

TEMPORARY BANKRUPTCY JUDGESHIPS EXTENSION ACT
OF 2011

—————
JULY 19, 2011.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. SMITH of Texas, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1021]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1021) to prevent the termination of the temporary office of bankruptcy judges in certain judicial districts, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
The Amendment	1
Purpose and Summary	3
Background and Need for the Legislation	4
Hearings	9
Committee Consideration	9
Committee Votes	9
Committee Oversight Findings	9
New Budget Authority and Tax Expenditures	9
Congressional Budget Office Cost Estimate	9
Performance Goals and Objectives	12
Advisory on Earmarks	12
Section-by-Section Analysis	12

The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Temporary Bankruptcy Judgeships Extension Act of 2011”.

SEC. 2. EXTENSION OF TEMPORARY OFFICE OF BANKRUPTCY JUDGES IN CERTAIN JUDICIAL DISTRICTS.

(a) TEMPORARY OFFICE OF BANKRUPTCY JUDGES AUTHORIZED BY PUBLIC LAW 109-8.—

(1) EXTENSIONS.—The temporary office of bankruptcy judges authorized for the following districts by section 1223(b) of Public Law 109-8 (28 U.S.C. 152 note) are extended until the applicable vacancy specified in paragraph (2) in the office of a bankruptcy judge for the respective district occurs:

- (A) The central district of California.
- (B) The eastern district of California.
- (C) The district of Delaware.
- (D) The southern district of Florida.
- (E) The southern district of Georgia.
- (F) The district of Maryland.
- (G) The eastern district of Michigan.
- (H) The district of New Jersey.
- (I) The northern district of New York.
- (J) The southern district of New York.
- (K) The eastern district of North Carolina.
- (L) The eastern district of Pennsylvania.
- (M) The middle district of Pennsylvania.
- (N) The district of Puerto Rico.
- (O) The district of South Carolina.
- (P) The western district of Tennessee.
- (Q) The eastern district of Virginia.
- (R) The district of Nevada.

(2) VACANCIES.—

(A) SINGLE VACANCIES.—Except as provided in subparagraphs (B), (C), (D), and (E), the 1st vacancy in the office of a bankruptcy judge for each district specified in paragraph (1)—

- (i) occurring more than 5 years after the date of the enactment of this Act, and
 - (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge,
- shall not be filled.

(B) CENTRAL DISTRICT OF CALIFORNIA.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge for the central district of California—

- (i) occurring 5 years or more after the date of the enactment of this Act, and
 - (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge,
- shall not be filled.

(C) DISTRICT OF DELAWARE.—The 1st, 2d, 3d, and 4th vacancies in the office of a bankruptcy judge for the district of Delaware—

- (i) occurring more than 5 years after the date of the enactment of this Act, and
 - (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge,
- shall not be filled.

(D) SOUTHERN DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of a bankruptcy judge for the southern district of Florida—

- (i) occurring more than 5 years after the date of the enactment of this Act, and
 - (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge,
- shall not be filled.

(E) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of a bankruptcy judge for the district of Maryland—

- (i) occurring more than 5 years after the date of the enactment of this Act, and
 - (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge,
- shall not be filled.

(3) APPLICABILITY OF OTHER PROVISIONS.—Except as provided in paragraphs (1) and (2), all other provisions of section 1223(b) of Public Law 109-8 (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in paragraph (1).

(b) TEMPORARY OFFICE OF BANKRUPTCY JUDGES EXTENDED BY PUBLIC LAW 109-8.—

(1) EXTENSIONS.—The temporary office of bankruptcy judges authorized by section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) and extended by section 1223(c) of Public Law 109–8 (28 U.S.C. 152 note) for the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee are extended until the applicable vacancy specified in paragraph (2) in the office of a bankruptcy judge for the respective district occurs.

