

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 7, 1945.

The committee on Civil Service, to whom were referred so much of the recommendations of the Civil Service Commission (House, No. 23) as relates to providing further for meeting certain contingencies arising in connection with the service of public officers and employees in the military or naval forces of the United States during the present national emergency (accompanied by bill, House, No. 24), the petition (accompanied by bill, House, No. 901) of Peter J. Jordan and William H. J. Rowan that war veterans be exempted from physical examination as a prerequisite to appointments under the civil service laws, the petition (accompanied by bill, House, No. 1200) of Coleman C. Curran for legislation relative to positions in the classified service of the Commonwealth, counties, cities and towns, the petition (accompanied by bill, House, No. 1293) of Joseph A. Aspero that public officers and employees be permitted to be reinstated without physical examination when retiring from war service and relative to employment of certain physically handicapped or incapacitated persons, and the petition (accompanied by bill, House, No. 1342) of William J. Shields, John C. Wickes, Ernest W. Dullea and John B. Powers for legislation relative to status of veterans who receive permanent appointments while serving as military substitutes under the civil service laws, report the accompanying bill (House, No. 2020).

For the committee,

GEORGE J. O'SHEA.

The Commonwealth of Massachusetts

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

AN ACT PROVIDING FURTHER FOR MEETING CERTAIN CONTINGENCIES ARISING IN CONNECTION WITH THE SERVICE OF PUBLIC OFFICERS AND EMPLOYEES 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, therefore it is hereby
5 declared to be an emergency law, necessary for the
6 preservation 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 two and inserting in
4 place thereof the following: —
5 *Section 2.* Any person referred to in section one
6 who was or shall be separated from the service of the
7 commonwealth, or any political subdivision thereof,
8 while holding an office or position classified under
9 chapter thirty-one of the General Laws shall, if he
10 so requests in writing to the appointing authority
11 within two years after the termination of his said mili-
12 tary or naval service, and if, within said time, he also

13 files with the division of civil service the certificate of
14 a registered physician that he is not physically dis-
15 abled or incapacitated for performing the duties of
16 the office or position, be reinstated in the office or
17 position previously held by him without civil service
18 examination and without loss of seniority or other
19 rights, or in case that physical or other disability
20 prevents his reinstatement in the same position and
21 his request for reinstatement states that he is willing
22 to accept reinstatement in another position, he shall
23 be reinstated in a similar class or grade or in a lower
24 class or grade and shall be so employed without civil
25 service examination and without loss of seniority or
26 other rights if his physical condition, as certified by a
27 registered physician, permits such employment; pro-
28 vided, that if he so requests reinstatement in the office
29 or position formerly held by him and it has been filled
30 prior to the effective date of this act by a permanent
31 appointment, he shall be employed in a similar posi-
32 tion in the same or in some other department. All
33 appointments, transfers and promotions made on
34 account of such leaves of absence shall be temporary
35 only and the person so appointed, transferred or pro-
36 moted shall be known as a military substitute; pro-
37 vided, that, notwithstanding any provision of said
38 chapter thirty-one to the contrary, he may continue
39 to serve in such office or position until the incumbent
40 is reinstated therein or until the time within which he
41 has a right to be reinstated has expired, and if the
42 incumbent has not been reinstated as provided herein
43 said military substitute shall, if his appointment as
44 such military substitute was made in accordance with
45 the civil service law and rules governing examination,
46 certification and appointment, continue in the position

47 and his seniority rights shall date from his appoint-
48 ment as such military substitute. In the event that
49 a permanent vacancy not caused by or related to the
50 absence of the incumbent in said military or naval
51 service occurs in a position of the same or similar
52 rank or grade as that then occupied by a military
53 substitute, said military substitute may be appointed
54 to such permanent vacancy and his seniority rights
55 shall date from his appointment as such military
56 substitute; provided that such military substitute
57 appointment was made in accordance with the civil
58 service law and rules governing examination, certifi-
59 cation and appointment, and provided, further, that
60 such appointment does not prejudice the rights of any
61 person who has notified the division of civil service
62 that he is serving or has served in said military or
63 naval service and whose name is or was on an eligible
64 list at the time of commencing said military or naval
65 service; and provided, further, that such permanent
66 appointment of the military substitute shall be made
67 in accordance with the civil service law and rules
68 governing certification to an original position, except
69 that the basis of certification shall be the order of
70 appointment as military substitute or, in the case of
71 appointments on the same date, the order in which
72 names were certified for appointment.

