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FOREWORD

U.S. CODE TITLE 51: NATIONAL AND COMMERCIAL SPACE PROGRAM

*By Joanne Irene Gabrynowicz**

This volume of the *Journal of Space Law* began in 2006 when the Editor-in-Chief had a discussion with an attorney in the Office of Revision Counsel of the U.S. House of Representatives about a draft bill being prepared to revise and restate laws relating to United States national and commercial space programs as a new positive law title of the United States Code. This is a process known as positive law codification. Since then, the National Center for Remote Sensing, Air, and Space Law (Center) has had an active role in the codification process and informing the space law community about its progress.

An integral part of the codification process is to make the bill available to the public and interested parties to solicit their comments on the bill. As part of that process, the Chair of the Committee on the Judiciary of the U.S. House of Representatives Committee (Committee) was “requesting relevant congressional committees and federal agencies, and other interested parties, to review the bill and submit any comments to the Law Revision Counsel.”¹ In 2008, the Chair also requested the Center to assist the Committee “in ensuring the appropriate codifica-

* Joanne Irene Gabrynowicz is the Editor-in-Chief of the *Journal of Space Law*. She is also a professor of space law and remote sensing law and the Director of the National Center for Remote Sensing, Air, and Space Law at the University of Mississippi School of Law. Prof. Gabrynowicz was the recipient of the 2001 Women in Aerospace Outstanding International Award and is a Director of the International Institute of Space Law and a member of the American Bar Association Forum on Air and Space Law.

¹ Letter from John Conyers, Jr. Chair, U.S. House of Representatives Committee on the Judiciary, to Prof. Joanne Irene Gabrynowicz, Director, National Center for Remote Sensing, Air, and Space Law (Mar. 28, 2008), 37 J. SPACE L. at 75 (2011).

tion of title 51...”. The Center then contacted numerous members of the private U.S. bar informing them about the pending bill and soliciting their comments. The letter was also posted on the Center’s blog, *Res Communis*.² All of the comments received by the Center were forwarded to the Committee for inclusion in the review process.

From 2008 to 2010, the Center tracked the bill’s progress, providing input to the process as needed. Progress was posted on *Res Communis* and it culminated in the announcement that on December 20, 2010, U.S. President Barak Obama signed H.R. 3237 into law as Public Law 111-314, which enacted the new Title 51, United States Code, “The National and Commercial Space Programs”.

This volume of the *Journal of Space Law* is dedicated to the historic promulgation of Title 51. It is the intention of the *Journal of Space Law* to serve the space law community by making this dedicated issue a complete reference work for Title 51. The keystone element of this issue is the article, *Positive Law Codification of Space Programs: The Enactment of Title 51, United States Code* written by Robert Mark Sukol, Senior Counsel in the Office of the Law Revision Counsel, United States House of Representatives. The author was the principle legislative drafter involved in preparing the legislation to enact the new title.

The next component of this special volume is the official version of Public Law 111-314, which is published here in its entirety. The Committee’s accompanying report that explains the law’s purpose, summary, and background is also published here. It is titled, *To Enact Certain Laws Relating To National and Commercial Space Programs As Title 51, United States Code, “National And Commercial Space Programs.”* The letter from John Conyers, Jr. Chair, Committee on the Judiciary of the U.S. House of Representatives Committee regarding the codification process is included. A Title 51 legislative timeline and a special bibliography that addresses the subject of positive law codification rounds out the reference materials.

² <http://rescommunis.files.wordpress.com/2008/04/congressional-letter-john-conyers-jr.pdf>.

Finally, an article authored by the *Journal of Space Law's* Editor-in-Chief, and originally published in the Harvard Law & Policy Review is republished here. It is titled, *One Half Century and Counting: The Evolution of U.S. National Space Law and Three Long-Term Emerging Issues*.³ As the title indicates, the article traces the development of U.S. national space law since its inception and is offered in this special volume to provide context and commentary for Title 51.

³ Joanne Irene Gabrynowicz, *One Half Century and Counting: The Evolution of U.S. National Space Law and Three Long-Term Emerging Issues*, 4 HARV. L. & POL'Y REV. 405 (2010).

CALL FOR PAPERS

JOURNAL OF SPACE LAW UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW

A JOURNAL DEVOTED TO SPACE LAW AND THE LEGAL PROBLEMS ARISING
OUT OF HUMAN ACTIVITIES IN OUTER SPACE.

Volume 37, Number 2

The National Center for Remote Sensing, Air, and Space Law of the University of Mississippi School of Law is delighted to announce that it will publish Volume 37, issue 2 of the JOURNAL OF SPACE LAW in the second half of 2011.

Authors are invited to submit manuscripts, and accompanying abstracts, for review and possible publication in the JOURNAL OF SPACE LAW. Submission of manuscripts and abstracts via email is preferred.

Papers addressing all aspects of international and national space law are welcome. Additionally, papers that address the interface between aviation and space law are also welcome.

Please email manuscripts and accompanying abstracts in Microsoft Word or WordPerfect to:

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Or, alternatively, a hardcopy of the manuscript and abstract, along with a computer diskette containing them in Microsoft Word or WordPerfect format may be sent to:

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To be considered for the next issue, submissions should be received on or before October 15, 2011. However, the JOURNAL OF SPACE LAW will continue to accept and review submissions on an on-going basis.

POSITIVE LAW CODIFICATION OF SPACE PROGRAMS: THE ENACTMENT OF TITLE 51, UNITED STATES CODE

*Rob Sukol**

INTRODUCTION

On December 18, 2010, Public Law 111-314 was enacted into law.¹ The event is remarkable for a number of reasons, but most striking is this simple fact: For the past 83 years, the United States Code has been limited to 50 titles, but now a new title has been added: Title 51, United States Code, “National and Commercial Space Programs.”

What is this new title 51 of the United States Code? Styled “National and Commercial Space Programs,” the new title is a restatement of existing law. No new programs or policies were created by Public Law 111-314. No existing programs or policies were cancelled or substantively changed. Yet, for practitioners and academics specializing in space law, and for others with an interest in space law or Federal statutory law generally, the enactment of Public Law 111-314 is highly significant.

Title 51, United States Code, represents a substantial improvement in the organizational structure and codification of United States space law. Many technical corrections and improvements were made by Public Law 111-314 in order to ren-

* The author, Robert Mark Sukol, Esq., is a Senior Counsel in the Office of the Law Revision Counsel, United States House of Representatives, having served as a staff attorney in that office since 1994. The author was the principle legislative drafter involved in preparing H.R. 3237 (111th Congress), which was enacted as Public Law 111-314.

¹ National and Commercial Space Programs, Pub. L. No. 111-314, 124 Stat. 3328 (2010), *available at* <http://www.gpo.gov/fdsys/pkg/PLAW-111publ314/pdf/PLAW-111publ314.pdf> and *at* <http://www.gpo.gov/fdsys/pkg/PLAW-111publ314/html/PLAW-111publ314.htm>.

der this body of statutory law easier to navigate and easier to comprehend. In addition, and very importantly, the new organizational structure of the law has been designed to foster greater coherence in the future growth of this area of law.

