

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—115th Cong., 2d Sess.**

**S. 2644**

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

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. LEAHY

Viz:

1 At the end, add the following:

2 **SEC. 2. SPECIAL COUNSEL BUDGETARY INTEGRITY.**

3 (a) DEFINITIONS.—In this section—

4 (1) the term “Attorney General” means the At-  
 5 torney General of the United States or, if the Attor-  
 6 ney General is recused or otherwise unable to exer-  
 7 cise the duties of the Attorney General, the Acting  
 8 Attorney General or other individual eligible to exer-  
 9 cise the duties of the Attorney General as deter-  
 10 mined under section 508 of title 28, United States  
 11 Code;

12 (2) the term “covered action” means—

1           (A) rejecting or refusing to establish a pro-  
2           posed budget for the operations of a special  
3           counsel developed by the special counsel for a  
4           fiscal year; or

5           (B) approving a proposed budget described  
6           in subparagraph (A) for a fiscal year for an  
7           amount that is less than 95 percent of the pro-  
8           posed budget;

9           (3) the term “joint resolution” means only a  
10          joint resolution introduced in the period beginning  
11          on the date on which the notification referred to in  
12          subsection (b)(1)(A) is received by Congress and  
13          ending 90 days thereafter (excluding days either  
14          House of Congress is adjourned for more than 3  
15          days during a session of Congress), the matter after  
16          the resolving clause of which is as follows: “That  
17          Congress disapproves the covered action taken by  
18          the Attorney General relating to \_\_\_\_\_, and such  
19          covered action shall have no force or effect.” (The  
20          blank space being appropriately filled in);

21          (4) the term “special counsel” means a special  
22          counsel appointed under Department of Justice reg-  
23          ulations; and

1           (5) the term “submission date” means the date  
2           on which Congress receives the notification sub-  
3           mitted under subsection (b)(1)(A).

4           (b) CONGRESSIONAL REVIEW.—

5           (1) REVIEW.—

6           (A) NOTIFICATION.—Before a covered ac-  
7           tion can take effect, the Attorney General tak-  
8           ing such covered action shall submit to each  
9           House of Congress a notification of the covered  
10          action.

11          (B) EFFECTIVE DATE.—A covered action  
12          relating to a notification submitted under sub-  
13          paragraph (A) shall take effect on the latest  
14          of—

15                 (i) 90 days after the date on which  
16                 Congress receives the notification sub-  
17                 mitted under subparagraph (A); or

18                 (ii) if Congress passes a joint resolu-  
19                 tion of disapproval described in subsection  
20                 (c) relating to the covered action, and the  
21                 President signs a veto of such resolution,  
22                 the earlier date—

23                         (I) on which either House of  
24                         Congress votes and fails to override  
25                         the veto of the President; or

1 (II) occurring 30 session days  
2 after the date on which Congress re-  
3 ceived the veto and objections of the  
4 President; or

5 (iii) the date the covered action would  
6 have otherwise taken effect, if not for this  
7 subsection (unless a joint resolution of dis-  
8 approval under subsection (c) is enacted).

9 (C) EFFECT AFTER SUBMISSION TO CON-  
10 GRESS.—A covered action shall take effect as  
11 otherwise provided by law after submission to  
12 Congress of a notification under subparagraph  
13 (A).

14 (D) NO DELAY.—Notwithstanding sub-  
15 paragraph (B), the effective date of a covered  
16 action shall not be delayed by operation of this  
17 Act beyond the date on which either House of  
18 Congress votes to reject a joint resolution of  
19 disapproval under subsection (c).

20 (2) JOINT RESOLUTION OF DISAPPROVAL.—A  
21 covered action shall not take effect (or continue), if  
22 Congress enacts a joint resolution of disapproval, de-  
23 scribed under subsection (c), of the covered action.

24 (3) SUCCEEDING SESSIONS OF CONGRESS.—

1 (A) IN GENERAL.—In addition to the op-  
2 portunity for review otherwise provided under  
3 this Act, in the case of any covered action for  
4 which a notification was submitted in accord-  
5 ance with paragraph (1)(A) during the period  
6 beginning on the date occurring—

7 (i) in the case of the Senate, 60 ses-  
8 sion days; or

9 (ii) in the case of the House of Rep-  
10 resentatives, 60 legislative days;

11 before the date Congress adjourns a session of  
12 Congress through the date on which the same  
13 or succeeding Congress first convenes its next  
14 session, subsection (c) shall apply to such cov-  
15 ered action in the succeeding session of Con-  
16 gress.

17 (B) EFFECT.—A covered action described  
18 under subparagraph (A) shall take effect as  
19 otherwise provided by law (including other  
20 paragraphs of this subsection).

21 (4) RETROACTIVITY.—

22 (A) IN GENERAL.—For purposes of this  
23 paragraph, subsection (c) shall also apply to  
24 any covered action taken by the Attorney Gen-

1           eral between May 17, 2017, and the date of en-  
2           actment of this Act.

