

105TH CONGRESS  
1ST SESSION

# S. RES. 128

Expressing the sense of the Senate that sections 3345 through 3349 of title 5, United States Code (commonly referred to as the “Vacancies Act”), relating to the appointment of certain officers to fill vacant positions in Executive agencies, apply to all Executive agencies, including the Department of Justice.

---

## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 1997

Mr. THURMOND (for himself, Mr. HATCH, Mr. GRASSLEY, Mr. KYL, Mr. SESSIONS, and Mr. DEWINE) submitted the following resolution; which was referred to the Committee on Governmental Affairs

---

## RESOLUTION

Expressing the sense of the Senate that sections 3345 through 3349 of title 5, United States Code (commonly referred to as the “Vacancies Act”), relating to the appointment of certain officers to fill vacant positions in Executive agencies, apply to all Executive agencies, including the Department of Justice.

Whereas Congress enacted the Act entitled “An Act to authorize the temporary supplying of vacancies in the executive departments”, approved July 23, 1868 (commonly referred to as the “Vacancies Act”), to—

- (1) preclude the extended filling of a vacancy in an office of an executive or military department subject to

Senate confirmation, without the submission of a Presidential nomination;

(2) provide an exclusive means to temporarily fill such a vacancy; and

(3) clarify the role of the Senate in the exercise of the Senate's constitutional advice and consent powers in the Presidential appointment of certain officers;

Whereas subchapter III of chapter 33 of title 5, United States Code, includes a codification of the Vacancies Act, and (pursuant to an amendment on August 17, 1988, to section 3345 of such title) specifically applies such vacancy provisions to all Executive agencies, including the Department of Justice;

Whereas the legislative history accompanying the 1988 amendment makes clear in the controlling committee report that the general administrative authorizing provisions for the Executive agencies, which include sections 509 and 510 of title 28, United States Code, regarding the Department of Justice, do not supersede the specific vacancy provisions in title 5, United States Code;

Whereas there are statutory provisions of general administrative authority applicable to every Executive department and other Executive agencies that are similar to sections 509 and 510 of title 28, United States Code, relating to the Department of Justice;

Whereas despite the clear intent of Congress, the Attorney General of the United States has continued to interpret the provisions granting general administrative authority to the Attorney General under sections 509 and 510 of

title 28, United States Code, to supersede the specific vacancy provisions in title 5, United States Code; and

Whereas the interpretation of the Attorney General would—

(1) virtually nullify the vacancy provisions under subchapter III of chapter 33 of title 5, United States Code;

(2) circumvent the clear intention of Congress to preclude the extended filling of certain vacancies and provide for the temporary filling of such vacancies; and

(3) subvert the constitutional authority and responsibility of the Senate to advise and consent in certain appointments: Now, therefore, be it

1       *Resolved*, That it is the sense of the Senate that—

2               (1) sections 3345, 3346, 3347, 3348, and 3349  
3       of title 5, United States Code (relating to the filling  
4       of vacancies in certain offices), apply to all Execu-  
5       tive agencies, including the Department of Justice;

6               (2) the general administrative authorizing stat-  
7       utes of Executive agencies, including sections 509  
8       and 510 of title 28, United States Code, relating to  
9       the Department of Justice, do not supersede the  
10       specific vacancy provisions applicable to Executive  
11       agencies in title 5, United States Code; and

12               (3) the Attorney General of the United States  
13       should—

1           (A) take such necessary actions to ensure  
2           that the Department of Justice is in compliance  
3           with the statutory requirements of such sec-  
4           tions; and

5           (B) inform other Executive agencies to  
6           comply with the vacancy provisions in title 5,  
7           United States Code.

○