

# CRS Report for Congress

Received through the CRS Web

## **House Vacancies: Selected Proposals for Filling Them After a Catastrophic Loss of Members**

**Updated June 3, 2004**

Sula P. Richardson and Paul S. Rundquist  
Government and Finance Division

# House Vacancies: Selected Proposals for Filling Them After a Catastrophic Loss of Members

## Summary

Since the terrorist attacks of September 11, 2001, and the anthrax incidents that occurred about a month later, some Members of Congress, scholars, and other political observers have been considering options for congressional succession or for temporarily filling multiple House vacancies that could occur due to injury or death of Members in emergency situations. As of this writing, eight such proposals have been introduced in the House or Senate during the 108<sup>th</sup> Congress. Six of these would amend the Constitution to allow for the temporary appointment of individuals pre-designated by Members (H.J.Res. 77, H.J.Res. 83, and H.J.Res. 92); allow state legislatures or governors to make temporary appointments (H.J.Res. 89); authorize Congress to provide a temporary appointment process (H.J.Res. 90); or authorize Congress to regulate temporarily filling vacancies by law (S.J.Res. 23). The remaining two measures are proposed federal laws. One (H.R. 2844) would require the states to hold expedited special elections. The other (S. 1820), which has been offered as implementing legislation for S.J.Res. 23, would authorize states to develop mechanisms for temporarily filling vacancies in their congressional delegations if a prescribed number of Members is killed, incapacitated, or unable to discharge the duties of office.

Some of the proposals introduced during the 108<sup>th</sup> Congress are revisions, combinations, or parts of proposals introduced during the 107<sup>th</sup> Congress. The options that were presented during the 107<sup>th</sup> Congress included amending the Constitution to provide for temporary appointments to the House; enacting federal legislation to require the states to hold expedited special elections; changing House rules to allow for admitting “emergency Delegates” to the Committee of the Whole; and changing House rules to allow for “interim successors” pre-designated by Members.

Individuals and groups outside Congress also are debating the continuity issue. For example, one privately funded group — the Continuity of Government Commission — has recommended adoption of a constitutional amendment that would give Congress the authority to enact legislation to provide for temporary appointments to fill House vacancies after a catastrophic attack and to temporarily fill the seats of incapacitated House and Senate Members. Another group — the Coalition to Preserve an Elected Congress — opposes the Commission’s proposal and any proposed constitutional amendment that would remove the people’s constitutional right to *elect* their Representatives.

This report will be updated as events warrant. A related document, CRS Report RL32031, *House Vacancies: Proposed Constitutional Amendments for Filling Them Due to National Emergencies*, by Sula P. Richardson and Paul S. Rundquist, focuses specifically on proposed constitutional amendments for filling House vacancies in national emergencies. See also CRS Electronic Briefing Book, *Terrorism*, page on “Continuity of Congress,” by Paul S. Rundquist, at [<http://www.congress.gov/brbk/html/ebter201.html>].

## Contents

Amending the Constitution .....	1
To Allow for Temporary Appointees .....	2
To Allow Pre-Designated Successors .....	3
“Acting” Representatives and Senators .....	3
To Authorize Congress to Regulate Filling Vacancies by Law .....	4
Enacting Federal Law Requiring Expedited Special Elections .....	5
Changing House Rules .....	6
To Allow a Role for “Emergency Delegates” in the Committee of the Whole .....	6
To Allow for Pre-Designated Interim Successors .....	8
108 <sup>th</sup> Congress .....	9
Proposed Constitutional Amendments .....	10
H.J.Res. 77 and H.J.Res. 83 .....	10
H.J.Res. 89 .....	11
H.J.Res. 90 .....	11
H.J.Res. 92 .....	12
S.J.Res. 23 .....	12
Legislative Proposals .....	12
S. 1820 .....	12
H.R. 2844 .....	13
Hearings .....	14
Activity Outside Congress .....	14
107 <sup>th</sup> Congress .....	15
Conclusion .....	16

## List of Tables

Table 1. Selected Proposals for Filling House Vacancies in Time of National Emergency: Summary Table, 108 <sup>th</sup> Congress .....	17
Table 2. Selected Proposals for Filling House Vacancies in Time of National Emergency: Summary Table, 107 <sup>th</sup> Congress .....	20

# House Vacancies: Selected Proposals for Filling Them After a Catastrophic Loss of Members

While the Constitution requires that vacancies in both the House and the Senate be filled by special election, it empowers state legislatures to provide for temporary appointments to the U.S. Senate by state governors until elections are held. House Members, on the other hand, have always been chosen in one way — by *direct election* of the people — and House vacancies have always been filled by special election. No provision is made for temporary appointments to the U.S. House of Representatives.

Since the terrorist attacks of September 11, 2001, and the anthrax incidents that occurred shortly thereafter, some Members of Congress, scholars, and other political observers have been considering options for filling large numbers of House vacancies more quickly than current special election processes might allow.<sup>1</sup> This is not the first time that Congress has considered the issue. For example, from the 1940s through 1962, more than 30 proposed constitutional amendments were introduced to provide for temporarily filling House vacancies or selecting successors in case of the disability of a significant number of Representatives.<sup>2</sup>

The means that have been suggested for implementing such change are the subject of debate. Some believe that the change must be done by constitutional amendment, while others contend that the issue can be addressed by enacting federal law or modifying House rules.

## Amending the Constitution

The Constitution requires that vacancies in the House be filled by special election; it makes no provision for temporary appointments to vacant seats in the House. Accordingly, if temporary appointments to the House are to be provided for, a constitutional amendment would arguably provide the best way to avoid constitutional challenges. Supporters contend that amending the Constitution would

---

<sup>1</sup> See also “Continuity of Congress: Proposals and Issues,” by Paul S. Rundquist, in the CRS Electronic Briefing Book, *Terrorism*, available at [<http://www.congress.gov/brbk/html/ebter201.html>].

