CONGRESSIONAL RECORD

Proceedings and Debates of the 85th Congress

SENATE

BILL: H.R. 7866 **DATE:** August 14, 1958

ACTION: Passed with amendment **PAGE** 16186 - 87

AMENDMENT OF TITLE 28, UNITED STATES CODE RELATING TO COURT OF CUSTOMS AND PATENT APPEALS

The Senate proceeded to consider the bill (H. R. 7866) to amend title 28, United States Code, relating to the Court of Customs and Patent Appeals, which had been reported from the Committee on the Judiciary, with an amendment, on page 5, after line 7, to strike out:

(b) Any retired circuit or district judge may be designated and assigned to perform such judicial duties in any circuit as he is willing to undertake. Designation and assignment of such judge for service within his circuit shall be made by the chief jduge or judicial council of the circuit. Designation and assignment for service elsewhere shall be made by the Chief Justice of the United States.

(c) Any retired judge of the Court of Claims, the Court of Customs and Patent Appeals, or the Customs Court may be designated and assigned by the chief judge of such court to perform such judicial duties therein as he is willing to undertake or may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit as he is willing to undertake.

(d) The Chief Justice of the United States shall maintain a roster of judges who have retired from regular active service but who are willing and able to undertake special judicial duties from time to time, which roster shall be known as the Roster of Senior Judges. Any judge of the United States who has retired from regular active service under section 371 (b) or 372 (a) of this title but is willing and able to undertake special judicial duties from time to time either in a particular court or courts specified by him or generally in any court may so indicate by requesting the Chief Justice of the United States to place his name upon the Roster of Senior Judges as available for such duty. The Chief Justice shall remove from the Roster of Senior Judges the name of any such judge who is no longer willing or able to perform any judicial duties. Any retired judge whose name appears upon the Roster of Senior Judges shall be known as a senior judge, and may be designated and assigned by the Chief Justice of the United States to perform such judicial duties as he is willing to undertake in any court of the United States other than the Supreme Court, upon presentation of a certificate of necessity by the chief judge of such court.

And, in lieu thereof, to insert:

(b) Any judge of the United States who has retired from regular active service under section 371 (b) or 372 (a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

(c) Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit or district judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster of senior judges. Any such retired judge of the United States may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit or district judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

The amendment was agreed to.

Mr. TALMADGE. Mr. President, on behalf of the distinguished chairman of the Committee on the Judiciary, I offer amendments to H. R. 7866, to amend title 28, United States Code, relating to the Court of Customs and Patent Appeals. It has come to my attention there is some feeling that the change of the Court of Customs and Patent Appeals from a legislative court to a constitutional court might possibly have an effect on certain laws which provide for appeals to that court in certain instances. In order to meet this possible contingency, I offer the following amendments:

Immediately after section 6 in the bill, insert a new section 7 as follows:

"SEC. 7. Nothing contained in this act shall be construed in any way to limit or alter the jurisdiction heretofore conferred upon the United States Court of Customs and Patent Appeals by any provision of law."

Renumber section 7 as it is presently in the bill as section 8.

The precedent for this proposed legislation is supported by a similar provision relating to the customs court. When the customs court, by Public Law 703 of the 84th Congress, was made a constitutional court, an identical provision was contained therein. I, therefore, move the adoption of these amendments, en bloc.

The PRESIDING OFFICER. The amendments will be stated for the information of the Senate.

The LEGISLATIVE CLERK. Immediately following section 6 in the bill it is proposed to insert a new section 7 as follows:

SEC. 7. Nothing contained in this act shall be construed in any way to limit or alter the jurisdiction heretofore conferred upon the United States Court of Customs and Patent Appeals by any provision of law.

Renumber the succeeding section.

The PRESIDING OFFICER. The question is on agreeing to the amendments offered by the Senator from Georgia, en bloc.

The amendments were agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.