(2) VACANCIES.—

(A) DISTRICT OF DELAWARE.—The 5th vacancy in the office of a bankruptcy judge for the district of Delaware—

(i) occurring more than 5 years after the date of the enactment of this Act, and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

(B) DISTRICT OF PUERTO RICO.—The 2d vacancy in the office of a bankruptcy judge for the district of Puerto Rico—

(i) occurring more than 5 years after the date of the enactment of this Act, and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

(C) EASTERN DISTRICT OF TENNESSEE.—The 1st vacancy in the office of a bankruptcy judge for the eastern district of Tennessee—

(i) occurring more than 5 years after the date of the enactment of this Act, and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

(3) APPLICABILITY OF OTHER PROVISIONS.—Except as provided in paragraphs (1) and (2), all other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) and section 1223(c) of Public Law 109–8 (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in paragraph (1).

(c) TEMPORARY OFFICE OF THE BANKRUPTCY JUDGE AUTHORIZED BY PUBLIC LAW 102–361 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA.—

(1) EXTENSION.—The temporary office of the bankruptcy judge authorized by section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) for the middle district of North Carolina is extended until the vacancy specified in paragraph (2) occurs.

(2) VACANCY.—The 1st vacancy in the office of a bankruptcy judge for the middle district of North Carolina—

(A) occurring more than 5 years after the date of the enactment of this Act, and

(B) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

(3) APPLICABILITY OF OTHER PROVISIONS.—Except as provided in paragraphs (1) and (2), all other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary office of the bankruptcy judge referred to in paragraph (1).

Purpose and Summary

With respect to the Federal judicial districts listed in the bill, H.R. 1021 extends the time period within which a vacancy in the office of bankruptcy judge caused by death, resignation, retirement, or removal may be filled (with respect to each judgeship, the “Lapse Date”). Temporary bankruptcy judgeships were authorized for these districts by Pub. L. Nos. 102–361 and 109–8. The Lapse Date for certain of these judgeships was extended by Pub. L. No. 109–8. Currently, the Lapse Dates for the judgeships affected by this bill either have already passed or are soon approaching. This bill will prevent the possible loss of bankruptcy judgeships in judicial districts that, according to a biennial caseload-per-judge evaluation conducted by the Judicial Conference of the United States, have a continuing need for bankruptcy judges.

Background and Need for the Legislation

I. INTRODUCTION

The volume of bankruptcy cases commenced in the United States continues to grow as individuals and businesses attempt to cope with the effects of the recent recession. In the 12-month period ending September 30, 2007, 801,269 bankruptcy cases were commenced.¹ Just 3 years later, in the 12-month period ending September 30, 2010, the number of cases commenced almost doubled to 1,596,355.² Moreover, in fiscal year 2010, the number of cases commenced rose in 73 of the Federal judiciary's 90 bankruptcy courts, remained steady in one court, and decreased in 16 courts.³

Bankruptcy cases have also become more complex in recent years due to the statutory changes made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) and to other factors.⁴ Witnesses at a 2009 hearing before the House Committee on the Judiciary's Subcommittee on Commercial and Administrative Law testified that BAPCPA's new types of proceedings and motions have increased the amount of time and attention a bankruptcy judge must pay to a particular case.⁵ At that hearing, Judge Lynn also testified that there are more "mega-cases" today with numerous complicated disputes among litigants that consume a significant amount of a bankruptcy judge's time.⁶

Notwithstanding this recent increase in the volume and complexity of bankruptcy cases, the number of Federal bankruptcy judgeships has not increased since 2005.⁷ Bankruptcy judges serve as judicial officers of the U.S. District Courts and preside over the bankruptcy court for their respective districts.⁸ The number of bankruptcy judgeships in each district is determined by Congress, which receives a report every 2 years from the Judicial Conference on the need for additional judges.⁹ The 2009 report, upon which H.R. 4506 was based in the 111th Congress, recommended that Congress authorize 13 new bankruptcy judgeships, convert 22 existing temporary bankruptcy judgeships to permanent status, and extend two existing temporary judgeships for 5 years.¹⁰ The 2011 report recommends that Congress authorize 49 new bankruptcy

¹ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS: 2008 ANNUAL REPORT OF THE DIRECTOR 293 (U.S. Gov't Printing Office 2009).

²ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS: 2010 ANNUAL REPORT OF THE DIRECTOR 295 (U.S. Gov't Printing Office 2011).

³*Id.* at 32.

⁴Pub. L. No. 109-8, 119 Stat. 23 (2005).

