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810/11/76

APPROVED
OCT 11 1976

THE WHITE HOUSE
WASHINGTON
October 9, 1976

ACTION

Last Day: October 13

MEMORANDUM FOR THE PRESIDENT
FROM: JIM CANNON *[Signature]*
SUBJECT: S. 14 - Cost-of-living adjustment for retired territorial judges

*Posted
10/12/76*

*Archives
10/12/76*

Attached for your consideration is S. 14, sponsored by Senator McClellan.

The enrolled bill would provide automatic cost-of-living adjustments in the pay of retired judges of Federal district courts in the Canal Zone, Guam and the Virgin Islands, by applying the same annuity adjustment formula adopted by law for civil service annuitants. The maximum retirement pay as adjusted would be limited to 95% of the salary of an active Federal district court judge.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Kilberg) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign S. 14 at Tab B.





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 7 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 14 - Cost-of-living adjustment
for retired territorial judges
Sponsor - Sen. McCellan (D) Arkansas

Last Day for Action

October 13, 1976 - Wednesday

Purpose

Provides automatic cost-of-living adjustments in the pay of retired judges of Federal district courts in the Canal Zone, Guam and the Virgin Islands.

Agency Recommendations

Office of Management and Budget	Approval
Administrative Office of the U.S. Courts	Approval
Civil Service Commission	Defers to Judicial Conference of U.S.

Discussion

S. 14 would provide automatic cost-of-living increases in the retired pay of territorial judges, i.e., judges of district courts in the Canal Zone, Guam and the Virgin Islands, by applying the same annuity adjustment formula adopted by law for civil service annuitants. The maximum retirement pay as adjusted would be limited to 95% of the salary of an active Federal district court judge. The new civil service annuity adjustment formula (enacted in P.L. 94-440, approved October 1, 1976) provides semiannual adjustments in annuity, in March and September of each year, equal to the percentage change in the cost-of-living index for the preceding six months.

Unlike judges of the U.S. district courts in the 94 judicial districts of the United States, who have lifetime tenure, the so-called "territorial" judges are appointed for fixed, eight-year terms, may be reappointed for additional terms, and relinquish office when they retire at age 70 with 10 years of judicial service, or at age 65 with 15 years service.

The retirement pay of territorial judges is equal to the salary they were receiving when they retired. Under present law there is no provision for increasing that retirement pay. Life-tenure district court judges, on the other hand, are entitled to retire from active service while continuing to hold office for life, and thus receive as retirement pay the salary of the office as increased from time to time.

The Committee reports on S. 14 note that territorial judges exercise the same jurisdiction over civil and criminal matters as life-tenure Federal district court judges, and receive the same salary and must meet identical age and service requirements for retirement. The Senate report states that S. 14 was introduced to overcome the inequity in retirement pay of territorial judges as compared to that of life-tenure judges.

Four presently retired territorial judges would benefit under the enrolled bill, and the future annuitants would be any territorial judge eligible for retirement. At present the district courts of the Canal Zone and Guam each have one judge and the Virgin Islands has two. In addition, judges who previously served in the district courts of the territories of Alaska and Hawaii, or as Justices of the Supreme Court of the territory of Hawaii would also be eligible, as they were granted coverage under the Federal judicial retirement system when Alaska and Hawaii became States.

In its views letter on the enrolled bill, the Administrative Office of the U.S. Courts states that the bill originated with the Judicial Conference of the United States and recommends approval.



Paul H. O'Neill
Acting Director

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 13

Date: October 7

Time: 600pm

FOR ACTION: ~~Barb Beach~~
Max Friedersdorf *MF*
Bobbie Kilberg *BK*
Dick Parsons *DP*

cc (for information): Jack Marsh
Jim Connor
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 7 Time: noon

SUBJECT:

S;14 -Cost-of-living adjustment for retired territorial judges

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 7 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 14 - Cost-of-living adjustment
for retired territorial judges
Sponsor - Sen. McClellan (D) Arkansas

Last Day for Action

October 13, 1976 - Wednesday

Purpose

Provides automatic cost-of-living adjustments in the pay of retired judges of Federal district courts in the Canal Zone, Guam and the Virgin Islands.

