

FEDERAL VACANCIES REFORM  
ACT OF 1998—MOTION TO PROCEED

The Senate continued with the motion to proceed.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Mr. President, what is the pending business?

The PRESIDING OFFICER. A motion to proceed to S. 2176, postcloture.

Mr. LOTT. I know of no further debate.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed to S. 2176.

The motion was agreed to.

FEDERAL VACANCIES REFORM  
ACT OF 1998

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 2176) to amend sections 3345 through 3349 of title 5, United States Code (commonly referred to as the "Vacancies Act") to clarify statutory requirements relating to vacancies in and appointments to certain Federal offices, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Governmental Affairs, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 2176

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Federal Vacancies Reform Act of 1998".

**SEC. 2. FEDERAL VACANCIES AND APPOINTMENTS.**

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended by striking sections 3345 through 3349 and inserting the following:

**"§ 3345. Acting officer**

"(a) If an officer of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

"(1) the first assistant of such officer shall perform the functions and duties of the office temporarily in an acting capacity, subject to the time limitations of section 3346; or

"(2) notwithstanding paragraph (1), the President (and only the President) may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and duties of the office temporarily in an acting capacity, subject to the time limitations of section 3346.

"(b) Notwithstanding section 3346(a)(2), a person may not serve as an acting officer for an office under this section, if—

"(1) on the date of the death, resignation, or beginning of inability to serve of the applicable officer, such person serves in the position of first assistant to such officer;

"(2) during the 365-day period preceding such date, such person served in the position of first assistant to such officer for less than 180 days; and

"(3) the President submits a nomination of such person to the Senate for appointment to such office.

"(c) With respect to the office of the Attorney General of the United States, the provisions of section 508 of title 28 shall be applicable.

**"§ 3346. Time limitation**

"(a) The person serving as an acting officer as described under section 3345 may serve in the office—

"(1) for no longer than 150 days beginning on the date the vacancy occurs; or

"(2) subject to subsection (b), once a first or second nomination for the office is submitted to the Senate, *from the date of such nomination* for the period that the nomination is pending in the Senate.

"(b)(1) If the first nomination for the office is rejected by the Senate, withdrawn, or returned to the President by the Senate, the person may continue to serve as the acting officer for no more than 150 days after the date of such rejection, withdrawal, or return.

"(2) **[If Notwithstanding paragraph (1), if a second nomination for the office (of a different person than first nominated in the case of a rejection or withdrawal) is submitted to the Senate [during the 150-day period] after the rejection, withdrawal, or return of the first nomination, the person serving as the acting officer may continue to serve—**

"(A) until the second nomination is confirmed; or

"(B) for no more than 150 days after the second nomination is rejected, withdrawn, or returned.

"(c) If a person begins serving as an acting officer during an adjournment of the Congress sine die, the 150-day period under subsection (a) shall begin on the date that the Senate first reconvenes.

**"§ 3347. Application**

"(a) Sections 3345 and 3346 are applicable to any office of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) for which appointment is required to be made by the President, by and with the advice and consent of the Senate, unless—

"(1) another statutory provision expressly provides that such provision supersedes sections 3345 and 3346;

"(2) a statutory provision in effect on the date of enactment of the Federal Vacancies Reform Act of 1998 expressly authorizes the President, or the head of an Executive department, to designate an officer to perform the functions and duties of a specified office temporarily in an acting capacity; or

"(2) a statutory provision in effect on the date of enactment of the Federal Vacancies Reform Act of 1998 expressly—

"(A) *authorizes the President, a court, or the head of an Executive department, to designate an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or*

"(B) *designates an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or*

"(3) the President makes an appointment to fill a vacancy in such office during the recess of the Senate pursuant to clause 3 of section 2 of article II of the United States Constitution.

"(b) Any statutory provision providing general authority to the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) to delegate duties to, or to reassign duties among, officers or employees of such Executive agency, is not a statu-

tory provision to which subsection (a)(2) applies.