Until now, no distinct title for national and commercial space programs existed in the United States Code because the organizational scheme for the United States Code was originally established in 1926, before such programs were contemplated. Over the past five decades, a substantial body of Federal legislation related to national and commercial space programs was enacted. The editors of the United States Code, confronted with one statute at a time, placed each of these individual statutes into the Code where it best fit at the time it was enacted. Some of the provisions appeared in title 15 (Commerce and Trade), some in title 42 (The Public Health and Welfare), and some in title 49 (Transportation).

As time passed, it became increasingly apparent that a distinct title for national and commercial space programs was needed. Now Public Law 111-314 gathers these provisions, substantially reorganizes the material into a coherent form, and restates this entire body of Federal statutory law as title 51, United States Code, "National and Commercial Space Programs."

The bill to enact Public Law 111-314 was prepared by the Office of the Law Revision Counsel² of the United States House of Representatives (Office). The Office is an independent office in the United States House of Representatives. Among other duties, it is required to prepare positive law codification bills to be transmitted to the Committee on the Judiciary of the House of Representatives.³ The Office is non-political, being required

² Note that this is "Counsel", not "Council." "The management, supervision, and administration of the Office are vested in the Law Revision Counsel, who shall be appointed by the Speaker [of the United States House of Representatives] without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any person so appointed shall serve at the pleasure of the Speaker." 2 U.S.C. § 285c. The current Law Revision Counsel, Mr. Peter G. LeFevre, Esq., was appointed in 2004.

³ See *id.* § 285b (for details on the functions of the Office of the Law Revision Counsel of the United States House of Representatives).

by law to maintain impartiality as to issues of legislative policy.⁴ In general, it maintains and improves the United States Code, which is the official codification of Federal statutory law.

This article begins by providing a basic overview and explanation of the United States Code in part I. The article continues in part II by providing a general discussion of “positive law codification,” which is the legislative process through which Public Law 111-314 came into being. An explanation or overview of the law is addressed in the remaining parts. In the appendices following the article, a copy of Public Law 111-314 and a copy of House Report 111-325, which accompanied the bill enacted as Public Law 111-314, are provided for ready reference.

PART I – OVERVIEW OF THE UNITED STATES CODE

The United States Code is the official codification of Federal statutory law.⁵ It contains the general and permanent statutory law of the United States, with the material organized into 51 broad subject matter titles. As subsequent enactments amend or repeal earlier statutes, the text of the law, as it evolves, is maintained and presented in a usable, coherent form.

The term “code”

The term “code” can be used to describe any organized collection of laws, but the United States Code must be distinguished from European style civil codes.⁶

⁴ “The Office shall maintain impartiality as to issues of legislative policy to be determined by the House.” 2 U.S.C. § 285a.

⁵ The United States Code is sometimes confused with similar commercially available publications that are based on it. For example, the United States Code Annotated (U.S.C.A.) and the United States Code Service (U.S.C.S.) closely mirror the United States Code as to statutory text. Those publications also provide descriptions of relevant case law and other information related to particular provisions. The United States Code, however, is the only official codification. See 2 U.S.C. §§ 285 – 285g.

⁶ Will Tress, *Lost Laws: What We Can’t Find in the United States Code*, 40 GOLDEN GATE U. L. REV. 129, 131-132.

Historical development

The United States Code was first published in 1926.⁷ That it has been able to maintain an organized presentation of Federal statutory law over the past century is remarkable. The 1926 publication of the United States Code was not the first attempt to organize the nation's Federal statutory law, and earlier attempts were rapidly overwhelmed and made obsolete by new enactments and amendments. The United States Code has been successful despite an explosive level of growth in Federal statutory law since 1926.⁸

Professor Will Tress, Law Library Director at the University of Baltimore School of Law, has traced the history of early attempts to organize Federal statutory law:

The Development of the U.S. Code

The first collection of federal statutes - a compilation - was authorized by Congress in 1795. . . . It included all the public laws and treaties enacted up to that date, and an index. The annual session laws themselves were not published on a regular basis until the creation of the Statutes at Large in 1845; before that time, official federal statutes were published in newspapers By the 1840's, Americans were familiar with the pros and cons of codifying statutes. . . . Beginning in the early 1820's, individual states had debated the benefits of codification. . . . The New York Revised Code of 1829 served as a model for some states enacting their codes; this was particularly evident in the newly admitted states in the West. . . . The first legislative initiative for a revision of the federal statutes . . . was introduced in 1848 by the chairman of the House Judiciary Committee. . . . The Report . . . accompanying that bill laid out the arguments for revising (rather than merely compiling) the session laws: that these laws may have been "enacted under the pressure of momentary emergency; if not in-

⁷ Nancy Pelosi, *Preface - 2006 Edition*, in UNITED STATES CODE, VII (Jan. 15, 2007).

⁸ "The first edition of the United States Code, published in 1926, consisted of a single volume. By contrast, the 2000 edition had 35 volumes and the size of the Code increases every year." Peter G LeFevre, *Editor's Note - 2006 Edition*, in UNITED STATES CODE, VIII (Jan. 15, 2007).

consistent, they are obscure; sometimes involved in statutes dissimilar in title and object, and always scattered over different parts of a broad surface, in the numerous hiding places of which they are concealed." . . . Ideally, however, "enactments defining the duties of a particular office should naturally be so united as to furnish all needful information in one comprehensive body. That which seems to be complete in its enumeration should be so in reality."

* * * The Revised Statutes of 1873 and 1878

Despite the evident need for an orderly and up-to-date arrangement of statutes, it was not until 1866 that Congress enacted legislation creating a commission charged with the "revision and consolidation of the statute laws of the United States." . . . The commissioners soon discovered that creating an overall subject scheme and fitting in the individual session laws was a monumental task requiring extensive rewriting: "Where several statutes relating to the same subject modify each other, it has been impossible to state their united effect without writing a new statute." . . . When the revision was presented to Congress in 1872, however, the work was deemed too extreme a departure from the language of the existing session laws, and the draft was passed on to a special reviser to reverse some of the changes made by the commission. . . . The final product of this process - commission drafting and reviser undrafting - was introduced in the House in 1873, enacted in 1874, and published in 1875. . .

In enacting the Revised Statutes of 1873, Congress not only reorganized the previously passed session laws, but replaced them as legal authority. All general acts of Congress "embraced in any section" of the revision were repealed. . . . Appropriations and local and temporary statutes were not covered by the repeal, but general law provisions within appropriations acts were covered by the repeal. A separate act declared the printed volumes of the Revised Statutes of 1873 to be "legal evidence of the laws therein contained, in all the courts of the United States, and of the several States and Territories."