Agency Recommendations

Office of Management and Budget	Approval
Administrative Office of the U.S. Courts	Approval
Civil Service Commission	Defers to Judicial Conference of U.S.

Discussion

S. 14 would provide automatic cost-of-living increases in the retired pay of territorial judges, i.e., judges of district courts in the Canal Zone, Guam and the Virgin Islands, by applying the same annuity adjustment formula adopted by law for civil service annuitants. The maximum retirement pay as adjusted would be limited to 95% of the salary of an active Federal district court judge. The new civil service annuity adjustment formula (enacted in P.L. 94-440, approved October 1, 1976) provides semiannual adjustments in annuity, in March and September of each year, equal to the percentage change in the cost-of-living index for the preceding six months.



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

October 6, 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the Commission's views on enrolled bill, S. 14, "To provide cost-of-living adjustments in retirement pay of certain Federal judges."

S. 14 would provide cost-of-living adjustments in retirement pay of territorial judges retiring under section 373 of title 28, United States Code, computed as specified in section 8340(b) of title 5, United States Code for civil service annuitants. Total pay as increased would be limited to 95 percent of the salary of a territorial judge in active service.

There is no provision under present law for increasing the retirement pay of a territorial judge when he relinquishes office by resignation or upon expiration of his term appointment.

While the provisions of the enrolled bill would not directly or substantially affect any of the programs administered by the Commission we believe they are justified. Since such matters are for the consideration of the Judicial Conference of the United States, however, the Commission defers to the opinion of that Conference.

By direction of the Commission:

Sincerely yours,

Handwritten signature of Robert Hampton in cursive script.
Chairman

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

October 1, 1976

WILLIAM E. FOLEY
DEPUTY DIRECTOR

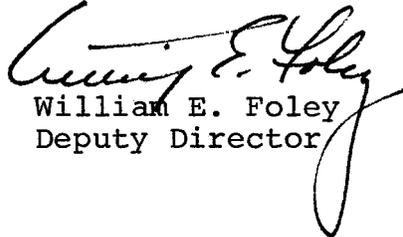
Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C.

Dear Mr. Frey:

This is in response to your enrolled bill request of October 1, 1976, requesting views and recommendations on S. 14, an act "To provide cost-of-living adjustments in retirement pay of certain Federal judges."

Inasmuch as this legislation was proposed by the Judicial Conference of the United States, Executive approval is recommended.

Sincerely,


William E. Foley
Deputy Director

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

89

Date: October 7

Time: 600pm

FOR ACTION: Paul Leach
Max Friedersdorf
Bobbie Kilberg
Dick Parsons

cc (for information): Jack Marsh
Jim Connor
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 9

Time: noon

SUBJECT:

S.14 -Cost-of-living adjustment for retired territorial judges

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Approved.

Ken Lazarus

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

89

Date: October 7

Time: 600pm

FOR ACTION: Paul Leach
Max Friedersdorf
Bobbie Kilberg
Dick Parsons

cc (for information): Jack Marsh
Jim Connor
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 9

Time: noon

SUBJECT:

S.14 -Cost-of-living adjustment for retired territorial judges

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Approve. RJD
please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

October 11, 1976

CANNON

MEMORANDUM FOR:

JIM ~~CAVANAUGH~~

FROM:

MAX L. FRIEDERSDORF *M. L. F.*

SUBJECT:

S.14-Cost-of-living adjustment for retired territorial judges

The Office of Legislative Affairs concurs with the agencies that the legislation, Cost-of-living adjustment for retired territorial judges should be signed.

Attachments

COST-OF-LIVING ADJUSTMENTS FOR RETIRED TERRITORIAL JUDGES

SEPTEMBER 17, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DANIELSON, from the Committee on the Judiciary,
submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany S. 14]

The Committee on the Judiciary, to whom was referred the bill (S. 14) to provide cost-of-living adjustments in retirement pay of certain Federal judges, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to amend section 373 of title 28, United States Code, by adding a new paragraph to such section in order to grant to eligible judges the same cost-of-living adjustments in their retirement compensation as is given to annuitants under the civil service retirement fund as provided and computed in section 8340(b) of title 5, United States Code.

