

H.R. 13927 would change existing law in several respects. It would substitute the courts of appeals for three-judge district courts; review the court's decision would be sought on petition for certiorari rather than appeal to the Supreme Court; and the proceeding would be against the Interstate Commerce Commission represented by its own counsel, rather than against the United States represented by the Attorney General. However, the United States could intervene through the Attorney General. The bill also provides a 60-day limitation of filing petitions with the courts of appeals for review of Commission orders; at present there is no express time limitation. The court in which the record is filed would have exclusive jurisdiction; if petitions are filed in more than one court, under section 2112 of title 28, United States Code, the court which received the first petition would have jurisdiction. Under existing law it is possible for more than one district court to review the same order when different parties file independent actions to set it aside, and this multiplicity has occasionally created problems.

Section 2 of the bill repeals chapter 157 of title 28, United States Code, in toto instead of only to the extent that its provisions conflict with those of H.R. 13927. Chapter 157 applies not only to civil actions to set aside orders of the Commission but to those brought to enforce such orders or to collect fines, penalties and forfeitures. H.R. 13927 does not appear to seek to modify existing law with respect to enforcement of Commission orders or collection of fines, penalties and forfeitures.

The Department of Justice favors the underlying purposes of the proposed legislation—substitution of the courts of appeals for three-judge district courts in the review of Commission orders and elimination of appeals as a matter of right to the Supreme Court. Such provisions would eliminate the heavy strain on our trial court resources imposed by the convening of three-judge district courts and lighten the docket of the Supreme Court provided under existing law.

However, the legislation is objectionable insofar as it would remove the United States as the statutory defendant and repeal the Attorney General's responsibility for primary control of this class of litigation. Such dispersion of responsibility for the conduct of litigation involving the government conflicts with prior efforts of the Executive Department and the Congress to centralize control of the government's litigation in the Attorney General.

Instead of enactment of H.R. 13927, the Department of Justice recommends that since the principal objectives of this legislation may be accomplished by amending chapter 158 of title 28, United States Code, which relates to the review of orders of certain designated federal agencies, relevant references to the Interstate Commerce Commission and its orders be incorporated in that chapter.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WARREN CHRISTOPHER,
Deputy Attorney General.

DEPARTMENT OF TRANSPORTATION,
OFFICE OF THE SECRETARY,
Washington, D.C., March 22, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is to express the views of this Department on H.R. 13927, a bill "To amend section 17 of the Interstate Commerce Act to provide for judicial review of orders of the Interstate Commerce Commission, and for other purposes."

The bill would amend section 17 of the Interstate Commerce Act by adding a new subsection which provides that orders of the Interstate Commerce Commission would be subject to review in the United States courts of appeals, with any further review by the Supreme Court pursuant to writ of certiorari.

The provisions of Title 28, United States Code, which now govern Commission orders prescribe review in a district court of three judges, at least one of whom is a circuit judge. Supreme Court review of such decisions is by appeal, rather than by certiorari. The proposed new subsection would repeal existing jurisdictional statutes and add provisions which deal with jurisdiction, venue, and various administrative requirements which would be applicable to review of Commission actions in the courts of appeals. The bill would not alter present