

BANKRUPTCY JUDGESHIP ACT OF 1997

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JULY 28, 1997.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. GEKAS, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 1596]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1596) 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.

PURPOSE AND SUMMARY

Bankruptcy courts are an essential element of the Federal Judiciary and the American economic system. Unfortunately, total bankruptcy filings reached an unprecedented level in excess of one million new cases in 1996 and are continuing to increase in every judicial district in the nation. Additional resources are now needed in certain districts if the bankruptcy courts are to continue to perform their vital role efficiently and effectively.

H.R. 1596 is intended to provide those resources where they are most needed. The bill authorizes seven permanent and 11 temporary bankruptcy judgeships in 14 Federal judicial districts and would extend an existing temporary judgeship in another district, increasing the total number of judgeships from 326 to 344. This responds positively to a request by the Judicial Conference and also reflects Congressional policy in favor of creating temporary as opposed to permanent judgeships as a means of limiting future costs wherever possible and appropriate.

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 with 13 vacancies, three of which are in the process of being filled. 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 these 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 1996, the Conference recommended that no authorized positions be eliminated but stated that the circuit judicial councils will continue their practice of filling vacancies only when essential to ensure the effective operation of the bankruptcy system in the district.⁴ Because of changing filing patterns, ten authorized positions are currently being kept vacant, maintaining flexibility while providing significant cost savings.

At any given time, an estimated six to ten bankruptcy judges are temporarily serving outside of their districts in order to assist with heavier caseloads elsewhere. Other steps taken to extend existing resources include the recall of approximately 25 retired bankruptcy judges to serve on either a full-time or part-time basis, sharing judges between districts, cross-designation of judges to adjacent or nearby districts, and utilizing additional law clerks.⁵ These actions, however, together with automation and harder and longer working hours on the part of judges and other court personnel, appear to have virtually reached their limit as a means of coping with the rising tide of bankruptcy filings. Chief Bankruptcy Judge Frank W. Koger of the Western District of Missouri, President of the National Conference of Bankruptcy Judges, testified at the Commercial and Administrative Law Subcommittee hearing that “this request for new positions [has been] made only after the judiciary has taken every possible step to maximize all other programs to meet the needs before asking for your assistance.”⁶

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 most important factor considered in this process and is similar to that used for allocating district court judgeships. It reflects the average

¹28 U.S.C. § 152(a)(1).

²Id.

³Pub. L. No. 102-361, 106 Stat. 965.

⁴1996 Judicial Conference Rep. on the Continuing Need for Existing Bankruptcy Judgeship Positions, at 2.

⁵Id. at 5.

⁶The Bankruptcy Judgeship Act of 1997: Hearing on H.R.1596 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary, 105th Cong., 1st Sess. Transcript at 17 (1997).

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. The Southern District of New York has recently employed a protocol developed by the Federal Judicial Center to assign higher weighted values to the corporate reorganization mega-cases arising under Chapter 11, and this is available for use in other jurisdictions as appropriate. Adversary proceedings—separate lawsuits filed within bankruptcy cases—are also assigned case weights.

The Judicial Conference generally requires a district to meet a per judge weighted caseload average of 1,500 hours as a threshold for considering additional judgeships. This threshold is exceeded in each of the districts that would receive additional judges under H.R.1596. The national weighted caseload average in 1993 was 1327 hours per judge, and the weighted caseloads in the 14 districts that would receive judgeships under the bill exceed that average by percentages that range from 14 percent up to 90 percent.⁷ The weighted hours do not reflect judicial time that cannot be attributable to an individual case, such as court administration, continuing education and intradistrict travel, which amount to approximately 700 hours of additional work per judge per year.⁸ 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 not 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.

