

Calendar No. 393

115TH CONGRESS
2D SESSION

S. 2644

To ensure independent investigations and judicial review of the removal of
a special counsel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 11, 2018

Mr. GRAHAM (for himself, Mr. COONS, Mr. TILLIS, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 26, 2018

Reported by Mr. GRASSLEY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To ensure independent investigations and judicial review of
the removal of a special counsel, 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 “Special Counsel Inde-
5 pendence and Integrity Act”.

1 **SEC. 2. LIMITATION ON REMOVAL OF SPECIAL COUNSEL.**

2 (a) IN GENERAL.—A special counsel appointed by the
 3 Attorney General, or any other official appointed by the
 4 Attorney General who exercises a similar degree of inde-
 5 pendence from the normal Department of Justice chain
 6 of command, may be removed from office only by the per-
 7 sonal action of an Attorney General who has been con-
 8 firmed by the Senate, or, if the Attorney General is
 9 recused from the matter, the most senior Department of
 10 Justice official who has been confirmed by the Senate and
 11 is not recused from the matter.

12 (b) REMOVAL FOR CAUSE.—A special counsel or
 13 other appointed official described in subsection (a) may
 14 be removed only for misconduct, dereliction of duty, inca-
 15 pacity, conflict of interest, or other good cause, including
 16 violation of policies of the Department of Justice.

17 (c) NOTICE OF REMOVAL.—

18 (1) IN GENERAL.—The Attorney General or
 19 other Department of Justice official described in
 20 subsection (a), as the case may be, shall provide
 21 written notice to the special counsel or other ap-
 22 pointed official described in subsection (a) of the
 23 specific reason or reasons for the removal.

24 (2) EFFECTIVE DATE OF REMOVAL.—Except as
 25 provided in subsection (c), removal under this sec-
 26 tion shall become effective on the date that is 10

1 days after the date on which the written notice was
 2 provided under paragraph (1).

3 ~~(d) TIMING.~~—Not later than 10 days after the date
 4 on which written notice was provided under subsection
 5 ~~(e)(1)~~, the special counsel or other appointed official de-
 6 scribed in subsection ~~(a)~~, as the case may be, may file
 7 an action challenging the removal in accordance with sub-
 8 section ~~(e)~~.

9 ~~(e) REVIEW.~~—

10 ~~(1) IN GENERAL.~~—An individual that received
 11 written notice under subsection ~~(e)(1)~~ may file an
 12 action in accordance with paragraph ~~(2)~~ that the re-
 13 moval was in violation of this Act.

14 ~~(2) REQUIREMENTS.~~—Any action filed under
 15 this subsection shall be heard and determined by a
 16 court of 3 judges not later than 14 days after the
 17 date on which the action is filed in accordance with
 18 the provisions of section 2284 of title 28, United
 19 States Code, and any appeal shall lie to the Supreme
 20 Court.

21 ~~(3) RELIEF.~~—If a court determines that the re-
 22 moval of the individual who filed an action under
 23 this subsection violates this Act, the removal shall
 24 not take effect. The court may also provide other ap-
 25 propriate relief.

1 (4) STATUS DURING PROCEEDINGS.—

2 (A) IN GENERAL.—At the request of the
3 individual who filed an action under this sub-
4 section, the court shall determine whether the
5 individual shall remain in office during the
6 pendency of the action described in paragraph
7 (2).

8 (B) PRESERVATION OF MATERIALS.—Dur-
9 ing the pendency of an action filed under this
10 subsection, the staff, documents, and materials
11 of the special counsel or other appointed official
12 described in subsection (a) shall be preserved.

13 (C) LIMITATION.—During the pendency of
14 an action filed under this subsection, a replace-
15 ment for the special counsel or other appointed
16 official described in subsection (a) who is chal-
17 lenging the removal shall not be designated.

18 (f) EFFECTIVE DATE.—This Act shall apply to any
19 special counsel or other appointed official described in sub-
20 section (a) appointed on or after January 1, 2017.

