

HOUSE No. 1830

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 2, 1943.

The committee on Municipal Finance, to whom was referred the Bill to meet certain contingencies arising in connection with the service of public officers and employees and certain other persons in the military or naval forces of the United States during the present national emergency (House, No. 1637) report that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 1830).

For the committee,

CHARLES H. COOKE.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Three.

AN ACT TO MEET CERTAIN CONTINGENCIES ARISING IN CONNECTION WITH THE SERVICE OF PUBLIC OFFICERS AND EMPLOYEES AND CERTAIN OTHER PERSONS IN THE MILITARY OR NAVAL FORCES OF THE UNITED STATES DURING THE PRESENT NATIONAL EMERGENCY.

1 *Whereas*, The deferred operation of this act would
2 tend to defeat its purpose, which in part is to protect
3 the rights of certain persons in the military or naval
4 service of the United States and to facilitate the
5 temporary appointment of persons to perform their
6 duties in their absence, therefore, it is hereby declared
7 to be an emergency law, necessary for the preserva-
8 tion of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter seven hundred and eight of
2 the acts of nineteen hundred and forty-one is hereby
3 amended by striking out section one, as amended by
4 chapter one hundred and seventy-two of the acts of
5 the current year, and inserting in place thereof the
6 following:—

7 *Section 1.* Notwithstanding any contrary provi-
8 sions of general or special law any person who, on or
9 after January first, nineteen hundred and forty, shall

10 have tendered his resignation from an office or position
11 in the service of the commonwealth, or any political
12 subdivision thereof, or otherwise terminated such serv-
13 ice, for the purpose of serving in the military or naval
14 forces of the United States and who does or did so
15 serve or was or shall be rejected for such service, shall,
16 except as hereinafter provided, be deemed to be or to
17 have been on leave of absence; and no such person
18 shall be deemed to have resigned from his office in the
19 service of the commonwealth, or any political sub-
20 division thereof, or to have terminated such service,
21 until the expiration of one year from the termination
22 of said military or naval service by him.

23 When a person holding an office or position in the
24 service of the commonwealth, or any political sub-
25 division thereof, enters the military or naval service
26 of the United States and files a resignation in writing
27 stating his reason for such resignation, the resignation
28 shall be considered a final determination of the reason
29 for leaving the service of the commonwealth, or a
30 political subdivision thereof. If no written resigna-
31 tion is filed, entrance into the military or naval service
32 of the United States by a person holding a position in
33 the service of the commonwealth, or a political sub-
34 division thereof, shall be prima facie evidence that
35 his service to the commonwealth, or a political sub-
36 division thereof, is terminated for the purpose of
37 entering said military or naval service. The phrase
38 "serving in the military or naval forces of the United
39 States", the phrase "service in the military or naval
40 forces of the United States" and the phrase "mili-
41 tary or naval service", as used in this act, shall be
42 taken to include service other than in a civilian ca-
43 pacity as a member of any corps or unit established

44 under the laws of the United States for the purpose
45 of enabling women to serve with, or as auxiliary to,
46 the armed forces of the United States.

1 SECTION 2. Section three of said chapter seven
2 hundred and eight is hereby amended by adding at
3 the end the following new paragraph: —

4 Any person who is in such military or naval service
5 and who is certified in accordance with the civil
6 service law and rules to a permanent office or position
7 classified under chapter thirty-one of the General
8 Laws may be permanently appointed to such office or
9 position and employed therein provided he makes
10 request for employment in writing of the appointing
11 authority within three months after termination of
12 such military or naval service, and files with the di-
13 vision of civil service the certificate of a registered
14 physician that he is not physically disabled or inca-
15 pacitated for performing the duties of the office or
16 position. Any such appointment shall be subject to
17 a probationary period of six months to be served upon
18 actual employment after return from the military or
19 naval service. Any appointment, transfer or pro-
20 motion to fill such office or position while he is so
21 serving shall be temporary only and shall be filled by
22 a military substitute who shall hold such office or
23 position, subject to the same limitations and with the
24 same rights as a military substitute appointed under
25 section two.

1 SECTION 3. Said chapter seven hundred and eight
2 is hereby further amended by inserting after section
3 ten the following new section: —

4 *Section 10A.* In case an elected officer of a city,

5 other than the mayor, including members of the city
6 council, except in Boston, is unable to perform the
7 duties of his office by reason of said military or naval
8 service, an acting officer who in his absence from the
9 city shall possess all the rights and powers, perform
10 all the duties, and be subject to all the obligations of
11 said office until the expiration of the term of the
12 absent officer, shall be selected as follows: If the said
13 vacancy is in a board consisting of two or more mem-
14 bers, the remaining members shall give written notice
15 to the mayor of said vacancy, and said members and
16 the mayor, acting as a special board, shall fill such
17 vacancy by ballot by a majority vote, or in case of
18 failure to fill such vacancy in the manner hereby
19 provided, within one week after the giving of such
20 notice, such vacancy shall be filled by the mayor.

21 If the said vacancy is in an office held by an indi-
22 vidual not a member of a board, the mayor, or the
23 city council if it has the power of original appoint-
24 ment to such office, may appoint a person to fill the
25 vacancy and the person so appointed shall, until the
26 return of the absent officer, or until the expiration of
27 his term, whichever first occurs, have all the rights
28 and powers and perform all the duties and be subject
29 to all the obligations of said officer.

30 A person appointed under the provisions of this sec-
31 tion shall receive from the city one half of the salary
32 or compensation fixed for the position, which shall be
33 deducted from and charged against the appropriation
34 voted for such salary or compensation, plus such
35 additional amount, if any, as may be appropriated
36 therefor. The salary or compensation paid to the
37 elected official on leave of absence shall be one half
38 of the amount fixed for the office until the expiration

39 of the term of office for which he was elected, or until
40 his return to the duties of such office, whichever first
41 occurs.

