

112TH CONGRESS
1ST SESSION

H. R. 162

To amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into two judicial circuits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. SIMPSON introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into two judicial circuits, 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 “Ninth Circuit Court
5 of Appeals Judgeship and Reorganization Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the term “former ninth circuit” means the
2 ninth judicial circuit of the United States as in ex-
3 istence on the day before the effective date of this
4 Act;

5 (2) the term “new ninth circuit” means the
6 ninth judicial circuit of the United States established
7 by the amendment made by section 3(2)(A); and

8 (3) the term “twelfth circuit” means the twelfth
9 judicial circuit of the United States established by
10 the amendment made by section 3(2)(B).

11 **SEC. 3. NUMBER AND COMPOSITION OF CIRCUITS.**

12 Section 41 of title 28, United States Code, is amend-
13 ed—

14 (1) in the matter preceding the table, by strik-
15 ing “thirteen” and inserting “fourteen”; and

16 (2) in the table—

17 (A) by striking the item relating to the
18 ninth circuit and inserting the following:

“Ninth California, Guam, Hawaii, Northern
Mariana Islands.”;

19 and

20 (B) by inserting after the item relating to
21 the eleventh circuit the following:

“Twelfth Alaska, Arizona, Idaho, Montana, Ne-
vada, Oregon, Washington.”.

22 **SEC. 4. JUDGESHIPS.**

23 (a) NEW JUDGESHIPS.—

1 (1) FOR FORMER NINTH CIRCUIT.—The Presi-
2 dent shall appoint, by and with the advice and con-
3 sent of the Senate, 2 additional circuit judges for
4 the former ninth circuit. The official duty station of
5 a judge appointed under this paragraph shall be in
6 Arizona, California, or Nevada.

7 (2) FOR NEW NINTH CIRCUIT.—The President
8 shall appoint, by and with the advice and consent of
9 the Senate, 3 circuit judges for the new ninth cir-
10 cuit. The judges authorized by this paragraph shall
11 not be appointed before January 21, 2012.

12 (b) TEMPORARY JUDGESHIPS.—

13 (1) APPOINTMENT OF JUDGES.—The President
14 shall appoint, by and with the advice and consent of
15 the Senate, 2 additional circuit judges for the former
16 ninth circuit. The official duty station of a judge ap-
17 pointed under this paragraph shall be in Arizona,
18 California, or Nevada.

19 (2) EFFECT OF VACANCIES.—The first 2 vacan-
20 cies occurring on the new ninth circuit 10 years or
21 more after judges are first confirmed to fill both
22 temporary circuit judgeships created by this sub-
23 section shall not be filled.

24 (c) EFFECTIVE DATE.—This section shall take effect
25 on the date of the enactment of this Act.

1 **SEC. 5. NUMBER OF CIRCUIT JUDGES.**

2 The table contained in section 44(a) of title 28,
3 United States Code, is amended—

4 (1) by striking the item relating to the ninth
5 circuit and inserting the following:

“Ninth 25”;

6 and

7 (2) by inserting after the item relating to the
8 eleventh circuit the following:

“Twelfth 9”.

9 **SEC. 6. PLACES OF CIRCUIT COURT.**

10 The table contained in section 48(a) of title 28,
11 United States Code, is amended—

12 (1) by striking the item relating to the ninth
13 circuit and inserting the following:

“Ninth Honolulu, San Francisco, Pasadena.”;

14 and

15 (2) by inserting after the item relating to the
16 eleventh circuit the following:

“Twelfth Phoenix, Seattle.”.

17 **SEC. 7. ASSIGNMENT OF CIRCUIT JUDGES.**

18 (a) IN GENERAL.—Except as provided in subsection
19 (b), each circuit judge of the former ninth circuit who is
20 in regular active service and whose official duty station
21 on the day before the effective date of this Act—

1 (1) is in California, Guam, Hawaii, or the
2 Northern Mariana Islands shall be a circuit judge of
3 the new ninth circuit as of such effective date; and

4 (2) is in Alaska, Arizona, Idaho, Montana, Ne-
5 vada, Oregon, or Washington shall be a circuit judge
6 of the twelfth circuit as of such effective date.

7 (b) **SPECIAL RULE TO ENSURE STATUTORY DIS-**
8 **TRIBUTION OF JUDGES.**—If the assignment of judges
9 under subsection (a) would result in a number of judges
10 in either the new ninth circuit or the twelfth circuit that
11 exceeds the number provided for that circuit in the table
12 contained in section 44(a) of title 28, United States Code,
13 as amended by section 5 of this Act, then a number of
14 judges accounting for such excess who are the least senior
15 in commission shall be assigned to the other circuit.

16 **SEC. 8. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.**

17 Each judge who is a senior circuit judge of the former
18 ninth circuit on the day before the effective date of this
19 Act may elect to be assigned to the new ninth circuit or
20 to the twelfth circuit as of such effective date, and shall
21 notify the Director of the Administrative Office of the
22 United States Courts of such election.