Congress soon had reason to regret such an affirmative break with the accumulated authority of the pre-1874 Statutes at Large. . . . Numerous complaints about mistakes and omis-

sions in the 1873 Revised Statutes . . . led to the publication of an amended and updated version in 1878. . . . After the problems with the 1873 Revision, Congress declined to make the 1878 edition conclusive evidence of the laws passed since 1873. This amended edition was still “legal evidence” of the laws covered in the 1873 Revision, but did not “preclude reference to, nor control, in case of discrepancy, the effect of any original act passed by Congress since the first day of December, eighteen hundred and seventy-three”

* * * The 1926 United States Code

The difficulties with the Revised Statutes seem to have thoroughly dampened congressional enthusiasm for codification. It was not until almost fifty years later, in 1926, that Congress brought forth a new official federal code of laws. . . . During that extended period, the unofficial commercial versions of the federal laws that were produced used the basic structure of the Revised Statutes to integrate later enactments. Two of the commercial code publishers, West and Edward Thompson, were enlisted in the production of the 1926 edition.⁹

Content and features of the United States Code

As this article is being prepared, a proposed draft of language to explain the content and features of the United States Code is being circulated among the staff of the Office of the Law Revision Counsel. When finalized, this language is slated to be posted as a user guide on a page of the Office’s internet site. Some excerpts from this draft language follow:

The United States Code contains the general and permanent law of the United States, arranged into 51 broad titles according to subject matter. The organization of the Code was originally established by Congress in 1926 with the enactment of the act of June 30, 1926, chapter 712. Since then, 26 of the titles, referred to as positive law titles, have been restated and enacted into law by Congress as titles of the Code. The remaining titles, referred to as non-positive law titles, are made up of

⁹ Will Tress, *supra* note 6, at 133.

sections from many different acts of Congress which had either been included in the original Code or have been added since then by the editors of the Code, i.e. the Office of the Law Revision Counsel, and its predecessors in the House of Representatives.

Each title of the Code is subdivided into some combination of smaller units such as subtitles, parts, chapters, divisions, subchapters, subparts, and sections, not necessarily in that order. Individual sections are often subdivided into some combination of smaller units such as subsections, paragraphs, subparagraphs, clauses, subclauses, and items. In the case of a positive law title, the units are determined by Congress in the laws that enacted and later amended the title. In the case of a non-positive law title, the organization of the title since 1926 has been determined by the editors of the Code and has generally followed the organization of the underlying acts as much as possible. For example, chapter 7 of title 42 sets out the titles, parts, and sections of the Social Security Act as corresponding subchapters, parts, and sections of the chapter.

In addition to the sections themselves, the Code includes statutory provisions set out as statutory notes, the Constitution, several sets of Federal court rules, and certain Presidential documents, such as Executive orders, determinations, notices, and proclamations, which implement or relate to statutory provisions in the Code. The Code does not include treaties, agency regulations, State and District of Columbia laws, or most acts which are temporary or special, such as those that appropriate money for specific years or that apply to only a limited number of people or a specific place.

* * *

The Code also contains editorially created source credits, notes, and tables which provide useful information about the source of Code sections, their arrangement, the references they contain, and their history.

The law contained in the Code is the product of over 200 years of legislating. Drafting styles have changed over the years, and the resulting differences in laws are reflected in the Code. Similarly, Code editorial styles and policies have evolved over the 80-plus years since the Code was first adopted. As a result,

not all acts have been handled in a consistent manner in the Code over time.

* * *

Statutory Notes

Generally speaking, a note is anything appearing after the text and source credit of a U.S. Code section. There are two main kinds of notes, statutory and editorial. Statutory notes are provisions of law that are set out as notes under a Code section rather than as a Code section. A statutory note can consist of as much as an entire act (such as Public Law 108-347 set out under 22 U.S.C. 5811) or as little as a clause (such as section 1013(a)(4)(B)(iii) of Public Law 100-647 set out under 26 U.S.C. 144). Whether a provision in an act (other than an amendment to a positive law title) appears in the Code as a section or as a statutory note is an editorial decision based on a number of factors.

* * *

Validity of notes

A provision of a Federal statute is the law whether the provision appears in the Code as section text or as a statutory note, and even when it does not appear in the Code at all. The fact that a provision is set out as a note is merely the result of an editorial decision and has no effect on its meaning or validity.

* * *

Editorial Notes

Most sections in the U.S. Code are followed by editorial notes. These notes are prepared by the Code editors to assist users of the Code. They provide information about the section's source, derivation, history, references, translations, effectiveness and applicability, codification, defined terms, prospective amendments, and related matters.

* * *

Historical and Revision notes appear only in positive law titles and specify the laws that formed the basis of sections that were included in the title when the title was first enacted into

positive law. The first act in the source credits for such a section is the act that enacted the title into positive law. The Historical and Revision notes provide information about those earlier acts and how they were reorganized into the section as it was enacted as part of the new positive law title. For most titles, the Historical and Revision notes are the reviser's notes that were contained in the congressional committee report accompanying the codification bill that enacted the title.¹⁰

The early historical development of the United States Code, as discussed in this part, helps to explain why positive law codification is now an ongoing project, being accomplished one title at a time. We turn now to a general discussion of the process of positive law codification.

PART II - GENERAL DISCUSSION OF "POSITIVE LAW CODIFICATION"¹¹

Positive law codification is the legislative process through which Public Law 111-314 came into being.

In general, positive law codification is the process of preparing and enacting a restatement of existing law. The restatement conforms to the policy, intent, and purpose of Congress in the original enactments, but the organizational structure of the law

¹⁰ This is the proposed draft language for the website of the Office of the Law Revision Counsel, United States House of Representatives. It was prepared by staff of the Office to explain the content and features of the United States Code.

¹¹ With two exceptions, the material in Part II (General Discussion of "Positive Law Codification") is based on material from an earlier work by the author, a brochure entitled "Positive Law Codification in the United States Code." Office of the Law Revision Counsel, United States House of Representatives, *Positive Law Codification in the United States Code*, available at <http://uscode.house.gov/codification/Positive%20Law%20Codification.pdf> (last visited Mar. 29, 2011). The two exceptions are (1) the introductory sentence of Part II of this article, which has been inserted by the author to provide a context for this material within this article, and (2) the portion of the material under the heading "The term 'positive law.'" That portion of the material (under the heading "The term 'positive law'") is based on part of the author's contribution to proposed draft language currently being developed by the staff of the Office of the Law Revision Counsel, United States House of Representatives, for eventual inclusion on the Office's website.

is improved, obsolete provisions are eliminated, and technical errors are corrected. The restatement is enacted as a positive law title of the United States Code.

The term "positive law"

When used with respect to the United States Code -- as in "*positive law codification*" or "*a positive law title of the Code*" -- the term "positive law" has a special and particular meaning. In general, however, especially in legal philosophy, the term "positive law" is used more broadly. There is overlap to be sure. However, the intended meaning of the term as used with respect to the United States Code is not identical to the intended meaning of the term as used generally, and the distinction must be understood to avoid confusion.¹²

In general, the term "positive law" connotes statutes, i.e., law that has been enacted by a duly authorized legislature. As used in this sense, positive law is distinguishable from natural law. The term "natural law," especially as used generally in legal philosophy, refers to a set of universal principles and rules that properly govern moral human conduct. Unlike a statute,

¹² Why is there a specialized meaning for the term "positive law" with respect to the United States Code, and why is this term used despite the potential for confusion with the broader meaning given to the identical term in legal philosophy? The answer involves a historical solution to a statutory drafting problem. For generations Congress has used the term "positive law" when it enacts a title of the United States Code, as such, into statutory law. For example, section 1 of the Act of July 30, 1947 (1 U.S.C. note prec. 1), provides in relevant part: "Title 1 of the United States Code entitled 'General Provisions', is codified and enacted into *positive law* . . ." (emphasis added). Earlier legislative drafters chose the term "positive law" in order to capture the abstract distinction between a title of the Code that has been enacted, as such, versus a title of the Code that has not been enacted, as such, but that sets forth enacted statutes. More literally, this distinction might be expressed as "enacted title" versus "non-enacted title," but those literal terms are problematic since they incorrectly seem to suggest that provisions set forth in a "non-enacted title" of the Code have not been enacted. Those provisions have been enacted, but as part of a freestanding statute rather than as part of an enacted (positive law) title. The specialized use of the term "positive law" in this situation captures the abstract distinction between the two types of titles in the Code, and the use of the term in this way is now well established.

natural law is not created by human beings. Rather, the natural law is thought to be the preexisting law of nature, which human beings can *discover* through their capacity for rational analysis.¹³

Within the context of the United States Code, the term “positive law” is used in a more limited sense. A positive law title of the United States Code is a title that has been enacted as a statute. To enact the title, a positive law codification bill is introduced in Congress. The bill repeals existing laws on a certain subject and restates those laws in a new form: a positive law title of the United States Code. The titles of the United States Code that have not been enacted through this process are called non-positive law titles.