1 SECTION 4. Section eleven of said chapter seven
2 hundred and eight is hereby amended by adding at
3 the end of the first paragraph the following new
4 sentence:— In case of failure to fill such vacancy
5 in the manner hereby provided within one week, such
6 vacancy shall be filled by the selectmen, — and by
7 striking out the second paragraph and inserting in
8 place thereof the following:—

9 A person appointed under the provisions of this
10 section shall receive from the town one half of the
11 salary or compensation fixed for the position which
12 shall be deducted from and charged against the
13 appropriation voted for such salary or compensation,
14 plus such additional amount, if any, as may be voted
15 by the town. The salary or compensation paid to the
16 elected official on leave of absence shall be one half
17 of the amount fixed for the office until the expiration
18 of the term of office for which he was elected, or until
19 his return to the duties of such office, whichever first
20 occurs.

1 SECTION 5. Said chapter seven hundred and eight
2 is hereby further amended by inserting after section
3 eleven the three following new sections:—

4 *Section 11A.* In case any elected officer of a fire,
5 water, light or improvement district is unable to
6 perform the duties of his office by reason of service
7 in the military or naval forces of the United States
8 during the existing state of war between the United
9 States and any foreign country, a majority of the

10 members of a board established as hereinafter pro-
11 vided may in writing appoint an acting officer who
12 in the absence of such absent officer shall possess all
13 the rights and powers, perform all the duties and be
14 subject to all the obligations of said office until the
15 expiration of the term of the absent officer or until
16 his return, whichever first occurs. Said board shall
17 consist of the prudential committee or body having
18 like powers, or, in filling a vacancy in any other
19 elective body of any such district, the members of
20 such other body, and in addition in each case the
21 district clerk and the district treasurer; provided,
22 that any such officer shall not be a member of such
23 board when his office is being filled. No member of
24 any such board shall have more than one vote.

25 A person appointed under the provisions of this
26 section shall receive from the district one half of the
27 salary or compensation fixed for the position which
28 shall be deducted from and charged against the
29 appropriation voted for such salary or compensation,
30 plus such additional amount, if any, as may be voted
31 by the district. The salary or compensation paid to
32 the elected official on leave of absence shall be one
33 half of the amount fixed for the office until the expira-
34 tion of the term of office for which he was elected, or
35 until his return to the duties of such office, which-
36 ever first occurs.

37 *Section 11B.* In case an elected county officer,
38 other than the register of probate, is unable to per-
39 form the duties of his office by reason of said military
40 or naval service, a board consisting of the county
41 commissioners together with the clerk of court and
42 the county treasurer, may in writing appoint an
43 acting officer who in his absence shall possess all the

44 rights and powers and perform all the duties of said
45 office until the expiration of the term of office of the
46 absent officer, or until his return, whichever shall
47 occur first. In case of failure to fill such vacancy in
48 the manner hereby provided within one week, such
49 vacancy shall be filled by the county commissioners.

50 A person appointed under the provisions of this
51 section shall receive from the county one half of the
52 salary or compensation fixed for the position which
53 shall be deducted from and charged against the appro-
54 priation voted for such salary or compensation, plus
55 such further sum as may be provided from an appro-
56 priation voted or a transfer from the reserve fund set
57 up in the budget. The salary or compensation paid
58 to the elected official on leave of absence shall be one
59 half of the amount fixed for the office until the expira-
60 tion of the term of office for which he was elected, or
61 until his return to the duties of such office, which-
62 ever first occurs.

63 *Section 11C.* In case a register or an assistant
64 register of probate enters the military or naval service
65 of the United States, the judge or judges of probate
66 of any such county shall appoint a temporary register
67 or assistant register to act until the return of the
68 absent officer or until the expiration of his term, which-
69 ever first occurs, who shall have all the rights and
70 powers and perform all the duties and be subject to
71 all the obligations of said office.

72 The compensation of a register or assistant register
73 appointed under the provisions of this section shall
74 be the same salary fixed for said position and shall
75 be paid by the commonwealth.

1 SECTION 6. Section six of chapter four of the acts
2 of nineteen hundred and forty-two is hereby repealed.

1 SECTION 7. Said chapter seven hundred and eight
2 is hereby further amended by striking out section
3 twelve and inserting in place thereof the following: —

4 *Section 12.* The term “elected officer”, as used in
5 this act, shall mean an officer elected by and from all
6 the voters of a county, city, town or district respec-
7 tively, and shall include a member of a body, board or
8 commission.

1 SECTION 8. Said chapter seven hundred and eight
2 is hereby further amended by adding at the end the
3 following new section: —

4 *Section 26.* Nothing in this act shall be construed
5 as giving the benefits thereof to any person who is dis-
6 honorably discharged from such military or naval
7 service.

1 SECTION 9. Section eighteen of said chapter seven
2 hundred and eight is hereby amended by striking out
3 the last sentence and inserting in place thereof the
4 following: — Each such officer shall specify in writing
5 the date and shall add after his signature his rank
6 and organization.

1 SECTION 10. Section twenty-five of said chapter
2 seven hundred and eight is hereby amended by strik-
3 ing out, in the fifth line, the word “forty-four” and
4 inserting in place thereof the word: — forty-six, —
5 so as to read as follows: — *Section 25.* Service in
6 the military or naval forces of the United States
7 referred to in this act shall, except as otherwise pro-
8 vided thereby, mean such service occurring on or
9 after July first, nineteen hundred and forty and prior
10 to January first, nineteen hundred and forty-six.

1 SECTION 11. The provisions of sections two and
2 eight shall take effect as of October twenty-ninth,
3 nineteen hundred and forty-one.

