

105TH CONGRESS  
2D SESSION

# H. R. 4264

To establish the Bureau of Enforcement and Border Affairs within the  
Department of Justice.

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IN THE HOUSE OF REPRESENTATIVES

JULY 17, 1998

Mr. ROGERS introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To establish the Bureau of Enforcement and Border Affairs  
within the Department of Justice.

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. ESTABLISHMENT OF BUREAU OF ENFORCE-**  
4       **MENT AND BORDER AFFAIRS.**

5       (a) ESTABLISHMENT OF BUREAU.—

6               (1) IN GENERAL.—There is established in the  
7       Department of Justice a bureau to be known as the  
8       Bureau of Enforcement and Border Affairs (in this  
9       section referred to as the “Bureau”).

1           (2) DIRECTOR.—The head of the Bureau shall  
2           be the Director of the Bureau of Enforcement and  
3           Border Affairs who—

4                   (A) shall be appointed by the President, by  
5                   and with the advice and consent of the Senate;  
6                   and

7                   (B) shall report directly to the Attorney  
8                   General.

9           (3) COMPENSATION.—The Director shall be  
10           paid at the rate of basic pay payable for level III of  
11           the Executive Schedule.

12           (4) FUNCTIONS.—The Director shall perform  
13           such functions as are transferred to the Director by  
14           this section or otherwise vested in the Director by  
15           law.

16           (c) TRANSFER OF FUNCTIONS.—There are trans-  
17           ferred from the Commissioner of the Immigration and  
18           Naturalization Service to the Director all functions per-  
19           formed under the following programs, and all personnel,  
20           infrastructure, and funding provided to the Commissioner  
21           in support of such programs immediately before the effec-  
22           tive date of this section:

23                   (1) The Border Patrol program.

24                   (2) The detention and deportation program.

25                   (3) The intelligence program.

1           (4) The investigations program.

2           (5) The inspections program.

3           (d) REFERENCES.—With respect to any function  
4 transferred by this section and exercised on or after the  
5 effective date of this section, reference in any other Fed-  
6 eral law, Executive order, rule, regulation, or delegation  
7 of authority, or any document of or pertaining to an office  
8 from which a function is transferred by this section—

9           (1) to the head of such office is deemed to refer  
10 to the Director of the Bureau of Enforcement and  
11 Border Affairs; or

12           (2) to such office is deemed to refer to the Bu-  
13 reau.

14           (e) EXERCISE OF AUTHORITIES.—Except as other-  
15 wise provided by law, a Federal official to whom a function  
16 is transferred by this section may, for purposes of per-  
17 forming the function, exercise all authorities under any  
18 other provision of law that were available with respect to  
19 the performance of that function to the official responsible  
20 for the performance of the function immediately before the  
21 effective date of the transfer of the function under this  
22 section.

23           (f) SAVINGS PROVISIONS.—

24           (1) LEGAL DOCUMENTS.—All orders, deter-  
25 minations, rules, regulations, permits, grants, loans,

1 contracts, agreements, certificates, licenses, and  
2 privileges—

3 (A) that have been issued, made, granted,  
4 or allowed to become effective by the President,  
5 the Attorney General, the Commissioner of the  
6 Immigration and Naturalization Service, the  
7 Assistant Commissioner for Border Patrol, the  
8 Assistant Commissioner for Detention and De-  
9 portation, the Assistant Commissioner for Intel-  
10 ligence, the Assistant Commissioner for Inves-  
11 tigation, or any other Government official, or  
12 by a court of competent jurisdiction, in the per-  
13 formance of any function that is transferred by  
14 this section; and

15 (B) that are in effect on the effective date  
16 of such transfer (or become effective after such  
17 date pursuant to their terms as in effect on  
18 such effective date);

19 shall continue in effect according to their terms until  
20 modified, terminated, superseded, set aside, or re-  
21 voked in accordance with law by the President, any  
22 other authorized official, a court of competent juris-  
23 diction, or operation of law.

