

HJR

29

FISCAL NOTE

No: 1

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STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date: 7/24/99
 Title: Relating to the Division of the
6th Circuit Court of Appeals
 Sponsor: House Judiciary Committee
 Requester: _____

Dept. Affected _____
 BRU _____
 Component _____
 Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Cory N. Winchell

Phone 465-4990

House Judiciary Committee

Phone _____

Date 7/24/99

COMMITTEE COPY

Alaska State Legislature



House of Representatives House Judiciary Committee

SPONSOR STATEMENT

HJR 29 - Endorsing S.253 and the division of the Ninth Circuit Court of Appeals

The United States Court of Appeals for the Ninth Circuit encompasses nine states and two territories: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands. The circuit contains nearly 14 million square miles and 50 million people, and is the largest US court of appeals by any measure.

HJR 29 endorses S.253, introduced by Senators Frank Murkowski and Slade Gorton, which proposes to divide the ninth circuit into three regional divisions and a fourth circuit division. The states of Alaska, Idaho, Montana, Oregon, and Washington would be in one of the regional divisions.

S.253 proposes to adopt the recommendations of a congressionally mandated commission, chaired by retired Supreme Court Justice Byron R. White. The commission has addressed many of the shortcomings of the present Ninth Circuit Court. The division of the Court of Appeals for the Ninth Circuit into regions would benefit Alaska by providing speedier and more consistent rulings by the jurist who have greater familiarity with the social, geographical, political, and economic life in Alaska.

The legislature should support S.253 because the ninth circuit is simply too large to respond to the needs of Alaska.

Bill Summary & Status for the 106th Congress

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S.253SPONSOR: Sen Murkowski, Frank H. (introduced 01/19/99)RELATED BILLS: S.186

SUMMARY:**(AS INTRODUCED)**

Federal Ninth Circuit Reorganization Act of 1999 - Organizes the United States Court of Appeals for the Ninth Circuit into three regional divisions, designated as the Northern, Middle, and Southern Divisions, and a nonregional Circuit Division. Makes provisions of the Federal judicial code regarding circuits in which decisions are reviewable inapplicable to the Ninth Circuit, with such review instead governed by this Act.

Directs that appeals from: (1) the districts of Alaska, Idaho, Montana, Oregon, Eastern Washington, and Western Washington be taken to the Northern Division; (2) the districts of Eastern California, Northern California, Guam, Hawaii, Nevada, and the Northern Mariana Islands be taken to the Middle Division; (3) the districts of Arizona, Central California, and Southern California be taken to the Southern Division; and (4) the Tax Court, petitions to enforce the orders of administrative agencies, and specified other proceedings be filed in the court of appeals and assigned to the division that would have jurisdiction if the division were a separate court of appeals.

Allows judges to be assigned: (1) to serve for specified, staggered terms of three years or more in a division in which they do not reside; and (2) at random, by means determined by the court, in such numbers as necessary to enable the divisions to function effectively.

Directs the Ninth Circuit to establish a Circuit Division which shall have jurisdiction to review, and to affirm, reverse, or modify, any final decision rendered in any of the court's divisions that conflicts on an issue of law with a decision in another division of the court.

Requires: (1) the Federal Judicial Center to study the effectiveness and efficiency of the Ninth Circuit divisions, and report to the Judicial Conference of the United States; and (2) the Judicial Conference to submit recommendations to the Congress.

(Sec. 2) Rewrites provisions regarding the assignment of judges to direct a court of appeals or any regional division thereof to consider and decide cases and controversies through three judge panels, at least two of whom shall be judges of the court, with exceptions. Directs the United States Court of Appeals for the Federal Circuit to determine a procedure for the rotation of judges.

(Sec. 3) Amends the judicial code to authorize the judicial council of each circuit to establish a district court appellate panel service. Directs the judicial council to specify the categories or types of cases over which such panels shall have appellate jurisdiction.

Directs the Federal Judicial Center to monitor the implementation under this section and to report to the

Judicial Conference.

S 253 ISIS

(Star Print)

106th CONGRESS

1st Session

S. 253

To provide for the reorganization of the Ninth Circuit Court of Appeals, and for other purposes.

IN THE SENATE OF THE UNITED STATES

January 19, 1999

Mr. MURKOWSKI (for himself and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the reorganization of the Ninth Circuit Court of Appeals, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Federal Ninth Circuit Reorganization Act of 1999'.

SEC. 2. DIVISIONAL ORGANIZATION OF THE COURT OF APPEALS FOR THE NINTH CIRCUIT.