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

4 *Section 3A.* Whenever a person eligible to com-
5 pete in a promotional examination is in said military
6 or naval service and is unable to appear therefor, un-
7 less said person notifies the director of civil service

8 that he does not desire to take the examination the
9 director of civil service shall limit appointments made
10 as a result thereof to a period not exceeding the con-
11 tinuance of the state of war between the United States
12 and any foreign country and one year after the ter-
13 mination thereof, unless the appointing officer certifies
14 that the public welfare or public safety requires the
15 immediate filling of the position on a permanent basis,
16 in which case the director shall not limit such appoint-
17 ments.

18 *Section 3B.* The director of civil service shall
19 limit original appointments to positions made during
20 the continuance of the existing state of war between
21 the United States and any foreign country to a period
22 not exceeding the duration of such existing states of
23 war and one year after the termination thereof, unless
24 the appointing officer certifies that the public welfare
25 or public safety requires the immediate filling of the
26 position on a permanent basis, in which case the di-
27 rector shall not limit such appointments.

28 *Section 3C.* The director of civil service is hereby
29 authorized to conduct, whenever necessary, examina-
30 tions for the purpose of establishing eligible lists for
31 appointments and promotions to be made under the
32 provisions of sections three A and three B.

33 *Section 3D.* Whenever any civil service employee
34 is or was unable to compete in a competitive pro-
35 motional examination because of his absence in said
36 military or naval service, except where appointments
37 made as the result thereof were limited to a period not
38 exceeding the continuance of the state of war between
39 the United States and any foreign country and one
40 year after the termination thereof as set forth in sec-
41 tion three A, he shall, upon his request in writing

42 made within one year after the termination of his said
43 military or naval service, be given a qualifying pro-
44 motional examination and his name shall be placed
45 on an eligible list. The eligibility of such person on
46 said list shall continue for the full regular period of
47 eligibility provided for by the civil service law and
48 rules. If there is an eligible list in existence, the name
49 of such person shall be placed thereon in the order of
50 percentage, and his eligibility shall continue for said
51 full period of eligibility. If there is more than one
52 eligible list in existence, such person shall be placed
53 on the first list established unless prior to placement
54 thereon he notifies the director otherwise.

1 SECTION 3. Said chapter seven hundred and eight
2 is hereby further amended by striking out section
3 four and inserting in place thereof the following:—
4 *Section 4.* Any person whose name is on any
5 eligible list or register of the division of civil service
6 at the time of his commencing said military or naval
7 service and any person who otherwise becomes en-
8 titled to have his name placed on an eligible list or
9 register on account of an examination or registration
10 and who notifies the division of civil service that he is
11 in said military or naval service shall be continued
12 on such list or register for the period of said service,
13 or for the full regular period of eligibility provided for
14 by the civil service law and rules, whichever is the
15 longer, and shall, upon his request in writing filed with
16 the director of civil service within two years after the
17 termination of said service, be continued on or re-
18 stored to such list or register for a further period fol-
19 lowing such request equal to the remainder of the
20 term of his regular period of eligibility thereon at the

21 time he commenced said military or naval service,
22 provided, that at the time of such request he files with
23 the director of civil service the certificate of a regis-
24 tered physician that he is not physically disabled or
25 incapacitated for performing the duties of the office or
26 position. If more than one list exists or will exist as
27 the result of this section, certification shall be made
28 from such list in order of date of establishment of such
29 lists and in accordance with the civil service law and
30 rules governing certification and preference to veter-
31 ans and disabled veterans.

1 SECTION 4. Said chapter seven hundred and eight
2 is hereby further amended by inserting after section
3 nine the following new section:—

4 *Section 9A.* Any person referred to in section one
5 who was or shall be separated from the service of the
6 commonwealth, or any political subdivision thereof,
7 while holding an office or position in such service under
8 chapter thirty-one of the General Laws, and receives
9 a discharge, other than a dishonorable one, from said
10 military or naval service, in case he is physically or
11 mentally incapable of being reinstated in and per-
12 forming the duties of the office or position previously
13 held by him, may, if he is otherwise eligible to retire-
14 ment, be retired under the retirement law applicable
15 to him without such reinstatement.

1 SECTION 5. Section twenty-five of said chapter
2 seven hundred and eight, as most recently amended
3 by section ten of chapter five hundred and forty-eight
4 of the acts of nineteen hundred and forty-three, is
5 hereby further amended by striking out, in the fifth
6 line, the word "January" and inserting in place

7 thereof the word: — July, — so as to read as follows:
8 — *Section 25.* Service in the military or naval forces
9 of the United States referred to in this act shall,
10 except as otherwise provided thereby, mean such
11 service occurring on or after July first, nineteen hun-
12 dred and forty and prior to July first, nineteen hun-
13 dred and forty-six.