<sup>2</sup> For further detail on proposed constitutional amendments introduced during the current Congress and in earlier years, see CRS Report RL32031, *House Vacancies: Proposed Constitutional Amendments for Filling Them Due to National Emergencies*, by Sula P. Richardson and Paul S. Rundquist.

demonstrate concurrence of the state legislatures because constitutional amendments are effective only upon ratification by three-fourths of those state bodies. They also point out that a constitutional amendment would treat the office of U.S. Representative like that of U.S. Senator and President of the United States, both of which have definitive replacement plans that are constitutionally based (17<sup>th</sup> and 25<sup>th</sup> Amendments).

On the other hand, critics argue that amending the Constitution is a cumbersome process; additional terrorist attacks could occur before the process is completed. Further, they contend that the office of U.S. Representative does have a constitutionally based replacement plan — “writs of election,” as set forth in Article I, Section 2, of the Constitution. They also note differences between the two houses of Congress. Unlike U.S. Senators<sup>3</sup> and U.S. Presidents, U.S. Representatives have the distinction of having been chosen in but one way since the inception of their office — by direct election. In addition, they point out that the scope of the issues and constituencies for governors and U.S. Senators is usually broader than it is for U.S. Representatives. (Governors and U.S. Senators are elected by voters in the entire state, while U.S. Representatives — except for those representing single district states — are elected by voters in their congressional districts). Moreover, some political observers believe that a constitutional amendment is unnecessary, since change could be implemented through less extreme means, such as by enacting federal legislation or modifying House rules.

## **To Allow for Temporary Appointees**

Proposed constitutional amendments that would allow governors to appoint temporary replacements for Members killed or incapacitated during a national emergency may be divided into two categories: (1) those that would permit the governor of each affected state to appoint qualified persons he or she chooses; and (2) those that would allow the governor to select and appoint individuals from a list of successors pre-designated by the Member the appointee would be replacing.

Supporters contend that permitting governors to make temporary appointments would enable replacements to be made quickly until special elections could be held. Further, they believe it would help to facilitate the continued representation of all states in the House and ensure against a House with severely depleted membership in time of national emergency. In addition, it would give temporary appointment power to governors, a clear and logical choice, advocates argue, since state laws already give governors certain powers to deal with crises.

Opponents contend that allowing governors to temporarily appoint persons to the House would depart from the basic tenet of a House whose members are chosen solely by *election*. Furthermore, they assert it would create two classes of Representatives — those who have been elected and those who have been appointed. They also note that it would concentrate additional power in the office of governor, who already has power to make interim appointments to the U.S. Senate.

---

<sup>3</sup> Prior to 1913, when the 17<sup>th</sup> Amendment was adopted, U.S. Senators were elected by state legislatures.

Consequently, the governor could have power to appoint the entire congressional delegation of a state. Moreover, opponents claim that, in some instances, temporary appointments could result in a change in party control in Congress, if governors' appointees were of a party different from their predecessors. That shift in party control could result in a change in the legislative agenda at a particularly crucial time — one that might require emergency legislation.

## To Allow Pre-Designated Successors

The concept of allowing Members to pre-designate their interim successors was suggested during the 107<sup>th</sup> Congress. As proposed at that time, however, the interim successors would have been temporarily appointed as “emergency Delegates” to the Committee of the Whole. Further, the appointments would have been implemented by amending House rules, rather than by amending the Constitution. Supporters of this approach included two former Speakers of the House of Representatives (Tom Foley and Newt Gingrich). The concept of amending House rules to permit the temporary appointment of individuals to the Committee of the Whole raised a number of legal and procedural issues.<sup>4</sup> During the 108<sup>th</sup> Congress, in an effort to address some of those issues, Representative Brian Baird introduced two proposals — H.J.Res. 77 (on November 19, 2003), and H.J.Res. 83 (on December 8, 2003). Both resolutions would amend the Constitution (rather than House rules) to allow the temporary appointment of individuals to the House (rather than to the Committee of the Whole). Further, both proposals would permit governors to appoint temporary successors from a list of individuals pre-designated by the Members the appointees would be replacing. (See “108<sup>th</sup> Congress” in this report for further detail.)

**“Acting” Representatives and Senators.** On April 2, 2004, Representative Dana Rohrabacher introduced a proposal that would permit each candidate for the House or Senate to pre-designate, in ranked order, three to five potential temporary successors. The appointments must be publicly available not earlier than one year nor later than 60 days prior to the general election. As a result, voters could know the identity of potential successors chosen by the Member *prior* to the election, and those choices could be part of voters' decision to support or oppose a candidate. The proposal — H.J.Res. 92 — would repeal the current authority of governors to make temporary appointments to fill Senate vacancies, except that governors would be allowed to temporarily appoint Representatives and Senators if the elected Senator or Representative had not submitted a list of successors, or if none of the listed successors was able to serve. (See “108<sup>th</sup> Congress” in this report for further detail.)

Supporters contend that this approach makes the Member responsible for his or her choices of designees and allows voters to know who those choices are *prior* to the election. For example, one supporter of allowing pre-designated successors to be appointed contends that because the appointees would have been approved in advance by the Members they would be replacing, the appointees “should continue to be politically, geographically, and ideologically representative of the voters

---

<sup>4</sup> See text under the heading “Changing House Rules to Allow for Pre-Designated Interim Successors” in this report.

represented by that [M]ember.”<sup>5</sup> In addition, advocates point out that the process would apply in emergency and non-emergency situations, whether one Member, 100 Members, or some other number died or became unable to discharge their duties. As such, they argue, it avoids the issue of determining the number of deaths or incapacitations that would be necessary to trigger it. Further, supporters assert it would help ensure that death or incapacity of Representatives and Senators would not change party control of either house, since the party affiliation of Members and their designees would likely be the same. Finally, advocates believe that “the legitimacy of such a ‘congressional succession plan’ is more likely to be accepted in a national emergency if it has previously worked in smaller tragedies.”<sup>6</sup>

