

108TH CONGRESS  
1ST SESSION

# S. 640

To amend subchapter III of chapter 83 and chapter 84 of title 5, United States Code, to include Federal prosecutors within the definition of a law enforcement officer, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 18, 2003

Mr. LEAHY (for himself, Mr. HATCH, Ms. MIKULSKI, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To amend subchapter III of chapter 83 and chapter 84 of title 5, United States Code, to include Federal prosecutors within the definition of a law enforcement officer, 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 “Federal Prosecutors  
5       Retirement Benefit Equity Act of 2003”.

1 **SEC. 2. INCLUSION OF FEDERAL PROSECUTORS IN THE**  
 2 **DEFINITION OF A LAW ENFORCEMENT OFFI-**  
 3 **CER.**

4 (a) CIVIL SERVICE RETIREMENT SYSTEM.—

5 (1) IN GENERAL.—Paragraph (20) of section  
 6 8331 of title 5, United States Code, is amended by  
 7 striking “position.” and inserting “position and a  
 8 Federal prosecutor.”.

9 (2) FEDERAL PROSECUTOR DEFINED.—Section  
 10 8331 of title 5, United States Code, is amended—

11 (A) in paragraph (27), by striking “and”  
 12 at the end;

13 (B) in paragraph (28), by striking the pe-  
 14 riod and inserting “; and”; and

15 (C) by adding at the end the following:

16 “(29) ‘Federal prosecutor’ means—

17 “(A) an assistant United States attorney  
 18 under section 542 of title 28; or

19 “(B) an attorney employed by the Depart-  
 20 ment of Justice and designated by the Attorney  
 21 General of the United States.”.

22 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—

23 (1) IN GENERAL.—Paragraph (17) of section  
 24 8401 of title 5, United States Code, is amended—

25 (A) in subparagraph (C), by striking  
 26 “and” at the end;

1 (B) in subparagraph (D), by adding “and”  
 2 after “agency;”; and

3 (C) by adding at the end the following:

4 “(E) a Federal prosecutor;”.

5 (2) FEDERAL PROSECUTOR DEFINED.—Section  
 6 8401 of title 5, United States Code, is amended—

7 (A) in paragraph (33), by striking “and”  
 8 at the end;

9 (B) in paragraph (34), by striking the pe-  
 10 riod and inserting “; and”; and

11 (C) by adding at the end the following:

12 “(35) ‘Federal prosecutor’ means—

13 “(A) an assistant United States attorney  
 14 under section 542 of title 28; or

15 “(B) an attorney employed by the Depart-  
 16 ment of Justice and designated by the Attorney  
 17 General of the United States.”.

18 (c) TREATMENT UNDER CERTAIN PROVISIONS OF  
 19 LAW (UNRELATED TO RETIREMENT) TO REMAIN UN-  
 20 CHANGED.—

21 (1) ORIGINAL APPOINTMENTS.—Subsections (d)  
 22 and (e) of section 3307 of title 5, United States  
 23 Code, are amended by adding at the end of each the  
 24 following: “The preceding sentence shall not apply in  
 25 the case of an original appointment of a Federal

1 prosecutor as defined under section 8331(29) or  
 2 8401(35).”.

3 (2) MANDATORY SEPARATION.—Sections  
 4 8335(b) and 8425(b) of title 5, United States Code,  
 5 are amended by adding at the end of each the fol-  
 6 lowing: “The preceding provisions of this subsection  
 7 shall not apply in the case of a Federal prosecutor  
 8 as defined under section 8331(29) or 8401(35).”.

9 (d) EFFECTIVE DATE.—The amendments made by  
 10 this section shall take effect on the first day of the first  
 11 applicable pay period beginning on or after 120 days after  
 12 the date of enactment of this Act.