STATEMENT

The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico are divided into 94 judicial districts with each of such districts having a separate court of record known as the U.S. district court for such district. These several courts have a current complement of 400 district judges who have life-time tenure pursuant to article III of the Constitution. In addition, the Congress has created in the several territories and possessions of the United States a U.S. district court. These courts are known as the district court for the district of the Canal Zone, the district court of Guam and the district court of

the Virgin Islands. Judges of these territorial courts are appointed for 8-year terms and may be reappointed for additional terms in the office. These territorial courts exercise the broad range of the judicial power of the U.S. Government within their respective territories. They have jurisdiction over proceedings to enforce the criminal laws of the United States and jurisdiction in civil cases to the same extent as the district courts located in the 94 judicial districts previously mentioned. In addition, some of these courts exercise certain "local jurisdiction" arising pursuant to the Organic Acts relating to the specific territory. Except for the difference between the life-tenure judges in the one instance and the limited-term of 8 years in the second instance, all of these courts are district courts of the United States in the geographical entities where the United States exercises dominion.

Under sections 371 and 373 of title 28, United States Code, the judges of these courts become eligible for retirement upon meeting the identical requirements of age and time in office. Under section 371, a life-tenure judge may retire at age 70 with 10 years of service or at age 65 with 15 years of service. Similarly, under section 373, a territorial or limited-term judge may retire at age 70 after 10 years of service or at age 65 after 15 years of service. However, in the case of life-tenure judges, provision is made in subsection (b) of section 371 for a life-tenure judge to take "senior status" in lieu of resigning the office as a means of retirement. Under section 294(b) of title 28, a judge who has retired from regular active service, in lieu of resignation, is designated as a "senior judge" as provided in section 271(b). A "senior" judge who retires from regular active service continues to retain the office of judge and as such he is subject to assignment and designation to perform such judicial duties as he is willing and physically able to undertake as authorized under section 294 of title 28. A life-tenure judge who retires by electing senior status continues to draw for the remainder of his life the salary of the office. This continued entitlement to the salary of the office is a major inducement to life-tenure judges to elect such senior status, in which capacity they can continue to perform judicial services which are of great value to the Federal judicial system.

A life-tenure judge who does not elect to take senior status may retire by resignation from the office under subsection 371(a) of title 28, in which event he receives for the remainder of his life the salary he was receiving at the time he resigned.

These two methods of retirement, that is by resignation of the office or by an election to take senior status, were enacted by the Congress in order to carry out a sound national policy, to wit, that the knowledge and experience possessed by Federal judges when they reach the age of normal retirement should not be lost through resignation from the office but should be retained and preserved through the senior judge system. Also, the assignment and designation of senior judges to continue to serve, when willing and able, in a judicial capacity, affords the Federal judicial system a degree of flexibility achieved by this pool of experienced judicial talent. Many of the State judicial systems have similar provisions for the continued use of retired judges in a judicial capacity.

In the case of territorial judges, however, and because they are appointed to limited terms of 8 years, it is not possible for the Congress to permit such limited-term judges to elect senior status whereby they retain the office by "retirement from regular active service".

This inability of territorial or limited-term judges to elect senior status as a means of retirement is the sole distinction between the life-tenure judges on the one hand and the limited-term judges on the other hand. As previously stated herein, both classes of judges exercise the same judicial power; both classes of judges draw the same compensation; and both classes of judges must comply with the same age and years of service in order to qualify for retirement.

Hearings on this bill were held by the Senate Judiciary Subcommittee on Improvements in Judicial Machinery on October 7, 1975, and in this Committee's Subcommittee on Courts, Civil Liberties, and the Administration of Justice on May 20, 1975. The Administrative Office of the U.S. Courts expressed their support for the bill at both hearings; Judge Guthrie F. Crowe of the district court of the Canal Zone testified at the Senate hearing.