Critics argue, however, that appointments, though temporary, would alter the basic tenet of the “people’s House,” whose Members have always been *elected* by the people. They believe that “a House of five elected members would have more ‘legitimacy,’ as the living continuation of the only directly elected entity in our government, than would a House composed of those five elected members and 430 appointed members.”<sup>7</sup> Further, they assert that the Member’s constituents might not agree with his or her choice of successors or with the successors’ policies. For example, given the range of the ideological and philosophical views *within* parties, governors’ appointment of persons from the same party as their predecessors could still result in a shift in the ideological makeup of the Congress, which in turn, could change the legislative agenda. Opponents believe that historical events support their view. They point out that during the War of 1812, when British troops invaded Washington, DC, and burned the White House and the Capitol, and also after the attack on Pearl Harbor in 1941, the constitutional right of the people to elect their Representatives remained intact.<sup>8</sup> Moreover, critics contend that amending the Constitution to provide for temporary appointments to the House is unnecessary, since the states could expedite their election processes to fill vacancies without a constitutional amendment.

## **To Authorize Congress to Regulate Filling Vacancies by Law**

Some political observers believe that an effective means of addressing congressional continuity issues is to adopt a broad and concise constitutional

---

<sup>5</sup> Howard M. Wasserman, Testimony before the Senate Committee on the Judiciary, *Ensuring the Continuity of the United States Government: A Proposed Constitutional Amendment to Guarantee a Functioning Congress*, hearings, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., Jan. 27, 2004, available online at [[http://judiciary.senate.gov/print\\_testimony.cfm?id=1022&wit\\_id=2918](http://judiciary.senate.gov/print_testimony.cfm?id=1022&wit_id=2918)], visited Mar. 24, 2004.

<sup>6</sup> Rep. Dana Rohrabacher, remarks in the House, *Congressional Record*, daily edition, vol. 150, Apr. 2, 2004, p. E530.

<sup>7</sup> Coalition to Preserve an Elected Congress, “Statement of Opposition to the Continuity of Government Commission’s Proposal by Professor Charles E. Rice,” [<http://www.electcongress.org/articles/2003/rice-cog.shtml>], visited Apr. 16, 2004.

<sup>8</sup> Rep. Ron Paul, remarks in the House, *Congressional Record*, daily edition, vol. 149, June 4, 2003, p. E1137.

amendment authorizing Congress to regulate filling vacancies by law. Supporters contend that this approach would keep the constitutional amendment short and simple, while allowing Congress the flexibility to set forth the details in statutes deemed most effective to address the situation, whatever it might be. Further, because legislation can be amended more readily than the Constitution, advocates believe this approach would provide a faster route (than amending the Constitution) for any additional change that might become necessary.

Opponents argue that proposals of this kind are ambiguous, since they provide no specifics on how the mass vacancies would be handled. Further, they contend that while details could be left for inclusion in the implementing statute(s), reaching agreement on them could delay passage, resulting in a delay in implementation.

On November 5, 2003, Senator John Cornyn introduced S.J.Res. 23, a constitutional amendment, and S. 1820, implementing legislation that reflect this two-step approach. Combined, the two proposals have been referred to as the “Cornyn Plan.”<sup>9</sup> The proposed constitutional amendment, S.J.Res. 23, would grant Congress the authority to enact laws providing procedures to handle mass vacancies and mass incapacitations. In turn, pursuant to the implementing legislation, S. 1820, Congress would delegate to the states the authority to develop such processes as the respective states deem necessary to replace deceased and incapacitated Members following a catastrophic event. (See “108<sup>th</sup> Congress” in this report for further detail.)

## **Enacting Federal Law Requiring Expedited Special Elections**

Some observers claim that no constitutional amendment is required, only the enactment of a federal statute. Supporters contend that in the event of mass House vacancies, Congress could exercise its constitutional authority to preempt state law regarding the “Times, Places, and Manner of Holding Elections”<sup>10</sup> for the House and pass legislation that would require states to hold expedited special elections within a specified time frame.<sup>11</sup> They assert that the legislation could amend current law,<sup>12</sup> which leaves it to state law to determine when an election must be held to fill a

---

<sup>9</sup> Wasserman, Testimony before Senate Judiciary Committee, *Ensuring the Continuity of Government*, Jan. 27, 2004.

<sup>10</sup> U.S. Const. art. I, § 4, Clause 1.

<sup>11</sup> M. Miller Baker, Testimony and Prepared Statement before the House Committee on the Judiciary Subcommittee on the Constitution in U.S. Congress, House Committee on the Judiciary, Subcommittee on the Constitution, *Temporary Filling of House of Representatives Vacancies During National Emergencies*, hearings on H.J.Res. 67, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., Feb. 28, 2002 (Washington: GPO, 2002), p. 32. See also the Continuity of Government Commission’s website, “Proposals for Reform — Don Wolfensberger’s Proposal,” at [<http://www.continuityofgovernment.org/pdfs/proposalwolfensberger.htm>], visited Apr. 15, 2004.

<sup>12</sup> 2 U.S.C., ch. 1, §. 8.

House vacancy. Supporters note that current provisions for filling vacancies in the House in non-emergency situations would remain intact, and the expedited special elections would be triggered only in the event of a significant number of House vacancies due to a national emergency. Further, supporters argue that passing a federal statute is a far less cumbersome process than amending the Constitution. In addition, advocates believe that a statute providing for expedited special elections could minimize the length of time House membership would be severely depleted without violating the basic tenet of *elected* Representatives.

On the other hand, critics of this approach argue that it could result in campaign periods so short that citizens could not make reasoned, informed decisions about candidates and issues. Shorter campaign periods could also be problematic for state election officials, who, in keeping with their responsibility for administering elections, must handle filing deadlines, filing requirements, absentee ballots, ballot access, and other aspects of the election process. Moreover, if a number of states were attacked and severely damaged, it might also be difficult to hold elections in a timely manner. Finally, more compressed campaign periods could also put candidates who are not as well funded or as well known at a disadvantage.