13 **SEC. 3. PROVISIONS RELATING TO INCUMBENTS.**

14 (a) DEFINITIONS.—In this section, the term—

15 (1) “Federal prosecutor” means—

16 (A) an assistant United States attorney  
 17 under section 542 of title 28, United States  
 18 Code; or

19 (B) an attorney employed by the Depart-  
 20 ment of Justice and designated by the Attorney  
 21 General of the United States; and

22 (2) “incumbent” means an individual who is  
 23 serving as a Federal prosecutor on the effective date  
 24 of this section.

1 (b) DESIGNATED ATTORNEYS.—If the Attorney Gen-  
 2 eral of the United States makes any designation of an at-  
 3 torney to meet the definition under subsection (a)(1)(B)  
 4 for purposes of being an incumbent under this section—

5 (1) such designation shall be made before the  
 6 effective date of this section; and

7 (2) the Attorney General shall submit to the  
 8 Office of Personnel Management before that effec-  
 9 tive date—

10 (A) the name of the individual designated;  
 11 and

12 (B) the period of service performed by that  
 13 individual as a Federal prosecutor before that  
 14 effective date.

15 (c) NOTICE REQUIREMENT.—Not later than 9  
 16 months after the date of enactment of this Act, the De-  
 17 partment of Justice shall take measures reasonably de-  
 18 signed to provide notice to incumbents on—

19 (1) their election rights under this Act; and

20 (2) the effects of making or not making a time-  
 21 ly election under this Act.

22 (d) ELECTION AVAILABLE TO INCUMBENTS.—

23 (1) IN GENERAL.—An incumbent may elect, for  
 24 all purposes, to be treated—

1 (A) in accordance with the amendments  
 2 made by this Act; or

3 (B) as if this Act had never been enacted.

4 (2) FAILURE TO ELECT.—Failure to make a  
 5 timely election under this subsection shall be treated  
 6 in the same way as an election under paragraph  
 7 (1)(A), made on the last day allowable under para-  
 8 graph (3).

9 (3) TIME LIMITATION.—An election under this  
 10 subsection shall not be effective unless the election  
 11 is made not later than the earlier of—

12 (A) 120 days after the date on which the  
 13 notice under subsection (c) is provided; or

14 (B) the date on which the incumbent in-  
 15 volved separates from service.

16 (e) LIMITED RETROACTIVE EFFECT.—

17 (1) EFFECT ON RETIREMENT.—In the case of  
 18 an incumbent who elects (or is deemed to have elect-  
 19 ed) the option under subsection (d)(1)(A), all service  
 20 performed by that individual as a Federal prosecutor  
 21 shall—

22 (A) to the extent performed on or after the  
 23 effective date of that election, be treated in ac-  
 24 cordance with applicable provisions of sub-  
 25 chapter III of chapter 83 or chapter 84 of title

1           5, United States Code, as amended by this Act;  
2           and

3                   (B) to the extent performed before the ef-  
4           fective date of that election, be treated in ac-  
5           cordance with applicable provisions of sub-  
6           chapter III of chapter 83 or chapter 84 of such  
7           title, as if the amendments made by this Act  
8           had then been in effect.

9           (2) NO OTHER RETROACTIVE EFFECT.—Noth-  
10          ing in this Act (including the amendments made by  
11          this Act) shall affect any of the terms or conditions  
12          of an individual's employment (apart from those  
13          governed by subchapter III of chapter 83 or chapter  
14          84 of title 5, United States Code) with respect to  
15          any period of service preceding the date on which  
16          such individual's election under subsection (d) is  
17          made (or is deemed to have been made).

18          (f) INDIVIDUAL CONTRIBUTIONS FOR PRIOR SERV-  
19          ICE.—

20                   (1) IN GENERAL.—An individual who makes an  
21          election under subsection (d)(1)(A) may, with re-  
22          spect to prior service performed by such individual,  
23          contribute to the Civil Service Retirement and Dis-  
24          ability Fund the difference between the individual  
25          contributions that were actually made for such serv-

1 ice and the individual contributions that should have  
 2 been made for such service if the amendments made  
 3 by section 2 had then been in effect.

