

109TH CONGRESS
1ST SESSION

S. 1301

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 3 circuits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 23, 2005

Mr. ENSIGN (for himself, Mr. CRAIG, Mr. CRAPO, Mr. CORNYN, Mr. COBURN, and Mr. INHOFE) introduced the following bill; which was read twice and 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 3 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 Judge-
5 ship and Reorganization Act of 2005”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) FORMER NINTH CIRCUIT.—The term
2 “former ninth circuit” means the ninth judicial cir-
3 cuit of the United States, as in existence on the day
4 before the effective date of this Act.

5 (2) NEW NINTH CIRCUIT.—The term “new
6 ninth circuit” means the ninth judicial circuit of the
7 United States, established by the amendment made
8 by section 3(2)(A).

9 (3) TWELFTH CIRCUIT.—The term “twelfth cir-
10 cuit” means the twelfth judicial circuit of the United
11 States established, by the amendment made by sec-
12 tion 3(2)(B).

13 (4) THIRTEENTH CIRCUIT.—The term “thir-
14 teenth circuit” means the thirteenth judicial circuit
15 of the United States, established by the amendment
16 made by section 3(2)(B).

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

18 Section 41 of title 28, United States Code, is amend-
19 ed—

20 (1) in the matter preceding the table, by strik-
21 ing “thirteen” and inserting “fifteen”; and

22 (2) in the table—

23 (A) by striking the item relating to the
24 ninth circuit and inserting the following:

“Ninth	California, Guam, Hawaii, Northern Marianas Islands.”;
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1 and

2 (B) by inserting after the item relating to
3 the eleventh circuit the following:

“Twelfth	Arizona, Nevada, Idaho, Montana.
“Thirteenth	Alaska, Oregon, Washington.”.

4 **SEC. 4. JUDGESHIPS.**

5 (a) NEW JUDGESHIPS.—The President shall appoint,
6 by and with the advice and consent of the Senate, 5 addi-
7 tional circuit judges for the new ninth circuit court of ap-
8 peals, whose official duty station shall be in California.

9 (b) TEMPORARY JUDGESHIPS.—

10 (1) APPOINTMENT OF JUDGES.—The President
11 shall appoint, by and with the advice and consent of
12 the Senate, 2 additional circuit judges for the former
13 ninth circuit court of appeals, whose official duty
14 stations shall be in California.

15 (2) EFFECT OF VACANCIES.—The first 2 vacan-
16 cies occurring on the new ninth circuit court of ap-
17 peals 10 years or more after judges are first con-
18 firmed to fill both temporary circuit judgeships cre-
19 ated by this subsection shall not be filled.

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

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

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

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

“Ninth 19”;

3 and

4 (2) by inserting after the item relating to the
 5 eleventh circuit the following:

“Twelfth 8
 “Thirteen 6”.

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

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

9 (1) by striking the item relating to the ninth
 10 circuit and inserting the following:

“Ninth San Francisco, Los Angeles.”;

11 and

12 (2) by inserting after the item relating to the
 13 eleventh circuit the following:

“Twelfth Las Vegas, Phoenix.
 “Thirteen Portland, Seattle.”.

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

15 Each circuit judge of the former ninth circuit who
 16 is in regular active service and whose official duty station
 17 on the day before the effective date of this Act—

18 (1) is in California, Guam, Hawaii, or the
 19 Northern Marianas Islands shall be a circuit judge
 20 of the new ninth circuit as of such effective date;

1 (2) is in Arizona, Nevada, Idaho, or Montana
 2 shall be a circuit judge of the twelfth circuit as of
 3 such effective date; and

4 (3) is in Alaska, Oregon, or Washington shall
 5 be a circuit judge of the thirteenth circuit as of such
 6 effective date.

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

8 Each judge who is a senior circuit judge of the former
 9 ninth circuit on the day before the effective date of this
 10 Act may elect to be assigned to the new ninth circuit, the
 11 twelfth circuit, or the thirteenth circuit as of such effective
 12 date, and shall notify the Director of the Administrative
 13 Office of the United States Courts of such election.

14 **SEC. 9. SENIORITY OF JUDGES.**

15 The seniority of each judge—

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

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

20 **SEC. 10. APPLICATION TO CASES.**

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

24 (1) If the matter has been submitted for deci-
 25 sion, further proceedings with respect to the matter

1 shall be had in the same manner and with the same
2 effect as if this Act had not been enacted.

3 (2) If the matter has not been submitted for de-
4 cision, the appeal or proceeding, together with the
5 original papers, printed records, and record entries
6 duly certified, shall, by appropriate orders, be trans-
7 ferred to the court to which the matter would have
8 been submitted had this Act been in full force and
9 effect at the time such appeal was taken or other
10 proceeding commenced, and further proceedings with
11 respect to the case shall be had in the same manner
12 and with the same effect as if the appeal or other
13 proceeding had been filed in such court.

