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Proposed Presidential Succession Legislation

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4-27-2005

# Presidential Succession Act of 2005

United States. House of Representatives

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109TH CONGRESS  
1ST SESSION

# H. R. 1943

To amend chapter 1 of title 3, United States Code, relating to Presidential succession.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2005

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

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## A BILL

To amend chapter 1 of title 3, United States Code, relating to Presidential succession.

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 “Presidential Succession  
5 Act of 2005”.

6       **SEC. 2. PRESIDENTIAL SUCCESSION.**

7       (a) IN GENERAL.—Section 19(d) of title 3, United  
8 States Code, is amended—

9               (1) in paragraph (1), by inserting “, Secretary  
10 of Homeland Security, Ambassador to the United

1 Nations, Ambassador to Great Britain, Ambassador  
2 to Russia, Ambassador to China, Ambassador to  
3 France” after “Secretary of Veterans Affairs”;

4 (2) in paragraph (2)—

5 (A) by striking “acting as” and inserting  
6 “serving as acting”; and

7 (B) by striking “but not” and all that fol-  
8 lows through the period and inserting “or until  
9 the disability of the President or Vice President  
10 is removed.”;

11 (3) in paragraph (3)—

12 (A) by striking “be held to constitute” and  
13 inserting “not require”;

14 (B) by striking “act as President” and in-  
15 serting “serve as acting President”; and

16 (C) by adding at the end the following:  
17 “Such individual shall not receive compensation  
18 from holding that office during the period that  
19 the individual serves as acting President or Vice  
20 President under this section, and shall be com-  
21 pensated for that period as provided under sub-  
22 section (c).”; and

23 (4) by adding at the end the following:

24 “(4) This subsection shall apply only to such officers  
25 that are—

1           “(A) eligible to the office of President under the  
2 Constitution;

3           “(B) appointed to an office listed under para-  
4 graph (1), by and with the advice and consent of the  
5 Senate, prior to the time the powers and duties of  
6 the President devolve to such officer under para-  
7 graph (1); and

8           “(C) not under impeachment by the House of  
9 Representatives at the time the powers and duties of  
10 the office of President devolve upon them.”.

11       (b) CONFORMING AMENDMENTS.—Section 19 of such  
12 title is amended as follows:

13           (1) In subsection (a)—

14               (A) in paragraph (1), by striking “act as  
15 President” and inserting “serve as acting Presi-  
16 dent”; and

17               (B) in paragraph (2), by striking “acting  
18 as President” and inserting “serving as acting  
19 President”.

20           (2) In subsection (b), by striking “act as Presi-  
21 dent” and inserting “serve as acting President”.

22           (3) In subsection (c)—

23               (A) in the matter preceding paragraph  
24 (1)—

1 (i) by striking “acting as President”  
2 and inserting “serving as acting Presi-  
3 dent”, and

4 (ii) by striking “continue to act” and  
5 inserting “continue to serve”; and

6 (B) in paragraphs (1) and (2), by striking  
7 “shall act” each place it appears and inserting  
8 “shall serve”.

9 (4) In subsection (e)—

10 (A) in the first sentence, by striking “(a),  
11 (b), and (d)” and inserting “(a) and (b)”; and

12 (B) by striking the second sentence.

13 (5) In subsection (f), by striking “acts as Presi-  
14 dent” and inserting “serves as acting President”.

15 **SEC. 3. SENSE OF CONGRESS REGARDING VOTES BY ELEC-**  
16 **TORS AFTER DEATH OR INCAPACITY OF**  
17 **NOMINEES.**

18 It is the sense of Congress that—

19 (1) during a Presidential election year, the  
20 nominees of each political party for the office of  
21 President and Vice President should jointly an-  
22 nounce and designate on or before the final day of  
23 the convention (or related event) at which they are  
24 nominated the individuals for whom the electors of  
25 President and Vice President who are pledged to

1 vote for such nominees should give their votes for  
2 such offices in the event that such nominees are de-  
3 ceased or permanently incapacitated prior to the  
4 date of the meeting of the electors of each State  
5 under section 7 of title 3, United States Code;

