

116TH CONGRESS
1ST SESSION

S. 2348

To restore administrative law judges to the competitive service, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Ms. CANTWELL (for herself and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To restore administrative law judges to the competitive service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ALJ Competitive Serv-
5 ice Restoration Act”.

6 **SEC. 2. APPOINTMENT OF ADMINISTRATIVE LAW JUDGES.**

7 (a) IN GENERAL.—Section 3105 of title 5, United
8 States Code is amended to read as follows:

9 **“§ 3105. Appointment of administrative law judges**

10 “(a) APPOINTMENT.—

1 “(1) AUTHORITY.—The head of each Executive
2 department and agency shall appoint as many ad-
3 ministrative law judges as are necessary for pro-
4 ceedings required to be conducted in accordance with
5 sections 556 and 557.

6 “(2) SELECTION; EXAMINATION.—Administra-
7 tive law judges shall be appointed by the head of an
8 Executive department or an agency from a list of eli-
9 gible candidates provided by the Office of Personnel
10 Management based upon successful examination and
11 approval of the qualifications of the individual by the
12 Office.

13 “(b) MINIMUM QUALIFICATIONS AND CONDITIONS
14 OF EMPLOYMENT.—

15 “(1) LICENSURE.—At the time of application
16 for a position and while serving as an administrative
17 law judge, the individual must possess a professional
18 license to practice law under the laws of a State, the
19 District of Columbia, the Commonwealth of Puerto
20 Rico, or any territorial court.

21 “(2) QUALIFYING EXPERIENCE.—To be eligible
22 to serve as an administrative law judge, an indi-
23 vidual shall have not less than 7 years of experience
24 as a licensed attorney litigating or adjudicating for-

1 mal hearings or trials involving civil, criminal, or ad-
 2 ministrative law at the Federal, State, or local level.

3 “(c) COMPETITIVE SERVICE.—Administrative law
 4 judge positions shall be positions in the competitive serv-
 5 ice.

6 “(d) ASSIGNMENT.—Administrative law judges shall
 7 be assigned to cases in rotation as far as practicable, and
 8 may not perform duties inconsistent with their duties and
 9 responsibilities as administrative law judges.

10 “(e) AUTHORITY AND ROLE OF ADMINISTRATIVE
 11 LAW JUDGES IN RELATION TO EXECUTIVE DEPARTMENT
 12 OR AGENCY HEADS.—

13 “(1) CHIEF ALJ.—A chief administrative law
 14 judge shall report directly to the head of the Execu-
 15 tive department or agency at which the chief is ap-
 16 pointed.

17 “(2) ALJ.—An administrative law judge shall
 18 report directly to the chief administrative law judge
 19 (if any) of the Executive department or agency at
 20 which the administrative law judge is appointed. If
 21 there is no chief administrative law judge, the ad-
 22 ministrative law judge shall report directly to the
 23 head of the Executive department or agency.

24 “(3) CLARIFICATION.—Nothing in this sub-
 25 section shall be construed to limit or otherwise miti-

1 gate the ability or independence of an administrative
2 law judge in carrying out the duties and responsibil-
3 ities of an administrative law judge.”.

4 (b) EXEMPTION FROM PROBATIONARY PERIOD.—
5 Section 3321(e) of title 5, United States Code, is amended
6 to read as follows:

7 “(c) Subsections (a) and (b) of this section shall not
8 apply with respect to appointments in the Senior Execu-
9 tive Service, the Federal Bureau of Investigation and
10 Drug Enforcement Administration Senior Executive Serv-
11 ice, any individual covered by section 1599e of title 10,
12 or any individual appointed to an administrative law judge
13 position.”.

14 (c) CLARIFICATION OF APPLICATION OF DISCIPLI-
15 NARY PROCEDURES.—Notwithstanding the amendments
16 made by this Act that classify administrative law judges
17 within the competitive service, an administrative law
18 judge—

19 (1) shall not be subject to subchapter I or II of
20 chapter 75 of title 5, United States Code; and

21 (2) shall be subject to the requirements of sub-
22 chapter III of that chapter.

23 (d) CONVERSION OF POSITIONS.—With respect to
24 any individual serving on the date of the enactment of this
25 Act in an excepted service position as an administrative

1 law judge appointed under section 3105 of title 5, United
2 States Code, as in effect on the day before the date of
3 enactment of this Act, not later than 30 days after the
4 date of enactment of this Act, the head of an Executive
5 department listed in section 101 of title 5, United States
6 Code, or the agency employing the administrative law
7 judge shall convert the appointment to a permanent ap-
8 pointment in the competitive service in the Executive de-
9 partment or agency, as applicable.

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