the Army, the Secretary of the Navy, or the Secretary of the Treasury with respect to the Coast Guard, as the case may be, is empowered, subject to such regulations as he may prescribe, to order an allotment of the pay of a

person in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by the wife, children, or other dependents of such person. (Oct. 17, 1940, ch. 888, § 300, 54 Stat. 1181; Oct. 6, 1942, ch. 581, § 8, 56 Stat. 771; Mar. 3, 1966, Pub. L. 89-358, § 10, 80 Stat. 28.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(n) of act July 26, 1947 was repealed by section 83 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1950, enacted "Title 10, Armed Forces" which in sections 3011-3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

AMENDMENTS

1086—Subsec. (1). Pub. L. 89-358 increased the limitation of rents from \$80 to \$150 per month.

1942—Subsec. (2). Act Oct. 6, 1942, § 8(a), added last sentence.

Subsec. (3). Act Oct. 6, 1942, § 8(b), inserted "or attempts so to do."

SECRETARY OF THE AIR FORCE

For transfer of certain functions relating to finance and fiscal matters, insofar as they pertain to the Air Force, from the Secretary of the Army and Department of the Army to the Secretary of the Air Force and Department of the Air Force, see Secretary of Defense Transfer Order No. 25 [§ 111], Oct. 14, 1948.

For transfer of certain real property, and functions relating thereto, insofar as they pertain to the Air Force, from the Secretary of the Army and Department of the Army to the Secretary of the Air Force and Department of the Air Force, see Secretary of Defense Transfer Order Nos. 14, eff. July 1, 1948, and 40 [App. B (140)], July 22, 1949.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 527, 531 to 548 and 580 to 590 of this Appendix.

§ 531. Installment contracts for purchase of property.

(1) No person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price, or a deposit or installment under the contract, lease, or bailment, from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment thereunder due or for any other breach of the terms thereof occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction.

(2) Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subsection (1) of this section or in section 107 [section 517 of this Appendix], or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both.

(3) Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of

the property, or may, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix] unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interests of all parties. (Oct. 17, 1940, ch. 888, § 301, 54 Stat. 1181; Oct. 6, 1942, ch. 581, § 9 (a, c, d), 56 Stat. 771.)

AMENDMENTS

1942—Subsec. (1). Act Oct. 6, 1942, § 9 (a), omitted provision limiting applicability to transactions prior to Oct. 10, 1940, and proviso relating to modification, termination, or cancellation of contracts and repossession or retention of property by mutual written agreement of the parties. Inserted provision relating to deposit or installment under contract, lease, or bailment, and included other branches of terms in addition to nonpayment of installments.

Subsec. (2). Act Oct. 6, 1942, § 9 (d), substituted "of this section or in section 107, or attempts so to do," for "hereof".

Subsec. (3). Act Oct. 6, 1942, § 9 (c), deleted "except as provided in section 303", preceding "on application".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 530, 532 to 548 and 560 to 590 of this Appendix.

§ 532. Mortgages, trust deeds, etc.

(1) The provisions of this section shall apply only to obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him which obligations originated prior to such person's period of military service.

(2) In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix]; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

(3) No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (Oct. 6, 1942) and during the period of military service or within three months thereafter, except pur-

suant to an agreement as provided in section 107 [section 517 of this Appendix], unless upon an order previously granted by the court and a return thereto made and approved by the court.

(4) Any person who shall knowingly make or cause to be made any sale, foreclosure, or seizure of property, defined as invalid by subsection (3) hereof, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both. (Oct. 17, 1940, ch. 888, § 302, 54 Stat. 1182; Oct. 6, 1942, ch. 581, §§ 9 (b, c), 10, 56 Stat. 771, 772; June 23, 1952, ch. 450, 66 Stat. 151.)

REFERENCES IN TEXT

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in subsec. (3), amended, among other sections, this section. For other sections affected, see note under section 501 of this Appendix.

AMENDMENTS

1952—Subsec. (4). Act June 23, 1952, prohibited the making of sales, foreclosures, or seizures defined as invalid by subsec. (3) of this section.

1942—Subsec. (1). Act Oct. 6, 1942, § 9 (b), deleted "originating prior to the date of approval of this Act and" following "obligations" and inserted matter at end of subsection following "him".

Subsec. (2). Act Oct. 6, 1942, § 9 (c), deleted "except as provided in section 303," preceding "on application".

Subsec. (3). Act Oct. 6, 1942, § 10, amended subsec. (3) generally.

Subsec. (4). Act Oct. 6, 1942, § 10, added subsec. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 531, 533 to 548 and 560 to 590 of this Appendix and title 12 sections 1710, 1739, 1750c.

§ 533. Settlement of cases involving stayed proceedings to foreclose mortgage on, resume possession of, or terminate contract for purchase of, personal property.

Where a proceeding to foreclose a mortgage upon or to resume possession of personal property, or to rescind or terminate a contract for the purchase thereof, has been stayed as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix], the court may, unless in its opinion an undue hardship would result to the dependents of the person in military service, appoint three disinterested parties to appraise the property and, based upon the report of the appraisers, order such sum, if any, as may be just, paid to the person in military service or his dependent, as the case may be, as a condition of foreclosing the mortgage, resuming possession of the property, or rescinding or terminating the contract. (Oct. 17, 1940, ch. 888, § 303, as added Oct. 6, 1942, ch. 581, § 12, 56 Stat. 772.)

REPEALS

Former section 533, from act Oct. 17, 1940, ch. 888, § 303, 54 Stat. 1183, related to stay of action to resume possession of motor vehicle, tractor, or their accessories, encumbered by purchase money mortgage, conditional sales contract, etc., and was repealed by act Oct. 6, 1942, ch. 581, § 11, 56 Stat. 772.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 532, 534 to 548 and 560 to 590 of this Appendix.

§ 534. Termination of leases by lessees.

(1) The provisions of this section shall apply to any lease covering premises occupied for dwelling, professional, business, agricultural, or similar pur-

poses in any case in which (a) such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service, and (b) the premises so leased have been occupied for such purposes, or for a combination of such purposes, by such person or by him and his dependents.

(2) Any such lease may be terminated by notice in writing delivered to the lessor (or his grantee) or to the lessor's (or his grantee's) agent by the lessee at any time following the date of the beginning of his period of military service. Delivery of such notice may be accomplished by placing it in an envelope properly stamped and duly addressed to the lessor (or his grantee) or to the lessor's (or his grantee's) agent and depositing the notice in the United States mails. Termination of any such lease providing for monthly payment of rent shall not be effective until thirty days after the first date on which the next rental payment is due and payable subsequent to the date when such notice is delivered or mailed. In the case of all other leases, termination shall be effected on the last day of the month following the month in which such notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be proratably computed and any rental paid in advance for a period succeeding termination shall be refunded by the lessor (or his assignee). Upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this subsection shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require.

(3) Any person who shall knowingly seize, hold, or detain the personal effects, clothing, furniture, or other property of any person who has lawfully terminated a lease covered by this section, or in any manner interfere with the removal of such property from the premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both. (Oct. 17, 1940, ch. 888, § 304, as added Oct. 6, 1942, ch. 581, § 12, 56 Stat. 772.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 533, 535 to 548 and 560 to 590 of this Appendix.

§ 535. Protection of assignor of life insurance policy; enforcement of storage liens; penalties.

(1) Where any life insurance policy on the life of a person in military service has been assigned prior to such person's period of military service to secure the payment of any obligation of such person, no assignee of such policy (except the insurer in connection with a policy loan) shall, during the period of military service of the insured or within one year thereafter, except upon the consent in writing of the insured made during such period or when the premiums thereon are due and unpaid or upon the death of the insured, exercise any right or option by virtue of such assignment unless upon leave of court granted upon an application made therefor

by such assignee. The court may thereupon refuse to grant such leave unless in the opinion of the court the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his military service. For the purpose of this subsection premiums which are guaranteed under the provisions of article IV of this Act [sections 540 to 548 of this Appendix] shall not be deemed to be due and unpaid.

(2) No person shall exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a person in military service during such person's period of military service and for three months thereafter except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court. In such proceeding the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to pay the storage charges due is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix]; or

(b) make such other disposition of the case as may be equitable to conserve the interest of all parties.

The enactment of the provisions of this subsection shall not be construed in any way as affecting or as limiting the scope of section 302 of this Act [section 532 of this Appendix].

(3) Any person who shall knowingly take any action contrary to the provisions of this section, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed \$1,000, or both. (Oct. 17, 1940, ch. 888, § 305, as added Oct. 6, 1942, ch. 581, § 12, 56 Stat. 773.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 534, 536 to 548 and 560 to 590 of this Appendix.

§ 536. Extension of benefits to dependents.

Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under the provisions of this article [sections 530 to 536 of this Appendix] upon application to a court therefor, unless in the opinion of the court the ability of such dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the person upon whom the applicants are dependent. (Oct. 17, 1940, ch. 888, § 306, as added Oct. 6, 1942, ch. 581, § 12, 56 Stat. 773.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 535, 540 to 548 and 560 to 590 of this Appendix and title 12 sections 1710, 1739, 1750c.

ARTICLE IV.—INSURANCE

PAIOR PROVISIONS

The provisions of "Article IV—Insurance" of act Oct. 17, 1940, ch. 888, 54 Stat. 1183, were amended by act Oct. 6, 1942, ch. 581, § 13, 56 Stat. 773, to read as incorporated in sections 540—548 of this Appendix.

Prior to act Oct. 6, 1942, constituting the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, "Article IV—Insurance" consisted of sections 400—414 of act Oct. 17, 1940, which were incorporated in sections 540—554 of this Appendix. For text of sections 400—414 of act Oct. 17, 1940, as originally enacted, see notes to sections 540—554 of this Appendix.

§ 540. Definitions.

As used in this article [sections 540 to 548 of this Appendix]—

(a) The term "policy" shall include any contract of life insurance or policy on a life, endowment, or term plan, including any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association, which does not provide for the payment of any sum less than the face value thereof or for the payment of an additional amount as premiums if the insured engages in the military service of the United States as defined in section 101 of article I of this Act [section 511 of this Appendix] or which does not contain any limitation or restriction upon coverage relating to engagement in or pursuit of certain types of activities which a person might be required to engage in by virtue of his being in such military service, and (1) which is in force on a premium-paying basis at the time of application for benefits hereunder, and (2) which was made and a premium paid thereon before the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942 or not less than one hundred and eighty days before the date the insured entered into the military service. The provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix] shall not be applicable to policies or contracts of life insurance issued under the War Risk Insurance Act, as amended, the World War Veterans Act, as amended, or the National Service Life Insurance Act of 1940, as amended.

(b) The term "premium" shall include the amount specified in the policy as the stipend to be paid by the insured at regular intervals during the period therein stated.

(c) The term "insured" shall include any person in the military service of the United States as defined in section 101, article I, of this Act [section 511 of this Appendix], whose life is insured under and who is the owner and holder of and has an interest in a policy as above defined.

(d) The term "insurer" shall include any firm, corporation, partnership, or association chartered or authorized to engage in the insurance business and to issue a policy as above defined by the laws of a State of the United States or the United States. (Oct. 17, 1940, ch. 888, § 400, 54 Stat. 1183; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 773; July 11, 1956, ch. 570, § 1, 70 Stat. 528.)

REFERENCES IN TEXT

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in subsec. (a), amended, among other sections, this section. For other sections affected, see note under section 501, of this Appendix.

The War Risk Insurance Act, as amended, referred to in subsec. (a), was act Oct. 6, 1917, ch. 105, 40 Stat. 398, as amended, which was repealed by Pub. L. 85-56, Title XXII, 2302 (96), June 17, 1957, 71 Stat. 166.

The World War Veteran's Act as amended, referred to in subsec. (a), was act June 27, 1924, ch. 320, title I, 43 Stat. 607, as amended, which was repealed by Pub. L. 85-857, § 14 (51), Sept. 2, 1958, 72 Stat. 1271, and subject

matter of which is now generally covered by subchapter II of chapter 19 of Title 38, Veterans' Benefits.

The National Service Life Insurance Act of 1940, as amended, referred to in subsec. (a) was act Oct. 8, 1940, ch. 757, title VI, pt. 1, 54 Stat. 1008, as amended, which was repealed by Pub. L. 85-857, § 14 (75), Sept. 2, 1958, 72 Stat. 1272, and is now generally covered by chapter 19 of Title 38, Veterans' Benefits.

AMENDMENTS

1956—Subsec. (a). Act July 11, 1956, substituted "one hundred and eighty" for "thirty" preceding the words "days before the date the insured entered into the military service".

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act July 11, 1956, provided that the amendment to subsec. (a) should take effect with respect to applications for benefits made after July 11, 1956.

PRIOR PROVISIONS

Section 400 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 8, 1942, read: "In this article the term 'policy' shall include any contract of life insurance on the level premium or legal reserve plan. It shall also include any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association; the term 'premium' shall include membership dues or assessments in such association, and the date of issuance of policy as herein limited shall refer to the date of admission to membership in such association; the term 'insured' shall include any person who is the holder of a policy as defined in this article; the term 'insurer' shall include any corporation, partnership, or other form of association which secures or provides insurance under any policy as defined in this article."

VETERANS' LIFE INSURANCE REFUNDS

Pub. L. 85-586 Aug. 1, 1958, 72 Stat. 487, authorized the Administrator of Veterans' Affairs to make refunds, without interest, which are due on account of amounts collected by the United States Government by offset or otherwise from persons who made valid application for and were legally entitled to the protection of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, former sections 540-554 of this Appendix, as it existed prior to the amendments of October 8, 1942, application to be made to the Veterans' Administration, within two years after Aug. 1, 1958 and authorized appropriation of additional sums for such purposes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 536, 541 to 548 and 560 to 590 of this Appendix.

§ 541. Persons entitled to benefits of article; applications; amount of insurance protected.

The benefits and privileges of this article [sections 540 to 548 of this Appendix] shall apply to any insured, when such insured, or a person designated by him, or, in case the insured is outside the continental United States (excluding Alaska and the Panama Canal Zone), a beneficiary, shall make written application for protection under this article [said sections], unless the Administrator of Veterans' Affairs in passing upon such application as provided in this article [said sections] shall find that the policy is not entitled to protection hereunder. The Veterans' Administration shall give notice to the military and naval authorities of the provisions of this article [said sections], and shall include in such notice an explanation of such provisions for the information of those desiring to make application for the benefits thereof. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration. The total

amount of insurance on the life of one insured under policies protected by the provisions of this article (said sections) shall not exceed \$10,000. If an insured makes application for protection of policies on his life totaling insurance in excess of \$10,000, the Administrator is authorized to have the amount of insurance divided into two or more policies so that the protection of this article (said sections) may be extended to include policies for a total amount of insurance not to exceed \$10,000, and a policy which affords the best security to the Government shall be given preference. (Oct. 17, 1940, ch. 888, § 401, 54 Stat. 1183; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 774.)

PRIOR PROVISIONS

Section 401 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"(1) The benefits of this article shall apply to any person in military service who is the holder of a policy of life insurance, when such holder shall apply for such benefits on a form prepared in accordance with regulations which shall be prescribed by the Administrator of Veterans' Affairs. Such form shall set forth particularly that the application therein made is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article and by receiving and filing the same the insurer shall be deemed to have assented thereto, to the extent, if any, to which the policy on which the application is made is within the provisions of this article. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration.

"(2) The Veterans' Administration shall issue through suitable military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article and shall furnish forms to be distributed to those desiring to make application for its benefits."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 540, 548 to 549 and 560 to 590 of this Appendix.

§ 542. Form of application; reports to Veterans' Administration by insurer; policy deemed modified upon application for protection.

Any writing signed by the insured and identifying the policy and the insurer, and agreeing that his rights under the policy are subject to and modified by the provisions of this article (sections 540 to 548 of this Appendix), shall be sufficient as an application for the benefits of this article (said sections), but the Veterans' Administration may require the insured and insurer to execute such other forms as may be deemed advisable. Upon receipt of the application of the insured the insurer shall furnish such report to the Veterans' Administration concerning the policy as shall be prescribed by regulations. The insured who has made application for protection under this article (said sections) and the insurer shall be deemed to have agreed to such modification of the policy as may be required to give this article (said sections) full force and effect with respect to such policy. (Oct. 17, 1940, ch. 888, § 401, 54 Stat. 1183; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 774.)

PRIOR PROVISIONS

Section 402 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this

Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"The benefits of this act shall be available to any person in military service in respect of contracts of insurance in force under their terms up to but not exceeding a face value of \$5,000, irrespective of the number of policies held by such person whether in one or more companies, when such contracts were made and a premium was paid thereon before the date of approval of this act or not less than thirty days before entry into the military service; but in no event shall the provisions of this article apply to any policy on which premiums are due and unpaid for a period of more than one year at the time when application for the benefits of this article is made or in respect of any policy on which there is outstanding a policy loan or other indebtedness equal to or greater than 50 per centum of the cash surrender value of the policy."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 541, 543 to 549 and 560 to 590 of this Appendix.

§ 543. Determination of policies entitled to protection; notice to parties; lapse of policies for nonpayment of premiums, etc.

The Administrator of Veterans' Affairs shall find whether the policy is entitled to protection under this article (sections 540 to 548 of this Appendix) and shall notify the insured and the insurer of such finding. Any policy found by the Administrator of Veterans' Affairs to be entitled to protection under this article (said sections) shall not, subsequent to date of application, and during the period of military service of the insured or during two years after the expiration of such service, lapse or otherwise terminate or be forfeited for the nonpayment of a premium becoming due and payable, or the nonpayment of any indebtedness or interest. (Oct. 17, 1940, ch. 888, § 403, 54 Stat. 1184; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775.)

PRIOR PROVISIONS

Section 403 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"The Veterans' Administration shall, subject to regulations, which shall be prescribed by the Administrator of Veterans' Affairs, compile and maintain a list of such persons in military service as have made application for the benefits of this article, and shall (1) reject any application for such benefits made by persons who are not persons in military service; (2) reject any applications for such benefits in excess of the amount permitted by section 402 (section 542 of this Appendix); and (3) reject any applications in respect of contracts of insurance otherwise not entitled to the benefits of this article. Said Administration shall immediately notify the insurer and the insured in writing of every rejection or approval."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 542, 544 to 548 and 560 to 590 of this Appendix.

§ 544. Rights and privileges of insured during period of protection.

No dividend or other monetary benefit under a policy shall be paid to an insured or used to purchase dividend additions while a policy is protected by the provisions of this article (sections 540 to 548 of this Appendix) except with the consent and approval of the Veterans' Administration. If such consent is not procured, such dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with

the insurer. No cash value, loan value, or withdrawal of dividend accumulation, or unearned premium, or other value of similar character shall be available to the insured while the policy is protected under this article [said sections] except upon approval by the Veterans' Administration. The insured's right to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this article [said sections]. (Oct. 17, 1940, ch. 888, § 404, 54 Stat. 1184; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775.)

PRIOR PROVISIONS

Section 404 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940, as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"When one or more applications are made under this article by any one person in military service in respect of insurance exceeding a total face value of \$5,000, whether on one or more policies or in one or more companies, and the insured shall not in his application indicate an order of preference, the Veterans' Administration shall reject such policies as have the inferior cash surrender value, so as to reduce the total benefits conferred within the face value of \$5,000, and where necessary for this purpose shall direct the insurer to divide any policy into two separate policies. The said Administration shall immediately notify the insurer and the insured in writing of such selection."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 543, 545 to 548 and 560 to 590 of this Appendix.

§ 545. Deduction of unpaid premiums upon settlement of policies maturing during protection.

In the event of maturity of a policy as a death claim or otherwise before the expiration of the period of protection under the provisions of this article (sections 540 to 548 of this Appendix), the insurer in making settlement will deduct from the amount of insurance the premiums guaranteed under this article [said sections], together with interest thereon at the rate fixed in the policy for policy loans. If no rate of interest is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the Act [sections 501 to 548 and 560 to 590 of this Appendix] was issued. The amount deducted by reason of the protection afforded by this article (sections 540 to 548 of this Appendix) shall be reported by the insurer to the Administrator of Veterans' Affairs. (Oct. 17, 1940, ch. 888, § 405, 54 Stat. 1184; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775.)

PRIOR PROVISIONS

Section 405 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"No policy which has not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured, and which has been brought within the benefits of this article, shall lapse or be forfeited for the nonpayment of premium during the period of such service or during one year after the expiration of such period: Provided, That in no case shall this prohibition extend for more than one year after the date when this Act ceases to be in force."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 544, 545 to 548 and 560 to 590 of this Appendix.

§ 546. Guaranty of premiums and interest by United States; settlement of amounts due upon expiration of protection; subrogation of United States; crediting debt repayments.

