

103^D CONGRESS
1ST SESSION

S. 486

To establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 3, 1993

Mr. HEFLIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish a specialized corps of judges necessary for certain Federal proceedings required to be conducted, 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 That this Act may be cited as the “Administrative Law
4 Judge Corps Act”.

5 ESTABLISHMENT OF ADMINISTRATIVE LAW JUDGE CORPS

6 SEC. 2. (a) Chapter 5 of title 5, United States Code,
7 is amended by adding at the end thereof the following new
8 subchapter:

1 “SUBCHAPTER VI—ADMINISTRATIVE LAW
2 JUDGE CORPS

3 **“§ 595. Definitions**

4 “For the purposes of this subchapter—

5 “(1) ‘agency’ means an authority referred to in
6 section 551(1) of this title;

7 “(2) ‘Corps’ means the Administrative Law
8 Judge Corps of the United States established under
9 section 596 of this title;

10 “(3) ‘administrative law judge’ means an ad-
11 ministrative law judge appointed under section 3105
12 of this title on or before the effective date of the Ad-
13 ministrative Law Judge Corps Act or under section
14 599a of this title after such effective date;

15 “(4) ‘chief judge’ means the chief administra-
16 tive law judge appointed and serving under section
17 597 of this title;

18 “(5) ‘Council’ means the Council of the Admin-
19 istrative Law Judge Corps established under section
20 599 of this title;

21 “(6) ‘Board’, unless otherwise indicated, means
22 the Complaints Resolution Board established under
23 section 599c of this title; and

1 “(7) ‘division chief judge’ means the chief ad-
2 ministrative law judge of a division appointed and
3 serving under section 598 of this title.

4 **“§ 596. Establishment; membership**

5 “(a) There is established an Administrative Law
6 Judge Corps consisting of all administrative law judges,
7 in accordance with the provisions of subsection (b). Such
8 Corps shall be located in Washington, D.C.

9 “(b) An administrative law judge serving as such on
10 the date of the commencement of the operation of the
11 Corps shall be transferred to the Corps as of that date.
12 An administrative law judge who is appointed on or after
13 the date of the commencement of the operation of the
14 Corps shall be a member of the Corps as of the date of
15 such appointment.

16 **“§ 597. Chief administrative law judge**

17 “(a) The chief administrative law judge shall be the
18 chief administrative officer of the Corps and shall be the
19 presiding judge of the Corps. The chief judge shall be ap-
20 pointed by the President, by and with the advice and con-
21 sent of the Senate. The chief judge shall be an administra-
22 tive law judge who has served as an administrative law
23 judge for at least five years preceding the date of appoint-
24 ment as chief judge. The chief judge shall serve for a term
25 of five years or until a successor is appointed and qualifies

1 to serve, whichever is earlier. A chief judge may be
2 reappointed upon the expiration of his term, by and with
3 the advice and consent of the Senate.

4 “(b)(1) If the office of chief judge is vacant, the divi-
5 sion chief judge who is senior in length of service as a
6 member of the Council shall serve as acting chief judge
7 until such vacancy is filled.

8 “(2) If two or more division chief judges have the
9 same length of service as members of the Council, the divi-
10 sion chief judge who is senior in length of service as an
11 administrative law judge shall serve as such acting chief
12 judge.

13 “(c) The chief judge shall, within ninety days after
14 the end of each fiscal year, submit a written report to the
15 President and the Congress concerning the business of the
16 Corps during the preceding fiscal year. The report shall
17 include information and recommendations of the Council
18 concerning the personnel requirements of the Corps.

19 “(d) After serving as chief judge, such individual may
20 continue to serve as an administrative law judge unless
21 such individual has been removed from office in accord-
22 ance with section 599c of this title.

23 **“§ 598. Divisions of the Corps; division chief judges**

24 “(a) Each judge of the Corps shall be assigned to
25 a division by the Council, pursuant to section 599. The

1 assignment of a judge who was an administrative law
2 judge on the date of commencement of the operation of
3 the Corps shall be made after consideration of the areas
4 of specialization in which the judge has served. Each divi-
5 sion shall be headed by a division chief judge who shall
6 exercise administrative supervision over such division.

7 “(b) The divisions of the Corps shall be as follows:

8 “(1) Division of Communications, Public Util-
9 ity, and Transportation Regulation.

10 “(2) Division of Safety and Environmental Reg-
11 ulation.

