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WASHINGTON, D.C. 20544

September 4, 1990

MEMORANDUM TO MR. MECHAM
MR. MACKLIN

THRU: RAYMOND KARAM *OK 9/4*

SUBJECT: Judicial Impact Statement for H.R. 5381 and S. 2648,
the Federal Courts Study Committee Implementation Act
of 1990

Attached for your information is the Judicial Impact Statement for H.R. 5381 and S. 2648, the Federal Courts Study Committee Implementation Act of 1990. The Judiciary is testifying at a hearing on H.R. 5381 on September 6. This proposed legislation requires the Judiciary to take a number of steps associated with: (1) increasing witness and juror fees; (2) authorizing alternative dispute resolution procedures; (3) allowing biennial circuit judicial conferences; (4) appeals of judgments, orders and decrees of bankruptcy courts; (5) extension of the terms of office of bankruptcy judges; (6) reauthorization of the bankruptcy administrator program; (7) creating a retirement program for Claim Court Judges, and changing the age and service requirements for Justices of the Supreme Court, Appeals and District Court Judges, and Court of International Trade Judges for their retirements; and (8) decreasing the length of service required for eligibility under the Judicial Survivors' Annuities Act.

The impact of the proposed legislation varies according to the manner in which it is implemented. Because of this, several provisions are not quantifiable at this time. The quantifiable provisions of these bills would cost the Judiciary \$21.9 million and 180 staff years annually once the bills are fully implemented. However, the actual budgetary impact would be slightly higher since the savings associated with Judicial Officer resources and support staff will still be expended for other priority activities. Currently, the recurring budgetary

Memorandum to Mr. Mecham
Mr. Macklin

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impact is estimated to be \$23.4 million and 192 staff years. The estimates developed for this impact statement were produced from information submitted by LPA, GC, ADPM, CAD, DSD, PD, MD, BD, ADAT, ADA, and FMD.



Nancy Potok

Attachment

cc: Robert Feidler
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JUDICIAL IMPACT STATEMENT

H.R. 5381 AND S. 2648

**FEDERAL COURTS STUDY COMMITTEE
IMPLEMENTATION ACT OF 1990**

PREPARED BY:

**THE ADMINISTRATIVE OFFICE OF THE
U.S. COURTS**

JUDICIAL IMPACT STATEMENT

FEDERAL COURTS STUDY COMMITTEE IMPLEMENTATION ACT OF 1990

H.R. 5381 AND S. 2648 (TITLE III)

The Federal Courts Study Committee Implementation Act (H.R. 5381) and Senate version of the bill, S. 2648 (Title III), are nearly identical and have a significant impact on the resources of the Judiciary. Areas affected include court administration, bankruptcy, automation, and the AO. Some of the bills' major provisions include: (1) increasing witness and juror fees; (2) authorizing alternative dispute resolution procedures; (3) allowing biennial circuit judicial conferences; (4) appeals of judgments, orders, and decrees of bankruptcy court; (5) extension of the terms of office of bankruptcy judges; (6) reauthorization of the bankruptcy administrator program; (7) creating a new retirement program for Claim Court Judges, and changing the age and service requirements for Justices of the Supreme Court, Appeal and District Court Judges, and Court of International Trade Judges for their retirements; and (8) decreasing the length of service required for eligibility under the Judicial Survivors' Annuities Act.

Impact on the Judiciary

These bills contain several provisions that are not easily quantifiable. Provisions that are not quantifiable are identified as having potential impacts and are not included in the cost of the bills. The annual cost to the Judiciary is anticipated to exceed \$25.6 million and 180 staff years (full-time equivalents (FTEs)) for the first year and \$21.9 million and 180 staff years for recurring years as shown below:

RESOURCE REQUIREMENT

<u>Provision</u>	<u>First Year Costs \$ in M</u>	<u>Recur. Years Costs \$ in M</u>	<u>Staff Years (FTEs)</u>
Juror Fees.....	11.0	11.0	---
ADR Procedures.....	14.9	12.2	179
Biennial Circuit Jud. Confer.	-2.4	-2.4	-12
Study on Defender Program....	.2	.2	3
Annuities for Judges.....	.1	.2	---
Automation and Support.....	1.4	.4	5
Administrative Office.....	.4	.3	5
Subtotal	<u>\$25.6</u>	<u>\$21.9</u>	<u>180</u>