⁵See *Bankruptcy Judgeship Needs: Hearing Before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary* (the "Bankruptcy Judgeships Hearing"), 111th Cong. 6 (statement of Hon. Barbara M.G. Lynn, District Judge, U.S. district court for the Northern District of Texas, on behalf of the Judicial Conference of the United States) (the "Lynn Statement"), 56 (statement Hon. David S. Kennedy, Chief Judge, U.S. Bankruptcy Court for the Western District of Tennessee, on behalf of the National Conference of Bankruptcy Judges) (2009).

⁶Bankruptcy Judgeships Hearing 10 (Lynn Statement) ("Cases such as Chrysler, Circuit City, and other national and international corporate reorganizations consume a tremendous amount of a bankruptcy court's time.")

⁷BAPCPA created 24 temporary judgeships—23 fewer judgeships than the Judicial Conference determined were needed just prior to its enactment. Pub. L. No. 109-8, § 1223 (codified at 28 U.S.C. § 152 (2006)).

⁸See 28 U.S.C. §§ 152(a), 157 (2006).

⁹See 28 U.S.C. § 152(b)(2) (2006).

¹⁰JUDICIAL CONFERENCE OF THE UNITED STATES, 2009 BANKRUPTCY JUDGESHIP RECOMMENDATIONS (on file with Committee); see Bankruptcy Judgeships Hearing 18 (Lynn Statement at "Attachment 1").

judgeships, convert 28 temporary judgeships to permanent status, and extend two existing temporary judgeships for 5 years.¹¹

II. HOW THE NEED FOR ADDITIONAL BANKRUPTCY JUDGES IS ASSESSED

The Judicial Conference’s recommendation to Congress concerning the need for bankruptcy judgeships is the product of a multi-step process. First, a bankruptcy court submits a request for additional bankruptcy judgeships to the district court, which transmits the request to the circuit court. Then, the circuit’s judicial council considers the request and either approves it, with or without modification, or disapproves it. Approved requests are then sent to the Judicial Conference’s Bankruptcy Committee’s Subcommittee on Judgeships for consideration. The Subcommittee reviews the circuit court’s recommendation, conducts on-site evaluations of judicial needs, and makes a recommendation to the full Bankruptcy Committee. The Bankruptcy Committee reviews the Subcommittee’s findings and makes a recommendation to the full Judicial Conference. Upon final approval, the recommendation is then transmitted by the Judicial Conference to Congress in its biennial report.¹²

It is the practice of the Judicial Conference to use a “weighted case filing” method to determine judicial needs. This method assigns a case weight to each new case filed based on its complexity, the number of parties involved, and other data relevant to assessing how the case will affect judicial workload.¹³ Case weights are based on a 1988–1989 study in which bankruptcy judges completed diaries on how many hours they spent on specific types of cases.¹⁴ Weighted case filings per judgeship equals the annual total of weighted case filings in a district divided by the number of authorized judgeships in that district. For example, if a judicial district had 5,100 weighted bankruptcy case filings and three authorized judgeships, the weighted case filings per judgeship is 1,700.

The Judicial Conference has established 1,500 annual weighted case filings per judgeship as the benchmark for determining whether a bankruptcy court needs additional judgeships.¹⁵ If filings in a bankruptcy court are over 1,500 weighted cases per judge per year, the Judicial Conference will consider, along with other factors, whether additional judgeships are needed. It should be noted that the Judicial Conference’s policy is to consider additional judgeships only for those courts that request them. Thus if a district’s weighted caseload would support requesting another judgeship but the district does not submit a request, the Judicial Conference will not recommend to Congress that the judgeship be created.¹⁶ Additionally, if a vacancy arises that could be filled under the authorizing statute but the Judicial Conference determines the need is not suf-

¹¹ JUDICIAL CONFERENCE OF THE UNITED STATES, 2011 BANKRUPTCY JUDGESHIP RECOMMENDATIONS (on file with Committee).

¹² Bankruptcy Judgeships Hearing 47 (Lynn Statement at “Attachment 4”).

¹³ *Id.* at 49 (Lynn Statement at “Attachment 5”).

¹⁴ *Id.*

¹⁵ *Id.* at 50–51.

