

Calendar No. 711

118TH CONGRESS }
2d Session

SENATE

{ REPORT
118-305

SECURING CHAIN OF COMMAND
CONTINUITY ACT OF 2024

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 6972

TO AMEND TITLE 5, UNITED STATES CODE, TO REQUIRE
AN EXECUTIVE AGENCY WHOSE HEAD IS A MEMBER OF THE
NATIONAL SECURITY COUNCIL TO NOTIFY THE EXECUTIVE
OFFICE OF THE PRESIDENT, THE COMPTROLLER GENERAL
OF THE UNITED STATES, AND CONGRESSIONAL LEADERSHIP
OF SUCH HEAD BECOMING MEDICALLY INCAPACITATED WITHIN
24 HOURS, AND FOR OTHER PURPOSES



DECEMBER 17 (legislative day, DECEMBER 16), 2024.—Ordered to be
printed

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DECEMBER 17 (legislative day, DECEMBER 16), 2024.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 6972]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 6972) to amend title 5, United States Code, to require an Executive agency whose head is a member of the National Security Council to notify the Executive Office of the President, the Comptroller General of the United States, and congressional leadership of such head becoming medically incapacitated within 24 hours, and for other purposes, having considered the same, reports favorably thereon with an amendment, in the nature of a substitute, and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

H.R. 6972 the *Securing Chain of Command Continuity Act* adds additional notification requirements when a member of the National Security Council who is also an agency head becomes medically incapacitated. Specifically, the bill requires a notification to

Congress and the President within 24 hours when the agency head becomes or is reasonably expected to become medically incapacitated. The notification must include which individual will temporarily be fulfilling the responsibilities of the agency head during the official's medical incapacitation.

Should an agency fail to provide notice to the President and Congress within 24 hours of the official being medically incapacitated, the bill requires a lengthier and more comprehensive notice to be submitted within 72 hours.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The *Federal Vacancies Reform Act of 1998* (hereafter “the Vacancies Act”) prescribes the methods and means by which officials may temporarily perform the functions and duties of a vacant office that requires Senate confirmation.¹ The law specifies that a vacancy occurs when an official serving in a position that requires the advice and consent of the Senate “dies, resigns, or is otherwise unable to perform the functions and duties of the office.”² This last clause is rather broad and undefined, but the legislative history indicates that it encompasses instances of imprisonment, sickness, dismissal, or the conclusion of a term of office.³ The Vacancies Act also generally limits the length of time an acting official may serve, but explicitly carves out sickness from these time limitations—further implying that sickness constitutes an inability to “perform the functions and duties.”⁴ The Vacancies Act also requires that the federal agency head notify the Comptroller General, and both Houses of Congress when a vacancy occurs and provide the name of any person serving in acting capacity, the name of a person nominated to fill the vacancy, and if applicable the date of any rejection, withdrawal or return of any nomination for the vacancy.⁵ However, there have been instances where an official is unable to fulfill the functions and duties of the office and there is a temporary transfer of authority, but has not complied with the Vacancies Act notification requirements.⁶ Additionally, in the case of medical incapacity it may be hard for the agency head themselves to provide the required notice.

Recent instances where cabinet level officials have taken temporary leave without sufficient notice have raised concerns about the effectiveness of current law. In December 2023, Defense Secretary Lloyd Austin underwent a medical procedure to treat prostate cancer.⁷ During his procedure he temporarily transferred the functions and duties of his office to Deputy Secretary Kathleen Hicks. Following his procedure, on January 1, Secretary Austin experienced complications and required hospitalization.⁸ On January

¹ 5 U.S.C. § 3345 *et seq.*

² 5 U.S.C. § 3345.

³ Statement of Senator Fred Thompson, Congressional Record, S12823 (Oct. 21, 1998); Statement of Senator Robert Byrd, Congressional Record, S12824 (Oct. 21, 1998).

⁴ 5 U.S.C. § 3346.

⁵ 5 U.S.C. § 3349.

⁶ Government Accountability Office, *Federal Vacancies for Prior Administrations* (<https://www.gao.gov/legal/federal-vacancies-reform-act/federal-vacancies-prior-administration>) (accessed Dec 2, 2024); *John Bryson Takes Medical Leave*, Politico (Jun. 11, 2012) (<https://www.politico.com/story/2012/06/bryson-to-take-leave-of-absence-077312>).

⁷ House Committee on Armed Services, Testimony Submitted for the Record of Secretary Lloyd J. Austin III, Department of Defense, *Full Committee Hearing: A review of Defense Secretary Austin's Unannounced Absence*, 118th Cong. (Feb. 29, 2024).