S. 14 would affect a very small number of judges who have been placed in an unique situation for federal judges; unable to elect "senior status," and limited to an annuity of their salary when they left office. Those judges presently affected include a former justice of the Supreme Court of the territory of Hawaii, one judge from Guam, and two from the Virgin Islands. Thus, the number of territorial judges and the retirement compensation to which they are entitled can be summarized as follows:

Name	Retirement date	Court	Years of service	Retirement compensation
Justice Louis LeBaron.....	Feb. 14, 1955	Supreme Court Hawaii.....	18	\$10,000
Judge Herman E. Moore.....	Nov. 15, 1957	Virgin Islands.....	18	22,500
Judge Walter A. Gordon.....	Oct. 1, 1968	do.....	10	30,000
Judge Paul D. Shriver.....	Oct. 1, 1969	Guam.....	19	40,000

The future annuitants would be any territorial judge who is eligible to receive the annuity. At present the district courts of the Canal Zone and Guam each have one judge, and the district court of the Virgin Islands have two judges.

Since 1955 the Consumer Price Index has increased 97 percent, thus the purchasing power of retirement compensation dating back to that point in time has been reduced by one-half. As regards civil service retirees, the Congress has seen fit to enact periodic percentage increases in the annuities payable under the civil service system. Beginning in 1969, the Congress passed legislation providing for an automatic cost-of-living escalator triggered by a 3 percent rise in the Consumer Price Index. (Public Law 91-93). In total the periodic adjustments and the automatic cost-of-living adjustments granted to civil service retirees since June of 1956 has amounted to 158 percent. While the committee hopes that this Nation has seen the worst of the inflationary spiral which has occurred over the last 20 years, the committee does recognize that the effect of the inflationary process is to erode the benefits of the retirement provisions for these territorial judges in the same manner and to the same extent as it would have eroded the retirement annuities of annuitants under the civil service retirement fund.

Therefore, the committee finds it is necessary to provide for these territorial judges a cost-of-living adjustment in order to carry out the intent of the Congress that adequate retirement provisions be an emolument of the judicial office granted by the government in return for long and faithful service in a judicial capacity.

The provisions of the bill as amended herein would grant to retired territorial judges who are eligible for retirement under section 373 of title 28 an adjustment in their retirement compensation based upon the formula set forth in section 8340(b) of title 5, United States Code. This is the so-called 3 percent plus 1 percent formula. This formula is incorporated by reference in order to assure that the formula for adjusting the compensation of territorial judges would always remain the same as the formula used for civil service retirees. If that formula is changed, or the one-percent "kicker" is eliminated, it will effect the annuitants, too.

OVERSIGHT

The Committee on the Judiciary has oversight of federal courts and of the annuity programs for judicial officers. The hearing on May 20, 1976, focused on the specific legislation to provide reasonable annuities to federal territorial judges.

No statement has been received on the legislation from the House Committee on Government Operations.

STATEMENT OF THE CONGRESSIONAL BUDGET OFFICE

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the Committee estimates the following costs of S. 14.

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 10, 1976.

HON. PETER W. RODINO, JR.,
Chairman, Judiciary Committee, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 14, a bill to provide cost-of-living adjustments in retirement pay of certain Federal judges.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin, Director.

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE,
SEPTEMBER 10, 1976

1. Bill number: S. 14.
2. Bill title: To provide cost-of-living adjustments in retirement pay of certain Federal judges.

3. Bill purpose: The bill amends section 373 of title 28 by providing territorial judges with a cost-of-living adjustment in retirement pay equivalent to the increases received by civil servants under section 8340(b) of title 5 (i.e., annuity increases tied to the consumer price index with a one percent kicker). The bill also limits the retirement pay of territorial judges to 95 percent of an active U.S. district court judge's salary.

4. Cost estimate: This bill would result in the following costs for the increased annuities of the four territorial judges who retired under section 373:

Fiscal year:	
1977	----- \$7, 200
1978	----- 14, 900
1979	----- 23, 100
1980	----- 31, 900
1981	----- 41, 300

5. Basis of estimate: There are four retired judges affected by this bill, who receive an average annuity of \$25,625 per year. It was assumed that the consumer price index would increase at approximately 6 percent per year, over the projection period. Consequently, annuities would rise in each fiscal year by approximately 7 percent.

This estimate does not include costs for any active territorial judges that may retire in the future and be eligible for these increased annuity benefits, since there are only four active territorial judges of whom only one will be eligible for retirement within the projection period.

