

BANKRUPTCY JUDGESHIP ACT OF 1995

MAY 9, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2604]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2604) to amend title 28, United States Code, to authorize the appointment of additional bankruptcy judges, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY AND PURPOSE

Bankruptcy courts are an essential element of the Federal Judiciary and the American economic system. Unfortunately, total bankruptcy filings are now increasing in every judicial district in the nation. Additional resources are needed in certain districts if the bankruptcy courts are to continue to perform their vital role efficiently and effectively.

H.R. 2604 is intended to provide those resources where needed. The bill authorizes five permanent and six temporary bankruptcy judgeships in eight Federal judicial districts, increasing the total number of judgeships to 337. This represents a reassessment and reduction from the 1993 Judicial Conference request for 19 new positions, which was not acted on by the 103d Congress. It also more faithfully reflects Congressional policy in favor of creating temporary as opposed to permanent judgeships whenever possible and appropriate as a means of limiting future costs.

BACKGROUND AND NEED FOR THE LEGISLATION

Bankruptcy judges serve as judicial officers of the United States District Courts.¹ By contrast with Article III judges, who are nominated by the President and confirmed by the Senate to lifetime positions, bankruptcy judges are selected by the regional United States Courts of Appeals and serve 14-year terms, with eligibility for reappointment.²

At this time there are 326 authorized bankruptcy judgeships nationwide. The most recent increase took place when the Bankruptcy Judgeship Act of 1992 authorized 25 permanent and 10 temporary judgeships.³ Reflecting Congressional concern regarding an appropriate distribution of judicial resources, that Act also directed the Judicial Conference, on a biennial basis, to assess the continuing need for bankruptcy judgeships and to submit any recommendations for the elimination of positions.

In 1994, the Conference recommended that no authorized positions be eliminated but endorsed leaving some judgeships unfilled based on need related considerations. Its 1996 recommendations may reflect, among other developments, the sharp decline in farm bankruptcies in the midwest. As an efficiency measure, nine authorized positions are currently being kept vacant due to reduced workloads in certain districts. At any given time, furthermore, an estimated six to ten bankruptcy judges are temporarily serving outside of their districts in order to assist with heavier caseloads elsewhere.

The Judicial Conference bases its recommendations for new bankruptcy judgeships on a comprehensive analysis of each court's caseload statistics and an on-site review of its workload and procedures by a survey team. The weighted caseload is the first factor considered in this process and is similar to that used for allocating district court judgeships. It signifies the average amount of judicial time required over the life of a case to handle a matter in a particular category. This system was developed by the Federal Judicial Center following a detailed quantitative study of the workloads carried by virtually all bankruptcy judges in active service between October 1988 and October 1989. It assigns a time value to each of 17 different categories of bankruptcy cases so that the sheer number of cases alone does not constitute the workload profile. A Chapter 7 non-business liquidation case with assets under \$50,000, for instance, is given a weighted value of 5.34 minutes, while every Chapter 11 corporate reorganization case with assets of at least \$1 million is given a value of 11.234 hours. Adversary proceedings—separate lawsuits filed within bankruptcy cases—are also assigned case weights.

A billion dollar corporate reorganization case, of course, generally would present a far greater but statistically unacknowledged burden on a bankruptcy court. The inability of the current weighted caseload method to fully reflect the burden placed on the courts by multi-million dollar Chapter 11 “mega-cases” is, therefore, suggestive of a significant weakness, and the Committee reiterates its

¹28 U.S.C. § 152(a)(1).

²*Id.*

³Pub. L. No. 102-361, 106 Stat. 965.

view that this problem merits attention by the Judicial Conference.⁴

The Judicial Conference requires a district to meet a per judge weighted caseload average of 1,500 hours as a threshold for considering additional judgeships—except in unusual circumstances. This threshold is exceeded in each of the districts that would receive additional judges under H.R. 2604. The national weighted caseload average from July 1994 to June 1995 was 1,149 hours per judge, and the weighted caseloads in the eight districts that would benefit under the bill exceed that average by percentages that range from 31.1 percent up to 72.5 per cent.⁵ The weighted hours do not reflect judicial time that cannot be attributable to an individual case, such as travel and administrative matters, which amount to nearly 700 hours of additional work per judge per year.⁶ In addition, the case weights are assigned for the year in which a case is filed, while much judicial work is actually performed in subsequent years, and they may also reflect unusual filing patterns, such as a large number of objections to discharge filed in a particular case.

Other pertinent factors that the Judicial Conference must take into account in formulating its recommendations include the nature and mix of the court's caseload; historical caseload data and filing trends; geographic, economic, and demographic factors; the effectiveness of the court's case management efforts; the availability of alternative solutions and resources for handling the court's workload; and the impact that the requested additional resources would have on the court's per judgeship caseload.