Payment of premiums and interest thereon at the rate specified in section 405 hereof [section 545 of this Appendix] becoming due on a policy while protected under the provisions of this article [sections 540 to 548 of this Appendix] is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this article [said sections], the amount then due shall be treated by the insurer as a policy loan on such policy, but if at the expiration of said period the cash surrender value is less than the amount then due, the policy shall then cease and terminate and the United States shall pay the insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended [said sections], shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law. Any moneys received as repayment of debts incurred under this article, as originally enacted and as amended [said sections], shall be credited to the appropriation for the payment of claims under this article [said sections]. (Oct. 17, 1940, ch. 888, § 406, 54 Stat. 1184; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775; Apr. 3, 1948, ch. 170, § 6, 62 Stat. 160.)

AMENDMENTS

1948—Act Apr. 3, 1948, added last sentence to section.

PRIOR PROVISIONS

Section 406 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"Within the first fifteen days of each calendar month after the date of approval of this Act until the expiration of one year after the date when this Act ceases to be in force every insurance corporation or association to which application has been made as herein provided, for the benefits of this article, shall render to the Veterans' Administration a report, duly verified, setting forth the following facts:

"First. The names of the persons who have applied for such benefits, and the face value of the policies in respect of which such benefits have been applied for by such persons during the preceding calendar month.

"Second. A list as far as practicable of the premiums in respect of policies entitled to the benefits of this article, which remain unpaid on the last day of the preceding calendar month, which day is at least thirty-one days after the due date of the premiums, provided such premiums have not previously been so reported as in default.

"Third. A list of premiums which, having been previously reported as in default, have been paid by the policyholder or someone on his behalf in whole or in part during the preceding calendar month.

"Fourth. A computation of the difference between the total amount of defaulted premiums therein reported and the total amount of premiums paid as therein reported, after having been previously reported as in default. From this sum shall be deducted the total sum of any premiums previously reported as in default, upon policies in respect of which the Veterans' Administration

has, since the date of such report, rejected an application for the benefits of this article. The final sum so arrived at shall be denominated the monthly difference."

CROSS REFERENCES

Termination of war for purposes of sections 540—548 of this Appendix, see note to section 584 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 545, 547, 548 and 560 to 590 of this Appendix.

§ 547. Regulations; finality of determinations.

The Administrator of Veterans' Affairs is authorized and directed to provide by regulations for such rules of procedure and forms as he may deem advisable in carrying out the provisions of this article [sections 540 to 548 of this Appendix]. The findings of fact and conclusions of law made by the Administrator of Veterans' Affairs in administering the provisions of this article [said sections] shall be final, and shall not be subject to review by any other official or agency of the Government. (Oct. 17, 1940, ch. 888, § 407, 54 Stat. 1185; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775; Sept. 2, 1959, Pub. L. 85-857, § 14(76), 72 Stat. 1272.)

PRIOR PROVISIONS

Section 407 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940, as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"The Administrator of Veterans' Affairs shall verify the computation of monthly difference reported by each insurer and shall, within ten days thereafter, deliver each month to the proper officer of such insurer, a certificate in the amount of the monthly difference certified in respect of each insurer. Such certificate shall be signed by said Administrator in the name of the United States, shall be in such form as the Administrator shall determine, shall be payable to the insurer within sixty days after the approval of the statement of account, as provided in section 411 hereof [section 551 of this Appendix], and shall bear interest at a rate to be prescribed by the Secretary of the Treasury, payable with the principal. Such certificate shall not be transferred except with the approval of said Administrator and shall remain with the insurer until settlement is made in accordance with this article."

AMENDMENTS

1958—Pub. L. 85-857 eliminated provisions which required the Administrator of Veterans' Affairs to report annually to the Congress on the administration of sections 540—548 of this Appendix. See section 214 of Title 88, Veterans' Benefits.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as a note preceding Part I of Title 88, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 546, 548 and 560 to 590 of this Appendix.

§ 548. Law governing applications for protection prior to October 6, 1942.

(1) The provisions of this article [sections 540—548 of this Appendix] in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 [Act Oct. 6, 1942, which, among other things, amended this article generally] (hereinafter in this section called "such provisions") shall remain in full force and effect with respect to all valid applications for protection executed prior to the date of enactment of the Soldiers' and Sailors' Civil Relief Act amend-

ments of 1942 [Oct. 6, 1942] and all policies to which such applications pertain shall continue to be entitled to the protection granted thereby.

(2) Any insurer under a policy accepted under such provisions shall, subject to the approval of the Administrator of Veterans' Affairs and upon complete surrender by it to the United States, within ninety days after the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 [Oct. 6, 1942], of all certificates issued in accordance with such provisions together with all right to payment thereunder, be entitled to the guarantee of unpaid premiums and interest thereon and the mode of settlement for such policies as provided by this article, as amended [sections 540 to 548 of this Appendix]. The privileges and benefits granted by the foregoing sentence shall be in lieu of the method of settlement, and the requirement for accounts and reports prescribed by such provisions. In the event any such insurer fails to surrender within the said ninety days all such certificates and rights to payment, the accounts, reports, and settlements required to be made by such insurer under such provisions shall continue to be made as required and shall be governed by such provisions. (Oct. 17, 1940, ch. 888, § 408, 54 Stat. 1185; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 776.)

REFERENCES IN TEXT

The provisions of this article in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942, referred to in text, are set out in notes under sections 540—548 and 549—554 of this Appendix.

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in the text, amended, among other sections, this section. For other sections affected, see note under section 501 of this Appendix.

PRIOR PROVISIONS

Section 408 of act Oct. 17, 1940, as originally enacted, continued in force by this section as amended by act Oct. 6, 1942, read: "The certificate so delivered shall be held by the respective insurers as security for the payment of the defaulted premiums with interest. To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article, subject only to any lien existing at the time the policy became subject to this Act, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of such lien. Before any dividend is paid or any loan or settlement is made the written consent of the Veterans' Administration must be obtained."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 547 and 560 to 590 of this Appendix.

§§ 549 to 554. Omitted.

CODIFICATION

Sections 549—554 of this Appendix were omitted from "Article IV—Insurance" in the general amendment thereof by act Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775. They were from sections 409—414, respectively, of act Oct. 17, 1940, ch. 888, 54 Stat. 1185, 1186, and read:

"§ 549. *Deduction of unpaid premiums from proceeds of policies.* In the event that the military service of any person being the holder of a policy receiving the benefits of this article shall be terminated by death, the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy and shall be included in the next monthly report of the insurer as premiums paid. Oct. 17, 1940, ch. 888 § 409, 54 Stat. 1185.

"§ 550. *Lapsing of policy for failure to pay past due premiums upon termination of service.* If the insured

does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon from their several due dates at the rate provided in the policy for policy loans, the policy shall at the end of such year immediately lapse and become void, and the insurer shall thereupon become liable to pay the cash surrender value thereof, if any: *Provided*, That if the insured is in the military service when this Act ceases to be in force, such lapse shall occur and surrender value be payable at the expiration of one year after the date when this Act ceases to be in force Oct. 17, 1940, ch. 888, § 410, 54 Stat. 1185.

"§ 551. *Accounts stated between insurers and United States.* At the expiration of one year after the date when this Act ceases to be in force there shall be an account stated between each insurer and the United States, in which there shall be credited to the insurer the total amount of the certificates held as security under this article, together with accrued interest to the date of the account, and in which there shall be credited to the United States the amount of the cash surrender value of each policy lapsed or forfeited as provided in section 410 [section 550 of this Appendix], but not in any case a greater amount on any policy than the total of the unpaid premiums with interest thereon at the rate provided for in the policy for policy loans. Oct. 17, 1940, ch. 888, § 411, 54 Stat. 1185.

"§ 552. *Payment of balances due insurers by Secretary of Treasury.* The balance in favor of the insurer in each case shall be certified by the Administrator of Veterans' Affairs to the Secretary of the Treasury, who shall pay to the insurer the amount thereof, which is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, upon the surrender by the insurer of the certificates delivered to it from time to time by the Administrator of Veterans' Affairs under the provisions of this article. Oct. 17, 1940, ch. 888, § 412, 54 Stat. 1185.

"§ 553. *Policies exempted from application of article.* This article shall not apply to any policy which is void or which may at the option of the insured be voidable, if the insured is in military service, either in this country or abroad, nor to any policy which as a result of being in military service, either in this country or abroad, provides for the payment of any sum less than the face thereof or for the payment of an additional amount as premium. Oct. 17, 1940, ch. 888, § 413, 54 Stat. 1186.

"§ 554. *Insurers within application of article.* This article shall apply only to insurance companies or associations which are required, by the law under which they are organized or doing business to maintain a reserve, or, which if not so required, have made or shall make provision for the collection from all those insured in such insurer of a premium to cover the special war risk of those insured persons who are in military service. Oct. 17, 1940, ch. 888, § 414, 54 Stat. 1186."

ARTICLE V.—TAXES AND PUBLIC LANDS

§ 560. Taxes respecting personalty, money, credits, or realty; sale of property to enforce collection; redemption of property sold; penalty for nonpayment; notice of rights to beneficiaries of section.

(1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or

other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix], for a period extending not more than six months after the termination of the period of military service of such person.

(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act [said sections] ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

(4) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon. (Oct. 17, 1940, ch. 888, § 500, 54 Stat. 1186; Oct. 6, 1942, ch. 581, § 14, 56 Stat. 776.)

AMENDMENTS

1942—Subsec. (1). Act Oct. 6, 1942, inserted parenthetical clause excepting income taxes, included taxes and assessments falling due prior to period of military service, and extended benefits to cover personal property, money, or credits, and real property owned and occupied for professional purposes.

Subsec. (2). Act Oct. 6, 1942, § 14(a), amended section generally.

Subsec. (5). Act Oct. 6, 1942, § 14(b), repealed subsec. (5), which required the Secretaries of War, Navy, and Treasury to give notice of the benefits of this section to persons in the military service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548 and 561 to 590 of this Appendix.

§ 561. Rights to public lands not forfeited; grazing lands.

(1) No right to any lands owned or controlled by the United States initiated or acquired under any laws of the United States, including the mining and mineral leasing laws, by any person prior to entering military service shall during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon or his failure to do any other act required by or under such laws.

(2) If a permittee or licensee under the Act of June 28, 1934 (48 Stat. 1269) [sections 315 to 315g, 315h to 315m, 315n, 315o-1 and 1171 of Title 43] enters military service, he may elect to suspend his permit or license for the period of his military service and six months thereafter, and the Secretary of the Interior by regulations shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during such suspension.

(3) This section shall not be construed to control specific requirements contained in this article [sections 560 to 574 of this Appendix]. (Oct. 17, 1940, ch. 888, § 501, 54 Stat. 1187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 and 562 to 590 of this Appendix.

§ 562. Homestead entries and settlement claims; service as equivalent to residence and cultivation.

If any person whose application for a homestead entry has been allowed or who has made application for homestead entry which may thereafter be allowed, after such entry or application enters military service, or if any person who has a valid settlement claim enters military service, the Department of the Interior shall construe his military service to be equivalent to residence and cultivation upon the tract entered or settled upon for the period of such service. From the effective date of this Act (Oct. 17, 1940) no contest shall be initiated on the ground of abandonment and no allegation of abandonment shall be sustained against any such person, unless it shall be alleged in the preliminary affidavit or affidavits of contest and proved at the hearing in cases initiated subsequent to the effective date of this Act (Oct. 17, 1940) that the alleged absence from the land was not due to such military service. If such person is discharged on account of wounds received or disability incurred in the line of duty, the term of his enlistment and any period of hospitalization due to such wounds or disability shall be deducted from the required length of residence, without reference to the time of actual service. No patent shall issue to any such person who has not resided upon, improved, and cultivated his homestead for a period of at least one year. (Oct. 17, 1940, ch. 888, § 502, 54 Stat. 1187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560, 561 and 563 to 590 of this Appendix.

§ 563. Same; death or incapacity during or resulting from service as affecting rights; perfection of rights.

(1) If any person whose application for a homestead entry has been allowed or who has made application for homestead entry which may thereafter be allowed or who has a valid settlement claim dies while in military service or as a result of such service, his widow, if unmarried, or in the case of her death or marriage, his minor children, or his or their legal representatives, may proceed forthwith to make final proof upon such entry or upon an application which is allowed after the applicant's death, or upon a homestead application thereafter allowed based on a valid settlement claim, and shall be entitled to receive a patent for such land. The death of such person while in military service or as a result of such service shall be construed to be equivalent to a performance of all requirements as to residence and cultivation upon such homestead or claim, notwithstanding the provisions of section 502 of this Act [section 562 of this Appendix].

(2) If such person is honorably discharged and because of physical incapacities due to such service

is unable to return to the land, he may make final proof without further residence, improvement, or cultivation, at such time and place as the Secretary of the Interior may authorize, and receive a patent to the land entered.

(3) The Act of July 28, 1917 (40 Stat. 248) [sections 241 and 242 of Title 43], is repealed. (Oct. 17, 1940, ch. 888, § 503, 54 Stat. 1187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 562 and 564 to 590 of this Appendix.

§ 564. Desert-land entries; suspension of requirements.

(1) No desert-land entry made or held under the desert-land laws prior to the entrance of the entryman or his successor in interest into military service shall be subject to contest or cancelation for failure to make or expend the sum of \$1 per acre per year in improvements upon the claim or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in military service or during a period of six months thereafter or during any period of hospitalization because of wounds or disability incurred in the line of duty. The time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of his period of service and the six-months' period and any such period of hospitalization.

(2) If such entryman or claimant is honorably discharged and because of physical incapacities due to such service is unable to accomplish reclamation of, and payment for, the land, he may make proof without further reclamation or payments under such rules as the Secretary of the Interior may prescribe and receive patent for the land entered or claimed.

(3) In order to obtain the benefits of this section, such entryman or claimant shall, within six months after the effective date of this Act (Oct. 17, 1940) or within six months after his entrance into military service, file or cause to be filed in the land office of the district in which his claim is situated a notice that he has entered military service and that he desires to hold the desert claim under this section. (Oct. 17, 1940, ch. 888, § 504, 54 Stat. 1187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 563 and 565 to 590 of this Appendix.

§ 565. Mining claims; requirements suspended.

(1) The provisions of section 2324 of the Revised Statutes of the United States [section 28 of Title 30], which require that on each mining claim located after May 10, 1872, and until patent has been issued therefor not less than \$100 worth of labor shall be performed or improvements made during each year, shall not apply during the period of his service, or until six months after the termination of such service, or during any period of hospitalization because of wounds or disability incurred in line of duty, to claims or interests in claims which are owned by a person in military service and which have been regularly located and recorded. No mining claim or any interest in a claim which is owned by such a person and which has been regularly located and recorded shall be subject to forfeiture by nonperformance of the annual assessments during the period

of such military service, or until six months after the termination of such service or of such hospitalization.

(2) In order to obtain the benefits of this section, the claimant of any mining location shall, before the expiration of the assessment year during which he enters military service, file or cause to be filed in the office where the location notice or certificate is recorded a notice that he has entered such service and that he desires to hold his mining claim under this section. (Oct. 17, 1940, ch. 888, § 505, 54 Stat. 1188.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 564 and 566 to 590 of this Appendix.

§ 566. Mineral permits and leases; suspension of operations and term of permits and leases.

(1) Any person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may, at his election, suspend all operations under his permit or lease for a period of time equivalent to the period of his military service and six months thereafter. The term of the permit or lease shall not run during such period of suspension nor shall any rentals or royalties be charged against the permit or lease during the period of suspension.

(2) In order to obtain the benefit of this section, such permittee or lessee shall, within six months after the effective date of this Act (Oct. 17, 1940), or six months after his entrance into military service, notify the Bureau of Land Management by registered mail of his entrance into such service and of his desire to avail himself of the benefits of this section.

(3) This section shall not be construed to supersede the terms of any contract for operation of a permit or lease. (Oct. 17, 1940, ch. 888, § 506, 54 Stat. 1188; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

"Bureau of Land Management" was substituted for "General Land Office" on authority of 1946 Reorg. Plan No. 3, set out as a note under section 1 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 565 and 567 to 590 of this Appendix.

§ 567. Right to take action for perfection, defense, etc., of rights as unaffected; affidavits and proofs.

Nothing in this article [sections 560 to 574 of this Appendix] shall be construed to limit or affect the right of a person in military service to take any action during his period of service which may be authorized by law or the regulations of the Department of the Interior for the perfection, defense, or further assertion of rights initiated or acquired prior to the date of entering military service. It shall be lawful for any person while in such service to make any affidavit or submit any proof which may be required by law or the practice or regulations of the Bureau of Land Management in connection with the entry, perfection, defense, or further assertion of any rights initiated or acquired prior to entering such service, before the officer in immediate command and holding a commission in the branch of the service in which the person is engaged. Such

affidavits shall be as binding in law and with like penalties as if taken before an officer designated by the Secretary of the Interior of a United States land office. The Secretary of the Interior may issue rules and regulations to effectuate the purposes of sections 501 to 512, inclusive [sections 561—572 of this Appendix]. (Oct. 17, 1940, ch. 888, § 507, 54 Stat. 1188; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

"Bureau of Land Management" was substituted for "General Land Office" and "an officer designated by the Secretary of the Interior" for "a register" on authority of 1946 Reorg. Plan No. 3, set out as a note under section 1 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 565 and 568 to 590 of this Appendix.

§ 568. Irrigation rights; residence requirements suspended.

The Secretary of the Interior is authorized, in his discretion, to suspend as to persons in military service during the period while this Act [sections 501 to 548 and 560 to 590 of this Appendix] remains in force and for a period of six months thereafter or during any period of hospitalization because of wounds or disability incurred in line of duty that provision of the act known as the "Reclamation Act" requiring residence upon lands in private ownership or within the neighborhood for securing water for the irrigation of the same [section 431 of Title 43], and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper. (Oct. 17, 1940, ch. 888, § 508, 54 Stat. 1189.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 567 and 569 to 590 of this Appendix.

§ 569. Distribution of information concerning benefits of article; forms.

The Secretary of the Interior shall issue through appropriate military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article [sections 560 to 574 of this Appendix] except as to sections 500, 513, and 514 hereof [sections 560, 573 and 574 of this Appendix] and shall furnish forms to be distributed in like manner to those desiring to make application for its benefits, except as to said sections. (Oct. 17, 1940, ch. 888, § 509, 54 Stat. 1189; Oct. 6, 1942, ch. 581, § 15, 56 Stat. 776.)

AMENDMENTS

1942—Act Oct. 6, 1942, substituted "sections 500, 513, and 514" for "section 500" and "sections" for "section" at end of section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 568 and 570 to 590 of this Appendix.

§ 570. Homestead entrymen permitted to leave entries to perform farm labor.

(1) During the pendency of any war in which the United States may be engaged while this Act [sections 501 to 548 and 560 to 590 of this Appendix] remains in force any homestead entryman shall be entitled to a leave of absence from his entry for the

purpose of performing farm labor. The time actually spent in farm labor shall be counted as constructive residence, if within fifteen days after leaving his entry to engage in such labor the entryman files a notice of absence in the land office of the district in which his entry is situated, and if at the expiration of the calendar year the entryman files in that office a written statement under oath and corroborated by two witnesses giving the date or dates when he left his entry, the date or dates of his return, and the place where and person for whom he was engaged in farm labor during such period or periods of absence.

(2) Nothing in this section shall excuse any homestead entryman from making improvements or performing the cultivation upon his entry required by law. The provisions of this section shall apply only to persons whose applications have been allowed or filed prior to the effective date of this Act (Oct. 17, 1940). (Oct. 17, 1940, ch. 888, § 510, 54 Stat. 1189.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 569 and 571 to 590 of this Appendix.

§ 571. Land rights of persons under 21.

Any person under the age of twenty-one who serves in the military service while this Act (sections 501 to 548 and 560 to 590 of this Appendix) remains in force shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including the mining and mineral leasing laws, as those over twenty-one now possess under such laws. Any requirements as to establishment of residence within a limited time shall be suspended as to entry by such person until six months after his discharge from military service. Applications for entry may be verified before any officer in the United States or any foreign country authorized to administer oaths by the laws of the State or Territory in which the land may be situated. (Oct. 17, 1940, ch. 888, § 511, 54 Stat. 1189.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 570 and 572 to 590 of this Appendix.

§ 572. Extension of benefits to persons serving with war allies of United States.

Citizens of the United States who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act (sections 501 to 548 and 560 to 590 of this Appendix) remains in force shall be entitled to the relief and benefits afforded by sections 501 to 511, inclusive (sections 561 to 571 of this Appendix), if such service is similar to military service as defined in this Act (sections 501 to 548 and 560 to 590 of this Appendix), and if they are honorably discharged and resume United States citizenship or die in the service of the allied forces or as a result of such service. (Oct. 17, 1940, ch. 888, § 512, 54 Stat. 1190; Oct. 6, 1942, ch. 581, § 16, 56 Stat. 776.)

AMENDMENTS

1942—Act Oct. 6, 1942, substituted "sections 501 to 511, inclusive" for "this article."