6. Cost comparison: None.

7. Previous CBO estimate: None.

8. Estimate prepared by James V. Manaro.

9. Estimate approved by James L. Blum, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

The legislation will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

COMMITTEE VOTE

S. 14 was reported favorably without amendment and by voice vote of the Committee on September 2, 1976. Twenty-nine members were present.

SECTIONAL ANALYSIS

As explained in the body of the report, the purpose of the bill as amended, is to enact an automatic cost-of-living adjustment in the retirement compensation, payable to judges of territorial courts, who have qualified for retirement after reaching the age and serving for

the number of years specified in section 373. The phrase "or who is otherwise entitled to payments under this section", is intended to include the judges who previously served on the district court for the territory of Alaska, on the district court for the district of Hawaii, or as Justices of the Supreme Court of the territory of Hawaii. This inclusion is necessary since by public law 85-508, relating to Alaska, and public law 86-3, relating to Hawaii, the benefits of section 373 were extended to judges serving on these courts prior to statehood. As the amendments states, the formula for a cost-of-living adjustment as set forth in section 8340(b) of title 5, is incorporated by reference in order to assure that the adjustment in the retirement compensation of judges coincides with the adjustment applicable to civil service retirees. There recently has been question raised about the desirability of the 1 percent factor expressed in that formula. If, for example, the 1 percent factor were to be changed or eliminated for civil service retirees, it would also be changed or eliminated for the territorial judges included in this legislation. For the reasons expressed in the body of the report, the proviso would limit the total compensation payable to a retired territorial judge as increased under this act to a figure not in excess of 95 percent of the salary payable to a U.S. district court judge in regular active service.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

SECTION 373 OF TITLE 28 OF THE UNITED STATES CODE

§373. Judges in Territories and Possessions

Any judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District of the Virgin Islands, who resigns after attaining the age of seventy years and after serving at least ten years, continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years, continuously or otherwise, shall continue during the remainder of his life to receive the salary he received when he relinquished office.

Any judge of any such courts who is removed by the President of the United States upon the sole ground of mental or physical disability, or who fails of reappointment, shall be entitled, upon attaining the age of sixty-five years or upon relinquishing office if he is then beyond the age of sixty-five years, (a) if his judicial service aggregated sixteen years or more, to receive during the remainder of his life the salary he received when he relinquished office, or (b) if his judicial service aggregated less than sixteen years but not less than ten years, to receive during the remainder of his life that proportion of such salary which the aggregate number of years of his judicial service bears to sixteen.

Service at any time in any of the courts referred to in the first paragraph, or in any other court under appointment by the President, shall be included in the computation of aggregate years of judicial service for the purposes of this section.

Any judge who has retired by resigning under the provisions of this section, or who is otherwise entitled to payments under this section, shall be entitled after the effective date of this Act to a cost-of-living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, United States Code: Provided, however, That in no case shall the salary or amount payable to such judge as increased under this paragraph exceed 95 per centum of the salary of a United States district court judge in regular active service.

○

COST-OF-LIVING ADJUSTMENTS FOR RETIRED TERRITORIAL JUDGES

FEBRUARY 2, 1976.—Ordered to be printed

Mr. McCLELLAN, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 14]

The Committee on the Judiciary to which was referred the bill (S. 14) to provide a cost-of-living adjustment in retirement pay of certain Federal judges, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to amend section 373 of title 28, United States Code, by adding a new paragraph to such section in order to grant to eligible judges the same cost-of-living adjustments in their retirement compensation as is given to annuitants under the civil service retirement fund as provided and computed in section 8340(b) of title 5, United States Code.

AMENDMENT

The committee recommends an amendment as follows:

1. Strike everything after the enacting clause and substitute in lieu thereof the following:

That section 373 of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:

"Any judge who has retired by resigning under the provisions of this section, or who is otherwise entitled to payments under this section, shall be entitled after the effective date of this act to a cost-of-living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, United States Code; provided, however, that in no case shall the salary or amount payable to such judge as increased under this paragraph exceed 95 percent of the salary of a U.S. district court judge in regular active service."

