

105TH CONGRESS
2D SESSION

H. R. 3961

To establish the Administrative Law Judge Conference of the United States,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1998

Mr. GEKAS introduced the following bill; which was referred to the Committee
on the Judiciary

A BILL

To establish the Administrative Law Judge Conference of
the United States, 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 “Administrative Law
5 Judge Conference of the United States Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) in order to promote efficiency, productivity,
9 and the improvement of administrative functions, to
10 enhance public service and public trust in the admin-

1 istrative resolution of disputes, and to enhance the
2 enforcement of the administrative law provisions of
3 title 5, United States Code, the Administrative Law
4 Judge Conference of the United States should be es-
5 tablished;

6 (2) the existing system of permanent agency as-
7 signments of administrative law judges appointed
8 under section 3015 of title 5, United States Code,
9 will be enhanced, by creating the Administrative
10 Law Judge Conference of the United States and will
11 serve the public with maximum economy and effi-
12 ciency;

13 (3) the Administrative Law Judge Conference
14 of the United States will enhance legal specialization
15 of administrative law judges by establishing initial
16 and continuing education programs, after consulting
17 with the appropriate agency, to insure that each
18 such judge has the necessary training in the special-
19 ized field of law to hear cases assigned by the agen-
20 cy;

21 (4) the Administrative Law Judge Conference
22 of the United States will establish a system of ad-
23 ministrative law judge professional accountability
24 and implement a process to protect the public by es-

1 tablishing procedures to handle allegations of judi-
 2 cial misconduct; and

3 (5) the Administrative Law Judge Conference
 4 of the United States will effect no change in the
 5 rulemaking, interpretative, or policymaking authority
 6 of an agency which would retain full authority to re-
 7 view and change administrative law judge decisions.

8 **SEC. 3. ESTABLISHMENT OF THE ADMINISTRATIVE LAW**
 9 **JUDGE CONFERENCE OF THE UNITED**
 10 **STATES.**

11 (a) IN GENERAL.—Chapter 5 of title 5, United
 12 States Code, is amended by adding at the end thereof the
 13 following new subchapter:

14 “SUBCHAPTER VI—THE ADMINISTRATIVE LAW
 15 JUDGE CONFERENCE OF THE UNITED STATES

16 “§ 597. Definitions

17 “For the purposes of this subchapter—

18 “(1) the term ‘agency’ means an authority re-
 19 ferred to in section 551(1);

20 “(2) the term ‘Conference’ means the Adminis-
 21 trative Law Judge Conference of the United States
 22 established under section 598;

23 “(3) the term ‘administrative law judge’ means
 24 an administrative law judge appointed under section

1 3105 before or after the effective date of this sub-
2 chapter; and

3 “(4) the term ‘chief judge’ means the chief ad-
4 ministrative law judge appointed and serving under
5 section 599.

6 **“§ 598. Establishment; membership**

7 “(a) ESTABLISHMENT.—There is established the Ad-
8 ministrative Law Judge Conference of the United States
9 consisting of all administrative law judges in accordance
10 with subsection (b). Such office shall be administered in
11 Washington, DC.

12 “(b) MEMBERSHIP.—An administrative law judge
13 serving as such on the date of the commencement of the
14 operation of the Conference, or who is appointed to the
15 position of administrative law judge thereafter, shall be
16 transferred to the Conference for personnel management
17 and related support functions. Each administrative law
18 judge shall be assigned to an agency as provided under
19 section 599A.

20 **“§ 599. Chief administrative law judge**

21 “(a) APPOINTMENT; TERM; PAY.—The chief admin-
22 istrative law judge shall be the chief administrative officer
23 and presiding judge of the Conference. The chief judge
24 shall be appointed by the President, by and with the advice
25 and consent of the Senate. The chief judge shall have

1 served as an administrative law judge for at least 5 years
2 before the date of appointment. The term of office of the
3 chief judge shall be 5 years or until a successor is ap-
4 pointed and qualifies to serve. A chief judge may be re-
5 appointed by the President, by and with the advice and
6 consent of the Senate, for 1 additional term upon the expi-
7 ration of the term of such judge. The chief judge shall
8 be paid at the rate of 105 percent of basic pay for level
9 IV of the Executive Schedule.

