

114TH CONGRESS
2D SESSION

S. 2490

To amend title 28, United States Code, 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 3, 2016

Mr. FLAKE 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 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 “Judicial Administra-
5 tion and Improvement Act of 2016”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **FORMER NINTH CIRCUIT.**—The term
9 “former ninth circuit” means the ninth judicial cir-

1 cuit of the United States as in existence on the day
2 before the effective date of this Act.

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

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

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

12 Section 41 of title 28, United States Code, is amend-
13 ed—

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

16 (2) in the table—

17 (A) by striking the item relating to the
18 ninth circuit and inserting the following:

 “Ninth California, Hawaii, Oregon, Wash-
 ington, Guam, Northern Mariana
 Islands.”;

19 and

20 (B) by inserting after the item relating to
21 the eleventh circuit the following:

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

1 **SEC. 4. NUMBER OF CIRCUIT JUDGES.**

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

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

“Ninth 21”;

6 and

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

“Twelfth 8”.

9 **SEC. 5. PLACES OF CIRCUIT COURT.**

10 The table contained in section 48(a) of title 28,
11 United States Code, is amended by inserting after the
12 item relating to the eleventh circuit the following:

“Twelfth Las Vegas, Phoenix, Anchorage, Mis-
soula.”.

13 **SEC. 6. ELECTION OF ASSIGNMENT OF CIRCUIT JUDGES.**

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

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

1 (2) subject to subsection (b), is in Alaska, Ari-
2 zona, Idaho, Montana, or Nevada shall be a circuit
3 judge of the twelfth circuit as of such effective date.

4 (b) **ELECTION BY CERTAIN CIRCUIT JUDGES.**—A cir-
5 cuit judge in regular active service as described in sub-
6 section (a)(2) may elect to be permanently assigned to the
7 new ninth circuit as of such effective date by notifying
8 the Director of the Administrative Office of the United
9 States Courts of such election.

10 (c) **VACANCIES.**—For each individual serving in the
11 position of circuit judge of the former ninth circuit whose
12 official duty station on the day before the effective date
13 of this Act is in Alaska, Arizona, Idaho, Montana, or Ne-
14 vada, after the date on which such individual ceases to
15 serve as a circuit judge, the President shall appoint, by
16 and with the advice and consent of the Senate, 1 addi-
17 tional circuit judge for the twelfth circuit, without regard
18 to whether such individual makes an election described in
19 subsection (b).

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

21 Each judge who is a senior circuit judge of the former
22 ninth circuit, whose official duty station on the day before
23 the effective date of this Act is in Alaska, Arizona, Idaho,
24 Montana, or Nevada may elect to be assigned to the new
25 ninth circuit or the twelfth circuit as of such effective date

1 and shall notify the Director of the Administrative Office
2 of the United States Courts of such election.

3 **SEC. 8. AUTHORIZATION OF TEMPORARY JUDGESHIPS.**

4 (a) IN GENERAL.—For each circuit judge in regular
5 active service who elects to be assigned to the new ninth
6 circuit under section 6(b), the President shall appoint, by
7 and with the advice and consent of the Senate, 1 addi-
8 tional circuit judge for the twelfth circuit, resident in the
9 duty station of the circuit judge making the election as
10 of the day before the effective date of this Act.

11 (b) VACANCIES.—For each appointment made under
12 subsection (a) for the twelfth circuit, an equal number of
13 corresponding vacancies in the position of circuit judge for
14 the twelfth circuit shall not be filled.

15 **SEC. 9. SENIORITY OF JUDGES.**

16 (a) IN GENERAL.—The seniority of each judge—

17 (1) who elects to be assigned to the twelfth cir-
18 cuit under section 6(b);

19 (2) who elects to be assigned to the new ninth
20 circuit under section 6(b); or

21 (3) who elects to be assigned to the twelfth cir-
22 cuit under section 7,

23 shall run from the date of commission of such judge as
24 a judge of the former ninth circuit.

1 (b) TEMPORARY TWELFTH CIRCUIT JUDGES.—The
2 seniority of each judge appointed under section 8(a) shall
3 run from the date of commission of such judge as a judge
4 of the twelfth circuit.

5 **SEC. 10. APPLICATION TO CASES.**

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

9 (1) Except as provided in paragraph (3), if the
10 matter has been submitted for decision, further pro-
11 ceedings with respect to the matter shall be had in
12 the same manner and with the same effect as if this
13 Act had not been enacted.

14 (2) If the matter has not been submitted for de-
15 cision, the appeal or proceeding, together with the
16 original papers, printed records, and record entries
17 duly certified, shall, by appropriate orders, be trans-
18 ferred to the court to which the matter would have
19 been submitted had this Act been in full force and
20 effect on the date on which such appeal was taken
21 or other proceeding commenced, and further pro-
22 ceedings with respect to the case shall be had in the
23 same manner and with the same effect as if the ap-
24 peal or other proceeding had been filed in such
25 court.

1 (3) If a petition for rehearing en banc is pend-
2 ing on or after the effective date of this Act, the pe-
3 tition shall be considered by the court of appeals to
4 which the petition would have been submitted had
5 this Act been in full force and effect on the date on
6 which the appeal or other proceeding was filed with
7 the court of appeals.

8 **SEC. 11. ADMINISTRATION.**

9 (a) IN GENERAL.—The court of appeals for the ninth
10 circuit as constituted on the day before the effective date
11 of this Act may take such administrative action as may
12 be required to carry out this Act and the amendments
13 made by this Act.

14 (b) ADMINISTRATIVE TERMINATION.—The court de-
15 scribed in subsection (a) shall cease to exist for adminis-
16 trative purposes 2 years after the effective date of this
17 Act.

18 **SEC. 12. EFFECTIVE DATE.**

19 This Act and the amendments made by this Act shall
20 take effect 1 year after the date of enactment of this Act.

21 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

22 There are authorized to be appropriated such sums
23 as may be necessary to carry out this Act and the amend-
24 ments made by this Act, including such sums as may be
25 necessary to provide appropriate space and facilities for

- 1 any judicial positions created by this Act or an amendment
- 2 made by this Act.

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