

105TH CONGRESS
1ST SESSION

S. 988

To amend chapter 72 of title 38, United States Code, to reform the retirement provisions relating to the Court's judicial component, to provide for a staggered judicial retirement option to avoid the large case backlog increase that would arise in the event of simultaneous judicial vacancies, to rename the United States Court of Veterans Appeals as the United States Court of Appeals for Veterans Claims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 7, 1997

Mr. SPECTER (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Court of Veterans Ap-
3 peals Amendments of 1997”.

4 **TITLE I—COMPARABILITY**

5 **SEC. 101. AUTHORITY TO PRESCRIBE RULES AND REGULA-
6 TIONS.**

7 Section 7254 of title 38, United States Code, is
8 amended by adding at the end thereof the following new
9 subsection:

10 “(f) The Court shall have the authority to prescribe
11 rules and regulations that are necessary or appropriate to
12 carry out the provisions of subchapters III and V of chap-
13 ter 72 of this title and that are consistent with such chap-
14 ter and any other applicable provision of law.”.

15 **SEC. 102. CALCULATION OF YEARS OF SERVICE AS A
16 JUDGE.**

17 Section 7296(b) of title 38, United States Code, is
18 amended by adding at the end thereof the following new
19 paragraph:

20 “(4) For purposes of calculating the years of service
21 of an individual under this subsection and subsection (c),
22 only those years of service as a judge of the Court shall
23 be credited, and that portion of the aggregate number of
24 years of such service that is a fractional part of 1 year
25 shall not be credited if it is less than 6 months, and shall
26 be credited if it is 6 months or more.”.

1 **SEC. 103. LIMITATION ON COST-OF-LIVING ADJUSTMENT TO**
2 **RETIRED PAY.**

3 Section 7296 of title 38, United States Code, is
4 amended by adding at the end thereof the following new
5 subsection:

6 “(1) Notwithstanding any other provision of law, cost-
7 of-living adjustments made or accruing to any retired pay
8 that is paid under this section shall not result in such re-
9 tired pay exceeding the rate of pay in effect under section
10 7253(e) of this title for a judge performing active serv-
11 ice.”.

12 **SEC. 104. SURVIVOR ANNUITIES.**

13 (a) **ELECTION TO PARTICIPATE.**—Section 7297(b) of
14 title 38, United States Code, is amended in the first sen-
15 tence by inserting before the period “or within 6 months
16 after the date on which the judge marries if the judge has
17 retired under section 7296 of this title”.

18 (b) **REDUCTION OF CONTRIBUTIONS OF ACTIVE**
19 **JUDGES.**—(1) Section 7297(c) of title 38, United States
20 Code, is amended by striking out “3.5 percent of the
21 judge’s pay” and inserting in lieu thereof “2.2 percent of
22 the judge’s salary received under section 7253(e) of this
23 title, 3.5 percent of the judge’s retired pay received under
24 section 7296 of this title when the judge is not serving
25 in recall status under section 7257 of this title, and 2.2
26 percent of the judge’s retired pay received under such sec-

1 tion 7296 when the judge is serving in recall status under
2 such section 7257”.

3 (2) The amendment made by this subsection shall
4 take effect on the first day of the first pay period begin-
5 ning on or after January 1, 1995.

6 (c) INTEREST PAYMENTS.—Section 7297(d) of title
7 38, United States Code, is amended—

8 (1) by inserting “(1)” after “(d)”; and

9 (2) by adding at the end thereof the following
10 new paragraph:

11 “(2) If a judge has previously performed a period of
12 service as a judge, or has performed service as a judicial
13 official as defined under section 376(a)(1) of title 28, a
14 Member of Congress, or a congressional employee, the in-
15 terest required under the first sentence of paragraph (1)
16 shall not be required for any period—

17 “(A) during which a judge was separated from
18 all such service; and

19 “(B) during which the judge was not receiving
20 retired pay or a retirement annuity based on service
21 as a judge or as a judicial official.”.

22 (d) SERVICE ELIGIBILITY.—(1) Section 7297(f) of
23 title 38, United States Code, is amended—

24 (A) in paragraph (1) in the matter preceding
25 subparagraph (A)—

1 (i) by striking out “at least 5 years” and
2 inserting in lieu thereof “at least 18 months”;
3 and

4 (ii) by striking out “last 5 years” and in-
5 serting in lieu thereof “last 18 months”; and

6 (B) by adding at the end thereof the following
7 new paragraph:

8 “(5) If a judge dies as a result of an assassination
9 and leaves a survivor or survivors who are entitled to re-
10 ceive annuity benefits under this section, the matter in
11 paragraph (1) preceding subparagraph (A) shall not
12 apply.”.