¹⁶ *See id.* at 47 (Lynn Statement at “Attachment 4”) (determination of judicial need is initiated by the district court on behalf of bankruptcy court).

ficient to fill that position or an alternative approach is available, it does not recommend to Congress that it be filled.¹⁷

III. COST OF BANKRUPTCY JUDGESHIPS

The short title of H.R. 1021 is the “Temporary Bankruptcy Judgeships Extension Act of 2011.” There is no provision in the United States Code, however, that authorizes an office called a “temporary bankruptcy judgeship.” Every bankruptcy judge is appointed to a 14-year term and is paid 92 percent of a district court judge’s salary (approximately \$155,756 per year).¹⁸ Bankruptcy judges with at least 14 years of judicial service are eligible for a pension equal to 100 percent of the salary the judge was receiving at the time he or she left office once he or she reaches age 65.¹⁹

What, then, makes a bankruptcy judgeship “temporary”? The temporariness refers to the provision of H.R. 1021 that prohibits the filling of the first vacancy in the office of bankruptcy judge caused by death, resignation, retirement, or removal in a judicial district after 5 years. It need not be—and very frequently is not—the death, resignation, retirement, or removal of the particular judge appointed when the temporary bankruptcy judgeship is created. After all, that judge would be beginning to serve the 6th year of his 14-year judgeship when the lapse date is reached. Consider the District of New Jersey for example. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) authorized one “temporary” judgeship for New Jersey. That judgeship was filled on October 11, 2006. So, if the District of New Jersey suffers a vacancy in the office of bankruptcy judgeship after October 11, 2011, and if the vacancy is the result of a bankruptcy judge’s death, resignation, removal, or retirement, the Judicial Conference cannot fill the vacancy. (It is likely, though, that the particular judge appointed in October 2006 will still be serving his 14-year term in October 2011.)

In the 111th Congress, Reps. Cohen, Smith (TX), and Conyers introduced H.R. 4506, the Bankruptcy Judgeship Act of 2010. That bill was much broader in scope than H.R. 1021. H.R. 4506 would have created *new* judgeships, converted existing temporary judgeships to permanent status, and extended by 5 years certain temporary judgeships.²⁰ Members and Committee staff expected the Congressional Budget Office (CBO) to conclude that the provisions of H.R. 4506 that authorized permanent judgeships would increase the federal deficit. And CBO did conclude just that. It estimated that those provisions would increase direct spending by \$24 million over the next 10 years:

H.R. 4506 also would make 22 judgeships on the bankruptcy courts that are currently temporary positions permanent. Under current law, those temporary judgeships will remain filled for 5 years or until a vacancy occurs, whichever is later. CBO cannot predict the timing of va-

¹⁷See Bankruptcy Judgeships Hearing 6 (Lynn Statement) (“The conference takes seriously its role as a steward of taxpayer dollars, and I assure you that we have requested judgeship vacancies be filled only where there is a workload need after exploring all alternatives to filling the need for additional resources.”)

¹⁸28 U.S.C. §§ 152(a)(1), 153 (2006).

¹⁹*Id.* § 377 (2006).

²⁰H.R. 4506, 111th Cong. (2010).

cancies. Therefore, we cannot estimate how the conversion of the 22 judgeships into permanent positions under the legislation would affect the federal budget over the next 10 years. (The same is true for temporary judgeships that are extended but not made permanent under the bill.) *For this estimate, CBO assumes that there would be no effect on the federal budget from this provision over the next 10 years.* However, if any of the temporary judges were to die, retire, resign, or be removed during the next 10 years, the bill would require that position be filled at an additional cost that would not be incurred under current law.²¹ [Emphasis added.]

However, with respect to Section 4 of H.R. 4506, the section that simply extended the temporary office of bankruptcy judge in certain judicial districts, CBO observed that it could not predict when a specified vacancy in the office of bankruptcy judge in those districts would occur, and therefore gave it no score.²² The cost of the provisions of H.R. 4506 that did score was more than paid for by Section 5, which increased filing fees for bankruptcy cases.²³

This Congress, in preparing H.R. 1021 for bipartisan introduction, Republican and Democratic staff of the Judiciary Committee relied entirely on the “zero” score that CBO gave to the section of H.R. 4506 that simply extended temporary bankruptcy judgeships. H.R. 1021 is identical in nature to Section 4 of H.R. 4506. Remarkably, however, CBO’s cost estimate of this provision changed in just 12 months. As set forth below, CBO concludes that H.R. 1021 authorizes new direct (mandatory) spending. It estimates the bill will cost \$5 million over the next 10 years.