21 (g) SEVERABILITY.—If any provision of this Act or
22 the application of such provision to any person or cir-
23 cumstance is held to be invalid or unconstitutional, the
24 remainder of this Act and the application of the provisions

1 of this Act to any person or circumstance shall remain
 2 and shall not be affected thereby.

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Special Counsel Inde-*
 5 *pendence and Integrity Act”.*

6 **SEC. 2. DEPARTMENT OF JUSTICE SPECIAL COUNSEL.**

7 *(a) IN GENERAL.—Part II of title 28, United States*
 8 *Code, is amended by inserting after chapter 40A the fol-*
 9 *lowing:*

10 **“CHAPTER 40B—SPECIAL COUNSEL**

“Sec.

“599K–1. Grounds for appointing a Special Counsel.

“599K–2. Alternatives available to the Attorney General.

“599K–3. Qualifications of the Special Counsel.

“599K–4. Jurisdiction.

“599K–5. Staff.

“599K–6. Powers and authority.

“599K–7. Conduct and accountability generally.

“599K–8. Limitation on removal of Special Counsel and certain other officials.

“599K–9. Notification and reports by the Special Counsel.

“599K–10. Notification and reports by the Attorney General.

“599K–11. No creation of rights.

11 **“§ 599K–1. Grounds for appointing a Special Counsel**

12 *“(a) IN GENERAL.—The Attorney General shall ap-*
 13 *point a Special Counsel if the Attorney General determines*
 14 *that—*

15 *“(1) criminal investigation of a person or matter*
 16 *is warranted;*

17 *“(2) investigation or prosecution of the person or*
 18 *matter described in paragraph (1) by the office of a*
 19 *United States attorney or litigating Division of the*

1 *Department of Justice (in this chapter referred to as*
 2 *the ‘Department’)* would present a conflict of interest
 3 *for the Department or other extraordinary cir-*
 4 *cumstances; and*

5 *“(3) under the circumstances, it would be in the*
 6 *public interest to appoint an outside Special Counsel*
 7 *to assume responsibility for the matter.*

8 *“(b) RECUSAL.—The Attorney General who has been*
 9 *confirmed to that position by the Senate or, in the case of*
 10 *the vacancy, absence, disability, or recusal of the Attorney*
 11 *General, the most senior Senate-confirmed officer of the De-*
 12 *partment listed in section 508 who is not recused from the*
 13 *matter shall exercise the authority under this chapter.*

14 **“§ 599K-2. Alternatives available to the Attorney Gen-**
 15 **eral**

16 *“(a) IN GENERAL.—When matters are brought to the*
 17 *attention of the Attorney General that might warrant con-*
 18 *sideration of appointment of a Special Counsel, the Attor-*
 19 *ney General may—*

20 *“(1) appoint a Special Counsel in accordance*
 21 *with this chapter;*

22 *“(2) direct that an initial investigation, con-*
 23 *sisting of such factual inquiry or legal research as the*
 24 *Attorney General determines appropriate, be con-*
 25 *ducted in order to better inform the decision; or*

1 “(3) *conclude that under the circumstances of the*
 2 *matter, the public interest would not be served by re-*
 3 *moving the investigation from the normal processes of*
 4 *the Department, and that the appropriate component*
 5 *of the Department should handle the matter.*

6 “(b) *ADDITIONAL DIRECTION.—If the Attorney Gen-*
 7 *eral reaches a conclusion described in subsection (a)(3), the*
 8 *Attorney General may direct that appropriate steps be*
 9 *taken to mitigate any conflicts of interest, such as recusal*
 10 *of particular officials.*

11 **“§ 599K–3. *Qualifications of the Special Counsel***

12 “(a) *IN GENERAL.—An individual named as Special*
 13 *Counsel under this chapter shall be—*

14 “(1) *a lawyer with a reputation for integrity*
 15 *and impartial decisionmaking, and with appropriate*
 16 *experience to ensure both that the investigation will*
 17 *be conducted ably, expeditiously, and thoroughly, and*
 18 *that investigative and prosecutorial decisions will be*
 19 *supported by an informed understanding of the crimi-*
 20 *nal law and Department policies; and*