(a) REGIONAL DIVISIONS- Effective 180 days after the date of enactment of this Act, the United States Court of Appeals for the Ninth Circuit shall be organized into 3 regional divisions designated as the Northern Division, the Middle Division, and the Southern Division, and a nonregional division designated as the Circuit Division.

(b) REVIEW OF DECISIONS-

(1) NONAPPLICATION OF SECTION 1294- Section 1294 of title 28, United States Code, shall not apply to the Ninth Circuit Court of Appeals. The review of district court decisions shall be governed as provided in this subsection.

(2) REVIEW- Except as provided in sections 1292(c), 1292(d), and 1295 of title 28, United States Code, once the court is organized into divisions, appeals from reviewable decisions of the district and territorial courts located within the Ninth Circuit shall be taken to the regional

divisions of the Ninth Circuit Court of Appeals as follows:

(A) Appeals from the districts of Alaska, Idaho, Montana, Oregon, Eastern Washington, and Western Washington shall be taken to the Northern Division.

(B) Appeals from the districts of Eastern California, Northern California, Guam, Hawaii, Nevada, and the Northern Mariana Islands shall be taken to the Middle Division.

(C) Appeals from the districts of Arizona, Central California, and Southern California shall be taken to the Southern Division.

(D) Appeals from the Tax Court, petitions to enforce the orders of administrative agencies, and other proceedings within the court of appeals' jurisdiction that do not involve review of district court actions shall be filed in the court of appeals and assigned to the division that would have jurisdiction over the matter if the division were a separate court of appeals.

(3) ASSIGNMENT OF JUDGES- Each regional division shall include from 7 to 11 judges of the court of appeals in active status. A majority of the judges assigned to each division shall reside within the judicial districts that are within the division's jurisdiction as specified in paragraph (2), except that judges may be assigned to serve for specified, staggered terms of 3 years or more, in a division in which they do not reside. Such judges shall be assigned at random, by means determined by the court, in such numbers as necessary to enable the divisions to function effectively. Judges in senior status may be assigned to regional divisions in accordance with policies adopted by the court of appeals. Any judge assigned to 1 division may be assigned by the chief judge of the circuit for temporary duty in another division as necessary to enable the divisions to function effectively.

(4) PRESIDING JUDGES- Section 45 of title 28, United States Code, shall govern the designation of the presiding judge of each regional division as though the division were a court of appeals, except that the judge serving as chief judge of the circuit may not at the same time serve as presiding judge of a regional division, and that only judges resident within, and assigned to, the division shall be eligible to serve as presiding judge of that division.

(5) PANELS- Panels of a division may sit to hear and decide cases at any place within the judicial districts of the division, as specified by a majority of the judges of the division. The divisions shall be governed by the Federal Rules of Appellate Procedure and by local rules and internal operating procedures adopted by the court of appeals. The divisions may not adopt their own local rules or internal operating procedures. The decisions of 1 regional division shall not be regarded as binding precedents in the other regional divisions.

(c) CIRCUIT DIVISION-

(1) IN GENERAL- In addition to the 3 regional divisions specified under subsection (a), the Ninth Circuit Court of Appeals shall establish a Circuit Division composed of the chief judge of the circuit and 12 other circuit judges in active status, chosen by lot in equal numbers from each regional division. Except for the chief judge of the circuit, who shall serve ex officio, judges on the Circuit Division shall serve nonrenewable, staggered terms of 3 years each. One-third of the judges initially selected by lot shall serve terms of 1 year each, one-third shall

serve terms of 2 years each, and one-third shall serve terms of 3 years each. Thereafter all judges shall serve terms of 3 years each. If a judge on the Circuit Division is disqualified or otherwise unable to serve in a particular case, the presiding judge of the regional division to which that judge is assigned shall randomly select a judge from the division to serve in the place of the unavailable judge.

(2) JURISDICTION- The Circuit Division shall have jurisdiction to review, and to affirm, reverse, or modify any final decision rendered in any of the court's divisions that conflicts on an issue of law with a decision in another division of the court. The exercise of such jurisdiction shall be within the discretion of the Circuit Division and may be invoked by application for review by a party to the case, setting forth succinctly the issue of law as to which there is a conflict in the decisions of 2 or more divisions. The Circuit Division may review the decision of a panel within a division only if en banc review of the decision has been sought and denied by the division.

(3) PROCEDURES- The Circuit Division shall consider and decide cases through procedures adopted by the court of appeals for the expeditious and inexpensive conduct of the division's business. The Circuit Division shall not function through panels. The Circuit Division shall decide issues of law on the basis of the opinions, briefs, and records in the conflicting decisions under review, unless the Circuit Division determines that special circumstances make additional briefing or oral argument necessary.