12 “(3) Division of Labor.

13 “(4) Division of Labor Relations.

14 “(5) Division of Health and Benefits Programs.

15 “(6) Division of Securities, Commodities, and
16 Trade Regulation.

17 “(7) Division of General Programs.

18 “(8) Division of Financial Services Institutions.

19 “(c)(1) The division chief judge of each division set
20 forth in subsection (b) shall be appointed by the President,
21 by and with the advice and consent of the Senate.

22 “(2) To be eligible for appointment as a division chief
23 judge, an individual shall have served as an administrative
24 law judge for at least five years and should possess experi-

1 ence and expertise in the specialty of the division to which
2 such person is an appointee.

3 “(3) Division chief judges shall be appointed for five-
4 year terms except that of those division chief judges first
5 appointed, the President shall designate two such individ-
6 uals to be appointed for five-year terms, three for four-
7 year terms, and two for three-year terms.

8 “(4) Any division chief judge appointed to fill an
9 unexpired term shall be appointed only for the remainder
10 of such predecessor’s term, but may be reappointed as
11 provided in paragraph (5).

12 “(5) Any division chief judge may be reappointed
13 upon the expiration of his term if nominated for such
14 appointment pursuant to the provisions of this title.

15 “(6) Any judge, after serving as division chief judge
16 may continue to serve as an administrative law judge un-
17 less such individual has been removed from office in
18 accordance with section 599c of this title.

19 **“§ 599. Council of the Corps**

20 “(a) The policymaking body of the Corps shall be the
21 Council of the Corps. The chief judge and the division
22 chief judges shall constitute the Council. The chief judge
23 shall preside over the Council. If the chief judge is unable
24 to be present at a meeting of the Council, the division chief

1 judge who is senior in length of service as a member of
2 such Council shall preside.

3 “(b) One half of all of the members of the Council
4 shall constitute a quorum for the purpose of transacting
5 business. The affirmative vote by a majority of all the
6 members of the Council shall be required to approve a
7 matter on behalf of the Council. Each member of the
8 Council shall have one vote.

9 “(c) Meetings of the Council shall be held at least
10 once a month at the call of the chief judge or by the call
11 of one-third or more of the members of the Council.

12 “(d) The Council is authorized—

13 “(1) to assign judges to divisions and transfer
14 or reassign judges from one division to another, sub-
15 ject to the provisions of section 599a of this title;

16 “(2) to appoint persons as administrative law
17 judges under section 599a of this title;

18 “(3) to file charges seeking adverse action
19 against an administrative law judge under section
20 599c of this title;

21 “(4) subject to the provisions of subsection (e),
22 to prescribe, after providing an opportunity for no-
23 tice and comment, the rules of practice and proce-
24 dure for the conduct of proceedings before the
25 Corps, except that, with respect to a category of pro-

1 proceedings adjudicated by an agency before the effective date of the Administrative Law Judge Corps Act, the Council may not amend or revise the rules of practice and procedure prescribed by that agency during the two years following such effective date without the approval of that agency, and any amendments or revisions made to such rules shall not affect or be applied to any pending action;

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9 “(5) to issue such rules and regulations as may be appropriate for the efficient conduct of the business of the Corps and the implementation of this subchapter, including the assignment of cases to administrative law judges;

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14 “(6) subject to the civil service and classification laws and regulations, to select, appoint, employ, and fix the compensation of the employees (other than administrative law judges) that such Council determines necessary to carry out the functions, powers, and duties of the Corps and to prescribe the authority and duties of such employees;

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21 “(7) to establish, abolish, alter, consolidate, and maintain such regional, district, and other field offices as are necessary to carry out the functions, powers, and duties of the Corps and to assign and reassign employees to such field offices;

1 “(8) to procure temporary and intermittent
2 services under section 3109 of this title;

3 “(9) to enter into, to the extent or in such
4 amounts as are authorized in appropriation Acts,
5 without regard to section 3709 of the Revised Stat-
6 utes of the United States (41 U.S.C. 5), contracts,
7 leases, cooperative agreements, or other transactions
8 that may be necessary to conduct the business of the
9 Corps;

10 “(10) to delegate any of the chief judge’s func-
11 tions or powers with the consent of the chief judge,
12 or whenever the office of such chief judge is vacant,
13 to one or more division chief judges or other employ-
14 ees of the Corps, and to authorize the redelegation
15 of any of those functions or powers;

16 “(11) to establish, after consulting with an
17 agency, initial and continuing educational programs
18 to ensure that each administrative law judge as-
19 signed to hear cases of an agency has the necessary
20 training in the specialized field of law of that
21 agency;

22 “(12) to make suitable arrangements for con-
23 tinuing education and training of other employees of
24 the Corps, so that the level of expertise in the divi-

1 sions of the Corps shall be maintained and
2 enhanced; and

3 “(13) to determine all other matters of general
4 policy of the Corps.