24 (2) PROCEEDINGS.—This section shall not af-  
25 fect any proceedings or any application for any bene-

1 fits, service, license, permit, certificate, or financial  
2 assistance pending on the effective date of this sec-  
3 tion before an office whose functions are transferred  
4 by this section, but such proceedings and applica-  
5 tions shall be continued. Orders shall be issued in  
6 such proceedings, appeals shall be taken therefrom,  
7 and payments shall be made pursuant to such or-  
8 ders, as if this section had not been enacted, and or-  
9 ders issued in any such proceeding shall continue in  
10 effect until modified, terminated, superseded, or re-  
11 voked by a duly authorized official, by a court of  
12 competent jurisdiction, or by operation of law. Noth-  
13 ing in this subsection shall be considered to prohibit  
14 the discontinuance or modification of any such pro-  
15 ceeding under the same terms and conditions and to  
16 the same extent that such proceeding could have  
17 been discontinued or modified if this section had not  
18 been enacted.

19 (3) SUITS.—This section shall not affect suits  
20 commenced before the effective date of this section,  
21 and in all such suits, proceeding shall be had, ap-  
22 peals taken, and judgments rendered in the same  
23 manner and with the same effect as if this section  
24 had not been enacted.

1           (4) NONABATEMENT OF ACTIONS.—No suit, ac-  
2           tion, or other proceeding commenced by or against  
3           the Department of Justice or the Immigration and  
4           Naturalization Service, or by or against any individ-  
5           ual in the official capacity of such individual as an  
6           officer or employee in connection with a function  
7           transferred by this section, shall abate by reason of  
8           the enactment of this section.

9           (5) CONTINUANCE OF SUITS.—If any Govern-  
10          ment officer in the official capacity of such officer  
11          is party to a suit with respect to a function of the  
12          officer and under this section such function is trans-  
13          ferred to any other officer or office, then such suit  
14          shall be continued with the other officer or the head  
15          of such other office, as applicable, substituted or  
16          added as a party.

17          (6) ADMINISTRATIVE PROCEDURE AND JUDI-  
18          CIAL REVIEW.—Except as otherwise provided by this  
19          section, any statutory requirements relating to no-  
20          tice, hearings, action upon the record, or administra-  
21          tive or judicial review that apply to any function  
22          transferred by this section shall apply to the exercise  
23          of such function by the head of the office, and other  
24          officers of the office, to which such function is trans-  
25          ferred by this section.

1 (g) TRANSFER AND ALLOCATION OF APPROPRIA-  
2 TIONS AND PERSONNEL.—

3 (1) IN GENERAL.—The personnel of the De-  
4 partment of Justice employed in connection with the  
5 functions transferred by this section (and functions  
6 that the Attorney General determines are properly  
7 related to the functions of the Bureau and would, if  
8 so transferred, further the purposes of the Bureau),  
9 and the assets, liabilities, contracts, property,  
10 records, and unexpended balance of appropriations,  
11 authorizations, allocations, and other funds em-  
12 ployed, held, used, arising from, available to, or to  
13 be made available to the Immigration and Natu-  
14 ralization Service in connection with the functions  
15 transferred by this section, subject to section 202 of  
16 the Budget and Accounting Procedures Act of 1950,  
17 shall be transferred to the Bureau for appropriate  
18 allocation by the Director. Unexpended funds trans-  
19 ferred pursuant to this paragraph shall be used only  
20 for the purposes for which the funds were originally  
21 authorized and appropriated. The Attorney General  
22 shall retain the right to adjust or realign transfers  
23 effected under this section for a period of 2 years  
24 after the date of the establishment of the Bureau.

25 (2) EFFECT ON PERSONNEL.—

1 (A) IN GENERAL.—The transfer under this  
2 section of full-time personnel (except special  
3 Government employees) and part-time personnel  
4 holding permanent positions shall not cause any  
5 such employee to be separated or reduced in  
6 grade or compensation for 1 year after the date  
7 of transfer to the Bureau.

