

## Summary of Provisions of S. 253: Federal Ninth Circuit Reorganization Act of 1999

Senators Murkowski and Gorton introduced this bill on January 19, 1999, to implement the recommendations of the final report of the Commission on Structural Alternatives for the Federal Courts of Appeals. It is identical to the proposed legislation included in the final report of the Commission.

Senator Murkowski's comments upon introduction included a reiteration that circuit population, high caseloads, and inconsistency of decisions still justified splitting the circuit completely. He criticized the circuit's large geographic spread and said its population will increase 40% (from 49 to 63 million) by 2010. He alleged that the circuit's large size decreases judges' ability to keep abreast of the caseload, resulting in conflicting cases and a high (95%) reversal rate in the Supreme Court in 1996-1997. The main provisions of the bill are summarized below:

- The limited *en banc* court is eliminated for the Ninth Circuit as a whole.
- **REGIONAL DIVISIONS:** Appeals will be taken from district courts to the regional division in which they are located:
  - Northern: Alaska, Idaho, Montana, Oregon, E.D. Washington, W.D. Washington.
  - Middle: E. D. California, N.D. California, Guam, Hawaii, Nevada, NMI.
  - Southern: Arizona, C.D. California, S.D. California.
- Presiding judges of each regional division must be resident in the division.
- Panels may sit anywhere in the regional division and may not adopt their own local rules or internal operating procedures.
- Each division will have from 7 to 11 judges, the majority of whom reside in that division. Judges may be randomly assigned for 3-year terms to another division.
- The decisions of one regional division are not binding on other regional divisions.
- **CIRCUIT DIVISION:** A Circuit Division of 13 judges, including the chief circuit judge and 12 others chosen by lot in equal numbers from each division, will serve staggered three-year terms.
  - The Circuit Division has discretionary jurisdiction to review, affirm, reverse, or modify any final decision of a regional division that conflicts on an issue of law with a decision of another division of the court.
  - Any party may seek review by the Circuit Division after *en banc* review of the decision has been sought and denied by the regional division.
  - The Circuit Division shall sit *en banc*. It shall adopt expedited procedures and decide issues of law on the basis of opinions, briefs, and records, unless special circumstances call for additional briefing or oral argument.
- **EVALUATION:** The Federal Judicial Center shall conduct a study of the effectiveness and efficiency of the divisions in the Ninth Circuit and issue an evaluation report no later than eight years after the effective date of the act (which is 180 days after enactment).
  - The Judicial Conference of the United States shall submit recommendations to Congress on division structure and its continuation with or without modification.
- **NEW DECISIONAL MECHANISMS** are permitted in the legislation for all circuits, including the use of two-judge panels and district court appellate panels (using two district judges and one circuit judge.)