21 “(2) *selected from outside the United States Gov-*
 22 *ernment.*

23 “(b) *PRIORITY OF INVESTIGATION.—An individual*
 24 *named as Special Counsel under this chapter shall agree*
 25 *that the responsibilities of the individual as Special Counsel*

1 *shall take first precedence in the professional life of the indi-*
 2 *vidual, and that it may be necessary to work full time on*
 3 *the investigation, depending on the complexity of the inves-*
 4 *tigation and the stage of the investigation.*

5 “(c) *APPOINTMENT METHOD.*—

6 “(1) *IN GENERAL.*—*The Attorney General shall*
 7 *consult with the Assistant Attorney General for Ad-*
 8 *ministration to ensure an appropriate method of ap-*
 9 *pointment, and to ensure that a Special Counsel un-*
 10 *dergoes an appropriate background investigation and*
 11 *a detailed review of ethics and conflicts of interest*
 12 *issues.*

13 “(2) *CONFIDENTIAL EMPLOYEE.*—*A Special*
 14 *Counsel shall be appointed as a confidential em-*
 15 *ployee, as described in section 7511(b)(2)(C) of title*
 16 *5.*

17 **“§ 599K–4. *Jurisdiction***

18 “(a) *ORIGINAL JURISDICTION.*—

19 “(1) *IN GENERAL.*—*The jurisdiction of a Special*
 20 *Counsel appointed under this chapter shall be estab-*
 21 *lished by the Attorney General, and shall include the*
 22 *authority to investigate and prosecute Federal crimes*
 23 *committed in the course of, and with intent to inter-*
 24 *fere with, the Special Counsel’s investigation, such as*
 25 *perjury, obstruction of justice, destruction of evidence,*

1 *and intimidation of witnesses, and to conduct appeals*
 2 *arising out of the matter being investigated or pros-*
 3 *ecuted.*

4 “(2) *STATEMENT OF THE MATTER TO BE INVES-*
 5 *TIGATED.—The Special Counsel shall be provided*
 6 *with a specific factual statement of the matter to be*
 7 *investigated.*

8 “(b) *ADDITIONAL JURISDICTION.—If in the course of*
 9 *the investigation by a Special Counsel appointed under this*
 10 *chapter, the Special Counsel concludes that additional ju-*
 11 *risdiction beyond that specified in the original jurisdiction*
 12 *is necessary in order to fully investigate and resolve the*
 13 *matters assigned, or to investigate new matters that come*
 14 *to light in the course of the investigation, the Special Coun-*
 15 *sel shall consult with the Attorney General, who shall deter-*
 16 *mine whether to include the additional matters within the*
 17 *jurisdiction of the Special Counsel or assign them elsewhere.*

18 “(c) *CIVIL AND ADMINISTRATIVE JURISDICTION.—*

19 “(1) *IN GENERAL.—If in the course of an inves-*
 20 *tigation by a Special Counsel appointed under this*
 21 *chapter, the Special Counsel determines that adminis-*
 22 *trative remedies, civil sanctions, or other govern-*
 23 *mental action outside the criminal justice system*
 24 *might be appropriate, the Special Counsel shall con-*

1 *sult with the Attorney General with respect to the ap-*
 2 *propriate component to take any necessary action.*

3 *“(2) LIMITATION.—A Special Counsel appointed*
 4 *under this chapter shall not have civil or administra-*
 5 *tive authority unless specifically granted such juris-*
 6 *diction by the Attorney General.*

7 **“§ 599K–5. Staff**

8 *“(a) IN GENERAL.—A Special Counsel appointed*
 9 *under this chapter may request the assignment of appro-*
 10 *priate personnel of the Department to assist the Special*
 11 *Counsel. The Department shall gather and provide the Spe-*
 12 *cial Counsel with the names and resumes of appropriate*
 13 *personnel available for detail. The Special Counsel may also*
 14 *request the detail of specific personnel, and the office for*
 15 *which the designated personnel work shall make reasonable*
 16 *efforts to accommodate the request.*

