

115TH CONGRESS
1ST SESSION

S. 295

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

FEBRUARY 2, 2017

Mr. DAINES (for himself, Mr. SULLIVAN, and Ms. MURKOWSKI) 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 “Circuit Court of Ap-
5 peals Restructuring and Modernization Act”.

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, whose offi-
5 cial 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, whose official duty station shall be in
11 California.

12 (2) EFFECT OF VACANCIES.—The first 2 vacan-
13 cies in the position of circuit judge for the new ninth
14 circuit occurring 10 years or more after judges are
15 first confirmed to fill both temporary circuit judge-
16 ships created by this subsection shall not be filled.

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

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

20 The table in section 44(a) of title 28, United States
21 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 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 Fran-
cisco.”;

and

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

“Twelfth Las Vegas, Phoenix, Portland, Se-
attle.”.

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 that 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 that 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—

8 (1) may elect to be assigned to the new ninth
9 circuit or the twelfth circuit as of that effective date;
10 and

11 (2) shall notify the Director of the Administra-
12 tive Office of the United States Courts of the elec-
13 tion made under paragraph (1).

14 **SEC. 10. SENIORITY OF JUDGES.**

15 The seniority of each judge who is assigned under
16 section 8 or elects to be assigned under section 9 shall
17 run from the date of commission of the judge as a judge
18 of the former ninth circuit.

19 **SEC. 11. APPLICATION TO CASES.**

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

23 (1) Except as provided in paragraph (3), if the
24 matter has been submitted for decision, further pro-
25 ceedings with respect to the matter shall be had in

1 the same manner and with the same effect as if this
2 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 on the date on which the appeal was taken or
10 other proceeding commenced, and further pro-
11 ceedings with respect to the case shall be had in the
12 same manner and with the same effect as if the ap-
13 peal or other proceeding had been filed in that court.

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

21 **SEC. 12. TEMPORARY ASSIGNMENT OF CIRCUIT JUDGES**
22 **AMONG CIRCUITS.**

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

1 “(c) The chief judge of the Ninth Circuit may, in the
 2 public interest and upon request by the chief judge of the
 3 Twelfth Circuit, designate and assign temporarily any cir-
 4 cuit judge of the Ninth Circuit to act as circuit judge in
 5 the Twelfth Circuit.

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

11 **SEC. 13. TEMPORARY ASSIGNMENT OF DISTRICT JUDGES**
 12 **AMONG CIRCUITS.**

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

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

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

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

1 “(g) The chief judge of the United States Court of
 2 Appeals for the Twelfth Circuit may in the public inter-
 3 est—

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

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

13 “(h) Any designation or assignment under subsection
 14 (f) or (g) shall be in conformity with the rules or orders
 15 of the court of appeals of, or the district within, as applica-
 16 ble, the circuit to which the judge is designated or as-
 17 signed.”.

18 **SEC. 14. ADMINISTRATION.**

19 (a) **TRANSITION AUTHORITY.**—The court of appeals
 20 for the ninth circuit as constituted on the day before the
 21 effective date of this Act may take any administrative ac-
 22 tion that is required to carry out this Act and the amend-
 23 ments made by this Act.

24 (b) **ADMINISTRATIVE TERMINATION.**—The court de-
 25 scribed in subsection (a) shall cease to exist for adminis-

1 trative purposes 2 years after the date of enactment of
2 this Act.

3 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated such sums
5 as may be necessary to carry out this Act, including funds
6 for additional court facilities.

7 **SEC. 16. EFFECTIVE DATE.**

8 Except as provided in section 4(c), this Act and the
9 amendments made by this Act shall take effect 1 year
10 after the date of enactment of this Act.

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