5 “(e) The Council shall select an official seal for the
6 Corps which shall be officially noticed.

7 **“§ 599a. Appointment and transfer of administrative**
8 **law judges**

9 “(a) After the initial establishment of the Corps, the
10 Council shall appoint new or additional judges as may be
11 necessary for the efficient and expeditious conduct of the
12 business of the Corps. Appointments shall be made from
13 a register maintained by the Office of Personnel Manage-
14 ment under subchapter I of chapter 33 of this title. Upon
15 request by the chief judge, the Office of Personnel Man-
16 agement shall certify enough names from the top of such
17 register to enable the Council to consider five names for
18 each vacancy. Notwithstanding section 3318 of this title,
19 a vacancy in the Corps may be filled from the highest five
20 eligible individuals available for appointment on the cer-
21 tificate furnished by the Office of Personnel Management.

22 “(b) A judge of the Corps may not perform or be
23 assigned to perform duties inconsistent with the duties
24 and responsibilities of an administrative law judge.

1 “(c) A judge of the Corps on the date of commence-
2 ment of the operation of the Corps may not thereafter be
3 involuntarily reassigned to a new permanent duty station
4 if such station is beyond commuting distance of the duty
5 station which is the judge’s permanent duty station on
6 that date, unless the Council determines and submits a
7 written explanation to the judge stating that such reas-
8 signment is required to meet substantial changes in work-
9 loads. A judge may be temporarily detailed, once in a 24-
10 month period, to a new duty station at any location, for
11 a period of not more than 120 days.

12 **“§ 599b. Jurisdiction**

13 “(a) All types of cases, claims, actions and proceed-
14 ings held before administrative law judges before the effec-
15 tive date of the Administrative Law Judge Corps Act shall
16 be referred to the Corps for adjudication on the record
17 after an opportunity for a hearing.

18 “(b) An administrative law judge who is a member
19 of the Corps shall hear and render a decision upon—

20 “(1) every case of adjudication subject to the
21 provisions of section 553, 554, or 556 of this title;

22 “(2) every case in which hearings are required
23 by law to be held in accordance with sections 553,
24 554, or section 556 of this title; and

1 “(3) every other case referred to the Corps by
2 an agency or court in which a determination is
3 to be made on the record after an opportunity
4 for a hearing.

5 “(c) When a case under subsection (b) arises, it shall
6 be referred to the Corps. Under regulations issued by the
7 Council the case shall be assigned to a division. The appro-
8 priate division chief judge shall assign cases to judges,
9 taking into consideration specialization, training, workload
10 and conflicts of interest.

11 “(d) Federal agencies and courts are authorized to
12 refer any appropriate case either—

13 “(1) to the Corps; or

14 “(2) to a specific administrative law judge, with
15 the approval of the majority of the Council, to serve
16 as a special master pursuant to the provisions of
17 Rule 53(a) of the Federal Rules of Civil Procedure.

18 “(e) Compliance with this subchapter shall satisfy
19 any requirement under section 916 of the Financial Insti-
20 tutions Reform, Recovery and Enforcement Act of 1989.”.

21 **“§ 599c. Removal and discipline**

22 “(a) Except as provided in subsection (b) of this
23 section—

24 “(1) an administrative law judge may not be re-
25 moved, suspended, reprimanded, or disciplined ex-

1 cept for misconduct or neglect of duty, but may be
2 removed for physical or mental disability; and

3 “(2) an action specified in paragraph (1) of this
4 subsection may be taken against an administrative
5 law judge only after the Council has filed a notice
6 of adverse action against the administrative law
7 judge with the Merit Systems Protection Board and
8 the Board has determined, on the record after an
9 opportunity for a hearing before the Board, that
10 there is good cause to take such action.

11 “(b) Subsection (a) shall not apply to an action initi-
12 ated under section 1206 of this title.

