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COMMISSION ON STRUCTURAL ALTERNATIVES FOR THE FEDERAL COURTS OF APPEALS

MARCH 17, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

[To accompany H.R. 908]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 908) to establish a Commission on Structural Alternatives for the Federal Courts of Appeals, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	1
Background and Need for the Legislation	2
Hearings	3
Committee Consideration	3
Vote of the Committee	3
Committee Oversight Findings	3
Committee on Government Reform and Oversight	3
New Budget Authority and Tax Expenditures	3
Congressional Budget Office Estimate	3
Constitutional Authority	5
Section-by-Section Analysis	5

PURPOSE AND SUMMARY

The purpose of H.R. 908 is to establish a Commission on Structural Alternatives for the Federal Courts of Appeals. The Commission would: (1) study the present division of the United States into several judicial circuits; (2) review the structure and alignment of the Federal Courts of Appeals system, with particular reference to the Ninth Circuit; and (3) report to the President and Congress its

39–006

recommendations for such changes in circuit boundaries or structure as may be appropriate for the expeditious and effective caseload of the Federal Courts of Appeals, consistent with fundamental concepts of fairness and due process.

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 908 would create a Commission on Structural Alternatives for the Federal Courts of Appeals. The legislation originated as a response to recurring attempts to divide the largest of the federal judicial circuits, the Ninth. However, the Commission proposal in this bill represents a sound approach to a problem of national concern: explosive growth in the caseload of all of the courts of appeals.

Over the past two decades, filings in the courts of appeals have increased by more than 200 percent. The number of judges has also grown, though much more slowly. But the structure of the federal appellate system remains essentially the same one that Congress created more than a century ago. The time is ripe for a careful, objective study aimed at determining whether that structure can adequately serve the needs of the 21st century. The task of the Commission would be to carry out that study.

Although the immediate occasion for the Commission proposal was the debate over dividing the Ninth Circuit, the proposal has its origins in the work of the Federal Courts Study Committee, which was created by Act of Congress in 1988. In a report issued in 1990, the Study Committee concluded that the federal appellate courts were already experiencing a "crisis of volume." The Study Committee expressed the view that "within as few as five years the nation could have to decide whether or not to abandon the present circuit structure in favor of an alternative structure that might better organize the more numerous appellate judges needed to grapple with a swollen caseload." The Committee's report presented several "structural alternatives," but it did not endorse any of them; instead, it called for "further inquiry and discussion." The proposed Commission would thus take up where the Federal Courts Study Committee left off.

The proposed Commission would be the first of its kind since the Commission on Revision of the Federal Court Appellate System (the "Hruska Commission"), which completed its work in 1975, more than 20 years ago. Needless to say, dramatic changes have taken place in the work of the federal courts in those two decades, including the explosive growth noted above. But there have been no structural alterations except for the division of the old Fifth Circuit and the creation of the Court of Appeals for the Federal Circuit.

H.R. 908 would give the Commission two years in which to carry out its work. It also includes a requirement that the initial appointments to the Commission be made within 60 days of the date of enactment. That will help to assure that the process will not be delayed unduly.

Under H.R. 908, the composition of the Commission would consist of 12 members, with two members to be appointed by each of six individuals—the President, the Chief Justice, the Majority and Minority Leaders of the Senate, and the Speaker and Minority

Leader of the House. A quorum would consist of 7 members, but 3 may conduct hearings. Funding for the Commission would be $1.3 million, $500,000 of which has already been appropriated pursuant to Public Law 104–208, an Omnibus Appropriations Act passed by the 104th Congress. Members of the Commission who are federal officers or full-time employees will receive no additional compensation for their services, but shall be reimbursed for travel, subsistence, and other related expenses. Those Commissioners selected from private life will also be reimbursed for expenses in addition to receiving $200 per day when engaged in Commission-related work. The Commission will have authority to hire staff and procure the personal services of experts and consultants.

HEARINGS

Neither the Subcommittee on Courts and Intellectual Property nor the Committee conducted hearings on H.R. 908. The Senate Committee on the Judiciary did hold hearings on a similar bill, S. 956, during the 104th Congress.

COMMITTEE CONSIDERATION

On March 5, 1997, the Subcommittee on Courts and Intellectual Property met in open session and reported favorably H.R. 908 to the full Committee by voice vote, a quorum being present. On March 12, 1997, the Committee on the Judiciary met in open session and reported favorably H.R. 908 to the House by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes during consideration of H.R. 908.