6 (2) in the event a nominee for President is de-  
7 ceased or permanently incapacitated prior to the  
8 date referred to in paragraph (1) (but the nominee  
9 for Vice President of the same political party is not  
10 deceased or permanently incapacitated), the electors  
11 of President who are pledged to vote for the nominee  
12 should give their votes to the nominee of the same  
13 political party for the office of Vice President, and  
14 the electors of Vice President who are pledged to  
15 vote for the nominee for Vice President should give  
16 their votes to the individual designated for such of-  
17 fice by the nominees under paragraph (1);

18 (3) in the event a nominee for Vice President  
19 is deceased or permanently incapacitated prior to the  
20 date referred to in paragraph (1) (but the nominee  
21 for President of the same political party is not de-  
22 ceased or permanently incapacitated), the electors of  
23 Vice President who are pledged to vote for such  
24 nominee should give their votes to the individual des-

1       ignated for such office by the nominees under para-  
2       graph (1);

3               (4) in the event that both the nominee for  
4       President and the nominee for Vice President of the  
5       same political party are deceased or permanently in-  
6       capacitated prior to the date referred to in para-  
7       graph (1), the electors of President and Vice Presi-  
8       dent who are pledged to vote for such nominees  
9       should vote for the individuals designated for each  
10      such office by the nominees under paragraph (1);  
11      and

12              (5) political parties should establish rules and  
13      procedures consistent with the procedures described  
14      in the preceding paragraphs, including procedures to  
15      obtain written pledges from electors to vote in the  
16      manner described in such paragraphs.

17 **SEC. 4. SENSE OF CONGRESS ON THE CONTINUITY OF GOV-**  
18                               **ERNMENT AND THE SMOOTH TRANSITION OF**  
19                               **EXECUTIVE POWER.**

20      (a) FINDINGS.—Congress finds that—

21              (1) members of the Senate, regardless of polit-  
22      ical party affiliation, agree that the American people  
23      deserve a Government that is failsafe and foolproof,  
24      and that terrorists should never have the ability to  
25      disrupt the operations of the Government;

1           (2) continuity of governmental operations in the  
2 wake of a catastrophic terrorist attack remains a  
3 pressing issue of national importance before the  
4 United States Congress;

5           (3) at a minimum, terrorists should never have  
6 the ability, by launching a terrorist attack, to change  
7 the political party that is in control of the Govern-  
8 ment, regardless of which party is in power;

9           (4) whenever control of the White House shall  
10 change from one political party to another, the out-  
11 going President and the incoming President should  
12 work together, and with the Senate to the extent de-  
13 termined appropriate by the Senate, to ensure a  
14 smooth transition of executive power, in the interest  
15 of the American people;

16           (5) under the current presidential succession  
17 statute in section 19 of title 3, United States Code,  
18 the members of the cabinet, defined as the heads of  
19 the statutory executive departments under section  
20 101 of title 5, United States Code, fall within the  
21 line of succession to the presidency;

22           (6) during previous presidential transition peri-  
23 ods, the incoming President has had to serve with  
24 cabinet members from the prior administration, in-  
25 cluding subcabinet officials from the prior adminis-



1       tration acting as cabinet members, for at least some  
2       period of time;

3           (7) the Constitution vests the appointment  
4       power of executive branch officials in the President,  
5       by and with the advice and consent of the Senate,  
6       and nothing in this resolution is intended to alter ei-  
7       ther the constitutional power of the President or the  
8       constitutional function of the Senate with regard to  
9       the confirmation of presidential nominees;

10          (8) an incoming President cannot exercise the  
11       constitutional powers of the President, in order to  
12       ensure a smooth transition of Government, until  
13       noon on the 20th day of January, pursuant to the  
14       terms of the twentieth amendment to the Constitu-  
15       tion;

16          (9) cooperation between the incoming and the  
17       outgoing President is therefore the only way to en-  
18       sure a smooth transition of Government;

19          (10) Congress throughout history has acted  
20       consistently and in a bipartisan fashion to encourage  
21       measures to ensure the smooth transition of execu-  
22       tive power from one President to another, such as  
23       through the enactment of the Presidential Transi-  
24       tion Act of 1963 (3 U.S.C. 102 note; Public Law  
25       88–277) and subsequent amendments;

