

COURT REFORM AND ACCESS TO JUSTICE ACT OF 1988

AUGUST 26, 1988.—Ordered to be printed

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

REPORT

[To accompany H.R. 4807]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4807) to amend title 28, United States Code, to make certain improvements with respect to the Federal judiciary, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to any civil action commenced on or after the date of the enactment of this Act.

TITLE IV—FEDERAL JUDICIAL CENTER

SEC. 401. FEDERAL JUDICIAL CENTER FOUNDATION.

(a) **ESTABLISHMENT.**—Chapter 42 is amended by adding at the end the following new section:

“§ 629. Federal Judicial Center Foundation

“(a) **ESTABLISHMENT AND PURPOSE.**—There is established a private nonprofit corporation which shall be known as the Federal Judicial Center Foundation (hereafter in this section referred to as the ‘Foundation’) and which shall be incorporated in the District of Columbia. The purpose of the Foundation shall be to have sole authority to accept and receive gifts of real and personal property and services made for the purpose of aiding or facilitating the work of the Federal Judicial Center. The Foundation shall not accept conditional or otherwise restricted gifts, except for gifts that are designated for the support of specific projects previously approved by the Board of the Center. The Foundation shall have no authority to administer or otherwise determine the use of gifts accepted under this section.

“(b) **BOARD OF THE FOUNDATION.**—The business of the Foundation shall be conducted by a Board that shall have seven members, including a chairman. Three members, including the chairman, shall be appointed by the Chief Justice of the United States, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. The term of office of each member of the Board shall be five years, except that the initial terms shall be five years for the chairman, one member appointed by the President Pro Tempore and one member appointed by the Speaker, three years for the other member appointed by the President Pro Tempore and the other member appointed by the Speaker, and two years for the two other members appointed by the Chief Justice. Members of the Board shall serve without compensation but, upon authorization of the Director of the Center, shall be reimbursed by the Federal Judicial Center for actual and necessary expenses incurred in the performance of their official duties. No person who is a Federal or State judge in regular active service or otherwise eligible to perform judicial duties shall be eligible for membership on the Board. The Center shall provide all administrative support and facilities necessary for the operation of the Board.

“(c) **USE OF GIFTS BY THE CENTER.**—The Federal Judicial Center is authorized to administer and use gifts received by the Foundation under this section. The gifts shall be used to further the goals of the Center as determined by the Board of the Center.

“(d) **DEPOSIT OF GIFTS IN THE TREASURY; DISBURSEMENTS.**—Gifts of money and proceeds from sales of other property received as gifts shall be deposited in a separate fund in the Treasury of the United States and disbursed on the order of the Director of the Center, in accordance with policies established by the Board of the Center.

“(e) **ANNUAL REPORTS.**—The Board of the Foundation shall, not later than October 1 of each year, submit to the Committees on the Judiciary of the Senate and the House of Representatives a report with respect to gifts received under this section during the preceding 12-month period, including the source of each such gift, the amount of each gift of cash or cash equivalent, and a description of any other gift. The Center shall include in its annual report of the activities of the Center under section 623(a)(3) a description of the purposes for which gifts were used during the year covered by the report.

“(f) **TREATMENT OF GIFTS FOR PURPOSES OF TAX LAWS.**—For the purpose of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift or bequest to or for the use of the United States.”

(b) **CONFORMING AMENDMENT.**—The item relating to section 629 in the table of sections for chapter 42 is amended to read as follows:

“629. Federal Judicial Center Foundation.”

SEC. 402. AUTHORITY TO IMPLEMENT HISTORY PROGRAM.

Section 623(a) is amended—

- (1) by striking out “and” at the end of paragraph (5);
- (2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof “, and”; and
- (3) by adding at the end the following new paragraph:

"(7) conduct, coordinate, and encourage programs relating to the history of the judicial branch of the United States Government."

SEC. 403. AUTHORITY TO PROVIDE FOR TRAINING FOR PERSONS OUTSIDE THE JUDICIAL BRANCH.

