

103^D CONGRESS
2^D SESSION

S. 2305

To provide that members of the Board of Veterans' Appeals be referred to as veterans law judges, to provide for the pay of such members, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 21 (legislative day, JULY 20), 1994

Mr. AKAKA introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To provide that members of the Board of Veterans' Appeals be referred to as veterans law judges, to provide for the pay of such members, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Veterans Law Judge
5 Act of 1994".

1 **SEC. 2. AUTHORITY TO REFER TO MEMBERS OF BOARD OF**
2 **VETERANS' APPEALS AS VETERANS LAW**
3 **JUDGES.**

4 Section 7101(b) of title 38, United States Code, is
5 amended by adding at the end the following:

6 “(5)(A) Except as provided in subparagraph (B), a
7 member of the Board, including the Chairman and the
8 Vice Chairman, shall be referred to as a veterans law
9 judge.

10 “(B) Subparagraph (A) shall not apply to a tem-
11 porary member of the Board.”.

12 **SEC. 3. CLASSIFICATION AND PAY OF MEMBERS OF BOARD**
13 **OF VETERANS' APPEALS.**

14 (a) **IN GENERAL.**—Section 7101(b) of title 38,
15 United States Code, as amended by section 2, is further
16 amended by adding at the end the following:

17 “(6) A member of the Board (other than the Chair-
18 man and Vice Chairman) shall receive compensation under
19 the provisions of section 5372 of title 5 and other benefits
20 equal to those payable to an administrative law judge.”.

21 (b) **EFFECTIVE DATE.**—The amendment made by
22 subsection (a) shall take effect on the first day of the first
23 pay period beginning after the date of the enactment of
24 this Act.

25 (c) **SAVINGS PROVISION.**—The rate of basic pay pay-
26 able to an individual who is a member of the Board of

1 Veterans' Appeals on the date of the enactment of this
2 Act may not be reduced by reason of the amendment made
3 by subsection (a) below the rate payable to such individual
4 on the day before the effective date specified in subsection
5 (b).

6 **SEC. 4. CONTINUATION OF SERVICE AND REAPPOINTMENT**
7 **OF BOARD MEMBERS.**

8 (a) CHAIRMAN.—Paragraph (1) of section 7101(b) of
9 title 38, United States Code, is amended to read as fol-
10 lows:

11 “(1)(A) The Chairman shall be appointed by the
12 President, by and with the advice and consent of the Sen-
13 ate, for a term of six years.

14 “(B) Notwithstanding subparagraph (A), the Chair-
15 man may, upon the approval of the Secretary, serve after
16 the expiration of the term of the Chairman under that
17 subparagraph. The Chairman may serve under this sub-
18 paragraph until—

19 “(i) the confirmation of the Chairman under
20 subparagraph (A) for an additional term to which
21 the Chairman is appointed under paragraph (3); or

22 “(ii) the confirmation of the successor to the
23 Chairman.

24 “(C) The Chairman may be removed by the President
25 for misconduct, inefficiency, neglect of duty, or engaging

1 in the practice of law or for physical or mental disability
2 which, in the opinion of the President, prevents the proper
3 execution of the Chairman's duties. The Chairman may
4 not be removed from office by the President on any other
5 grounds. Any such removal may only be made after notice
6 and opportunity for hearing.”.

7 (b) OTHER MEMBERS OF BOARD.—Paragraph (2) of
8 such section is amended to read as follows:

9 “(2)(A) The other members of the Board (including
10 the Vice Chairman) shall be appointed by the Secretary,
11 with the approval of the President and based upon rec-
12 ommendations of the Chairman, for a term of nine years.

13 “(B) Notwithstanding subparagraph (A), a member
14 of the Board may, upon the recommendation of the Chair-
15 man and the approval of the Secretary, serve after the
16 expiration of the term of the member under that subpara-
17 graph. A member may serve under this subparagraph
18 until—

19 “(i) the appointment of the member to an addi-
20 tional term under paragraph (3); or

21 “(ii) the appointment of the successor to the
22 member.

23 “(C)(i) The Secretary shall notify a member of the
24 Board under this paragraph if—

1 “(I) the Chairman decides not to recommend
2 the member for appointment under paragraph (3) to
3 an additional term; or

4 “(II) the Secretary decides not to appoint the
5 member to an additional term under that paragraph.