13 “(c) Under regulations issued by the Council, a Com-
14 plaints Resolution Board shall be established within the
15 Corps to consider and to recommend appropriate action
16 to be taken when a complaint is made concerning the offi-
17 cial conduct of a judge. Such complaint may be made by
18 any interested person, including parties, practitioners, the
19 chief judge, and agencies.

20 “(d) The Board shall consist of two judges from each
21 division of the Corps who shall be appointed by the Coun-
22 cil. The chief judge and the division chief judges may not
23 serve on such Board.

24 “(e) A complaint of misconduct by an administrative
25 law judge shall be made in writing. The complaint shall

1 be filed with the chief judge, or it may be originated by
2 the chief judge on his own motion. The chief judge shall
3 refer the complaint to a panel consisting of three members
4 of the Board selected by the Council, none of whom may
5 be serving in the same division as the administrative law
6 judge who is the subject of the complaint. The administra-
7 tive law judge who is the subject of the complaint shall
8 be given notice of the complaint and the composition of
9 the panel. The administrative law judge may challenge pe-
10 remptorily not more than two members of the panel. The
11 Council shall replace a challenged member with another
12 member of the Board who is eligible to serve on such
13 panel.

14 “(f) The panel shall inquire into the complaint and
15 shall render a report to the Council. A copy of the report
16 shall be provided concurrently to the administrative law
17 judge who is the subject of the complaint. The report shall
18 be advisory only.

19 “(g) The proceedings, deliberations, and reports of
20 the Board and the contents of complaints under this sec-
21 tion shall be treated as privileged and confidential. Docu-
22 ments considered by the Board and reports of the Board
23 are exempt from disclosure or publication under section
24 552 of this title. Section 552b of this title shall not apply
25 to the Board.”.

1 (b) The table of sections for chapter 5 of title 5, Unit-
 2 ed States Code, is amended by adding at the end thereof
 3 the following:

4 “SUBCHAPTER VI—ADMINISTRATIVE LAW
 5 JUDGE CORPS

“Sec.

“595. Definitions.

“596. Establishment; membership.

“597. Chief administrative law judge.

“598. Divisions of the Corps; division chief judges.

“599. Council of the Corps.

“599a. Appointment and transfer of administrative law judges.

“599b. Jurisdiction.

“599c. Removal and discipline.”.

6 AGENCY REVIEW STUDY AND REPORT

7 SEC. 3. The chief administrative law judge of the Ad-
 8 ministrative Law Judge Corps of the United States shall
 9 make a study of the various types and levels of agency
 10 review to which decisions of administrative law judges are
 11 subject. A separate study shall be made for each division
 12 of the Corps. The studies shall include monitoring and
 13 evaluating data and shall be made in consultation with the
 14 division chief judges, the Chairman of the Administrative
 15 Conference of the United States, and the agencies that
 16 review the decisions of administrative law judges. Not
 17 later than two years after the effective date of this Act,
 18 the Council shall report to the President and the Congress
 19 on the findings and recommendations resulting from the
 20 studies. The report shall include recommendations, includ-
 21 ing recommendations for new legislation, for any reforms

1 that may be appropriate to make review of administrative
2 law judges' decisions more efficient and meaningful and
3 to accord greater finality to such decisions.

4 TRANSITION AND SAVINGS PROVISIONS

5 SEC. 4. (a) There are transferred to the administra-
6 tive law judges of the Administrative Law Judge Corps
7 established by section 596 of title 5, United States Code
8 (as added by section 2 of this Act), all functions performed
9 on the day before the effective date of this Act by the ad-
10 ministrative law judges appointed under section 3105 of
11 such title before the effective date of this Act.

12 (b) With the consent of the agencies concerned, the
13 Administrative Law Judge Corps of the United States
14 may use the facilities and the services of officers, employ-
15 ees, and other personnel of agencies from which functions
16 and duties are transferred to the Corps for so long as may
17 be needed to facilitate the orderly transfer of those func-
18 tions and duties under this Act.

19 (c) The personnel, assets, liabilities, contracts, prop-
20 erty, records, and unexpended balances of appropriations,
21 authorizations, allocations, and other funds employed,
22 held, used, arising from, available or to be made available,
23 in connection with the functions, offices, and agencies
24 transferred by this Act, are, subject to section 1531 of
25 title 31, United States Code, correspondingly transferred
26 to the Corps for appropriate allocation.

