

116TH CONGRESS
2D SESSION

H. R. 8548

To establish the Commission on Presidential Capacity to Discharge the Powers and Duties of the Office, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2020

Mr. RASKIN (for himself, Mr. NADLER, Mrs. CAROLYN B. MALONEY of New York, Mrs. DEMINGS, Ms. SCANLON, Mr. POCAN, Ms. JAYAPAL, Ms. DEAN, Mr. CICILLINE, Ms. DEGETTE, Ms. ESCOBAR, Mr. ESPAILLAT, Ms. MOORE, Mr. EVANS, Ms. SHALALA, Mr. TED LIEU of California, Ms. NORTON, Ms. SCHAKOWSKY, Mr. MCGOVERN, Mr. JOHNSON of Georgia, Ms. GARCIA of Texas, Mr. NEGUSE, Mr. MFUME, Ms. ESHOO, Ms. LOFGREN, Mr. CONNOLLY, Ms. HAALAND, Mr. CORREA, Mr. DESAULNIER, Mr. DEUTCH, Ms. BASS, Mr. GREEN of Texas, Ms. WASSERMAN SCHULTZ, Ms. VELÁZQUEZ, Mr. SWALWELL of California, Mrs. TORRES of California, Mr. BLUMENAUER, Mrs. WATSON COLEMAN, and Mr. COHEN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish the Commission on Presidential Capacity to Discharge the Powers and Duties of the Office, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Commission on Presi-
3 dential Capacity to Discharge the Powers and Duties of
4 the Office Act”.

5 **SEC. 2. ESTABLISHMENT.**

6 There is established a commission in the legislative
7 branch to be known as the “Commission on Presidential
8 Capacity to Discharge the Powers and Duties of the Of-
9 fice” (in this Act referred to as the “Commission”). The
10 Commission shall serve as the body provided by law by
11 Congress to carry out section 4 of the 25th Amendment
12 to the Constitution of the United States.

13 **SEC. 3. DUTY OF COMMISSION.**

14 (a) IN GENERAL.—If directed by Congress pursuant
15 to section 5, the Commission shall carry out a medical ex-
16 amination of the President to determine whether the
17 President is mentally or physically unable to discharge the
18 powers and duties of the office, as described under sub-
19 section (b).

20 (b) DETERMINATION.—The determination under sub-
21 section (a) shall be made if the Commission finds that the
22 President is temporarily or permanently impaired by any
23 of the following conditions to the extent that the person
24 lacks sufficient understanding or capacity to execute the
25 powers and duties of the office of President:

26 (1) Physical illness or disability.

1 (2) Mental illness or deficiency.

2 (3) Alcohol or drug use.

3 (4) Any other condition or contingency ren-
4 dering the President unable to execute the powers
5 and duties of the office of the President.

6 **SEC. 4. MEMBERSHIP OF THE COMMISSION.**

7 (a) NUMBER.—

8 (1) IN GENERAL.—The Commission shall be
9 composed of 17 members, appointed as follows:

10 (A) Two members appointed by the major-
11 ity leader of the Senate.

12 (B) Two members appointed by the minor-
13 ity leader of the Senate.

14 (C) Two members appointed by the Speak-
15 er of the House of Representatives.

16 (D) Two members appointed by the minor-
17 ity leader of the House of Representatives.

18 (E) Eight members—

19 (i) four of whom are former high-
20 ranking executive branch officers appointed
21 jointly by the two appointing individuals
22 under subparagraphs (A) through (D) who
23 are members of, or caucus with, the Demo-
24 cratic party;

(ii) four of whom are former high-ranking executive branch officers appointed jointly by the two appointing individuals under subparagraphs (A) through (D) who are members of, or caucus with, the Republican party; and

(iii) each of whom has served as President, Vice President, Secretary of State, Attorney General, Secretary of the Treasury, Secretary of Defense, or Surgeon General.

(F) One member, to serve as Chair of the Commission, appointed by simple majority vote of the 16 members appointed under subparagraphs (A) through (E). The Chair may not be any member appointed under such subparagraphs. For purposes of appointing the Chair, a voting quorum shall be established by the presence of 50 percent plus one of the members appointed under such subparagraphs.

(2) FAILURE OF APPOINTMENT.—If any appointment under paragraph (1) is not made, the Commission shall consist of the members duly appointed.

(b) APPOINTMENT.—

1 (1) INITIAL APPOINTMENT.—

2 (A) IN GENERAL.—For the initial appoint-
3 ment of members to the Commission, each
4 member under subparagraphs (A) through (E)
5 of subsection (a)(1) shall be appointed not later
6 than 10 days after the date of enactment of
7 this Act.

8 (B) CHAIR.—The members of the Commis-
9 sion appointed under subparagraph (A) shall
10 appoint the Chair under subsection (a)(1)(F)
11 not later than 3 days after the date the mem-
12 bers are so appointed.

13 (C) TERM.—A member appointed under
14 subparagraph (A) shall serve as a member of
15 the Commission until January 1, 2025. A mem-
16 ber so appointed may serve after the expiration
17 of that member's term until a successor has
18 taken office.

19 (2) SUBSEQUENT APPOINTMENTS.—

20 (A) IN GENERAL.—For any appointment
21 of members to the Commission after the initial
22 appointment under paragraph (1), each member
23 under subparagraphs (A) through (E) of sub-
24 section (a)(1) shall be appointed not later than
25 January 10 of the year immediately following

1 any year (beginning in 2024) in which a presi-
2 dential election is held.

