

TITLE IV

SEC. 401. Section 205 of the Public Salary Tax Act of 1939 is amended by adding at the end thereof a new sentence to read as follows: "If the amount of the deficiency in income tax for any taxable year beginning before January 1, 1939, attributable to compensation paid indirectly by the United States, or any agency or instrumentality thereof, for personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any of the foregoing, is paid on or before March 15, 1941, then with respect to failure to pay such amount or make return of such compensation: (a) No criminal penalty shall apply; and (b) the additions to tax provided in sections 291 and 293 of the Internal Revenue Code shall not apply."

Deficiency in income tax.  
53 Stat. 576.  
26 U. S. C., Supp. V, § 22 (note).

53 Stat. 88.  
26 U. S. C., Supp. V, §§ 291, 293.

Approved, June 25, 1940, 11:45 a. m., E. S. T.

[CHAPTER 420]

AN ACT

To transfer the active list of the Construction Corps to the line of the Navy; and for other purposes.

June 25, 1940  
[S. 4027]

[Public, No. 657]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Construction Corps of the Navy is hereby abolished, but nothing herein shall affect the status, rights, or obligations of any officer now on the retired list of the Construction Corps.

Construction Corps of the Navy, abolishment.  
Retired officers not affected.

NAVAL CONSTRUCTORS TRANSFERRED TO THE LINE: STATUS UPON TRANSFER

SEC. 2. Officers now on the active list of the Construction Corps are hereby transferred to the line of the Navy, and shall be commissioned accordingly. Each officer so transferred shall—

Transfer of officers on active list to the line

Designation, rank, etc.

- (a) Be designated for engineering duty only.
- (b) Occupy the rank and grade corresponding to those held by him in the Construction Corps.
- (c) Continue amenable to disciplinary action to the same extent in all respects as if not transferred.
- (d) Be an additional number in the grade to which transferred and in any grade to which he may thereafter be promoted.
- (e) Have the lineal position and precedence in the line which a board of naval officers finds that he would have had if he had remained in the line or if his original appointment had been in the line, and the finding of such board when approved by the Secretary of the Navy shall be conclusive for all purposes: *Provided*, That the existing relative rank, precedence, or seniority among themselves of officers transferred by this Act shall not be altered by such transfer.
- (f) Except as herein otherwise provided, be governed by the provisions of existing laws and of laws hereafter enacted relating to line officers assigned to engineering duty only.

ADJUSTMENT OF STATUS

SEC. 3. For the purpose of adjusting the status in the line of the officers transferred thereto by this Act, the following shall govern with respect to such officers:

Adjustment of status in the line.

- (a) Each officer shall become eligible for consideration by a line selection board as of the date the next junior line officer becomes eligible therefor, subject to the provisions of section 7 (a) of this Act, and the same eligibility rule shall apply to all other officers designated for engineering duty only.

Eligibility for consideration by line selection board.

- Officers passed over. (b) Each officer who at the time of transfer has been passed over one or more times in the rank in which transferred shall be regarded as having failed of selection as best fitted once only.
- Precedence, etc., of promoted captains. (c) Each captain whose date of commission in such rank is earlier than February 2, 1932, shall, if promoted pursuant to the recommendation of the first line selection board convened for his rank after the date of this Act, have the date of commission and the precedence which the Secretary of the Navy finds that he would have had if he had remained in the line or if his original appointment had been in the line: *Provided*, That his existing relative rank, precedence, or seniority shall not be altered thereby with reference to other such officers advanced to the rank of rear admiral pursuant to the recommendation of the same or an earlier selection board.
- Proviso.*  
Existing relative precedence, etc. (d) Commanders and lieutenant commanders who, while in the rank in which transferred, have been considered by staff selection boards shall, if promoted pursuant to the recommendation of the first line selection board convened for their rank after the date of approval of this Act, have the date of commission and the precedence which the Secretary of the Navy finds that they would have had if such promotion had occurred prior to their transfer.
- Precedence, etc., of promoted commanders and lieutenant commanders.

