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89TH CONGRESS, 1st Session | SENATE | REPORT No. 430

AMENDING SECTIONS 20a AND 214 OF THE INTERSTATE COMMERCE ACT RE ISSUANCE OF SECURITIES

JULY 9 (legislative day, JULY 8), 1965.—Ordered to be printed

Mr. LAUSCHE, from the Committee on Commerce, submitted the following

REPORT

[To accompany H.R. 5246]

The Committee on Commerce to which was referred the bill H.R. 5246 to amend sections 20a and 214 of the Interstate Commerce Act, having considered the same, reports favorably thereon without amendment, and recommends that the bill do pass.

SUMMARY OF PROPOSED LEGISLATION

Under sections 20a and 214 of the Interstate Commerce Act, carriers must obtain Commission approval and authorization for stock and security issues and for assumptions of obligations. The purpose of the bill, H.R. 5246, is to make certain that securities issued by the Federal Government, States, municipalities, or other governmental bodies which acquire the status of common carriers, are not subject to the requirements of these sections of the Interstate Commerce Act.

NEED FOR LEGISLATION

Public ownership of interstate transportation facilities has increased in recent years. A number of port authorities are now served by publicly owned and operated carriers. Examples of such carriers are the State-owned California Belt Railroad and the Port Authority Trans-Hudson Corp., a wholly owned subsidiary of the Port of New York Authority. Galveston, Tex., and Cincinnati, Ohio, each operate a line of railroad in interstate commerce.

The Commission considers that its approval should not be required for the issuance of transportation securities and the assumption of obligations by political entities or their instrumentalities. These financial transactions are generally backed by the credit of a govern-

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mental body and are not as subject to manipulation as those of private corporations.

Neither section 20a nor section 214 of the act exempts or authorizes the Commission to exempt, except for relatively minor transactions, any issues or assumptions of obligations. In the absence of an explicit statutory exemption, the legality of such transactions accomplished without Commission approval and authorization might be open to challenge in the courts. Enactment of this proposed legislation would eliminate any possible question by specifically exempting these transactions from the requirements of sections 20a and 214 of the act.

Hearings on this measure were conducted by the Surface Transportation Subcommittee starting on May 10, 1965. The Interstate Commerce Commission and the Department of Commerce testified in support of this measure. No one appeared in opposition to the proposed legislation.

COST

The enactment of this bill will result in no increased Federal expenditures.

AGENCY COMMENTS

This bill was recommended by the Interstate Commerce Commission in its last annual report to the Congress. The Commission's justification for this measure is included in this report. The General Counsel of the Department of Commerce submitted a statement supporting the bill. The Comptroller General advised that he had no objection to its favorable consideration. The Department of Justice indicated that this matter did not directly affect the activities of the Department, and withheld comment concerning the bill. The text of these agency statements and comments follow:

INTERSTATE COMMERCE COMMISSION

Recommendation No. 1

This proposed bill would give effect to legislative recommendation No. 1 of the Interstate Commerce Commission as set forth on page 60 of its 78th annual report as follows:

"We recommend that sections 20a and 214 be amended so as expressly to exempt from the Commission's jurisdiction thereunder, securities issued by States, municipalities, or other governmental bodies which are carriers as defined in part I or II of the act."

Justification

The purpose of the draft bill is to make certain that securities issued by the Federal Government, States, municipalities, or other governmental bodies which acquire the status of common carriers, are not subject to the requirements of sections 20a or 214 of the Interstate Commerce Act. Although these requirements do not apply to securities issued for nontransportation purposes such as highway, school and housing bonds, it is doubtful whether securities issued to finance the construction, acquisition, and operation of interstate common carrier transportation facilities are likewise exempt.

Under sections 20a and 214 of the act carriers must obtain Commission approval and authorization for stock and security issues and for assumptions of obligations. Except for certain relatively minor transactions, neither section exempts or authorizes the Commission to exempt, any issues or assumptions.

When section 20a was enacted into law as a part of the Transportation Act of 1920, interstate rail transportation was almost exclusively performed by private individuals or corporations. In recent years, however, public ownership and operation of common carriers has become more common. A number of port authorities are now served by publicly owned and operated carriers such as the State-owned California Belt Railroad and by subsidiary corporations such as the Port Authority Trans-Hudson Corp., a wholly owned subsidiary of the Port of New York Authority. In addition, a number of cities owned and operate rail lines. The city of Galveston, Tex., operates a line of railroad in interstate commerce known as the Galveston Wharves. The city of Cincinnati, Ohio, owns a railroad line and recently floated a sizable bond issue in connection therewith, without requesting or receiving authorization from the Commission. Moreover, in view of the recent passage of the Urban Mass Transportation Act of 1964 (Public Law No. 88–365) the number of such instances is almost certain to increase.

The Commission believes that its approval should not be required for the issuance of transportation securities and the assumption of obligations by political entities or their instrumentalities. Financial transactions of this nature are generally backed by the credit of a governmental body and are not as subject to manipulation as those of private corporations.