13 (2) Section 7297(a) of title 38, United States
14 Code, is amended—

15 (A) by inserting “who is in active service
16 or who has retired under section 7296 of this
17 title” after “Court” in paragraph (2);

18 (B) by striking “(c)” in paragraph (3);

19 (C) by redesignating paragraphs (1)
20 through (3) as paragraphs (2) through (4), re-
21 spectively; and

22 (D) by inserting before paragraph (2) (as
23 redesignated by clause (C) of this paragraph)
24 the following new paragraph:

1 “(1) The term ‘assassination’ means the killing of a
2 judge that is motivated by the performance by that judge
3 of the judge’s official duties.”.

4 (e) AGE REQUIREMENT OF SURVIVING SPOUSE.—
5 Section 7297(f)(1)(A) of title 38, United States Code, is
6 further amended by striking out “or following the surviv-
7 ing spouse’s attainment of the age of 50 years, whichever
8 is later”.

9 (f) COLA FOR SURVIVOR ANNUITIES.—Section
10 7297(o) of title 38, United States Code, is amended to
11 read as follows:

12 “(o) Each survivor annuity payable from the retire-
13 ment fund shall be increased at the same time as, and
14 by the same percentage by which, annuities payable from
15 the Judicial Survivors’ Annuities Fund are increased pur-
16 suant to section 376(m) of title 28.”.

17 **SEC. 105. EXEMPTION OF RETIREMENT FUND FROM SE-**
18 **QUESTRATION ORDERS.**

19 Section 7298 of title 38, United States Code, is
20 amended by adding at the end the following new sub-
21 section:

22 “(g) For purpose of section 255(g)(1)(B) of the Bal-
23 anced Budget and Emergency Deficit Control Act of 1985
24 (2 U.S.C. § 905(b)(1)(B)), the retirement fund shall be

1 treated in the same manner as the Court of Federal
2 Claims Judges' Retirement Fund.”.

3 **SEC. 106. LIMITATION ON ACTIVITIES OF RETIRED JUDGES.**

4 (a) IN GENERAL.—Chapter 72 of title 38, United
5 States Code (as amended by this Act), is further amended
6 by adding at the end thereof the following new section:

7 **“§ 7299. Limitation on activities of retired judges**

8 “Any judge of the Court of Appeals for Veterans
9 Claims who retires from the Court under section 7296 of
10 this title or under chapter 83 or 84 of title 5 and who
11 thereafter in the practice of law represents (or supervises
12 or directs the representation of) a client in making any
13 civil claim relating to veterans' benefits against the United
14 States or any agency thereof shall forfeit all rights to re-
15 tired pay under such provisions for any period during
16 which the judge engages in any such activity and for one
17 year immediately following the cessation of such activity.”

18 (b) TECHNICAL AND CONFORMING AMENDMENT.—
19 The table of sections for chapter 72 of title 38, United
20 States Code, is amended by adding at the end thereof the
21 following:

“7299. Limitation on activities of retired judges.”.

1 TITLE II—STAGGERED RETIREMENT AND
2 RECALL PROVISIONS

3 **SEC. 201. STAGGERED RETIREMENT.**

4 (a) ELIGIBILITY.—One individual each year shall be
5 eligible to retire under this section starting in the year
6 1999 and ending in the year 2003. An individual is eligible
7 to retire under this section, if the individual, at the time
8 of retirement,

9 (1) is an associate judge of the United States
10 Court of Appeals for Veterans Claims (as renamed
11 by title III of this Act) who has at least 10 years
12 of service creditable under section 7296 of title 38,
13 United States Code;

14 (2) has made an election to receive retired pay
15 under section 7296 of such title;

16 (3) has at least 20 years of service allowable
17 under section 7297(l) of such title;

18 (4) is at least fifty-five years of age;

19 (5) has years of age, years of service creditable
20 under section 7296 of such title, and years of service
21 allowable under section 7297(l) of such title not
22 creditable under section 7296 of such title, that total
23 at least 80; and

24 (6) has the greatest seniority as a judge of the
25 United States Court of Appeals for Veterans Claims

1 (as renamed by Title III of this Act) of the judges
2 who provide notification in accordance with sub-
3 section (b).