After a brief respite in 1993 and 1994, bankruptcy filings are now increasing in all 91 judicial districts throughout the country. In calendar year 1994 there were 832,829 bankruptcy filings and in calendar year 1995 there were 926,601, an 11.3 per cent annual increase. A month-to-month comparison of 1994 with 1995 shows that nationally there was a 25.5 percent increase in all filings in October (from 70,131 to 87,995 cases), a 22 percent increase in November (from 67,310 to 82,130 cases), and a 15.9 percent increase in December (from 64,291 to 74,492 cases). Overall, filings in the fourth quarter of 1995 were 21 percent higher than in the fourth quarter of 1994. Business bankruptcies, particularly Chapter 11 reorganization cases, declined over the last three years until the fourth quarter of 1995, when they were up 8.7 percent over the fourth quarter of 1994.⁷

H.R. 2604 authorizes additional judicial positions for the bankruptcy court system in eight districts where the Judicial Conference—to the satisfaction of this Committee—has demonstrated the greatest need. The five year temporary judgeship concept, to be

⁴The Committee directs the attention of the Judicial Conference to the following statement in its report on the Bankruptcy Judgeship Act of 1992:

"The Committee believes that the 'weighted caseload' approach can achieve its full potential as a reliable indicator of the need for additional bankruptcy judgeships only if the system accurately reflects the impact of very large cases."

H.R.Rep. No. 825, 102d Cong., 2d Sess. 9 (1992).

⁵Bankruptcy Division of the Administrative Office of the United States Courts, "Additional Support for 11 Recommended Bankruptcy Judgeships," November 1995.

⁶"Bankruptcy Judgeship Act of 1995: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary," 104th Cong., 1st Sess. 8 (testimony of Paul A. Magnuson, J.).

⁷Bankruptcy Division of the Administrative Office of the United States Courts, "Bankruptcy Trends in the Nation," March 1996.

utilized in six of the 11 new appointments, represents a fiscally prudent option that reflects the realities of current Federal budget constraints. It provides the supplemental resources needed to deal with present expanding caseloads without burdening taxpayers with the continual expense of permanent judgeships that may become unnecessary as bankruptcy filings decline.

In February 1996, the Administrative Office of the United States Courts estimated that the total cost associated with each new bankruptcy judgeship is \$735,530 for the first year and \$614,631 per year thereafter. These figures include a bankruptcy judge's current annual salary of \$122,912, which is set by statute at 92 percent of the compensation received by a United States District Judge.

H.R. 2604 was introduced on November 9, 1995, by Mr. Gekas, Chairman of the Subcommittee on Commercial and Administrative Law, at the request of the Judicial Conference of the United States.

HEARINGS

The Committee's Subcommittee on Commercial and Administrative Law held a hearing on H.R. 2604 on December 7, 1995. Testimony was received from: the Honorable Paul A. Magnuson, Chief Judge, United States District Court, District of Minnesota, and Chairman of the Judicial Conference Committee on the Administration of the Bankruptcy System; the Honorable Paul Mannes, Chief Bankruptcy Judge, District of Maryland, and Chairman of the Judicial Conference Advisory Committee on Bankruptcy Rules; the Honorable William A. Anderson, Bankruptcy Judge, Western District of Virginia, on behalf of the National Conference of Bankruptcy Judges; and Mr. Harry D. Dixon, Jr., Chairman of the Board of the American Bankruptcy Institute.

COMMITTEE CONSIDERATION

On February 29, 1996, the Subcommittee on Commercial and Administrative Law met in open session and ordered reported the bill H.R. 2604, without amendment by voice vote, a quorum being present. On March 12, 1996, the Committee met in open session and ordered reported the bill H.R. 2604 without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There was one rollcall vote on an amendment offered during full Committee markup of H.R. 2604. The amendment offered by Mr. Reed was to restrict recommendations by the Judicial Conference for additional bankruptcy judges and to provide greater flexibility in transfers. This was defeated by a vote of 10–11.

YEAS	NAYS
Mr. Chabot	Mr. Hyde
Mr. Conyers	Mr. Moorhead
Mr. Frank	Mr. Gekas
Mr. Boucher	Mr. Smith (TX)
Mr. Reed	Mr. Schiff
Mr. Nadler	Mr. Canady
Mr. Scott	Mr. Goodlatte
Mr. Watt	Mr. Bono
Ms. Lofgren	Mr. Bryant (TN)
Ms. Jackson Lee	Mr. Flanagan
	Mr. Barr

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2604, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 18, 1996.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2604, the Bankruptcy Judgeship Act of 1995.

