

COMMENCEMENT DATES OF CERTAIN TEMPORARY
FEDERAL JUDGESHIPS

NOVEMBER 13, 1995.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. MOORHEAD, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 2361]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2361) to amend the commencement dates of certain temporary Federal judgeships, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 2361 is to ensure that judicial districts, specified as recipients of temporary judgeships under the Federal Judgeship Act of the Judicial Improvements Act of 1990, receive the benefit of the temporary judgeship for five years as intended by the Act. It does so by measuring the term of the temporary

judgeship from the confirmation date of the judge appointed rather than from the effective date of the Act.

BACKGROUND AND NEED FOR THE LEGISLATION

In 1990 the Federal Judgeship Act, Pub. L. 101-650, part of the Judicial Improvements Act of 1990, created thirteen temporary judgeships. These temporary positions are unique in that 5 years after the effective date of the Act, December 1, 1990, the next vacancy occurring in each of those 13 courts will not be filled. Therefore, under the present provisions of the Act any vacancy created by death, retirement, or by a judge taking senior status after December 1, 1995 will not be filled. This has the effect of allowing districts with clogged dockets to receive the benefit of an extra judge for a temporary period of 5 years.

The problem arises because the confirmation process is time-consuming and the temporary judgeship positions were not filled in some districts until 1994. For those courts a vacancy created soon after December 1, 1995, by death, retirement, or a judge taking senior status, would result in that court having had the benefit of the temporary position for as little as 14 months rather than the 5 years intended by Congress. The earliest temporary judgeship position was filled in November of 1991, thus making four years the maximum benefit received by any of the affected districts. Under the provisions of the present law, the 5 year term intended by Congress may not be attained.

H.R. 2361 establishes the confirmation date of the judge named to fill the temporary position as the starting point for the 5 years. The first vacancy occurring 5 years after that confirmation date will not be filled. This change assures that all affected districts receive the benefit of the temporary judgeship position for the full 5 years. Under the Act, the judge named to fill the temporary position continues in office as a permanent federal judge. It is only the first vacancy created after the five year term that is not filled, thereby allowing the court to return to its pre-1990 Judgeship Act number of judges.

The Western District of Michigan has notified the Committee on the Judiciary that because its docket has been dramatically reduced, it no longer requires the benefit of an extra judge for a temporary period of time and that such a benefit would amount to a waste of federal resources. In response to this request, H.R. 2361 exempts the Western District of Michigan from the new date extension provision.

This bill will appreciably enhance the administration of justice in those districts where the caseloads necessitated the creation of temporary judgeships.

HEARINGS

The provision contained in H.R. 2361 is substantially the same as one of the provisions considered by the Committee's Subcommittee on Courts and Intellectual Property at a hearing on H.R. 1443 on May 11, 1995. Testimony was received regarding that provision from the Honorable J. Phil Gilbert, Chief Judge, United States District Court for the Southern District of Illinois. Section 5 of H.R.

1443 amends the effective date of the Federal Judgeship Act in the same manner as the provision contained in H.R. 2361. Because of the time deadline for enacting the effective date provision, section 5 was introduced as a separate bill, H.R. 2361, and brought before the Committee.

COMMITTEE CONSIDERATION

On May 16, 1995, the Subcommittee on Courts and Intellectual Property met in open session and reported the bill, H.R. 1443, which contains a provision substantially the same as that contained in H.R. 2361, by a voice vote, a quorum being present. The Committee met in open session and ordered reported the bill H.R. 2361, by a voice vote, a quorum being present, on October 17, 1995.

VOTE OF THE COMMITTEE

Mr. Hyde called up H.R. 2361 and moved its adoption. The motion carried on a voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2361, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 31, 1995.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2361, a bill to amend the commencement dates of certain temporary federal judgeships.

Enacting H.R. 2361 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2361.
2. Bill title: A bill to amend the commencement dates of certain temporary federal judgeships.
3. Bill status: As ordered reported by the House Committee on the Judiciary on October 17, 1995.
4. Bill purpose: This bill would amend the Judicial Improvements Act of 1990 (Public Law 101-650), which created 13 temporary district court judgeships and required that the next vacancy in each of the 13 affected districts occurring five years after the effective date of the act (December 1, 1990) would not be filled. Thus, provisions of Public Law 101-650 were enacted with the intent of providing each district with the benefit of an additional judgeship for at least five years. However, because of delays in the nomination and confirmation process, many districts have not realized the benefit of having an additional judge serving for the intended minimum five-year period. Enacting this bill would change the controlling date for leaving vacancies unfilled to five years after the confirmation date of the temporary judge, rather than five years after the effective date of the Judicial Improvements Act of 1990. The bill also would exempt the western district of Michigan from the date extension provision. Thus, all but 1 of the 13 districts would realize the benefit of an extra judgeship for at least the full five years.
5. Estimated cost to the Federal Government: Enacting H.R. 2361 would increase discretionary spending, subject to appropriations of the necessary funds, and also would increase spending as shown in the following table.