Section 620(b)(3) is amended to read as follows:

"(3) to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the Government and other persons whose participation in such programs would improve the operation of the judicial branch, including, but not limited to, judges, United States magistrates, clerks of court, probation officers, and persons serving as mediators and arbitrators;"

SEC. 404. APPOINTMENT AND COMPENSATION OF THE DEPUTY DIRECTOR OF THE CENTER.

(a) **APPOINTMENT BY THE BOARD.**—Section 624, relating to powers of the Board of the Federal Judicial Center, is amended in paragraph (1) by inserting "and the Deputy Director" after "Director".

(b) **COMPENSATION.**—(1) Section 626 is amended by adding at the end the following new sentence: "The compensation of the Deputy Director of the Federal Judicial Center shall be the same as that of the Deputy Director of the Administrative Office of the United States Courts."

(2) The section heading for section 626 is amended to read as follows:

"§ 626. Compensation of the Director and Deputy Director".

(3) The item relating to section 626 in the table of sections at the beginning of chapter 42 is amended to read as follows:

"626. Compensation of the Director and Deputy Director."

(c) **BUDGET ACT COMPLIANCE.**—The amendment made by subsection (b) shall be effective for fiscal years beginning on or after October 1, 1988.

TITLE V—TEMPORARY EMERGENCY COURT OF APPEALS

SEC. 501. TRANSFER OF JURISDICTION OF THE COURT.

(a) **APPEALS UNDER ECONOMIC STABILIZATION ACT.**—Section 211 of the Economic Stabilization Act of 1970 (Public Law 91-379, as amended; 84 Stat. 799) is amended by striking out subsections (b) through (h) and inserting in lieu thereof the following:

"(b) Appeals from orders or judgments entered by a district court of the United States in cases and controversies arising under this title may be brought in the United States Court of Appeals for the Federal Circuit, if the appeal is from a final decision of the district court, or is an interlocutory appeal to the extent permitted under section 1292(c) of title 28, United States Code."

(b) **JUDICIAL REVIEW OF EMERGENCY ORDERS UNDER NATURAL GAS POLICY ACT.**—Section 506(c) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3416(c)) is amended—

(1) in the first sentence by striking out "the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended," and inserting in lieu thereof "the United States Court of Appeals for the Federal Circuit"; and

(2) by striking out "Temporary Emergency Court of Appeals" each subsequent place it appears and inserting in lieu thereof "United States Court of Appeals for the Federal Circuit"

(c) **CONFORMING AMENDMENT.**—Section 1295(a) is amended—

(1) by striking out "and" at the end of paragraph (9);

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraphs:

"(11) of an appeal under section 211 of the Economic Stabilization Act of 1970;

"(12) of an appeal under section 5 of the Emergency Petroleum Allocation Act of 1973;

"(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978;

and

"(14) of an appeal under section 523 of the Energy Policy and Conservation Act."

SEC. 502. ABOLITION OF THE COURT.

(a) **DATE OF ABOLITION.**—The Temporary Emergency Court of Appeals created by section 211(b) of the Economic Stabilization Act of 1970 shall be abolished effective at the close of business on September 30, 1989.

TITLE IV—FEDERAL JUDICIAL CENTER AMENDMENTS

BACKGROUND

The Subcommittee on Courts, Civil Liberties, and the Administration of Justice has a long history of interest in and support for the Federal Judicial Center. The Center is an independent agency in the judicial branch of government responsible for providing education and training services to all judicial personnel, as well as research and systems development services to the courts, to the Judicial Conference of the United States and its committees, and to the Congress. The Center is governed by an eight-member board chaired by the Chief Justice of the United States. The other board members consist of the Director of the Administrative Office of the United States Courts who serves ex-officio and six judges—two circuit, three district, and one bankruptcy—who are elected to four-year terms by the Judicial Conference.⁴⁵