However, in the absence of an explicit statutory exemption, the legality of such transactions accomplished without Commission approval and authorization is susceptible to challenge in the courts. Enactment of the draft bill would eliminate this vulnerability by exempting these transactions from the requirements of sections 20a and 214 of the act.

General Counsel of the Department of Commerce,
Washington, D.C., April 22, 1965.

Hon. Warren G. Magnuson,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This is in reply to your request for the views of this Department concerning S. 1142, a bill to amend sections 20a and 214 of the Interstate Commerce Act.

This bill would amend the Interstate Commerce Act to exempt the Federal Government and the District of Columbia Government and their instrumentalities, States and their political subdivisions, and municipal corporations from ICC regulation with regard to the issuance of securities or the assumption of liabilities or obligations.

Local governments and authorities have already entered the transportation field and would appear to be carriers under the provisions of the act. It does not seem necessary for the provisions of the act

regulating the financing activities of carriers to be applied to governmental units issuing securities to finance their transportation activities. It would appear desirable therefore explicitly to exempt these governmental financial activities from ICC regulation.

This Department supports enactment of S. 1142.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., March 8, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: We refer to your letter of February 18, 1965, in which you request our comments on S. 1142.

This bill was introduced at the request of the Interstate Commerce Commission to implement legislative recommendation No. 1 set forth in its 78th annual report, page 60. The proposal would amend sections 20a and 214 of the Interstate Commerce Act, as amended, 49 U.S.C. 20a and 314, to exempt from regulation by the Commission securities issued by the Federal Government, States, municipalities, or other governmental bodies which acquire the status of carriers subject to regulation under parts I and II of the act.

S. 1142 would not affect the functions and operations of the General Accounting Office, nor do we have any special knowledge of the need for this proposed legislation. If enacted, the bill would not seem to be productive of any adverse effect on the interests of the United States as a user of transportation services and we, therefore, have no objection to its favorable consideration by your committee.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

APRIL 5, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 1142, a bill to amend sections 20a and 214 of the Interstate Commerce Act.

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,
Deputy Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERSTATE COMMERCE ACT (TITLE 49, UNITED STATES CODE)

SEC. 20a. (2) From and after one hundred and twenty days after this section takes effect it shall be unlawful for any carrier to issue any share of capital stock or any bond or other evidence of interest in or indebtedness of the carrier (hereinafter in this section collectively termed "securities") or to assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or otherwise, in respect of the securities of any other person, natural or artificial, even though permitted by the authority creating the carrier corporation, unless and until, and then only to the extent that, upon application by the carrier, and after investigation by the Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities of any other person, natural or artificial, the Commission by order authorizes such issue or assumption. The Commission shall make such order only if it finds that such issue or assumption: (a) is for some lawful object within its corporate purposes, and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the carrier of service to the public as a common carrier, and which will not impair its ability to perform that service, and (b) is reasonably necessary and appropriate for such purpose: *Provided, That nothing in this section is to be construed as applying to securities issued or obligations or liabilities assumed by the United States or any instrumentality thereof, or by the District of Columbia or any instrumentality thereof, or by any State of the United States, or by any political subdivision or municipal corporation of any State, or by any instrumentality of one or more States, political subdivisions thereof, or municipal corporations.*

SEC. 214. Common or contract carriers by motor vehicle, corporations organized for the purpose of engaging in transportation as such carriers, and corporations authorized by order of the Commission to acquire control of any such carrier, or of two or more such carriers, shall be subject to the provisions of paragraphs 2 to 11, inclusive, of section 20a of part I of this Act (including penalties applicable in cases of violations thereof): *Provided, however,* That said provision shall not apply to such carriers or corporations where the value of capital stock or principal amount of other securities to be issued, together with the value of capital stock and principal amount of other securities then outstanding, does not exceed $1,000,000, nor to the issuance of notes of a maturity of two years or less and aggregating not more than $200,000, which notes aggregating such amount including all outstanding obligations maturing in two years or less may be issued without reference to the percentage which said amounts bear to the total amount of outstanding securities. In the case of capital stock having no par value, the value thereof for the pur-

pose of this section shall be the fair market value as of the date of its issue; and in the case of capital stock having par value, the value for the purpose of this section shall be the fair market value as of the date of its issue, or the par value, whichever is the greater: *Provided further*, That the exemption in section 3(a)(6) of the "Securities Act, 1933" is hereby amended to read as follows: "(6) Any security issued by a common or contract carrier, the issuance of which is subject to the provisions of section 20a of the Interstate Commerce Act, as amended;" *And provided further, That the provisions of this section shall not apply to the United States or any instrumentality thereof, the District of Columbia, or any instrumentality thereof, any State of the United States or political subdivision or municipal corporation thereof, or any instrumentality of one or more States, political subdivisions thereof, or municipal corporations.*

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