**"§ 3348. Vacant office**

"(a) In this section—

"(1) the term 'action' includes any agency action as defined under section 551(13); and

"(2) the term 'function or duty' means any function or duty of the applicable office that—

"(A)(i) is established by statute; and

"(ii) is required by statute to be performed by the applicable officer (and only that officer); or

"(B)(i)(I) is established by regulation; and

"(II) is required by such regulation to be performed by the applicable officer (and only that officer); and

"(ii) includes a function or duty to which clause (i) (I) and (II) applies, and the applicable regulation is in effect at any time during the 180-day period preceding the date on which the vacancy occurs, notwithstanding any regulation that—

"(I) is issued on or after the date occurring 180 days before the date on which the vacancy occurs; and

"(II) limits any function or duty required to be performed by the applicable officer (and only that officer).

"(b) Subject to section 3347 and subsection (c)—

"(1) if the President does not submit a first nomination to the Senate to fill a vacant office within 150 days after the date on which a vacancy occurs—

"(A) the office shall remain vacant until the President submits a first nomination to the Senate; and

"(B) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office, until a nomination is made in accordance with subparagraph (A);

"(2) if the President does not submit a second nomination to the Senate within 150 days after the date of the rejection, withdrawal, or return of the first nomination—

"(A) the office shall remain vacant until the President submits a second nomination to the Senate; and

"(B) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office, until a nomination is made in accordance with subparagraph (A); and

"(3) if an office is vacant after 150 days after the rejection, withdrawal, or return of the second nomination—

"(A) the office shall remain vacant until a person is appointed by the President, by and with the advice and consent of the Senate; and

"(B) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office), only the head of such Executive agency may perform any function or duty of such office, until an appointment is made in accordance with subparagraph (A).

"(c) If the last day of any 150-day period under subsection (b) is a day on which the Senate is not in session, the first day the Senate is next in session and receiving nominations shall be deemed to be the last day of such period.

"(d)(1) Except as provided under paragraphs (1)(B), (2)(B), and (3)(B) of subsection (b), an action shall have no force or effect if such action—

"(A)(i) is taken by any person who fills a vacancy in violation of subsection (b); and

“(ii) is the performance of a function or duty of such vacant office; or

“(B)(i) is taken by a person who is not filling a vacant office; and

“(ii) is the performance of a function or duty of such vacant office.

“(2) An action that has no force or effect under paragraph (1) may not be ratified.

“(d) This section shall not apply to—

“(1) the General Counsel of the National Labor Relations Board;

“(2) the General Counsel of the Federal Labor Relations Authority; or

“(3) any Inspector General appointed by the President, by and with the advice and consent of the Senate.

#### “§ 3349. Reporting of vacancies

“(a) The head of each Executive agency (including the Executive Office of the President, and other than the General Accounting Office) shall submit to the Comptroller General of the United States and to each House of Congress—

“(1) notification of a vacancy and the date such vacancy occurred immediately upon the occurrence of the vacancy;

“(2) the name of any person serving in an acting capacity and the date such service began immediately upon the designation;

“(3) the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and

“(4) the date of a rejection, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

“(b) If the Comptroller General of the United States makes a determination that an officer is serving longer than the 150-day period including the applicable exceptions to such period under section 3346, the Comptroller General shall report such determination to—

“(1) the Committee on Governmental Affairs of the Senate;

“(2) the Committee on Government Reform and Oversight of the House of Representatives;

“(3) the Committees on Appropriations of the Senate and House of Representatives;

“(4) the appropriate committees of jurisdiction of the Senate and House of Representatives;

“(5) the President; and

“(6) the Office of Personnel Management.

#### “§ 3349a. Presidential inaugural transitions

“(a) In this section, the term ‘transitional inauguration day’ means the date on which any person swears or affirms the oath of office as President, if such person is not the President on the date preceding the date of swearing or affirming such oath of office.

“(b) With respect to any vacancy that exists during the 60-day period beginning on a transitional inauguration day, the 150-day period under section 3346 or 3348 shall be deemed to—

“(1) begin on the later of—

“(A) the date following such transitional inauguration day; or

“(B) the date the vacancy occurs; and

“(2) be a period of 180 days.]

“(b) With respect to any vacancy that exists during the 60-day period beginning on a transitional inauguration day, the 150-day period under section 3346 or 3348 shall be deemed to begin on the later of the date occurring—

“(1) 90 days after such transitional inauguration day; or

“(2) 90 days after the date on which the vacancy occurs.

