69TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 195

TO AMEND THE NATIONAL DEFENSE ACT IN RELATION TO RETIREMENT OF OFFICERS

FEBRUARY 4, 1926.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. WURZBACH, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 3995]

The Committee on Military Affairs, to which was referred the bill (H. R. 3995) to amend the national defense act approved June 3, 1916, as amended by the act of June 4, 1920, relating to retirement, having considered the same, report favorably thereon with the recommendation that it do pass.

A similar measure (H. R. 5084) was favorably reported by your committee during the first session of the Sixty-eighth Congress and passed the House by an overwhelming vote. It first passed without a roll call, and later a motion to reconsider was defeated 35 to 220.

Senator Wadsworth, in explaining the measure in the Senate later, as found on page 4038 of volume 66, part 4, of the Congressional Record, stated:

> Having conceded that it might be very well to permit certain officers over the age of 45 years to come into the Regular Army, in 1920 the Military Committees of the two Houses, in finishing the drafting of the national defense act, decided that those officers should not have the same retirement privileges with the respect to the retirement upon age as officers who entered the service in their early twenties, served on through their twenties, their thirties, and their forties, on toward to the age of 64, so we placed a provision in the national defense act of 1920 to the effect that officers appointed in the Regular Army over the age of 45 should, when retired, it being assumed that they would retire at the age of 64, receive as retired pay 4 per cent of their active pay, multiplied by the number of years they had served.
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> "That was all fairly well understood. In other words, an officer coming in, we will say, at the age of 50, being retired at the age of 64—and, of course, none of these retirements have yet occurred—would receive 4 per cent for 14 years' service instead of 75 per cent of his active pay. In other words, he would get less retired pay than the officer who had spent his life in the Army and had reached the age of 64.
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> "We forgot one thing, however, I admit it on my own part, because I was one of those who helped draft the law. We forgot that these officers who came in over

the age of 45 might be seriously injured in line of duty, and if thus injured and rendered helpless for the rest of their lives they might be thrown out of the Army, retired for physical disability, with pay equal to only 4 per cent of their pay multiplied by the number of years they had served. For example, if one of these officers to-day should be severely injured in line of duty and his retirement compelled under the law, having served only four years, he would get only 16 per cent of his active pay as his retired pay."

The report made on H. R. 5084, Sixty-eighth Congress, goes into the subject matter in considerable detail, and that report is made a part of this report, as follows:

[House Report No. 495, Sixty-eighth Congress, first session]

The Committee on Military Affairs, to which was referred H. R. 5084, to amend section 24 of the national defense act, approved June 4, 1920, report the same to the House with one amendment, with the recommendation that the bill as amended do pass.

The amendment consists of a proviso added to the bill, as follows:

"*Provided*, That no officer shall be retired for any cause unless the Secretary of War shall certify in writing that such officer is unable to render effective service in any branch or division of the Military Establishment."

EXPLANATION OF THE PURPOSE OF THE BILL

The purpose of the bill is to eliminate what appears to be an unjust discrimination as between officers of the Army commissioned on July 1, 1920, when above the age of 45 years, and who were emergency officers during the World War, and all other officers of the Army of any other date of commission, by equalizing their retired pay in cases where they are retired on account of disability incurred in line of duty.

By section 24 of the national defense act, approved June 4, 1920 (quoted in Appendix A hereto), provision was made for filling a part of the vacancies created by the act by the commissioning in the Regular Army, under limitations mentioned, of persons who had served as officers in the emergency forces during the World War. It was further provided that no person should be thus appointed who was above 58 years of age and that officers who were above the age of 45 years when appointed should, when retired, receive retired pay at the rate of 4 per cent of active pay for each complete year of commissioned service in the Army.