In the course of the 1985 oversight hearing, Mr. Kastenmeier noted that some years had passed since the Center was created and asked whether the Center might benefit from some amendment of the governing statute.⁴⁶ In response, the Board of the Center reviewed the operations of the Center and approved four proposed amendments to authorize the receipt of gifts by the Center through a private nonprofit corporation, to establish a history program for the Judicial Branch, to permit training of individuals other than judicial branch employees under certain circumstances, and to make the Deputy Director of the Center a statutory position and to fix the compensation of the Deputy Director. These recommendations were submitted to the Congress on May 7, 1987, on behalf of the Board in an omnibus Judicial Branch improvements measure and introduced as separate legislation by Congressman Kastenmeier on May 19, 1987, as H.R. 2467. On May 20, hearings were held on the proposals as a part of oversight hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice.⁴⁷ Subsequently, Congressman Kastenmeier incorporated these proposals into H.R. 3152 and, in due course, into the current measure as title IV.

Title IV, therefore, accomplishes several objectives regarding the Federal Judicial Center. First, it creates a Federal Judicial Center Foundation to accept and receive gifts to be used by the Federal Judicial Center for the purpose of aiding or facilitating the work of the Center. In deciding to confer gift acceptance legislation on the Center, it is necessary to safeguard both the independence and the appearance of the independence of the Federal Judiciary branch. It is the view of the Committee that the judiciary's independence would not be compromised if the Center were permitted to utilize gifts of personal property, such as books or papers from judges' or scholars' collections, or gifts of services from scholars or other experts who wished to donate their time. It would also be proper to

⁴⁵ See generally, Chapter 42, title 28, United States Code, reproduced in *Federal Judicial Center Oversight Hearing*, *supra* note 14 at 13-16.

⁴⁶ *Id.* at 1,6.

⁴⁷ Hearing on Federal Judicial Center/State Justice Institute, *supra* note 14 at 36-41, 43-46, 81-99.

Section 402

Section 402 of the bill amends section 623(a) of title 28, United States Code, dealing with the duties of the Board of the Federal Judicial Center, by adding a new paragraph (7) that directs the board to "conduct, coordinate, and encourage programs relating to the history of the Judicial Branch of the United States government." This amendment, in effect, confers upon the Federal Judicial Center the task of establishing a history program for the Federal Judiciary. It should be noted that the Committee amended section 623(a)(7) as introduced to delete after the term "programs" the phrase "to collect, preserve, and make available materials". This amendment is to clarify that the history programs to be undertaken by the Center were not intended to be narrowly focused upon document collection and preservation. Although the Center would have the authority to acquire and utilize papers and manuscripts relating to judicial history, it is not intended that the Center would establish a document collection and preservation program that would in any way compete with those of other government entities, such as the National Archives and Records Administration or the Library of Congress.

The extent of historical preservation in the judiciary is not only very small, there is also extremely limited information available about the activities that do exist. A survey of circuit executives turned up only two such activities. A follow-up revealed several more projects at the district level that were not known at the circuit executive level. Doubtless, the total activity is still small, but it is larger than generally known. Material that cannot be found is almost as great a loss as material that has been lost or destroyed.

Preservation and use of historical material is a useful and valid service to contemporary work. Knowing how and why things came to be the way they are contributes substantially to any assessment of current effectiveness and to appreciating the promise of proposals for change. Though the utilitarian side of historical materials in the judiciary may differ from applications in other public endeavors, there is nonetheless real need and real potential.

A history program for the Judicial Branch might extend to the following elements: (a) a catalog that would record the location and identification of and identify existing materials, ongoing projects, and planned programs relating to Federal judicial history; (b) an oral history program involving both support for others and activities carried on by the staff; (c) a written history project that might support work to cover neglected areas or coordinate work addressing specific needs; and (d) a judicial museum for displaying artifacts, manuscripts, portraits, and other projects.

A history program for the Federal judiciary is related to the proposal in section 401 of this title to provide a mechanism for the Center to accept and utilize gifts. A history program would clearly need to be able to accept and utilize gifts of manuscripts, diaries, and other forms of records as well as artifacts.

In the view of the Committee, this program should be implemented in consultation with an advisory committee to be established by the Federal Judicial Center. The Committee should be composed of legal and constitutional historians whose field of re-

search is judicial history, judges interested in the field of judicial history, and judicial administrators assigned the function or maintaining and preserving records.