1 (d) The transfer of personnel pursuant to subsection
2 (b) of this section shall be without reduction in pay or
3 classification for one year after such transfer.

4 (e) The Director of the Office of Management and
5 Budget, at such time or times as the Director shall pro-
6 vide, may make such determinations as may be necessary
7 with regard to the functions, offices, agencies, or portions
8 thereof, transferred by this Act, and to make such addi-
9 tional incidental dispositions of personnel, assets, liabil-
10 ities, grants, contracts, property, records, and unexpended
11 balances of appropriations, authorizations, allocations,
12 and other funds held, used, arising from, available to, or
13 to be made available in connection with such functions,
14 offices, agencies, or portions thereof, as may be necessary
15 to carry out the provisions of this Act.

16 (f) All orders, determinations, rules, regulations, cer-
17 tificates, licenses, and privileges which have been issued,
18 made, granted, or allowed to become effective in the exer-
19 cise of any duties, powers, or functions which are trans-
20 ferred under this Act and are in effect at the time this
21 Act becomes effective shall continue in effect according to
22 their terms until modified, terminated, superseded, set
23 aside, or repealed by the Administrative Law Judge Corps
24 of the United States or a judge thereof in the exercise
25 of authority vested in the Corps or its members by this

1 Act, by a court of competent jurisdiction, or by operation
2 of law.

3 (g) Except as provided in subsections (d)(5) and (e)
4 of section 599 of title 5, United States Code, this Act shall
5 not affect any proceeding before any department or agency
6 or component thereof which is pending at the time this
7 Act takes effect. Such a proceeding shall be continued be-
8 fore the Administrative Law Judge Corps of the United
9 States or a judge thereof, or, to the extent the proceeding
10 does not relate to functions so transferred, shall be contin-
11 ued before the agency in which it was pending on the
12 effective date of this Act.

13 (h) No suit, action, or other proceeding commenced
14 before the effective date of this Act shall abate by reason
15 of the enactment of this Act.

16 AUTHORIZATION OF APPROPRIATIONS

17 SEC. 5. There are authorized to be appropriated such
18 sums as may be necessary to carry out the provisions of
19 this Act and subchapter VI of title 5, United States Code
20 (as added by section 2 of this Act).

21 TECHNICAL AND CONFORMING AMENDMENTS

22 SEC. 6. Title 5, United States Code, is amended as
23 follows:

24 (1) Section 573(b) is amended by redesignating
25 paragraphs (4), (5), and (6) as paragraphs (5), (6),

1 and (7), respectively, and inserting a new paragraph
2 (4) to read as follows:

3 “(4) the chief administrative law judge of the
4 Administrative Law Judge Corps of the United
5 States;”.

6 (2) Section 3105 is amended to read as follows:

7 **“§ 3105. Appointment of administrative law judges**

8 “Administrative law judges shall be appointed by the
9 Council of the Administrative Law Judge Corps pursuant
10 to section 599a of this title.”.

11 (3) Section 3344 and any references to such
12 section are repealed.

13 (4) The table of sections for chapter 33 is
14 amended by striking out the item relating to section
15 3344.

16 (5)(A) Subchapter III of chapter 75 of title 5,
17 United States Code, is repealed.

18 (B) The table of sections at the beginning of
19 chapter 75 of title 5, United States Code, is amend-
20 ed—

21 (i) by striking out the items relating to
22 subchapter III and section 7521;

23 (ii) by redesignating “Subchapter IV” and
24 all references to such subchapter as “Sub-
25 chapter III”; and

1 (iii) by redesignating “Subchapter V” and
2 all references to such subchapter as “Sub-
3 chapter IV”.

4 OPERATION OF THE CORPS

5 SEC. 7. Operation of the Corps shall commence on
6 the date the first chief administrative law judge of the
7 Corps takes office.

8 CONTRACT DISPUTES ACT

9 SEC. 8. Nothing in this Act or the amendments made
10 by this Act shall be deemed to affect any agency board
11 established pursuant to the Contract Disputes Act (41
12 U.S.C. 601), or any other person designated to resolve
13 claims or disputes pursuant to such Act.

14 EFFECTIVE DATE

15 SEC. 9. Except as otherwise provided, this Act and
16 the amendments made by this Act shall take effect 120
17 days after the date of enactment.

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