Representative James Sensenbrenner introduced a bill on July 24, 2003, that would require expedited special elections to fill vacancies in the House in extraordinary circumstances. So far, of the proposals introduced during the 108<sup>th</sup> Congress, the Sensenbrenner proposal — H.R. 2844 — has gone farthest in the legislative process. As passed in the House on April 22, 2004, the measure would set a timetable of 45 days for expedited special elections in the event of a catastrophic loss of membership in the House. (See “108<sup>th</sup> Congress” in this report for further detail.)

## Changing House Rules

Two other options, arguably requiring neither a constitutional amendment nor a statutory change, call for changing House rules. Both were suggested during the 107<sup>th</sup> Congress. Supporters contend that the rules changes could be made in accordance with the House’s constitutional authority to adopt its internal rules and to judge its Members’ qualification.<sup>13</sup>

### **To Allow a Role for “Emergency Delegates” in the Committee of the Whole**

During the 107<sup>th</sup> Congress, it was suggested that if a provision were made for governors to make interim House appointments, the House might modify its rules to allow interim appointees or “emergency Delegates” to vote in the Committee of the

---

<sup>13</sup> The Constitution provides that each chamber of Congress “may determine the Rules of its Proceedings.” U.S. Const. art. I, § 5, cl. 2.

Whole.<sup>14</sup> Some believed this could distinguish emergency Delegates from full-fledged House Members, while enabling them to participate in the legislative business of the House. Specifically, the emergency Delegates:

might be allowed to vote in Committee of the Whole on proposed legislation, which would not, however, be deemed to have passed the House except when (and by reason of being) approved by the quorum of surviving Representatives, who, alone, would vote on final passage of legislation — until vacancies could be filled by election.<sup>15</sup>

House rules allowed Delegates<sup>16</sup> to vote in Committee of the Whole in 1993-1994.<sup>17</sup> Some claimed that, if emergency Delegates were allowed, House rules could be modified to permit them to vote in Committee of the Whole. As supporters saw it, such a rule might be easier to attain than either a constitutional amendment or a statute.<sup>18</sup>

The rule allowing Delegates to vote in Committee of the Whole generated considerable controversy and was challenged in the courts.<sup>19</sup> The Court held that Delegates could not vote in the House on legislative matters because only Representatives elected from the states were Members of the House, and only the House could exercise “legislative power.” Under this principle, the emergency Delegates, too, might be able to express their position but not to exercise any determinative vote in the House. The court also noted, however, that while the House had no authority to exclude any individuals who are *Members* of the House from voting in the Committee of the Whole, nevertheless:

as for the House’s ability to *include* additional individuals in the Committee’s proceedings, as it has done with respect to the Delegates, that poses a range of questions that the Court need not decide here.

---

<sup>14</sup> Charles Tiefer, Testimony and Prepared Statement Before the House Committee on the Judiciary, Subcommittee on the Constitution, Feb. 28, 2002, in House Subcommittee on the Constitution, *Temporary Filling of House Vacancies*, pp. 42-43.

<sup>15</sup> Tiefer Prepared Statement, p. 45.

<sup>16</sup> For the purposes of this report, the term “territorial Delegates” includes the Resident Commissioner of Puerto Rico. The other Delegates were from the District of Columbia, American Samoa, Guam, and the Virgin Islands.

<sup>17</sup> There was also a provision (known as a “savings clause”) for immediate consideration in the full House of questions resolved in the Committee of the Whole when the Delegates’ votes were decisive. Thus, the territorial Delegates could express their position, but they had no determinative vote in the House. In 1994, the Federal District Court ruled, and the Appeals Court upheld, that the House action granting the Delegates the authority to vote in Committee of the Whole would have been “plainly unconstitutional” without the savings clause. See *Michel et al. v. Anderson et al.*, 817 F.Supp.126 (D. D. C. 1993) and 14 F.3d 623 (D.C. Cir. 1994) (argued 1993, decided 1994). (The authority for the territorial Delegates to vote in Committee of the Whole was repealed at the beginning of the 104<sup>th</sup> Congress (1995).)

<sup>18</sup> Tiefer Prepared Statement, p. 45.

<sup>19</sup> *Michel v. Anderson*.

This point could argue in favor of the authority of the House to admit emergency Delegates to certain of its proceedings, but not necessarily definitive actions of the full House of Representatives. The proposal for emergency Delegates also raises a number of other procedural and constitutional questions. First, as representatives of states, the status and authority of emergency Delegates might be seen as somewhat different from that of Delegates. Second, this approach would require determining how the emergency Delegates would be chosen, and raises the question of whether the authority to choose them could be conferred by House rule, or whether a statute or constitutional amendment would be required. One supporter has contended that providing for emergency Delegates need not require a constitutional amendment, a statute, or a rule before a national emergency occurs. Rather, “it would suffice, in time of emergency, then to adopt a rule inviting governors to send “Emergency Delegates.”<sup>20</sup>

## To Allow for Pre-Designated Interim Successors

During the 107<sup>th</sup> Congress, former Speakers of the House Tom Foley and Newt Gingrich and others<sup>21</sup> suggested that the House modify its rules to allow each Representative to pre-designate an interim successor who would serve until his or her successor was elected. They believed “it would be reasonable for the House to recognize interim designees as fully empowered to perform the duties of the office.”<sup>22</sup> Supporters of this approach contended that the rules change would serve as a short-term solution until a constitutional amendment could be approved, which could take years.<sup>23</sup>

It is possible that a change in House rules could provide a mechanism whereby a “caretaker” could be empowered to oversee the administrative duties and some “representational” activities of the vacant congressional office. On the other hand, allowing Representatives to pre-designate their successors raises a number of procedural and constitutional questions. For example, there is a constitutional question as to whether a Member may transfer his or her legislative duties to another person who has not been chosen by the people in accordance with Article I, Section 2, Clause 1 of the Constitution and the “vacancies clause” of Article I, Section 2, Clause 4.<sup>24</sup> Would a person not chosen as prescribed in the Constitution be improperly exercising legislative power? Would a House rule vesting such authority

---

<sup>20</sup> Tiefer Prepared Statement, p. 45.