Bankruptcy cases soared in 1996, exceeding one million cases for the first time. A total of 1,178,555 cases were filed during the year, or 3,615 filings per judge. This was a 27.2 per cent increase over the 926,601 filings during 1995, which was itself an 11.3 percent increase from the 832,829 filings in 1994. In the six most populous states (California, Florida, Illinois, New York, Pennsylvania and Texas) the increase in total filings ranged from 21.1 per cent in New York to 33 per cent in Pennsylvania. No state was less than

⁷ Summary of Bankruptcy Judgeship Recommendations, Bankruptcy Division of the Administrative Office of the United States Courts (June 1997).

⁸ H.R. 1596 Hearing, *supra* note 6, at 9.

15 per cent and only five states were less than 20 per cent. Filings nationwide in 1997 have exceeded 100,000 per month.⁹

H.R. 1596 authorizes additional judicial positions for the bankruptcy court system in the 14 districts where the Judicial Conference—to the satisfaction of this Committee—has demonstrated the greatest need. The five year temporary judgeship concept, to be utilized in 11 of the 18 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.

The Administrative Office of the United States Courts has estimated that the total cost associated with each new bankruptcy judgeship will be \$768,533 for the first year and \$595,415 each 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. 1596 was introduced on May 14, 1997, by Mr. Gekas, Chairman of the Subcommittee on Commercial and Administrative Law, with the co-sponsorship of Mr. Hyde, the Chairman of the Judiciary Committee, Mr. Conyers, the Committee Ranking Minority Member, and Mr. Nadler, the Subcommittee Ranking Minority Member.

HEARINGS

The Committee's Subcommittee on Commercial and Administrative Law held a hearing on H.R. 1596 on June 19, 1997. Testimony was received from five witnesses, including Judge David R. Thompson of the United States Court of Appeals for the Ninth Circuit, Chairman of the Judicial Conference Committee on the Administration of the Bankruptcy System; Chief Bankruptcy Judge Frank W. Koger of the Western District of Missouri, President of the National Conference of Bankruptcy Judges; Chief Bankruptcy Judge Tina L. Brozman of the Southern District of New York; Richard L. Wynne of Wynne Spiegel Itkin, a Los Angeles law firm, on behalf of the Los Angeles County Bar Association; and Michael P. Richman of the New York law office of Mayer, Brown and Platt, on behalf of the American Bankruptcy Institute.

COMMITTEE CONSIDERATION

On June 19, 1997, the Subcommittee on Commercial and Administrative Law met in open session and ordered reported the bill H.R.1596, without amendment by a voice vote, a quorum being present. On July 16, 1997, the Committee met in open session and ordered reported favorably the bill H.R. 1596 without amendment by voice vote, a quorum being present.

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

⁹ Bankruptcy Statistical Information Prepared by the Administrative Office of the United States Courts (Revised April 1, 1997).

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(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

According to the Congressional Budget Office the bill does provide some new budget authority, but no new tax expenditures. See attached CBO letter.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1596, 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, July 25, 1997.

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. 1596, the Bankruptcy Judgeship Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

JAMES L. BLUM
(for June E. O'Neill, Director).

Enclosure.

H.R. 1596—Bankruptcy Judgeship Act of 1997

Summary: H.R. 1596 would authorize 7 permanent and 11 temporary bankruptcy judgeships in 14 federal judicial districts. The bill also would extend an existing temporary bankruptcy judgeship in another district. CBO estimates that enacting this bill would result in about \$12 million in new mandatory spending over the 1998–2002 period for salaries and benefits of judges. In addition, CBO estimates that salaries and benefits for support personnel and other expenditures related to the judgeships would total about \$21 million over the same period, assuming appropriation of the necessary amounts.

Because enacting H.R. 1596 would affect direct spending in 1998, pay-as-you-go procedures would apply. The bill contains no inter-governmental or private-sector mandates as defined in the Un-

funded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated Cost to the Federal Government: Based on information from the Administrative Office of the United States Courts (AOUSC) that takes into account projections for when vacancies would occur in each of the affected districts and the time it takes to nominate and confirm judges, CBO assumes that 14 positions would be filled by the end of fiscal year 1998. We expect that the remaining four additional positions that would be authorized by the bill would be filled during the first half of fiscal year 1999. CBO estimates that the costs associated with extending the temporary judgeship in the District of Delaware would not be incurred until fiscal year 2001.