(4) EN BANC PROCEEDINGS- Section 46 of title 28, United States Code, shall apply to each regional division of the Ninth Circuit Court of Appeals as though the division were the court of appeals. Section 46(c) of title 28, United States Code, authorizing hearings or rehearings en banc, shall be applicable only to the regional divisions of the court and not to the court of appeals as a whole. After a divisional plan is in effect, the court of appeals shall not order any hearing or rehearing en banc, and the authorization for a limited en banc procedure under section 6 of Public Law 95-486 (92 Stat. 1633), shall not apply to the Ninth Circuit. An en banc proceeding ordered before the divisional plan is in effect may be heard and determined in accordance with applicable rules of appellate procedure.

(d) CLERKS AND EMPLOYEES- Section 711 of title 28, United States Code, shall apply to the Ninth Circuit Court of Appeals, except the clerk of the Ninth Circuit Court of Appeals may maintain an office or offices in each regional division of the court to provide services of the clerk's office for that division.

(e) STUDY OF EFFECTIVENESS- The Federal Judicial Center shall conduct a study of the effectiveness and efficiency of the divisions in the Ninth Circuit Court of Appeals. No later than 8 years after the effective date of this Act, the Federal Judicial Center shall submit to the Judicial Conference of the United States a report summarizing the activities of the divisions, including the Circuit Division, and evaluating the effectiveness and efficiency of the divisional structure. The Judicial Conference shall submit recommendations to Congress concerning the divisional structure and whether the structure should be continued with or without modification.

SEC. 2. ASSIGNMENT OF JUDGES; PANELS; EN BANC PROCEEDINGS; DIVISIONS; QUORUM.

(a) IN GENERAL- Section 46 of title 28, United States Code, is amended to read as follows:

Sec. 46. Assignment of judges; panels; en banc proceedings; divisions; quorum

(a) Circuit judges shall sit on the court of appeals and its panels in such order and at such times as the court directs.

(b) Unless otherwise provided by rule of court, a court of appeals or any regional division thereof shall consider and decide cases and controversies through panels of 3 judges, at least 2 of whom shall be judges of the court, unless such judges cannot sit because recused or disqualified, or unless the chief judge of that court certifies that there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. A court may provide by rule for the disposition of appeals through panels consisting of 2 judges, both of whom shall be judges of the court. Panels of the court shall sit at times and places and hear the cases and controversies assigned as the court directs. The United States Court of Appeals for the Federal Circuit shall determine by rule a procedure for the rotation of judges from panel-to-panel to ensure that all of the judges sit on a representative cross section of the cases heard and, notwithstanding the first sentence of this subsection, may determine by rule the number of judges, not less than 2, who constitute a panel.

(c) Notwithstanding subsection (b), a majority of the judges of a court of appeals not organized into divisions as provided in subsection (d) who are in regular active service may order a hearing or rehearing before the court en banc. A court en banc shall consist of all circuit judges in regular active service, except that any senior circuit judge of the circuit shall be eligible to participate, at that judge's election and upon designation and assignment pursuant to section 294(c) and the rules of the circuit, as a member of an en banc court reviewing a decision of a panel of which such judge was a member.

(d)(1) A court of appeals having more than 15 authorized judgeships may organize itself into 2 or more adjudicative divisions, with each judge of the court assigned to a specific division, either for a specified term of years or indefinitely. The court's docket shall be allocated among the divisions in accordance with a plan adopted by the court, and each division shall have exclusive appellate jurisdiction over the appeals assigned to it. The presiding

judge of each division shall be determined from among the judges of the division in active status as though the division were the court of appeals, except the chief judge of the circuit shall not serve at the same time as the presiding judge of a division.

(2) When organizing itself into divisions, a court of appeals shall establish a circuit division, consisting of the chief judge and additional circuit judges in active status, selected in accordance with rules adopted by the court, so as to make an odd number of judges but not more than 13.

(3) The circuit division shall have jurisdiction to review, and to affirm, reverse, or modify any final decision rendered in any of the court's divisions that conflicts on an issue of law with a decision in another division of the court. The exercise of such jurisdiction shall be within the discretion of the circuit division and may be invoked by application for review by a party to the case, setting forth succinctly the issue of law as to which there is a conflict in the decisions of 2 or more divisions. The circuit division may review the decision of a panel within a division only if en banc review of the decision has been sought and denied by the division.