REPEAL OF PRIOR ACTS CONTINUING SECTION

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 84 as amended by

Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 20, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 571 and 574 to 590 of this Appendix.

§ 573. Income taxes; collection deferred; interest; statute of limitations.

The collection from any person in the military service of any tax on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six months after the termination of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this section, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the collection of such tax by distraint or otherwise shall be suspended for the period of military service of any individual the collection of whose tax is deferred under this section, and for an additional period of nine months beginning with the day following the period of military service. The provisions of this section shall not apply to the income tax on employees imposed by section 1400 of the Federal Insurance Contributions Act. (Oct. 17, 1940, ch. 888, § 513, 54 Stat. 1190.)

REFERENCES IN TEXT

Section 1400 of the Federal Insurance Contributions Act, referred to in the text, is a reference to section 1400 of Title 26, I.R.C. 1939, which was repealed by section 7851 of Title 26, I.R.C. 1954, and is now covered by section 3101 of Title 26, I.R.C. 1954. For provision deeming a reference in other laws to a provision of I.R.C. 1939, also as a reference to corresponding provision of I.R.C. 1954, see section 7852(b) of Title 26, I.R.C. 1954.

FORMER PROVISIONS FOR ABATEMENT OF TAX

Internal Revenue Code, § 421, as added by act June 9, 1943, 7 p. m., E. W. T., ch. 120, § 8, 87 Stat. 149, and amended by acts Aug. 5, 1947, ch. 496, § 1, 61 Stat. 778; Aug. 8, 1947, ch. 515, § 9, 61 Stat. 918 (section 421 of Title 26, I.R.C. 1939), provided for abatement of income tax for members of armed forces dying on or after December 7, 1941, while in active service and prior to January 1, 1948. These provisions were omitted in the general amendment of that section by act Sept. 23, 1950, 3:15 p.m., E.D.T., ch. 994, title III, part I, § 301, 64 Stat. 947.

EXTENSION OF DUE DATE UNDER OTHER LAWS

Section 507 (b) (2) (A) of the Revenue Act of 1942, act Oct. 21, 1942, 4:30 p. m., E. W. T., ch. 619, title V, 56 Stat. 964, provided: "The amendments made by this section [adding sections 3804 and 3805 of Title 26, I.R.C. 1939, and adding section 527 of this Appendix] shall not be construed to shorten any period fixed under the provisions of section 518 of the Soldiers' and Sailors' Civil Relief Act of 1940 [this section] within which any act may be done, except that any action or proceeding authorized under section 3804(d) (1) of the Internal Revenue Code [Title 26, I.R.C. 1939], as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted without regard to the period so fixed."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 572 and 574 to 590 of this Appendix.

§ 574. Residence for tax purposes.

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid. (Oct. 17, 1940, ch. 888, § 514, as added Oct. 6, 1942, ch. 581, § 17, 56 Stat. 777, and amended July 3, 1944, ch. 397, § 1, 58 Stat. 722; Oct. 9, 1962, Pub. L. 87-771, 76 Stat. 768.)

AMENDMENTS

1962—Pub. L. 87-771 inserted sentence in par. (1) making this section applicable with respect to personal property, or the use thereof, within any tax jurisdiction other than the place of residence or domicile, regardless of where the owner may be serving in compliance with military or naval orders where the owner of personal property is absent from his residence or domicile solely by reason of compliance with such orders.

1944—Act July 3, 1944, added "personal" preceding "property" in first sentence, "personal property", preceding "income or gross income", "and personal property shall * * * other has jurisdiction" following "or District" in second sentence, and substituted "October 6, 1942" for "the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942" in the third sentence.

CREDITING OR REFUNDING TANGIBLE PERSONAL PROPERTY TAX

Section 2 of act July 3, 1944, provided: "Nothing contained in this Act [this section] shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excise imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment. [July 3, 1944]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 573 and 580 to 590 of this Appendix.

ARTICLE VI.—ADMINISTRATIVE REMEDIES

§ 580. Transfers to take advantage of act.

Where in any proceeding to enforce a civil right in any court it is made to appear to the satisfaction of the court that any interest, property, or contract has since the date of the approval of this Act (Oct. 17, 1940) been transferred or acquired with intent to delay the just enforcement of such right by taking advantage of this Act (sections 501 to 548 and 560 to 590 of this Appendix), the court shall enter such judgment or make such order as might lawfully be entered or made, the provisions of this Act (said sections) to the contrary notwithstanding. (Oct. 17, 1940, ch. 888, § 600, 54 Stat. 1190.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 574 and 581 to 590 of this title.

§ 581. Certificates of service; persons reported missing.

(1) In any proceeding under this Act (sections 501 to 548 and 560 to 590 of this Appendix) a certificate signed by The Adjutant General of the Army as to persons in the Army or in any branch of the United States service while serving pursuant to law with the Army of the United States, signed by the Chief of Naval Personnel as to persons in the United States Navy or in any other branch of the United States service while serving pursuant to law with the United States Navy, and signed by the Commandant, United States Marine Corps, as to persons in the Marine Corps, or in any other branch of the United States service while serving pursuant to law with the Marine Corps, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate:

That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the place where such person died in or was discharged from such service.

(2) It shall be the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers or by any person purporting upon the face of the certificates to have been so authorized shall be prima facie evidence of its contents and of the authority of the signer to issue the same.

(3) Where a person in military service has been reported missing he shall be presumed to continue in the service until accounted for, and no period herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or found by the Department of the Army or Navy, or any court or board thereof, or until such death is found by a court of competent jurisdiction: *Provided*, That no period herein limited which begins or ends with the death of such person shall be extended beyond a period of six months after the time when this Act [said sections] ceases to be in force. (Oct. 17, 1940, ch. 888, § 601, 54 Stat. 1190; Jan. 20, 1942, ch. 10, § 1, 56 Stat. 10; May 13, 1942, ch. 303, § 1, 56 Stat. 276.)

REFERENCES IN TEXT

The time when this Act ceases to be in force, referred to in subdivision (3), is defined in section 584 of this title.

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CHANGE OF NAME

"Chief of the Bureau of Navigation of the Navy Department" was changed to "Chief of Naval Personnel" under authority of act May 13, 1942.

Act Jan. 20, 1942, redesignated "Major General Commandant of the Marine Corps" to be "Commandant of the Marine Corps".

AIR FORCE

For transfer of certain functions relating to military records, insofar as they pertain to military personnel of the Department of the Air Force, from the Secretary of the Army and Department of the Army to the Secretary of the Air Force and Department of the Air Force, see Secretary of Defense Transfer Order No. 20 [§ 1e], Aug. 12, 1948.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 580 and 582 to 590 of this title.

§ 582. Revocation, etc., of interlocutory orders.

Any interlocutory order made by any court under the provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix] may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon such notice to the parties affected as it may require. (Oct. 17, 1940, ch. 888, § 602, 54 Stat. 1191.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 581 and 582 to 590 of this title.

§ 583. Separability of provisions.

If any provision of this Act [sections 501 to 548 and 560 to 590 of this Appendix], or the application

thereof to any person or circumstances, is held invalid, the remainder of the Act [said sections], and the application of such provision to other persons or circumstances, shall not be affected thereby. (Oct. 17, 1940, ch. 888, § 603, 54 Stat. 1191.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 582 and 584 to 590 of this title.

§ 584. Termination date.

This Act [sections 501 to 548 and 560 to 590 of this Appendix] shall remain in force until May 15, 1945: *Provided*, That should the United States be then engaged in a war, this Act [said sections] shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter: *Provided further*, That whenever under any section or provision of this Act [said sections] a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided with respect to military service performed prior to the date herein fixed for the termination of this Act [said sections], such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting, or other transaction. (Oct. 17, 1940, ch. 888, § 604, 54 Stat. 1191.)

EXTENSION OF ACT

Notwithstanding the provisions of Joint Res. July 26, 1947, set out in a note under this section, the entire act, sections 501—548 and 560—590 of this Appendix, are in force and effect and shall so remain until a subsequent Act of Congress terminates them, under the provisions of section 464 of this Appendix.

TERMINATION OF WAR

Joint Res. July 26, 1947, ch. 327, § 4, 61 Stat. 484, provided: "For the purposes of article IV of the Act of October 17, 1940 (54 Stat. 1183—1188), as amended [sections 540—548 of this Appendix], the present war shall be deemed to have terminated within the meaning of section 604 (54 Stat. 1191) of the said Act [this section], as of the effective date of this joint resolution [July 26, 1947]".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 583 and 585 to 590 of this title.

§ 585. Inapplicability of Soldiers' and Sailors' Civil Relief Act of 1918.

CODIFICATION

Section, act Oct. 17, 1940, ch. 888, § 605, 54 Stat. 1191, related to the inapplicability of the Soldiers' and Sailors' Relief Act of 1918, former section 101 et seq. of this Appendix, to military service performed after Oct. 17, 1940.

ARTICLE VII.—FURTHER RELIEF

§ 590. Stay of enforcement of obligations, liabilities, taxes, etc.

(1) A person may, at any time during his period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by such person prior to his period of military service or in respect of any tax or assessment whether falling due prior to or during his period of military service. The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected

by reason of his military service, may grant the following relief:

(a) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of such obligation during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of such combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during such combined period at such rate of interest on the unpaid balance as is prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due, and subject to such other terms as may be just.

(b) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such obligation, liability, tax, or assessment, if paid when due, and subject to such other terms as may be just.

(2) When any court has granted a stay as provided in this section no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment in respect of which such stay was granted. (Oct. 17, 1940, ch. 888, § 700, as added Oct. 6, 1942, ch. 581, § 18, 56 Stat. 777.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 610 to 648 and 660 to 685 of this title.

FIRST WAR POWERS ACT, 1941

ACT DEC. 18, 1941, CH. 593, 55 STAT. 838

TITLE I.—COORDINATION OF EXECUTIVE BUREAUS IN THE INTEREST OF THE MORE EFFICIENT CONCENTRATION OF THE GOVERNMENT

§§ 601 to 605. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651.

Sections, act Dec. 18, 1941, ch. 593, title I, §§ 1-5, 55 Stat. 838, 839, related to coordination of executive bureaus, offices, etc., in the interest of more efficient concentration of the Government, consolidation of offices, expenditure of appropriations for bureaus, offices, etc., Presidential recommendation to Congress for elimination of certain bureaus, offices, etc., and to suspension of conflicting laws.

TITLE II.—CONTRACTS

§ 611. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651.

Section, act Dec. 18, 1941, ch. 593, title II, § 201, 55 Stat. 830; Jan. 12, 1951, ch. 1230, § 1, 64 Stat. 1257, related to exemption of war contracts from certain restrictions.

TITLE III.—TRADING WITH THE ENEMY

§ 616. Amendment of section 5 of this Appendix and section 95a of Title 12.

CODIFICATION

Section, act Dec. 18, 1941, ch. 593, title III, § 301, 55 Stat. 839, has been omitted as executed.

§ 617. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651.

Section, act Dec. 18, 1941, ch. 593, title III, § 302, 55 Stat. 840, confirmed certain acts, etc., made under the Trading with the Enemy Act.

§ 618. Repealed. July 5, 1947, ch. 327, § 1, 61 Stat. 449.

Section, act Dec. 18, 1941, ch. 593, title III, § 303, 55 Stat. 840, related to censorship of communications during World War II and penalties and forfeitures for violations thereof.

§§ 619, 620. Omitted.

CODIFICATION

Section 619, act Dec. 18, 1941, ch. 593, title III, § 304, as added Mar. 8, 1946, ch. 83, § 1, 60 Stat. 50, was omitted as its provisions are incorporated in section 32 of this Appendix.

Section 620, act Dec. 18, 1941, ch. 593, title III, § 305, as added Aug. 8, 1946, ch. 878, § 1, 60 Stat. 925, was omitted as its provisions are incorporated in sections 33-37 of this Appendix.

TITLE IV.—TIME LIMIT AND SHORT TITLE

§§ 621, 622. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651.

Sections, act Dec. 18, 1941, ch. 593, title IV, §§ 401, 402, 55 Stat. 841, provided for the termination of sections 601-605 of this Appendix and contained the short title for former sections 601-605, 611, and 616-622 of this Appendix, the "First War Powers Act, 1941," respectively.

SECOND WAR POWERS ACT, 1942

ACT MAR. 27, 1942, CH. 199, 56 STAT. 176

TITLE I.—EMERGENCY POWERS OF THE INTERSTATE COMMERCE COMMISSION OVER MOTOR AND WATER CARRIERS

Sec. 631 to 631b. Omitted.

TITLE II.—ACQUISITION AND DISPOSITION OF PROPERTY

632, 632a. Omitted.

TITLE III.—PRIORITIES POWERS

633. Amendment of section 1152 of this Appendix.

TITLE IV.—PURCHASE BY FEDERAL RESERVE BANKS OF GOVERNMENT OBLIGATIONS

634. Federal Reserve Act amendment.

TITLE V.—WAIVER OF NAVIGATION AND INSPECTION LAWS

635. Authorization of waiver by responsible department or agency head.

TITLE VI.—POWER TO REQUISITION

636, 636a. Omitted.

TITLE VII.—POLITICAL ACTIVITY

637. Amendment of section 1181 of Title 5.



GREATER ANCHORAGE AREA BOROUGH

3500 TUDOR ROAD, POUCH 6-650

ANCHORAGE, ALASKA 99502

April 30, 1971

HB-432

GLENN M. MCKEE
ASSESSOR
278-8686

Representative William J. Moran
State House
State Capitol
Juneau, Alaska 99801

Dear Representative Moran:

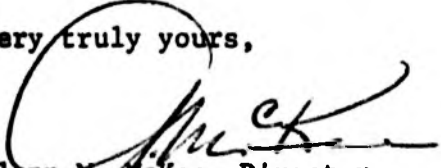
Re: House Bill No. 432.

I have been following House Bill 432 for some time. I do have one question: The Senior Citizens' Bill purpose and intent is to keep the senior citizens in Alaska where, as I read it, they can continue to make their immeasurable contributions to the younger generations.

The one problem I see with this bill is that it is for the abode of the senior citizen on Real Property only. There are numerous senior citizens who do not choose to live in a home, but would prefer to live in a trailer. Why then are we discriminating against those persons who prefer to live in a trailer and in a trailer court? It is their home, just as a person living on real property is living in his home.

I feel that if this bill is to pass that it should be amended to grant exemption from taxes on the home from those senior citizens who live in trailers, even though the trailer is not on their own property. We in the Anchorage Borough, as do most all of the other boroughs and cities in the state, classify a trailer as Personal Property. Therefore, those persons who live in trailers would not be considered under the bill as it presently exists.

Very truly yours,


Glenn M. McKee, Director
Property Assessment & Management Department

GMM:sls

cc: Mr. S. Robert Dozier, State Assessor
Local Affairs Agency
Pouch AB
Juneau, Alaska 99801

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WILLIAM A. EGAN, GOVERNOR

POUCH M — JUNEAU 99801

April 13, 1972

File
CSHB 480


Honorable William J. Moran
Chairman, House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Bill
Dear Representative Moran:

Attached is a copy of a letter dated April 11, 1972 from Homer L. Burrell, Director of the Division of Oil and Gas, in which he comments on CSHB 480, which is before your Committee for consideration.

Work of the Oil and Gas Conservation Committee, which is in the Division of Oil and Gas, is highly technical. By necessity, the Committee frequently relies on information that is held confidential by law and, in some cases, on information that is furnished with the understanding that it will be held confidential.

Very truly yours,



Charles F. Herbert
Commissioner

Attachment

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

TO:

Charles F. Herbert
Commissioner

DATE : April 11, 1972

FROM:

Homer L. Burrell
Director

SUBJECT: CSHB No. 480

Although a member of the Alaska Bar Association Administrative Law Committee, I was not present when Committee approval of the captioned bill was voted.

From the standpoint of the Oil and Gas Conservation Committee, I object to: (a) being under the Administrative Procedure Act, as we have our own hearing and appeal procedures in AS 31 with which both the Administrative Procedure Act and the proposed bill conflict; and (b) the fact that the captioned bill requires all state agencies, regardless of their individual governing statutes, to use hearing officers on the staff of the Office of Administrative Adjudication, and opens up our confidential files to the hearing officers.

I therefore recommend:

(1) AS 44.62.330(a)(18) be repealed; and

(2) AS 44.62.353 and 354 (in the captioned bill) be amended to provide that hearing officers may be assigned only to those agencies and functions subject to the Administrative Procedure Act.

The specialized and technical nature of oil and gas conservation hearings is such that a hearing officer without substantial oil and gas experience would be a burden upon this agency.

DEPARTMENT OF
NATURAL RESOURCES

APR 12 1972

RECEIVED
UNEAU, ALASKA

Prepare bill for Moran

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

The Hague Conference on Private International Law has been requested by the Council of Europe to prepare a general convention on recognition and enforcement of foreign judgments. The six nations of the European Economic Community have started work on a convention of their own. The United Kingdom has concluded new treaties and the Commissioners on Uniformity of Legislation in Canada have decided to re-examine their own Uniform Act. A concerted drive is under way to secure greater uniformity in the law. From all of these efforts improvement may come to a field well known for its unsatisfactory condition.

In most states of the Union, the law on recognition of judgments from foreign countries is not codified. In a large number of civil law countries, grant of conclusive effect to money-judgments from foreign courts is made dependent upon reciprocity. Judgments rendered in the United States have in many instances been refused enforcement abroad because of the difficulty of proving existence of reciprocity to the satisfaction of the foreign court. Wide agreement exists in state law on the rules to govern recognition of such judgments. The uniform codification of the law greatly enhances the prospects of recognition for judgments from American courts.

Uniform Foreign Money-Judgments Recognition Act

(Be it enacted, etc.)

SECTION 1. [Definitions.] As used in this act:
(1) "foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands;
(2) "foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.
SECTION 2. [Applicability.] This act applies to any foreign judgment that is final and conclusive and enforceable where rendered, even though an appeal therefrom is pending or it is subject to appeal.
SECTION 3. [Recognition and Enforcement.] Except as provided in Section 4, a foreign judgment meeting the requirements of Section 2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforce-

HB-451 + HB-452

able in the same manner as the judgment of a sister state which is entitled to full faith and credit.

SECTION 4. [Grounds for Non-recognition.]
(a) A foreign judgment is not conclusive if
(1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
(2) the foreign court did not have personal jurisdiction over the defendant; or
(3) the foreign court did not have jurisdiction over the subject matter.
(b) A foreign judgment need not be recognized if
(1) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
(2) the judgment was obtained by fraud;
(3) the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state;
(4) the judgment conflicts with another final and conclusive judgment;
(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or
(6) in the case of jurisdiction based only on personal service the foreign court was a seriously inconvenient forum for the trial of the action.

SECTION 5. [Personal Jurisdiction.]
(a) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if
(1) the defendant was served personally in the foreign state;
(2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
(3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
(4) the defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;
(5) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a [cause of action] [claim for relief] arising out of business done by the defendant through that office in the foreign state; or

20 (6) the defendant operated a motor vehicle or airplane in the
 21 foreign state and the proceedings involved a [cause of action]
 22 [claim for relief] arising out of such operation.
 23 (b) The courts of this state may recognize other bases of juris-
 24 diction.

1 SECTION 6. [Stay in Case of Appeal.] If the defendant satisfies
 2 the court either that an appeal is pending or that he is entitled and
 3 intends to appeal from the foreign judgment, the court may stay the
 4 proceedings until the appeal has been determined or until the expir-
 5 ation of a period of time sufficient to enable the defendant to prose-
 6 cute the appeal.

1 SECTION 7. [Saving Clause.] This act does not prevent the
 2 recognition of a foreign judgment in situations not covered by this act.

1 SECTION 8. [Uniformity of Interpretation.] This act shall be so
 2 construed as to effectuate its general purpose to make uniform the
 3 law of those states which enact it.

1 SECTION 9. [Short Title.] This act may be cited as the Uniform
 2 Foreign Money-Judgments Recognition Act.

1 SECTION 10. [Repeal.] [The following acts are repealed:
 2 (1) ;
 3 (2) ;
 4 (3) .]

1 SECTION 11. [Time of Taking Effect.] This act shall take effect
 2 []

UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT

Civil litigation with interstate and international aspects is becoming an increasingly important element of judicial business. In many cases it is necessary to perform a procedural act, either with or without assistance from local officials, in a sister state or a foreign country. Conversely, domestic courts are being requested with greater frequency to render assistance to out-of-state tribunals and litigants. Unfortunately, existing law is frequently difficult to ascertain, inadequate, and ill-adjusted to conditions prevailing outside the forum state. The American Bar Association, recognizing the need for reform, recommended shortly after the second World War that the President establish a Commission to investigate, and suggest measures for the improvement of existing procedures. In 1952, the President approved this recommendation, and in 1958, the United States Congress enacted legislation to establish a Commission and Advisory Committee on International Rules of Judicial Procedure (Act of September 2, 1958, 72 Stat. 1743). This Commission and its Advisory Committee, in cooperation with the Columbia Law School Project on International Procedure, has drafted several amendments to the Federal Rules of Civil and Criminal Procedure and Titles 18, 22 and 28 of the United States Code that are presently being considered for adoption.