<sup>21</sup> See also AEI Continuity of Congress website, Proposed Statutory and Rules Changes — Alton Frye, “Maintaining Continuity in the House of Representatives: An Urgent Solution to an Urgent Problem,” at [<http://www.continuityofgovernment.org/pdfs/proposalrye.htm>], visited Apr. 16, 2004.

<sup>22</sup> Thomas S. Foley and Newt Gingrich, “If Congress Were Attacked,” *Washington Post*, March 17, 2002, p. B9.

<sup>23</sup> Ben Pershing and Susan Crabtree, “Many Members Wary of Changing Constitution to Allow Appointments to House After Crisis,” *Roll Call*, Mar. 21, 2002, p. 28.

<sup>24</sup> U.S. Const. art. I, § 2, cl. 1: “The House of Representatives shall be composed of Members chosen every second year by the People of the several states.”

in such person be in conflict with the U.S. Constitution?<sup>25</sup> Would anyone have standing to challenge the rule (i.e., would there be injury to anyone) until the rule was actually implemented?

## 108<sup>th</sup> Congress

Both houses of Congress have taken some steps in the 108<sup>th</sup> Congress to help ensure continued operations in the event of a catastrophe. In the House, Representatives Christopher Cox and Martin Frost, among others, submitted suggestions for changes in House Rules to minimize the threat to Congress's continuity posed by emergencies. Some of these suggestions were incorporated into H.Res. 5, agreed to January 7, 2003, adopting the Rules of the House for the 108<sup>th</sup> Congress.

New rule language directs the Speaker to designate in writing a number of Members who would serve (in the order listed) as Speaker pro tempore in the event of the Speaker's death or disability, until a successor Speaker or Speaker pro tempore could be elected by the House. The new rule does not specify a minimum or maximum number of Members to be so designated. Other rules changes authorize the Speaker to recess the House at any time if he or she is informed of an imminent threat to Members' safety, and codifies in the rules the established House practice that a quorum is a majority of the members elected, sworn, and living.

In addition, both houses agreed to H.Con.Res. 1, which would allow designees of the Speaker and the Senate majority leader to call Congress into session in the event of the death or disability of either leader.

At the President's State of the Union Address, one cabinet member traditionally does not attend in order to safeguard the line of presidential succession. For what appears to be the first time, several Members of Congress did not attend the January 28, 2003 address to safeguard the continuity of Congress: Senator Ted Stevens, the President pro tempore, Senators Evan Bayh and Peter Fitzgerald, and Representative Roy Blunt, the House majority whip.

A number of proposed constitutional amendments as well as legislative proposals directed at congressional continuity issues have been introduced in the 108<sup>th</sup> Congress.

---

<sup>25</sup> "... [W]ere the House to create members not 'chosen every second year by the people of the several states,' and bestow upon them full voting privileges, such an action, whether or not pursuant to House rules, would be blatantly unconstitutional." *Michel v. Anderson*, supra at 627. For elaboration on this point and for additional issues, see Don Wolfensberger, "Naming Successors Would Violate 'People's House,'" *Roll Call*, April 15, 2002, p. 10.

## Proposed Constitutional Amendments

As of this writing, six proposals to amend the Constitution to provide for filling vacancies in the event of the catastrophic loss of Members have been introduced during the 108<sup>th</sup> Congress. Five were introduced in the House, and one was introduced in the Senate.

**H.J.Res. 77 and H.J.Res. 83.** Representative Brian Baird has proposed two constitutional amendments — H.J.Res. 77 and H.J.Res. 83 — that would allow each “chief executive of State” (i.e., the governor or other executive authority, as appropriate) to temporarily appoint an individual from a list of at least two successors pre-designated by the Member to take the Member’s place if the Member dies or becomes incapacitated. The resolutions were introduced on November 19, 2003, and December 8, 2003, respectively. Under both proposals, the Representative-elect would present the list of successors to the chief executive of state prior to taking the oath of office.<sup>26</sup> Thereafter, if a majority of the whole membership of the House could not carry out its duties because of death or incapacity, or if the House adopted a resolution declaring the existence of extraordinary circumstances, which “threaten the ability of the House to represent the interests of the people,” the “chief executives of State” would appoint replacement Members within seven days after the deaths or disabilities had been certified. An appointee would serve until the incapacitated Member he or she was replacing regained ability to serve, or until a special election was held to fill the seat.

Both H.J.Res. 77 and H.J.Res. 83 would authorize Congress to enact “appropriate legislation” to enforce them. They differ slightly in the language prescribing the means for determining whether a Member is dead or incapacitated. The broader of the two measures — H.J.Res. 83 — provides that Congress may *by law* establish the criteria for determining whether a Member of the *House or Senate* is dead or incapacitated. H.J.Res. 77 would allow for “the adoption of rules by the House of Representatives to determine whether a Member is dead or incapacitated.” Note, however, that the provision for enforcement through “appropriate legislation” could apply to the establishment of such criteria. Consequently, H.J.Res. 77 and H.J.Res. 83 are similar, and both were referred to the House Committee on the Judiciary.

On March 23, 2004, Representative Brian Baird introduced a special rule that would provide for consideration of H.J.Res. 83. The rule — H.Res. 572 — was referred to the House Committee on Rules. On April 20, 2004, Representative Baird initiated a discharge petition in an attempt to discharge the Committee on Rules from consideration of H.Res. 572.<sup>27</sup> As of May 21, 2004, 85 of the 218 signatures needed to discharge the Rules Committee from consideration of H.Res. 572 and bring it to the House floor had been attained. Representative Baird has argued that the House should consider amending the Constitution *and* enacting legislation to address the

---

<sup>26</sup> After taking the oath of office, the Member may revise the list at any time during the Congress.