ADDITIONAL OFFICERS TO BE DESIGNATED FOR ENGINEERING DUTY ONLY:  
STATUS AND DUTIES

- Officers on aeronautical-engineering duty, designation. SEC. 4. (a) Officers heretofore appointed or designated for the performance of aeronautical-engineering duty only in accordance with the Act of June 5, 1935 (49 Stat. 323; U. S. C., Supp. V, title 34, sec. 71a), are hereby designated for engineering duty only and no further appointments or designations shall be made under that Act, which is hereby repealed.
- Repeal. (b) The provision of the Act approved August 29, 1916 (39 Stat. 580; U. S. C., title 34, sec. 71), which authorizes the assignment of officers "not below the grade of lieutenant" to engineering duty only is hereby amended by deleting the word "lieutenant" and inserting in lieu thereof the words "lieutenant (junior grade)".
- Assignment of officers to engineering duty only. (c) Officers designated for engineering duty only shall be additional numbers in grade and shall not succeed to command except on shore and then only as authorized by the Secretary of the Navy.
- Additional numbers in grade, etc. SEC. 5. (a) The number of rear admirals designated for engineering duty only shall be reduced to six, as provided in this section, and thereafter that number shall be the permanent authorized number of such officers. In the meantime, only the first and each alternate succeeding separation of such officers from the active list shall be deemed to create a vacancy, and if more than one vacancy should result in any fiscal year the excess shall not be filled, but the next succeeding separation from the active list shall be regarded as the alternate succeeding separation within the meaning of this section: *Provided*, That the line selection boards convened in the fiscal years 1941 and 1942 to recommend captains for promotion to the grade of rear admiral shall be furnished by the Secretary of the Navy with an estimated number of vacancies in that grade for officers designated for engineering duty only, which number shall be four and two, respectively, regardless of the number of officers separated from the active list.
- Number of rear admirals for engineering duty only. (b) Officers transferred to the line of the Navy pursuant to the provisions of section 2 of this Act who, at the time of transfer, have been recommended for advancement to the rank of rear admiral, and those who may be so recommended in the report of the selection
- Vacancies. *Proviso.*  
Information to be furnished line selection boards.
- Advancement to rank of rear admiral. Number of vacancies.

board convened next subsequent to the date of approval of this Act shall be eligible for promotion on January 2, 1941, upon which date there shall be deemed to have been created a number of vacancies equal to the number of such officers recommended for promotion. Except as above provided, each captain designated for engineering duty only on the promotion list for the grade of rear admiral shall be promoted to rank from the date stated in or in due course to be stated in, the commission in that grade of the next junior officer on the promotion list who is not designated for engineering duty only.

Date of promotion.

#### INFORMATION TO BE FURNISHED SELECTION BOARDS

SEC. 6. (a) The estimate furnished by the Secretary of the Navy to line selection boards convened for the consideration of captains, pursuant to section 8 (a) of the Act approved June 23, 1938 (52 Stat. 946; U. S. C., Supp. V, title 34, sec. 294), shall show separately the number of vacancies existing in the grade of rear admiral among officers designated for engineering duty only and among officers not so designated, and the number of such vacancies estimated to occur before the end of the next succeeding fiscal year, in excess of the number of officers of each group then on the promotion list.

Vacancies in grade of rear admiral.

(b) The statement furnished line selection boards pursuant to section 8 (a) of the Act approved June 23, 1938 (52 Stat. 946; U. S. C., Supp. V, title 34, sec. 294), shall include the percentage of engineering duty only officers adjudged fitted for promotion which shall be continued on the active list to meet the immediate requirements of the Navy.

Officers adjudged fitted for promotion, continuance on active list.

(c) Each line selection board convened for the consideration of captains shall be furnished with the names of all captains eligible for consideration to be designated for retention or continuance on the active list pursuant to this Act, in addition to the names of captains eligible for consideration for promotion required to be furnished such board by section 8 (a) of the Act approved June 23, 1938 (52 Stat. 946; U. S. C., Supp. V, title 34, sec. 294).