Non-positive law titles of the United States Code are compilations of statutes. The Office of the Law Revision Counsel is charged with making the editorial decisions regarding the selection and arrangement of provisions from statutes into the non-positive law titles of the Code. Non-positive law titles, as such,

¹³ This explanation of natural law is an abbreviated and simplified statement regarding an area of legal philosophy that is quite well developed. Classical natural law traces from Aristotle, Hobbes, Locke, et al. Natural law jurisprudence uses universal natural law to critique positive law statutes. This piece, being focused on a recent development in the United States Code, is concerned exclusively with statutory law (i.e., positive law). However, an effective argument can be made that the heart and soul of the United States, so to speak, has always been rooted in deep and abiding faith in natural law principles. The nation’s essential foundational document, the Declaration of Independence, does not rely on any man-made statute or compact as an ultimate reference point, but rather relies explicitly on the natural law principles the founders found to be “self-evident”:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

have not been enacted by Congress, but the laws assembled in the non-positive law titles have been enacted by Congress.

In both positive law titles and non-positive law titles of the United States Code, all of the law set forth is positive law (in the general sense of the term) because the entire United States Code is a codification of Federal statutes enacted by Congress, and not of preexisting *natural law* principles.

Positive law titles

The United States Code is divided into subject matter titles. Some are “positive law” titles and some are “non-positive law” titles. The difference is this: A positive law title of the United States Code is - itself - a Federal statute. A non-positive law title of the United States Code is an editorial compilation of Federal statutes.

For example, title 10, United States Code, “Armed Forces,” is a positive law title because the title, per se, has been explicitly enacted. Alternatively, title 42, United States Code, “The Public Health and Welfare,” is a non-positive law title. The Federal statutes set out editorially in title 42 have been explicitly enacted, but title 42, per se, has not.

Provisions set out in non-positive law titles of the United States Code may vary slightly from the precise language enacted into law; cross references are adapted and stylistic changes are made in order to facilitate the integration of Federal statutory provisions into the United States Code. By contrast, a positive law title of the United States Code constitutes the precise statutory language enacted into law. The distinction between positive law titles and non-positive law titles can have legal and practical ramifications. (See “Benefits of Positive Law Codification” below). Ultimately, all titles of the United States Code will be positive law titles. At present, about half are positive law titles.

Office of the Law Revision Counsel

The Office of the Law Revision Counsel is an independent office in the United States House of Representatives. Among other duties, the Office of the Law Revision Counsel is required

to prepare positive law codification bills to be transmitted to the Committee on the Judiciary of the House of Representatives. The Office of the Law Revision Counsel is non-political, being required by law to maintain impartiality as to issues of legislative policy. In general, the function of the Office of the Law Revision Counsel is to maintain and improve the United States Code, which is the official codification of Federal statutory law.

Review and comment

As a positive law codification bill is prepared, the Office of the Law Revision Counsel actively seeks input from Federal agencies, congressional committees, and others with expertise in the area of law being codified. Close review and rigorous analysis are welcomed, so that all interested parties are assured that the restatement of law is accurate and comprehensive. A formal review and comment period begins once the bill is introduced, but from the very outset of the drafting process the Office of the Law Revision Counsel actively seeks feedback.

Legislative procedure

The Office prepares an initial draft of a bill to restate existing law as a positive law title of the United States Code. The bill is introduced in the House of Representatives by the Chairman of the Committee on the Judiciary. The Committee on the Judiciary has jurisdiction of codification legislation. After introduction of the bill, an extensive review and comment period ensues. The Office of the Law Revision Counsel actively seeks input from Federal agencies, congressional committees, and others with expertise in the area of law being codified. At the conclusion of the comment period, an amendment in the nature of a substitute – reflecting corrections and comments – is prepared by the Office of the Law Revision Counsel and transmitted to the Committee on the Judiciary for Committee action. Typically, the bill is passed by the House under suspension of the rules and in the Senate by unanimous consent.

Benefits of Positive Law Codification

The process of positive law codification yields a number of benefits for the courts, Congress, Federal agencies, the private bar, and all who use or refer to Federal statutory law, including:

Legal evidence. Provisions set out in non-positive law titles of the United States Code are merely prima facie evidence of the actual law. However, once those provisions are enacted as a positive law title of the United States Code, the provisions, as set out in the Code, constitute legal evidence of the law in all Federal and State courts.

Improved organization. Provisions that are closely related by subject may be scattered in different places in the United States Code. Such provisions may have been enacted many years apart and incorporated into the United States Code at different times. Positive law codification affords an opportunity to revisit the organizational structure of statutory material. Thoughtful regrouping of provisions often yields a statutory product that is easier to use and that fosters a more comprehensive understanding of the law.

Elimination of obsolete provisions. Obsolete provisions are frequently identified in the course of preparing a positive law codification bill. For example, existing law often contains provisions related to reports that were required and submitted many decades in the past. Obsolete provisions are eliminated from the law after appropriate vetting of proposed changes. Although such changes seem small and innocuous when viewed individually, the cumulative effect of removing all obsolete provisions can be profound, resulting in a much more compact and comprehensible text.

Improved wording and form. Some provisions - particularly provisions enacted many years ago - use archaic "legalese" that obscures the meaning of the text. Positive law codification provides an opportunity to update wording to achieve a more consistent and readable style. Even when no words are changed, improvements in form may make the text more understandable. For example, an overlong and complex provision may be broken down into labeled parts to aid the reader in following the text and focusing on relevant material. In all cases, great care is

taken to ensure that the restatement of existing law conforms to the policy, intent, and purpose of Congress in the original enactments.

Correction of technical errors. Positive law codification provides an opportunity to correct technical errors in the law, including typographical errors, misspellings, and punctuation and grammar problems.

Precise statutory text. The process of positive law codification promotes public access to the precise text of Federal statutory law. Provisions set out in non-positive law titles of the United States Code may vary slightly from the precise language enacted into law; cross references are adapted and stylistic changes are made in order to facilitate the integration of Federal statutory provisions into the United States Code. By contrast, a positive law title of the United States Code constitutes the precise statutory language enacted into law.

Cleaner amendments. Positive law codification promotes accuracy and efficiency in the preparation of amendments. A positive law title of the United States Code constitutes the precise statutory language enacted into law. Specifying words to be struck or the place where new words are to be inserted is simplified. Understanding the impact of proposed amendments is easier. Drafting errors are reduced. In addition, compliance with congressional rules requiring comparative prints (showing proposed omissions and insertions) is facilitated.