Enacting H.R. 2604 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 2604.
2. Bill title: Bankruptcy Judgeship Act of 1996.
3. Bill status: As ordered reported by the House Committee on the Judiciary on March 12, 1996.
4. Bill purpose: H.R. 2604 would establish five permanent and six temporary bankruptcy judgeships in eight federal judicial districts. The temporary judgeships would be authorized for a minimum of five years from the confirmation date of the temporary judge.
5. Estimated cost to the Federal Government: Enacting H.R. 2604 would increase discretionary spending, subject to appropriations of the necessary funds, and also would increase mandatory spending as shown in the following table. Additional costs would total \$7 million to \$8 million a year by 1998.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
ADDITIONAL SPENDING SUBJECT TO APPROPRIATIONS ACTION					
Estimated authorization level		2	6	5	5
Estimated outlays		2	6	5	5
CHANGES IN DIRECT SPENDING					
Estimated budget authority		(1)	2	2	2
Estimated outlays		(1)	2	2	2

¹ Less than \$500,000.

The costs of this bill fall within budget function 750.

6. Basis of estimate: Based on information from the Administrative Office of the United States Courts (AOUSC), CBO expects that enacting this bill would increase both discretionary and mandatory costs associated with the salaries and benefits of bankruptcy judges and their support personnel. Expenses required to support the additional personnel also would increase. Judges' salaries and benefits, which total about \$150,000 a year for each judge, are not subject to appropriations, and thus a change in the number of judges affects direct spending. Salaries and benefits of support personnel

and other expenditures related to a judgeship total about \$450,000 a year, after certain initial costs. This spending would require appropriation action.

Based on information from the AOUSC and taking into account the time it takes to nominate and confirm judges, CBO estimates that enacting H.R. 2604 would result in about \$6 million in mandatory spending from 1997 through 2000 for salaries and benefits of judges. (Under current law, total spending for salaries and benefits of bankruptcy judges during that period would average about \$55 million a year.) Our estimate of additional costs assumes that all of the 11 judgeships authorized under the bill would be filled by 1998. CBO also assumes that while the appointment process for these judgeships may begin in 1996, any additional costs that would be incurred in this year would be insignificant. Other costs, subject to appropriations of the necessary amounts, would total about \$18 million over the 1997–2000 period.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 2604 would increase direct spending by less than \$500,000 in 1997 and by \$2 million in 1998. The following table shows the estimated pay-as-you-go impact of this bill.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	2
Change in receipts	(¹)	(¹)	(¹)

¹ Not applicable.

8. Estimated impact on state, local, and tribal governments: H.R. 2604 contains no intergovernmental mandates as defined in Public Law 104–4 and would impose no direct costs on state, local, or tribal governments.

9. Estimated impact on the private sector: This bill would impose no new private sector mandates, as defined in Public Law 104–4.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal Cost Estimate: Susanne S. Mehlman, State and Local Government Impact: Karen McVey, Private Sector Impact: Matthew Eyles.

12. Estimate approved by: Robert A. Sunshine for Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2604 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill states the short title.

Section 2 increases the number of permanent bankruptcy judgeships by four in the central district of California and by one in the district of Maryland.

Section 3 establishes temporary bankruptcy judgeships in the southern district of Florida, the eastern district of Michigan, the district of New Jersey, the eastern district of New York, the northern district of New York, and the eastern district of Pennsylvania. The first vacancy in the office of a bankruptcy judge in each of the six districts—resulting from the death, retirement, resignation or removal of a bankruptcy judge five or more years after the date of an appointment to one of the new temporary positions—will not be filled. The increased number of judges, therefore, will continue only until such a vacancy occurs, at which point the number of positions will revert to the current figure. When a vacancy occurs by reason of the expiration of an incumbent judge’s term, however, that judge will be eligible for reappointment. A person appointed to a temporary judgeship, therefore, may serve a full 14-year term and be eligible for reappointment, just as a person appointed to a “permanent” judgeship.

Section 4 makes a technical correction to make clear that the United States Courts of Appeals appoint bankruptcy judges in districts located in their respective circuits.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 152 OF TITLE 28, UNITED STATES CODE

§ 152. Appointment of bankruptcy judges

(a)(1) **[**The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph.**]** *The bankruptcy judges established in paragraph (2) for a judicial district shall be appointed, in such number as are established in such paragraph, by the United States court of appeals for the circuit in which such district is located.* Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

*	*	*	*	*	*	*
California:						
*	*	*	*	*	*	*
Central						[21] 25
*	*	*	*	*	*	*
Maryland						[4] 5
*	*	*	*	*	*	*

ADDITIONAL VIEWS

While we do not quarrel with the need for additional judicial resources in the 11 districts that are to gain judgeships, we nonetheless regret that the Judiciary Committee has missed an opportunity to take a more careful look at the way in which Congress allocates bankruptcy judgeships to ensure that bankruptcies are handled efficiently and expeditiously nationwide.

