American Landmark Legislation

PRIMARY MATERIALS

Compiled and Edited by
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To my Harvard Law School 1950 classmates:
Herbert Glaser, Richard K. Fink, Gerald Halpern,
Robert B. Ross and David Hurwitz on the occasion of our
twenty-fifth anniversary, 1975.

INTRODUCTION TO THE SERIES

The legislative background of our country reflects its past, its critical events, conflicts, and problems. More than this, legislation has a central place in America's governmental system. Acts of Congress increasingly control every citizen's political, social, and economic life. In selecting the laws for this series of *Landmark Legislation,* the editor used two criteria. The first of these was the important national significance they had at the time Congress passed them. Secondly, these laws carry principles that continue to be of great import to one dimension or another of American life. Even when particular laws are no longer in effect, either because they accomplished their purpose (*viz.,* the Homestead Act of 1862) or were declared unconstitutional at a later point by the judiciary (*viz.,* the Civil Rights Act of 1875), their legislative history helps us deal with contemporary issues. Thus public land use and civil rights have something of their genesis in the Homestead and Civil Rights Acts of the nineteenth century.

This series will provide general readers and students, as well as professional workers, with primary legislative materials not now readily available except in the largest library systems. And even there, the task of sifting out and distilling the specific and relevant materials takes skills, time, and energy a very limited number of people have. Hopefully, the *Landmark Legislation* series will make a study or investigation of these important pieces of legislation a pleasurable as well as a viable pursuit.

Reproducing as we have the actual legislative and judicially-related materials will give readers a sense of authenticity as well as "flavor" that cannot be conveyed with ordinary narrative texts.

The full, unabridged, and unedited primary sources are offered for each of the statutes covered. Editing or abridging would have resulted in selection, which in turn reflects an editor's point of view. While unedited accounts require the reader to wade through more than he may be looking for or wants to know, they have the advantage to alerting him to information he did not know existed and should have! In any case, the full reproduction of the congressional debates during the session of the Congress that passed the law is a feature of this series that distinguishes it from anything presently available.

Each "landmark" statute is preceded by a detailed narrative legislative history prepared either by the editor or adapted from an authoritative source. Following the statute are a variety of pertinent documentary sources.. In addition to the complete congressional debates already mentioned, there are committee reports, presidential messages, contemporary news or editorial accounts, and finally, judicial decisions that either interpret the legislation or some part of it or deal with its constitutionality. Together, such a set of materials relating to America's leading legislative enactments will fulfill a great variety of needs and purposes among our citizenry.

Irving J. Sloan
Scarsdale, New York

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THE LEGISLATIVE HISTORY OF THE SECURITY ACT *

THE friends of the social security movement urged the necessity of speed upon the administration if it were to obtain cooperative action from the states in the near future. For virtually all the state legislatures were meeting during the early months of 1935. Most of them would, however, adjourn their regular sessions by the middle of the spring and would not normally reconvene for nearly two years or until the beginning of 1937. It was, therefore, pointed out that quick action in drafting the bill and in its consideration by Congress were essential if the program were to be accepted by any considerable number of states in 1935 or indeed even before 1937.

The Bill As Introduced

It was not, however, until the fifteenth of January that the Committee on Economic Security made its report[1] and on the seventeenth that the bill was introduced into Congress by Senator Wagner in the upper branch and by both David

[1] *Report to the President of the Committee on Economic Security.* See also *Supplement to Report to the President of the Committee on Economic Security.*

* From, *Social Security in the United States* by Paul H. Douglas, Mc-Graw-Hill Book Co. (New York: 1935) Chapter IV. With permission.

J. Lewis of Maryland and Robert L. Doughton of Georgia in the House. Representative Lewis, it will be remembered, had, during the preceding Congress, jointly sponsored with Senator Wagner the unemployment insurance bill, while Mr. Doughton had then been either indifferent or opposed to it. The latter now, however, also attached his name to the draft,[1] and under administration guidance it was referred to the Ways and Means Committee, of which he was chairman. This reference to the Ways and Means Committee instead of to the House Committee on Labor seemed somewhat illogical to some and was explained by certain cynical students of the political scene on the ground that the administration feared that the relatively progressive or radical Committee on Labor would so liberalize the provisions of the measure that the administration would be forced into a more radical position than it wished to assume. With the far more conservative Committee on Ways and Means no such fears need arise. Justification for this action was, however, found in the fact that the measure involved public appropriations together with further contributions by or taxes upon employers and employees. It might, therefore, be said with some propriety to be a matter with which the Ways and Means Committee should deal. Similarly, in the Senate the bill was

[1] It was intimated by several newspaper correspondents that this was done in order to obtain credit in the public eye for an act which was about to pass.

referred to the Committee on Finance rather than to that on Labor.