17 *“(b) ASSIGNMENT OF DUTIES.—A Special Counsel ap-*
 18 *pointed under this chapter shall assign the duties and su-*
 19 *pervise the work of personnel while they are assigned to the*
 20 *Special Counsel.*

21 *“(c) HIRING OF ADDITIONAL PERSONNEL.—If nec-*
 22 *essary, a Special Counsel appointed under this chapter may*
 23 *request that additional personnel be hired or assigned from*
 24 *outside the Department.*

1 “(d) *COOPERATION.*—All personnel in the Department
2 shall cooperate to the fullest extent possible with a Special
3 Counsel appointed under this chapter.

4 **“§ 599K–6. Powers and authority**

5 “(a) *IN GENERAL.*—Subject to the limitations of this
6 chapter, a Special Counsel appointed under this chapter
7 shall exercise, within the scope of the jurisdiction of the Spe-
8 cial Counsel, the full power and independent authority to
9 exercise all investigative and prosecutorial functions of any
10 United States attorney.

11 “(b) *SPECIAL COUNSEL DISCRETION.*—Except as oth-
12 erwise provided in this chapter, a Special Counsel ap-
13 pointed under this chapter shall determine whether and to
14 what extent to inform or consult with the Attorney General
15 or others within the Department about the conduct of the
16 duties and responsibilities of the Special Counsel.

17 **“§ 599K–7. Conduct and accountability generally**

18 “(a) *IN GENERAL.*—A Special Counsel appointed
19 under this chapter shall—

20 “(1) *comply with the rules, regulations, proce-*
21 *dures, practices, and policies of the Department; and*

22 “(2) *consult with appropriate offices within the*
23 *Department for guidance with respect to established*
24 *practices, policies, and procedures of the Department,*

1 *including ethics and security regulations and proce-*
 2 *dures.*

3 “(b) *EXTRAORDINARY CIRCUMSTANCES.—If a Special*
 4 *Counsel appointed under this chapter determines that the*
 5 *extraordinary circumstances of any particular decision*
 6 *would render compliance with required review and ap-*
 7 *proval procedures by the designated departmental compo-*
 8 *nent inappropriate, the Special Counsel may consult di-*
 9 *rectly with the Attorney General.*

10 “(c) *LIMITATION ON SUPERVISION.—*

11 “(1) *IN GENERAL.—A Special Counsel appointed*
 12 *under this chapter shall not be subject to the day-to-*
 13 *day supervision of any official of the Department, ex-*
 14 *cept that the Attorney General may request that the*
 15 *Special Counsel provide an explanation for any in-*
 16 *vestigative or prosecutorial step, and may after re-*
 17 *view conclude that the action is so inappropriate or*
 18 *unwarranted under established practices of the De-*
 19 *partment that it should not be pursued.*

20 “(2) *REVIEW.—In conducting a review described*
 21 *in paragraph (1), the Attorney General shall give*
 22 *great weight to the views of the Special Counsel. If the*
 23 *Attorney General concludes that a proposed action by*
 24 *a Special Counsel should not be pursued, the Attorney*

1 General shall notify Congress in accordance with sec-
2 tion 599K–10(a)(3).

3 “(d) *DISCIPLINARY ACTION FOR MISCONDUCT.*—A
4 Special Counsel appointed under this chapter, and any
5 staff of the Special Counsel, shall be subject to disciplinary
6 action for misconduct and breach of ethical duties under
7 the same standards and to the same extent as are other em-
8 ployees of the Department. Inquiries into such matters shall
9 be handled through the appropriate office of the Department
10 upon the approval of the Attorney General.

11 **“§ 599K–8. Limitation on removal of Special Counsel**
12 **and certain other officials**

13 “(a) *IN GENERAL.*—A Special Counsel appointed
14 under this chapter, or any other official appointed by the
15 Attorney General who exercises a similar degree of inde-
16 pendence from the normal chain of command of the Depart-
17 ment, may be removed from office only by the personal ac-
18 tion of an Attorney General who has been confirmed to that
19 position by the Senate, or the most senior Senate-confirmed
20 officer of the Department listed in section 508 who is not
21 recused from the matter.