3           (B) APPLICATION.—In applying subsection  
4           (c) for purposes of congressional review, a cov-  
5           ered action described under subparagraph (A)  
6           shall be treated as though—

7                   (i) such covered action took effect on  
8                   the date of enactment of this Act; and

9                   (ii) a notification on such covered ac-  
10                  tion was submitted to Congress under  
11                  paragraph (1)(A) on such date.

12           (C) EFFECTIVENESS.—The effectiveness of  
13           a covered action described under subparagraph  
14           (A) shall be as otherwise provided by law, un-  
15           less the covered action is made of no force or  
16           effect under subsection (c).

17           (5) NO FORCE OR EFFECT.—Any covered action  
18           that takes effect and later is made of no force or ef-  
19           fect by enactment of a joint resolution under sub-  
20           section (c) shall be treated as though such covered  
21           action had never taken effect.

22           (6) RULE OF CONSTRUCTION.—If Congress  
23           does not enact a joint resolution of disapproval  
24           under subsection (c) respecting a covered action, no  
25           court or agency may infer any intent of Congress

1 from any action or inaction of Congress with regard  
2 to such covered action, related statute, or joint reso-  
3 lution of disapproval.

4 (c) CONGRESSIONAL DISAPPROVAL PROCEDURE.—

5 (1) REFERRAL.—A joint resolution shall be re-  
6 ferred to the committees in each House of Congress  
7 with jurisdiction.

8 (2) PETITION FOR DISCHARGE IN SENATE.—In  
9 the Senate, if the committee to which is referred a  
10 joint resolution has not reported such joint resolu-  
11 tion (or an identical joint resolution) at the end of  
12 20 calendar days after the submission date, such  
13 committee may be discharged from further consider-  
14 ation of such joint resolution upon a petition sup-  
15 ported in writing by 30 Members of the Senate, and  
16 such joint resolution shall be placed on the calendar.

17 (3) CONSIDERATION IN SENATE.—

18 (A) MOTION TO PROCEED.—In the Senate,  
19 when the committee to which a joint resolution  
20 is referred has reported, or when a committee  
21 is discharged (under paragraph (2)) from fur-  
22 ther consideration of a joint resolution, it is at  
23 any time thereafter in order (even though a  
24 previous motion to the same effect has been dis-  
25 agreed to) for a motion to proceed to the con-

1           sideration of the joint resolution, and all points  
2           of order against the joint resolution (and  
3           against consideration of the joint resolution)  
4           are waived. The motion is not subject to  
5           amendment, or to a motion to postpone, or to  
6           a motion to proceed to the consideration of  
7           other business. A motion to reconsider the vote  
8           by which the motion is agreed to or disagreed  
9           to shall not be in order. If a motion to proceed  
10          to the consideration of the joint resolution is  
11          agreed to, the joint resolution shall remain the  
12          unfinished business of the Senate until disposed  
13          of.

14                 (B) LIMITED DEBATE.—In the Senate, de-  
15          bate on the joint resolution, and on all debat-  
16          able motions and appeals in connection there-  
17          with, shall be limited to not more than 10  
18          hours, which shall be divided equally between  
19          those favoring and those opposing the joint res-  
20          olution. A motion further to limit debate is in  
21          order and not debatable. An amendment to, or  
22          a motion to postpone, or a motion to proceed to  
23          the consideration of other business, or a motion  
24          to recommit the joint resolution is not in order.



1           (C) VOTE ON FINAL PASSAGE.—In the  
2           Senate, immediately following the conclusion of  
3           the debate on a joint resolution, and a single  
4           quorum call at the conclusion of the debate if  
5           requested in accordance with the rules of the  
6           Senate, the vote on final passage of the joint  
7           resolution shall occur.

8           (D) APPEALS.—Appeals from the decisions  
9           of the Chair relating to the application of the  
10          rules of the Senate to the procedure relating to  
11          a joint resolution shall be decided without de-  
12          bate.

13          (4) REGULAR ORDER IN SENATE.—In the Sen-  
14          ate the procedure specified in paragraph (2) or (3)  
15          shall not apply to the consideration of a joint resolu-  
16          tion respecting a rule—

17                 (A) after the expiration of the 90 session  
18                 days beginning with the applicable submission  
19                 date; or

20                 (B) if the notification under subsection  
21                 (b)(1)(A) was submitted during the period re-  
22                 ferred to in subsection (b)(4)(A), after the expi-  
23                 ration of the 60 session days beginning on the  
24                 15th session day after the succeeding session of  
25                 Congress first convenes.

1           (5) **PASSAGE BY ONE HOUSE.**—If, before the  
2           passage by one House of a joint resolution of that  
3           House, that House receives from the other House a  
4           joint resolution, then the following procedures shall  
5           apply:

6                   (A) The joint resolution of the other House  
7                   shall not be referred to a committee.

8                   (B) With respect to a joint resolution of  
9                   the House receiving the joint resolution—

10                           (i) the procedure in that House shall  
11                           be the same as if no joint resolution had  
12                           been received from the other House; but

13                           (ii) the vote on final passage shall be  
14                           on the joint resolution of the other House.

15           (d) **APPLICABILITY.**—This section shall apply to any  
16           special counsel appointed on or after May 17, 2017.