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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “ALJ Competitive Service Restoration Act”.

SEC. 2. APPOINTMENT OF ADMINISTRATIVE LAW JUDGES.

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

“(a) APPOINTMENT.—
“(1) AUTHORITY.—The head of each Executive department and agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557.

“(2) SELECTION; EXAMINATION.—Administrative law judges shall be appointed by the head of an Executive department or an agency from a list of eligible candidates provided by the Office of Personnel Management based upon successful examination and approval of the qualifications of the individual by the Office.

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

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

“(2) QUALIFYING EXPERIENCE.—To be eligible to serve as an administrative law judge, an individual shall have not less than 7 years of experience as a licensed attorney litigating or adjudicating for-
mal hearings or trials involving civil, criminal, or admin-
istrative law at the Federal, State, or local level.

“(c) COMPETITIVE SERVICE.—Administrative law
judge positions shall be positions in the competitive serv-
iece.

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

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

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

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

“(3) CLARIFICATION.—Nothing in this sub-
section shall be construed to limit or otherwise miti-
gate the ability or independence of an administrative
law judge in carrying out the duties and responsibil-
ities of an administrative law judge.”.

(b) Exemption From Probationary Period.—
Section 3321(c) of title 5, United States Code, is amended
to read as follows:

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

(e) Clarification of Application of Disciplinary
Procedures.—Notwithstanding the amendments
made by this Act that classify administrative law judges
within the competitive service, an administrative law
judge—

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

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

(d) Conversion of Positions.—With respect to
any individual serving on the date of the enactment of this
Act in an excepted service position as an administrative
law judge appointed under section 3105 of title 5, United States Code, as in effect on the day before the date of enactment of this Act, not later than 30 days after the date of enactment of this Act, the head of an Executive department listed in section 101 of title 5, United States Code, or the agency employing the administrative law judge shall convert the appointment to a permanent appointment in the competitive service in the Executive department or agency, as applicable.