4 (b) NOTIFICATION.—A judge who desires to retire
5 under subsection (c) shall provide the President of the
6 United States and the chief judge of the United States
7 Court of Appeals for Veterans Claims (as renamed by
8 Title III of this Act) with written notification to that effect
9 not later than April 1 of any year specified in subsection
10 (a). Such notification shall specify the retirement date in
11 accordance with subsection (c). Notification provided
12 under this subsection shall be irrevocable.

13 (c) RETIREMENT.—A judge who is eligible to retire
14 under subsection (a) shall retire during the fiscal year in
15 which notification is provided pursuant to subsection (b),
16 but, in no event, earlier than 90 days after such notifica-
17 tion is provided. Notwithstanding any other provision of
18 law, such judge shall be deemed, for all purposes, to be
19 retiring under section 7296(b)(1) of title 38, United
20 States Code, except that, the rate of retired pay for a
21 judge retiring under this section shall, on the date of such
22 judge's separation from service, be equal to the rate de-
23 scribed in section 7296(c)(1) of such title multiplied by
24 the percentage represented by the fraction in which the
25 numerator is the sum of the number represented by years

1 of service as a judge of the United States Court of Appeals
 2 for Veterans Claims (as renamed by Title III of this Act)
 3 creditable under section 7296 of such title and the age
 4 of such judge, and the denominator is 80.

5 (d) DUTY OF ACTUARY.—Section 7298(e)(2) of title
 6 38, United States Code, is amended—

7 (1) by redesignating subparagraph (C) as sub-
 8 paragraph (D); and

9 (2) by adding the following new subparagraph:

10 “(C) For purposes of subparagraph (B) of
 11 this paragraph, notwithstanding any other pro-
 12 vision of law, ‘present value’ includes a value
 13 determined by an actuary with respect to a pay-
 14 ment that may be made under subsection (b)
 15 from the retirement fund within the contempla-
 16 tion of law.”

17 **SEC. 202. RECALL OF RETIRED JUDGES.**

18 (a) IN GENERAL.—Chapter 72 of title 38, United
 19 States Code (as amended by section 102 of this Act), is
 20 further amended by inserting after section 7256 the fol-
 21 lowing new section:

22 **“§ 7257. Recall of retired judges of the Court of Ap-
 23 peals for Veterans Claims**

24 “(a) A judge of the Court of Appeals for Veterans
 25 Claims who has retired from the Court under the provi-

1 sions of section 7296 of this title or the provisions of chap-
2 ter 83 or 84 of title 5 shall be eligible for recall upon pro-
3 viding the chief judge of the Court of Appeals for Veterans
4 Claims with written notification to that effect. In the event
5 of a vacancy in the position of associate judge of the Court
6 or otherwise as necessary to meet anticipated case work-
7 load, the chief judge may recall such a judge upon written
8 certification by the chief judge that substantial service is
9 expected to be performed by the eligible judge for such
10 period as determined by the chief judge to be necessary
11 to meet the needs of the Court, and to which certification
12 the eligible judge agrees in writing.

13 “(b) A judge recalled under this section may exercise
14 all of the powers and duties of the office of a judge in
15 active service.

16 “(c) A judge recalled under this section shall be paid
17 pay, during the period for which the judge serves in recall
18 status, at the rate of pay in effect under section 7253(e)
19 of this title for a judge performing active service, less the
20 amount the judge is paid in retired pay under section 7296
21 of this title or an annuity under the applicable provisions
22 of chapter 83 or 84 of title 5.

23 “(d) Except as provided in subsection (c), a judge re-
24 called under this section who retired under the applicable
25 provisions of title 5 shall be considered to be a reemployed

1 annuitant under chapter 83 or 84, as applicable, of title
2 5.

3 “(e) Nothing in this section shall affect the right of
4 a judge who retired under the provisions of chapter 83
5 or 84 of title 5 to serve otherwise as a reemployed annu-
6 itant in accordance with the provisions of title 5.”

7 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
8 The table of sections for chapter 72 of title 38, United
9 States Code (as amended by section 106(b) of this Act),
10 is further amended by inserting after the item relating to
11 section 7256 the following:

“7257. Recall of retired judges of the Court of Veterans Appeals.”.