Streamlined citations. Statutory citations in court documents, legal academic papers, and other legal work are streamlined as a result of positive law codification. A reference to a provision in a non-positive law title of the United States Code may require a long citation including the section number, the short title of the Act, the Public Law number, and the Statutes at Large citation - all in addition to the United States Code citation. However, once the provision is enacted as a part of a positive law title, the United States Code citation becomes the complete citation.

In concluding this general discussion of positive law codification, a fundamental point is that positive law codification bills restate existing law, but do so in a manner that conforms to the existing law insofar as the policy, intent, and purpose of the

underlying enactments. This point is discussed in detail in Part III.

PART III – CONFORMITY WITH ORIGINAL INTENT OF SOURCE LAW

In order to understand Public Law 111-314 -- what the Act is and what it does -- it is first necessary to understand what the Act is not and what it does not do. Notwithstanding the broad sweep of Public Law 111-314 -- the entire body of United States space law is transformed -- the Act does not provide for any new programs or modify or repeal any existing programs. Rather, the Act restates existing law in a manner adhering to the policy, intent, and purpose of the original enactments being repealed and replaced.

Upon introducing H.R. 3237 in the United States House of Representatives, the Chairman of the Committee on the Judiciary explained:

The new positive law title replaces the existing provisions, which are repealed by the bill. The bill is ***not intended to make any substantive changes*** in the law. As is typical with the codification process, a number of non-substantive revisions are made, including the reorganization of sections into a more coherent overall structure, but ***these changes are not intended to have any substantive effect***.¹⁴

Within the Act itself, section 2 makes the point explicitly:

The purpose of this Act is to codify certain existing laws related to national and commercial space programs as a positive law title of the United States Code. . . . In the codification of laws by this Act, the intent is to conform to the understood policy, intent, and purpose of Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections¹⁵

¹⁴ EXTENSION OF REMARKS, CONG. REC. E1818 (July 16, 2009) (statement of Hon. John Conyers, Jr. of Michigan) (emphasis added).

¹⁵ National and Commercial Space Programs, *supra* note 1, § 2, (51 U.S.C. note prec. 10101).

When the bill was reported out by the Committee on the Judiciary of the House of Representatives, the Committee's report dealt with this issue in considerable detail:

Conformity With Original Intent

In the drafting, the intent is to comply with the standard set forth in 2 U.S.C. 285b(1), that the restatement of existing law shall conform to "the understood policy, intent, and purpose of the Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections"

In restating existing law, this bill consolidates various provisions of law which have been enacted separately over a period of many years, reorganizing them, conforming style and terminology, modernizing obsolete language, and correcting drafting errors. These changes are not intended to have substantive effect, or to impair in any way the precedential value of earlier judicial decisions or other interpretations.

This bill is intended to restate existing law without substantive change. That enactment of a bill such as this one does not make substantive change in the law, absent an unequivocal expression of Congressional intent to make such a change, has been repeatedly held in numerous cases, including the following:

Finley v. United States, 490 U.S. 545, 553-555 (1989).

Cass v. United States, 417 U.S. 72, 81-82 (1974).

Tidewater Oil Co. v. U.S., 409 U.S. 151, 161-162 (1972).

United States v. Cook, 384 U.S. 257, 260 (1966).

Fourco Glass Co. v. Transmirra Products Corp., 353 U.S. 222, 226-227 (1957).

Washington-Dulles Transportation, Ltd. v. Metropolitan Washington Airports Authority, 263 F.3d 371, 378-379 (4th Cir. 2001).

Atchison, Topeka and Santa Fe Railway Co. v. United States, 617 F.2d 485, 490-491 (7th Cir. 1980).

Trailer Marine Transport Corp. v. Federal Maritime Commission, 602 F.2d 379, 383 (D.C. Cir. 1979).

See also NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION, §§28.10, 28.11 (6th ed. 2002).¹⁶

PART IV – ORGANIZATION AND ENUMERATION

Although Public Law 111-314 does not make substantive changes in the law, it does make sweeping changes in the organizational structure used to present space law in the United States Code. The primary purpose driving these organizational changes is to make the existing body of Federal statutory law related to national and commercial space programs easier to use and comprehend. In many cases these statutory provisions were enacted many years apart - often several decades apart. Conceptually related provisions are frequently enacted as part of separate programs. In the day-to-day editorial process of preparing and maintaining the United States Code, it is impossible to group all conceptually related provisions together.

Truth to tell, even in the course of preparing a wholesale restatement of law it is not always possible to group all conceptually related provisions together. Perfection is impossible. A provision that is integral to one program may be conceptually related to a provision that is integral to some other very different program. If the overall thrust of the two programs is sufficiently unrelated, then the two particular provisions within each program, although related conceptually themselves, will necessarily be pulled apart. It is a matter of balance. A positive law codification bill provides an opportunity to closely reexamine and reflect on the way statutory material is organized. Even if it is impossible to achieve a perfect organizational structure (in which absolutely every conceptually related provision is placed adjacent to its conceptual cousin), it is possible to maximize the coherence of the organizational structure as a whole. This is more art than science, but thoughtful regrouping of provisions enacted many years apart can provide a body of law that

¹⁶ H.R. REP. NO. 111-325, at 2 (2009).

“tracks” much more easily. For experienced, knowledgeable researchers, such restructuring, can be quite helpful in the long run, even if a transition period is required to adapt. For general researchers, who may lack deep experience or expertise in this particular body of law, such improved organization can be a godsend, making the difference between missing or finding statutory provisions that are highly relevant to an inquiry at hand.

A very important secondary purpose also underlies the organizational changes made to this body of law. The structure of the new title 51, United States Code, is designed to be robust. It is designed, that is, to accommodate and foster future growth of this body of law in decades to come. Of course, it is impossible to anticipate the future development of Federal statutory law in any area with precision. And the further out in time one looks, the cloudier the horizon will be. In 1926, the United States Code was designed without the existence of a title 51 for “national and commercial space programs.” In 1926, the designers of the United States Code did not, indeed, could not, anticipate that need with any precision. However, the perspective was different in 2010 as Public Law 111-314 was enacted. With over 50 years of Federal statutory development to examine, the drafter could examine not only the current state of Federal space law, but also the trajectory of growth over the past few decades. As noted, this sort of fortune telling is highly imprecise, but the drafter was able to bring some sense, at least, of recent trends, with relatively greater clarity of foresight for anticipated growth in the near term.

To build a new title that is robust, that will accommodate anticipated future growth in the law while maintaining overall organizational coherence, there are a number of simple drafting and planning techniques that the drafter of a positive law codification bill may use. The most important of these techniques is a breathtakingly simple drafting principle: Leave Room For New Stuff. This principle is actualized largely through the system of enumeration adopted for the units within the title. Section numbers, chapter numbers, and subtitle numbers in the title (and subunits of these units) are all assigned with intention, leaving lots of room for future growth.

In title 51, United States Code, unit numbers are not packed tightly together. To the contrary, the title is porous and open, with plenty of room for future growth in every subject area. If such growth never takes place in a particular subject area, then the roominess built into that area turns out to be unnecessary. But unused potential unit numbers do no harm; they cost nothing. We leave room for growth everywhere because that growth might occur anywhere.