⁸ *Id.*

2, Secretary Austin's condition worsened and in the afternoon he again transferred the functions and duties of his office to Deputy Secretary Hicks.⁹ Secretary Austin did not immediately notify the President or Congress of his condition or his transfer of authority to Deputy Secretary Hicks. In fact, the National Security Advisor and the President were not notified until January 4th about Secretary Austin's hospitalization.¹⁰ It was not until January 5th that the Pentagon notified Congress, and subsequently issued a public press release announcing his hospitalization.¹¹ On the evening of January 5th Secretary Austin resumed his duties as Secretary of Defense.¹²

Following this incident, multiple reviews were conducted to inform and improve the security of the chain of command. Secretary Austin directed a 30-day review to identify the relevant facts surrounding the hospitalization and evaluate processes and procedures used to notify the Deputy Secretary.¹³ On January 9th the White House Chief of Staff issued a Memorandum that directed a review of all agency delegation-of-authority protocols and required all cabinet agencies to notify the White House when any delegation of authority occurs and establish contact between the Acting principal and their White House counterpart.¹⁴ The 30-day Pentagon review concluded that while "the Deputy Secretary was at all times positioned to perform all the functions and duties of the Secretary of Defense," there were improvements that could be made and provided eight specific recommendations to improve the procedures related to when another official assumes the functions and duties of the Secretary of Defense.¹⁵ Notably, neither the White House memorandum nor the Pentagon's recommendations included explicit recommendations to ensure that Congress is notified in instances of an agency head's medical

incapacity or temporary transfers of authority.¹⁶ Additionally, Secretary Austin's hospitalization was not the only incident of a Cabinet official temporarily transferring their authorities due to medical incapacity. During the Obama Administration, then-Sec-

⁹*Id.*; Department of Defense, *Unclassified Summary of 30-Day Review* (Feb. 26, 2024) (<https://media.defense.gov/2024/Feb/26/2003400135/-1/-1/1/UNCLASSIFIED-SUMMARY-OF-30-DAY-REVIEW.PDF>) (hereinafter "Unclassified Summary").

¹⁰*Pentagon didn't inform Biden, White House for days about Austin's hospitalization*, Politico (Jan. 6, 2024) (<https://www.politico.com/news/2024/01/06/pentagon-took-3-days-to-inform-white-houses-nsc-of-austins-hospitalization-00134176>).

¹¹Unclassified Summary; Department of Defense, *Statement From Pentagon Press Secretary Maj. Gen. Pat Ryder on Secretary of Defense Austin* (Jan. 5, 2024) (<https://www.defense.gov/News/Releases/Release/Article/3633270/statement-from-pentagon-press-secretary-maj-gen-pat-ryder-on-secretary-of-defen/>).

¹²*Id.*

¹³Department of Defense, Office of the Secretary of Defense, *Memorandum for Senior Staff of the Secretary and Deputy Secretary of Defense, Director of Administration and Management, Cables Executive Support Office, Secretary of Defense Communications, Executive Secretary: Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense* (Jan. 8, 2023; Corrected copy Jan. 11, 2024) (https://media.defense.gov/2024/Jan/08/2003371727/-1/-1/1/NOTIFICATION_PROCESS_FOR_ASSUMPTION_OF_FUNCTIONS_AND_DUTIES_OF_THE_SECRETARY_OF_DEFENSE_8_JAN_24.PDF).

¹⁴The White House, *Memorandum to Cabinet Members: Cabinet Notifications* (Jan. 9, 2024).

¹⁵Department of Defense, Office of the Secretary of Defense, *Memorandum for Senior Pentagon Leadership, Commanders of the Combatant Commands, Defense Agency and DOD Field Activity Directors Senior Staff of the Secretary and Deputy Secretary of Defense, Executive Secretary, Cables Executive Support Office, Secretary of Defense Communications: Follow-on Actions Review of Notification Process for Assumption of Functions and Duties of the Secretary of Defense* (Feb. 26, 2024) (<https://media.defense.gov/2024/Feb/26/2003400143/-1/-1/1/FOLLOW-ON-ACTIONS-REVIEW-OF-NOTIFICATION-PROCESS-FOR-ASSUMPTION-OF-FUNCTIONS-AND-DUTIES-OF-THE-SECRETARY-OF-DEFENSE.PDF>).

¹⁶*Id.*

retary of Commerce John Bryson took a leave of absence for medical reasons and transferred the functions and duties of his office to his Deputy.¹⁷ In this case the transfer of authority was not reported and a vacancy was not reported until the Secretary resigned from his position nine days later.¹⁸

Members of the National Security Council (NSC), including the Secretary of Defense, advise the President on all matters relating to protecting the country's national security.¹⁹ This includes monitoring and providing expertise and advice on significant and rapidly developing events with direct consequences for American national security and global stability. As such, the security and continuity of the chain of command for these critical positions is vital. The circumstances surrounding Secretary Austin's hospitalization left key national security officials unaware of temporary changes in the chain of command and who was executing the functions and duties of the Secretary of Defense.