22 “(b) *REMOVAL FOR CAUSE.*—A Special Counsel or
23 other appointed official described in subsection (a) may be
24 removed only for misconduct, dereliction of duty, inca-

1 *capacity, conflict of interest, or other good cause, including*
 2 *violation of policies of the Department.*

3 “(c) *NOTICE OF REMOVAL.*—

4 “(1) *IN GENERAL.*—*The Attorney General or*
 5 *other Department official described in subsection (a),*
 6 *as the case may be, shall provide written notice to the*
 7 *Special Counsel or other appointed official described*
 8 *in subsection (a) of the specific reason or reasons for*
 9 *the removal.*

10 “(2) *EFFECTIVE DATE OF REMOVAL.*—*Except as*
 11 *provided in subsection (e), removal under this section*
 12 *shall become effective on the date that is 10 days after*
 13 *the date on which the written notice was provided*
 14 *under paragraph (1).*

15 “(d) *TIMING.*—*Not later than 10 days after the date*
 16 *on which written notice was provided under subsection*
 17 *(c)(1), the Special Counsel or other appointed official de-*
 18 *scribed in subsection (a), as the case may be, may file an*
 19 *action in the United States District Court for the District*
 20 *of Columbia challenging the removal in accordance with*
 21 *subsection (e).*

22 “(e) *REVIEW.*—

23 “(1) *IN GENERAL.*—*An individual that received*
 24 *written notice under subsection (c)(1) may file an ac-*

tion in accordance with paragraph (2) that the removal was in violation of this chapter.

“(2) *REQUIREMENTS.*—Any action filed under this subsection shall be heard and determined by a court of 3 judges not later than 14 days after the date on which the action is filed in accordance with the provisions of section 2284, and an appeal of any final decision shall lie to the Supreme Court.

“(3) *RELIEF.*—If a court determines that the removal of the individual who filed an action under this subsection violates this chapter, the removal shall not take effect. The court may also provide other appropriate relief.

“(4) *STATUS DURING PROCEEDINGS.*—

“(A) *IN GENERAL.*—At the request of the individual who filed an action under this subsection, the court shall determine whether the individual shall remain in office during the pendency of the action described in paragraph (2). If an individual makes such a request, the court shall order that the effective date of the removal shall be stayed until the court rules on the request.

“(B) *PRESERVATION OF MATERIALS.*—During the pendency of an action filed under this

1 subsection, the personnel, documents, and mate-
 2 rials of the Special Counsel or other appointed
 3 official described in subsection (a) shall be pre-
 4 served.

5 “(C) *LIMITATION.*—During the pendency of
 6 an action filed under this subsection, a replace-
 7 ment for the Special Counsel or other appointed
 8 official described in subsection (a) who is chal-
 9 lenging the removal shall not be designated.

10 **“§599K–9. Notification and reports by the Special**
 11 **Counsel**

12 “(a) *BUDGET.*—

13 “(1) *IN GENERAL.*—A Special Counsel appointed
 14 under this chapter shall be provided all appropriate
 15 resources by the Department.

16 “(2) *PROPOSED BUDGET.*—Not later than 60
 17 days after the date on which a Special Counsel is ap-
 18 pointed under this chapter, the Special Counsel shall
 19 develop a proposed budget for the current fiscal year
 20 with the assistance of the Justice Management Divi-
 21 sion for review and approval by the Attorney General.

