

111TH CONGRESS
1ST SESSION

H. R. 4121

To amend title 38, United States Code, to improve the appeals process of the Department of Veterans Affairs, to establish a commission to study judicial review of the determination of veterans' benefits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2009

Mr. HALL of New York (for himself, Mr. BILBRAY, Mr. LAMBORN, Mr. RODRIGUEZ, Mrs. KIRKPATRICK of Arizona, Mrs. HALVORSON, Mr. DONNELLY of Indiana, and Mr. MILLER of Florida) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to improve the appeals process of the Department of Veterans Affairs, to establish a commission to study judicial review of the determination of veterans' benefits, 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 Appeals Im-
5 provement and Modernization Act of 2009".

1 **SEC. 2. WAIVER OF REGIONAL OFFICE JURISDICTION OVER**
2 **INCORPORATION OF SUPPLEMENTAL EVI-**
3 **DENCE INTO PREVIOUSLY SUBMITTED**
4 **CLAIMS.**

5 (a) WAIVER.—Section 7104 of title 38, United States
6 Code, is amended by adding at the end the following new
7 subsection:

8 “(f) If a claimant submits new evidence in support
9 of a case for which a substantive appeal has been filed,
10 such evidence shall be submitted to the Board directly and
11 not to a regional office of the Department, unless the
12 claimant requests that the evidence be reviewed by the re-
13 gional office before being submitted to the Board.”.

14 (b) EFFECTIVE DATE.—Subsection (f) of section
15 7104 of title 38, United States Code, as added by sub-
16 section (a) of this section, shall apply with respect to evi-
17 dence submitted on or after the date that is 90 days after
18 the date of the enactment of this Act.

19 **SEC. 3. MODIFICATION OF JURISDICTION AND FINALITY OF**
20 **DECISIONS OF THE COURT OF APPEALS FOR**
21 **VETERANS CLAIMS.**

22 (a) MODIFICATION.—Subsection (a) of section 7252
23 of title 38, United States Code, is amended—

24 (1) by striking the third sentence; and

25 (2) by adding at the end the following new sen-
26 tence: “The Court shall have power to affirm, mod-

1 ify, reverse, remand, or vacate and remand a deci-
2 sion of the Board after deciding all relevant assign-
3 ments of error raised by an appellant for each par-
4 ticular claim for benefits. In a case in which the
5 Court reverses a decision on the merits of a par-
6 ticular claim and orders an award of benefits, the
7 Court need not decide any additional assignments of
8 error with respect to that claim.”.

9 (b) **EFFECTIVE DATE.**—The amendments made by
10 subsection (a) shall apply with respect to a decision of the
11 Board of Veterans’ Appeals made on or after the date of
12 the enactment of this Act.

13 **SEC. 4. COMMISSION TO STUDY JUDICIAL REVIEW OF THE**
14 **DETERMINATION OF VETERANS’ BENEFITS.**

15 (a) **ESTABLISHMENT.**—There is established a com-
16 mission to be known as the “Veterans Judicial Review
17 Commission” (in this section referred to as the “Commis-
18 sion”).

19 (b) **DUTIES.**—The Commission shall—

20 (1) evaluate the administrative and judicial ap-
21 pellate review processes of veterans’ and survivors’
22 benefits determinations; and

23 (2) make specific recommendations and offer
24 solutions to improve the accuracy, fairness, trans-
25 parency, predictability, timeliness, and finality of

1 such appellate review processes, including a rec-
2 ommendation as to whether the Court of Appeals for
3 Veterans Claims should have the authority to hear
4 class action or associational standing cases.

5 (c) MEMBERSHIP.—

6 (1) IN GENERAL.—The Commission shall be
7 composed of 13 members appointed as follows:

8 (A) Two individuals appointed by the
9 Speaker of the House of Representatives.

10 (B) Two individuals appointed jointly by
11 the President of the Senate and the President
12 pro tempore.

13 (C) Two individuals appointed by the mi-
14 nority leader of the House of Representatives.

15 (D) Two individuals appointed by the mi-
16 nority leader of the Senate.

17 (E) Four individuals appointed by the
18 President.

19 (F) One individual appointed by the Presi-
20 dent, by and with the advice and consent of the
21 Senate, who shall serve as chairperson.

22 (2) QUALIFICATIONS.—Individuals appointed
23 under paragraph (1) shall—

24 (A) be specially qualified to serve on the
25 Commission by virtue of their expert education,

1 training, or experience associated with veterans'
2 benefits, judicial review, constitutional law, or
3 other areas of expertise pertinent to the duties
4 of the Commission; and

5 (B) include individuals who—

6 (i) are current or retired members of
7 the judiciary;

8 (ii) are members of the legal or aca-
9 demic community; or

10 (iii) represent—

11 (I) veterans service organizations;

12 (II) legal service organizations;

13 or

14 (III) other affected entities.