This legislation adds additional reporting requirements to clarify that during an instance of medical incapacity, the head of an agency on the NSC is subject to reporting obligations under the Vacancies Act. Specifically, the bill requires a notification to Congress, OPM and the President within 24 hours of an agency head who serves on the NSC becoming medically incapacitated or 24 hours prior to a planned procedure that will likely result in medical incapacitation. The notification must include that the agency head is or will be medically incapacitated, and which official will be fulfilling the functions and duties of the office on behalf of the agency head. The bill also provides additional reporting requirements within 72 hours if an agency fails to provide the 24-hour notice.

III. LEGISLATIVE HISTORY

Congresswoman Jennifer Kiggans (R-VA-2) introduced H.R. 6972, the *Securing Chain of Command Continuity Act*, on January 11, 2024. The bill was referred to the House Committee on Oversight and Accountability, where it was reported favorably with 41 yeas to 0 nays on February 6, 2024. The bill passed the House under suspension of the rules by voice vote on May 6, 2024.

On May 7, 2024, the bill was received in the Senate and referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered H.R. 6972 at a business meeting on November 20, 2024. At the business meeting, Senator Peters offered a substitute amendment to the bill, as well as a modification to that amendment. The substitute amendment, as modified, makes several changes to clarify the text, including simplifying the language so that the required notifications are solely the responsibility of the first assistant, ensuring that the 24-hour notification contains information about which individual will be performing the functions and duties of the agency head for the medically incapacitated official, and harmonizing the notification recipients to those that receive notifications of vacancies under the Vacancies Act,

¹⁷ *John Bryson Takes Medical Leave*, Politico (Jun. 11, 2012) (<https://www.politico.com/story/2012/06/bryson-to-take-leave-of-absence-077312>).

¹⁸ Government Accountability Office, *Federal Vacancies for Prior Administrations* (<https://www.gao.gov/legal/federal-vacancies-reform-act/federal-vacancies-prior-administration>) (accessed Dec 2, 2024); Bryson resigns from Commerce, Politico (Jun 21, 2012) (<https://www.politico.com/story/2012/06/bryson-resigns-as-commerce-secretary-077695>).

¹⁹ 50 U.S. Code § 3021.

thereby adding the Senate Homeland Security and Governmental Affairs Committee, House Oversight and Accountability Committee and the House and Senate Appropriations committees, and the Office of Personnel Management (OPM) as report recipients. Senator Peters also modified his substitute amendment to add language stipulating that no additional funds could be used to implement the legislation.

The Committee adopted the modification to the Peters substitute amendment, and the Peters substitute amendment as modified, by unanimous consent, with Senators Peters, Hassan, Rosen, Ossoff, Blumenthal, Butler, Lankford, and Hawley present. The bill, as amended by the Peters substitute amendment as modified, was ordered reported favorably by roll call vote of 8 yeas to 0 nays, with Senators Peters, Hassan, Rosen, Ossoff, Blumenthal, Butler, Lankford, and Hawley voting in the affirmative. Senators Carper, Sinema, Paul, Johnson, Romney, Scott, and Marshall voted yea by proxy, for the record only.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as the “Securing Chain of Command Continuity Act.”

Section 2. National Security Council medical incapacity notification enhancement

Amends 5 U.S.C. 3349 (Reporting of vacancies) with a new subsection (c):

Paragraph (1) requires the first assistant to submit a notification to the appropriate federal officials within 24 hours of an agency head who serves on the National Security Council becoming medically incapacitated or 24 hours prior to a planned procedure that will likely result in medical incapacitation. The notification must include that the agency head is or will be medically incapacitated, and which official will be fulfilling the functions and duties of the office on behalf of the agency head.

Paragraph (2) stipulates that if the first assistant does not provide timely notification under paragraph (1) that they provide additional information to the appropriate federal officials within 72 hours, including the name of the acting official, the date or expected dates of the acting official’s service, the authority for the acting official to perform the functions and duties of the office, a comprehensive list of resources and authorities provided to the acting official, the date of the head’s medical incapacitation, whether they have resumed service, and an explanation for why such head was medically incapacitated.

Paragraph (3) requires the first assistant to provide periodic updates on the agency head, if the agency head remains medically incapacitated at the time of a notification provided pursuant to paragraph (2).