22 “(3) *ESTABLISHMENT OF BUDGET.*—Based on a
 23 proposal developed under paragraph (2), the Attorney
 24 General shall establish a budget for the operations of
 25 the Special Counsel, which shall include a request for

1 *assignment of personnel, with a description of the*
 2 *qualifications needed.*

3 “(4) *ADDITIONAL BUDGET REQUESTS.*—*After a*
 4 *budget has been established under paragraph (3), the*
 5 *Special Counsel shall, not later than 90 days before*
 6 *the beginning of each fiscal year, report to the Attor-*
 7 *ney General the status of the investigation, and pro-*
 8 *vide a budget request for the following fiscal year. The*
 9 *Attorney General shall determine whether the inves-*
 10 *tigation should continue and, if so, establish the budg-*
 11 *et for the next fiscal year.*

12 “(b) *NOTIFICATION OF SIGNIFICANT EVENTS.*—*A Spe-*
 13 *cial Counsel appointed under this chapter shall notify the*
 14 *Attorney General of events in the course of the investigation*
 15 *by the Special Counsel in conformity with the guidelines*
 16 *of the Department with respect to Urgent Reports.*

17 “(c) *CLOSING DOCUMENTATION.*—

18 “(1) *IN GENERAL.*—*At the conclusion of the work*
 19 *of a Special Counsel appointed under this chapter,*
 20 *the Special Counsel shall submit to the Attorney Gen-*
 21 *eral, the Chairman and Ranking Minority Member of*
 22 *the Committee on the Judiciary of the Senate, and the*
 23 *Chairman and Ranking Minority Member of the*
 24 *Committee on the Judiciary of the House of Rep-*
 25 *resentatives a report detailing the factual findings of*

1 *the investigation and explaining the prosecution or*
 2 *declination decisions reached by the Special Counsel.*
 3 *If the Attorney General granted or denied a request*
 4 *from the Special Counsel to change the Special Coun-*
 5 *sel’s jurisdiction under section 599K–4(b), that infor-*
 6 *mation shall be included.*

7 “(2) *INFORMATION REQUIRED.*—*The report sub-*
 8 *mitted under paragraph (1) shall include information*
 9 *regarding significant prosecutorial decisions and sig-*
 10 *nificant expenditures by the Office of the Special*
 11 *Counsel.*

12 **“§ 599K–10. Notification and reports by the Attorney**
 13 **General**

14 “(a) *IN GENERAL.*—*If the Attorney General appoints*
 15 *a Special Counsel under this chapter, the Attorney General*
 16 *shall submit to the Chairman and Ranking Minority Mem-*
 17 *ber of the Committee on the Judiciary of the Senate and*
 18 *the Chairman and Ranking Minority Member of the Com-*
 19 *mittee on the Judiciary of the House of Representatives a*
 20 *written notification, with a report explaining—*

21 “(1) *the appointment of the Special Counsel;*

22 “(2) *the intent of the Attorney General to remove*
 23 *the Special Counsel; and*

24 “(3) *after the conclusion of the investigation of*
 25 *the Special Counsel, to the extent consistent with ap-*

1 *plicable law, any instance in which the Attorney Gen-*
 2 *eral concluded that a proposed action by a Special*
 3 *Counsel was so inappropriate or unwarranted under*
 4 *established Departmental practices that it should not*
 5 *be pursued.*

6 “(b) *NOTICE OF APPOINTMENT.*—*A notification and*
 7 *report under subsection (a)(1) shall—*

8 “(1) *be submitted on the date on which the Spe-*
 9 *cial Counsel is appointed; and*

10 “(2) *include—*

11 “(A) *the factual basis necessitating the ap-*
 12 *pointment of the Special Counsel, including a*
 13 *description of any effort made before appointing*
 14 *the Special Counsel to mitigate potential con-*
 15 *licts of interests of relevant individuals or with-*
 16 *in relevant components; and*

17 “(B) *a specific factual statement of the mat-*
 18 *ter to be investigated.*

19 “(c) *NOTICE OF REMOVAL.*—*A notification and report*
 20 *under subsection (a)(2) shall—*

21 “(1) *be submitted not later than 30 days before*
 22 *the date on which notice is provided to the Special*
 23 *Counsel under section 599K–8(c)(1); and*

24 “(2) *include the reasons for the removal.*

1 **“§ 599K–11. No creation of rights**

2 *“Except as provided in section 599K–8, this chapter*
 3 *shall not be construed to create any rights, substantive or*
 4 *procedural, enforceable at law or equity, by any person or*
 5 *entity, in any matter, civil, criminal, or administrative.”.*

6 (b) *TABLE OF CHAPTERS.—The table of chapters for*
 7 *part II of title 28, United States Code, is amended by in-*
 8 *serting after the item relating to chapter 40A the following:*

“40B. Special Counsel599K–1”.