As indicating the attitude of Congress toward the commissioning of officers of the emergency forces who were above the age of 45 years, the following is quoted from the report of the Committee on Military Affairs with reference to said section. (Rept. No. 680, 66th Cong., 2d sess., p. 8:)

"The amendment here presented provides for filling the vacancies to be created by the passage of this bill. It is intended to make use of the excellent material developed and trained during the war by filling vacancies, so far as possible, by the appointment of men who have already served as officers. The high age limit of 54 years (subsequently raised to 58 years) is set in order to obtain the services of a number of men of advanced years and high abilities, particularly for some of the technical staff departments. The objection that these men will soon be retired and thus become a charge on the Government is met by providing a reduced scale of pay for them, so that the maximum retired pay will not be allowed unless they serve 19 years."

In hearings before the subcommittee it was testified that prior to their appointment it was the general belief among emergency officers who had observed the retirement provisions of section 24 of the act of June 4, 1920, that such provisions reduced the amount of the retired pay of an officer appointed when above the age of 45 years only if he were retired for age, and had no effect upon the amount of his retired pay if he should be retired on account of disability in line of duty. In view of the fact that said section 24, aside from the clauses defining eligibility, deals exclusively with the question of age, and in view of the language quoted above from the report of the Military Affairs Committee, it can hardly be said that the emergency officers were not reasonably justified in accepting their commissions in the belief that, should they subsequently be retired for disability, their retired pay would not be governed by the provisions of said section 24.

The Comptroller General has ruled that said section 24 applies to retirement for disability in line of duty as well as to retirement for age.

To allow to officers of the class being considered, who are retired for disability only the limited retired pay of 4 per cent of active pay for each complete year of service, and to all other officers a full 75 per cent of their active pay, constitutes an unjustifiable discrimination. There is no relationship whatsoever between retirement for age and retirement for disability. Outside of said section 24, every law passed by Congress with respect to retirement recognizes this fact. Under these laws when an officer reaches the age of 64 he is retired on three-fourths pay; and if retired for disability after one year's or one day's service he likewise receives three-fourths pay. Disability in line of duty is a casualty of the service and is as apt to occur to a man of 25 as to a man of 55. Of all officers appointed under said section 24 who were above the age of 45, 2.78 per cent have been retired for disability; and of all officers appointed under said section who were under the age of 45, 2.58 per cent have been retired for disability.

The unjustifiable discrimination made by said section 24, as interpreted by the Comptroller General, further appears from the following facts adduced at the hearings:

If a first lieutenant appointed under section 24, when above the age of 45, and a first lieutenant out of West Point, appointed at the same time, had, within one year, both been injured during a field duty which they were performing jointly, the lieutenant above 45 would receive, as retired pay, $80 per year, and the young lieutenant $1,500 per year.

The Medical Corps is recruited from civil life in the grade of captain. If a medical officer be appointed to-day in the grade of captain and becomes disabled a year from to-day, he will receive as retired pay $1,800 per year; whereas an officer appointed as of July 1, 1920, when above 45 years of age, would, had he suffered a like casualty at the end of one year, have received as retired pay $96 per year.

Take the case of two officers appointed under the provisions of said section 24, one of whom was, when appointed, one month over 45 and the other one month under 45 years of age. Operating together during maneuvers they are permanently disabled by the explosion of field piece. Assume that each is a major and that each has had four years of service. The one who was appointed when above 45 would receive as retired pay $504 per year, whereas the one who was two months his junior would receive as retired pay $2,362.50 per year.

It is only to this particular class of officers, namely, those who had tendered their services to their country in time of war, and who had served during the World War, and who were above the age of 45 years on July 1, 1920, when their commissions are dated—it is only to this class of officers that the discrimination applies. If an officer be appointed upon any other date than July 1, 1920, although above the age of 45, he is subject to no discrimination whatever, but receives, when retired, whether for age or for disability, 75 per cent of his base pay. In other words, it is only the officer above 45 whose commission is dated July 1, 1920, that lies under the discrimination referred to. Two concrete illustrations of this fact will now be given.

An officer of the Regular Army resigned in 1919, when a major. Section 24–e of the national defense act permits the reappointment of a former officer, and provides that when thus reappointed he shall be commissioned in the grade determined by the place assigned him on the promotion list. This officer, on December 15, 1920, was reappointed under said section 24–e and, under 24–a, was commissioned in the grade of colonel. He was then 48 years of age. He has since been retired and receives full three-fourths pay.