The Uniform Interstate and International Procedure Act presents for adoption by the states a comprehensive code for use in state litigation with interstate or international incidence. It is designed to clarify, consolidate, and improve existing law, and supplants the Uniform Foreign Depositions Act, the Uniform Judicial Notice of Foreign Law Act, and the Uniform Proof of Statutes Act.

Article I, a modified version of the uniform Extra-Territorial Process Act, which was before the Conference at its 1961 meeting, specifies authorized bases of personal jurisdiction over persons and entities that are not within the state at the time the action is commenced. Article II provides several alternative methods by which service may be effected outside the state. Article III is designed to facilitate the taking of depositions to obtain testimony, documents, and other tangible evidence outside the state for use in domestic litigation. Both Article II and Article III contain provisions for rendering assistance to tribunals and litigants outside the enacting state. Article IV resolves problems attendant upon the determination of the law of a governmental unit outside the forum state. Article V concerns proof of official records kept outside the state.

Uniform Interstate and International Procedure Act

(Be it enacted, etc.)

Article I. Bases of Personal Jurisdiction Over Persons Outside This State

REVISED UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

The mobility, today, of both persons and property is such that existing procedure for the enforcement of judgments in those cases where the judgment debtor has removed himself and his property from the state in which the judgment was rendered, is inadequate. By this act, procedure is made available under which the judgment creditor can effectively obtain relief and at the same time adequate protection is given the judgment debtor to present any defense that can now be interposed to an action on such judgment. The revision simplifies procedures by providing for a shorter registration or filing procedure rather than the summary judgment procedure prescribed by the original act.

Revised Uniform Enforcement of Foreign Judgments Act

09.30.160

1 -Section 1. [Definition.] In this act "foreign judgment" means
2 any judgment, decree, or order of a court of the United States or of
3 any other court which is entitled to full faith and credit in this state.

09.30.170

1 -Section 2. [Filing and Status of Foreign Judgments.] A copy of
2 any foreign judgment authenticated in accordance with the act of
3 Congress or the ~~statutes~~ of this state may be filed in the office of
4 the clerk of any [District Court of any city or county] of this state.
5 The clerk shall treat the foreign judgment in the same manner as a
6 judgment of the [District Court of any city or county] of this state.
7 A judgment so filed has the same effect and is subject to the same
8 procedures, defenses, and proceedings for reopening, vacating, or
9 staying as a judgment of a [District Court of any city or county] of
10 this state and may be enforced or satisfied in like manner.

Section 3. [Notice of Filing.]

1 (a) At the time of the filing of the foreign judgment, the judgment
2 creditor or his lawyer shall make and file with the Clerk of Court
3 an affidavit setting forth the name and last known post office address
4 of the judgment debtor, and the judgment creditor.

5 (b) Promptly upon the filing of the foreign judgment and the affi-
6 davit, the clerk shall mail notice of the filing of the foreign judgment
7 to the judgment debtor at the address given and shall make a note of
8 the mailing in the docket. The notice shall include the name and
9 post office address of the judgment debtor and the judgment creditor
10 of this state. In addition, the judgment creditor
11 may mail a copy of the filing of the judgment to the judgment deb-
12 tor and any file proof of mailing with the clerk. Each of the above
13 notices of filing by the clerk shall be made by the end of the next
14 business day of mailing by the clerk, if it has been made.

15 (c) No execution or other process for enforcement of a judgment
16 judgment filed hereunder shall be issued [20] day
17 after the filing of the judgment.

09.30.110

Section 4. [Stay.]

1 (a) If the judgment debtor shows the [District Court of any city
2 or county] that an appeal from the foreign judgment is pending or
3 will be taken, or that a stay of execution has been granted, the court
4 shall stay enforcement of the foreign judgment until the appeal is
5 concluded, the time for appeal expires, or the stay of execution ex-
6 pires or is vacated, upon proof that the judgment debtor has furnished
7 the security for the satisfaction of the judgment required by the
8 state in which it was rendered.

9 (b) If the judgment debtor shows the [District Court of any city
10 or county] any ground upon which enforcement of a judgment of any
11 [District Court of any city or county] of this state would be stayed,
12 the court shall stay enforcement of the foreign judgment for an ap-
13 propriate period, upon requiring the same security for satisfaction
14 of the judgment which is required in this state.

09.30.120

1 [Section 5. [Fees.] Any person filing a foreign judgment shall
2 pay to the Clerk of Court [~~1~~ dollars. Fees for docketing,
3 transcription or other enforcement proceedings shall be as provided
4 for judgments of the [District Court of any city or county] of this
5 state.]

09.30.130

1 -Section 6. [Optional Procedure.] The right of a judgment creditor
2 to bring an action to enforce his judgment instead of proceeding
3 under this act remains unimpaired.

09.30.140

1 -Section 7. [Uniformity of Interpretation.] This act shall be so
2 interpreted and construed as to effectuate its general purpose to
3 make uniform the law of those states which enact it.

09.30.150

1 Section 8. [Short Title.] This act may be cited as the Uniform
2 Enforcement of Foreign Judgments Act.

1 Section 9. [Repeal.] The following acts and parts of acts are
2 repealed:

- 3 (1) ;
- 4 (2) ;
- 5 (3) ;

1 Section 10. [Taking Effect.] This act takes effect
2 [] day.

Other 2.
As proposed

the fee
prescribed
by law for
the filing
of an
action.

REPORT ON HOUSE BILL NO. 480

BY THE
ADMINISTRATIVE LAW COMMITTEE,
ALASKA BAR ASSOCIATION

Sec. 44.62.351

The Committee has contacted the Alaska Court System, and has been informed by Chief Justice Boney that they have not had an opportunity to review the Bill. However, your subcommittee chairman has talked to one of the Associate Justices of the Supreme Court, and he informs me that he would oppose having the Office of Administrative Adjudication attached to the court system, although he did make it clear that the courts do not oppose, and in fact, favor, the concept of independent hearing examiners. The courts' main concern is that by adding more people to the system, its staff manpower and budget would be further diluted, since they are already underfunded, and in addition, since a hearing examiner decision might ultimately be appealed to the courts, there would be the question of a possible conflict of interest.

The Committee would not object to the hearing examiner being placed under, for example, the Department of Administration, provided that department's authority were limited to budget authority only. The Committee believes that the Bill should stress the independence of the hearing examiners.

Sec. 44.62.352

We would recommend adding a subsection (c) providing for a term of six years and allowing removal only for good cause.

Sec. 44.62.353(b)

We would recommend that this subsection be amended by adding the words "who is otherwise qualified by reason of background and experience, and meets the qualifications established by the Department of Administration."

COMMENT: This change is to correlate this section with Sec. 352(b) which provides that the presiding officer must have the same qualifications as a hearing officer, and it is thought initially that the Department of Administration (or the Court System) should set these qualifications.

Sec. 44.62.353(c)

We would re-write the first sentence of this subsection to read as follows: "The presiding officer shall assign a hearing officer for any administrative adjudicatory proceeding arising under state law."

COMMENT: This makes it clear that the Bill will apply to all agencies. While there is no objection by the Committee to having commissions or agencies, such as Public Utilities Commission or Alaska Transportation Commission, sit on cases, the Committee does believe that a hearing officer should sit with the agency. One Committee member felt that in appropriate cases, where there was an otherwise qualified lawyer member of the agency, he could be appointed as hearing examiner.

Sec. 44.62.353(d)

We would add a subsection (d) to provide that the Office of Administrative Adjudication may contract for a hearing examiner where their staff does not otherwise have a qualified person available.

COMMENT: This suggestion was made by some members of the House Local Affairs Committee, and the Committee believes it is a sound one.

Sec. 44.62.354

Add a sentence at the end that the office will compile and publish significant Court and Administrative decisions.

COMMENT: We think the Office of Administrative Adjudication should be required to publish significant administrative law decisions, just as the Court publishes its opinions. The Commission also might wish to consider making the publication a monthly or bi-monthly affair, in which proposed regulations could also be published. This would be the equivalent of the Federal Register as used by the federal government.

Sec. 44.62.410

We would change the first sentence to read: "The agency shall consult the office and all parties in interest, and, subject to the availability of the office's staff, shall determine the time and place of hearing."

COMMENT: Many hearings have a statewide interest and effect--i.e., utility, oil and gas, and transportation matters--and the agency should try to set it for the convenience of all parties.

Sec. 44.62.500(c)

The second sentence of this subsection should have the following language added: "and a final decision, including findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings."

COMMENT: This language is taken from Sec. 12 of the Model State Administrative Procedures Act. If this amendment is adopted it will prevent agencies from arbitrarily reversing a hearing examiner decision by reference to statutory language or formulas. Further, this language, we think, is indicative of the present trend of Administrative Law requirements for making explicit findings of fact and conclusions of law. We do not think that this will infringe upon the permanent authority of the agencies to make the final decision but rather, it requires them to have good reason to reverse a hearing examiner decision.

Sec. 44.62.515 (a)

Add: "or the submission of briefs or memoranda, whichever occurs later". We would also recommend a provision similar to that required of judges--i.e., that a hearing examiner submit an affidavit that he has no cases pending beyond the 90-day limit provided above or forfeit his pay

Sec. 44.62.515(b)

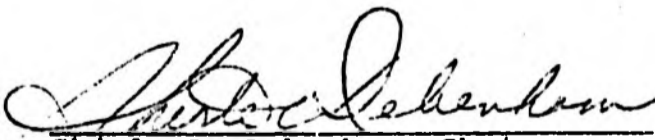
Strike the word "rendering" and substitute "receipt".

COMMENT: The amendment to subsection (a), we believe, is a realistic one, since in the more complex cases it often will take 60 to 70 days just to submit briefs. A hearing examiner should have the full 90 days to make the decision. Subsection (b) makes it clear that the agency or commission would have 30 days from the receipt of the decision. Delay in the mails is often encountered and the agency should have the full 30 days to render its decision.

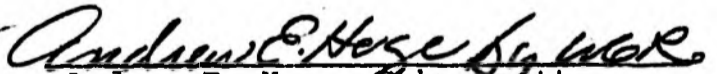
We would add a Sec. 11 to the Bill, making it clear that the sections referred to in House Bill No. 480 apply to all agencies of the state and not just the agencies referred to in AS 44.62.330.

We wish to make it clear that we would not recommend a general revision of the Administrative Procedure Act, §44.62.330, et seq., to make it applicable to all agencies. Certain state agencies have adopted their own rules of practice pursuant to law, and at this point in time we do not think any effort should be made to generalize the Administrative Procedure Act provisions to all agencies. What we do wish to make clear, however, is that the provisions recommended for House Bill No. 480 should be applicable to all agencies.

The Administrative Law Committee has long favored independent hearing examiners. However, more importantly, we favor the concept that there will be adequate hearing officer personnel available to all agencies of the state. The present impossible situation at the Alaska Transportation Commission and the lack of effective hearing procedures for many of the regulatory boards, such as medical examiners, dental examiners, etc., is clearly not in the public interest.



Shirle A. Debenham, Chairman
Administrative Law Committee



Andrew E. Hoge, Subcommittee
Chairman
Administrative Law Committee

A NEW REGULATORY
FRAMEWORK

Report On
Selected Independent
Regulatory Agencies



The President's
Advisory Council On
Executive Organization

January 1971

Findings and Recommendations

Major and fundamental change pervades each of the areas of economic enterprise under regulation by the independent regulatory commissions.

- In transportation, increasing interaction between the various modes reflects a persistent striving for greater efficiency in the movement of goods and people;
- In trade, new and probably enduring levels of public and producer attention are being given to the quality of goods and services, and to the operation of the marketplace;
- In securities, even as the structure of the industry itself and the relationship between Government and industry are experiencing major changes, a well-established trend toward institutional investment and new methods of financing are significantly altering the characteristics of securities trading;
- In power, where industry structure is also undergoing change, supplies of electrical energy and natural gas have not consistently kept pace with increasing demands in certain areas, and new technologies have yet to take up the slack;
- In communications, burgeoning technology has created new avenues for service and new products which together complicate the task of regulation and blur distinctions between the various forms of communications.

The independent regulatory commissions play a critical role in balancing the changing demands of the Nation for the goods and services of regulated industries and the related need for financially sound and effectively managed industries in the regulated sectors of our economy. Unfortunately, obsolete organizational forms limit the effectiveness of these commissions in responding to economic, technological, structural, and social change. Inappropriate regulatory structures and cumbersome procedures impose burdens that impede good public service, sound financial and operational planning, and adjustment to changes in growing industries—contrary to the purposes of regulation.

Our proposals for change in the organizational forms of several independent regulatory commissions are directed at improving agency effectiveness, while assuring fairness to those involved in or affected by the regulatory process.

FINDINGS

The regulatory commissions are not sufficiently accountable for their actions to either the Congress or the President because of the degree of their independence and remoteness in practice from those constitutional branches of government. Regulatory activities, therefore, are not adequately supported and are not effectively coordinated with national policy goals.

Inherent deficiencies in the commission form of organization prevent the commissions from responding effectively to changes in industry structure, technology, economic trends, and public needs.

Deficiencies in the performance of the regulatory commissions are partly due to the difficulty of attracting highly qualified commissioners and retaining executive staff. Even able administrators have difficulty in serving as coequals on collegial commissions.

- While there are notable exceptions, it is difficult to attract to regulatory positions men of skill in administration and breadth of perspective largely because of the procedures and traditions associated with appointment to the regulatory commissions.
- Given these traditions and the shared responsibility of the collegial form, it is not likely that commission positions will generate greater interest in the future.

Certain judicial activities of the commissions conflict with their policy-making responsibilities and generate an organizational environment inimical to regulatory efficiency and constructive response to industry and the public.

- Many commissions engage excessively in case-by-case adjudication as a basis for policy formulation rather than using less formal procedures such as exchanges of written or oral information, informal regulatory guidance, or rulemaking.
- The judicial cast of agency review proceedings places too great an emphasis on legal perspectives to the detriment of economic, financial, technical, and social perspectives. One result is a high level of legal skill among agency professionals and commissioners, but generally insufficient capability in other disciplines.
- The judicial cast of agency review proceedings delays final administrative determinations and invites dilatory appeals.
- Overjudicialization encumbers the time and energies of commissioners and staff, causes undue case backlogs, imposes high costs upon litigants, prevents anticipatory action through rulemaking, deters informal settlements, and precludes coordination of agency policy and priorities with those of the executive branch.

Certain functional responsibilities are inappropriately distributed among the various commissions.

- Responsibility for regulation of transportation is distributed among the ICC, CAB, and FMC, impeding formulation of broader regulatory policy covering the several transportation modes and coordination with the Department of Transportation, and thus forestalling consistency in national transportation policy.
- Responsibility for promotion of transportation, vested in some regulatory commissions, conflicts with the regulatory activity of those agencies.
- Combination of antitrust enforcement and consumer protection in the FTC deprives that agency of a central purpose, fostering an uncertainty of emphasis as between its functions, inordinate delay, and preoccupation with routine matters.
- Regulation of public utility holding companies by the SEC is no longer best performed by that agency. Regulatory expertise regarding public utility holding companies rests with the FPC.

RECOMMENDATIONS

To assure coordination of regulatory matters with national policy goals, to improve the management efficiency of regulatory functions, to improve accountability to the Congress and the executive branch, and to increase the probability of superior leadership for regulatory activities, the transportation, power, securities, and consumer protection regulatory functions should be administered by single administrators, appointed by

the President. These functions should be performed by agencies respectively designated: Transportation Regulatory Agency, Federal Power Agency, Securities and Exchange Agency, and Federal Trade Practices Agency.

- The authority and responsibility attending the single administrator form should enable the agencies to attract and retain the most highly qualified administrators and executive staffs.
- Unambiguous placement of authority for agency policy and operations in a single administrator should increase accountability to both the Congress and the President.
- Agency work should be expedited by utilizing more effective administrative techniques made possible by one-man management of agency activities.

The communications regulatory function and the antitrust enforcement function should, as now, be carried out by multimember bodies for reasons supervening the advantages of a single administrator. The FCC should be reduced in size from seven to five members, to serve 5-year terms.

To prevent the overjudicialization of agency procedures and attitudes and to assure comprehensive and anticipatory policymaking, internal agency review of proceedings should be limited in time and focused primarily on the consistency of the decision with agency policy. Appeals from final agency decisions should be heard by an Administrative Court of the United States.

- A 30-day period should be allowed after a hearing examiner's decision for review by the single administrator. The administrator should have the power to modify or remand an examiner's decisions. The limited time and scope of policy review by agency administrators should help make initial decisions of agency examiners, in many cases, final determinations of the agency.
- The Administrative Court should review appeals by an aggrieved party from final agency determinations of the transportation, securities and power agencies. Decisions of the antitrust, trade practices, and communications agencies would be reviewed in the Federal courts as they are today.
- The court should consist of as many as 15 judges, appointed by the President and confirmed by the Senate for terms sufficiently long as to attract men of quality. We suggest 15-year staggered terms, with judges sitting in three-man panels for each case reviewed by the court.

Certain functional responsibilities of the agencies should be realigned.

- **To reflect the increasing interdependence of the structure, economics, and technology of the transportation modes, regulatory responsibilities of the ICC, CAB, and the FMC should be combined within a new Transportation Regulatory Agency.**
- **To correct the conflict inherent in performing regulatory and promotional functions in the same agency, the promotional subsidy-granting activities of the CAB should be transferred to the Department of Transportation.**
- **To assure that each of its missions is more effectively performed, the FTC's consumer protection responsibilities should be vested in a new Federal Trade Practices Agency and its antitrust enforcement responsibilities should be vested in a new Federal Antitrust Board. The Board should consist of a chairman and two economist members, each appointed by the President with the consent of the Senate.**
- **To provide an organizational placement which better reflects current realities, the regulatory responsibilities of the SEC under the Public Utility Holding Company Act should be transferred to the Federal Power Agency.**

DISSENTING STATEMENT OF FREDERICK R. KAPPEL

The Council made its recommendations to the President in a brief and to the point preliminary report on July 10, 1970. It included a dissent on my part consistent with the content of that report.

This more complete report contains the same specific recommendations and my dissent concerning them is unchanged and quoted herein.

This report elaborates considerably on the earlier report in its reasoning and in its references, quotes, and documentation. It does this by the inclusion of views and writings from numerous sources. These include legal, academic, government committee views, and writings from individuals involved as regulators past and present. There were over 200 interviews made by staff as noted in the report.

In connection with the references, interviews and other material researched I must point out that there are almost no references or views from the regulated entities. To this extent I believe any one who accepts this report on its face value must recognize that it is almost totally lacking in this very important respect. If constructive action results from this report and the efforts behind it (and I sincerely hope that it will), it will require, in my opinion, that this added point of view be sought and considered in a major way. Any useful progress will require it.

Since this report is hopefully the beginning of an effort to bring to bear all qualified viewpoints toward better regulatory results, it must be the aim that such regulation meet the test of not only good, safe, ample

goods and services fairly priced to the public, but the organizational structure and the level of competence of the regulators themselves must be such that they will soundly recognize the problems of the regulated entities and work with the realization that the producers and businesses involved must be allowed freedom to manage and have ample leeway in operations and rate of returns to produce the high quality and ample service results that are vital to the whole country. This is a serious deficiency in past performance.

The ensuing developments should include careful examination of the recommendations of this Council, agency by agency, before adopting these structural recommendations as I note in the following quoted dissent previously referred to:

"I do not share the judgments of my associates in recommending a single administrator and a separate administrative court. These proposals reflect their belief that they will bring about a greater capability of administration and improved decision processes. There is no certainty that these proposals will lead to more effective administration. The economic and technological aspects of transportation and power regulation, for example, are more complex than other nonservice industries studied. The problems raised in the regulation of these industries cannot be resolved entirely in the atmosphere of either a hearing officer or an administrative court. I fear that this will be the result of the changes proposed by my colleagues.

"I agree, however, along with my colleagues that we should emphasize the need to encourage men of exceptional ability to seek and accept appointments to these vital administrative posts as a prime objective of our recommendations. But, I would suggest that more careful attention to the selection of commissioners and other key personnel is as likely to improve the administrative process as is the single administrator and the administrative court.

"In my opinion, it would be more appropriate to implement these proposals in one administrative agency. The FTC would be my selection. These innovations may then be studied carefully before any further attempt is made to implement them elsewhere."

Overview

The independent regulatory commissions, now mature institutions of the Federal Government, are characterized by rigidity in their process and in their patterns of relationship with Congress and the executive branch, the regulated industries, and the public. They lack the adaptive force which might regenerate or redefine their roles in helping shape the American economy. Both rigidity and lack of adaptability impede regulatory effectiveness at the very time when persistent trends and new directions in the economy demand flexibility and imagination to carry out regulatory objectives and to formulate action in the interest of the public, including the regulated segments of the private sector.