PURPOSE OF THE AMENDMENT

The single amendment, in the nature of a substitute, has three purposes:

1. To incorporate by reference the formula specified in 5 United States Code 8340(b) rather than to enact a wholly separate formula applicable to retired territorial judges of the United States;
2. To limit the total amount payable by virtue of any such cost-of-living adjustment to 95 percent of the salary payable to a U.S. district court judge in regular active service; and
3. To delete from the bill the inclusion of life-tenure district court judges who retire by resigning the office under section 371(a) of title 28, United States Code.

STATEMENT

The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico are divided into 94 judicial districts with each of such districts having a separate court of record known as the U.S. district court for such district. These several courts have a current complement of 400 district judges who have life-time tenure pursuant to article III of the Constitution. In addition, the Congress has created in the several territories and possessions of the United States a U.S. district court. These courts are known as the district court for the district of the Canal Zone, the district court of Guam and the district court of the Virgin Islands. Judges of these territorial courts are appointed for 8-year terms and may be reappointed for additional terms in the office. These territorial courts exercise the broad range of the judicial power of the U.S. Government within their respective territories. They have jurisdiction over proceedings to enforce the criminal laws of the United States and jurisdiction in civil cases to the same extent as the district courts located in the 94 judicial districts previously mentioned. In addition, some of these courts exercise certain "local jurisdiction" arising pursuant to the Organic Acts relating to the specific territory. Except for the difference between the life-tenure judges in the one instance and the limited-term of 8 years in the second instance, all of these courts are district courts of the United States in the geographical entities where the United States exercises dominion.

Under sections 371 and 373 of title 28, United States Code, the judges of these courts become eligible for retirement upon meeting the identical requirements of age and time in office. Under section 371, a life-tenure judge may retire at age 70 with 10 years of service or at age 65 with 15 years of service. Similarly, under section 373, a territorial or limited-term judge may retire at age 70 after 10 years of service or at age 65 after 15 years of service. However, in the case of life-tenure judges, provision is made in subsection (b) of section 371 for a life-tenure judge to take "senior status" in lieu of resigning the office as a means of retirement. Under section 294(b) of title 28, a judge who has retired from regular active service, in lieu of resignation, is designated as a "senior judge" as provided in section 271(b). A "senior" judge who retires from regular active service continues to retain the office of judge and as such he is subject to assignment and

designation to perform such judicial duties as he is willing and physically able to undertake as authorized under section 294 of title 28. A life-tenure judge who retires by electing senior status continues to draw for the remainder of his life the salary of the office. This continued entitlement to the salary of the office is a major inducement to life-tenure judges to elect such senior status, in which capacity they can continue to perform judicial services which are of great value to the Federal judicial system.

A life-tenure judge who does not elect to take senior status may retire by resignation from the office under subsection 371(a) of title 28, in which event he receives for the remainder of his life the salary he was receiving at the time he resigned.

These two methods of retirement, that is by resignation of the office or by an election to take senior status, were enacted by the Congress in order to carry out a sound national policy, to wit, that the knowledge and experience possessed by Federal judges when they reach the age of normal retirement should not be lost through resignation from the office but should be retained and preserved through the senior judge system. Also, the assignment and designation of senior judges to continue to serve, when willing and able, in a judicial capacity, affords the Federal judicial system a degree of flexibility achieved by this pool of experienced judicial talent. Many of the State judicial systems have similar provisions for the continued use of retired judges in a judicial capacity.

In the case of territorial judges, however, and because they are appointed to limited terms of 8 years, it is not possible for the Congress to permit such limited-term judges to elect senior status whereby they retain the office by "retirement from regular active service".

This inability of territorial or limited-term judges to elect senior status as a means of retirement is the sole distinction between the life-tenure judges on the one hand and the limited-term judges on the other hand. As previously stated herein, both classes of judges exercise the same judicial power; both classes of judges draw the same compensation; and both classes of judges must comply with the same age and years of service in order to qualify for retirement.

In recognition of the fact that the active service provided by both life-tenure and limited-term judges is the same, Senator McClellan introduced S. 14 in order to overcome an inequity in the retirement compensation of the territorial judges as compared to the life-tenure judges. Hearings on this bill were held on October 7th of this year and testimony was received from representatives of the administrative office of the U.S. courts and from Judge Guthrie F. Crowe of the district court of the Canal Zone.