<sup>27</sup> See: U.S. House of Representatives, “Discharge Petition 0007, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., Apr. 20, 2004 at [<http://clerk.house.gov/108/lcr/pd/petitions/Dis7.htm>], visited May 26, 2004.

continuity issue. On April 22, 2004, during debate on H.R. 2844<sup>28</sup> (expedited special elections bill), House Judiciary Committee Chairman James Sensenbrenner indicated that arrangements would be made for the House to vote on H.J.Res. 83, although he personally opposed the measure.<sup>29</sup> Speaker Hastert later announced his support for having such a floor vote, although he too opposed the constitutional amendment. On May 5, 2004, the Committee on the Judiciary reported H.J.Res. 83 “adversely” (by a vote of 17 to 12).

A special rule — H.Res. 657 — providing for the consideration of H.J.Res. 83 was reported (H.Rept. 108-519) from the House Rules Committee on June 2, 2004. That same day, the House adopted H.Res. 657 by a vote of 211-200. The rule provided for 90 minutes of debate time in the House, equally divided and controlled by the chairman and ranking minority member of the Judiciary Committee, with no amendments permitted and one motion to recommit. The motion to recommit offered by Representative Lofgren would have required that the Judiciary Committee hold hearings on the subject. The motion to recommit was defeated 195-215. The House rejected H.J.Res. 83 by a vote of 63-353 (the two-thirds needed for passage of a constitutional amendment not having been attained).

**H.J.Res. 89.** On March 11, 2004, Representative John Larson of Connecticut introduced H.J.Res. 89, a constitutional amendment that would permit temporary appointees to be chosen by the affected state legislatures or the chief executives of state. H.J.Res. 89 would allow fewer than a majority of the House to adopt a resolution declaring that a vacancy existed in the majority of the seats in the House. The legislature of each affected state would have five calendar days from the day after the House adopted such resolution to convene a special session for appointing individuals to temporarily fill the vacancies. The state legislature would then be required to appoint an individual to fill each vacancy within three calendar days from the date the legislature convened in special session. If the state legislature did not convene the special session or make the appointments within the time prescribed, the chief executive of state would appoint individuals to fill the vacancies. Appointees would be required to meet the constitutional qualifications for service as House Members and would be required to be members of the same political party as their predecessors. Further, appointees would serve until special elections were held to fill the House vacancies, but they would be prohibited from being candidates for election to the House during their temporary service. In addition, H.J.Res. 89 would empower Congress “by law to specify circumstances constituting when a vacancy happens in the Representation from any State in the House and to address the incapacity of Members of the House of Representatives.” As such, the proposal would empower Congress to enact legislation addressing the issue of incapacitation.

**H.J.Res. 90.** Also, on March 11, 2004, Representative Zoe Lofgren introduced H.J.Res. 90, a proposed constitutional amendment that would permit Congress to enact legislation providing for the appointment of temporary Members

---

<sup>28</sup> For further detail, see discussion on H.R. 2844 under the heading “Legislative Proposals” in this report.

<sup>29</sup> Rep. James F. Sensenbrenner, Jr., remarks in the House during debate on H.R. 2844, *Congressional Record*, daily edition, vol. 150, Apr. 22, 2004, p. 2319.

of the House to serve during any period in which 30% or more of the House seats are vacant because of death or resignation.

**H.J.Res. 92.** On April 2, 2004, Representative Dana Rohrabacher introduced H.J.Res. 92, a proposed constitutional amendment that would authorize candidates in the general election for the House and Senate to publicly designate not fewer than three and not more than five potential temporary successors (i.e., “Acting Representatives or Acting Senators”).

**S.J.Res. 23.** Senator John Cornyn proposed another constitutional amendment — S.J.Res.23 — on November 5, 2003. It would authorize Congress to enact law(s) providing procedures to address the death or inability of Representatives to serve and the inability of Senators to serve,<sup>30</sup> if one-fourth of either house were killed or incapacitated. Congress would declare who would serve in place of the deceased and incapacitated Members until the disabled Members regained ability to serve or new Members were elected. Procedures established would be in effect for 120 days, but that time frame could be extended (for additional 120-day periods) if one-fourth of the seats in either house remained vacant or occupied by incapacitated Members. (See also “S. 1820,” below).

## Legislative Proposals

**S. 1820.** A bill, S. 1820, introduced by Senator John Cornyn on November 5, 2003, would authorize the states to take emergency action to fill vacant seats of Members or replace incapacitated Members if 25% of the House or Senate were dead or incapacitated. The emergency procedures would be triggered through two mechanisms. The Speaker and the House Minority Leader, or their designees, could jointly declare that one-fourth of the House Members had been killed or incapacitated. Alternatively, state governors could individually certify that one or more of the state’s congressional delegation had been killed or incapacitated and the President of the United States had declared that he had received a sufficient number of certifications from state governors to determine that one-fourth of the Senators or Representatives had been killed or incapacitated.

The Cornyn bill would authorize the states to enact legislation providing for filling House vacancies by special election or by appointment by the governor or state legislature, by appointment from a list of potential successors submitted by the incumbent Member, or by such other procedures as the state legislature determines to be appropriate. Under each of the latter three options, a subsequent special election would be required. With regard to Senate vacancies, the bill would provide for appointment by the governor or legislature of the state, appointment from a list of successors submitted by the incumbent Senator, or such other procedures as the state determines. The Cornyn bill does not appear to contemplate the holding of special elections to fill a Senate vacancy, although Oregon, Wisconsin, and, in some

---

<sup>30</sup> The 17<sup>th</sup> Amendment of the Constitution already provides for special elections or appointments (as determined by each state) to fill vacant Senate seats, but no provision is made for de facto vacancies due to the inability of Senators to serve.

circumstances, Oklahoma require special elections to fill vacancies. The proposal was referred to the Senate Committee on Rules and Administration.