9 (c) *APPLICATION TO EXISTING SPECIAL COUNSEL.—*

10 (1) *IN GENERAL.—For purposes of applying*
 11 *chapter 40B of title 28, United States Code, as added*
 12 *by this Act, to a Special Counsel who is subject to*
 13 *any provision of part 600 of title 28, Code of Federal*
 14 *Regulations, and who is serving as a Special Counsel*
 15 *on the date of enactment of this Act—*

16 (A) *in addition to the authority under*
 17 *which the Special Counsel was originally ap-*
 18 *pointed, the Special Counsel shall be deemed to*
 19 *be a Special Counsel appointed under such chap-*
 20 *ter 40B; and*

21 (B) *such chapter 40B shall apply for pur-*
 22 *poses of any action described in such chapter*
 23 *40B by or with respect to the Special Counsel*
 24 *taken on after the date of enactment of this Act*

1 *(including removing the Special Counsel from of-*
 2 *fice).*

3 (2) *REMOVAL BEFORE ENACTMENT.*—

4 (A) *IN GENERAL.*—*Section 599K–8 of title*
 5 *28, United States Code, as added by this Act,*
 6 *shall apply with respect to an individual who*
 7 *was—*

8 (i) *appointed as a Special Counsel*
 9 *after January 1, 2017;*

10 (ii) *subject to any provision of part*
 11 *600 of title 28, Code of Federal Regulations;*
 12 *and*

13 (iii) *removed from office before the date*
 14 *of enactment of this Act.*

15 (B) *IMPLEMENTATION.*—*If there is a Spe-*
 16 *cial Counsel who is described in subparagraph*
 17 (A)—

18 (i) *not later than 10 days after the*
 19 *date of enactment of this Act, the Attorney*
 20 *General shall provide written notice relat-*
 21 *ing to the removal—*

22 (I) *to the Special Counsel, that*
 23 *provides the information required*
 24 *under section 599K–8(c)(1) of title 28,*

1 *United States Code, as added by this*
2 *Act; and*

3 (ii) *to the Chairman and Rank-*
4 *ing Minority Member of the Committee*
5 *on the Judiciary of the Senate and the*
6 *Chairman and Ranking Minority*
7 *Member of the Committee on the Judi-*
8 *ciary of the House of Representatives,*
9 *that provides the information required*
10 *under section 599K–10(c)(2) of such*
11 *title;*

12 (ii) *not later than 10 days after the*
13 *date on which written notice is provided*
14 *under clause (i)(I), the Special Counsel*
15 *may file an action challenging the removal*
16 *in accordance with section 599K–8(e) of*
17 *such title;*

18 (iii) *in an action filed under clause*
19 *(ii), the court shall determine whether the*
20 *removal of the Special Counsel meets the re-*
21 *quirements for removal under subsections*
22 *(a), (b), and (c)(1) of section 599K–8 of*
23 *such title; and*

24 (iv) *if a court determines that the re-*
25 *moval of the individual who filed an action*

1 *under clause (ii) violates a requirement de-*
2 *scribed in clause (iii), the court may order*
3 *reinstatement or provide other appropriate*
4 *relief.*

5 (d) *SEVERABILITY.—If any provision of this Act, or*
6 *an amendment made by this Act, or the application of such*
7 *provision or amendment to any person or circumstance is*
8 *held to be invalid or unconstitutional, the remainder of this*
9 *Act, and the amendments made by this Act, and the appli-*
10 *cation of such provisions and amendments to any person*
11 *or circumstance shall remain and shall not be affected there-*
12 *by.*

Calendar No. 393

115TH CONGRESS
2^D Session

S. 2644

A BILL

To ensure independent investigations and judicial review of the removal of a special counsel, and for other purposes.

APRIL 26, 2018

Reported with an amendment