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.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Vacancies Re-
form 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 other-
wise unable to perform the functions and duties of the of-

“(1) the first assistant of such officer shall per-
form the functions and duties of the office tempo-
rarily in an acting capacity, subject to the time limi-
tations of section 3346; or

“(2) notwithstanding paragraph (1), the Presi-
dent (and only the President) may direct a person
who serves in an office for which appointment is re-
quired 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

“(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 statutory 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 regulation to be performed by the applicable officer (and only that officer); or
“(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 (in-
cluding 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 swear-
ing 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 inaugura-
tion 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 af-
feet 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 sub-
chapter 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.
(2) **Subchapter Heading.**—The subchapter heading for subchapter III of chapter 33 of title 5, United States Code, is amended to read as follows:

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"SUBCHAPTER III—DETAILS, VACANCIES, AND APPOINTMENTS".
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**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.
A BILL

[Report No. 105-250]

S. 2176

105TH CONGRESS

Calendar No. 469

To amend sections 3345 through 3349 of title 5,