

89TH CONGRESS
1ST SESSION

H. R. 4850

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 1965

Mr. FOGARTY introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To provide life tenure for the judges of the United States Court of Military Appeals.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 867 (a) (article 67 (a) of title 10, United States
4 Code) is amended to read as follows:

5 “(a) (1) There is a United States Court of Military
6 Appeals, established under article 1 of the Constitution of
7 the United States and located for administrative purposes
8 only in the Department of Defense. The court consists of
9 three judges appointed from civil life by the President, by
10 and with the advice and consent of the Senate. Not more
11 than two of the judges of that court may be appointed from

1 the same political party, nor is any person eligible for ap-
2 pointment to the court who is not a member of the bar of a
3 Federal court or of the highest court of a State. The Presi-
4 dent shall designate from time to time one of the judges to
5 act as chief judge. Each judge shall hold office during good
6 behavior, and is entitled to the salary, allowances, per-
7 quisites, rights of resignation, and retirement benefits pro-
8 vided for judges of the United States Courts of Appeals, in-
9 cluding survivor benefits for widow and dependent children,
10 and shall be similarly excluded from coverage under sections
11 2251-2267 of title 5, United States Code. The chief judge
12 of the court shall have precedence and preside at any session
13 which he attends. The other judges shall have precedence
14 and preside according to the seniority of their commissions.
15 Judges whose commissions bear the same date shall have
16 precedence according to seniority in age. The court may
17 prescribe its own rules of procedure and determine the num-
18 ber of judges required to constitute a quorum. A vacancy
19 in the court does not impair the right of the remaining judges
20 to exercise the powers of the court.

21 “(2) Judges of the Court of Military Appeals may be
22 removed by the President, upon notice and hearing, for
23 neglect of duty or malfeasance in office, but for no other
24 cause.

25 “(3) If a judge of the Court of Military Appeals is

1 temporarily unable to perform his duties because of illness
2 or other disability, the President may assign a judge of the
3 United States Court of Appeals for the District of Columbia
4 to fill the office for the period of disability.

5 “ (4) If a judge of the Court of Military Appeals desires
6 to retire for disability, he shall furnish to the President a
7 certificate of disability signed by the chief judge. If a judge
8 of the Court of Military Appeals who is eligible to retire by
9 reason of being permanently disabled from performing his
10 duties does not do so, and a certificate of disability signed
11 by the chief judge of the Court of Military Appeals is pre-
12 sented to the President, and the President finds that such
13 judge is unable to discharge efficiently all the duties of his
14 office by reason of permanent mental or physical disability
15 and that the appointment of an additional judge is necessary
16 for the efficient dispatch of business, the President may make
17 such appointment, by and with the advice and consent of the
18 Senate. Whenever any such additional judge is appointed,
19 the vacancy subsequently caused by the death, resignation,
20 or retirement of the disabled judge may not be filled. Any
21 judge whose disability causes the appointment of an addi-
22 tional judge shall, for purpose of precedence, service as chief
23 judge, or temporary performance of the duties of that office,
24 be treated as junior in commission to the other judges of the
25 court.”

1 SEC. 2. The United States Court of Military Appeals
2 established under this Act is a continuation of the Court of
3 Military Appeals as it existed prior to the effective date of
4 this Act, and no loss of rights or powers, interruption of
5 jurisdiction, or prejudice to matters pending in the Court of
6 Military Appeals before the effective date of this Act shall
7 result. A judge of the Court of Military Appeals so serving
8 on the day before the effective date of this Act shall for all
9 purposes, including salary, allowances, perquisites, rights of
10 resignation, and retirement benefits including survivor bene-
11 fits for widow and dependent children, be a judge of the
12 United States Court of Military Appeals under this Act, and
13 shall serve until the expiration of the term of office for which
14 he was originally appointed: *Provided, however,* That the
15 President, by and with the advice and consent of the Senate,
16 may at any time after the effective date of this Act appoint
17 him to hold office during good behavior under section 1 of
18 this Act. Retirement benefits of a judge serving on the effec-
19 tive date of this Act shall accrue from the date of his original
20 appointment, and he may make a written election concern-
21 ing survivor benefits, in the manner provided by section 376
22 of title 28, United States Code, within six months of the
23 effective date of this Act.

24 SEC. 3. Notwithstanding any other provision of this Act,
25 no judge of the United States Court of Military Appeals shall

1 upon resignation, or retirement for disability or length of
2 service, be paid, on account of his judicial service or any
3 other Federal service, a salary or annuity or combination
4 thereof, the total of which exceeds the salary of a judge of
5 the United States Court of Military Appeals.

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