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. 908, 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, March 12, 1997.

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. 908, a bill to establish a Commission on Structural Alternatives for the Federal Courts of Appeals.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 908—A bill to establish a Commission on Structural Alternatives for the Federal Courts of Appeals

Summary: H.R. 908 would establish a commission to study the structure and alignment of the Federal Court of appeals system. The commission, consisting of 12 members, would have two years after its seventh member is appointed to conduct the study and present its findings to the President and the Congress. In addition, the commission would have the authority to appoint an executive director, who, with the approval of the commission, could appoint additional personnel to assist the commission in performing its duties.

The bill would authorize the appropriation of up to $1.3 million for establishing the commission and carrying out its duties, but $500,000 of that amount has already been appropriated. Hence, CBO estimates an additional cost of $800,000, assuming appropriation of the entire amount authorized. H.R. 908 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 908 is shown in the table on the following page. CBO assumes that the full amount authorized in H.R. 908 would be appropriated by the start of fiscal year 1998. Because $500,000 has already been appropriated for this purpose, CBO estimates that an additional appropriation of $800,000 would be required for the commission to complete its study. Projected outlays are based on the historical rate of spending for similar commissions.

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION						
Spending under current law:						
Authorization level [1]	0.5	.....	.....	.....	.....	.....

[By fiscal year, in millions of dollars]

	1997	1998	1999	2000	2001	2002
Estimated outlays	0.3	0.2	.....	.....	.....	.....
Proposed changes:						
Authorization level	.....	0.8	.....	.....	.....	.....
Estimated outlays	.....	0.6	0.2	.....	.....	.....
Spending under H.R. 908:						
Authorization level [1]	0.5	0.8	.....	.....	.....	.....
Estimated outlays	0.3	0.8	0.2	.....	.....	.....

[1] The 1997 level is the amount appropriated for the year.

The costs of this legislation fall within budget function 750 (administration of justice).

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 908 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995, and would not impose any costs on state, local, or tribal governments.

Estimate prepared by: Susanne S. Mehlman.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY

The constitutional authority for H.R. 908 is Article I, Section 8.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill establishes a Commission on Structural Alternatives for the Federal Courts of Appeals and enumerates its functions; namely, to study the present division of the United States into the several judicial circuits; review the structure and alignment of the Federal Court of Appeals system, with particular reference to the Ninth Circuit; and report to the President and Congress its recommendations for such changes in circuit boundaries or structure as may be appropriate for the expeditions and effective disposition of the caseload of the Federal Courts of Appeals, consistent with fundamental concepts of fairness and due process.

Section 2 of the bill describes the 12-member composition of the commission: two persons to be appointed by each of six individuals—the President, the Chief Justice of the Supreme Court, the Majority and Minority Leaders of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives.

All members of the Commission are to be appointed within 60 days after the date of enactment of the bill. Vacancies are to be filled in the same manner as an original appointment. Section 2 also requires the Commission, once appointed, to elect a Chair and Vice Chair from among its members. At least three members may conduct hearings, but seven will constitute a quorum.

Section 3 establishes rates of compensation for members of the Commission. Officers or full-time employees of the Federal workforce will receive no additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses related to Commission work. In addition to such expenses, private members of the Commission will receive $200 for each day (including travel time) they perform Commission-related work.

Section 4 authorizes the Commission to appoint an Executive Director who, in turn, may hire staff and procure the personal services of experts and consultants to assist the Commission in its work. Section 4 further directs the Administrative Office of the U.S. Courts to provide administrative services for the Commission on a reimbursable basis, and requires the Federal Judicial Center to provide necessary research services on a reimbursable basis.

Section 5 authorizes the Commission to require from any Federal department, agency, or independent instrumentalities any information or assistance the Commission determines necessary to perform its work. The affected departments, agencies, and independent instrumentalities are correspondingly authorized to provide such information and assistance.

Section 6 requires the Commission to submit its report to the President and Congress no later than 2 years after the date on which the Seventh Commission Member is appointed. The Commission will then terminate 90 days after the date of submission of the report.

Section 7 requires the Committees on the Judiciary of the House of Representatives and the Senate to act on the report no later than 60 days following its submission.

Section 8 authorizes up to $1,300,000 to be appropriated for the Commission to perform its work.

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