Paragraph (4) provides that if the agency head does not have a first assistant, the individual performing the functions and duties of the first assistant shall perform the reporting responsibilities under this section.

Paragraph (5) defines the term “appropriate federal officials,” “medical incapacity,” “medically incapacitated,” and “National Security Council.”

Section 3. No additional funds

This section provides that no additional funds are authorized to be appropriated for the purpose of carrying out this Act.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The Congressional Budget Act of 1974 requires the Congressional Budget Office, to the extent practicable, to prepare estimates of the budgetary effects of legislation ordered reported by Congressional authorizing committees. In order to provide the Congress with as much information as possible, the attached table summarizes information about the estimated direct spending and revenue effects of some of the legislation that has been ordered reported by the Senate Committee on Homeland Security and Governmental Affairs during the 118th Congress. The legislation listed in this table generally would have small effects, if any, on direct spending or revenues, CBO estimates. Where possible, the table also provides information about the legislation’s estimated effects on spending subject to appropriation and on intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act.

ESTIMATED BUDGETARY EFFECTS AND MANDATES INFORMATION

Bill Number	Title	Status	Last action	Budget function	Direct spending, 2025-2034	Revenues, 2025-2034	Spending subject to appropriation, 2025-2029	Pay-as-you-go procedures apply?	Budgetary effects after 2034	Mandates	Contact
H.R. 6972	Securing Chain of Command Continuity Act.	Ordered reported	11/20/24	800	0	0	Not Estimated	No	No	No	Matthew Pickford.

H.R. 6972 would require executive branch agencies that are members of the National Security Council to inform the President, Government Accountability Office, and Congressional leadership when the head of an agency is medically incapacitated. That notice would identify the agency's acting head along with other information. CBO estimates that enacting H.R. 6972 would not affect direct spending or revenues. CBO has not estimated the legislation's effects on spending subject to appropriation. The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

Title 5—Government Organization and Employees

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart B—Employment and Retention

* * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

* * * * *

Subchapter III—Details, Vacancies, and Appointments

* * * * *

SEC. 3349. REPORTING OF VACANCIES

(a) * * *

(b) * * *

(c)(1) *Not later than 24 hours after the head of an Executive agency who is a member of the National Security Council becomes medically incapacitated or 24 hours in advance of such head undergoing a planned medical procedure for which medical incapacity is known or may be reasonably assumed, the first assistant to the office of such head shall submit to the appropriate Federal officials—*

(A) a notification that such head is or will be medically incapacitated; and

(B) the name of the individual who will serve in an acting capacity or otherwise perform the functions and duties of the office of such head during the medical incapacitation of the head.

(2) If the notification required under paragraph (1) with respect to the head of an Executive agency who is a member of the National Security Council is not submitted in accordance with the requirements under paragraph (1), not later than 72 hours after such head becomes subject to a medical incapacity, the first assistant to the office of such head shall submit to the appropriate Federal officials a report including—

(A) *the name of each individual who served or is serving in an acting capacity as such head or otherwise performed or is performing the functions and duties of the office of such head pursuant to such medical incapacity and, for each such individual—*

(i) the dates of such service or, if such head has not resumed performing the functions and duties of the office of such head, the expected dates of service;

(ii) the authority for the individual to serve in such acting capacity or otherwise perform the functions and duties of the office of such head; and (iii) a comprehensive list of resources and authorities allocated to such individual while serving in such acting capacity or otherwise performing the functions and duties of the office of such head to ensure that such individual could perform the functions and duties of the office of such head;

(B) the dates of such head's medical incapacitation, and if such head has resumed performing the functions and duties of the office, the date such head so resumed performing such functions and duties; and

(C) an explanation of why such head was medically incapacitated.

(3) In the event the head of an Executive agency who is a member of the National Security Council remains medically incapacitated on the date the report is submitted under paragraph (2), the first assistant to the office of such head shall submit periodic updates, as the first assistant considers appropriate, to such report to the appropriate Federal officials.

(4) If the head of an Executive agency who is a member of the National Security Council and is medically incapacitated does not have a first assistant, the individual performing the functions and duties of the first assistant shall perform the reporting obligations of the first assistant under this subsection.

(5) In this subsection—

(A) the term 'appropriate Federal officials' means the Majority Leader of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, and each required recipient of a report under subsection (b);

(B) the terms 'medical incapacity' and 'medically incapacitated' mean, with respect to the head of an Executive agency, that such head is unable to perform the functions and duties of the office of such head due to sickness, injury, or other medical condition; and

(C) the term 'National Security Council' means the council established under section 101 of the National Security Act of 1947 (50 U.S.C. 3021).

* * * * *