REGULATION AND GOVERNMENTAL STRUCTURE

The ICC, CAB, FMC, FTC, SEC, FPC, and FCC, established by Congress in the years since 1887, have long been considered an anomaly in government structure.¹ They are institutions housed in the executive branch, carrying out legislative functions, and behaving like courts. In the past quarter century, the growth of the regulated industries and the pace of the national economy have largely outdistanced the ability of the commissions to cope constructively with regulatory problems.

To have practical meaning, the commissions' charge to regulate in the interest of the public must include regard for economic, technological, and social developments, as well as the capability of the regulated industries to provide good public service.

Inadequacies in regulatory structure have adversely affected the implementation of Congressional mandates, the management of executive

branch functions, the interests of the public generally, and the ability of the regulated industries to operate their businesses profitably or to plan future actions with reasonable assurance of what regulatory policy will be.

The history of the regulatory commissions reflects an attempt to respond practically to national needs with institutions outside the three constitutional branches of government. Congress initially undertook to perform some regulatory responsibilities, but later conferred these responsibilities on independent commissions, a form that it believed would provide fairness and expertise, without delay or partisan influence. The commissions, however, soon became part of a highly specialized, independent "fourth branch" of the Federal Government. Today, they are not sufficiently accountable to either Congress or the executive branch. Perhaps because of this, they have become less effective in balancing the needs of the public with those of the industries they regulate consistent with Congressional intent and executive policy.

REGULATORY ACCOUNTABILITY

More than 30 years ago, the President's Committee on Administrative Management highlighted the lack of accountability of independent regulatory commissions:

They constitute a headless "fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers * * *. The Congress has found no effective way of supervising them, they cannot be controlled by the President, and they are answerable to the courts only in respect to the legality of their activities.²

The point has been made many times since, but the scope of the problem has changed little, if at all, over the years. The independent commissions persist more from inertia than from an analysis of how regulatory bodies should properly function within the context of a comprehensive political and economic system.

Congress has conceived of these commissions as independent of executive branch control, but in fact the commissions are almost as independent of Congress itself. Apart from appropriations approval, periodic program review, and the intermittent interest of one or several of its members, Congress does not exercise the degree of oversight with respect to regulatory commissions that it does for executive departments and other agencies of the executive branch. Congress has sought to preserve the independence of the regulatory commissions, even as their activities increasingly affect the implementation of national policy. The executive branch, responsible for carrying out national policy, has been reluctant to support reforms needed to integrate regulatory activities with executive programs

because the President does not have sufficient responsibility for commission direction.

Yet congressional and executive attention to regulatory needs is required more today than ever in the past because of the increasing interdependence of national economic policies which emerge from budget and fiscal action, economic regulation, and industry promotion by government. Proponents of the commission form tend to ignore that interdependence.³ In doing so they perpetuate processes and relationships which may frustrate national policy and sound economic growth.

Independence, and the resulting absence of regulatory accountability, has transferred to a generally shielded arena those questions which should be settled in a more open forum. The public—the intended beneficiary of regulation—has found it difficult to understand the issues and lacks a practical mechanism through which to communicate its views.

All this, together with significant impediments to regulatory performance inherent in the commission form itself, has led the commissions to become less responsive to economic and social trends and changes in industry structure.

Most studies and commentary relating to reform of the regulatory commissions over the years emphasize their separateness from an integrated governmental structure.⁴ These studies, and subsequent attempts to implement proposals stemming from them, have concentrated on reordering personnel, procedures, or functions to improve commission performance. Such efforts are commendable, but internal revision and redefinition are not enough. The regulatory apparatus requires a fundamental restructuring to enhance overall effectiveness and responsibility.

Accountability to Congress

Congress' powers under article II of the Constitution to regulate interstate and foreign commerce is the primary basis for regulatory controls. Through legislation, Congress has vested in regulatory commissions the powers necessary to carry out broad statutory mandates. But congressional statements of policy are understandably general, leaving to the commissions the task of making specific policy to implement those objectives. One result is that the commissions, in the course of time, have developed policies affecting the economy without sufficient guidance or check by Congress.⁵ This condition is aggravated in the view of some commentators by the commission form of organization which makes it hard to pinpoint those within the regulatory agencies responsible for setting policy.⁶

With greater coordination between the agencies and the executive branch and an organization structured to focus responsibility, Congress

would be better able to oversee agency policy and, in concert with the President, improve regulation.

Accountability to the Executive Branch

The President is responsible under article I of the Constitution to "take care that the laws be faithfully executed." That duty extends to the activities of the regulatory agencies to assure that the laws enacted by Congress are carried out effectively and fairly. The American public—to whom the President is directly answerable—looks to the President for leadership in pursuing national policy goals, including those affected by the regulatory process. The success of many Congressional and executive programs ultimately depends on a coordinated regulatory response.

Several recent Presidents have recommended changes in the regulatory process.⁷ Although many proposed reforms have fallen short of enactment, these Presidents presumably felt that such recommendations were part of their responsibility to oversee faithful execution of the laws. Congress has repeatedly recognized the President's role in the regulatory scheme by authorizing him to make organizational changes in all agencies of the executive branch without distinction between executive agencies within the Departments and independent regulatory commissions.⁸

If regulation is to be more responsive to the public interest and coordinated with national programs, it must first be brought within the ambit of elective government, with accountability to those officials to whom the public and the regulated industries alike look for fair and constructive application of national policy.

REGULATION BY INDEPENDENT COMMISSIONS

Historically, at least four premises have been offered to support regulation by independent commission.

The first is that Congress delegated unique legislative authority to carry out certain critical regulatory functions and created a unique form of organization, the independent commission, for that purpose. Yet, most executive departments also possess delegated regulatory powers. For both, Congress enacts skeletal legislation setting forth principles, mandates, and limitations within which the traditional executive departments and agencies develop rules, standards, and regulations to give substance to a legislative program.⁹ It is difficult today to discern the distinction which justifies wide differences in the structure and processes of the Federal Trade Commission on the one hand and the Food and Drug Administration or Federal Aviation Administration (both headed by single administrators) on the other. The most recent agency to be vested with

regulatory functions, the Environmental Protection Agency,¹⁰ incorporates the concept of unitary leadership in place of the commission form.

Second, it is argued that to deal with complex and technical regulatory problems, special expertise is required of decisionmakers and that the commission form alone best develops that expertise. The commissions have not, however, demonstrated consistent mastery of the subjects within their jurisdictions.¹¹ Nor does their technical capability visibly surpass that of regulatory counterparts within executive departments.

Third, it is urged that the application of regulatory statutes, rules, and regulations requires a bipartisan, multimember body that can act without regard to the partisan considerations which affect Congress or the executive branch. Political pressure coming from Congress or the executive branch unquestionably impinges on the impartiality of commission proceedings. But the procedural requirements of adequate notice and fair hearing, as well as the availability of judicial review, help to assure, as much as anything, a just result in particular proceedings. In the opinion of several observers of the regulatory process, the fairness of regulatory decisions results more from the mechanics of internal decisionmaking and breadth of perspective of the regulators than from the fact of bipartisan representation on the commissions.¹²

A fourth premise often asserted in support of the commission form is that commissions can better serve the public interest in regulatory matters because their independence makes them immune from control by the industries they regulate. The assumption which lies behind these assertions is that the interest of the industries and of the public are in fundamental conflict. But today, those interests are closely related, for the success of an industry will have a marked impact on the extent, quality, and price of available goods and services. Nevertheless, undue or unbalanced influence upon the commissions by the industries regulated is undesirable. While the adversary nature of commission proceedings decreases the likelihood of such influence, when it occurs, it is an outgrowth of the dependence of the regulator on the regulated—a relationship which may occur regardless of form.¹³ To the extent the form of organization is responsible at all, the very anonymity of the commission structure which heightens unaccountability tends to prevent public exposure of relationships which may be improper.

The foregoing does not set forth all the premises underlying the commission form for use in economic regulation.¹⁴ Other arguments for the establishment of the commissions range from the discomfort of many courts with complex economic and technological problems to the need for expeditious procedures in regulating commerce.

At the very least, these reasons for regulation by independent commis-

sion, if ever valid, are today of questionable validity. In practice, the commission form has proven most of them to be invalid.

REGULATION AND INDUSTRY EXPANSION

The form of the regulatory commissions, compatible with another era, prevents them from responding effectively to economic trends and changes in technology, industry structure, and public needs.

The Interstate Commerce Commission, first among the Federal regulatory commissions, was established in 1887 to achieve rate stability, prevent discrimination in favor of large shippers and certain geographical areas, and protect farmers from undue charges by railroads. Today, some of the surface transportation industries suffer major economic hardship partly caused by the regulatory processes themselves.

Given the likely impact of such developments as containerization, jet freight carriage, and the interstate highway system, as well as the needs of a growing and concentrated population, modes of transportation within ICC jurisdiction must be viewed together with other modes as an integral part of a unified transportation network. Other carriers not regulated by the ICC affect and are affected by ICC decisions. Urban mass transit is a concern of the ICC, CAB, and the Department of Transportation. The ICC and the CAB exercise jurisdiction over inland segments of overseas shipments while the FMC and CAB exercise jurisdiction over the ocean segment of such shipments, even though containerization has made possible a continuous flow of commerce from the interior of the United States to the interior of other continents. Fragmented regulation of the transportation industry is inconsistent with efforts to develop a coordinated transportation system. It frustrates the development of management and financial capability in the industries involved, and impedes the rate at which new technology can be utilized.

The Federal Trade Commission was created in 1914 to prevent unfair methods of competition by businesses in interstate commerce. Originally intended to augment antitrust enforcement, the FTC has become a repository for many bits and pieces of legislation that did not seem to fit neatly into any other agency of government. Consequently, FTC jurisdiction now ranges from the complexities of large corporate mergers to the comparatively simple task of accurate labeling of fabrics and furs.

The Federal Power Commission originated in 1920 with the relatively tidy mandate of licensing construction and operation of hydroelectric power plants on bodies of water within the jurisdiction of the Federal Government. It now also regulates transmission and wholesale marketing of electric energy in interstate commerce, including rates, accounting procedures, mergers, consolidations, interconnections, and

coordination of interstate electric energy systems. The FPC similarly regulates transmission and wholesale marketing of natural gas in interstate commerce. An increasingly complex interstate energy system affecting the well-being of every citizen makes these regulatory tasks monumental.

The Federal Communications Commission was set up in 1934 to bring order to radio spectrum allocation and to regulate the existing telephone systems as a monopoly service under legislation that authorized exclusive operation in the public interest. To these has been added regulatory responsibility for standard television broadcasting, cable and subscription television, satellite communications, and computer utilities.

The Securities and Exchange Commission, also a product of regulatory legislation in the 1930's, was established to promote public confidence, through government oversight, in the issuance and trading of securities. But today, the SEC must deal with related problems of public ownership of brokerage firms, the operations of securities exchanges, the effects of computerization and new financing techniques, and the advent of major institutional investors.

The Civil Aeronautics Board, created in 1938, dramatically illustrates the way in which technology has challenged the ability of regulatory commissions to respond to change. The CAB initially concentrated on safety regulations and awards of mail routes. Today, the Board oversees an industry experiencing recurring economic problems and faced with crowded airways, jumbo jets, inadequate terminal facilities, and problems yet to be generated by the SST. These factors materially affect the ability of the industry to provide good service and at the same time impinge on the economy, our physical environment, and transportation modes not regulated by the CAB.

The Federal Maritime Commission, which in 1961 replaced the Federal Maritime Board established under the Shipping Act of 1916, today is involved in tasks of international importance. The FMC must deal with the effects of containerization and other technological innovations in ocean shipping. The Commission must also resolve problems relating to joint through rates and single bills of lading, its impact on modes (including foreign carriers) it does not regulate, and pricing through international shipping conferences.

The end result of this period of unparalleled technological change, industry expansion, economic growth, and environmental and social concern is that new responsibilities and workloads generated by routine matters have outdistanced the commissions' ability to respond. As the volume of proceedings has increased with each new responsibility, internal commission structure and process has become more complex. While some attempts have been made to remedy these problems through inter-

nal reforms, little thought has been given to restructuring the entire regulatory apparatus.

But it is not the mounting ineffectiveness of the regulatory framework alone which compels change. The world is in an era of transition that challenges government and private sectors alike to deal constructively and cooperatively with the economic issues, current, prospective, and unforeseen. The independent regulatory commission's inflexible institutions attuned to a simpler day, cannot be expected to deal constructively with economic issues yet to be generated if they are unable to deal with current ones. More than ever, a new framework is needed for improved regulation and as a necessary first step to reconsidering the statutes which authorize economic regulation.

A NEW CONCEPTUAL FRAMEWORK

The failure of regulatory commissions to respond to current demands and the unlikelihood of their responding to new ones is principally attributable to collegial organization, the judicial cast of agency activities, and the misalignment of certain functional responsibilities.

The collegial form is today inappropriate for regulating highly complex, everchanging areas of the economy. What is needed is a regulatory structure which is more adaptable to changing conditions and better able than a collegial body to articulate policy. Plural-headed administration is usually characterized by shared powers, shared responsibility, and, for that reason, shared indecision and unaccountability.

In addition, overjudicialization, resulting from full commission review of initial agency decisions as a matter of course, has upset commission priorities and obscured the formulation of comprehensive, timely, and anticipatory agency policy. Moreover, the admixture of certain judicial functions with policymaking and prosecutory responsibilities has created a condition of apparent bias in certain proceedings, subjecting agency determinations to criticism on that ground and generally undermining confidence in the regulatory process.

Finally, certain regulatory activities are improperly divided among, or unwisely combined in existing commissions.

Agency Administration

We have considered several alternatives and have concluded that the best approach to solving the problems created by the commission form is to replace commissions—for transportation, power, securities, and trade practices regulation—with single administrators. These officials should be appointed by the President, upon the advice and consent of the Senate, to serve at the pleasure of the President.

agencies, where these vital requirements for program effectiveness are now often weak. This form of organization would also strengthen program coordination where two or more agencies need to work together to achieve a common goal.

Specifically, as described in detail in chapter 1, the single administrator would:

- Enable an agency to attract and retain highly qualified executives and staff because of better-defined, singular authority and responsibility;
- Encourage formulation of policy through informal procedures and rulemaking rather than case-by-case adjudication;
- Foster improved policy coordination among the agencies and with executive departments;
- Facilitate more immediate response to the needs of the public and to structural, economic, and technological changes in the regulated industries; and
- Promote more efficient allocations of agency resources by encouraging the use of modern management methods, including greater delegation of authority and more direct staff accountability.

Unitary leadership will not solve all regulatory problems. An agency so led may flounder for lack of the right kind of leadership or suffer from misguided efforts. But fault for that lies in the quality of the appointment not the form of organization. In such a case, responsibility lies with the President who has power to make the necessary change.

We suggest retention of plural leadership in the communications and antitrust areas because of overriding considerations which in our view supervene the benefits of the single administrator form. These considerations are discussed in chapters 4 and 7.

Review of Agency Decisions

The regulatory commissions have tended over the years to overjudicialize agency process by adopting a case-by-case approach. Excessive judicialization has fostered the development of ad hoc policies often limited to the particular fact situation at hand and therefore without general applicability or future effect.

Such judicial preoccupation, seen most readily in the course of systematic full commission review of decisions by agency hearing examiners, generally has precluded early, comprehensive statements of policy through rulemaking proceedings and other informal policymaking procedures. It has prevented the application of current agency policy by examiners while implicitly encouraging appeals to the full commission for a de

perspectives of staff and commissioners. The judicial attitudes and procedures of the commission have unduly prolonged proceedings and nurtured high case backlogs leading to ineffective uses of agency resources.

To rectify this situation, we propose that, instead of reviewing each initial decision as a matter of course, the single administrator of the restructured transportation, securities, and power regulatory agencies, and the new trade practices agency, review selected cases primarily for consistency with agency policy. Action by the administrator to overturn, modify, or remand an examiner's decision should be taken within 30 days and should set forth the reasons underlying such action.

Final agency action would be subject to review in the Federal courts. Whereas judicial review is presently exercised by the U.S. Courts of Appeals, we propose that, except for trade practice proceedings, review be transferred to a new Administrative Court of the United States. That court would be expert as to both the substantive issues involved in transportation, securities, and power legislation and the procedural intricacies of the Administrative Procedure Act which governs agency and review process. Moreover, the court's familiarity with problems of regulatory administration and the need for expedited procedures can be expected to aid in displacing the court-like posture of the agencies while maintaining regulatory fairness. We anticipate that removing judicial review of agency process from the Courts of Appeals will reduce somewhat the load on those courts and eliminate much of the agency preoccupation with judicial procedures which derives from review by common law courts.

The Administrative Court should consist of as many as 15 judges, appointed by the President, upon the advice and consent of the Senate, to serve staggered terms. We suggest terms up to 15 years. Appointments should be made initially on a bipartisan basis, with no more than a bare majority from one political party. Subsequent appointments or reappointments, just as those to other Federal courts, should be made without regard to political affiliation. The length of judicial terms should be long enough to insure continuity of expertise and at the same time short enough to permit revitalization of the judicial process compatible with an expanding economy, new technology, and changes in industry structure. A Chief Judge designated by the President should assign judges to cases on a rotating basis rather than to specialized panels. This would allow judges to maintain an open perspective and avoid identification of particular judges with specific types of proceedings.

The Restructured Agencies

The single administrator form, limited internal review, and the Administrative Court create a structure within which several regulatory functions can be realigned to reflect a more rational and potentially more effective placement of responsibilities.

Transportation

Three agencies presently regulate transportation: the ICC (railroads, trucks, buses, freight forwarders, barge lines, and pipelines), the CAB (air carriers), and the FMC (maritime shipping). While the reasons for dividing responsibility among three agencies may have been compelling as transportation regulation evolved, we found no persuasive reasons to justify the continuation of these divisions. To the contrary, grouping these responsibilities within a single Transportation Regulatory Agency has many advantages. These are set forth at length in chapter 3.

Today, there is a singularly vital need for a regulatory facility which is consonant with the increasing interdependence of transportation modes, competition among the modes, and integration of transportation into effective networks. The proposed Transportation Regulatory Agency would be charged with weighing the interests of each transportation mode in terms of the public interest. Rules and procedures for uniform classifications and for coordinated rates, routes, and industry practices would be possible when now such action is virtually impossible.

Promotional as distinct from regulatory functions of the existing transportation agencies—such as the subsidy-granting activity of the CAB—should be consolidated in the Department of Transportation which has primary concern for industry promotion. This would eliminate conflicting responsibilities for promotion and regulation within a single agency.

Trade

While transportation regulation is in our view better administered by one agency, regulation of antitrust enforcement and consumer protection is ill-combined in the FTC.

Although both activities aim at assuring fair business practices and preserving competition in American industry, methods of investigation, negotiation, and enforcement of their respective statutory mandates differ widely. Each requires different expertise and procedures. Consumer protection relies primarily on the promulgation of rules and regulations together with field investigations. Antitrust enforcement entails intensive study of the industry and of the economic impact of industry practices.

As detailed in chapter 4, to fulfill these separable responsibilities the FTC should be abolished and in its place created a new Federal Trade

Practices Agency for protecting consumers and a new Federal Antitrust Board for antitrust enforcement.

The Federal Trade Practices Agency would establish trade practice policies, both on its own initiative and in response to public initiatives. It would also investigate actual instances of alleged violations of fair trade practices. Since many such complaints are of limited financial consequence and are amenable to prompt resolution, hearing examiners situated in regional offices of the agency could most expeditiously deal with them. In fact, today many such situations are resolved quickly through the most informal discussion between the FTC and alleged offenders. In those cases where substantial issues are involved, examiners' decisions should be subject to appeal in appropriate Courts of Appeals after opportunity for policy review by the agency administrator.

The Federal Antitrust Board, consisting of a chairman and two economist administrators, would continue dual antitrust enforcement with the Department of Justice. The chairman would be responsible for all executive and administrative duties, and would articulate agency policy. The multimember Board would permit comprehensive micro- and macro-economic analysis by drawing upon the special expertise and perspective of its members. Actions brought by the Board should be heard in the Federal district courts.

Securities

A new Securities and Exchange Agency should supplant the SEC. Internal review of certain judicial proceedings presently commenced before hearing examiners should be limited to 30 days and directed principally to assuring that decisions correctly reflect agency policy. Appeals from agency decisions should be to the Administrative Court. Original actions taken by the SEC in the Federal district courts should continue as they do today. For reasons stated in chapter 5, application of these structural changes would enable the agency to adapt readily to present and future needs of the securities industry and the investing public.