The district court of the Canal Zone has one judge, the district court of Guam has one judge, and the district court of the Virgin Islands has two judges. Evidence received at the hearing disclosed there currently are three retired district judges of these territorial courts. In addition when Hawaii achieved statehood the retirement provisions of section 373 were made applicable to certain justices of the Supreme Court of the territory of Hawaii, of which justices, only one (Justice Louis LeBaron) is still receiving retirement compensation under section 373.

Thus, the number of territorial judges and the retirement compensation to which they are entitled can be summarized as follows:

Name	Retirement date	Court	Years of service	Retirement compensation
Justice Louis LeBorgne	Feb. 14, 1955	Supreme Court Hawaii	18	\$10,000
Judge Hermand E. Moore	Nov. 15, 1957	Virgin Islands	18	22,500
Judge Walter A. Gordon	Oct. 1, 1968	do	10	30,000
Judge Paul D. Shriver	Oct. 1, 1969	Guam	19	40,000

Since 1955 the Consumer Price Index has increased 97 percent, thus the purchasing power of retirement compensation dating back to that point in time has been reduced by one-half. As regards civil service retirees, the Congress has seen fit to enact periodic percentage increases in the annuities payable under the civil service system. Beginning in 1969, the Congress passed legislation providing for an automatic cost-of-living escalator triggered by a 3 percent rise in the Consumer Price Index. (Public Law 91-93) In total the periodic adjustments and the automatic cost-of-living adjustments granted to civil service retirees since June of 1956 has amounted to 158 percent. While the committee hopes that this Nation has seen the worst of the inflationary spiral which has occurred over the last 20 years, the committee does recognize that the effect of the inflationary process is to erode the benefits of the retirement provisions for these territorial judges in the same manner and to the same extent as it would have eroded the retirement annuities of annuitants under the civil service retirement fund. Therefore, the committee finds it is necessary to provide for these territorial judges a cost-of-living adjustment in order to carry out the intent of the Congress that adequate retirement provisions be an emolument of the judicial office granted by the government in return for long and faithful service in a judicial capacity.

The provisions of the bill as amended herein would grant to retired territorial judges who are eligible for retirement under section 373 of title 28 an adjustment in their retirement compensation based upon the formula set forth in section 8340(b) of title 5, United States Code. This is the so-called 3 percent plus 1 percent formula. This formula is incorporated by reference in order to assure that the formula for adjusting the compensation of territorial judges would always remain the same as the formula used for civil service retirees.

Under the bill as amended, this cost-of-living adjustment will not inure to the benefit of life-tenure judges who retire by resigning under section 371(a) of title 28. Ever since Congress enacted the "senior status" retirement provision contained in section 371(b), the vast majority of Federal judges have elected to retire by becoming senior judges. At the present time there is only one judge who has retired by resigning under section 371(a). The committee believes that it is unwise to extend the benefits of the cost-of-living adjustments provided in the bill to life-tenure judges who resign under section 371(a). Were this to be done, the committee fears that the legislation would substantially remove part of the inducement for a Federal judge to enter senior status where he will continue to receive "the salary of the office" and in which capacity he will continue to render valuable services.

Similarly the committee has deemed it advisable to insert the 95 percent limitation in order to keep the retirement compensation of these territorial judges below the level of compensation paid either to active judges or to senior judges who continue to furnish valued services.

COMMUNICATIONS

A representative of the administrative office of the U.S. courts testified at the hearing. He transmitted the view of the Judicial Conference of the United States to the effect that the conference had approved the provisions of S. 14 as originally introduced. Since the hearing, the committee has had further correspondence with the Chief Justice, who serves as chairman of the Judicial Conference of the United States, and has received the following letter with reference to the bill:

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., October 20, 1975.

HON. QUENTIN N. BURDICK,
Chairman, Subcommittee on Improvements in Judicial Machinery,
Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR BURDICK: In view of the question you raise regarding the provision in the Judicial Conference approved bill, S. 14, which would grant cost-of-living increases to Federal judges resigning under section 371(a) of title 28, United States Code, I strongly suggest that this provision be deleted from the bill. Those judges who have resigned rather than retire have all, so far as I know, done so to accept other private employment at substantial incomes. If there is any justification for treating a resignation on the same basis as a retirement where the judge continues to perform services, I am not familiar with it.