Captains eligible for consideration.

#### DUTIES OF SELECTION BOARDS

SEC. 7. (a) The recommendations of selection boards in the case of officers who are now or may hereafter be designated for engineering duty only shall be based upon their comparative fitness for the duties prescribed for them by law: *Provided*, That no captain designated for engineering duty only shall be eligible for consideration by a selection board for promotion unless the estimate of vacancies furnished that board by the Secretary of the Navy in compliance with section 6 (a) of this Act shows one or more vacancies existing or estimated to occur in the grade of rear admiral among officers designated for engineering duty only, but any such captain who is promoted pursuant to the recommendations of the first selection board by which he was considered shall be given in his new commission the same date of rank which has been or in due course will be stated in the commission in such rank of the senior officer below him who was recommended for promotion by the approved report of a selection board which did not consider him because of this proviso: *Provided further*, That no captain so promoted shall be entitled to increased pay or allowances prior to the date of the vacancy to which promoted.

Recommendations based upon comparative fitness.

*Provisos.*  
Promotion of captains.

Pay or allowances.

(b) Officers designated for engineering duty only may be recommended by a line selection board as best fitted for promotion to grades below rear admiral, pursuant to section 9 (a) of the Act of

Promotion of certain officers to grades below rear admiral.

June 23, 1938 (52 Stat. 947; U. S. C., Supp. V, title 34, sec. 297a), in addition to the number of estimated vacancies certified to the board by the Secretary of the Navy.

SEC. 8. Each selection board considering captains designated for engineering duty only shall—

Retention of captains on active list.

Ineligibility for promotion.

Retirement.

Involuntary retirements in excess of four.

Proviso. Ineligibility for promotion, etc.

(a) From among such captains who have twice failed of selection as best fitted designate by name for retention on the active list in the grade of captain until not later than the end of the next succeeding fiscal year those officers whose fitness, in the opinion of at least six of the members, warrants their retention. Captains so retained shall be ineligible for consideration for recommendation for promotion by subsequent selection boards, but shall be eligible for consideration by such boards for retention on the active list. If not again designated for retention on the active list they shall be placed on the retired list as provided in section 9 of this Act.

(b) When the number of involuntary retirements in any fiscal year pursuant to section 9 (c) of this Act would otherwise exceed four, designate by name such excess of officers for continuance on the active list until the end of the next fiscal year: *Provided*, That such officers shall be ineligible for consideration for recommendation for promotion by subsequent selection boards, but shall be eligible for consideration for continuance on the active list. If not again designated for continuance on the active list, they shall be placed on the retired list as provided in section 9 of this Act.

#### RETIREMENT

Retirement of certain captains on active list.

Retirement of captains not designated for retention.

Limitation on retirement of captains.

Retirement of commanders.

34 U. S. C., Supp. V, § 286a. Proviso. Ineligibility for promotion.

SEC. 9. (a) Except as provided in subsection (c) of this section, each officer in the grade of captain designated for retention on the active list pursuant to section 8 (a) of this Act shall be transferred to the retired list on June 30 of the next succeeding fiscal year or on the 1st day of the month following that in which he attains the age of sixty-one years, whichever shall occur first.

(b) Except as provided in subsection (c) of this section, each officer described in section 8 (a) of this Act who is not designated pursuant thereto for retention on the active list shall be transferred to the retired list on June 30 of the fiscal year in which he fails of such designation or on the 1st day of the month following that in which he attains the age of sixty-one years, whichever shall occur first.

(c) No officer transferred to the grade of captain by section 2 of this Act shall be retired pursuant to subsection (a) or (b) of this section earlier than four years after the date of approval of this Act, nor shall more than four such captains thereafter be so retired in any one fiscal year. Such officers who are considered for retention or continuance on the active list pursuant to the provisions of section 8 of this Act, and are not designated therefor, shall be placed on the retired list on June 30 of the fiscal year in which they fail of such designation.