The annual budgetary cost to the Judiciary is anticipated to be about \$27.1 million and 192 staff years for the first year and approximately \$23.4 million and 192 staff years for recurring years. The difference between the budgetary cost and resource cost estimates are attributable to the savings associated with Judicial Officers, their staffs and support. The savings associated with these personnel were subtracted out of the Resource Requirement Table. This was not done for Summary of Budgetary Costs Table, since Judicial Officers and their staff are working at full capacity, and the proposed savings would be diverted to other activities that require their attention. For example, the Biennial Circuit Judicial Conference provision creates a savings. However, this savings was reduced in the budget table since it does not affect compensation and benefits of Judicial Officers and their support staff.

The costs in this impact statement do not include the Federal Judicial Center or the U.S. Sentencing Commission.

SUMMARY OF BUDGETARY COSTS

<u>Appropriation</u>	<u>First Year Costs \$ in M</u>	<u>Recur. Years Costs \$ in M</u>	<u>Staff Years (FTEs)</u>
Courts of App., Dist. Courts, and Other Judicial Services			
Salaries and Expenses...	15.5	11.9	184
Fees of Jurors & Com....	11.0	11.0	---
Defender Services.....	.2	.2	3
Subtotal.....	\$26.7	23.1	187
Administrative Office.....	.4	.3	5
Subtotal.....	\$.4	\$.3	5
Total	\$27.1	\$23.4	192

Analytical Assumptions

The estimates presented represent the application of current workload measurement formulas. Changes in the estimated cost of the bills will occur as more of the bills' provisions become quantifiable.

The analysis assumes that the number of judges and magistrates would remain constant. Although there would be a savings associated with having biennial Circuit Judicial Conferences, both judges and magistrates are now working at full capacity, and their reduced work load would allow them to divert this time savings to other higher priority judicial activities.

The salary estimates used for both judges and magistrates are based on the levels that become effective in 1991. Staff costs for all other personnel are also based on FY 1991 salary rate estimates, and assume a 3.5 percent pay raise effective January 1991 and a 4.0 percent pay raise effective 1992.

This analysis assumes all required staff years would be filled by new hires. This assumption results in higher costs for the first year, due to the processing and the additional support and supplies that are required by new personnel. For recurring years, costs are lower since all staff are assumed to be part of the existing workforce of the Judiciary.

The costs for Alternative Dispute Resolution (ADR) procedures vary according to the extent which the courts are already engaging in the practices and procedures contained in the bills and how many courts elect to establish such procedures. Since the bills permit only voluntary mechanisms, the extent to which the bar and public make use of them will also affect the level of resources. Accordingly, a worse case scenario was presented in which all courts implement dispute resolution procedures to a maximum level of activity.

For other provisions (e.g., bankruptcy), there were too many variables to estimate a cost. For example, the number of circuits which would desire to establish a joint Bankruptcy Appellate Panel is currently unknown.

Detailed Cost Assumptions of the Impact of H.R. 5381 and S. 2648

The following details the significant annual costs of both bills. All costs are anticipated to reoccur annually unless otherwise noted.

Provision: Juror Fees

This provision amends 28 U.S.C. S.1871(b) by increasing the attendance fee of petit and grand jurors from \$30 to \$40 per day. At the discretion of the Judicial Officer, an additional fee increase of up to \$10 per day may be granted to both petit jurors and grand jurors who are required to attend over 30 and 45 days of trial or hearings, respectively.

In 1989, the Judiciary expended approximately \$30.5 million in attendance fees for both petit and grand jurors. If trial activities remain at the 1989 levels, an additional \$11,000,000 for attendance fees would be required annually. This estimate should be viewed as an extremely conservative estimate since recent analyses have indicated that juror days and criminal jury trials have been increasing over the last several years.

