

107TH CONGRESS  
2D SESSION

# S. 606

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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

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## 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 November 19), 2002.

Attest:

JERI THOMSON,  
*Secretary.*