SEC. 10. Officers transferred by this Act to the grade of commander of the line whose names are not placed upon the promotion list, shall be placed on the retired list on June 30 of the fiscal year in which they fail of selection as best fitted the second time or in which they complete twenty-eight years of commissioned service computed as provided in section 3 of the Act of March 3, 1931 (46 Stat. 1483; U. S. C., title 34, sec. 286a), whichever date shall be later: *Provided*, That any officer retained on the active list pursuant to this section shall be ineligible for consideration for promotion by subsequent selection boards.

SEC. 11. Officers transferred by this Act to the grade of lieutenant commander or lieutenant of the line shall, at their own request, in lieu of the honorable discharge provided in section 12 (c) of the Act approved June 23, 1938 (52 Stat. 948; U. S. C., title 34, sec. 404 (c)), be retired on June 30 of the fiscal year in which they fail of selection as best fitted the second time or in which they complete twenty-one and fourteen years, respectively, of commissioned service computed as provided in section 3 of the Act of March 3, 1931 (46 Stat. 1483; U. S. C., title 34, sec. 286a), whichever date shall be later: *Provided*, That any officer retained on the active list pursuant to this section shall be ineligible for consideration for promotion by subsequent selection boards.

Retirement of lieutenants and lieutenant commanders.  
52 Stat. 949.  
34 U. S. C., Supp. V, § 404 (c).

SEC. 12. No officer transferred by this Act to the grade of commander or lieutenant commander of the line shall be retired pursuant to section 12 (f) of the Act of June 23, 1938 (52 Stat. 950; U. S. C., Supp. V, title 34, sec. 40 (f)), prior to June 30 of the fiscal year in which he completes thirty or twenty-five years, respectively, of active commissioned service in the Navy.

34 U. S. C., Supp. V, § 286a.  
*Proviso.*  
Ineligibility for promotion.

Limitation on retirements.  
34 U. S. C., Supp. V, § 404 (f).

SEC. 13. Officers transferred to the retired list in conformity with this Act shall be entitled to retired pay computed as prescribed in section 12 (b) of the Act of June 23, 1938 (52 Stat. 949; U. S. C., title 34, sec. 404 (b)).

Retired pay.

34 U. S. C., Supp. V, § 404 (b).

#### MISCELLANEOUS PROVISIONS

SEC. 14. Nothing herein shall be construed to interfere with the promotion of officers who have been recommended for advancement on the effective date of this Act, except that the provisions of section 11 (b) of the Act approved June 23, 1938 (52 Stat. 948; U. S. C., title 34, sec. 300 (b)) shall be applicable in the cases of such officers. When promoted, such officers shall have the date of commission and the precedence which the Secretary of the Navy finds they would have had if such promotion had occurred prior to their transfer.

Promotion recommended prior to transfer.

34 U. S. C., Supp. V, § 300 (b).

SEC. 15. Nothing in this Act shall operate to reduce the pay and allowances of officers hereby transferred to the line of the Navy below that now authorized for officers of the Staff Corps with corresponding rank and service.

No reduction in pay, etc.

SEC. 16. All laws or parts of laws so far as they are inconsistent with or in conflict with the provisions of this Act are hereby repealed.

Repeal of inconsistent laws.

SEC. 17. The Secretary of the Navy is hereby authorized and directed to appoint a board of officers of the Navy to investigate and report upon all matters concerning the status of line officers designated for specialized duty. The board shall make specific recommendations as to the advisability of establishing a technical staff corps as an adjunct to the line of the Navy, but separate therefrom, such recommendations to include proposed permanent legislation deemed necessary to give effect thereto. The Secretary of the Navy is further directed to cause the report of the board herein authorized to be transmitted to the Congress within ten days of the beginning of the session of the Seventy-seventh Congress, commencing on or about January 3, 1941.

Board of officers.

Recommendations.

Report to Congress.

Approved, June 25, 1940.