Picture a tree with many branches. Leaves of legislative growth can sprout up on any branch. There is room for new growth on every branch. Whether a particular branch sprouts new leaves of legislative growth will depend on whether the sunshine of Congressional attention falls on that branch. A tree does not know where the sunshine will fall, so it spouts branches in every direction. In our new title, we create a multitude of branches to give future drafters easy convenient targets for future growth wherever they may require.

A few specifics are in order to illustrate the drafting enumeration style being discussed here. As a threshold matter, consider that, as enacted by Public Law 111-314, title 51, United States Code, consists of only 30 chapters. All of the existing statutory within the ambit of the project is set out in just 30 chapters. Those 30 chapters could have been numbered chapter 1 through chapter 30. Instead, however, note that the chapters run from chapter 101 to chapter 713. Throughout the title, there is room left for future growth - a lot of room. That roominess is not inserted randomly, but placed into the title in a thoughtful, strategic manner.

Note that the chapters enacted by Public Law 111-314 are all odd numbers (chapter 301, 303, 305, etc). No even-numbered chapters are created in the original enactment of title 51, United States Code. If a future program is enacted, and that future program is conceptually very closely tied to an existing chapter of title 51, United States Code, the new program can be inserted as an even-numbered chapter before or after the existing chapter.

The new title is divided into 7 broad subtitles, and between the end of each subtitle and the beginning of the next, plenty of

room is left available for future enactment of new chapters related to the subject of the subtitle.

PART V – A “GUIDED TOUR” OF TITLE 51, UNITED STATES CODE

Overview: Enactment of a Title-Wide Outline

Set out below is the title-wide table of contents enacted at the beginning of title 51, United States Code, by section 3 of Public Law 111-314.¹⁷

Subtitle I-General

Chapter 101. Definitions

Subtitle II-General Program and Policy Provisions

Chapter 201. National Aeronautics and Space Program

Chapter 203. Responsibilities and Vision

Subtitle III-Administrative Provisions

Chapter 301. Appropriations, Budgets, and Accounting

Chapter 303. Contracting and Procurement

Chapter 305. Management and Review

Chapter 307. International Cooperation and Competition

Chapter 309. Awards

Chapter 311. Safety

Chapter 313. Healthcare

Chapter 315. Miscellaneous

Subtitle IV-Aeronautics and Space Research and Education

Chapter 401. Aeronautics

Chapter 403. National Space Grant College and Fellowship Program

Chapter 405. Biomedical Research in Space

Chapter 407. Environmentally Friendly Aircraft

Chapter 409. Miscellaneous

¹⁷ Section 3 of Public Law 111-314 (124 Stat. 3328) enacts the entirety of title 51, United States Code, except that chapters 509 and 511 of title 51, United States Code, are transferred from title 49 to title 51, United States Code, by section 4(d) of Public Law 111-314 (124 Stat. 3440). *See infra* Part VI.

Subtitle V-Programs Targeting Commercial Opportunities

Chapter 501. Space Commerce

Chapter 503. Commercial Reusable In-Space Transportation

Chapter 505. Commercial Space Competitiveness

Chapter 507. Office of Space Commercialization

Chapter 509. Commercial Space Launch Activities.

(See § 4(d) of Public Law 111-314.)

Chapter 511. Space Transportation Infrastructure Matching Grants.

(See § 4(d) of Public Law 111-314.)

Subtitle VI-Earth Observations

Chapter 601. Land Remote Sensing Policy

Chapter 603. Remote Sensing

Chapter 605. Earth Science

Subtitle VII-Access to Space

Chapter 701. Use of Space Shuttle or Alternatives

Chapter 703. Shuttle Pricing Policy for Commercial and Foreign Users

Chapter 705. Exploration Initiatives

Chapter 707. Human Space Flight Independent Investigation Commission

Chapter 709. International Space Station

Chapter 711. Near-Earth Objects

Chapter 713. Cooperation for Safety Among Spacefaring Nations

The enactment of a title-wide table of contents to appear at the beginning of title 51, United States Code, represents an innovation in style for positive law titles of the United States Code. The traditional approach to tables of contents in positive law titles has been to list only the immediate component subunits in the table of contents for each unit. In the table of contents for the title, the component subtitles would be listed. In the table of contents for each subtitle, the component parts would be listed. In the table of contents for each part, the component subparts would be listed. And so forth. Thus, the reader would need to locate and view several tables in order to piece together a single broad overview of the title as a whole. And the

conceptually simple task of locating the relevant tables of contents could be made awkward in some cases because the structure of various units might be different. For example, one subtitle might be organized into parts (with each part containing several chapters), while the next subtitle might simply contain chapters (with no intervening organization into parts). The information was available, but the reader needed to dig to get at it.

As the bill to enact title 51, United States Code, was being prepared, a decision was made to improve on the table of contents scheme as an important method to make the new title a more “user-friendly” research tool. Only two levels of tables of contents are used.

First, there is the title-wide table of contents set out above. The title-wide table of contents appears at the beginning of the title and drills all the way down to the chapter level in every case, providing the reader with a reasonably detailed overview of the title as a whole. Second, at the beginning of each chapter, a chapter-wide table of contents drills all the way down to the section level in every case, providing the reader with a reasonably detailed overview of the particular chapter.

This arrangement is used consistently throughout the new title so that the reader can, by locating and examining only two tables -- one located at the beginning of the title and one at the beginning of the relevant chapter -- view and consider the contextual setting in which every section of the title appears.

Returning to the title-wide table of contents set out above, the idea behind this stylistic innovation was to enable the reader -- at a glance -- to readily comprehend the overall structure of the title in order to focus quickly on material relevant to the reader’s area of inquiry. The title-wide table of contents reveals that the title consists of 7 broad subtitle areas, each of which is discussed below.

Subtitle I-General

As enacted by Public Law 111-314, subtitle I consists of a single section in a single chapter. Two simple and obvious definitions are enacted here for clarity and convenience.¹⁸ The term “Administration” means the National Aeronautics and Space Administration, and the term “Administrator” means the Administrator of the National Aeronautics and Space Administration. Both definitions are made to apply anywhere “[i]n this title.”¹⁹

It is noteworthy (and quite intentional) that the entirety of subtitle I consists of a single section in a single chapter. A vast amount of room is reserved here for future enactments. This is a prime example of the intentionally robust character of the enumeration structure used to form title 51, United States Code.²⁰ Subtitle I of title 51, United States Code, as a “General” subtitle appearing at the beginning of the title, is envisioned as a proper location for any future enactments relating to the administration of the title itself. Should Congress find it necessary or desirable in the future to enact additional title-wide definitions or other provisions related to the scope and applicability of the title, subtitle I would be the proper place in which to enact those provisions.

¹⁸ H.R. REP. NO. 111-325, at 25 (Nov. 2, 2009) [hereinafter HOUSE REPORT].

¹⁹ 51 U.S.C. § 10101. Experience counsels that it is worth clarifying what may seem like a very basic concept. The definitions apply “[i]n this title.” That statement of applicability must be read literally and precisely. The definitions apply anywhere within the text of any section of title 51, United States Code. That is the complete extent of their ambit of applicability. If the defined terms are used in a provision from another statute (for example in a NASA authorization Act), then the definitions in section 10101 of title 51, United States Code, do not apply. Even if the provision from the other statute is editorially classified so as to appear under one of the sections of title 51, United States Code, the definitions do not apply. The words “[i]n this title” do not mean the physical volume in which title 51, United States Code, is printed. Rather, the words “[i]n this title” must be understood precisely; they mean the section text of each section of title 51, United States Code, as the title has been enacted and amended.