15 (3) TERMS.—Each member shall be appointed
16 for the life of the Commission.

17 (4) VACANCY.—A vacancy in the Commission
18 shall be filled in the manner in which the original
19 appointment was made.

20 (d) MEETINGS.—

21 (1) IN GENERAL.—The Commission shall meet
22 at the call of the Chairperson or a majority of its
23 members.

1 (2) QUORUM.—A majority of the Commission
2 shall constitute a quorum but a lesser number may
3 hold hearings.

4 (e) PAY.—

5 (1) RATES OF PAY.—Except as provided in
6 paragraph (2), members shall serve without pay.

7 (2) TRAVEL EXPENSE.—Each member shall re-
8 ceive travel expenses, including per diem in lieu of
9 subsistence, in accordance with applicable provisions
10 under subchapter I of chapter 57 of title 5, United
11 States Code.

12 (f) STAFF.—

13 (1) DIRECTOR.—The Commission shall have a
14 director who shall be appointed by the Chairperson.

15 (2) STAFF.—Subject to rules prescribed by the
16 Commission, the Chairperson may appoint additional
17 personnel as the Chairperson considers appropriate.

18 (3) APPLICABILITY OF CERTAIN CIVIL SERVICE
19 LAWS.—The director and staff of the Commission
20 shall be appointed subject to the provisions of title
21 5, United States Code, governing appointments in
22 the competitive service, and shall be paid in accord-
23 ance with the provisions of chapter 51 and sub-
24 chapter III of chapter 53 of that title relating to
25 classification and General Schedule pay rates.

1 (4) EXPERTS AND CONSULTANTS.—Subject to
2 rules prescribed by the Commission, the Chairperson
3 may procure temporary and intermittent services
4 under section 3109(b) of title 5, United States Code.

5 (5) STAFF TO FEDERAL AGENCIES.—Upon re-
6 quest of the Chairperson, the head of any Federal
7 department or agency may detail, on a reimbursable
8 basis, any of the personnel of that department or
9 agency to the Commission to assist it in carrying out
10 its duties under this section.

11 (g) POWERS OF COMMISSION.—

12 (1) HEARINGS AND SESSIONS.—The Commis-
13 sion may, for the purpose of carrying out this Act,
14 hold hearings, sit and act at times and places, take
15 testimony, and receive evidence as the Commission
16 considers appropriate. The Commission may admin-
17 ister oaths or affirmations to witnesses appearing
18 before it.

19 (2) POWERS OF MEMBERS AND AGENTS.—Any
20 member or agent of the Commission may, if author-
21 ized by the Commission, take any action which the
22 Commission is authorized to take by this section.

23 (3) OBTAINING OFFICIAL DATA.—The Commis-
24 sion may secure directly from any department or
25 agency of the United States information necessary

1 to enable it to carry out this Act. Upon request of
2 the Chairperson of the Commission, the head of that
3 department or agency shall furnish that information
4 to the Commission.

5 (4) **MAILS.**—The Commission may use the
6 United States mails in the same manner and under
7 the same conditions as other departments and agen-
8 cies of the United States.

9 (5) **ADMINISTRATIVE SUPPORT SERVICES.**—
10 Upon the request of the Commission, the Adminis-
11 trator of General Services shall provide to the Com-
12 mission, on a reimbursable basis, the administrative
13 support services necessary for the Commission to
14 carry out its responsibilities under this Act.

15 (h) **REPORTS.**—

16 (1) **INTERIM REPORT.**—Not later than July 1,
17 2010, the Commission shall submit to Congress an
18 interim report of the evaluation and recommenda-
19 tions made under subsection (b).

20 (2) **FINAL REPORT.**—Not later than December
21 31, 2010, the Commission shall submit to Congress
22 a final report on the activities of the Commission,
23 including—

24 (A) specific recommendations and solutions
25 proposed by the Commission under subsection

1 (b), including a recommendation as to whether
2 the Court of Appeals for Veterans Claims
3 should have the authority to hear class action
4 or associational standing cases;

5 (B) relevant background and statistical in-
6 formation associated with such recommenda-
7 tions and solutions; and

8 (C) other information the Commission de-
9 termines appropriate.

10 (i) TERMINATION.—The Commission shall terminate
11 on the date that is two years after the date on which the
12 Commission submits the final report pursuant to section
13 (h)(2).

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