

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3961

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

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## IN THE HOUSE OF REPRESENTATIVES

MAY 22, 1998

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

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## 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.

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