

107TH CONGRESS
2D SESSION

S. 606

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 2002

Referred to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

AN ACT

To provide additional authority to the Office of Ombudsman
of the Environmental Protection Agency.

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 “Ombudsman Reauthor-
5 ization Act of 2002”.

1 **SEC. 2. OFFICE OF OMBUDSMAN.**

2 Section 2008 of the Solid Waste Disposal Act (42
3 U.S.C. 6917) is amended to read as follows:

4 **“SEC. 2008. OFFICE OF OMBUDSMAN.**

5 “(a) DEFINITIONS.—In this section:

6 “(1) AGENCY.—The term ‘Agency’ means the
7 Environmental Protection Agency.

8 “(2) DEPUTY OMBUDSMAN.—The term ‘Deputy
9 Ombudsman’ means any individual appointed by the
10 Ombudsman under subsection (e)(1)(A)(i).

11 “(3) OFFICE.—The term ‘Office’ means the Of-
12 fice of the Ombudsman established by subsection
13 (b)(1).

14 “(4) OMBUDSMAN.—The term ‘Ombudsman’
15 means the director of the Office.

16 “(b) ESTABLISHMENT.—

17 “(1) IN GENERAL.—There is established within
18 the Agency an office to be known as the ‘Office of
19 the Ombudsman’.

20 “(2) OVERSIGHT.—

21 “(A) IN GENERAL.—The Office shall be an
22 independent office within the Agency.

23 “(B) STRUCTURE.—To the maximum ex-
24 tent practicable, the structure of the Office
25 shall conform to relevant professional guide-
26 lines, standards, and practices.

1 “(3) HEAD OF OFFICE.—

2 “(A) OMBUDSMAN.—The Office shall be
3 headed by an Ombudsman, who shall—

4 “(i) be appointed by the President by
5 and with the advice and consent of the
6 Senate; and

7 “(ii) report directly to the Adminis-
8 trator.

9 “(B) QUALIFICATIONS FOR AND RESTRIC-
10 TIONS ON EMPLOYMENT.—A person appointed
11 as Ombudsman—

12 “(i) shall have experience as an om-
13 budsman in a Federal, State, or local gov-
14 ernment entity; and

15 “(ii) shall not have been an employee
16 of the Agency at any time during the 1-
17 year period before the date of appointment.

18 “(C) TERM.—The Ombudsman—

19 “(i) shall serve for a term of 5 years;
20 and

21 “(ii) may be reappointed for not more
22 than 1 additional term.

23 “(D) REMOVAL.—

24 “(i) IN GENERAL.—The President
25 may remove or suspend the Ombudsman

1 from office only for neglect of duty or mal-
2 feasance in office.

3 “(ii) COMMUNICATION TO CON-
4 GRESS.—If the President removes or sus-
5 pends the Ombudsman, the President shall
6 communicate the reasons for the removal
7 or suspension to Congress.

8 “(c) DUTIES.—The Ombudsman shall—

9 “(1) receive, and render assistance concerning,
10 any complaint, grievance, or request for information
11 submitted by any person relating to any program or
12 requirement under—

13 “(A) this Act;

14 “(B) the Comprehensive Environmental
15 Response, Compensation, and Liability Act of
16 1980 (42 U.S.C. 9601 et seq.); or

17 “(C) any other program administered by
18 the Office of Solid Waste and Emergency Re-
19 sponse of the Agency; and

20 “(2) conduct investigations, make findings of
21 fact, and make nonbinding recommendations to the
22 Administrator concerning the programs and require-
23 ments described in paragraph (1).

24 “(d) POWERS AND RESPONSIBILITIES.—In carrying
25 out this section, the Ombudsman—

1 “(1) may investigate any action of the Agency
2 without regard to the finality of the action;

3 “(2) may select appropriate matters for action
4 by the Office;

5 “(3) may—

6 “(A) prescribe the methods by which com-
7 plaints shall be made to, and received and ad-
8 dressed by, the Office;

9 “(B) determine the scope and manner of
10 investigations made by the Office; and

11 “(C) determine the form, frequency, and
12 distribution of conclusions and recommenda-
13 tions of the Office;

14 “(4) may request the Administrator to provide
15 the Ombudsman notification, within a specified pe-
16 riod of time, of any action taken on a recommenda-
17 tion of the Ombudsman;

18 “(5) may request, and shall be granted by any
19 Federal agency or department, assistance and infor-
20 mation that the Ombudsman determines to be nec-
21 essary to carry out this section;

22 “(6) may examine any record of, and enter and
23 inspect without notice any property under the ad-
24 ministrative jurisdiction of—

25 “(A) the Agency; or

1 “(B) any other Federal agency or depart-
2 ment involved in a matter under the adminis-
3 trative jurisdiction of the Office of Solid Waste
4 and Emergency Response of the Agency;

5 “(7) may—

6 “(A) issue a subpoena to compel any per-
7 son to appear to give sworn testimony con-
8 cerning, or to produce documentary or other
9 evidence determined by the Ombudsman to be
10 reasonable in scope and relevant to, an inves-
11 tigation by the Office; and

12 “(B) seek enforcement of a subpoena
13 issued under subparagraph (A) in a court of
14 competent jurisdiction;