1           (11) Congress has previously concluded that  
2           “[t]he national interest requires” that “the orderly  
3           transfer of the executive power in connection with  
4           the expiration of the term of office of a President  
5           and the inauguration of a new President . . . be ac-  
6           complished so as to assure continuity in the faithful  
7           execution of the laws and in the conduct of the af-  
8           fairs of the Federal Government, both domestic and  
9           foreign” under the Presidential Transition Act of  
10          1963 (3 U.S.C. 102 note; Public Law 88–277);

11          (12) Congress has further concluded that  
12          “[a]ny disruption occasioned by the transfer of the  
13          executive power could produce results detrimental to  
14          the safety and well-being of the United States and  
15          its people” under the Presidential Transition Act of  
16          1963 (3 U.S.C. 102 note; Public Law 88–277);

17          (13) Congress has previously expressed its in-  
18          tent “that appropriate actions be authorized and  
19          taken to avoid or minimize any disruption” and  
20          “that all officers of the Government so conduct the  
21          affairs of the Government for which they exercise re-  
22          sponsibility and authority as (1) to be mindful of  
23          problems occasioned by transitions in the office of  
24          the President, (2) to take appropriate lawful steps to  
25          avoid or minimize disruptions that might be occa-

1 sioned by the transfer of the executive power, and  
2 (3) otherwise to promote orderly transitions in the  
3 office of President” under the Presidential Transi-  
4 tion Act of 1963 (3 U.S.C. 102 note; Public Law  
5 88–277);

6 (14) the National Commission on Terrorist At-  
7 tacks Upon the United States established under title  
8 VI of the Intelligence Authorization Act for Fiscal  
9 Year 2003 (6 U.S.C. 101 note; Public Law 107–  
10 306) expressly recognized the need to “Improve the  
11 Transitions between Administrations” in its final re-  
12 port;

13 (15) the Commission specifically recommended  
14 that, “[s]ince a catastrophic attack could occur with  
15 little or no notice, we should minimize as much as  
16 possible the disruption of national security policy-  
17 making during the change of administrations by ac-  
18 celerating the process for national security appoint-  
19 ments” and that “the process could be improved sig-  
20 nificantly so transitions can work more effectively  
21 and allow new officials to assume their new respon-  
22 sibilities as quickly as possible”;

23 (16) the Commission suggested that “[a] presi-  
24 dent-elect should submit lists of possible candidates  
25 for national security positions to begin obtaining se-

1 security clearances immediately after the election, so  
2 that their background investigations can be complete  
3 before January 20”, that “[a] president-elect should  
4 submit the nominations of the entire new national  
5 security team, through the level of under secretary  
6 of cabinet departments, not later than January 20”,  
7 that “[t]he Senate, in return, should adopt special  
8 rules requiring hearings and votes to confirm or re-  
9 ject national security nominees within 30 days of  
10 their submission”, and that an outgoing Administra-  
11 tion should work cooperatively with an incoming  
12 President to ensure a smooth transition, in the in-  
13 terest of national security; and

14 (17) there is no more important national secu-  
15 rity position than the office of President, and thus  
16 it is essential to national security that any new ad-  
17 ministration establish its own clear and stable line of  
18 succession to the presidency as quickly as possible.

19 (b) SENSE OF CONGRESS.—It is the sense of the Sen-  
20 ate that during the period preceding the end of a term  
21 of office in which a President will not be serving a suc-  
22 ceeding term—

23 (1) that President should consider submitting  
24 the nominations of individuals to the Senate who are

1       selected by the President-elect for offices that fall  
2       within the line of succession;

3               (2) the Senate should consider conducting con-  
4       firmation proceedings and votes on the nominations  
5       described under paragraph (1), to the extent deter-  
6       mined appropriate by the Senate, between January  
7       3 and January 20 before the Inauguration; and

8               (3) that President should consider agreeing to  
9       sign and deliver commissions for all approved nomi-  
10      nations on January 20 before the Inauguration to  
11      ensure continuity of Government.

○