

107TH CONGRESS
2D SESSION

H. R. 4046

To provide for congressional review of regulations relating to military tribunals.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2002

Mr. HOEFFEL (for himself, Ms. KAPTUR, Mrs. MINK of Hawaii, Mr. SERRANO, Ms. BROWN of Florida, Ms. MCCOLLUM, Mr. UNDERWOOD, Mr. McDERMOTT, and Mr. STARK) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Rules, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for congressional review of regulations relating to military tribunals.

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 “Military Tribunal Reg-
5 ulations Review Act”.

1 **SEC. 2. CONGRESSIONAL REVIEW.**

2 (a) PROCEDURES REQUIRED.—(1) Before a military
3 tribunal rule takes effect, the President shall submit to
4 Congress a report containing—

5 (A) a copy of the military tribunal rule;

6 (B) a concise general statement relating to the
7 military tribunal rule; and

8 (C) the proposed effective date of the military
9 tribunal rule.

10 (2) A military tribunal rule with respect to which a
11 report is submitted under paragraph (1) shall take effect
12 on the latest of the following:

13 (A) The last day of the 60-day period beginning
14 on the submission date for that rule.

15 (B) If the President, having been presented
16 with a joint resolution of disapproval with respect to
17 that rule, returns the joint resolution without his
18 signature to the House in which it originated, to-
19 gether with his objections thereto, the date that is—

20 (i) the date on which either House, having
21 proceeded to reconsider the joint resolution,
22 votes on and fails to pass the joint resolution,
23 the objections of the President to the contrary
24 notwithstanding; or

25 (ii) if earlier, the date that is 30 days after
26 the date on which the joint resolution, with the

1 President's objections thereto, was returned by
2 the President to the House in which it origi-
3 nated.

4 (C) The date on which the military tribunal
5 rule would have otherwise taken effect, if not for
6 this section (unless a joint resolution of disapproval
7 is enacted).

8 (3) Notwithstanding paragraph (2), the effective date
9 of a military tribunal rule shall not be delayed by oper-
10 ation of this Act beyond the date on which either House
11 of Congress votes to reject a joint resolution of dis-
12 approval.

13 (b) EFFECT OF DISAPPROVAL.—(1) A military tri-
14 bunal rule shall not take effect (or continue) if a joint res-
15 olution of disapproval with respect to that military tri-
16 bunal rule is enacted.

17 (2) A military tribunal rule that does not take effect
18 (or does not continue) under paragraph (1) may not be
19 reissued in substantially the same form, and a new mili-
20 tary tribunal rule that is substantially the same as such
21 a military tribunal rule may not be issued, unless the re-
22 issued or new military tribunal rule is specifically author-
23 ized by a law enacted after the date of the enactment of
24 the joint resolution of disapproval with respect to the
25 original military tribunal rule.

1 (c) DISAPPROVAL OF RULES ISSUED NEAR END OF
2 SESSION.—(1) In addition to the opportunity for review
3 otherwise provided under this Act, in the case of any mili-
4 tary tribunal rule for which a report was submitted in ac-
5 cordance with subsection (a)(1) during the period begin-
6 ning on the date occurring—

7 (A) in the case of the Senate, 60 session days,
8 or

9 (B) in the case of the House of Representatives,
10 60 legislative days,

11 before the date the Congress adjourns a session of Con-
12 gress and ending on the date on which the same or suc-
13 ceeding Congress first convenes its next session, section
14 3 shall apply to such military tribunal rule in the suc-
15 ceeding session of Congress.

16 (2)(A) In applying section 3 for purposes of the op-
17 portunity for additional review provided under paragraph
18 (1), a military tribunal rule described under such para-
19 graph shall be treated as though a report on such military
20 tribunal rule were submitted to Congress under subsection
21 (a)(1) on—

22 (i) in the case of the Senate, the 15th session
23 day, or

24 (ii) in the case of the House of Representatives,
25 the 15th legislative day,

1 after the succeeding session of Congress convenes.

2 (B) Nothing in this paragraph shall be construed to
3 affect the requirement under subsection (a)(1) that a re-
4 port shall be submitted to Congress before a military tri-
5 bunal rule can take effect.

6 (3) A military tribunal rule described under para-
7 graph (1) shall take effect as otherwise provided by law
8 (including other subsections of this section).

9 (d) DISAPPROVAL OF RULES ISSUED BEFORE DATE
10 OF ENACTMENT.—(1) For purposes of this subsection,
11 section 3 shall also apply to any military tribunal rule
12 issued during the period beginning after November 13,
13 2001, and ending on the date of the enactment of this
14 Act.