Hearings started in the House on January 21 and in the Senate on January 22. As the bill began to be studied, however, it was soon discovered that the technical job of drafting which had been confided to the legal staff of the Department of Labor had been poorly done. There was little or no logic in the sequence of topics covered and some of the language was ambiguous and, indeed, in places unintelligible.[1]

In the bill, as it was introduced, there were a number of salient features which need to be noticed. Under the old age pension section, fifty million dollars was appropriated for the year ending June 30, 1936, and one hundred twenty-five millions of dollars for each of the subsequent years. It was

[1] Thus, the outline of the bill (H. R. 4142 and 7260; S. 1130) was as follows:

Title I Appropriations for old age assistance.
II Appropriations for aid to dependent children.
III Earnings tax (for old age insurance).
IV Social Insurance Board. Under this were included: (*a*) The provisions governing the payment of monthly annuities under mandatory old age insurance; (*b*) Allotments to states for the administration of unemployment insurance.
V Annuity certificates.
VI Imposition of Tax (offset method for unemployment insurance). This title contained in fact a jumble of material. The definitions under this title were given towards the end, being preceded by the levying of the further tax and provisions for allowable credit. The sections of the bill which granted additional credit where the contributions of individual employers were reduced because of progress in stabilization were almost totally incomprehensible.
VII Maternal and child health and child welfare.
VIII Appropriations for public health.

provided that in order for any state to receive the federal aid for this purpose it was necessary that: (*a*) The plan should be state-wide and if administered by counties or localities should be mandatory upon them. The state should itself participate in a substantial financial manner. (*b*) There should be one central state authority which would be in general charge of the administration of the pension system. To this body individual claimants might appeal if they were denied by the local authorities, and it was also charged with the duty of making the necessary reports to the federal administration. (*c*) The pensions granted must, when added to the private incomes of the aged person, furnish "a reasonable subsistence compatible with health and decency." The decision as to what this "reasonable subsistence" would be was to be in the hands of the federal authority administering this section of the act. (*d*) The pensions could not, at the least, be denied to citizens of the United States who in other respects were eligible. This clause aimed to do two things. It made it optional for the states to grant pensions to aged aliens and it sought to place some protection, if they were citizens, around Negroes and other racial minorities and groups which might locally be oppressed; so that if they were otherwise eligible they could not be denied pensions. (*e*) The pensions were ultimately to be granted to all those of sixty-five years and over whose incomes and that of their families were insufficient to provide the "reasonable subsistence"

mentioned on page 87. Following a suggestion which had originally been made by Mr. Epstein in 1934 the states were now given a period of grace until 1940 during which they could confine the benefits to those of seventy years and over. This was done because so many of the existing state laws had fixed seventy years as the age of eligibility. (*f*) The state laws must not deny benefits to those who had resided in the state for five of the ten years preceding the date of application. This was a much lower residence requirement than that which had been imposed by the majority of the existing state laws, for these had naturally been framed with a view to preventing an influx of aged persons into the pioneering states.

The amount of the federal aid was to be one-half of the pension paid by the state subject to a monthly maximum grant by the federal government of $15. The general administration of the grants for old age assistance was to be given to the Federal Emergency Relief Administrator,[1] who had the power to compel the respective state authorities to establish such "methods of administration" as were approved by the administrator. If a state failed to come up to the legislative and administrative standards laid down, the federal administrator then had the right to withhold from that state the federal grants.

[1] The Federal Emergency Relief Administrator was also given charge in the original draft of the allotments for aid to dependent children or what are popularly known as mother's pensions.