8 (B) EXECUTIVE SCHEDULE.—Any person  
9 who, on the day preceding the effective date of  
10 this section, held a position compensated in ac-  
11 cordance with the Executive Schedule pre-  
12 scribed in chapter 53 of title 5, United States  
13 Code, and who, without a break in service, is  
14 appointed in the Bureau of Enforcement and  
15 Border Affairs to a position having duties com-  
16 parable to the duties performed immediately  
17 preceding such appointment shall continue to be  
18 compensated in such new position at not less  
19 than the rate provided for such previous posi-  
20 tion, for the duration of the service of such per-  
21 son in such new position.

22 (h) DELEGATION AND ASSIGNMENT.—Except as oth-  
23 erwise expressly prohibited by law or otherwise provided  
24 in this section, the Director of the Bureau of Enforcement  
25 and Border Affairs to whom functions are transferred

1 under this section may delegate any of the functions so  
2 transferred to such officers and employees of the Bureau  
3 as the Director may designate, and may authorize succes-  
4 sive redelegations of such functions as may be necessary  
5 or appropriate. No delegation of functions under this sub-  
6 section or under any other provision of this section shall  
7 relieve the official to whom a function is transferred under  
8 this section of responsibility for the administration of the  
9 function.

10 (i) AUTHORITIES OF ATTORNEY GENERAL.—

11 (1) DETERMINATIONS.—If necessary, the Attor-  
12 ney General shall make any determination of the  
13 functions that are transferred under this section.

14 (2) INCIDENTAL TRANSFERS.—The Attorney  
15 General, at such time or times as the Attorney Gen-  
16 eral shall provide, may make such determinations as  
17 may be necessary with regard to the functions trans-  
18 ferred by this section, and to make such additional  
19 incidental dispositions of personnel, assets, liabilities,  
20 grants, contracts, property, records, and unexpended  
21 balances of appropriations, authorizations, alloca-  
22 tions, and other funds held, used, arising from,  
23 available to, or to be made available in connection  
24 with such functions, as may be necessary to carry  
25 out the provisions of this section. The Attorney Gen-

1       eral shall provide for such further measures and dis-  
2       positions as may be necessary to effectuate the pur-  
3       poses of this section.

4               (3) AUTHORITY WITH RESPECT TO FUNDS.—  
5       Notwithstanding any other provision of law, the At-  
6       torney General may control retention and disburse-  
7       ment of funds transferred under this section.

8               (4) TREATMENT OF SHARED RESOURCES.—The  
9       Attorney General is authorized to provide for an ap-  
10      propriate allocation, or coordination, or both, of re-  
11      sources involved in supporting shared support func-  
12      tions for the Bureau and the Immigration and Natu-  
13      ralization Service other offices within the Depart-  
14      ment of Justice. Such shared support functions may  
15      include information resources management, human  
16      resources and training, security, records and forms  
17      management, equal opportunity activities, facilities  
18      and procurement administration, and budgeting.  
19      The Attorney General shall maintain oversight and  
20      control over the shared computer databases and sys-  
21      tems and records management.

22              (j) DEFINITIONS.—For purposes of this section:

23                   (1) The term “Director” means the Director of  
24      the Bureau of Enforcement and Border Affairs.

1           (2) The term “function” includes any duty, ob-  
2           ligation, power, authority, responsibility, right, privi-  
3           lege, activity, or program.

4           (3) The term “office” includes any office, ad-  
5           ministration, agency, bureau, institute, council, unit,  
6           organizational entity, or component thereof.

7           (k) EFFECTIVE DATE; TRANSITION.—The transfer of  
8           functions under this section shall take effect on the date  
9           that is 180 days after the date of the enactment of this  
10          Act. The Bureau of Enforcement and Border Affairs shall  
11          be established, and the Director of the Bureau of Enforce-  
12          ment and Border Affairs shall be appointed, not later than  
13          such effective date. During fiscal year 1999, the Attorney  
14          General shall provide for an appropriate accounting of  
15          funds and an appropriate transfer of funds appropriated  
16          to the Bureau of Enforcement and Border Affairs to the  
17          Immigration and Naturalization Service to the extent  
18          functions to be transferred to the Bureau under this sec-  
19          tion continue to be performed by such Service.

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