15 (2) In applying section 3 for purposes of any military
16 tribunal rule described in paragraph (1), such military tri-
17 bunal rule shall be treated as though a report on such
18 military tribunal rule were submitted to Congress under
19 subsection (a)(1) on the date of the enactment of this Act.

20 (3) The effectiveness of a military tribunal rule de-
21 scribed under paragraph (1) shall be as otherwise provided
22 by law, unless the military tribunal rule is made of no
23 force or effect under section 3.

24 (e) DISAPPROVAL OF RULES THAT HAVE TAKEN EF-
25 FECT.—Any military tribunal rule that takes effect and

1 later is made of no force or effect by the enactment of
2 a joint resolution of disapproval shall be treated as though
3 such military tribunal rule had never taken effect, except
4 that a trial of a person pursuant to such rule that is being
5 carried out before the enactment of such joint resolution
6 of disapproval shall continue to be carried out as though
7 such military tribunal rule remains in effect.

8 (f) **RULE OF CONSTRUCTION.**—If the Congress does
9 not enact a joint resolution of disapproval with respect to
10 a military tribunal rule, no court or agency may infer any
11 intent of the Congress from any action or inaction of the
12 Congress with regard to such military tribunal rule, re-
13 lated statute, or joint resolution of disapproval.

14 (g) **JOINT RESOLUTION OF DISAPPROVAL DE-**
15 **FINED.**—For purposes of this section, the term “joint res-
16 olution of disapproval” means a joint resolution under sec-
17 tion 3.

18 **SEC. 3. CONGRESSIONAL DISAPPROVAL PROCEDURE.**

19 (a) **JOINT RESOLUTION DEFINED.**—For purposes of
20 this section, the term “joint resolution” means only a joint
21 resolution introduced during the period beginning on the
22 date on which a report referred to in section 2(a)(1) is
23 received by Congress and ending 60 days thereafter (ex-
24 cluding days either House of Congress is adjourned for
25 more than 3 days during a session of Congress), the title

1 of which is “Joint Resolution disapproving the rule sub-
2 mitted by the President on _____, relating to military tri-
3 bunals”, containing no whereas clauses, and the matter
4 after the resolving clause of which is as follows: “That
5 Congress disapproves the rule submitted by the President
6 on _____, relating to military tribunals, and such rule shall
7 have no force or effect.” (The blank spaces being appro-
8 priately filled in).

9 (b) SUBMISSION DATE DEFINED.—For purposes of
10 this section, the term “submission date” means, with re-
11 spect to a military tribunal rule, the date on which the
12 Congress receives the report submitted under section
13 2(a)(1) with respect to that military tribunal rule.

14 (c) REFERRAL TO COMMITTEES.—A joint resolution
15 described in subsection (a) shall be referred to the commit-
16 tees in each House of Congress with jurisdiction.

17 (d) SPECIAL PROCEDURES IN THE SENATE.—(1) A
18 joint resolution described in subsection (a) shall be consid-
19 ered in the Senate in accordance with the provisions of
20 this subsection.

21 (2) If the committee to which is referred a joint reso-
22 lution described in subsection (a) has not reported such
23 joint resolution (or an identical joint resolution) at the end
24 of 20 calendar days after the submission date, such com-
25 mittee shall be discharged from further consideration of

1 such joint resolution upon a petition supported in writing
2 by 30 Members of the Senate, and such joint resolution
3 shall be placed on the calendar.

4 (3) When the committee to which a joint resolution
5 is referred has reported, or when a committee is dis-
6 charged (under paragraph (2)) from further consideration
7 of a joint resolution described in subsection (a), it is at
8 any time thereafter in order (even though a previous mo-
9 tion to the same effect has been disagreed to) for a motion
10 to proceed to the consideration of the joint resolution, and
11 all points of order against the joint resolution (and against
12 consideration of the joint resolution) are waived. The mo-
13 tion is not subject to amendment, or to a motion to post-
14 pone, or to a motion to proceed to the consideration of
15 other business. A motion to reconsider the vote by which
16 the motion is agreed to or disagreed to shall not be in
17 order. If a motion to proceed to the consideration of the
18 joint resolution is agreed to, the joint resolution shall re-
19 main the unfinished business of the Senate until disposed
20 of.

21 (4) Debate on the joint resolution, and on all debat-
22 able motions and appeals in connection therewith, shall be
23 limited to not more than 10 hours, which shall be divided
24 equally between those favoring and those opposing the
25 joint resolution. A motion further to limit debate is in

1 order and not debatable. An amendment to, or a motion
2 to postpone, or a motion to proceed to the consideration
3 of other business, or a motion to recommit the joint reso-
4 lution is not in order.

