

Public Law 94-381
94th Congress

An Act

To improve judicial machinery by amending the requirement for a three-judge court in certain cases and for other purposes.

Aug. 12, 1976
[S. 537]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2281 of title 28, United States Code, is repealed.

SEC. 2. That section 2282 of title 28, United States Code, is repealed.

SEC. 3. That section 2284 of title 28, United States Code, is amended to read as follows:

"2284. Three-judge court; when required; composition; procedure

"(a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

"(b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

"(1) Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

"(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State. The hearing shall be given precedence and held at the earliest practicable day.

"(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment."

SEC. 4. The analysis of chapter 155 of title 28, United States Code, is amended to read as follows:

"Sec.

"2281. Repealed.

"2282. Repealed.

"2283. Stay of State court proceedings.

"2284. Three-judge district court; when required; composition; procedure."

U.S. District
Courts.

Three-judge court
requirement for
certain actions.

Repeal.

Repeal.

Notification.

Notice and
hearing.

SEC. 5. (a) Section 2403 of title 28, United States Code is amended—

(1) by inserting the subsection “(a)” immediately before “In” and

(2) by adding at the end thereof the following new subsection:

“(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.”

(b) The catchline to section 2403 of title 28, United States Code, is amended to read as follows:

“§ 2403. Intervention by United States or a State; constitutional question”.

Sec. 6. Item 2403 of the analysis of chapter 161, of title 28, United States Code, is amended to read as follows:

“2403. Intervention by United States or a State; constitutional question.”

28 USC 2284
note.

Sec. 7. This Act shall not apply to any action commenced on or before the date of enactment.

Approved August 12, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-1379 accompanying H.R. 6150 (Comm. on the Judiciary).

SENATE REPORT No. 94-204 (Comm. on the Judiciary).

CONGRESSIONAL RECORD:

Vol. 121 (1975): June 20, considered and passed Senate.

Vol. 122 (1976): Aug. 2, considered and passed House, in lieu of H.R. 6150.