10 “(b) SERVICE AFTER TERM EXPIRES.—After serving
11 as chief judge, an individual may continue to serve as an
12 administrative law judge unless such individual has been
13 removed from office in accordance with section 7521.

14 “(c) POWERS OF THE CHIEF JUDGE.—The chief
15 judge shall—

16 “(1) enhance and develop the administrative
17 law process and the administrative law judge func-
18 tion and ensure that adjudications by administrative
19 law judges are conducted in accordance with sections
20 553, 554, and 556 and other applicable law.

21 “(2) maintain and be the custodian of the per-
22 sonnel file for each administrative law judge;

23 “(3) maintain a senior administrative law judge
24 register;

1 “(4) develop training programs, in coordination
2 with the agencies, to promote judicial education, spe-
3 cialization, and efficiency of administrative law
4 judges;

5 “(5) encourage the efficient use of administra-
6 tive law judges through temporary reassignment of
7 administrative law judges based upon workload;

8 “(6) consult with agencies and Office of Man-
9 agement and Budget regarding resources necessary
10 to support administrative law functions; and

11 “(7) make rules and procedures to implement
12 this subchapter and the functions of the Conference.

13 The chief judge shall make an annual written report to
14 the President and the Congress including recommenda-
15 tions to improve the administrative law process.

16 “(d) TRANSFER.—All administrative law judge func-
17 tions currently performed by the Office of Administrative
18 Law Judges of the United States Office of Personnel Man-
19 agement shall be transferred to the Conference.

20 **“§ 599A. Administrative law judge**

21 “(a) ASSIGNMENT TO AGENCIES.—After selection for
22 appointment to the position of administrative law judge
23 by an agency, the chief judge shall assign each administra-
24 tive law judge to such agency for the adjudication of cases
25 for the agency.

1 “(b) AGENCIES.—Each agency with assigned admin-
2 istrative law judges shall be responsible for the following:

3 “(1) To provide for all the budget, resources,
4 and support requirements for each administrative
5 law judge assigned to the agency.

6 “(2) To maintain the finance records for each
7 administrative law judge assigned to the agency.

8 “(c) APPOINTMENT OF AGENCY CHIEF JUDGES.—
9 The chief administrative law judge of each agency shall
10 be appointed by the agency head.

11 **“§ 599B. Council of the Administrative Law Judge**
12 **Conference of the United States**

13 “(a) IN GENERAL.—The advisory body on policy of
14 the Conference shall be the Council of the Administrative
15 Law Judge Conference of the United States. The chief
16 judge shall preside over the Council.

17 “(b) MEMBERSHIP.—Membership of the Council
18 shall consist of 6 agency chief judges, a public member,
19 3 elected administrative law judges, and the chief judge.
20 In addition to the chief judge, there shall be 3 permanent
21 members, 3 temporary members, 3 elected administrative
22 law judges, and 1 public member. The 3 permanent mem-
23 bers shall consist of the agency chief judge from each of
24 the 3 agencies which have the greatest number of adminis-
25 trative law judges. The 3 temporary members shall be se-

1 lected by the chief judge, on a rotating basis, from the
2 agency chief judges of the other agencies that have admin-
3 istrative law judges. The public member shall be an attor-
4 ney with administrative law experience who is selected by
5 the American Bar Association. Each temporary member
6 and the public member shall serve a term of 1 year. The
7 3 elected administrative law judges shall be selected by
8 popular vote of the currently employed administrative law
9 judges. Not more than one administrative law judge shall
10 be from the same agency and they shall serve for a term
11 of 2 years. The chief judge will conduct the election. The
12 agency of each administrative law judge serving on the
13 Council shall pay the expenses and per diems of each ad-
14 ministrative law judge for attending Council meetings and
15 performing Council business.