14 (3) A petition for rehearing or a petition for re-
15 hearing en banc in a matter decided before the effec-
16 tive date of this Act, or submitted before the effec-
17 tive date of this Act and decided on or after such
18 effective date as provided in paragraph (1), shall be
19 treated in the same manner and with the same effect
20 as though this Act had not been enacted. If a peti-
21 tion for rehearing en banc is granted, the matter
22 shall be reheard by a court comprised as though this
23 Act had not been enacted.

1 **SEC. 11. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES**
2 **AMONG CIRCUITS.**

3 Section 291 of title 28, United States Code, is
4 amended by adding at the end the following:

5 “(c) The chief judge of the Ninth Circuit may, in the
6 public interest and upon request by the chief judge of the
7 Twelfth Circuit or the Thirteenth Circuit, designate and
8 assign temporarily any circuit judge of the Ninth Circuit
9 to act as circuit judge in the Twelfth Circuit or Thirteenth
10 Circuit.

11 “(d) The chief judge of the Twelfth Circuit may, in
12 the public interest and upon request by the chief judge
13 of the Ninth Circuit or Thirteenth Circuit, designate and
14 assign temporarily any circuit judge of the Twelfth Circuit
15 to act as circuit judge in the Ninth Circuit or Thirteenth
16 Circuit.

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

23 **SEC. 12. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES**
24 **AMONG CIRCUITS.**

25 Section 292 of title 28, United States Code, is
26 amended by adding at the end the following:

1 “(f) The chief judge of the United States Court of
2 Appeals for the Ninth Circuit may in the public interest—

3 “(1) upon request by the chief judge of the
4 Twelfth Circuit or Thirteenth Circuit, designate and
5 assign 1 or more district judges within the Ninth
6 Circuit to sit upon the Court of Appeals of the
7 Twelfth Circuit or Thirteenth Circuit, or a division
8 thereof, whenever the business of that court so re-
9 quires; and

10 “(2) designate and assign temporarily any dis-
11 trict judge within the Ninth Circuit to hold a district
12 court in any district within the Twelfth Circuit or
13 Thirteenth Circuit.

14 “(g) The chief judge of the United States Court of
15 Appeals for the Twelfth Circuit may in the public inter-
16 est—

17 “(1) upon request by the chief judge of the
18 Ninth Circuit or Thirteenth Circuit, designate and
19 assign 1 or more district judges within the Twelfth
20 Circuit to sit upon the Court of Appeals of the
21 Ninth Circuit or Thirteenth Circuit, or a division
22 thereof whenever the business of that court so re-
23 quires; and

24 “(2) designate and assign temporarily any dis-
25 trict judge within the Twelfth Circuit to hold a dis-

1 trict court in any district within the Ninth Circuit
2 or Thirteenth Circuit.

3 “(h) The chief judge of the United States Court of
4 Appeals for the Thirteenth Circuit may in the public inter-
5 est—

6 “(1) upon request by the chief judge of the
7 Ninth Circuit or Twelfth Circuit, designate and as-
8 sign 1 or more district judges within the Thirteenth
9 Circuit to sit upon the Court of Appeals of the
10 Ninth Circuit or Twelfth Circuit, or a division there-
11 of whenever the business of that court so requires;
12 and

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

17 “(i) Any designations or assignments under sub-
18 section (f), (g), or (h) shall be in conformity with the rules
19 or orders of the court of appeals of, or the district within,
20 as applicable, the circuit to which the judge is designated
21 or assigned.”.

22 **SEC. 13. ADMINISTRATIVE COORDINATION.**

23 Section 332 of title 28, United States Code, is
24 amended by adding at the end the following:

1 “(i) Any 2 contiguous circuits among the Ninth Cir-
2 cuit, Twelfth Circuit, and Thirteenth Circuit may jointly
3 carry out such administrative functions and activities as
4 the judicial councils of the 2 circuits determine may ben-
5 efit from coordination or consolidation.”.

6 **SEC. 14. ADMINISTRATION.**

7 The court of appeals for the ninth circuit as con-
8 stituted on the day before the effective date of this Act
9 may take such administrative action as may be required
10 to carry out this Act and the amendments made by this
11 Act. Such court shall cease to exist for administrative pur-
12 poses 2 years after the date of enactment of this Act.

13 **SEC. 15. EFFECTIVE DATE.**

14 Except as provided in section 4(c), this Act and the
15 amendments made by this Act shall take effect on the first
16 October 1, that occurs on or after 9 months after the date
17 on which all 5 judges described under section 4(a) have
18 been appointed, by and with the advice and consent of the
19 Senate.

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