Another Cornyn measure, S. 2031, introduced January 27, 2004, would address only the issue of senatorial incapacity. Under procedures set in the bill, if the Senate finds itself without a quorum, the majority and minority leaders (or their designees) may jointly announce their finding that the absence of a quorum was caused by the inability of Senators to discharge the powers and duties of the office. In that event, procedures that the bill authorizes states to enact into law would be triggered, permitting the replacement of Senators unable to serve.

**H.R. 2844.** The most extensive action in the House has occurred on H.R. 2844, a bill introduced by Representative James Sensenbrenner on July 24, 2003, and referred to the Committee on House Administration and, sequentially, to the Committee on the Judiciary. The bill would set a timetable for expedited special elections in the event of a catastrophic loss of membership in the House of Representatives. The House Administration Committee held hearings on the bill on September 24, 2003, receiving testimony from five Members of Congress, various state election officials, and expert witnesses from the Woodrow Wilson International Center for Scholars, the Brookings Institution, and the American Enterprise Institute.

At the House Administration Committee markup on November 19, 2003, the committee agreed to an amendment in the nature of a substitute offered by Representative Robert Ney, the committee chairman. Most significantly, the Ney amendment lengthened the timetable for holding special elections from the 21-day schedule set in the bill as introduced to 45 days. The measure was reported by a 4-3 vote. The report of the committee (H.Rept. 108-404, part 1) was issued on December 8, 2003. The Committee on the Judiciary held no separate hearings on the measure, relying on testimony it received on proposed constitutional amendments in the 107<sup>th</sup> Congress and testimony taken by the Cox-Frost task force.<sup>31</sup> The Committee reported the measure on January 21, 2004, and the report (H.Rept. 108-404, part 2) was filed on January 28, 2004. On April 22, 2004, the House passed H.R. 2844, by a vote of 306 to 97. The measure has been placed on the Senate calendar, pending further Senate action on Senate measures on this subject.

---

<sup>31</sup> The Cox-Frost task force refers to a bipartisan House panel that was created in the spring of 2002, to study the continuity issue. The group is headed by Rep. Christopher Cox, chair of the Republican Policy Committee and Rep. Martin Frost, chair of the Democratic Caucus.

## Hearings

Hearings on the issue of continuity of Congress have been held in the House<sup>32</sup> and in the Senate.<sup>33</sup> Scholars, former and current Members of Congress, election officials, and other political observers have offered their ideas and opinions in support of or in opposition to the various options that have been proposed.

## Activity Outside Congress

In June of 2003, a privately funded group, the Continuity of Government Commission (the Commission),<sup>34</sup> published a report on the continuity of Congress. In the report, the Commission recommended the adoption of a constitutional amendment giving Congress the authority to provide by law for temporary appointments to fill House vacancies resulting from a catastrophic attack, and to temporarily fill House and Senate seats held by incapacitated Members.<sup>35</sup> An outside group whose position is counter to the Commission's was created in June 2003. That group — the Coalition to Preserve an Elected Congress (CPEC) — is coordinating a campaign against the Commission's proposal and any other such proposed constitutional amendments that it views as removing the people's constitutional right to *elect* their Members of Congress.<sup>36</sup> As part of its efforts, CPEC is spearheading

<sup>32</sup> U.S. Congress, House, Committee on House Administration, *Hearing on the Continuity of Congress: Special Elections in Extraordinary Circumstances*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., Sept. 24, 2003 (Washington: GPO, 2003), 147 pp; and U.S. Congress, House, Committee on House Administration, *Mark-Up of H.R. 2844, the Continuity in Representation Act of 2003*, hearing on H.R. 2844, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., Nov. 19, 2003 (Washington: GPO, 2004), 25 pp.

<sup>33</sup> Transcripts of the following hearings held by the Senate Committee on the Judiciary on Sept. 9, 2003 and Jan. 27, 2004, have not yet been printed: U.S. Congress, Senate, Committee on the Judiciary, *Ensuring the Continuity of the United State Government: The Congress*, hearing, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., Sept. 9, 2003; and U.S. Congress, Senate, Committee on the Judiciary, *Ensuring the Continuity of the United States Government: A Proposed Constitutional Amendment to Guarantee a Functioning Congress*, hearing, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., Jan. 27, 2004. Testimony of witnesses appearing before the Senate Judiciary Committee is available online from the committee's website at [<http://judiciary.senate.gov/hearing.cfm?id=909>] and [<http://judiciary.senate.gov/hearing.cfm?id=1022>], visited Mar. 31, 2004.

<sup>34</sup> Organized in the fall of 2002, the Commission is a joint project of the American Enterprise Institute (AEI) and the Brookings Institution. It is funded by the Carnegie, Hewlett, Packard, and MacArthur Foundations. "The central issue that the commission will address is how Congress could function if a large number of members were killed or incapacitated." American Enterprise Institute (AEI), Continuity of Government Commission, [<http://www.aei.org/research/projectID.16/project.asp>], visited March 15, 2004.

<sup>35</sup> Continuity on Government Commission, "Summary of Central Recommendation," in its *Preserving Our Institutions*, First Report of the Continuity of Government Commission, May 2003 (Washington: American Enterprise Institute, 2003), p. 58.

<sup>36</sup> For further details, see Coalition to Preserve an Elected Congress at (continued...)

a petition drive, asking individuals and organizations to endorse its “Resolution to Preserve an Elected Congress.”<sup>37</sup>

## 107<sup>th</sup> Congress

During the 107<sup>th</sup> Congress, Representative Brian Baird introduced a constitutional amendment that would have authorized governors to appoint persons temporarily to take the place of Representatives who had died or become incapacitated whenever 25% or more of Representatives were unable to perform their duties. Appointees generally would have been allowed to serve 90 days or less until a special election was held. Each special election would have been held at any time during the 90-day period beginning on the date of the individual’s appointment. The proposal, H.J.Res. 67, provided (in part) that:

If at any time 25 percent or more of the members of the House of Representatives are unable to carry out their duties because of death or incapacity, each Governor of a State represented by a member who has died or become incapacitated shall appoint an otherwise qualified individual to take the place of the member as soon as practicable (but in no event later than seven days) after the member’s death or incapacity has been certified.

