

116TH CONGRESS  
1ST SESSION

# S. 2348

To restore administrative law judges to the competitive service, and for  
other purposes.

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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 Secu-  
rity and Governmental Affairs

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## A BILL

To restore administrative law judges to the competitive  
service, 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 “ALJ Competitive Serv-  
5 ice Restoration Act”.

6 **SEC. 2. APPOINTMENT OF ADMINISTRATIVE LAW JUDGES.**

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

9 **“§ 3105. Appointment of administrative law judges**

10 **“(a) APPOINTMENT.—**

1           “(1) AUTHORITY.—The head of each Executive  
2       department and agency shall appoint as many ad-  
3       ministrative law judges as are necessary for pro-  
4       ceedings required to be conducted in accordance with  
5       sections 556 and 557.

6           “(2) SELECTION; EXAMINATION.—Administra-  
7       tive law judges shall be appointed by the head of an  
8       Executive department or an agency from a list of eli-  
9       gible candidates provided by the Office of Personnel  
10      Management based upon successful examination and  
11      approval of the qualifications of the individual by the  
12      Office.

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

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

21           “(2) QUALIFYING EXPERIENCE.—To be eligible  
22      to serve as an administrative law judge, an indi-  
23      vidual shall have not less than 7 years of experience  
24      as a licensed attorney litigating or adjudicating for-

1 mal hearings or trials involving civil, criminal, or ad-  
 2 ministrative law at the Federal, State, or local level.

3 “(c) COMPETITIVE SERVICE.—Administrative law  
 4 judge positions shall be positions in the competitive serv-  
 5 ice.

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

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

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

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

24 “(3) CLARIFICATION.—Nothing in this sub-  
 25 section shall be construed to limit or otherwise miti-

1       gate the ability or independence of an administrative  
 2       law judge in carrying out the duties and responsibil-  
 3       ities of an administrative law judge.”.

4       (b) EXEMPTION FROM PROBATIONARY PERIOD.—  
 5       Section 3321(c) of title 5, United States Code, is amended  
 6       to read as follows:

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

14      (c) CLARIFICATION OF APPLICATION OF DISCIPLI-  
 15      NARY PROCEDURES.—Notwithstanding the amendments  
 16      made by this Act that classify administrative law judges  
 17      within the competitive service, an administrative law  
 18      judge—

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

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

23      (d) CONVERSION OF POSITIONS.—With respect to  
 24      any individual serving on the date of the enactment of this  
 25      Act in an excepted service position as an administrative

1 law judge appointed under section 3105 of title 5, United  
2 States Code, as in effect on the day before the date of  
3 enactment of this Act, not later than 30 days after the  
4 date of enactment of this Act, the head of an Executive  
5 department listed in section 101 of title 5, United States  
6 Code, or the agency employing the administrative law  
7 judge shall convert the appointment to a permanent ap-  
8 pointment in the competitive service in the Executive de-  
9 partment or agency, as applicable.

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