CBO’s sudden change in the methods it employs to score the extension of temporary bankruptcy judgeships confesses its apparently newfound ability to predict when a bankruptcy judge will die, resign, retire, or be removed, despite the absence of any objective data concerning the same. It also means that CBO is newly able to predict whether 4 or 5 years from now the Judicial Conference will make the decision to fill a bankruptcy judge vacancy in one of the specified judicial districts. Despite its inability to make such predictions in February 2010, it is reasonable now to assume that CBO is able to predict the caseload that such judicial district will bear at that future time and the rubric that the Judicial Conference will use in the future to determine judicial need. Additionally, CBO obviously disregarded the proclivities of individual bankruptcy judges who are eligible for retirement to elect to retire just before the 5-year deadline so as to preserve a bankruptcy judgeship in their district.

The Committee is disappointed to report this bill with a CBO cost estimate that concludes the bill will increase the federal deficit by a few million dollars. In authoring H.R. 1021, the sponsors assumed that CBO’s scoring methodology would remain consistent at

²¹ See H.R. REP. NO. 111–430, at 10 (2010). The assertion in the last sentence of this paragraph is not accurate. The bill would have *authorized* a vacancy to be filled, but it would not have “required” it to be filled. Sometimes, the Judicial Conference elects not to fill a vacant judgeship because the caseload in the judicial district has decreased.

²² See *id.*

²³ See *id.* at 9 (“In total, the changes to direct spending and revenue made by H.R. 4506 would reduce future budget deficits by about \$1 million over the 2010–2015 period and about \$3 million over the 2010–2020 period.”)

least for a period as short as 1 year. Unfortunately, that assumption has proven to be faulty.

IV. LEGISLATIVE HISTORY

In the 111th Congress, Representatives Cohen, Smith, and Conyers introduced the Bankruptcy Judgeship Act of 2010. Consistent with all of the recommendations in the Judicial Conference's 2009 report, that bill would have authorized new permanent judgeships, converted temporary judgeships to permanent status, and extended some temporary judgeships.²⁴ To offset the cost, that bill would have increased filing fees in chapter 7 and 13 bankruptcy cases by one dollar and in chapter 11 cases by 42 dollars. The House Judiciary Committee held one hearing on the bill in the 111th Congress. The Bankruptcy Judgeship Act of 2010 passed the House by a vote of 345–5.²⁵ The Senate did not vote on the bill and it therefore did not become law.

H.R. 1021, the Temporary Bankruptcy Judgeships Extension Act of 2011, as amended, is a more limited bill than the Bankruptcy Judgeships Act of 2010. This bill, as amended, does not create any new permanent judgeships—whether completely new or from existing temporary judgeships—but merely extends the Lapse Date for 30 existing temporary judgeships. Upon enactment of the bill, a vacancy in the office of bankruptcy judge in its respective district resulting from a judge's death, removal, resignation, or retirement may be filled until 5 years after the date of enactment. The affected districts and number of temporary judgeships whose Lapse Date H.R. 1021 extends are as follows:

Judicial District	Judgeships Extended
Central District of California	3
Eastern District of California	1
District of Delaware	5
Southern District of Florida	2
Southern District of Georgia	1
District of Maryland	3
Eastern District of Michigan	1
District of New Jersey	1
Northern District of New York	1
Southern District of New York	1
Eastern District of North Carolina	1
Middle District of North Carolina	1
Eastern District of Pennsylvania	1
Middle District of Pennsylvania	1
District of Puerto Rico	2
District of South Carolina	1
Western District of Tennessee	1
Eastern District of Tennessee	1
Eastern District of Virginia	1
District of Nevada	1

²⁴ Bankruptcy Judgeship Act of 2010, H.R. 4506, 111th Cong. (2010).

²⁵ Roll no. 111, 111th Cong., 2d Sess. (2010).