In 1917 an emergency officer of the age of 58 years was commissioned in the Regular Army in the grade of major. About one year ago he was retired for age upon 75 per cent of his base pay.

Aside from said section 24, only one other act of Congress (sec. 24–b of the same act) provides for the retirement of an officer on less than 75 per cent of his base pay. This other exception applies to class B officers; that is, officers who have been found inefficient, and who are retired because of such inefficiency, but whose inefficiency is not due to their "neglect, misconduct, or avoidable habits." It is rather humiliating, as well as unjust, to class with these incompetents those officers described by the Military Affairs Committee as "men of advanced years and high abilities" for whom "the high age limit of 54 years is set in order" that their services may be obtained.

Gen. Kezie W. Walker, Chief of Finance, United States Army, testifying during the hearings on H. R. 5097, on March 25, 1924, asked for his opinion upon H. R. 5084, said:

"I feel that any officer retired for physical disability should have three-quarters of the pay he was receiving at the time he was retired. At the time that pro-

vision in regard to the 45-year-old officers was made, I do not think it was contemplated that any officer would be retired for disability on less than three-quarters of his pay."

H. R. 5084, in form as originally introduced and without the committee amendment above quoted, was referred to the Secretary of War for his opinion. Under date of January 30, 1924, he replied that "H. R. 5084 is viewed with favor by the War Department and its enactment is recommended." He pointed out, however, that the bill, as drawn, limited its benefits to officers retired under section 1251 Revised Statutes, suggested that such benefits should be extended to officers retired under section 1252 Revised Statutes and 26 Statutes 562, and proposed an amendment to accomplish this end. The committee has not adopted his proposed amendment. The Secretary's letter is set out in full in the hearings. Among other things he says:

"Since the law was enacted eight officers have been retired under it; of the eight, two have died, leaving six officers now on the retired list under this provision.

"The unfortunate effect of this law is apparent in the cases of the few officers already retired under it. Their retired pay ranges from $33 to $70 a month, much less than the pay of retired warrant officers and of most retired enlisted men. Most of these officers are married and some have dependent children. Their physical disabilities, age, and, in many cases, their long service in the Army other than as officers cause them to have a negligible earning capacity outside the military profession. Their retired pay is inadequate and, unless the law is amended, other similar cases are certain to arise. A physically incapacitated officer is particularly in need of retired pay adequate for the maintenance of himself and family and it is believed it is fully the intent of Congress to provide adequate pay no matter what the age of the officer when appointed.

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"Of the 256 officers now on the active list who are affected by H. R. 5084 there are 5 in the grade of colonel, 15 in the grade of lieutenant colonel, 98 in the grade of major, 110 in the grade of captain, and 28 in the grade of first lieutenant. Under the present rates of promotion none of them can expect any material advancement in grades before retirement. A majority of these officers were between the ages of 45 and 50 years when appointed. Upon reaching the age of 64 they will have served from 14 to 19 years and, at the rate of 4 per cent per year, will receive as retired pay from 56 to 75 per cent of their active pay at the time of retirement. Most of them will receive 75 per cent. The active pay on which this percentage is taken will, of course, increase with the officer's service. If retired for physical disability before reaching the age of 64 years the base pay, and hence the retired pay, even at the rate of 75 per cent, will, in general, be less than if retired at the age of 64. It is, of course, impossible to even estimate the monetary effect of H. R. 5084, but it is manifest that the bill can not entail any appreciable ultimate increased expense to the Government.

"It is believed that every officer who is tendered and accepts an appointment in the Regular Army pursuant to law, thereby engaging to spend the remainder of his life in the military service, should be subject to the general statute that, if through accident or disease incurred in line of duty his transfer to the retired list becomes necessary, he shall receive as retired pay 75 per cent of his active pay at the time. Enough experience has been had under the one departure from the general rule to indicate that such departure is inequitable and contrary to the best interests of the service."