15 “(8) may carry out and participate in, and co-
16 operate with any person or agency involved in, any
17 conference, inquiry on the record, public hearing on
18 the record, meeting, or study that, as determined by
19 the Ombudsman—

20 “(A) is material to an investigation con-
21 ducted by the Ombudsman; or

22 “(B) may lead to an improvement in the
23 performance of the functions of the Agency;

1 “(9) may administer oaths and hold hearings in
2 connection with any matter under investigation by
3 the Office;

4 “(10) may engage in alternative dispute resolu-
5 tion, mediation, or any other informal process that
6 the Ombudsman determines to be appropriate to
7 carry out this section;

8 “(11) may communicate with any person, in-
9 cluding Members of Congress, the press, and any
10 person that submits a complaint, grievance, or re-
11 quest for information under subsection (c)(1); and

12 “(12) shall administer a budget for the Office.

13 “(e) ADMINISTRATION.—

14 “(1) IN GENERAL.—The Ombudsman shall—

15 “(A)(i) appoint a Deputy Ombudsman for
16 each region of the Agency; and

17 “(ii) hire such other assistants and em-
18 ployees as the Ombudsman determines to be
19 necessary to carry out this section; and

20 “(B) supervise, evaluate, and carry out
21 personnel actions (including hiring and dis-
22 missal) with respect to any employee of the Of-
23 fice.

24 “(2) DELEGATION OF AUTHORITY.—The Om-
25 budsman may delegate to other employees of the Of-

1 fice any responsibility of the Ombudsman under this
2 section except—

3 “(A) the power to delegate responsibility;

4 “(B) the power to issue subpoenas; and

5 “(C) the responsibility to make rec-
6 ommendations to the Administrator.

7 “(3) CONTACT INFORMATION.—The Ombuds-
8 man shall maintain, in each region of the Agency, a
9 telephone number, facsimile number, electronic mail
10 address, and post office address for the Ombudsman
11 that are different from the numbers and addresses
12 of the regional office of the Agency located in that
13 region.

14 “(4) REPORTS.—The Ombudsman—

15 “(A) shall, at least annually, publish in the
16 Federal Register and submit to the Adminis-
17 trator, the President, the Committee on Envi-
18 ronment and Public Works of the Senate, and
19 the Committee on Energy and Commerce of the
20 House of Representatives a report on the status
21 of health and environmental concerns addressed
22 in complaints and cases brought before the Om-
23 budsman in the period of time covered by the
24 report;

1 “(B) may issue reports, conclusions, or
2 recommendations concerning any other matter
3 under investigation by the Office;

4 “(C) shall solicit comments from the Agen-
5 cy concerning any matter under investigation by
6 the Office; and

7 “(D) shall include any comments received
8 by the Office in written reports, conclusions,
9 and recommendations issued by the Office
10 under this section.

11 “(f) PENALTIES.—An investigation conducted by the
12 Ombudsman under this section constitutes—

13 “(1) a matter under section 1001 of title 18,
14 United States Code; and

15 “(2) a proceeding under section 1505 of title
16 18, United States Code.

17 “(g) EMPLOYEE PROTECTION.—

18 “(1) IN GENERAL.—No employer may discharge
19 any employee, or otherwise discriminate against any
20 employee with respect to compensation, terms, con-
21 ditions, or privileges of employment of the employee,
22 because the employee (or any person acting at the
23 request of the employee) complied with any provision
24 of this section.

1 “(2) COMPLAINT.—Any employee that, in the
 2 opinion of the employee, is discharged or otherwise
 3 discriminated against by any person in violation of
 4 paragraph (1) may, not later than 180 days after
 5 the date on which the violation occurs, file a com-
 6 plaint in accordance with section 211 of the Energy
 7 Reorganization Act of 1974 (42 U.S.C. 5851).

8 “(h) APPLICABILITY.—

9 “(1) IN GENERAL.—This section—

10 “(A) does not limit any remedy or right of
 11 appeal; and

12 “(B) may be carried out notwithstanding
 13 any provision of law to the contrary that pro-
 14 vides that an agency action is final, not review-
 15 able, or not subject to appeal.

16 “(2) EFFECT ON PROCEDURES FOR GRIEV-
 17 ANCES, APPEALS, OR ADMINISTRATIVE MATTERS.—
 18 The establishment of the Office does not affect any
 19 procedure concerning grievances, appeals, or admin-
 20 istrative matters under this Act or any other law
 21 (including regulations).

22 “(i) AUTHORIZATION OF APPROPRIATIONS.—

23 “(1) IN GENERAL.—There are authorized to be
 24 appropriated to carry out this section—

1 “(A) \$3,000,000 for each of fiscal years
2 2003 and 2004;

3 “(B) \$4,000,000 for each of fiscal years
4 2005 through 2008; and

5 “(C) \$5,000,000 for each of fiscal years
6 2009 through 2012.

7 “(2) SEPARATE LINE ITEM.—In submitting the
8 annual budget for the Federal Government to Con-
9 gress, the President shall include a separate line
10 item for the funding for the Office.”.

 Passed the Senate November 20 (legislative day No-
vember 19), 2002.

Attest:

JERI THOMSON,
Secretary.