

Presidential Transition Improvement Act

Title II of S. 4573, the Presidential Transition Improvement Act, seeks to ensure a smooth presidential transition in the event of a close race where there is not a clear winner immediately. It would amend the Presidential Transition Act (PTA) to clarify when a candidate or candidates should receive transition resources under the Act and to ensure both candidates begin receiving resources - funds, office space and access to briefings with the outgoing administration – in the event there is not a clear winner five days after Election Day. This adopts the basic provision included in Title XI of the Protecting Our Democracy Act (H.R. 5314, S. 2921), namely that if the GSA Administrator does not declare an “apparent winner” within five days of the election, both major candidates are authorized to receive transition resources. This should help the eventual winning candidate move ahead with critical transition work with less delay in the event of a close or contested outcome.

Specifically, if the losing candidate(s) concedes, the remaining candidate must be treated as the apparent winner for purposes of the Presidential Transition Act. Absent such a concession, the text would create a new framework for the GSA Administrator to determine the “apparent successful candidate,” one discretionary and one mandatory.

Five days after the election or later, the GSA Administrator “may” declare an apparent winner if it is “substantially certain” one candidate will receive a majority of pledged electoral votes taking into consideration:

- The results in states where significant legal challenges that could affect the outcome in that state are substantially resolved;
- The certified results in states that have completed certification; and
- The results in states where there is “substantial certainty” of the result based on “the totality of the circumstances.”

The GSA Administrator “must” declare an apparent winner if:

- The candidate receives a majority of pledged electoral votes based on certifications of states that have finished their final canvass **and** the conclusion of any recounts, or legal or administrative actions regarding the results; or
- The candidate receives a majority of electoral votes based on the meeting of the electors in their respective states in mid-December (pursuant to 3 U.S.C. section 7); or
- The candidate is declared the winner at the joint session of Congress in January (pursuant to 3 U.S.C. section 15).

The legislation also requires that the GSA Administrator submit certain reports on the transition process to increase transparency around the resources going to candidates and a determination regarding an apparent winner. Specifically, the administrator would have to:

- Submit weekly reports to Congress summarizing the transition process, including access to space and briefings by candidates and the distribution of transition funds as well as the status of candidates with regard to meeting the qualifications to be declared the apparent successful candidate; and

- Upon determining that a candidate for President or Vice President is the apparent successful candidate, issue a public, written statement laying out the decisions and reasons supporting it under the statutory guidelines.