23 **SEC. 9. SENIORITY OF JUDGES.**

24 The seniority of each judge—

25 (1) who is assigned under section 7, or

1 (2) who elects to be assigned under section 8,
2 shall run from the date of commission of such judge as
3 a judge of the former ninth circuit.

4 **SEC. 10. APPLICATION TO CASES.**

5 The following apply to any case in which, on the day
6 before the effective date of this Act, an appeal or other
7 proceeding has been filed with the former ninth circuit:

8 (1) If the matter has been submitted for deci-
9 sion, further proceedings with respect to the matter
10 shall be had in the same manner and with the same
11 effect as if this Act had not been enacted.

12 (2) If the matter has not been submitted for de-
13 cision, the appeal or proceeding, together with the
14 original papers, printed records, and record entries
15 duly certified, shall, by appropriate orders, be trans-
16 ferred to the court to which the matter would have
17 been submitted had this Act been in full force and
18 effect at the time such appeal was taken or other
19 proceeding commenced, and further proceedings with
20 respect to the case shall be had in the same manner
21 and with the same effect as if the appeal or other
22 proceeding had been filed in such court.

23 (3) A petition for rehearing or a petition for re-
24 hearing en banc in a matter decided before the effec-
25 tive date of this Act, or submitted before the effec-

1 tive date of this Act and decided on or after such
2 effective date as provided in paragraph (1), shall be
3 treated in the same manner and with the same effect
4 as though this Act had not been enacted. If a peti-
5 tion for rehearing en banc is granted, the matter
6 shall be reheard by a court comprised as though this
7 Act had not been enacted.

8 **SEC. 11. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES**
9 **BETWEEN CIRCUITS.**

10 Section 291 of title 28, United States Code, is
11 amended by adding at the end the following new sub-
12 sections:

13 “(c) The chief judge of the Ninth Circuit may, in the
14 public interest and upon request by the chief judge of the
15 Twelfth Circuit, designate and assign temporarily any cir-
16 cuit judge of the Ninth Circuit to act as circuit judge in
17 the Twelfth Circuit.

18 “(d) The chief judge of the Twelfth Circuit may, in
19 the public interest and upon request by the chief judge
20 of the Ninth Circuit, designate and assign temporarily any
21 circuit judge of the Twelfth Circuit to act as circuit judge
22 in the Ninth Circuit.”.

1 **SEC. 12. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES**
2 **BETWEEN CIRCUITS.**

3 Section 292 of title 28, United States Code, is
4 amended by adding at the end the following new sub-
5 sections:

6 “(f) The chief judge of the Ninth Circuit may in the
7 public interest—

8 “(1) upon request by the chief judge of the
9 Twelfth Circuit, designate and assign one or more
10 district judges within the Ninth Circuit to sit upon
11 the Court of Appeals of the Twelfth Circuit or a di-
12 vision thereof whenever the business of that court so
13 requires; and

14 “(2) designate and assign temporarily any dis-
15 trict judge of the Ninth Circuit to hold a district
16 court in any district within the Twelfth Circuit.

17 “(g) The chief judge of the Twelfth Circuit may in
18 the public interest—

19 “(1) upon request by the chief judge of the
20 Ninth Circuit, designate and assign one or more dis-
21 trict judges within the Twelfth Circuit to sit upon
22 the Court of Appeals of the Ninth Circuit or a divi-
23 sion thereof whenever the business of that court so
24 requires; and

1 “(2) designate and assign temporarily any dis-
2 trict judge of the Twelfth Circuit to hold a district
3 court in any district within the Ninth Circuit.

4 “(h) Any designation and assignment of a judge
5 under subsection (f)(1) or (g)(1) shall be in conformity
6 with the rules or orders of the court of appeals of the cir-
7 cuit to which the judge is designated and assigned.”.

8 **SEC. 13. ADMINISTRATIVE COORDINATION.**

9 Section 332 of title 28, United States Code, is
10 amended by adding at the end the following new sub-
11 section:

12 “(i) Any 2 contiguous circuits may jointly carry out
13 such administrative functions and activities as the judicial
14 councils of the 2 circuits determine may benefit from co-
15 ordination or consolidation.”.

16 **SEC. 14. ADMINISTRATION.**

17 The United States Court of Appeals for the Ninth
18 Circuit as constituted on the day before the effective date
19 of this Act may take such administrative action as may
20 be required to carry out this Act and the amendments
21 made by this Act. Such court shall cease to exist for ad-
22 ministrative purposes upon the expiration of the 2-year pe-
23 riod beginning on the effective date of this Act.

1 **SEC. 15. EFFECTIVE DATE.**

2 Except as provided in section 4(c), this Act and the
3 amendments made by this Act shall take effect on the first
4 day of the first fiscal year that begins after the expiration
5 of the 9-month period beginning on the first date on which
6 5 of the judges authorized to be appointed under section
7 4 have been confirmed by the United States Senate.

8 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated such sums
10 as may be necessary to carry out this Act, including funds
11 for additional court facilities.

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