

111TH CONGRESS
1ST SESSION

S. 1727

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 2 circuits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2009

Mr. ENSIGN (for himself, Mr. KYL, Mr. CRAPO, Mr. INHOFE, Mr. MCCAIN, Ms. MURKOWSKI, and Mr. RISCH) 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 2 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 “The Circuit Court of
5 Appeals Restructuring and Modernization Act of 2009”.

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

14 Section 41 of title 28, United States Code, is amend-
15 ed—

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

18 (2) in the table—

19 (A) by striking the item relating to the
20 ninth circuit and inserting the following:

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

21 and

22 (B) by inserting after the item relating to
23 the eleventh circuit the following:

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

1 **SEC. 4. JUDGESHIPS.**

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

6 (b) TEMPORARY JUDGESHIPS.—

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

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

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

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

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

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

“Ninth 20”

24 and

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

“Twelfth 14”.

SEC. 6. PLACES OF CIRCUIT COURT.

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

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

“Ninth Honolulu, Pasadena, San Francisco.”

and

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

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

SEC. 7. LOCATION OF TWELFTH CIRCUIT HEADQUARTERS.

The offices of the Circuit Executive of the Twelfth
Circuit and the Clerk of the Court of the Twelfth Circuit
shall be located in Phoenix, Arizona.

SEC. 8. ASSIGNMENT OF CIRCUIT JUDGES.

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

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

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

4 **SEC. 9. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.**

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

11 **SEC. 10. SENIORITY OF JUDGES.**

12 The seniority of each judge—

13 (1) who is assigned under section 8, or

14 (2) who elects to be assigned under section 9,
15 shall run from the date of commission of such judge as
16 a judge of the former ninth circuit.

17 **SEC. 11. APPLICATION TO CASES.**

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

21 (1) Except as provided in paragraph (3), if the
22 matter has been submitted for decision, further pro-
23 ceedings with respect to the matter shall be had in
24 the same manner and with the same effect as if this
25 Act had not been enacted.

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

12 (3) If a petition for rehearing en banc is pend-
 13 ing on or after the effective date of this Act, the pe-
 14 tition shall be considered by the court of appeals to
 15 which it would have been submitted had this Act
 16 been in full force and effect at the time that the ap-
 17 peal or other proceeding was filed with the court of
 18 appeals.

19 **SEC. 12. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES**
 20 **AMONG CIRCUITS.**

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

23 “(c) The chief judge of the Ninth Circuit may, in the
 24 public interest and upon request by the chief judge of the
 25 Twelfth Circuit, designate and assign temporarily any cir-

1 cuit judge of the Ninth Circuit to act as circuit judge in
2 the Twelfth Circuit.

3 “(d) The chief judge of the Twelfth Circuit may, in
4 the public interest and upon request by the chief judge
5 of the Ninth Circuit, designate and assign temporarily any
6 circuit judge of the Twelfth Circuit to act as circuit judge
7 in the Ninth Circuit.”.

8 **SEC. 13. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES**
9 **AMONG CIRCUITS.**

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

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

14 “(1) upon request by the chief judge of the
15 Twelfth Circuit, designate and assign 1 or more dis-
16 trict judges within the Ninth Circuit to sit upon the
17 Court of Appeals of the Twelfth Circuit, or a divi-
18 sion thereof, whenever the business of that court so
19 requires; and

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

23 “(g) The chief judge of the United States Court of
24 Appeals for the Twelfth Circuit may in the public inter-
25 est—

1 “(1) upon request by the chief judge of the
 2 Ninth Circuit, designate and assign 1 or more dis-
 3 trict judges within the Twelfth Circuit to sit upon
 4 the Court of Appeals of the Ninth Circuit, or a divi-
 5 sion thereof, whenever the business of that court so
 6 requires; and

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

10 “(h) Any designations or assignments under sub-
 11 section (f) or (g) shall be in conformity with the rules or
 12 orders of the court of appeals of, or the district within,
 13 as applicable, the circuit to which the judge is designated
 14 or assigned.”.

15 **SEC. 14. ADMINISTRATION.**

16 The court of appeals for the ninth circuit as con-
 17 stituted on the day before the effective date of this Act
 18 may take such administrative action as may be required
 19 to carry out this Act and the amendments made by this
 20 Act. Such court shall cease to exist for administrative pur-
 21 poses 2 years after the date of enactment of this Act.

22 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

23 There are authorized to be appropriated such sums
 24 as may be necessary to carry out this Act, including funds
 25 for additional court facilities.

1 **SEC. 16. EFFECTIVE DATE.**

2 Except as provided in section 4(c), this Act and the
3 amendments made by this Act shall take effect 12 months
4 after the date of enactment of this Act.