CBO assumes that judges' salaries and benefits, which are not subject to appropriation, would average about \$150,000 a year and that the discretionary expenditures associated with a judgeship would average about \$220,000 a year in 1998 dollars, after certain initial costs. Thus, enacting H.R. 1596 would result in about \$12 million in new mandatory spending over the 1998–2002 period for salaries and benefits of judges. CBO estimates that other costs, subject to the appropriation of the necessary amounts, would total about \$21 million over the same period. The estimated budgetary impact of H.R. 1596 is shown in the following table.

[By fiscal year, in millions of dollars]

| | 1998 | 1999 | 2000 | 2001 | 2002 |
|---|------|------|------|------|------|
| Changes in direct spending: | | | | | |
| Estimated budget authority | 1 | 2 | 3 | 3 | 3 |
| Estimated outlays | 1 | 2 | 3 | 3 | 3 |
| Additional spending subject to appropriation: | | | | | |
| Estimated authorization level | 1 | 5 | 5 | 5 | 5 |
| Estimated outlays | 1 | 5 | 5 | 5 | 5 |

The costs of this bill fall within budget function 750 (administration of justice).

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 specifies pay-as-you-go procedures for legislation affecting direct spending or receipts through fiscal year 1998. CBO estimates that enacting H.R. 1596 would increase direct spending by about \$1 million in fiscal year 1998 for the salaries and benefits of additional bankruptcy judges.

Intergovernmental and private sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

Estimate prepared by: Susanne S. Mehlman.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the United States House of Representatives, the Committee finds the authority for this legislation in Article I, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title.—Section 1 provides that this Act may be cited as the “Bankruptcy Judgeship Act of 1997.”

Sec. 2. Permanent Judgeships.—Section 2 increases the number of permanent bankruptcy judgeships by four in the central district of California and by one each in the district of Maryland, the district of New Jersey, and the western district of Tennessee.

Sec. 3. Temporary Judgeships.—Section 3 establishes a temporary judgeship in the eastern district of California, the southern district of Florida, the district of Maryland, the eastern district of Michigan, the southern district of Mississippi, the eastern district of New York, the northern district of New York, the southern district of New York, and the eastern district of Pennsylvania, the middle district of Pennsylvania, and the eastern district of Virginia. Temporary bankruptcy judgeships are effected by leaving unfilled the first vacancy in the office of a bankruptcy judge due to the death, retirement, resignation or removal of a bankruptcy judge in each of the designated districts which occurs five or more years after a person is appointed a temporary judgeship position. 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 would be.

Sec. 4. Extension.—Section 4 extends an existing temporary judgeship in the district of Delaware to the first vacancy due to death, retirement, resignation, or removal occurring 10 years or more after October 28, 1993. This judgeship would otherwise expire with the first such vacancy occurring in the district after October 28, 1998.

Sec. 5. Technical Amendment.—Section 5 makes a technical correction to 28 U.S.C. § 152(a)(1) to make clear that the United States Courts of Appeals appoint bankruptcy judges in districts located in their respective circuits.

AGENCY VIEWS

No agency views were received on H.R. 1596.

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 italics, existing law in which no change is proposed is shown in roman):

SECTION 152 OF TITLE 28 OF THE 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.] *Each bankruptcy judge to be appointed for a judicial district as provided in paragraph (2) shall be appointed 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:

| Districts | Judges |
|---|---------|
| * * * * * * | |
| California: | |
| Northern | 9 |
| Eastern | 6 |
| Central | [21] 25 |
| Southern | 4 |
| * * * * * * | |
| Maryland | [4] 5 |
| * * * * * * | |
| New Jersey | [8] 9 |
| * * * * * * | |
| Tennessee: | |
| Eastern | 3 |
| Middle | 3 |
| Western | [4] 5 |
| * * * * * * | |