²⁰ See *supra* “Part IV - Organization and Enumeration.”

Subtitle II-General Program and Policy Provisions

As enacted by Public Law 111-314, subtitle II of title 51, United States Code, consists of two chapters. These two chapters set out the basic statutory program and policy authority for the national and commercial space programs of the United States.

Chapter 201 of title 51, United States Code, which is styled “National Aeronautics and Space Program,” is a restatement of the National Aeronautics and Space Act of 1958.²¹ That 1958 enactment, informally referred to as “the Space Act” by those who work extensively in this area of law, is the foundational taproot, the “grand-daddy” of United States national and commercial space program law. The Act established the National Aeronautics and Space Administration²² (hereinafter NASA) and laid the foundation for national and commercial aeronautical and space program activity of the United States.

The foundational nature of “the Space Act” of 1958 led to inclusion of a provision that is unusual for a positive law codification bill: a short title provision. In general, in positive law codification projects, short titles are eliminated as unnecessary.²³ However, staffers from many quarters commenting on early drafts of the bill were aghast that they would no longer be able to refer to this group of provisions collectively as “the Space Act.” There seemed to be an emotional fondness for and attachment to the very name “the Space Act,” and the austere “chapter 201 of title 51” was deemed to be a terribly inadequate replacement. It was suggested that restatement in chapter 201 simply take on the precise same short title as the underlying Act. That suggestion was problematic, of course, since confusion would reign if two different enactments had precisely the same short title. Although the enactments were designed to be substantively equivalent, there might be occasions (technical amendments, for example) where distinguishing the enactments was necessary. Distinguishing the enactments would be impossible

²¹ HOUSE REPORT, *supra* note 18, at 26.

²² 51 U.S.C. § 20111(a) (for the provision establishing NASA).

²³ HOUSE REPORT, *supra* note 18, at 26.

(or, at least, highly impractical) if the words “National Aeronautics and Space Act of 1958” became the enacted short title for both the 1958 enactment and the 2010 enactment. Therefore, the “of 1958” was dropped, and section 20101 of title 51, United States Code, provides that chapter 201 may be cited as the “National Aeronautics and Space Act.” Thus, the two enactments are distinguishable if they ever need to be distinguished, and staffers can happily (and reasonably) continue to refer to this group of provisions as “the Space Act.”

Chapter 203 of title 51, United States Code, “Responsibilities and Vision,” is a restatement of selected provisions from three separate underlying Acts: the National Aeronautics and Space Administration Authorization Act of 2005,²⁴ the America COMPETES Act,²⁵ and the National Aeronautics and Space Administration Authorization Act of 2008.²⁶ The provisions are conceptually related to each other and generally relate to updated policy considerations involved in carrying out the national and commercial space programs of the United States.

Subtitle III-Administrative Provisions

Subtitle III of title 51, United States Code, was one of the most challenging subtitles to organize and draft. Over the past few decades, many independent provisions have been enacted that relate generally to the administration of national and commercial space programs. Frequently these provisions have been buried within the “administrative” subdivisions of appropriations Acts or within NASA authorization Acts. Often these

²⁴ National Aeronautics and Space Administration Authorization Act of 2005, Pub. L. No. 109-155, 119 Stat. 2895 (2005), *available at* <http://legislative.nasa.gov/PL109-155.pdf> [hereinafter NASA Authorization Act of 2005].

²⁵ America COMPETES Act, Pub. L. No. 110-69, 121 Stat. 572 (2007), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ069.110.pdf.

²⁶ National Aeronautics and Space Administration Authorization Act of 2008, Pub. L. No. 110-422, 122 Stat. 4779 (2008), *available at* <http://legislative.nasa.gov/PL%20110-422.pdf> [hereinafter NASA Authorization Act of 2008].

provisions were isolated, not enacted as an integral part of any larger program.

Where to classify these provisions in the United States Code as they were enacted over the years was problematic, but the editors of the United States Code found the best “fit” for each one. As these provisions were individually enacted, the Code editors would place each one near to the most conceptually related existing provision, usually a provision that had previously been enacted as part of some larger program.

However, as the restatement the whole body of law was being prepared, a broader perspective was possible given the ability to examine and consider at one time several decades worth of these individually enacted provisions. Two things became clear. First, that these provisions taken together formed a unit, a related set of administrative requirements. Second, that the provisions could be conceptually divided into several discrete categories. Thus, the decision was made to restate the provisions together as subtitle III (“Administrative Provisions”) of title 51, United States Code, and to divide the subtitle into several discrete chapters.

The precise grouping of these provisions required thoughtful analysis, delicate balance, and, quite frankly, a willingness to seek and accept an optimal arrangement, even if that optimal arrangement was clearly imperfect as a matter of pure logic. An additional consideration with respect to grouping the provisions into chapters was to make the title robust, capable of readily absorbing any future enacted administrative provisions that Congress might want to add. The resulting arrangement consists of eight chapters:

- Chapter 301. Appropriations, Budgets, and Accounting
- Chapter 303. Contracting and Procurement
- Chapter 305. Management and Review
- Chapter 307. International Cooperation and Competition
- Chapter 309. Awards
- Chapter 311. Safety
- Chapter 313. Healthcare
- Chapter 315. Miscellaneous

These chapters certainly do not represent the only logical way to organize the existing provisions. Many other possibilities

were developed and considered. This arrangement, however, does seem to strike an optimal balance, accommodating the organization of the existing provisions with sufficient particularity, yet leaving enough conceptual “wobble room,” enough generality, to accommodate future legislative growth that might branch out in unanticipated directions.

Subtitle IV-Aeronautics and Space Research and Education

As enacted by Public Law 111-314, subtitle IV of title 51, United States Code, consists of five chapters. Four chapters represent restatements of programs enacted in various NASA authorization Acts, and the last chapter of the subtitle restates miscellaneous provisions related to research and education.

Most of the source law for chapter 401, Aeronautics, was originally enacted as part of title IV of the National Aeronautics and Space Administration Authorization Act of 2005.²⁷ Chapter 403, National Space Grant College and Fellowship Program, is a restatement of the program originally established by the National Space Grant College and Fellowship Act.²⁸ In chapter 405, Biomedical Research in Space, the program originally created by title VI of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993²⁹ is restated. Chapter 407, Environmentally Friendly Aircraft, combines a restatement of three sections enacted in the National Aeronautics and Space Administration Authorization Act of 2005,³⁰ with the restatement of a related provision enacted in the National Aeronautics and Space Administration Authorization Act of 2008.³¹ Miscella-

²⁷ NASA Authorization Act of 2005, *supra* note 24.

²⁸ National Aeronautics and Space Administration Authorization Act of 1988, Pub. L. No. 100-147, 101 Stat. 860, at Title II (1988), *available at* <http://www.cq.com/graphics/sal/100/sal100-147.pdf>.

²⁹ National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993, Pub. L. No. 102-588, 106 Stat. 5107 (1993), *available at* <http://history.nih.gov/research/downloads/PL102-588.pdf> [hereinafter NASA Authorization Act of 1993].

³⁰ NASA Authorization Act of 2005, *supra* note 24.

³¹ NASA Authorization Act of 2008, *supra* note 26.

neous provisions from a variety of source laws are restated in chapter 409.