Regulatory responsibilities of the SEC under the Public Utility Holding Company Act of 1935 should be vested in the proposed power regulatory agency, since problems relating to the structure of public utility holding companies are properly within the competence of that agency. For many years, in fact, the SEC has drawn upon FPC expertise in administering the act. This proposal has long had substantial support from both the SEC and FPC.

Power

A new Federal Power Agency should replace the FPC. As with the proposed transportation and securities agencies, as well as for reasons

discussed in chapter 6, the power administrator would be able to respond more effectively than a multimember commission to the needs of the electric power and natural gas industries, their customers, and the public generally. Appeals from final agency decisions would be to the Administrative Court. As noted, the power agency should assume regulatory responsibilities under the Public Utility Holding Company Act.

Communications

The FCC regulates, among other things, radio and television broadcasting, both important sources of public information. To an extent not present in other agencies, regulation in this area involves personal value judgments as to the type, quality, and substance of programming—the product of the industry which the FCC oversees. Clearly, the public has come to rely on the broadcast media for much of its information. The mere appearance of possible undue influence over program content might undermine public confidence in the sources of its information. Thus, we believe it would be inadvisable to place in the hands of a single administrator the power to exercise control over industry members through licensing and programming decisions.

Moreover, because broadcast regulation is uniquely subjective in character, we believe that decisions in this area should reflect the personal values of more than a single individual. This is especially important in view of the fact that even though the damage to society from control of information sources may be substantial, there is no satisfactory remedy for undoing the harm. Accordingly, it is imperative, in the first instance, to build in added safeguards for assuring an uncontrolled flow of ideas and information.

For these reasons, more fully explained in chapter 7, the FCC should be retained as a multimember commission. To offset some of the disadvantages of plural administration, the number of FCC commissioners should be reduced from seven to five, to serve 5-year terms.

CONCLUSION

Most deficiencies and problems of the regulatory agencies stem from an inapposite wedding of form and function. The present commissions combine the passive, judicial characteristics of a court with the active policymaking responsibilities of an administrator, to the detriment of both.

Substantial changes are advisable in the present structure of regulation by collegial bodies. The transportation, power, securities, and trade practices agencies are in need of the vigorous reform which a single administrator is most likely to bring about.

We have not recommended single administrators for all the regulatory agencies because organizational theory should give way when other factors bear greater weight. Although we emphasize organizational principles, we think exceptions should be made where, on balance, supervening considerations apply or greater effectiveness is likely by retaining collegial bodies. Hence, we believe that the overriding needs for a mixture of views in the communications area and for extensive economic judgment at the point of decision in the antitrust field justify plural-headed organizations in these areas.

There has been no attempt to catalog all the flaws of the regulatory structure nor to set forth solutions to all problems. But we have identified the major problems; and we have suggested a constructive plan for refashioning the regulatory structure so that the agencies can perform more effectively and at the same time more fairly.

We do see, moreover, that in our complex and growing society economic regulation must be consistent in its purpose, constructive in its policies, and objective in its decisions. Regulators have the difficult task of balancing the interests of industries and of the public to insure that the latter is well served and that the former remain vigorously able to provide that service. Such is the goal of the proposals we have made.

NOTES

1. "It [the committee] is not persuaded of the soundness of the view sometimes asserted that, to the traditional threefold classification, there must be added a fourth power, conveniently called 'administrative,' which somehow involves the exercise of functions which are neither executive, legislative, nor judicial and thus escapes the necessity for safeguards which centuries of experience have built around the exercise of such functions." Report of the Special Committee on Administrative Law, before the 57th Annual Meeting of the American Bar Association, Milwaukee, Aug. 28-31, 1934, in "Separation of Powers and the Independent Agencies: Cases and Selected Readings," Committee on the Judiciary, S. Doc. No. 91-49, at 216 (1970).

2. The President's Committee on Administrative Management, "Report of the Committee With Studies of Administrative Management in the Federal Government," pt. I, at 40 (1937) (hereinafter referred to as Brownlow report).

3. See M. Bernstein, "Regulating Business by Independent Commission" 283 (Princeton University Press, Princeton, 1955) (hereinafter referred to as Bernstein).

4. See generally "Report of the Special Committee on Administrative Law" before the 57th Annual Meeting of the American Bar Association *supra* note 1; Brownlow report, *supra* note 2; "The U.S. Commission on Organization of the Executive Branch of the Government, the Independent Regulatory Commissions," Rept. No. 12, March 1949 (U.S. Government Printing Office, Washington, D.C., 1949) (hereinafter referred to as First Hoover Commission Report); Bernstein, *supra* note 3; J. Landis, "Report on Regulatory Agencies to the President-Elect," printed for use of the Senate Committee on the Judiciary, 86th Cong., Second sess. (1960) (hereinafter referred to as Landis report).

5. "Usually these investigations or hearings are sporadic in nature having been sparked by some incident that has caught the attention of the press. Regular surveys of their activities would be far more valuable." Landis report, supra note 4, at 34-35; "Congress has found no effective way of supervising them, they cannot be controlled by the President, and they are answerable to the courts only in the respect to the legality of their activities." Brownlow report, supra note 2, at 40.

6. "This arrangement [a chairman designated by the President and responsible for administration and staff] has advantages for the Commission as well. Over the long pull, it must function as a part of the Government as a whole. For one thing, it can accomplish its duties only with proper appropriations and that may require sympathetic help from the Chief Executive with respect to its budget." The U.S. Commission on Organization of the Executive Branch of the Government, Committee on Independent Regulatory Commissions: A Report with Recommendations, Jan. 13, 1949 (U.S. Government Printing Office, Washington, D.C., 1949) (hereinafter referred to as "First Hoover Commission Task Force Report"); "[S]o far an administration carried on by a group is concerned, there is little to commend it. It is on the purely administrative side that the independent commissions are weakest, and gain rather than loss would result from centralizing control and responsibility. * * * For purposes of management, boards and commissions have turned out to be failures." Brownlow report, supra note 2, at 21; "Administration by a plural executive is universally regarded as inefficient." "First Hoover Commission Report," supra note 4, at 5.

7. Eisenhower administration: "U.S. Commission on Organization of the Executive Branch of the Government, Legal Services and Procedure" (U.S. Government Printing Office, Washington, D.C., 1955) (hereinafter referred to as "Second Hoover Commission Report").

Kennedy administration: Landis report, supra note 4.

Johnson administration: "President's Task Force Report on Government Organization"; "Price Task Force 1964"; "Heineman Task Force Report 1967" (unpublished).

8. See, e.g., 5 U.S.C. 901 (a), 902(1)(a) (supp. IV, 1965-68); see also 5 U.S.C. 105 (supp. IV, 1965-68); 31 U.S.C. 2, 18(a)(b) (1964).

9. See, e.g., Packers and Stockyards Act, 7 U.S.C. 181-231 (1964) as amended (supp. IV, 1965-68), administered by the Department of Agriculture; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301-392 (1964), as amended (supp. IV, 1965-68), administered by the Food and Drug Administration; and the Commodity Exchange Act, 7 U.S.C. 1-17(a) (1964), administered by the Commodity Exchange Commission under the executive branch.

10. Reorganization Plan No. 3 of 1970, prepared by the President and transmitted to the Senate and the House of Representatives, July 9, 1970, pursuant to the provisions of 5 U.S.C. ch. 9.

11. "In both the ICC and the FTC, long tenures and the tradition of reappointment have tended to make incumbent commissioners relatively insensitive to new industrial developments and rather hostile to new ideas about regulatory policy and administrative practice." Bernstein, supra note 3, at 108.

12. "There is a little evidence that commissioners divide on major policy issues according to their party affiliations." Bernstein, supra note 3, at 104. See generally E. Herring, "Federal Commissioners—A Study of Their Careers and Qualifications" (Harvard University Press, Cambridge, 1936).

13. See E. Redford, "American Government and the Economy" 587-590 (Macmillan, New York City, 1965).

14. For an in-depth historical analysis see "Final Report of the Attorney General's Committee on Administrative Procedure," ch. 1 (U.S. Government Printing Office, Washington, D.C., 1941); J. Anderson, "The Emergence of the Modern Regulatory State" (Public Affairs Press, Washington, D.C., 1962) (hereinafter referred to as Anderson).

No. 5



International

Polar air crossroads of the world

**CITY OF
ANCHORAGE**



ALASKA

File -
HB 517

February 7, 1972

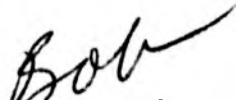
POST OFFICE BOX 400
ANCHORAGE, ALASKA
99501

The Honorable William J. Moran
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99801

Dear Bill:

In accordance with our telephone conversation of this date, I am enclosing the City of Anchorage, Municipal Division of the District Court, budget for 1972. Also enclosed is an extract of the Fines and Forfeitures section of the budget.

Sincerely yours,


Robert E. Sharp
City Manager

Enclosures: a/s



AIRMAIL IS FASTER

CITY OF ANCHORAGE

DEPARTMENT Municipal Division of District Court	ACCOUNT TITLE Administrative	ACCOUNT NUMBER 1005.00	SUMMARY	A	PAGE C84
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ACCOUNT SUMMARY

EXPENDITURE CLASSIFICATION	1968 ACTUAL	1969 ACTUAL	1970 ACTUAL	1971 REVISED BUDGET	1972		
					REQUEST	RECOMMEND	APPROVED
Personal Services	91,581	68,881	83,000	131,075	180,854	155,250	155,250
Contractural	27,406	11,479	9,062	17,688	17,360	17,780	17,780
Supplies	2,429	2,779	2,259	2,753	3,250	3,000	3,000
Other Costs	3,650						
Capital Outlay		549	1,029	47	24,200	700	700
	125,066	83,688	95,350	151,563	225,664	176,730	176,730
Less Interfund Charges							
Total	125,066	83,688	95,350	151,563	225,664	176,730	176,730

DEPARTMENT	DIVISION	ACCOUNT TITLE	ACCOUNT NUMBER
Mun. Div. Dist. Court	COURT	Administration	1005.00

WORK PROGRAM

Problem

Lack of space to conduct Arraignments, & Jury and Court Trials. Failure to provide timely trials will result in dismissals. RE: Criminal Rule 45, as amended by Alaska State Supreme Court Order No. 131 Section (b). Trials presently being set into 6th month after defendant is arraigned. 639 Trials pending as of August 25th, 1971. Rental Cost to City for extra court room from Sept. 28 thru July 31 - 6,607.20.

Goal-1

- (A) Implement efficient procedures to accomodate increased load resulting from requirement of Jury trials plus normal increase in number of cases filed.
- (B) Departments current program will not contribute to timely trials without wholesale dismissal of cases.
- (C) Greatly needed is additional court room space and assignment of another full time Judge or Magistrate.

Objective

- (A) Existing facilities will have to be divided creating a second court room - this can be accomplished at an approximate cost of \$23,500.00.
- (B) One court room will conduct Jury Trials, one court room will conduct Non-Jury trials five days per week beginning at 8:00AM each day. Scheduling of trials for each court will govern time of day court will close. Arraignments will be held in the late afternoon and early evenings.
- (C) Provide court space & additional court personnel (if necessary) to handle in timely & efficient manner the business of Municipal Division of District Court within one facility or area.

Progress Evaluation

- (A) Case flow in timely manner; elimination of confusion in procedure; elimination of unreasonable continuances of cases. Results would be reflected in less backlog in number of cases & show increase in revenue as well as timely dispensation of justice.
- (B) Cases scheduled from April 2 thru August 4, 1971 - 1426. Cases actually held - 206. Cases Dismissed - 368. Cases granted continuances - 305. Changes of Pleas, Bail Forfeitures and Bench Warrants - 558.
- (C) Cases that could have been tried during period April 2 thru Aug. 4 (Providing adequate space and personnel available) - 673.

CITY OF ANCHORAGE

DEPARTMENT Municipal Division of District Court		ACCOUNT TITLE Administrative	ACCOUNT NUMBER 1005.00	DETAIL	B	PAGE C86
CODE NO.	EXPENDITURE CLASSIFICATION	1970 ACTUAL	1971 REVISED BUDGET	1972		
				REQUEST	RECOMMEND	APPROVED
	<u>PERSONAL SERVICES</u>					
8110	Salaries	59,020	89,389	114,632	107,860	107,860
8120	Overtime	2,340	2,330	2,000	2,000	2,000
8140	Liability & Workman's Comp. Ins. -	876	1,384	1,373	1,870	1,870
8141	Retirement Plans	1,330	1,550	2,876	1,860	1,860
8142	Life Insurance	40	60	80	80	80
8143	Medical Insurance	302	2,125	2,110	2,110	2,110
8144	Social Security (FICA)	2,645	4,527	5,983	5,570	5,570
8180	Contracted Labor (Judges)	16,447	29,710	51,800	33,900	33,900
	Total	83,000	131,075	180,854	155,250	155,250
	<u>CONTRACTUAL</u>					
8211	Duplicating	558	548	650	650	650
8221	Telephone, Switchboard	2,220	2,300	2,400	2,400	2,400
8235	Tuition Refunds	108		-0-	-0-	-0-
8241	Interfund Charges				1,640	1,640
8252	Other Vehicles or Equip. Rented	1,741	600	630	630	630
8253	Private Vehicle			300	300	300
8254	Space Rental - City Buildings	3,151	11,280	12,980	11,810	11,810
8261	Repairs & Maintenance-City Forces	522			150	150
8262	Other Repairs & Maintenance		2,610		-0-	-0-
8270	Travel	666			-0-	-0-
8271	Dues & Subscriptions	96	350	400	200	200
	Total	9,062	17,688	17,360	17,780	17,780
	<u>SUPPLIES</u>					
8303	Office Supplies & Postage	2,259	2,753	3,250	3,000	3,000
	<u>CAPITAL</u>					
8602	Additional Court Room			23,500	-0-	-0-
8605	Machinery & Equipment	1,029	47	700	700	700
	Total	1,029	47	24,200	700	700
	Total Operating Budget	95,350	151,563	225,664	176,730	176,730

DEPARTMENT Municipal Division of District Court		ACCOUNT TITLE Administrative		ACCOUNT NUMBER 1005.00		PERSONNEL		C	PAGE C87
CLASSIFICATION	RANGE	SALARY RATE	EMPLOYEES CURRENT *BUDGET	1972					
				* REQUEST	* RECOMMEND	* APPROVED			
Department Adm. Assist II	25	994-1209	1	1	13,176	1	13,176	1	13,704
Accounting Clerk II	15	671-817	2	2	18,074	2	18,074	2	18,796
Jury Trial Clerk	13	620-755	2	2	16,352	2	16,352	2	17,006
Non-Jury Trial Clerk	13	620-755	1	1	7,622	1	7,622	1	7,926
Arraignment Clerk	13	620-755	2	2	15,474	2	15,474	2	16,092
In-Court Bailiff	19	787-956	2	2	19,590	2	19,590	2	20,374
Arraignment Clerk (PT)	13	620-755	1 1/2	2	14,996	1 1/2	11,247	1 1/2	11,696
In-Court Bailiff (PT)	19	787-956	3/4	1	9,348	3/4	7,011	3/4	7,292
			12 1/4	13	114,632	12 1/4	108,546	12 1/4	112,886
<u>New Position</u>									
Vacation Replacement (Bailiff)	19	787-956			1,510		1,510		1,570
Less 2% Vacancy Rate							(2,201)		(2,245)
TOTAL			12 1/4	13	116,142	12 1/4	107,855	12 1/4	112,211
* This column used for number of employees in each class.									
COMMENTARY									

DEPARTMENT MUNICIPAL DIVISION OF DISTRICT COURT	ACCOUNT TITLE ADMINISTRATION	ACCOUNT NUMBER 1005.00	COMMENTARY	D	PAGE C88
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	<u>Department Request</u>	<u>Manager Recommends</u>	<u>Council Approved</u>
8110 - Salaries-In court Bailiff as vacation replacement for existing positions	1,510	1,510	1,510
8180 - Contracted Labor - One additional Judge or Magistrate required to conduct additional court sessions, thus providing more time for trials	51,800	33,900	33,900
8242 - Inter-Fund Charges Courier Microfilm-Records		410 <u>1,230</u> 1,640	410 <u>1,230</u> 1,640
8253 - Bailiff use of private automobile to transport jurors, and in some instances prisoners. Clerk use of private automobile carrying on business of Municipal cases in State Court Building.	300	300	300
8602 - Partition existing facilities to provide two court rooms. Present facility operating at full capacity requiring rental being paid for court space.	23,500	-0-	-0-
8605 - Typewriter for added personnel.	700	700	700

GENERAL FUND		REVENUE DETAIL					PAGE
		1970	1971	1972			B1
ACC'T. NO.	CLASSIFICATION	ACTUAL	REVISED BUDGET	REQUEST	RECOMMEND	APPROVED	
	I. TAXES						
.7001	Real Property	3,942,073	4,585,815	5,540,940	5,362,200	5,362,200	
.7002	Personal Property	1,127,982	1,257,550	1,406,620	1,361,250	1,361,250	
.7010	PILOT - Off-Street Parking	39,090	79,173	79,170	77,940	77,940	
.7015	PILOT - Anchorage Telephone Utility	355,030	365,105	527,000	412,420	412,420	
.7016	PILOT - Municipal Light & Power	234,520	241,120	345,380	380,970	380,970	
.7017	PILOT - Water Utility	254,760	265,731	299,500	299,500	299,500	
.7018	PILOT - Port of Anchorage	21,648	25,360	25,410	25,410	25,410	
.7025	Franchise Tax - Anchorage						
	Natural Gas	100,671	105,868	111,330	112,000	112,000	
.7026	Co-Op Taxes - Chugach Electric	17,073	33,955	40,000	40,000	40,000	
.7030	Voluntary PILOT - ASHA	8,884	10,000	10,000	10,000	10,000	
.7035	Penalties & Interest on Delinquent Taxes	72,969	60,000	70,000	70,000	70,000	
	Subtotal	6,174,700	7,029,677	8,455,350	8,151,690	8,151,690	
	II. LICENSES AND PERMITS						
.7100	Building & Trade Licenses	12,234	15,450	15,000	15,000	15,000	
.7101	Building Permits	234,460	210,000	290,280	290,000	290,000	
.7102	Taxi Zone & Terminal Fees	6,155	6,000	6,400	6,500	6,500	
.7103	Other Business Licenses	17,089	20,000	20,000	20,000	20,000	
.7110	Street Use Permits	2,220	2,000	5,420	5,500	5,500	
.7120	Chauffers' Licenses	4,393	3,810	4,800	5,000	5,000	
.7121	Licenses on Amusement Devices	8,783	6,000	6,500	6,500	6,500	
.7122	Liquor Handlers' Permits	3,361	3,400	4,000	4,000	4,000	
	Subtotal	288,695	266,660	352,400	352,500	352,500	
	III. FINES AND FORFEITURES						
.7200	Parking Violations	252,869	300,000	360,000	360,000	360,000	
.7201	Court Fines & Forfeitures	390,531	409,000	390,000	390,000	390,000	
.7202	Failure to Appear Warrants	48,682	60,000	60,000	60,000	60,000	
.7210	Library Book Fines	10,546	10,500	12,000	12,000	12,000	
.7212	Impound & Storage of Aircraft	236	200	250	250	250	
	Penalty & Interest-Spec. Assmt.	11,939	-0-	-0-			
	Subtotal	714,803	779,700	822,250	822,250	822,250	

RECOMMENDATIONS ADOPTED BY THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS AT ITS SEPTEMBER 11, 1970 and JANUARY 22, 1971 MEETINGS DEALING WITH STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM

A. COURTS

Recommendation 1. Organization and Administration

The Commission recommends that each State establish a simplified and unified court system, consisting of a supreme court, an intermediate court of appeals if necessary, a general trial court and special subdivisions of the general trial court performing the duties of courts of limited jurisdiction. The Commission also recommends that the States abolish justice of the peace courts, or overhaul them by placing them under State supervision, direction and administration; by compensating justices by salary rather than by fees; and by requiring them to be licensed to practice law in the State or pass an appropriate qualifying examination. The Commission further recommends that all courts be subject to administrative supervision and direction by the supreme court or the chief justice; to uniform rules of practice and procedure promulgated by the supreme court subject to change by the legislature; and to the flexible assignment by the supreme court or chief justice of judges from court to court within and between levels.

Recommendation 2. State Court Administrative Office

The Commission recommends that all States provide an administrative office of the State courts, headed by a professional administrator, to assist in the administrative supervision and direction of the State court system.

Recommendation 3. Trial Court Administrative Offices

The Commission recommends that States authorize and encourage establishment of administrative offices for the general trial courts of large urban areas. The Commission further recommends that such offices be headed by professional administrators and be under the general supervision of the State court administrator where one exists.

Recommendation 4. Methods of Selecting Judges--The "Merit Plan"

The Commission recommends that State and local governments, where needed, adopt the "Merit Plan" of selecting judges, whereby commissions consisting of representatives of the bar, the judiciary, and the public screen and nominate qualified candidates for appointment by the chief executive. The Commission further recommends that judges so appointed be required to submit themselves to voter approval or disapproval at an election at the end of each term.