The enactment of the committee amendment would, it is believed, be of advantage to these officers by reason of permitting them, unless sooner retired for disability, to remain in the service a length of time sufficient to permit them to earn the full 75 per cent retired pay, and of advantage to the Government by reason of permitting it to avail itself of their services for a greater number of years, before putting them on the retired list, than would otherwise be possible.

APPENDIX A

Section 24, national defense act:

"SEC. 24. *Filling of vacancies.*—Not less than one-half of the total number of vacancies caused by this act, exclusive of those in the Medical Department and among chaplains, shall be filled by the appointment, to date from July 1, 1920, and subject to such examination as the President may prescribe, of persons other than officers of the Regular Army who served as officers of the United States Army at any time between April 6, 1917, and the date of the passage of

this act. A suitable number of such officers shall be appointed in each of the grades below that of brigadier general, according to their qualifications for such grade as may be determined by the board of general officers provided for in this section. No such person above the age of fifty years shall be appointed in a combatant branch, or above the age of fifty-eight in a noncombatant branch. No such person below the age of forty-eight years shall be appointed in the grade of colonel, or below the age of forty-five years in the grade of lieutenant colonel, or below the age of thirty-six years in the grade of major. Not less than three such persons shall be appointed to the grade of colonel in the Judge Advocate General's Department, and not less than eight to the grade of lieutenant colonel in the Judge Advocate General's Department, provided a sufficient number of applicants for such appointments are legally eligible and are found by the board provided for in this section to be properly qualified. Any person originally appointed under the provisions of this act at an age greater than forty-five years shall, when retired, receive retired pay at the rate of 4 per centum of active pay for each complete year of commissioned service in the United States Army, the total to be not more than 75 per centum. * * *"

The War Department continues favorable to the legislation, as is evidenced by the following letter received from the Secretary of War:

JANUARY 16, 1926.

Hon. JOHN M. MORIN,
Chairman Committee on Military Affairs,
House of Representatives.

MY DEAR MR. MORIN: Pursuant to your request of the 8th instant, I am pleased to state the views of the War Department relative to H. R. 3995, a bill to amend the national defense act approved June 3, 1916, as amended by the act of June 4, 1920, relating to retirement.

A similar bill (H. R. 5084) passed the House last year. My predecessor reported thereon in letter to the chairman of your committee under date of January 30, 1924, in which he stated that the War Department viewed the bill with favor, but recommended a substitute bill which would cover not alone those cases falling under 1251 R. S., but also those cases that might arise under 26 Stat. 562 and under 1252 R. S.

It is noted that the bill in reference (H. R. 3995) meets this recommendation of my predecessor except that it does not include in its provisions such cases as might arise under 1252 R. S. (retirement, in discretion of the President, for physical disability not incident to the service).

However, there will in all probability arise but few, if any, cases under section 1252 R. S., hence the bill as drawn will cover practically 100 per cent of the category of officers it is desirable to provide for in the way of retirement.

At the present time there are on the retired list only eight of the category of officers involved (all having been retired for physical disability incident to the service). These eight officers, and all those of the category who are now on the active list (about 250), would be included in the provisions of the bill.

It is manifest, in view of the small disability retirement rate for this class of officers, that the increased expense to the Government involved in the enactment of H. R. 3995 would not be appreciable.

The War Department is therefore in hearty favor of the provisions of H. R. 3995, and it is recommended that it be enacted into law.

The War Department will be glad to furnish any detailed information respecting the subject that may be desired by your committee.

Should War Department witnesses be desired to appear before your committee in hearings on this bill, the following are recommended as being familiar with the subject: Col. Fred W. Coleman, Finance Department, and Maj. O. C. Aleshire, General Staff.

A similar report on S. 96 (identical with H. R. 3995) has been made to the chairman of the Committee on Military Affairs of the Senate under date of January 8, 1926.

This proposed legislation has been submitted to the Director of the Bureau of the Budget, who advises that it is not in conflict with the financial program of the President.

Sincerely yours,

DWIGHT F. DAVIS, *Secretary of War.*

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