

117TH CONGRESS  
1ST SESSION

# S. 2968

To increase the number of judgeships for the United States Court of Appeals for the Ninth Circuit and certain district courts of the United States, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 2021

Mr. SULLIVAN (for himself, Ms. MURKOWSKI, Mr. CRAPO, Mr. DAINES, and Mr. RISCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To increase the number of judgeships for the United States Court of Appeals for the Ninth Circuit and certain district courts of the United States, 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 Efficiency Im-  
5       provement Act”.

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(2)(A).

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(2)(B).

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, Guam, Hawaii, 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, Oregon, Washington.”.

1 **SEC. 4. CIRCUIT COURT JUDGESHIPS.**

2 (a) NEW JUDGESHIPS.—The President shall appoint,  
3 by and with the advice and consent of the Senate, 2 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 ..... 18”;

24 and

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

“Twelfth ..... 13”.

**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 Seattle, Washington.

**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. DISTRICT JUDGES FOR THE DISTRICT COURTS.**

19       (a) **ADDITIONAL JUDGESHIPS.**—The President shall  
20 appoint, by and with the advice and consent of the Sen-  
21 ate—

22               (1) 4 additional district judges for the district  
23 of Arizona;

24               (2) 15 additional district judges for the central  
25 district of California;



1           (3) 4 additional district judges for the eastern  
2 district of California;

3           (4) 5 additional district judges for the northern  
4 district of California;

5           (5) 6 additional district judges for the southern  
6 district of California;

7           (6) 2 additional district judges for the district  
8 of Colorado;

9           (7) 2 additional district judges for the district  
10 of Delaware;

11          (8) 7 additional district judges for the middle  
12 district of Florida;

13          (9) 1 additional district judge for the northern  
14 district of Florida;

15          (10) 3 additional district judges for the south-  
16 ern district of Florida;

17          (11) 2 additional district judges for the north-  
18 ern district of Georgia;

19          (12) 1 additional district judge for the district  
20 of Idaho;

21          (13) 2 additional district judges for the south-  
22 ern district of Indiana;

23          (14) 1 additional district judge for the district  
24 of Iowa;

1           (15) 5 additional district judges for the district  
2 of New Jersey;

3           (16) 1 additional district judge for the district  
4 of New Mexico;

5           (17) 2 additional district judges for the eastern  
6 district of New York;

7           (18) 1 additional district judge for the southern  
8 district of New York;

9           (19) 1 additional district judge for the western  
10 district of New York;

11           (20) 2 additional district judges for the eastern  
12 district of Texas;

13           (21) 4 additional district judges for the south-  
14 ern district of Texas; and

15           (22) 6 additional district judges for the western  
16 district of Texas.

17       (b) CONVERSION OF TEMPORARY JUDGESHIPS.—The  
18 existing judgeships for the district of Kansas and the east-  
19 ern district of Missouri authorized by section 203(c) of  
20 the Judicial Improvements Act of 1990 (Public Law 101–  
21 650; 28 U.S.C. 133 note) and the existing judgeships for  
22 the district of Arizona, the central district of California,  
23 the southern district of Florida, the eastern district of  
24 Missouri, the district of New Mexico, the western district  
25 of North Carolina, and the eastern district of Texas au-

1 thorized by section 312(c) of the 21st Century Depart-  
 2 ment of Justice Appropriations Authorization Act (Public  
 3 Law 107–273, 28 U.S.C. 133 note), as of the date of en-  
 4 actment of this Act, shall be authorized under section 133  
 5 of title 28, United States Code, and the incumbents in  
 6 those offices shall hold the office under section 133 of title  
 7 28, United States Code, as amended by this Act.

8 (c) TECHNICAL AND CONFORMING AMENDMENTS.—  
 9 The table contained in section 133(a) of title 28, United  
 10 States Code, is amended—

11 (1) by striking the item relating to the district  
 12 of Arizona and inserting the following:

“Arizona ..... 17”;

13 (2) by striking the items relating to California  
 14 and inserting the following:

“California:  
 Northern ..... 19  
 Eastern ..... 10  
 Central ..... 43  
 Southern ..... 19”;

15 (3) by striking the item relating to the district  
 16 of Colorado and inserting the following:

“Colorado ..... 9”;

17 (4) by striking the item relating to the district  
 18 of Delaware and inserting the following:

“Delaware ..... 6”;

- 1 (5) by striking the items relating to Florida and  
 2 inserting the following:

“Florida:  
 Northern ..... 5  
 Middle ..... 22  
 Southern ..... 21”;

- 3 (6) by striking the items relating to Georgia  
 4 and inserting the following:

“Georgia:  
 Northern ..... 13  
 Middle ..... 4  
 Southern ..... 3”;

- 5 (7) by striking the item relating to Idaho and  
 6 inserting the following:

“Idaho ..... 3”;

- 7 (8) by striking the items relating to Indiana  
 8 and inserting the following:

“Indiana:  
 Northern ..... 5  
 Southern ..... 7”;

- 9 (9) by striking the item relating to New Jersey  
 10 and inserting the following:

“New Jersey ..... 22”;

- 11 (10) by striking the item relating to New Mex-  
 12 ico and inserting the following:

“New Mexico ..... 9”;

- 13 (11) by striking the items relating to New York  
 14 and inserting the following:

“New York:  
 Northern ..... 5

|                |     |
|----------------|-----|
| Southern ..... | 29  |
| Eastern .....  | 17  |
| Western .....  | 5”; |

1           (12) by striking the items relating to North  
2           Carolina and inserting the following:

|                  |     |
|------------------|-----|
| “North Carolina: |     |
| Eastern .....    | 4   |
| Middle .....     | 4   |
| Western .....    | 5”; |

3           and

4           (13) by striking the items relating to Texas and  
5           inserting the following:

|                |      |
|----------------|------|
| “Texas:        |      |
| Northern ..... | 12   |
| Southern ..... | 23   |
| Eastern .....  | 10   |
| Western .....  | 19”. |

6   **SEC. 15. ADMINISTRATION.**

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

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

1 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

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

5 **SEC. 17. EFFECTIVE DATE.**

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

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