Recommendations

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Recommendation 5. Judicial Discipline and Removal: The California-Type Commission on Judicial Qualifications.

The Commission recommends that, where lacking, States establish machinery for the discipline and removal of incapacitated or unfit judges, patterned after California's Commission on Judicial Qualifications.

Recommendation 6. Judicial Qualifications

The Commission recommends that States require all judges to be licensed to practice law in the State.

Recommendation 7. Mandatory Retirement

The Commission recommends that, where lacking, State laws require mandatory retirement of State and local judges upon reaching age seventy.

Recommendation 8. Full-Time Judges

The Commission recommends that States require all judges to devote full-time to their judicial duties.

Recommendation 9. State-Local Sharing of Court Financing: Full State Assumption of Costs

The Commission recommends that States assume full responsibility for financing State and local courts.

Recommendation 10. Improved Federal-State Court Relations

The Commission urges State and Federal district judges, judicial officers and Bar Associations to initiate and support the development of State-Federal Judicial Councils composed of chief judges of State and appropriate Federal district courts to cooperatively explore problems of joint concern, including procedures for review of past conviction petitions.

B. PROSECUTION

Recommendation 11. Increased State Responsibility for Prosecution

The Commission recommends that States strengthen State responsibility for prosecution by enhancing the attorney general's authority to oversee the work of local prosecutors; by establishing a State council of prosecutors composed of all local district attorneys and under the leadership of the attorney general; and by giving the attorney general the power to consult with and advise local prosecutors in matters relating to the duties of their office; and when, in his judgement, the interest of the people of the State requires it, to attend the trial of any party accused of a crime and assist in the prosecution and intervene in any investigation, criminal action, or proceedings instituted by prosecuting attorneys in certain specified instances. The Commission further recommends that States empower the supreme court to remove a prosecuting attorney pursuant to prescribed procedures and safeguards.

Recommendation 12. Consolidation of Local Prosecution Functions in Certain Areas

To achieve more efficient use of manpower and a higher level of prosecution, the Commission recommends that States, where necessary, centralize the local prosecution function in a single office, responsible for all criminal prosecutions.

Recommendation 13. Prosecutorial Districts and the Part-Time Prosecutor

The Commission recommends that States require prosecuting attorneys to be full-time officials and that their jurisdictions be redrawn so that each is large enough to require the full-time attention of such an official and to provide the financial resources to support his office.

Recommendation 14. Financing Prosecution

The Commission recommends that States pay at least 50 percent of the costs of local prosecuting attorneys' offices.

Recommendation 15. Flexible Grand Jury Procedures

The Commission recommends that, where necessary, States enact legislation authorizing prosecutors to bring indictments through either grand jury or information procedures. The Commission further recommends that prosecutors utilize grand juries primarily in cases of alleged official corruption or extraordinary public concern. When used, grand juries should be empaneled on a frequent enough basis to prevent unnecessary court delay. The Commission stresses that nothing in this recommendation is intended to modify the traditional investigative powers of grand juries.

C. DEFENSE COUNSEL FOR THE INDIGENT

Recommendation 16. State-Local Responsibility for Providing Defense Counsel for the Indigent--Direct Administration by the State

The Commission recommends that each State establish and finance a statewide system for defense of the indigent, making either a public defender or coordinated assigned counsel service readily available to every area of the State.

D. POLICE

Recommendation 17. Provision of Basic Police Services (Patrol and Preliminary Investigation) in all Metropolitan Localities

The Commission recommends that all local governments in metropolitan areas assure the provision of full-time patrol and preliminary investigative services to their residents. Metropolitan localities should provide these services either directly, or through intergovernmental cooperation with States, counties, or other local governments, or some combination thereof. The Commission also recommends that overlying county governments should be empowered to assume the police function in any metropolitan locality which fails to provide patrol and preliminary investigative services, charging the cost of such assumed police service to the affected local government. The Commission further recommends that in cases where the county does not assume these police services, State legislation should mandate the consolidation of police services in metropolitan jurisdictions which do not provide basic police services directly or through interlocal agreements.*

*Governor Reagan dissented.

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Recommendation 18. Provision of Supportive (Staff and Auxiliary) Police Services in Metropolitan Areas

The Commission recommends that counties be empowered and encouraged to perform specialized, supportive (staff and auxiliary) police services for constituent localities in single county metropolitan areas. These services should include communications, records, crime laboratory, and other related functions. The Commission further recommends that in multicounty or interstate metropolitan areas, States authorize and encourage appropriate areawide instrumentalities such as regional criminal justice planning agencies, councils of government, or multifunctional, multicounty agencies to perform these supportive police services.

Recommendation 19. Special Police Task Forces in Multicounty Metropolitan Areas

The Commission recommends that States authorize or encourage the creation of specialized police task forces, under State or interlocal direction, to operate throughout multicounty and interstate metropolitan areas in order to deal with extralocal and organized crime. The Commission further recommends that under the interlocal option, any areawide agency performing two or more operating functions be given responsibility for the task force; if no such areawide agency exists, the force should be established by interlocal agreement among the participating local governments.

Recommendation 20. Extraterritorial Police Powers

The Commission recommends that, where necessary, States enact legislation and enter into interstate compacts giving localities carefully circumscribed extraterritorial police powers relating to "close pursuit" of felonious criminal offenders and to geographically extended powers of criminal arrest. The Commission further recommends that States clarify governmental responsibility for liability insurance for police officers engaged in lawful extraterritorial police activity.

Recommendation 21. Financing County Police Services in Unincorporated Portions of Urban Areas.

The Commission recommends that where counties provide police services to unincorporated portions of metropolitan areas, States should require the costs of such services to be borne entirely by such unincorporated areas.

Recommendations

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Recommendation 25. Independent County Police Forces and Modernized Sheriffs' Departments

The Commission recommends that States give metropolitan counties the option of assigning basic responsibility for county-wide police services to an "independent" county police force under the control of the county chief executive or county board of commissioners. The Commission further recommends that States enact legislation which requires county law enforcement agency personnel to be compensated solely on a salary basis, covered by civil service tenure provisions, and provided with adequate retirement benefits. Where counties choose not to exercise the option of creating an independent county police force, States should authorize the assignment of responsibility for countywide police service to the sheriff's department, the reassignment of the sheriffs' court and jail* duties to appropriate court and correctional agencies, and the enactment of legislation which removes tenure limitations on the sheriff's office.

*The term "jail" refers to a short-term correctional institution other than a local holding facility.

Recommendation 26: Abolition of the Office of Constable

The Commission recommends that States abolish the office of constable and transfer its duties to appropriate lower court systems.

Recommendation 27. Abolition of the Coroner's Office

The Commission recommends that States abolish the office of coroner. The Commission also recommends that States enact legislation requiring that the medical functions of the coroner be exercised by an appointed local medical examiner and the judicial functions of the coroner position be exercised by the local prosecuting attorney. The Commission further recommends that such legislation should stipulate that official records regarding certification of death be a matter of public record, and a grand jury or specified number of citizens, by petition, may call for an inquest.

Recommendation 28. Improving Police Selection, Training, and Education.

The Commission recommends that, where needed, States create Councils on Police Standards, composed of appropriate State, local and public members, to develop and recommend minimum standards for police selection and basic training. The Commission further recommends that States enact legislation promulgating mandatory minimum standards in these areas and assigning the administration of these standards to such Councils. States should meet 100 percent of the cost of local training programs meeting mandatory State standards. The Commission further recommends that States encourage private and public institutions of higher education to offer appropriate programs for police training and that local governments establish incentive pay plans or other fiscal aids designed to help local policemen in furthering their professional training by participating in such programs.

Recommendation 29. State Criminal Code Revision.

The Commission recommends that State legislatures revise their criminal code to better define the scope of discretionary police activities. More specifically, State criminal codes should stipulate the bounds of legitimate police activity in the exercise of arrest powers, search procedures, and interrogation practices. The Commission further recommends that, where lacking, States enact comprehensive governmental tort liability statutes to protect State and local police employees from tort actions arising out of legitimate use of discretionary police powers.

Recommendation 30. Modifying Personnel Practices.

The Commission recommends modification of State laws which restrict local chief executives from appointing local police chiefs from the ranks of any qualified applicants and which restrict local police chiefs from appointing division heads and assistants reporting directly to them. The Commission further recommends that where necessary States modify veterans' preference and other State civil service regulations which serve to limit unduly or otherwise restrict the selection, appointment, and promotion of qualified local policemen.

E. CORRECTIONS

Recommendation 31. Reordering Priorities

The Commission concludes that since corrections is the step-child of the criminal justice system, it is essential that greater public attention, funds, and policy focus be directed to this field and that basic reforms be undertaken. The Commission recommends, as a matter of general public policy, that State and local officials give a high priority to upgrading correctional institutions and rehabilitation services in order to help reduce crime rates.

Recommendation 32. Strengthening Community-Based Treatment

The Commission concludes that adequately financed, staffed, and supervised community-based treatment programs including probation, work release, youth service bureaus, half-way houses, parole, and aftercare--can be more effective than institutional custody in rehabilitating most offenders and in facilitating their readjustment to society.

Recommendation 33. Refocusing State-Local Correctional Responsibilities

The Commission concludes that while State governments have an overriding responsibility to ensure the provision of certain correctional services on a statewide basis, including responsibility for assignment and transfer of convicted prisoners, other correctional activities can be more appropriately handled by local governments. Hence--

The Commission recommends that the States assume full financial, administrative, and operational responsibility for juvenile and long-term adult correctional institutions, parole, juvenile aftercare, and adult probation. The Commission further recommends that local governments retain operational and a share of the fiscal responsibility for short-term adult institutions and jails, adult and juvenile detention, and misdemeanor and juvenile probation, and that the States establish and monitor minimum standards of service, furnish planning and technical assistance, and provide a reasonable share of the costs of such activities.*

*Governor Hearnes dissented.

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Recommendation 34: Consolidating State Administrative Responsibilities

The Commission recommends that the State's responsibility for correctional activities, excluding the adjudicatory functions of granting paroles or pardons, be vested in one State department or agency directly accountable to the Governor.

Recommendation 35: Upgrading the Detention Function

To ease the critical problem of comingling untried persons with convicted offenders, and to expedite the trial of such persons, the Commission recommends that States and local governments jointly plan and develop adequate adult and juvenile detention services and facilities which relate to the processes of the court system.

Recommendation 36: Programs and Facilities for Work Release

The Commission recommends that State and local governments enact legislation, where necessary, authorizing work-release programs and establishing administrative and fiscal procedures to enable the State correctional agency to utilize approved regional or community institutions and jails for the placement of those prisoners who might benefit from such programs.

Recommendation 37: Expanding Vocational Training

The Commission concludes that the educational and vocational programs of most State and local institutions have failed to equip adequately offenders with the skills and experience necessary for successful reintegration into society, and that this, in turn, has contributed to the high rate of recidivism.

The Commission, therefore, recommends that State and local governments initiate or revamp their academic and vocational training offerings for inmates of juvenile and adult institutions.

Recommendation 38: Promoting Regional Correctional Facilities

The Commission recommends that States authorize and encourage local governments through financial incentives and

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technical assistance to contract with larger local units for the custody of their prisoners, or enter into agreements with other local units for the joint establishment and operation of regional jails and local institutions to handle such offenders.

Recommendation 39: Management of Short-Term Penal Institutions

The Commission recommends that short-term penal institutions be administered by appropriately trained correctional personnel.

Recommendation 40: Quantity and Quality of Personnel

The Commission concludes that many State and local correctional agencies have insufficient and inadequate professional staff due to low pay, long hours, a custodial rather than rehabilitative orientation, lack of exposure to research and development advances, and other impediments to job satisfaction. Hence --

The Commission recommends that State and appropriate local governments improve recruitment, compensation, training, and promotion practices to attract sufficient numbers of high quality personnel to the corrections system. The Commission further recommends that States establish minimum qualifications standards for correctional personnel.

Recommendation 41: Use of Paraprofessional and Volunteer Aides

The Commission recommends that, where necessary, State and local legislative bodies, personnel agencies and/or correctional agencies take action to create new personnel classification positions so that paraprofessionals and other qualified workers, including ex-offenders other than former police officers, can be used in correctional programs. The Commission further recommends that States and localities make available training and educational opportunities to such personnel to enable them to meet appropriate standards.

F. THE PUBLIC'S ROLE IN LAW ENFORCEMENT

Recommendation 42: Police-Community Relations

The Commission concludes that a workable partnership between police and community residents is necessary to effectively prevent crime. Hence,

The Commission recommends that local governments substantially increase their efforts to involve citizens in the law enforcement and criminal justice process through the establishment of police-community relations machinery and programs.

G. INTERFUNCTIONAL COOPERATION

Recommendation 43: Establishment of Local Criminal Justice Coordinating Councils

The Commission recommends that local criminal justice coordinating councils under the leadership of local chief executives be established in jurisdictions having substantial administrative responsibility for at least two of the major components of the criminal justice system. The Commission further recommends that LEAA require regional criminal justice planning agencies to coordinate their work with these local councils where they exist.

Recommendation 44: Improving Interfunctional Linkages in the State-Local Criminal Justice System

The Commission recommends that State and regional criminal justice planning agencies and local criminal justice coordinating councils take primary responsibility for improving interfunctional cooperation in the State-local criminal justice system. These agencies should encourage, among other things, the development of such coordinating mechanisms as seminars on sentencing practices for judicial and correctional personnel, police legal advisors, and a comprehensive criminal justice data system. They should also encourage the coordinating efforts of the existing professional law enforcement organizations. The Commission further recommends that State legislatures establish a joint standing committee or take other appropriate means to provide for continuing study and review of the progress in achieving a better coordinated State-local criminal justice system.

THE COUNCIL OF STATE GOVERNMENTS

HB-563

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April 16, 1971

INFORMATION LETTER

CRIMINAL LAW REVISION: FEDERAL AND STATE EFFORTS

Latest Developments:

State efforts in criminal law codification will be the subject of hearings before the Senate Judiciary Subcommittee on Criminal Laws and Procedures in late May. State experiences in criminal law revision will be discussed at additional hearings in June.

The Congress is beginning a major effort, expected to last for two or three years, to reform and codify the Federal criminal laws. According to the Senate Subcommittee Counsel, State experiences in code revision will benefit the federal effort. The Congress wants to learn from State government drafting techniques, substantive law provisions, and code organization and style. Operating experience under new codes adopted by States will guide the federal law reform program.

Background:

Congressional action in federal criminal law reform comes in response to the final report of the National Commission on Reform of Federal Criminal Laws filed January 7, 1971. The National Commission was created by Congress in 1966 by Public Law 89-801. Commission Chairman, appointed by President Johnson, is former Governor Edmund G. Brown, of California. Vice-Chairman is Congressman Richard H. Poff, of Virginia.

The Department of Justice, acting upon the direction of President Nixon, is developing a criminal code revision which will become the Administration's version for submission to the Congress. A special legal task force has been formed within the Department to draft the code. It is monitored by a four-man policy committee composed of high Department officials.

The National Commission was careful to present the Congress with a basic working draft upon which legislative decisions could still be made. The Draft is a complete reform of the present Title 18, the criminal law section of the U. S. Code. It brings together all federal felonies, some of which are presently outside Title 18; it codifies common defenses, which are now left to common law court decisions; and establishes standard principles of criminal liability. The Draft Code restructures the system for imposing sentences. The Commission, with certain strong dissent from a minority of its members, recommended the abolition of capital punishment.

Federal-State Jurisdictional Issues:

Major provisions of the Draft Code substantially increase federal criminal jurisdiction at the expense of State jurisdiction. Section 201(b) of the Code allows the federal government to prosecute for normally state offenses wherever there is a related federal criminal code violation. This would permit federal prosecution for all crimes of violence such as murder, arson, assault in any instance where there is a related federal code offense, no matter how minor. This so-called "piggyback" provision significantly curbs state responsibility for the punishment of crimes of violence.

The basic issues of cooperative federalism are not considered at all in the Draft Code. The practical problems of federal-state relations are further complicated by the Code's jurisdictional provisions concerning federal enclaves. Over the last century and a half, the movement of the law has been toward increased assimilation of the rights of enclave residents to the

rights of state residents. This reached the point where, in the case of Evans v. Cornman (90 S. Ct. 1752 (1970)), the Supreme Court ruled that residents of federal enclaves may vote in state elections. The Code, however, makes federal criminal law specifically applicable to enclaves, and reduces the Assimilative Crimes Act to its narrowest possible dimensions. The effect of these provisions is to make enclaves practical sanctuaries from state laws, thus undermining the state's enforcement of its criminal laws in surrounding areas. In 1956 the two volume "Report of the Interdepartmental Committee to Study Problems of Jurisdiction Relating to Federal Enclaves", the most comprehensive study of the problem, recommended the almost complete retrocession of exclusive jurisdiction over federal enclaves to state governments.

The Draft Code further extends federal criminal jurisdiction to cases involving offenses affecting federal public servants engaged in performance of their official duties, whether or not the offense is specifically directed by the offender against the federal official qua federal official. Similar provisions in the Draft Code provide for federal prosecution of property crimes directed against property being manufactured, constructed or stored for the United States whether or not the criminal was aware that the property was so situated. Federal jurisdiction over crimes involving the most minimal affect upon interstate commerce, such as using a telephone, is extended. The Draft Code extends federal jurisdiction to cases where either offenders or victims use interstate travel, even though the travel itself may not be directly related to the substance of the crime.

Finally, plenary federal jurisdiction is asserted in the general statement in Section 201 of the Brown Commission Code. The language states, "When no base is specified for an offense, federal jurisdiction exists if the offense is committed anywhere within the United States, or within the special maritime and territorial jurisdiction of the United States."

State Criminal Law Revision Efforts:

State criminal law revision efforts and experience will be used by the Congress to guide its own federal criminal law reforms.

The following states have enacted new criminal codes: Connecticut (1971); Georgia (1969); Illinois (1962); Kansas (1970); Louisiana (1942); Minnesota (1963); New Mexico (1963); New York (1967); and Wisconsin (1956).

The following states have completed drafts of new criminal codes which are now before their legislatures: Alaska, Colorado, Delaware, Hawaii, Idaho, Maryland, Michigan, Montana, New Hampshire, Oregon, Pennsylvania, and Texas.

Code revision efforts are now underway in: California, Kentucky, Massachusetts, New Jersey, Ohio, Rhode Island, Missouri, and preliminary work has begun in Alabama, Nebraska, and North Carolina. The legislatures in Arizona and North Dakota have just recently authorized efforts to draft criminal code revisions.

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THE COUNCIL OF STATE GOVERNMENTS

HD-563

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March 18, 1971

INFORMATION LETTER

SPECIAL REVENUE SHARING FOR LAW ENFORCEMENT

Latest Developments

President Nixon sent to Congress his special revenue sharing message on Law Enforcement--the first of six such messages to cover the broad areas of law enforcement, rural development, urban development, education, manpower and transportation.

The President proposes to amend the present Omnibus Crime Control and Safe Streets Act, administered by the Law Enforcement Assistance Administration, by granting to States substantially more flexibility in the use of funds, and relieving States of much administrative burden.

Background

The major elements proposed in the President's message are:

--Funds would be allocated to the States on a population formula, from an initial authorization request of \$425 million. An additional \$75 million would be granted from the LEAA discretionary fund, as now authorized in existing law.

--The requirement for a state criminal justice plan would remain in the basic Act, but the approval of the state plan by the LEAA would no longer be necessary prior to the allocation of the special revenue sharing funds to the States. The plan would be filed with the LEAA for its use as a post-audit tool. The plan would continue to have to be approved by the Governor and the state criminal justice agency supervisory board.

--The requirement for matching funds, to be furnished by recipients of grants, would be eliminated. Federal funds would be used for 100 percent of project costs.

--The present requirement that grantees maintain the existing level of their own direct expenditures, and that federal funds not be used to supplant state or local funding, is eliminated. The "maintenance of effort" requirement will no longer be a condition for receiving a grant.

--LEAA would still be authorized to provide technical assistance and counseling to the States in the preparation of their statewide plans.

--Minorities' protection from discrimination under Title VI of the Civil Rights Act of 1964 would apply to the law enforcement revenue sharing program. The present act exempts States and localities from the Title VI provisions.

--The new proposals preserve the flexible pass-through formula (contained in the 1970 amendments) requiring States to make available to localities a portion of the shared revenue equal to the ratio of state-local expenditures for all criminal justice activities.

--Additional fiscal control requirements would be placed on the States. More detailed post-audit reports will be required.

--The 1970 amendments to the basic Act providing for Part E-Corrections funding will be continued in the present form.

--The 25 percent "buy-in" requirement, adopted in the 1970 amendments, whereby States will be required in fiscal year 1973 to furnish 25 percent of a sub-grantees matching funds would be eliminated.