#### “§ 3349b. Holdover provisions relating to certain independent establishments

“With respect to any independent establishment for which a single officer is the head of the establishment, sections 3345

through 3349a shall not be construed to affect any statute that authorizes a person to continue to serve in any office—

“(1) after the expiration of the term for which such person is appointed; and

“(2) until a successor is appointed or a specified period of time has expired.

#### “§ 3349c. Exclusion of certain officers

“Sections 3345 through 3349b shall not apply to—

“(1) any member who is appointed by the President, by and with the advice and consent of the Senate to any board, commission, or similar entity that—

“(A) is composed of multiple members; and

“(B) governs an independent establishment or Government corporation; or

“(2) any commissioner of the Federal Energy Regulatory Commission.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the matter relating to subchapter III and inserting the following:

“SUBCHAPTER III—DETAILS,  
VACANCIES, AND APPOINTMENTS

“3341. Details; within Executive or military departments.

“[3342. Repealed.]

“3343. Details; to international organizations.

“3344. Details; administrative law judges.

“3345. Acting officer.

“3346. Time limitation.

“3347. Application.

“3348. Vacant office.

“3349. Reporting of vacancies.

“3349a. Presidential inaugural transitions.

“3349b. Holdover provisions relating to certain independent establishments.

“3349c. Exclusion of certain officers.”.

(2) SUBCHAPTER HEADING.—The subchapter heading for subchapter III of chapter 33 of title 5, United States Code, is amended to read as follows:

“SUBCHAPTER III—DETAILS,  
VACANCIES, AND APPOINTMENTS”.

#### SEC. 3. EFFECTIVE DATE AND APPLICATION.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICATION.—This Act shall apply to any office that—

(1) becomes vacant after the date of enactment of this Act; or

(2) is vacant on such date, except sections 3345 through 3349 of title 5, United States Code (as amended by this Act), shall apply as though such office first became vacant on such date.

#### CLOTURE MOTION

Mr. LOTT. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provision of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on S. 2176, the Vacancies Act:

Trent Lott, Strom Thurmond, Charles Grassley, Thad Cochran, Wayne Allard, Ben Nighthorse Campbell, Don Nickles, Orrin G. Hatch, Pat Roberts, Tim Hutchinson, Richard Shelby, Conrad Burns, Jim Inhofe, Connie Mack, Fred Thompson, Spencer Abraham.

Mr. LOTT. Mr. President, for the information of all Senators, this cloture vote will occur Monday, September 28. I now ask unanimous consent that, notwithstanding rule XXII, the cloture vote occur at 5:30 p.m. on Monday and the mandatory quorum under rule XXII be waived. I further ask that at 3:30 p.m. on Monday, the Senate resume the bill for debate only, with no action occurring, and that there be 2 hours of debate equally divided between the two leaders, or their designees.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### WENDELL H. FORD NATIONAL AIR TRANSPORTATION SYSTEM IMPROVEMENT ACT OF 1998

Mr. LOTT. Mr. President, I now ask unanimous consent that the Senate resume consideration of the FAA reauthorization bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 2279) to amend title 49, United States Code, to authorize the programs of the Federal Aviation Administration for fiscal years 1999, 2000, 2001, and 2002, and for other purposes.

The Senate continued with the consideration of the bill.

Mr. LOTT. Mr. President, I ask unanimous consent that no call for the regular order be in order prior to the conclusion of the FAA reauthorization bill.

Mr. MCCAIN. Mr. President, reserving the right to object. I ask the leader, does the leader intend to attempt for us to move forward with the Internet Tax Freedom Act as well?

Mr. LOTT. Certainly, I do. We have tried to get that cleared a couple times and there have been objections. I know there is a lot of interest in it. I am receiving calls, and I know there is support for it on both sides of the aisle. So we will continue to try to work that out, and we will try to get an agreement to go forward on it later today.

Mr. MCCAIN. I will not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I yield the floor.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, we are back on the FAA authorization bill. We have a number of amendments that will require debate and votes. We also are working to resolve a number of them. I want to say to my colleagues that I don't know what the leaders on both sides intend to do this evening, but the Senator from Kentucky and I intend to try to get rid of all amendments by this evening. If we are unable to have Members come over here to propose amendments, then, obviously, we have no choice but to move forward