Section 403

Section 403 amends section 620(b)(3) of title 28, United States Code, and permits the Federal Judicial Center to encompass within its training program non-government personnel whose participation in such programs would improve the operation of the Judicial Branch. A number of district courts now have programs under which members of the private bar serve as mediators or arbitrators in an effort to resolve litigation without the necessity of trial, but there is no authority to expend Judicial Center funds in programs to improve their mediation or arbitration skills. It would clearly be advantageous to the Judiciary if the Center were able to support such programs. There may also be limited situations in which it is appropriate to train members of the private bar who agree to represent indigent defendants but whose Federal court criminal experience is limited, or to provide court orientation seminars for prospective Federal court interpreters. This amendment would permit expenditure of Center funds in these types of situations clearly of benefit to the operation of the judiciary.

Section 404

Section 404 amends section 624 of title 28, United States code, relating to powers of the Board of the Judicial Center, to authorize the Board to appoint, fix the duties of, and remove the Deputy Director of the Federal Judicial Center. This amendment conforms the Federal Judicial Center to parallel provisions in 28 U.S.C. 601 making the Deputy Director of the Administrative Office of the United States Courts an express statutory position subject to removal by the Supreme Court. Section 404 also amends section 626 of title 28, United States Code, to add a new sentence that would provide for compensation of the Deputy Director of the Federal Judicial Center at the same rate as that of the Deputy Director of the Administrative Office. This section also makes technical changes to the section title and the appropriate chapter analysis.

TITLE V—TEMPORARY EMERGENCY COURT OF APPEALS

BACKGROUND

This title would phase out the Temporary Emergency Court of Appeals (TECA) a somewhat unique court within the judicial branch of government, and designate the Court of Appeals for the Federal Circuit as the forum for appellate review of future TECA cases.

The Temporary Emergency Court of Appeals was created in 1970 by section 211(b) of the Economic Stabilization Act of 1970 with jurisdiction over appeals involving wage-price regulations. While its original assignment has faded, over the years it has been given new but somewhat related jurisdiction now largely involving rate setting in the oil and gas industry.

The court consists of 24 Federal judges, borrowed from other courts. In the general period when hearings were held on H.R.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 25, 1988.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 4807, the Court Reform and Access to Justice Act of 1988.

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

Sincerely,

JAMES L. BLUM,
Acting Director.

X. CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 4807.
2. Bill title: Court Reform and Access to Justice Act of 1988.
3. Bill status: As ordered reported by the House Committee on the Judiciary, August 2, 1988.
4. Bill purpose: H.R. 4807 would make a number of changes with respect to the federal judiciary. The main features of the bill include:

Title I would amend the statutory provisions that establish the framework for the federal judiciary's role in the promulgation of rules of practice and procedure and rules of evidence in the federal court system.

Title II would authorize the use of arbitration in civil actions in an additional 13 districts for a period of five years.

Title III would provide federal jurisdiction for civil actions involving minimal diversity between adverse parties that arise from a single event involving either death or injury (resulting in damages that exceed \$50,000 per person) to at least 25 persons. This title would also increase the amount in controversy for federal jurisdiction of diversity of citizenship case from \$10,000 to \$50,000.

Title IV would establish a Federal Judicial Central Foundation to accept and receive gifts of real and personal property and services made to facilitate the work of the Federal Judicial Center. The bill would also require that the Federal Judicial Center implement a history program relating to the judicial branch of the United States government.

Title V would abolish the Temporary Emergency Court of Appeals as of September 30, 1989 and transfer jurisdiction to the United States Court of Appeals for the Federal Circuit.

Title VI would give the United States Court of Appeals for the Federal Circuit exclusive jurisdiction of appeals from interlocutory orders of district courts on motions to transfer actions to the United States claims Court.

Title VII would reauthorize the State Justice Institute for fiscal year 1989.

Title VII—the Court Interpreter Amendments Act of 1988—would require that the Director of the Administrative Office of