So far as the mandatory taxes for the purpose of providing old age insurance were concerned, the scale of payments prescribed was that which has already been outlined in Chapter II. These taxes were to be collected by the Bureau of Internal Revenue under the direction of the Secretary of the Treasury and were to be effected through the purchase of special stamps, etc. The bill, as introduced, provided for an extraordinarily wide degree of coverage by specifying that the contributions were to be made by and on behalf of all manual wage-workers and all salaried employees under sixty years of age. It was not, however, to be levied on that portion of a worker's salary which exceeded $250 a month. No occupations or industries were to be excluded except public employment and the railways.[1] Farm laborers, domestic servants and employees of non-profit seeking organizations were definitely included. Similarly, no firms were excluded because of smallness of size, and the firms with one employee were included along with the giant corporations.

The monthly annuities which were to be paid to these insured persons who reached the age of sixty-five and for whom contributions had been paid for at least two hundred weeks were to be those previously outlined in the second chapter. Those for whom taxes were paid only after 1941 were to receive in annuities a basic 10 per cent of their aver-

[1] At that time it was thought that the railway workers were provided for under the Railway Retirement Act.

age wage plus 1 per cent for each year over five (i.e., for each forty weeks beyond the first two hundred weeks) for which such contributions had been made.

Let us now turn to the unemployment insurance provisions of the original bill. It provided during the first two years of 1936 and 1937 for a sliding scale of payroll taxes upon industry based upon business conditions. The normal tax was supposed to be 3 per cent of the payroll, which was of course to be solely paid by the employers. But it was provided that if the index of production of the Federal Reserve Board during the year ending September 30, 1935, was less than 84 per cent of its 1923–1925 average the payroll assessment was then to be only 1 per cent. If the index was between 84 and 95 per cent the assessment was, however, to be 2 per cent.[1] In order that an employer might obtain a credit up to 90 per cent of the federal tax, it was necessary that payments to the unemployed should not begin until two years after the contributions first began to be made under the separate state laws. The payments of the state benefits were to be made through the public employment offices of the states and the sums collected by the states were to be deposited in a federal unemployment trust fund under the direction of the Secretary of the Treasury. These monies might be invested in government bonds or any obligations which were

[1] It was provided, however, that the assessment for 1937 could not be less than that for 1936 even though the index of production were lower.

guaranteed both as to principal and interest by the federal government.

It will be remembered that the funds for the administration of the unemployment laws of the various states were to be supplied from 100 per cent grants by the federal government. Although it was not explicitly stated, it was understood that these sums were in turn derived from the one-tenth of the federal payroll tax against which offsets could not be credited. An initial appropriation of 4 million dollars was made for the fiscal year ending June 30, 1936, but the total amounts which could be distributed for this purpose were to be 49 millions a year in subsequent years. In return for these grants, the Social Insurance Board, which was to administer this and certain other sections of the act, was to require that all positions under the state unemployment insurance acts were to be "filled by persons appointed on a nonpartisan basis and selected on the basis of merit under rules and regulations prescribed and approved by the Board." The board was also to see that the administrative rules and practices of the states were calculated to insure full payment of the benefits.

The scope of the payroll tax for the purpose of stimulating the states to take action in the field of unemployment insurance was indeed broad. It included employers with four or more employees, except government and public agencies. The employers were taxed on their entire payroll and not merely on those of manual workers and salaried

workers under a specified amount. This meant that the taxes would be collected on the salaries of executives, etc., who might not come under the protection of the various state funds, or who if they did would be given only comparatively small benefits in relation to their salaries.

The states were left largely free to adopt almost any type of insurance system which they wished. They could put into effect state-wide pooled funds, plant reserves, or industry funds composed of subgroups of employers. Provision was also made to recognize plans for guaranteed employment. It was provided, however, that those who contributed to plant and industry funds could obtain an offset against the federal tax only if they also contributed 1 per cent of their payrolls to a pooled state fund in order to help provide a reserve for other industries. The offset provisions for the plant reserve plans were unfortunately almost completely unintelligible to the average reader. Their intention was, however, to enable these employers to credit against the federal tax not only the amounts which they actually contributed but also the amounts which they were freed from contributing because of the relative stabilization of labor within their establishment or industry, which they had either effected or which had just "happened."

In addition there were, as I have indicated, appropriations for general welfare and health purposes. The sum of 25 million dollars was to be appropriated to provide federal aid to the states