Hearings

The Committee on the Judiciary held no hearings on H.R. 1021. In the 111th Congress, the Committee's Subcommittee on Commercial and Administrative Law held a hearing entitled "Bankruptcy Judgeship Needs" on June 16, 2009.²⁶

Committee Consideration

On March 17, 2011, the Committee met in open session and ordered the bill H.R. 1021 favorably reported with an amendment by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 1021.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises 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.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1021, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 5, 2011.

Hon. LAMAR SMITH, 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. 1021, the "Temporary Bankruptcy Judgeship Extension Act of 2011."

²⁶See Bankruptcy Judgeships Hearing 1 *et seq.* (transcript of proceedings).

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Martin von Gnechten, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1021—the “Temporary Bankruptcy Judgeship Extension Act of 2011.”

SUMMARY

H.R. 1021 would extend the authority to appoint judges to 30 temporary bankruptcy judgeships. Under the bill, those temporary judgeships could remain filled for 5 years or until another vacancy occurs, whichever is later. Under current law, those judgeships cannot be filled if any vacancies occur.

CBO estimates that enacting H.R. 1021 would increase direct spending by about \$2 million over the 2012–2016 period and about \$5 million over the 2012–2021 period. Pay-as-you-go procedures apply because the legislation would affect direct spending. Enacting the legislation would not affect revenues. Implementing the bill also would increase spending subject to appropriation by \$4 million over the next 5 years, CBO estimates.

H.R. 1021 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1021 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2012	2013	2014	2015	2016	2012– 2016
CHANGES IN DIRECT SPENDING ¹						
Estimated Budget Authority	*	*	*	*	1	2
Estimated Outlays	*	*	*	*	1	2
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	*	*	1	1	2	4
Estimated Outlays	*	*	1	1	2	4

Note: * = less than \$500,000.

1. Over the 2012–2021 period, CBO estimates that enacting H.R. 1021 would increase direct spending by \$5 million.

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 1021 would be enacted by the end of 2011. CBO cannot predict the timing of vacancies among temporary judgeships; however, based on information from the Administrative Office of the US Courts, historical mortality rates for bankruptcy judges, and mortality tables provided by

the Social Security Administration, we expect that four vacancies out of an affected population of more than 100 judges are likely to occur during the 5 years following the enactment of the bill. Under current law, some vacancies in judicial districts, regardless of when the judge was appointed or when the judgeship was established, would remain vacant; enacting this bill would allow those positions to be filled.

The salaries and benefits for bankruptcy judges—about \$190,000 per judge per year—are considered mandatory spending because those amounts do not depend on the enactment of annual appropriation bills. CBO estimates that enacting H.R. 1021 would increase direct spending by \$2 million over the 2012–2016 period and \$5 million over the 2012–2021 period. If more or fewer than four judges in the specified districts were to die, retire, resign, or be removed during the 5 years following the enactment of the legislation, costs could be higher or lower than we have estimated.

In addition, CBO estimates that implementing the legislation would increase spending subject to appropriation by \$4 million over the 2012–2016 period for the salaries and benefits of support personnel, court operations and maintenance, and other administrative costs associated with the additional judges that would be appointed under the bill.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for H.R. 1021, as ordered reported by the House Committee on the Judiciary on March 17, 2011

By Fiscal Year, in Millions of Dollars													
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2011– 2016	2011– 2021
NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	0	0	0	0	1	1	1	1	1	1	2	5

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Martin von Gnechten
 Impact on State, Local, and Tribal Governments: Melissa Merrell
 Impact on the Private Sector: Marin Randall

ESTIMATE APPROVED BY:

Theresa Gullo
 Deputy Assistant Director for Budget Analysis

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1021 extends authorization to refill vacancies in the office of bankruptcy judge in certain judicial districts by 5 years from the date of its enactment.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1021 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1 sets forth the short title of the bill: the “Temporary Bankruptcy Judgeships Extension Act of 2011.”

Section 2 extends, with respect to 30 bankruptcy judgeships, the date after which a vacancy in the office of bankruptcy judge resulting from death, removal, retirement, or resignation in the judicial district in which such judgeship exists cannot be filled by 5 years from the date of the enactment of the Act.