(4) The circuit division shall consider and decide cases through procedures adopted by the court of appeals for the expeditious and inexpensive conduct of the circuit division's business. The circuit division shall not function through panels. The circuit division shall decide issues of law on the basis

of the opinions, briefs, and records in the conflicting decisions under review, unless the division determines that special circumstances make additional briefing or oral argument necessary.

(e) This section shall apply to each division of a court that is organized into divisions as though the division were the court of appeals. Subsection (c), authorizing hearings or rehearings en banc, shall be applicable only to the divisions of the court and not to the court of appeals as a whole, and the authorization for a limited en banc procedure under section 6 of Public Law 95-486 (92 Stat. 1633), shall not apply in that court. After a divisional plan is in effect, the court of appeals shall not order any hearing or rehearing en banc, but an en banc proceeding already ordered may be heard and determined in accordance with applicable rules of appellate procedure.

(f) A majority of the number of judges authorized to constitute a court, a division, or a panel thereof shall constitute a quorum.'

(b) TECHNICAL AND CONFORMING AMENDMENT- The table of sections for chapter 3 of title 28, United States Code, is amended by amending the item relating to section 46 to read as follows:

'46. Assignment of judges; panels; en banc proceedings; divisions; quorum.'

(c) MONITORING IMPLEMENTATION- The Federal Judicial Center shall monitor the implementation of section 46 of title 28, United States Code (as amended by this section) for 8 years following the date of enactment of this Act and report to the Judicial Conference such information as the Center determines relevant or that the Conference requests to enable the Judicial Conference to assess the effectiveness and efficiency of this section.

SEC. 3. DISTRICT COURT APPELLATE PANELS.

(a) IN GENERAL- Chapter 5 of title 28, United States Code, is amended by adding after section 144 the following:

'Sec. 145. District Court Appellate Panels

(a) The judicial council of each circuit may establish a district court appellate panel service composed of district judges of the circuit, in either active or senior status, who are assigned by the judicial council to hear and determine appeals in accordance with subsection (b). Judges assigned to the district court appellate panel service may continue to perform other judicial duties.

(b) An appeal heard under this section shall be heard by a panel composed of 2 district judges assigned to the district court appellate panel service, and 1 circuit judge as designated by the chief judge of the circuit. The circuit judge shall preside. A district judge serving on an appellate panel shall not participate in the review of decisions of the district court to which the judge has been appointed. The clerk of the court of appeals shall serve as the clerk of the district court appellate panels. A district court appellate panel may sit at any place within the circuit, pursuant to rules promulgated by the judicial council, to hear and decide cases, for the convenience of parties and counsel.

(c) In establishing a district court appellate panel service, the judicial council shall specify the categories or types of cases over which district court appellate panels shall have appellate jurisdiction. In such cases specified by the judicial council as appropriate for assignment to district court appellate panels, and notwithstanding sections 1291 and 1292, the appellate panel shall have

exclusive jurisdiction over district court decisions and may exercise all of the authority otherwise vested in the court of appeals under sections 1291, 1292, 1651, and 2106. A district court appellate panel may transfer a case within its jurisdiction to the court of appeals if the panel determines that disposition of the case involves a question of law that should be determined by the court of appeals. The court of appeals shall thereupon assume jurisdiction over the case for all purposes.

“(d) Final decisions of district court appellate panels may be reviewed by the court of appeals, in its discretion. A party seeking review shall file a petition for leave to appeal in the court of appeals, which that court may grant or deny in its discretion. If a court of appeals is organized into adjudicative divisions, review of a district court appellate panel decision shall be in the division to which an appeal would have been taken from the district court had there been no district court appellate panel.

“(e) Procedures governing review in district court appellate panels and the discretionary review of such panels in the court of appeals shall be in accordance with rules promulgated by the court of appeals.

“(f) After a judicial council of a circuit makes an order establishing a district court appellate panel service, the chief judge of the circuit may request the Chief Justice of the United States to assign 1 or more district judges from another circuit to serve on a district court appellate panel, if the chief judge determines there is a need for such judges. The Chief Justice may thereupon designate and assign such judges for this purpose.”

(b) TECHNICAL AND CONFORMING AMENDMENT- The table of sections for chapter 5 of title 28, United States Code, is amended by adding after the item relating to section 144 the following:

“145. District court appellate panels.”

(c) MONITORING IMPLEMENTATION- The Federal Judicial Center shall monitor the implementation of section 145 of title 28, United States Code (as added by this section) for 8 years following the date of enactment of this Act and report to the Judicial Conference such information as the Center determines relevant or that the Conference requests to enable the Conference to assess the effectiveness and efficiency of this section.

END