4 (2) EFFECT OF NOT CONTRIBUTING.—If no  
 5 part of or less than the full amount required under  
 6 paragraph (1) is paid, all prior service of the incum-  
 7 bent shall remain fully creditable as law enforcement  
 8 officer service, but the resulting annuity shall be re-  
 9 duced in a manner similar to that described in sec-  
 10 tion 8334(d)(2) of title 5, United States Code, to  
 11 the extent necessary to make up the amount unpaid.

12 (3) PRIOR SERVICE DEFINED.—For purposes of  
 13 this section, the term “prior service” means, with re-  
 14 spect to any individual who makes an election under  
 15 subsection (d)(1)(A), service performed by such indi-  
 16 vidual before the date as of which appropriate retire-  
 17 ment deductions begin to be made in accordance  
 18 with such election.

19 (g) GOVERNMENT CONTRIBUTIONS FOR PRIOR SERV-  
 20 ICE.—

21 (1) IN GENERAL.—If an incumbent makes an  
 22 election under subsection (d)(1)(A), the Department  
 23 of Justice shall remit to the Office of Personnel  
 24 Management, for deposit in the Treasury of the  
 25 United States to the credit of the Civil Service Re-



1       tirement and Disability Fund, the amount required  
2       under paragraph (2) with respect to such service.

3           (2) AMOUNT REQUIRED.—The amount the De-  
4       partment of Justice is required to remit is, with re-  
5       spect to any prior service, the total amount of addi-  
6       tional Government contributions to the Civil Service  
7       Retirement and Disability Fund (over and above  
8       those actually paid) that would have been required  
9       if the amendments made by section 2 had then been  
10      in effect.

11          (3) CONTRIBUTIONS TO BE MADE RATABLY.—  
12      Government contributions under this subsection on  
13      behalf of an incumbent shall be made by the Depart-  
14      ment of Justice ratably (on at least an annual basis)  
15      over the 10-year period beginning on the date re-  
16      ferred to in subsection (f)(3).

17          (h) REGULATIONS.—Except as provided under sec-  
18      tion 4, the Office of Personnel Management shall prescribe  
19      regulations necessary to carry out this Act, including pro-  
20      visions under which any interest due on the amount de-  
21      scribed under subsection (f) shall be determined.

22          (i) EFFECTIVE DATE.—This section shall take effect  
23      120 days after the date of enactment of this Act.

1 **SEC. 4. DEPARTMENT OF JUSTICE ADMINISTRATIVE AC-**  
2 **TIONS.**

3 (a) DEFINITION.—In this section the term “Federal  
4 prosecutor” has the meaning given under section 3(a)(1).

5 (b) REGULATIONS.—

6 (1) IN GENERAL.—Not later than 120 days  
7 after the date of enactment of this Act, the Attorney  
8 General of the United States shall—

9 (A) consult with the Office of Personnel  
10 Management on this Act (including the amend-  
11 ments made by this Act); and

12 (B) promulgate regulations for making  
13 designations of Federal prosecutors who are not  
14 assistant United States attorneys.

15 (2) CONTENTS.—Any regulations promulgated  
16 under paragraph (1) shall ensure that attorneys des-  
17 ignated as Federal prosecutors who are not assistant  
18 United States attorneys have routine employee re-  
19 sponsibilities that are substantially similar to those  
20 of assistant United States attorneys assigned to the  
21 litigation of criminal cases, such as the representa-  
22 tion of the United States before grand juries and in  
23 trials, appeals, and related court proceedings.

24 (c) DESIGNATIONS.—The designation of any Federal  
25 prosecutor who is not an assistant United States attorney  
26 for purposes of this Act (including the amendments made

1 by this Act) shall be at the discretion of the Attorney Gen-  
2 eral of the United States.

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