AMENDMENT TO RULES COMMITTEE PRINT 116-57

OFFERED BY MR. CONNOLLY OF VIRGINIA

At the end of subtitle A of title XI, add the following:

1 SEC. 1111. APPOINTMENT OF ADMINISTRATIVE LAW JUDGES.

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

3 “§ 3105. Appointment of administrative law judges

4 “(a) APPOINTMENT.—

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

6 “(2) SELECTION; EXAMINATION.—Administrative law judges shall be appointed by the head of an Executive agency from a list of eligible candidates provided by the Office of Personnel Management based upon successful examination and approval of the qualifications, including any reasonable subject
matter expertise that the appointing agency requests, of the individual by the Office.

“(b) Minimum Qualifications and Conditions of Employment.—

“(1) Licensure.—At the time of application for a position 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.—

“(A) 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 preparing for, litigating, or adjudicating formal hearings or trials involving civil, criminal, or administrative law at the Federal, State, or local level.

“(B) The Office shall periodically examine and evaluate the effectiveness of the qualifying experience standards for administrative law judges and, if necessary, make changes to improve the quality of candidates eligible for hiring by Executive departments and agencies.
“(c) COMPETITIVE SERVICE.—Administrative law judge positions shall be positions in the competitive service.

“(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 AGENCY HEADS.—

“(1) CHIEF ALJ.—A Chief administrative law judge shall report directly to the head of the Executive agency at which the chief is appointed.

“(2) ALJ.—An administrative law judge (in this paragraph referred to as an ‘ALJ’) shall report directly to the chief administrative law judge (if any) of the Executive agency at which the ALJ is appointed. If there is no chief administrative law judge, the ALJ shall report directly to the head of such Executive agency.

“(3) CLARIFICATION.—Nothing in this subsection shall be construed to limit or otherwise mitigate the impartiality or judicial independence 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 Executive Service, the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, any individual covered by section 1599e of title 10, or any individual appointed to an administrative law judge position.”.

(c) Clarification of Application of Disciplinary Procedures.—Notwithstanding the amendments made by this section that classify administrative law judges within the competitive service, an administrative law judge shall not be subject to subchapter I or II of chapter 75 of title 5, United States Code, and shall be subject to the requirements of subchapter III of such 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 the enactment of this Act, not later than 30 days after such date of enactment, the head of an Executive agency
employing the administrative law judge shall deem such
individual to have successfully passed the required com-
petitive examination and convert the appointment to a per-
manent appointment in the competitive service in the
agency.