

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  
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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