It is clear that there is room for improvement. Last year, in one judicial district, bankruptcy judges handled a caseload of 252 weighted filings per judge. In another district, the caseload is almost eight times as high: 1,982 filings per judge. These disparities are commonplace.

The citizens in the state where each judge has 1,982 weighted cases per year are not getting the same level of service as the citizens of the state where each judge handles a caseload 1/8th the size. The solution provided by the Committee—additional judges to some of the most underserved areas without considering other means of transferring or reallocating existing resources—is not fair to the taxpayer.

The number of bankruptcy judgeships cannot keep escalating without some scrutiny of areas where resources exceed demand. Last year, a Judicial Conference survey found five districts where the caseload, even if one judge were removed or transferred, would not be over 1,000 hours (still less than the national average). The Judicial conference has begun utilizing a variety of methods to address the disparity in caseloads, including the use of visiting judges. These efforts are to be encouraged. We believe Congress must give the Judicial Conference the flexibility to adapt to regional shifts in bankruptcy caseload while at the same time providing incentives to use existing resources more efficiently. In an era of widespread budget cutbacks, no area of government can be exempt.

In particular, we regret that the Committee rejected an amendment offered by Mr. Reed, the Ranking Member of the Commercial and Administrative Law Subcommittee, that would have given the Judicial Conference greater authority to reallocate judicial resources from districts in which authorized judgeships exceed current needs to those requiring additional judgeships. Rep. Reed's proposal would have allowed the Judicial Conference to address the increasing workload in certain districts without increasing the total number of bankruptcy judges nationwide.

Under current law, the Judicial Conference is required to make recommendations for the elimination of judgeships in every even numbered year. However, while it has kept some positions vacant as a result of this review, it has not eliminated any authorized slots. The Conference does not have the authority to transfer the vacant slots to needy areas. By granting this authority while at the

same time requiring the Conference to combine requests for expansion with recommendations for the elimination of underutilized slots, the amendment offered by Mr. Reed would have provided an incentive to transfer judgeships and equalize workload. It also would enable the Judicial Conference to provide faster relief to over-burdened districts, which must now wait for Congressional action to receive additional assistance.

This is an idea that has great merit. Clearly, the current trend to reinvent government has demonstrated that it is possible to deliver better quality governmental services using fewer resources more efficiently. Reallocating existing judgeships to meet current needs rather than creating new judgeships would seem to be a reasonable application of this principle.

We are also concerned that districts whose dockets are characterized by extremely large Chapter 11 filings are not receiving adequate resources to handle their caseloads.

There was, in fact, little disagreement among members of the Committee that the Judicial Conference's current system for measuring workload does not adequately reflect real world conditions. As a Majority Staff memorandum noted,

The case weight figures do not fully reflect the amount of judicial work in districts that receive a disproportionate share of extremely large Chapter 11 filings, such as the District of Delaware and the Southern District of New York.¹

The weighted case hours method of measuring workload, under which 17 different categories of bankruptcy case are assigned a different time value, attempts to ensure that the sheer number of cases alone does not constitute the workload profile. Unfortunately, the largest unit of measure in this system is a \$1 million Chapter 11 case, which is assigned a value of 11.234 hours. Thus, for example, again as the Majority memorandum notes, "A billion dollar bankruptcy would be a far greater, but statistically unacknowledged burden on the court."²

Rep. Nadler offered an amendment that would have directed the General Accounting Office to study the way in which the Judicial Conference measures judicial workload and the need for additional judicial resources. The amendment would also have directed the GAO to review and recommend different ways of dealing with an increasing workload, including automatic reallocation of resources and the use of non-judicial resources. Finally, the amendment would have directed the GAO to estimate the impact of the current allocation of bankruptcy judges on the efficiency of all bankruptcy judges, the costs to the parties, and the costs to the taxpayers of administering this system.

Rep. Nadler withdrew the amendment during full committee markup with the assurance from Chairman Hyde that the Chairman would cooperate with Mr. Nadler in exploring a GAO study examining these issues. We believe such a study is warranted and

¹Memorandum from Charles E. Kern II, Counsel, to Members of the Subcommittee on Commercial and Administrative Law 3 (February 27, 1996).

²Id. at 3.

hope it can be requested by the full committee on a bipartisan basis.

Providing adequate resources to the bankruptcy courts is important not just to the parties, but to the economy. We hope that the important issues raised during the Committee's consideration of this legislation will not go unaddressed.

JACK REED.
ROBERT C. "BOBBY" SCOTT.
ZOE LOFGREN.
MELVIN L. WATT.
JERROLD NADLER.
JOHN CONYERS, Jr.
PATRICIA SCHROEDER.