	<u>Costs</u> <u>\$ in M</u>	<u>Staff Years</u> <u>(FTEs)</u>
Jurors Fees.....	\$11.0	---
Subtotal.....	\$11.0	---

Provision: Alternative Dispute Resolution (ADR) Procedures

This provision allows each court to adopt a local court rule establishing voluntary dispute resolution procedures such as mediation, early neutral evaluation, and court-annexed arbitration. The impact of the proposed legislation will vary according to the extent to which the courts are already engaging in the practices and procedures contained in the bills and the number of courts which elect to establish such procedures. The worse case scenario in which all courts implement dispute resolution procedures to a maximum level of activity will result in expanded duties for the Clerks. Assuming each District, Bankruptcy and Appellate court chooses to develop and implement only one type of dispute resolution program (Note: unlike S. 2648 and the Judicial Conference's 14-Point Plan, these bills are not limited to application in only the District courts), and making adjustments for the 20 Districts which already possess arbitration programs, the resource estimate would be 179 clerk staff years.

Arbitrators' fees for the 10 new voluntary arbitration courts (9 District and 1 Bankruptcy) will total \$225,000 for FY 1991. The legislation would authorize expansion of the arbitration program beyond the 20 Districts currently authorized to participate in this program. If each of the remaining 168 District and Bankruptcy courts implement a similar program, arbitrators' fees for these courts are estimated at \$3.8 million annually.

In addition to these resource impacts, some programs may require additional funds to: cover initial programming and administrative costs; compensate mediators and evaluators for their services; pay experts in the ADR field to meet and work with volunteers; develop and distribute informational materials; and cover additional costs for training mediators, arbitrators and evaluators. These costs were not included in this analysis.

	<u>Int. Costs</u> <u>\$ in M</u>	<u>Recur. Costs</u> <u>\$ in M</u>	<u>Staff Years</u> <u>(FTEs)</u>
ADR Programs.....	11.1	8.4	179
Arbitrators' Fees..	<u>3.8</u>	<u>3.8</u>	---
Subtotal	\$14.9	\$12.2	179

Provision: Biennial Circuit Judicial Conference

Currently, Title 28, U.S.C., Section 333 authorizes annual Circuit Judicial Conferences. The bills proposed that the term "Annual" be struck and replaced with "biennially, and may summon annually". If this measure is adopted and Conferences are held biennially and not annually, the Judiciary can expect a potential savings of approximately \$1.8 million in travel, per diem, and related costs; \$2.8 million and 19 staff years of Judicial Officer time; and \$.2 million and over 4 staff years of support staff time. The potential annual savings of this occurrence is 23 staff years and \$4.8 million in salary, benefits, travel, per diem costs, and other related costs. These savings would occur biennially, thus the average annual savings would be one half this amount. The annual savings are shown below. Staff years for Judicial Officers have been rounded upwards.

	<u>Savings</u> <u>\$ in M</u>	<u>Staff Years</u> <u>(FTEs)</u>
Judicial Officers.....	1.4	10
Support Staff.....	.1	2
Travel, Per Diem, & Other Savings.	<u>.9</u>	<u>--</u>
Subtotal	<u>\$2.4</u>	<u>12</u>

Provision: Appeals of Judgments, Orders, and Decrees of Bankruptcy Courts

This provision would allow the Judicial Councils of two or more circuits to establish a joint Bankruptcy Appellate Panel if authorized by the Judicial Conference (The Judicial Council of each circuit is permitted to establish a Bankruptcy Appellate Panel under current law). Since the section is permissive, there is no assurance that implementation of this provision would result in the creation of additional Bankruptcy Appellate Panels (currently there is one in the Ninth Circuit). Establishment of additional Bankruptcy Appellate Panels would reduce the bankruptcy appellate caseload in the District Courts. There are no estimates as to the potential savings the Judiciary may receive from this activity, or whether enactment of this provision would result in development of additional Bankruptcy Appellate Panels. However, the annual cost for each Panel would be between \$.6 and \$.8 million, which could include as many as 16 FTEs (law clerks and support staff), travel, publications of opinions, and office space.

Provision: Extension of Terms of Office of Bankruptcy Judges

This provision would permit a Bankruptcy Judge, with the approval of the Judicial Council of the Circuit, to hold over beyond the term of office and continue to perform the duties of the office for an additional 180 days or the date of the appointment of a successor. This provision would not require the expenditure of any additional monies or the hiring of any additional personnel, except for appropriated monies which would not have been expended if there had been a vacancy for a short period before a new Bankruptcy Judge takes office.

Provision: Bankruptcy Administrator Program

This provision would have the effect of extending the Bankruptcy Administrator Program in Alabama and North Carolina for another 10 years. This is not a new program. The Bankruptcy Administrator Program has been in operation since 1987. If the Congress allows the Bankruptcy Administrator Program to terminate, the functions performed by bankruptcy administrators and costs of the program would automatically pass to the United States Trustee Program.