--LEAA programs for law enforcement research, academic assistance and statistics and technical assistance will remain as they are.

Initial reaction from state officials has been favorable. Some have expressed concern that elimination of all matching and maintenance of effort requirements may result in a net loss of federal, state and local funds coming into the criminal justice system; and that localities, no longer having to put up their match for grants, might become careless with the "free" money.

Copies of the message and legislation will be sent upon request.

Staff Contact: James A. R. Johnson
Special Assistant

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THE COUNCIL OF STATE GOVERNMENTS

HB-563

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April 8, 1971

SPECIAL LETTER

JUVENILE DELINQUENCY LEGISLATION

Latest Developments

Congress is moving on pending juvenile delinquency legislation. The June 30, 1971 expiration of the Juvenile Delinquency Prevention and Control Act has prompted the General Subcommittee on Education of the House Education and Labor Committee, chaired by Rep. Roman Pucinski (Ill) and the Senate Judiciary's Subcommittee on Juvenile Delinquency, chaired by Sen. Birch Bayh (Ind) to begin hearings on pending legislation. Both subcommittees have heard Administration witnesses. Hearings will continue into May.

The Administration's proposal is not yet in bill form. Developed by HEW's Youth Development and Delinquency Prevention Administration, under Robert Gemignani, the proposal calls for a "national strategy" to develop model systems for preventing delinquency in inner city, suburb, rural setting, and the college campus. Final Administration approval has not been given to the HEW bill due to objections from the Justice Department.

Background

The Juvenile Delinquency Prevention and Control Act of 1968 (P.L. 90-445) was designed to be a companion program to block grant Omnibus Crime Control and Safe Streets Act. It provides for grants to States and cities for planning and action programs to prevent, control, and rehabilitate juvenile delinquents. Complex language of the Act prevented States from receiving action funds if they opted to do comprehensive planning. States seeking funds to coordinate juvenile delinquency projects with Omnibus Crime Control programs were frustrated by restrictive guidelines and bureaucratic mismanagement of program. Underfunding of Act (FY 69: \$5 million; FY 70: \$10 million; FY 71: \$15 million) in spite of authorizations of \$25 million, \$50 million and \$75 million, respectively, indicate low priority of program in HEW.

Alternative Proposals to be Considered:

I. The Administration requests \$10 million to develop a "national strategy" to test new approaches, techniques and model systems, seeking new knowledge about delinquent behavior, and transferring such findings into programs being funded by federal grant programs. Model systems for prevention and rehabilitation will be established for inner cities, suburbs, rural areas, and college campuses. The goals of HEW proposal are coordination of federal programs relating directly to delinquency, and promotion of joint funding. At present eight federal departments are involved directly in programs for delinquent youths. An additional eight agencies conduct a total of 75 programs for youth generally. Five HEW task forces will plan model delinquency-prevention projects; gather data; recommend projects for funding; assist applicants in program development; formulate evaluation systems; provide program consultation; and disseminate results.

II. Rep. Tom Railsback (Ill) and 50 other House members propose, in H.R. 45, creation of the "Institute for Continuing Studies of Juvenile Justice." The Institute will collect data on the treatment and control of juvenile offenders; serve as an information bank; and function as a graduate training center. No specific funds are authorized.

III. Rep. Claude Pepper (Fla), chairman of the House Select Committee on Crime, plans to introduce the "Juvenile Research Institute and Training Center Act." The bill would create a Coordinating Committee for Juvenile Justice composed of heads of federal agencies dealing with juvenile programs: Office of Education, Children's Bureau, Youth Development and Delinquency Prevention Administration, National Institute of Mental Health (all HEW); Law Enforcement Assistance Administration, Bureau of Prisons (Justice); Office of Manpower Training, U. S. Employment Service (Labor); Model Cities Program (HUD); and Legal Services Division (OEO). The committee would evaluate federal programs dealing with juveniles and recommend improvements. The Institute would collect information on juvenile justice; provide technical assistance to State, localities, and private agencies, training for professionals, and grants for action programs. The authorization request is \$8 million over 3 years.

IV. Rep. Roman Pucinski (Ill), Chairman of the General Subcommittee on Education of House Education and Labor Committee has introduced H.R. 6247 to extend the present Juvenile Delinquency Prevention and Control Act for five years, and increase the funding authorization.

V. The National Governors' Conference policy position, adopted in August, 1970, recommends transfer of planning and action program section (Title I) of the 1968 Juvenile Delinquency Act to Law Enforcement Assistance Administration. State dissatisfaction with HEW, and their satisfaction with the block grant mechanism administered by LEAA prompted this decision. During debate on policy position, many Governors expressed view that there must be a dual effort toward solving the juvenile problem. Improvements in juvenile justice system and law enforcement are essential; but there must also be efforts to divert youth from the justice system by preventive and youth development programs. Several Governors emphasized need for a comprehensive approach to problems of youth offenders. They pointed out that delinquent youths should not be set apart from government's total youth development effort. This approach is frustrated by multiplication of youth aid programs among diverse federal agencies. Governors have urged a "block grant for youth."

To date, approximately \$38 million in LEAA block grant funds have gone for prevention and control of juvenile delinquency in FY 69 and 70 while the Youth Development Administration allocated a mere \$13,713,000. In FY 1971, LEAA state plans call for over \$60 million for delinquency prevention and control while the YDDPA (HEW) will be granting \$14 million.

Action Needed

Hearings in both Senate and House will continue. State officials wishing to testify should contact this office, or the Chairman of the Senate Subcommittee on Juvenile Delinquency, or Chairman of the House General Subcommittee on Education. Views on proposed federal legislation are requested by this office. Copies of specific bills will be sent upon request.

Staff Contact: James A. R. Johnson, Special Assistant

HB-563



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No. 12

ECONOMIC DEVELOPMENT—FIELD HEARINGS TO EXAMINE THE PROPER DIRECTION AND FORM OF AN EFFECTIVE PROGRAM

Mr. MONTROYA. Mr. President, I rise to apprise the Senate of field hearings which will be held during the course of the next few weeks with respect to Appalachia and the other regional commissions.

The concept of creative federalism enunciated by Lyndon Johnson early in his Presidency, and the statement of awareness that we must "help State and local governments develop greater capacity to plan and manage their own affairs" which was contained in the state of the Union address by President Nixon, are both clear characterizations of the direction that government must take. If we start from the premise that the responsibility of government is to serve the people, then I believe it is our duty to achieve the best level of understanding of the kinds of public services that the people of the United States need to maintain proper growth and development.

The lasting effect of the great depression of the 1930's was not the catastrophic economic losses suffered, as terrible as they were, rather, it was the loss of the initiative and ability to render services to the public suffered by local and State governments. We now fully appreciate the result of the continuous movement of power to the National Government.

In and of itself, this centralization was not bad. It enabled us to frame the recovery from the depression, to mobilize for and conduct our national defense during World War II and to make the changeover from a wartime economy to an economy directed toward peaceful pursuits. The centralization of power served its purpose and like all other political responses, it has run its course.

We are now faced with a new set of imperatives, a new set of needs, a new set of national directions. In order to carry them forward we must decentralize government activities and the responsibilities for decisionmaking. This is not to say that there is no longer a need for a strong, active, and concerned Federal Government. What it means is that along with that kind of Federal Government, we must reestablish strong, active, and committed State and local governments. We have all been engaged in politics—the art of government—long enough to realize that there is no single

answer, that the art of government is the art of change without violent upset. We must be in a position to evaluate and re-evaluate what will work and under what circumstances it will work best.

The President, in his state of the Union message, put great emphasis on revenue sharing. Whether his recommendations will be enacted and whether they will work are questions which we will consider during the 92d Congress. But revenue sharing alone is not the answer. Our experiences over the past 25 years with a series of different approaches to long-term unemployment problems, short-term economic responses, natural catastrophe mechanisms, and the need for intelligent, well-reasoned assessments of priorities has given us a fund of experience and knowledge on which to draw.

As a result of President Johnson's concept of creative federalism, the Congress in 1965 enacted the Appalachian Regional Development Act and the Public Works and Economic Development Act. These programs, which have been in operation for 6 years, provide us with an excellent base from which to examine and recommend legislation in response to the broad range of the problems of the decade of the 1970's.

As we at the Federal level have been working with the programs to which I have referred, a number of States have developed responses of their own. During the months of February, March, and April, we shall inquire in depth as to how these programs have worked, what has been learned from them and how the lessons can be used to shape a new program of State-Federal action to achieve the goal of economic prosperity in a framework of healthy social, cultural, and environmental development.

In the literature of political science and economics, and in the recommendations of Government agencies are a number of worthy proposals. At this time we are not in a position to choose a particular approach to pursue. What the Subcommittee on Economic Development intends to do during these next 3 months is examine many of those ideas in a general framework. We are looking to the creation of legislation to establish a national economic development program, a public works and public facilities investment plan to determine how priorities for public works should be established, to create an inventory of what is needed, and to equip State and local

governments to assume the major role in these determinations.

We will concern ourselves with such questions as what constitutes proper development, how to determine the development goals and objectives of State and local governments, and how the Federal Government should be structured to assist the State and local governments in meeting these responsibilities.

As I have said, there are many suggestions. There have been many experiments, the most notable of which are the Appalachian regional development program and the approaches of the Public Works and Economic Development Act.

On February 8, 9, and 10, the Subcommittee on Economic Development will consider S. 575, a bill to extend and revise the Appalachian Act introduced by Senator RANDOLPH, the chairman of the Committee on Public Works, and Senator JOHN SHERMAN COOPER, the ranking minority member. Through these hearings, we will determine what has worked and why it has worked.

As Senator RANDOLPH said in his introductory remarks in this Chamber on February 3:

I am proud that the Appalachian Development Program has been a leader and an innovator in the areas of government organization and revenue sharing. The Committee on Public Works recognizes the significance of the bold new steps that have been taken in Appalachia, and we are studying the Appalachian program as a possible pattern for economic development and other programs elsewhere.

I concur in his observation and agree with his further statement:

Based on what we have learned in the past six years and what we expect to learn this year, I am sure that the Appalachian program will be modified and refined. We will, however, want to preserve the momentum and the spirit of cooperation and Federal-State partnership generated under the Appalachian program.

Senator RANDOLPH and Senator COOPER have done much to bring to the attention of the Senate, the Congress, and the Nation, the need for this Appalachian program and the important purposes which it serves. Following these hearings, the subcommittee will begin a series of field hearings which will take us to Raleigh, N.C., February 18, 19, and 20; Memphis, Tenn., March 5 and 6; Los Angeles, Calif., April 1, 2, and 3; Albuquerque and Santa Fe, N. Mex., April 5 and 6; Seattle, Wash., April 14 and 15; Anchorage and Fairbanks, Alaska, April 16, 17, and 18. The sites of these hearings

were chosen because in each place we expect to examine a different aspect of the major problems associated with economic development.

Raleigh, N.C., because of the knowledge and experience of the Governors, other members of State governments, local officials, and private citizens in that area of the South in working with the Appalachian program and the regional economic development program under title V of the Public Works and Economic Development Act.

Memphis, Tenn., because of the strong desire of the leaders of the States of the Mid-south to create a regional economic development program and because of the depth of experience with economic development districts established under title III of the Public Works and Economic Development Act which has been gained in that area.

We will hold hearings in Los Angeles to examine in some detail the long-term development problems of a major metropolitan area which has large minority populations not benefiting from the general prosperity of the area. The current technological unemployment in Los Angeles also should provide us with some interesting testimony.

In New Mexico we can concentrate on the alternatives of the regional commission and State development approach. We will be able to examine the issue with Governors, other State officials, and private individuals who have been working within the regional concept for the last 5 years. During these hearings we can also discuss the specific needs of Indians for separate treatment in order to help them defeat their long-term depression situation.

In Seattle, we will be able to discuss with the Governors of the Northwest their great concern for a regional development commission and to look into the question of pervasive unemployment which that general area has experienced.

In Alaska, we will be able to take full advantage of the knowledge gained by that State in its efforts to achieve economic revitalization following the disastrous earthquake in 1964. In Alaska we will be able to test the one-State approach as compared with the multistate approach.

It is our intention wherever we go to also raise the question of how best to describe the form of the Federal response to those situations where plant closings, loss of vital natural resources, and elimination of Government facilities create economic catastrophes. In this regard, I will join with Senator RANDOLPH and other Members of the Senate in the introduction of a bill to revitalize the accelerated public works program. We shall use this legislation which will be introduced next week as a vehicle for discussion on how best to do this job.

All of the witnesses will be asked to testify on the following outline of questions. We hope that they will respond to as many of the areas as they believe their experience and professional capability allow them.

First, What are the objectives of economic development?

In terms of these goals, what specifically has been the impact of the following on the economic development of your area:

Titles I, II, III, and IV of the Public Works and Development Act as administered by the Economic Development Administration: Its impact on immediate economic development and its impact on continuing economic development.

The regional commissions as created by title V of the Public Works and Economic Development Act.

Any other private, local, State, or Federal programs and agencies which you believe have the task of fostering economic development.

Would you comment on the following proposed local-State-Federal structure for implementing these economic development goals or, if you have other suggestions, please present them to the committee:

Should the entire State be divided into multicounty development areas, and if so—

Who would authorize and designate the districts: The State, Federal legislation, the local communities or some combination of these?

What criteria would be used to delineate these districts?

Should these districts be limited to areas of economic distress or would they be organized around areas of potential economic growth—for example, growth centers?

Would these districts focus in non-metropolitan areas or should they include metropolitan areas?

What would be the authority and responsibilities of the districts?

What would be the relation of these districts to the State? To Federal agencies? To local governmental authorities? To other multicounty districts which might already operate in the area?

Should the State establish a State-level economic development agency within the office of the Governor? If so—

What responsibilities and authority should this agency need to be effective?

What would be the relation of the agency to local governmental units and locally initiated plans and projects? Local development districts?

What would be the relation of this State-level agency to other State line agencies?

What would be the relation of this State agency to Federal Departments?

Would such an agency and a State development plan be a prerequisite to further Federal assistance?

Should the Federal Government be organized on a multistate regional basis or should we proceed on a State-by-State basis?

What would be the advantage of multistate regional commissions, such as the Appalachia Regional Commission and the title V commissions?

What criteria would be used to designate these regional groupings?

What responsibilities and authority should these regional commissions have to be effective?

Would the commissions include the entire State or only that area meeting the designation criteria? Why?

Should the regional commissions be represented at the Federal level as part of the Department of Commerce or within the executive offices by a Federal coordinator for economic development for example? What would be the role of the Federal side of the regional commission?

What would be the advantage of proceeding on a State-by-State basis?

Would the States be represented at the Federal level through a line agency or within the executive office by a Federal coordinator for economic development for example?

What would be the function of the Federal coordinator?

What would be the relation of the Federal coordinator to local development districts? The States? To other Federal Departments?

Should there be a regional counterpart in the Federal administrative regions to assist the Federal coordinator and the States?

What would be the relation of the private sector to such a structure?

What programs and devices do you recommend to accomplish these goals of economic development? For example, the use of supplemental grants and development corporations.

Second, What should be the role of the Federal and State governments in short-term economic readjustments in rural and urban areas which suffer abrupt and severe unemployment and loss of income due to setbacks in economic activity?

What programs and devices would be necessary to carry out such assistance?

What structure could best accomplish this assistance effort? For example, the use of a Federal coordinating field committee.

Following these hearings and an examination of the record, we shall draft legislation. We shall then hold hearings in Washington, D.C., with a wide range of witnesses who can give us their critical comments and their best suggestions on how to develop a workable procedure to achieve our goals.

Preparation for this program evaluation has been proceeding for some weeks. Members of the subcommittee have indicated their intense interest in the subject. I look to their support and participation in this undertaking. I know that we can develop a good bill in the tradition of the Committee on Public Works. I look forward to working with Senator HOWARD BAKER, the ranking minority member of the subcommittee, and all of his colleagues together with my Democratic colleagues. In this spirit of cooperation, we can approach this large and difficult task with reasonable hope for success to the benefit of the people of this country.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99801

HB-563
WILLIAM A. EGAN, GOVERNOR

April 24, 1972 .

The Honorable William J. Moran
Chairman
House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Dear Chairman Moran:

I am sending you a proposed draft to substitute for House Bill 563 submitted by the Governor to insure security and privacy of criminal justice information systems. I am also sending you a copy of my letter to the Senate Judiciary Committee on Senate Bill 387 which is identical to House Bill 753 referred to your committee.

The proposed substitute would specifically require the application of the Administrative Procedure Act in relation to the adoption of regulations pursuant to this proposed chapter. Although such a specific reference may not be necessary for the purposes of the Administrative Procedure Act, the reference makes it absolutely clear that it does apply.

Sec. 12.62.020 of the proposed bill has been altered so that the commission is required to adopt regulations concerning the collection and storage of information. Therefore, information may not be placed in such systems, or if already there, it may not remain in such systems, unless the commission specifically permits it by regulation. In addition, a long list of information is specifically excluded from the systems by the provisions of subsection (b) of this section. These exclusions include, among others, professional license information, revenue and taxation information, information relating to state welfare programs, and state personnel information.

The provisions relating to confidential information have been eliminated, and an individual may see all information referring to himself in a criminal justice information system.

The provisions relating to interstate systems for House Bill 753 have been incorporated into this proposed bill.

The Honorable William J. Moran

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April 24, 1972

Also, most of the more detailed provisions relating to the right of individual access, inspection, and challenge from House Bill 753 have been incorporated into this proposed bill.

The reference to "potential criminal offenders" in the definition of "criminal justice information" has been removed.

Finally, the effective date for this proposed bill would be October 1, 1972 to allow the Governor's Commission on the Administration of Justice time to establish the needed regulations.

Very truly yours,


JOHN E. HAVELOCK
ATTORNEY GENERAL

cc: The Honorable William A. Egan
Governor

JEH:gb

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WILLIAM A. EGAN, GOVERNOR

POUCH K — STATE CAPITOL
JUNEAU 99801

April 10, 1972

The Honorable Robert H. Ziegler
Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: SB 387

Dear Chairman Ziegler:

In reviewing SB 387, "An Act protecting the constitutional right of privacy of those individuals concerning whom records are maintained by governmental agencies," several possible problems have come to our attention. I believe your committee should be made aware of these problems.

I. PROBLEMS RELATED TO THE SECTION ON INDIVIDUAL RECORDS.

1. The proposed new section AS 09.25.125, which would set up a regulating scheme governing the collection and exchange of information collected by all state government agencies, would regulate these activities far beyond the needs for protecting the privacy of the individual or the security of the information. The notice provisions would, in many cases, create an unnecessary administrative burden on agencies presently collecting needed information. The requirement of permission or notice, when information is disclosed, would create a like unnecessary administrative burden in many situations; in other situations it would inhibit or prevent legitimate exchange or disclosure of information by government agencies.

2. The term "record" as used in Section 09.25.125 is never defined. Consequently, under a very broad definition of this term it is possible that any employees of a state agency would have to meet the permission and notice provisions of this section whenever he released any kind of information about another individual. This could possibly prevent public officials of the state from making all kinds of public statements and would thus lead to an extremely undesirable result.

3. In Section 09.25.125(d)(1) the time period "reasonably necessary" is possibly too vague and might lead to unnecessary litigation.

4. It is not clear what Section 09.25.125(d)(2) really means.

5. It would be inappropriate in Section 09.25.125 (e) to require the governor to report on records and/or investigatory files which might be maintained by the legislative and judicial branches of government.

II. PROBLEMS RELATED TO THE SECTIONS ON CRIMINAL JUSTICE INFORMATION SYSTEMS.

1. Definition of Criminal Justice Information System. Nowhere in Secs. 12.62.010 through 12.62.120 is the term "criminal justice information system" defined. Without knowing just what these Sections purport to regulate, it is impossible to discuss intelligently what effects these proposed Sections will or will not have on the collections and dissemination of information by criminal justice agencies within the state.

Section 12.62.030 states that only "criminal record information" may be collected and stored in criminal justice information systems. The Section goes on to give a list of examples of the kinds of information which may be put in the system and then it states, "[t]his information is restricted to that recorded as the result of the initiation of criminal proceedings or of consequent proceedings related to the criminal proceedings." This language evidently serves to define "criminal record information," the only kind of information which may be stored in criminal justice information systems. Without a definition of just what a criminal justice information system is, however, it is not exactly clear what this Section does.

If a "criminal justice information system" comprises all the information collected by a criminal justice agency, then it would prevent the compilation of investigative reports by any police or other agency. Further, it would prevent the Department of Public Safety from compiling its file of drivers licenses, fishing licenses and so forth.

If "criminal justice information system" means any data bank compiled by a criminal justice agency so that information from it can be recovered by an electronic computer it will preclude the inclusion in one system or the establishment of separate systems for drivers license information, fishing license information and so forth. Further, it would prohibit the establishment of a computer management information system by any of these agencies.