3 (B) CHAIR.—The members of the Commis-
4 sion appointed under subparagraph (A) shall
5 appoint the Chair under subsection (a)(1)(F)
6 not later than 10 days after the date the mem-
7 bers are so appointed.

8 (C) TERM.—A member appointed under
9 subparagraph (A) shall serve on the Commis-
10 sion for a term of 4 years. A member so ap-
11 pointed may serve after the expiration of that
12 member's term until a successor has taken of-
13 fice.

14 (3) VACANCIES.—A vacancy in the Commission
15 shall be filled in the manner in which the original
16 appointment was made, not later than 30 days after
17 the vacancy occurs. Any member appointed to fill a
18 vacancy occurring before the expiration of the term
19 for which the member's predecessor was appointed
20 shall be appointed only for the remainder of that
21 term.

22 (c) CRITERIA FOR APPOINTMENT.—

23 (1) IN GENERAL.—Each member appointed to
24 the Commission under subparagraphs (A) through
25 (D) of subsection (a)(1) shall be a physician. Of the

1 two members appointed by each individual under
2 such paragraphs, one shall be a physician with a
3 specialty in psychiatry. The Chair shall be a physi-
4 cian or an individual who meets the requirements of
5 subsection (a)(1)(E)(iii), or both. In this paragraph,
6 the term “physician” means a doctor of medicine li-
7 censed to practice medicine, surgery, or osteopathy
8 in a State.

9 (2) LIMITATIONS.—A member appointed under
10 subsection (a) may not, at the time the member is
11 appointed or serving as a member on the Commis-
12 sion, be—

13 (A) an elected official to any Federal,
14 State, or local office;

15 (B) an employee (as that term is defined
16 in section 2105 of title 5, United States Code,
17 including any employee of the United States
18 Postal Service or the Postal Regulatory Com-
19 mission); or

20 (C) a member of the Armed Forces, in-
21 cluding reserve components thereof.

22 (d) TRAVEL EXPENSES.—Each member of the Com-
23 mission shall receive travel expenses, including per diem
24 in lieu of subsistence, in accordance with applicable provi-

1 sions under subchapter I of chapter 57 of title 5, United
2 States Code.

3 **SEC. 5. EXAMINATION OF THE PRESIDENT.**

4 (a) IN GENERAL.—A concurrent resolution described
5 in this subsection is a concurrent resolution directing the
6 Commission to conduct an examination of the President
7 to determine whether the President is incapacitated, either
8 mentally or physically, the title of which is “Directing the
9 Commission on Presidential Capacity to Discharge the
10 Powers and Duties of the Office to conduct an examina-
11 tion of the President”, and the text of which consists solely
12 of a directive to the Commission to conduct the examina-
13 tion.

14 (b) PROCEDURES.—The provisions of section 2908
15 (other than subsection (a)) of the Defense Base Closure
16 and Realignment Act of 1990 shall apply to the consider-
17 ation of a concurrent resolution described in subsection
18 (a) in the same manner as such provisions apply to a joint
19 resolution described in section 2908(a) of such Act.

20 (c) SPECIAL RULES.—For purposes of applying sub-
21 section (b) with respect to such provisions, the following
22 rules shall apply:

23 (1) Any reference to the Committee on Armed
24 Services of the House of Representatives shall be
25 deemed a reference to the Committee on the Judici-

1 ary of the House of Representatives and any ref-
2 erence to the Committee on Armed Services of the
3 Senate shall be deemed a reference to the Committee
4 on the Judiciary of the Senate.

5 (2) Any reference in subsection (c) to a “20-day
6 period” shall be deemed a reference to a “48-hour
7 period”.

8 (3) Any reference in subsection (d) to “the
9 third day” shall be deemed a reference to “the first
10 day”.

11 (4) Any reference to the date on which the
12 President transmits a report shall be deemed a ref-
13 erence to the date on which a Member of Congress
14 introduced a concurrent resolution described in sub-
15 section (a).

16 (d) EXAMINATION.—Not later than 72 hours after
17 the adoption by Congress of the concurrent resolution de-
18 scribed in subsection (a), the Commission shall conduct
19 the examination described under such subsection.

20 **SEC. 6. REPORT.**

21 (a) IN GENERAL.—Not later than 72 hours after
22 completing the examination under section 5, and notwith-
23 standing the HIPAA privacy regulations (as defined in
24 section 1180(b)(3) of the Social Security Act (42 U.S.C.
25 1320d–9(b)(3))), the Commission shall, in consultation

1 with the Vice President, transmit a report to the Speaker
2 of the House of Representatives and the President Pro
3 Tempore of the Senate that shall include the declaration
4 described in section 4 of the 25th Amendment providing
5 whether the President is able to discharge the powers and
6 duties of the office and otherwise describing the findings
7 and conclusions of the examination.

8 (b) DISAGREEMENT OF VICE PRESIDENT.—If the
9 Vice President disagrees with the declaration or any other
10 conclusion of the Commission under subsection (a), the
11 report submitted under such subsection shall include a
12 statement by the Vice President setting forth such dis-
13 agreement and the basis for such disagreement.

14 (c) CONSIDERATION.—Any refusal by the President
15 to undergo such examination shall be taken into consider-
16 ation by the Commission in reaching a conclusion in the
17 report under subsection (a).

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