The Bankruptcy Administrator Program presently employs 33 individuals. The current annual cost of the program is \$1.8 million. The Bankruptcy, Judicial Resources, and Budget Committees have recommended to the Judicial Conference that it approve a request for additional resources for this program. However, at this time a firm estimate can not be developed on the additional costs that would be associated with the increased duties and responsibilities of Bankruptcy Administrators.

Provision: Study of Federal Defender Program

This provision was found only in the Senate bill (Section 322). This section requires the Judicial Conference to study the effectiveness of the Federal defender program and issue a report. Current estimates suggest that this activity will have a total cost of \$425,000 spread over two years. Staff requirements will include 2 professionals and 1 clerical support.

	<u>Int. Costs</u> <u>\$ in M</u>	<u>Recur. Costs</u> <u>\$ in M</u>	<u>Staff Years</u> <u>(FTEs)</u>
Study on Defenders....	<u>.2</u>	<u>.2</u>	<u>3</u>
Subtotal	\$.2	\$.2	3

Provisions: Retirement Program for Claims Court Judges and Retirement Age of Certain Federal Judges

The first provision allows Claims Court Judges who meet the age and service requirements to receive a retirement annuity equal to the salary payable to Claims Court Judges. Between now and 1995, only one judge will be eligible for this provision. In 1992, this judge would be eligible for this annuity. The judicial impact for this provision in 1992 will be \$124,500. This cost is identified in the recurring cost table.

The second provision modifies the retirement age requirements of Supreme Court Justices, Appeal and District Court Judges, and Court of International Trade Judges. There may be two judges eligible for this provision before 1995. The first judge would become eligible in 1991 and could receive an annuity of approximately \$100,000 annually, the second judge would become eligible in 1992 and would receive an annuity of \$124,500.

	<u>Int. Costs</u> <u>\$ in M</u>	<u>Recur. Costs</u> <u>\$ in M</u>	<u>Staff Years</u> <u>(FTEs)</u>
Annuities for Judges	<u>.1</u>	<u>.2</u>	---
Subtotal	<u>\$.1</u>	<u>\$.2</u>	---

Provision: Length of Service Required for Eligibility Under the Judicial Survivors' Annuities Act.

This would allow the survivors of a judge who elected to participate in the Judicial Survivors Annuity System and is assassinated before the judge met the 18-month service requirement, to be entitled to a Judicial Survivors' Annuity. We do not anticipate a significant judicial impact for this provision. History has shown that it is extremely rare for a Judicial Officer to be assassinated. If this provision is implemented, and an assassination of a Judicial Officer occurs, survivors would receive a monthly annuity of approximately \$2,200 per month based on current rules. This provision is not included in the summary tables since the resource impact on the Judiciary is relatively small.

Automation and Support

To implement these bills will require some additional automation and support resources. For every additional 40 staff who possess PCs, one additional automation and support person is required. In addition to these resources, the Judiciary would be required to purchase PCs and the associated software, material, supplies, training and maintenance support. The estimated first

year cost for this equipment and services will be approximately \$1.0 million. Recurring annual maintenance cost should be about \$.1.

	<u>Int. Costs</u> <u>\$ in M</u>	<u>Recur. Costs</u> <u>\$ in M</u>	<u>Staff Years</u> <u>(FTEs)</u>
ADP Support Staff....	.4	.3	5
An. Maint. & Support.	<u>1.0</u>	<u>.1</u>	<u>---</u>
Subtotal	\$1.4	.4	5

Additional Support by the Administrative Office to Implement the Bills

To implement provisions of these bills will require additional resource expenditures of \$.4 million by the Administrative Office. The annual recurring cost for this support will require \$.3 million and 5 staff years. These FTEs are for administrative support (e.g., personnel functions, space alterations, etc.) and program support (e.g., administering an ADR program, etc.).

	<u>Int. Costs</u> <u>\$ in M</u>	<u>Recur. Costs</u> <u>\$ in M</u>	<u>Staff Years</u> <u>(FTEs)</u>
AO Support.....	<u>.4</u>	<u>.3</u>	<u>5</u>
Subtotal	\$.4	\$.3	5