6 “(ii) The Secretary shall notify a member of the
7 Board under clause (i) not later than 120 days before the
8 expiration of the member’s term.

9 “(iii) A notification under clause (i) shall include an
10 explanation of the Chairman’s decision not to recommend
11 the member for appointment or the Secretary’s decision
12 not to appoint the member, as the case may be.

13 “(iv) The Secretary shall provide a member of the
14 Board who receives a notice under this subparagraph an
15 opportunity for a hearing on the matters in the notice.
16 The hearing shall occur not later than 60 days before the
17 expiration of the member’s term.

18 “(v) Upon completion of a hearing in the case of a
19 member of the Board under clause (iv), the Secretary shall
20 determine whether or not to appoint the member to an
21 additional term under paragraph (3). The Secretary’s de-
22 cision shall be final and shall not be subject to judicial
23 review.

24 “(D)(i) Except as provided in clause (ii), if the Sec-
25 retary fails to notify a member of the Board covered by

1 clause (i) of subparagraph (C) by the time specified in
2 clause (ii) of that subparagraph, the member shall be
3 deemed appointed by the Secretary to an additional term
4 under paragraph (3).

5 “(ii) The President may disapprove the appointment
6 of a member of the Board to an additional term under
7 clause (i). A member whose appointment is so disapproved
8 shall not be deemed appointed to such term under that
9 clause.

10 “(E) Upon the expiration of the term, including any
11 service after such expiration under subparagraph (B), of
12 a member of the Board (other than the Chairman) who
13 was a career or career-conditional employee in the service
14 before commencement of the term, the member shall re-
15 vert to the civil service grade and series held by the mem-
16 ber immediately before the appointment of the member to
17 the Board.

18 “(F)(i) Reversion of a member of the Board under
19 subparagraph (E) shall not affect the taking against the
20 member of an action referred to in clause (ii) if the action
21 was initiated before the expiration of the term of the mem-
22 ber.

23 “(ii) Clause (i) refers to the following actions:

24 “(I) Removal of a member of the Board.

25 “(II) Suspension of a member.

1 “(III) Reduction in grade of a member.

2 “(IV) Reduction in pay of a member.

3 “(V) Furlough of a member for 30 days or less.

4 “(VI) A reduction-in-force under section 3502
5 of title 5.

6 “(VII) An action initiated under section 1215
7 of title 5.”.

8 (c) CRITERIA FOR REAPPOINTMENT OF BOARD MEM-
9 BERS.—(1) The Secretary of Veterans Affairs shall pre-
10 scribe criteria applicable to the appointment of members
11 of the Board of Veterans’ Appeals to a term on the Board
12 under section 7101(b)(3) of title 38, United States Code.

13 (2) The criteria prescribed under paragraph (1) shall
14 not apply to the Chairman of the Board.

15 (3)(A) The criteria prescribed under paragraph (1)
16 shall take into consideration the timeliness of a member
17 of the Board, the case management of a member, the ex-
18 tent to which substantive errors appear in the decisions
19 of the Board issued by the member, and the conduct of
20 a member as a member of the Board.

21 (B) Such criteria shall not provide for an evaluation
22 of a member of the Board in accordance with the granting
23 or denying of appeals by the member.

24 (d) APPLICABILITY.—Subparagraph (B) of section
25 7101(b)(2) of title 38, United States Code, as amended

1 by subsection (b), shall apply to members of the Board
2 of Veterans' Appeals appointed under section 201(d) of
3 the Veterans' Judicial Review Act (division A of Public
4 Law 100-687; 38 U.S.C. 7101 note).

5 **SEC. 5. BOARD MEMBERS HOLDING APPOINTMENTS IN THE**
6 **SENIOR EXECUTIVE SERVICE.**

7 Notwithstanding any other provision of law, any
8 member of the Board of Veterans' Appeals who, on the
9 date of the enactment of this Act, is a member of the Sen-
10 ior Executive Service shall—

11 (1) continue as a member of the Senior Execu-
12 tive Service while serving as a member of the Board;
13 and

14 (2) during the term of office of the member
15 under section 7101(b) of title 38, United States
16 Code, receive the pay, leave, and other benefits (in-
17 cluding benefits relating to reassignment) to which
18 members of the Senior Executive Service are
19 entitled.

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