[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000
SPENDING SUBJECT TO APPROPRIATIONS ACTION					
Estimated authorization level			2	3	3
Estimated outlays			2	3	3
CHANGES IN DIRECT SPENDING					
Estimated budget authority			(¹)	1	1
Estimated outlays			(¹)	1	1

¹ Less than \$500,000.

The costs of this bill fall within budget function 750.

6. Basis of estimate: Based on information from the Administrative Office of the United States Courts (AOUSC), CBO expects that enacting this bill would increase both discretionary and mandatory costs associated with the salaries and benefits of district court judges and their support personnel. Expenses required to support these additional personnel also would increase. These increased costs would be incurred in most of the 12 affected district courts over the next five years when a judgeship is vacated and filled while the temporary judgeship is in place. (The thirteenth district—western Michigan—would be exempt under the bill.)

Judges' salaries and benefits are not subject to appropriations, and thus a change in the number of judges affects direct spending. Salaries and benefits for support personnel and other expenditures related to a judgeship would require appropriation action.

Based on information from the AOUSC that took into account projections for when judges in each of the 12 affected districts would retire and the time it takes to nominate and confirm judges, CBO estimates that this bill would result in slightly more than \$2 million in new mandatory spending from 1998 through 2000 for salaries and benefits of judges. (Under current law, total spending for salaries and benefits of district court judges during that period would average about \$150 million a year.) Other additional costs would amount to about \$8 million over the same period.

According to the AOUSC, the first vacancies in the affected 12 districts would not begin to be filled until fiscal year 1998. CBO estimates that, on average during the 1996–2000 period, about five more judgeships would be occupied under the bill than under current law—for a total of about 15 additional work-years for judges. In addition, we estimate that the judiciary would have to provide for the equivalent of about 80 staff-years for both direct and indirect support personnel to support judges for the additional 15 work-years cited above.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of H.R. 2361 would increase direct spending by less than \$500,000 in fiscal year 1998. The following table shows the estimated pay-as-you-go impact of this bill.

[By fiscal years, in millions of dollars]

	1996	1997	1998
Change in outlays	0	0	0
Change in receipts		(1)	

¹ Not applicable.

- 8. Estimated cost to State and local governments: None.
- 9. Estimate comparison: None.
- 10. Previous COB estimate: None.
- 11. Estimate prepared by: Susanne S. Mehlman.
- 12. Estimate approved by: Robert A. Sunshine for Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 2361 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill amends Section 203(c) of the Judicial Improvements Act of 1990 by providing that the confirmation date of a judge named to fill a temporary position established under the Act shall serve as the starting point for the 5 year term of benefit during which an affected district will receive the benefit of the temporary judgeship. Any vacancy occurring 5 years after that confirmation date would not be filled. This change assures that all affected districts will receive the benefit of the temporary judgeship position for the full 5 years intended by the Act. Under the Act, the judge named to fill the temporary position continues in office as a permanent federal judge. The first vacancy created after the five year term is skipped, allowing the specified court to return to its pre-1990 Judgeship Act number of judges.

The Western District of Michigan no longer requires the benefit of an extra judge for a temporary period of time because its docket has been dramatically reduced. Accordingly, section 1 exempts the Western District of Michigan from the amended date extension provision.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 203 OF THE JUDICIAL IMPROVEMENTS ACT OF 1990

SEC. 203. DISTRICT JUDGES FOR THE DISTRICT COURTS.

(a) * * *

* * * * *

(c) TEMPORARY JUDGESHIPS.—The President shall appoint, by and with the advice and consent of the Senate—

(1) * * *

* * * * *

【The first vacancy in the office of district judge in each of the judicial districts named in this subsection, occurring 5 years or more after the effective date of this title, shall not be filled.】 *The first vacancy in the office of district judge in each of the judicial districts named in this subsection, except the western district of Michigan, occurring 5 years or more after the confirmation date of the judge named to fill a temporary judgeship created by this Act, shall not be filled. The first vacancy in the office of district judge in the western district of Michigan, occurring after December 1, 1995, shall not be filled.*

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