12 **TITLE III—RENAMING PROVISIONS**

13 **SEC. 300. REFERENCES TO TITLE 38, UNITED STATES CODE.**

14 Except as otherwise expressly provided, whenever in
15 section 301 an amendment or repeal is expressed in terms
16 of an amendment, or repeal of, a section or other provi-
17 sion, the reference shall be considered to be made to a
18 section or other provision of title 38, United States Code.

19 **SEC. 301. RENAMING OF THE COURT OF VETERANS AP-**
20 **PEALS.**

21 (a) **IN GENERAL.**—The United States Court of Vet-
22 erans Appeals shall hereafter be known and designated as
23 the United States Court of Appeals for Veterans Claims.

24 (2) Section 7251 is amended by striking out “United
25 States Court of Veterans Appeals” and inserting in lieu

1 thereof “United States Court of Appeals for Veterans
2 Claims”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) The following sections are amended by
5 striking out “Court of Veterans Appeals” each place
6 it appears and inserting in lieu thereof “Court of
7 Appeals for Veterans Claims”: sections 5904,
8 7101(b), 7252(a), 7253, 7254, 7255, 7256, 7261,
9 7262, 7263, 7264, 7266(a)(1), 7267(a), 7268(a),
10 7269, 7281(a), 7282(a), 7283, 7284, 7285(a), 7286,
11 7291, 7292, 7296, 7297, and 7298.

12 (2)(A)(i) The heading of section 7286 is
13 amended to read as follows:

14 **“§ 7286. Judicial Conference of the Court of Appeals
15 for Veterans Claims”.**

16 (ii) The item relating to section 7286 in the
17 table of sections at the beginning of chapter 72 (as
18 amended by sections 106(b) and 202(b) of this Act)
19 is further amended to read as follows:

“7286. Judicial Conference of the Court of Appeals for Veterans Claims.”.

20 (B)(i) The heading of section 7291 is amended
21 to read as follows:

22 **“§ 7291. Date when Court of Appeals for Veterans
23 Claims decision becomes final”.**

24 (ii) The item relating to section 7291 in the
25 table of sections at the beginning of chapter 72 (as

1 amended by sections 106(b), 202(b), and subsection
2 (b)(2)(A)(ii) of this section) is further amended to
3 read as follows:

“7291. Date when Court of Appeals for Veterans Claims decision becomes
final.”.

4 (C)(i) The heading of section 7298 is amended
5 to read as follows:

6 **“§ 7298. Court of Appeals for Veterans Claims Retire-
7 ment Fund”.**

8 (ii) The item relating to section 7298 in the
9 table of sections at the beginning of chapter 72 (as
10 amended by sections 106(b), 202(b), and subsection
11 (b)(2)(A)(ii) and (B)(ii) of this section) is further
12 amended to read as follows:

“7298. Court of Appeals for Veterans Claims Retirement Fund.”.

13 (3) The item relating to chapter 72 in the table
14 of chapters at the beginning of title 38 and the item
15 relating to such chapter in the table of chapters at
16 the beginning of part V are amended to read as fol-
17 lows:

“72. United States Court of Appeals for Veterans Claims 7251.”.

18 (c) CONFORMING AMENDMENTS TO OTHER LAWS.—

19 (1) The following provisions of law are amended
20 by striking out “Court of Veterans Appeals” each
21 place it appears and inserting in lieu thereof “Court
22 of Appeals for Veterans Claims”:

1 (A) Section 8440d of title 5, United States
2 Code.

3 (B) Section 2412 of title 28, United States
4 Code.

5 (C) Section 906 of title 44, United States
6 Code.

7 (D) Section 109 of the Ethics in Govern-
8 ment Act of 1978 (5 U.S.C. App.).

9 (2)(A) The heading of section 8440d of title 5,
10 United States Code, is amended to read as follows:

11 **“§ 8440d. Judges of the United States Court of Ap-
12 peals for Veterans Claims”.**

13 (B) The item relating to such section in the
14 table of sections at the beginning of chapter 84 of
15 such title is amended to read as follows:

“8440d. Judges of the United States Court of Appeals for Veterans Claims.”.

16 (d) OTHER LEGAL REFERENCES.—Any reference in
17 a law, regulation, document, paper, or other record of the
18 United States to the United States Court of Veterans Ap-
19 peals shall be deemed to be a reference to the United
20 States Court of Appeals for Veterans Claims.

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