Subtitle V-Programs Targeting Commercial Opportunities

Subtitle V of title 51, United States Code, is constructed partly through conventional restatement of source law into the form of a positive law title of the United States Code and partly by the transfer of two chapters from one positive law title to another.³²

In chapter 501, Space Commerce, chapter 503, Commercial Reusable In-Space Transportation, and chapter 505, Commercial Space Competitiveness, provisions from the Commercial Space Act of 1998,³³ the Commercial Reusable In-Space Transportation Act of 2002,³⁴ and title V of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993,³⁵ respectively, are restated in the conventional method to become part of the new positive law title 51, United States Code.

Chapter 507, Office of Space Commercialization, is also established in title 51, United States Code, through the conventional restatement method, but the mere fact of the existence of this chapter in the new title is an excellent illustration of the importance of the review and comment process that is part of all codification projects.

As a positive law codification bill is prepared, the Office of the Law Revision Counsel actively seeks input from Federal agencies, congressional committees, and others with expertise in the area of law being codified.³⁶ Close review is always welcomed, and this chapter provides a fine example of why such review is valuable.

³² See *infra* “Part VI - Transfer of Chapters From Title 49”.

³³ Commercial Space Act of 1998, Pub. L. No. 105-303, 112 Stat. 2843 (1998), available at <http://landsat.usgs.gov/documents/PL105-303.pdf>.

³⁴ Commercial Reusable In-Space Transportation Act of 2002, Pub. L. No. 107-248, at Title IX, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ248.107.

³⁵ NASA Authorization Act of 1993, *supra* note 29.

³⁶ See *supra* text in “Part II - General Discussion of ‘Positive Law Codification’”, subheading “Review and comment”.

During the review and comment process for this bill, it was suggested that our restatement of national and commercial space law was not quite comprehensive because we had missed two important provisions. Section 8 of the Technology Administration Act of 1998³⁷ established the Office of Space Commercialization in the Department of Commerce, and section 115(b) of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991³⁸ set up an annual reporting requirement on the activities of the Office of Space Commercialization.

We reviewed the suggestion to include these provisions in title 51, United States Code, and agreed immediately that provisions relating to the Office of Space Commercialization were a perfect “fit” to be incorporated in subtitle V (“Programs Targeting Commercial Opportunities”) of title 51, United States Code. A definition for the term “Office” was added³⁹ for clarity and convenience,⁴⁰ and the restatement in chapter 507 of title 51, United States Code, was prepared.

Finally, we come to the two chapters that were created by transferring material from one positive law title of the United States Code to another. These are chapters 509 and 511 of title 51, United States Code. The considerations and methods involved in creating these chapters are discussed in detail below, under the heading “Part VI - Transfer of Chapters From Title 49.”

Subtitle VI-Earth Observations

As enacted by Public Law 111-314, subtitle VI of title 51, United States Code, consists of three chapters. Chapter 601, Land Remote Sensing Policy, is a restatement of the Land Re-

³⁷ Technology Administration Act of 1998, Pub. L. 105-309, 112 Stat. 2935 (1998).

³⁸ National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991, Pub. L. 101-611, 104 Stat 3192 [hereinafter NASA Authorization Act of 1991].

³⁹ 51 U.S.C. § 50701.

⁴⁰ H.R. REP. NO. 111-325, at 59 (Nov. 2, 2009), *available at* <http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt325/pdf/CRPT-111hrpt325.pdf>.

mote Sensing Policy Act of 1992.⁴¹ Chapter 603, Remote Sensing, is a restatement of related provisions from title III of the National Aeronautics and Space Administration Authorization Act of 2005.⁴² Chapter 605, Earth Science, groups together and restates certain related provisions selected from title II and title XI of the National Aeronautics and Space Administration Authorization Act of 2008⁴³ and title III of the National Aeronautics and Space Administration Authorization Act of 2005.⁴⁴

Subtitle VII-Access to Space

As enacted by Public Law 111-314, subtitle VII, of title 51, United States Code, consists of seven chapters and is the final subtitle of title 51, United States Code. Under the broad subtitle heading "Access to Space," subtitle VII pulls together and restates several distinct but related programs and forms chapters from groups of related provisions which were often enacted many years apart. A case in point, chapter 701, Use of Space Shuttle or Alternatives, restates one provision from the National Aeronautics and Space Administration Authorization Act, 1983⁴⁵ and several related provisions from the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991.⁴⁶ Chapter 703, Shuttle Pricing Policy for Commercial and Foreign Users, restates title II of the National Aeronautics and Space Administration Authorization Act of 1986.⁴⁷ Chapter 705, Exploration Initiatives, forms a chapter by combining and restating related provisions from title V of the National Aeronautics and Space Administration Authorization Act of 2005,⁴⁸ and titles IV and V of the National Aeronautics and Space Ad-

⁴¹ Land Remote Sensing Policy Act, Pub. L. 102-555, 106 Stat. 4163 (1992).

⁴² NASA Authorization Act of 2005, *supra* note 24.

⁴³ NASA Authorization Act of 2008, *supra* note 26.

⁴⁴ NASA Authorization Act of 2005, *supra* note 24.

⁴⁵ National Aeronautics and Space Administration Authorization Act, 1983, Pub. L. 97-324, 96 Stat. 1597 (1982).

⁴⁶ NASA Authorization Act of 1991, *supra* note 38.

⁴⁷ National Aeronautics and Space Administration Authorization Act of 1986, Pub. L. 99-170, 99 Stat. 1012 (1985).

⁴⁸ NASA Authorization Act of 2005, *supra* note 24.

ministration Authorization Act of 2008.⁴⁹ Chapter 707, Human Space Flight Independent Investigation Commission, restates the organic provisions establishing the Commission, which were originally enacted as sections 821 to 830 of the National Aeronautics and Space Administration Authorization Act of 2005.⁵⁰ Chapter 709, International Space Station, forms a chapter by grouping together and restating one provision that never previously appeared in the United States Code, section 123 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1991,⁵¹ several provisions from titles II and V of the National Aeronautics and Space Administration Authorization Act of 2005,⁵² and two provisions from title VI of the National Aeronautics and Space Administration Authorization Act of 2008.⁵³ Chapter 711, Near-Earth Objects, restates title VIII of the National Aeronautics and Space Administration Authorization Act of 2008.⁵⁴ Finally, chapter 713, Cooperation for Safety Among Spacefaring Nations, forms a chapter by combining and restating two related provisions, one from title IV and one from title XI, of the National Aeronautics and Space Administration Authorization Act of 2008.⁵⁵

PART VI – TRANSFER OF CHAPTERS FROM TITLE 49

The link to chapters 701 and 703 of title 49, United States Code

Conceptually, the statutory material previously found in chapters 701 and 703 of title 49, United States Code, is very closely related to statutory material restated in subtitle V, Programs Targeting Commercial Opportunities, of title 51, United States Code. That fact is unsurprising given the common roots of the original enactments.

⁴⁹ NASA Authorization Act of 2008, *supra* note 26.

⁵⁰ NASA Authorization Act of 2005, *supra* note 24.

⁵¹ NASA Authorization Act of 1991, *supra* note 38.

⁵² NASA Authorization Act of 2005, *supra* note 24.

⁵³ NASA Authorization Act of 2008, *supra* note 26.

⁵⁴ *Id.*

⁵⁵ *Id.*