If, after considering your thoughtful letter, the Judicial Conference Committee wishes to pursue the matter at a later date, it may do so in an independent bill. This course of action would avoid the delay involved in resubmitting the entire bill for further study.

Cordially,

WILLIAM E. BURGER.

ESTIMATED COSTS

As shown in the body of the report, there are four territorial judges presently receiving retirement compensation under section 373 of title 28. If the provisions of this bill become law, and assuming a 3 percent rise in the price index, one judge would receive a \$400 adjustment; another judge would receive a \$900 adjustment, and a third judge would receive a \$1,200 adjustment, for a total annual cost of \$2,500. The fourth judge would receive no adjustment because his current retirement compensation would exceed the 95 percent limit specified in the bill as amended. If a 5 percent rise in the price index is assumed, the total annual cost would be \$3,750. Because there are only a total of four judges serving on the three territorial courts named in this bill, it is likely that the number of retired judges affected by this legislation would not exceed five in number.

SECTIONAL ANALYSIS

As explained in the body of the report, the purpose of the bill as amended, is to enact an automatic cost-of-living adjustment in the retirement compensation, payable to judges of territorial courts, who have qualified for retirement after reaching the age and serving for the number of years specified in section 373. The phrase "or who is otherwise entitled to payments under this section", is intended to include the judges who previously served on the district court for the territory of Alaska, on the district court for the district of Hawaii, or as Justices of the Supreme Court of the territory of Hawaii. This inclusion is necessary since by public law 85-508, relating to Alaska, and public law 86-3, relating to Hawaii, the benefits of section 373 were extended to judges serving on these courts prior to statehood. As the amendments states, the formula for a cost-of-living adjustment as set forth in section 8340(b) of title 5, is incorporated by reference in order to assure that the adjustment in the retirement compensation of judges coincides with the adjustment applicable to civil service retirees. There recently has been question raised about the desirability of the 1 percent factor expressed in that formula. If, for example, the 1 percent factor were to be changed or eliminated for civil service retirees, it would also be changed or eliminated for the territorial judges included in this legislation. For the reasons expressed in the body of the report, the proviso would limit the total compensation payable to a retired territorial judge as increased under this act to a figure not in excess of 95 percent of the salary payable to a U.S. district court judge in regular active service.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: (Existing law is shown in roman, matter repealed enclosed in black brackets, and new matter is printed in italic).

CHAPTER 17 OF TITLE 28, UNITED STATES CODE

Chapter 17—Resignation and Retirement of Judges

* * * * *

§ 373. Judges in Territories and Possessions.

Any judge of the United States District Court for the District of the Canal Zone, the District Court of Guam, or the District Court of the Virgin Islands, who resigns after attaining the age of seventy years and after serving at least ten years, continuously or otherwise, or after attaining the age of sixty-five years and after serving at least fifteen years, continuously or otherwise, shall continue during the remainder of his life to receive the salary he received when he relinquished office.

* * * * *

"Any judge who has retired by resigning under the provisions of this section, or who is otherwise entitled to payments under this section, shall be entitled after the effective date of this Act to a cost-of-living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, United States Code; provided, however, that in no case shall the salary or amount payable to such judge as increased under this paragraph exceed 95 percent of the salary of a United States district court judge in regular active service."

RECOMMENDATIONS

The committee believes that S. 14, as amended, is meritorious and recommends that it do pass.



Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To provide cost-of-living adjustments in retirement pay of certain Federal judges.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 373 of title 28, United States Code, is amended by adding at the end thereof the following new paragraph:

*“Any judge who has retired by resigning under the provisions of this section, or who is otherwise entitled to payments under this section, shall be entitled after the effective date of this Act to a cost-of-living adjustment in the amount payable to him computed as specified in section 8340(b) of title 5, United States Code: *Provided, however,* That in no case shall the salary or amount payable to such judge as increased under this paragraph exceed 95 per centum of the salary of a United States district court judge in regular active service.”.*

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*