16 “(c) RESPONSIBILITIES.—The Council shall meet at
17 least quarterly and shall make recommendations to the
18 chief judge relating to the administrative law process and
19 administrative law judge personnel matters

20 “(d) PUBLIC MEMBER COMPENSATION.—The public
21 member of the Council shall be compensated as provided
22 in section 599D(b).

23 **“§ 599C. Jurisdiction**

24 “(a) DUTIES.—An administrative law judge who is
25 a member of the Conference and who is assigned to an

1 agency shall hear and render a decision upon every type
2 of claim, case, action, or controversy of adjudication, sub-
3 ject to the provisions of section 553, 554, or 556, and for
4 every type of claim, case, action, or controversy assigned
5 to administrative law judges at the time of the enactment
6 of this subchapter. An administrative law judge shall ad-
7 here to the existing legal precedent as established by the
8 decisions of the United States court of appeals for the cir-
9 cuit in which the case is heard.

10 “(b) REFERRAL OF CASES BY COURTS.—Courts are
11 authorized to refer, subject to the approval of the chief
12 judge and the parties in the court proceeding, those cases,
13 or portions thereof, in which they seek an administrative
14 law judge to act as a special master pursuant to the provi-
15 sions of Rule 53(a) of the Federal Rules of Civil Procedure
16 or otherwise seek an administrative law judge to make
17 findings of fact in a case on behalf of the referring court,
18 which shall continue to have exclusive and undiminished
19 jurisdiction over the case. When a court has referred a
20 case to an administrative law judge, the recommendations,
21 rulings, and findings of fact of the administrative law
22 judge are subject to de novo review by the referring court.

23 “(c) APPLICATION OF AGENCY POLICY.—The provi-
24 sions of this subchapter shall effect no change in—

1 “(1) an agency’s rulemaking, interpretative, or
2 policymaking authority in carrying out the statutory
3 responsibilities vested in the agency or agency head;

4 “(2) the adjudicatory authority of administra-
5 tive law judges; or

6 “(3) the authority of an agency to review deci-
7 sions of administrative law judges under any appli-
8 cable provision of law.

9 **“§ 599D. Removal and discipline**

10 “(a) IN GENERAL.—The chief judge, upon the rec-
11 ommendation of the Council of the Administrative Law
12 Conference of the United States and after providing notice
13 and a period for comment, shall adopt and issue rules of
14 judicial conduct for administrative law judges. An admin-
15 istrative law judge may not be removed, suspended, rep-
16 rimanded, or disciplined except for misconduct or neglect
17 of duty, as provided in section 7521, but may be removed
18 for physical or mental disability (consistent with prohibi-
19 tions on discrimination otherwise imposed by law).

20 “(b) COMPLAINT RESOLUTIONS BOARD.—The rules
21 of the chief judge under subsection (a) shall contain a
22 Complaints Resolution Board which consists of both ad-
23 ministrative law judges and attorneys. The attorneys shall
24 be nominated by the American Bar Association. Com-
25 pensation shall be paid for work performed by board mem-

1 bers, who are not Federal Government employees, at the
2 level of AL-3, rate C under section 5372 , plus expenses
3 and per diems authorized employees of agencies under
4 subchapter I of chapter 57 . The agency that employs the
5 administrative law judge, who is the subject of the com-
6 plaint, shall pay all expenses, per diem, and costs relating
7 to the disciplinary action.