5 (5) Immediately following the conclusion of the de-
6 bate on a joint resolution described in subsection (a), and
7 a single quorum call at the conclusion of the debate if re-
8 quested in accordance with the rules of the Senate, the
9 vote on final passage of the joint resolution shall occur.

10 (6) Appeals from the decisions of the chair relating
11 to the application of the rules of the Senate to the proce-
12 dure relating to a joint resolution described in subsection
13 (a) shall be decided without debate.

14 (7) The procedures specified in this subsection shall
15 not apply to the consideration of a joint resolution of dis-
16 approval with respect to a military tribunal rule—

17 (A) after the expiration of the 60 session days
18 beginning with the applicable submission or publica-
19 tion date, or

20 (B) if the report under section 2(a)(1) was sub-
21 mitted during the period referred to in section
22 2(d)(1), after the expiration of the 60 session days
23 beginning on the 15th session day after the suc-
24 ceeding session of Congress first convenes.

1 (e) PROCEEDINGS IN SECOND HOUSE.—If, before the
2 passage by one House of a joint resolution of that House
3 described in subsection (a), that House receives from the
4 other House a joint resolution described in subsection (a),
5 then the following procedures shall apply:

6 (1) The joint resolution of the other House
7 shall not be referred to a committee.

8 (2) With respect to a joint resolution described
9 in subsection (a) of the House receiving the joint
10 resolution—

11 (A) the procedure in that House shall be
12 the same as if no joint resolution had been re-
13 ceived from the other House; but

14 (B) the vote on final passage shall be on
15 the joint resolution of the other House.

16 (f) EXERCISE OF RULEMAKING POWER.—This sec-
17 tion is enacted by Congress—

18 (1) as an exercise of the rulemaking power of
19 the Senate and House of Representatives, respec-
20 tively, and as such it is deemed a part of the rules
21 of each House, respectively, but applicable only with
22 respect to the procedure to be followed in that
23 House in the case of a joint resolution described in
24 subsection (a), and it supersedes other rules only to
25 the extent that it is inconsistent with such rules; and

1 (2) with full recognition of the constitutional
2 right of either House to change the rules (so far as
3 relating to the procedure of that House) at any time,
4 in the same manner, and to the same extent as in
5 the case of any other rule of that House.

6 **SEC. 4. DEFINITIONS.**

7 For purposes of this Act:

8 (1) The term “military tribunal” means a mili-
9 tary commission or other military tribunal (other
10 than a court-martial).

11 (2) The term “military tribunal rule” means
12 the whole or part of an agency statement of general
13 or particular applicability and future effect designed
14 to implement, interpret, or prescribe law or policy,
15 or describing the organization, procedure, or practice
16 requirements of a Department or agency, with re-
17 gard to carrying out military tribunals.

18 **SEC. 5. JUDICIAL REVIEW.**

19 No determination, finding, action, or omission under
20 this Act shall be subject to judicial review.

21 **SEC. 6. REPORTING REQUIREMENTS FOR MILITARY TRIBU-**
22 **NALS.**

23 (a) IN GENERAL.—(1) Subchapter XI of chapter 47
24 of title 10, United States Code (the Uniform Code of Mili-

1 tary Justice) is amended by adding at the end the fol-
2 lowing new section:

3 **“§ 940a. Art. 140a. Reports to Congress on military**
4 **tribunals**

5 “(a) For each military tribunal, the President shall
6 submit to Congress periodic reports on the activities of
7 that military tribunal. The first such report with respect
8 to a military tribunal shall be submitted not later than
9 six months after the date on which the military tribunal
10 is convened and shall include an identification of the ac-
11 cused and the offense charged. Each succeeding report
12 with respect to a military tribunal shall be submitted not
13 later than six months after the date on which the pre-
14 ceding report was submitted.

15 “(b) A report under this section shall be submitted
16 in unclassified form, but may include a classified annex.

17 “(c) In this section, the term ‘military tribunal’
18 means a military commission or other military tribunal
19 (other than a court-martial).”

20 (2) The table of sections at the beginning of such sub-
21 chapter is amended by adding at the end the following
22 new item:

“940a. 140a. Reports to Congress on military tribunals.”

23 (b) EFFECTIVE DATE.—Section 940a of title 10
24 United States Code, as added by subsection (a), shall
25 apply with respect to any military tribunal covered after,

1 or pending on, that date of the enactment of this Act. In
2 the case of a military tribunal pending on the date of the
3 enactment of this Act, the first report required by such
4 section shall be submitted not later than six months after
5 the date of the enactment of this Act.

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