8 “(c) COMPLAINT.—(1) A complaint against an ad-
9 ministrative law judge shall be in writing and filed with
10 the chief judge. The chief judge may—

11 “(A) dismiss the complaint, if the chief judge
12 finds the complaint to be—

13 “(i) directly related to the merits of a deci-
14 sion or procedural ruling; or

15 “(ii) frivolous;

16 “(B) conclude the proceeding if the chief judge
17 finds that appropriate corrective action has been
18 taken or that action on the complaint is no longer
19 necessary because of intervening events; or

20 “(C) refer the complaint to the Complaints Res-
21 olution Board.

22 “(2) A panel selected from the Complaints Resolution
23 Board, and consisting of 2 administrative law judges and
24 1 attorney, shall conduct an investigation of the complaint,
25 may hold a hearing, and shall issue findings and rec-

1 ommendations. The recommendations of the panel shall
 2 include one of the following:

3 “(A) dismissal of all or part of the complaint;

4 “(B) direct informal reprimand;

5 “(C) direct formal reprimand;

6 “(D) suspension; or

7 “(E) referral to the Merit Systems Protections

8 Board for further proceedings under section 7521.

9 The recommendations of the panel are binding on the chief
 10 judge, but if the administrative law judge does not accept
 11 the recommendations of the panel, the agency may peti-
 12 tion the Merit Systems Protections Board as provided
 13 under section 7521.”.

14 **SEC. 4. MISCELLANEOUS**

15 (a) SATISFACTION OF OTHER PROCEDURAL RE-
 16 QUIREMENTS.—Compliance with subchapter VI of chapter
 17 5 of title 5, United States Code, shall satisfy all require-
 18 ments imposed under section 916 of the Financial Institu-
 19 tions Reform, Recovery, and Enforcement Act of 1989.

20 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
 21 authorized to be appropriated \$5,000,000 for fiscal year
 22 1999 for the Administrative Law Judge Conference of the
 23 United States.

24 (c) TECHNICAL AND CONFORMING AMENDMENT.—
 25 The table of sections for chapter 5 of title 5, United States

1 Code, is amended by adding at the end thereof the follow-
 2 ing:

“SUBCHAPTER VI—THE ADMINISTRATIVE LAW JUDGE CONFERENCE OF THE
UNITED STATES

“597. Definitions.

“598. Establishment; membership.

“599. Chief administrative law judge.

“599A. Administrative law judges.

“599B. Council of the Administrative Law Judge Conference of the United
States.

“599C. Jurisdiction.

“599D. Removal and discipline.”.

3 **SEC. 5. TRANSITION PROVISIONS.**

4 (a) TRANSFERS.—There shall be transferred to the
 5 Conference the personnel, assets, property, unexpended
 6 balances of appropriations, allocations, and other funds
 7 employed and held by the United States Office of Person-
 8 nel Management and relating to the administrative law
 9 function administered by the United States Office of Per-
 10 sonnel Management. Appropriations, authorizations, allo-
 11 cations, and other funds paid or transferred by agencies
 12 to the United States Office of Personnel Management for
 13 the administration of the administrative law judge func-
 14 tion shall, after the date of the enactment of this Act, be
 15 paid or transferred to the Conference.

16 (b) COLLECTIVE BARGAINING AGREEMENTS.—Col-
 17 lective bargaining agreements, relating to personnel trans-
 18 ferred by subsection (a), shall remain in effect according
 19 to the terms thereof.

1 (c) DISPUTES.—The Director of the Office of Man-
2 agement and Budget, at such time or times as the Direc-
3 tor may provide, shall make such determinations as may
4 be necessary with regard to any dispute arising from the
5 transfer of personnel or assets by subsection (a).

6 **SEC. 6. OPERATION OF THE CONFERENCE.**

7 Operation of the Administrative Law Judge Con-
8 ference of the United States shall commence on the date
9 the first chief judge of the Conference takes office under
10 section 599 of title 5, United States Code.

11 **SEC. 7. EFFECTIVE DATE.**

12 Except as otherwise provided, this Act and the
13 amendments made by this Act shall take effect 120 days
14 after the date of the enactment of this Act.