H.J.Res. 67 was introduced on October 10, 2001, and referred to the House Judiciary Committee. The House Subcommittee on the Constitution held a hearing on February 28, 2002.<sup>38</sup> No further action on the measure was taken. The resolution had 86 cosponsors.

On December 20, 2001, Senator Arlen Specter introduced a similar proposal, S.J.Res. 30. It would have provided for the appointment of temporary Representatives by governors if 50% or more of Representatives died or were incapacitated. Further, it would have required that the appointee be of the same political party as the Member who had died or was incapacitated. The measure was referred to the Senate Committee on the Judiciary, Subcommittee on Constitution. No further action was taken on the proposal.<sup>39</sup>

---

<sup>36</sup> (...continued)

[<http://www.electcongress.org>], visited Apr. 16, 2004.

<sup>37</sup> See Coalition to Preserve an Elected Congress, *Protect Your Right to Elect Your Own Congress*; “Sign the Resolution to Preserve an Elected Congress,” [[http://www.electcongress.org/cgi\\_bin/resolution/Resolution.html](http://www.electcongress.org/cgi_bin/resolution/Resolution.html)], visited Apr. 16, 2004.

<sup>38</sup> U.S. Congress, House Committee on the Judiciary, Subcommittee on the Constitution, *Temporary Filling of House of Representatives Vacancies During National Emergencies*, hearing on H.J.Res. 67, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., Feb. 28, 2002 (Washington: GPO, 2002), 78 pp. Also, hearing transcript is available online at U.S. House of Representatives, Committee on the Judiciary, Subcommittee on the Constitution, *Hearings and Markups*, [<http://www.house.gov/judiciary/constitution.htm>], visited May 26, 2004.

<sup>39</sup> While the hearings held by the House Subcommittee on the Constitution in February 2002, focused on H.J.Res. 67 some of the provisions and concepts in S.J.Res. 30 and in (continued...)

A third proposed constitutional amendment, H.J.Res. 77, would have authorized Congress by law to provide for the temporary appointment of Representatives if 30% or more of House seats became vacant because of death or resignation. The proposal, which was introduced by Representative Zoe Lofgren on December 5, 2001, was referred to the House Committee on the Judiciary, Subcommittee on the Constitution. No further action was taken on the measure.

## Conclusion

In the aftermath of the September 11, 2001 terrorist attacks, there is considerable support among some current and former Members of Congress, scholars, and other political observers for devising additional ways of ensuring effective and representative operations of the House in time of national emergency. There appears to be little consensus, however, on precisely how to accomplish that goal. The need to maintain the continuity of Congress without sacrificing a House kept close to the people argues for a deliberate consideration of the issues in question. A number of relevant factors, including time constraints, constitutional and legal issues, procedural questions, and election processes will likely be considered in conjunction with the various proposals offered.

---

<sup>39</sup> (...continued)

H.J.Res. 77 were discussed by some of the witnesses who testified.

**Table 1. Selected Proposals for Filling House Vacancies in Time of National Emergency:  
Summary Table, 108<sup>th</sup> Congress <sup>a</sup>**

Proposal	Type	Means of filling vacancies	Cause	Vacancy trigger	Term limit <sup>c</sup>	Time to fill vacancies
Rep. Baird <sup>b</sup> (H.J.Res. 77)	Constitutional amendment	“Chief executive of State” would appoint temporary replacements from list of pre-designated successors	death or incapacity	“majority of the whole membership of the House” or if House adopts a resolution declaring extraordinary circumstances exist	- - - <sup>b</sup>	not later than seven days after Member’s death or incapacity has been certified
Rep. Baird <sup>b</sup> (H.J.Res. 83)	Constitutional amendment	“Chief executive of State” would appoint temporary replacements from list of pre-designated successors	death or incapacity	“majority of the whole membership of the House” or if House adopts a resolution declaring extraordinary circumstances exist	- - - <sup>b</sup>	not later than seven days after Member’s death or incapacity has been certified
Sen. Cornyn <sup>c</sup> (S.J.Res. 23)	Constitutional amendment	Congress would enact federal legislation to establish procedures for determining the inability of Senators or Representatives to serve, or the deaths of Representatives, with Congress by law declaring who serves in the vacant seats.	death or inability of Representatives; inability of Senators	one-fourth of the Members of either the House or Senate	- - - <sup>c</sup>	- - -
Sen. Cornyn/Lott <sup>d</sup> (S. 1820)	Federal statute	Each state would enact and implement laws for filling vacancies and redressing incapacities in its congressional delegation <sup>1</sup>	death or incapacity of Representatives or Senators	one-fourth of the Members of the House or Senate	- - - <sup>d</sup>	- - - <sup>d</sup>

Proposal	Type	Means of filling vacancies	Cause	Vacancy trigger	Term limit <sup>e</sup>	Time to fill vacancies
Rep. Larson <sup>e</sup> (H.J.Res. 89)	Constitutional amendment	State legislatures would appoint temporary replacements; if state legislatures do not appoint within specified time frame, the “chief executives of State” would make appointments	- - -	upon adoption of a resolution by a smaller number than a majority of the House that a vacancy exists in the majority of the number of House seats	until election is held to fill original vacancy <sup>e</sup>	State legislatures must convene a special session and appoint within 5 calendar days after the date the House adopts the resolution; if state legislatures do not appoint within 3 calendar days after convening special session, the chief executives of State shall appoint individuals
Rep. Lofgren (H.J.Res. 90)	Constitutional amendment	Congress would enact federal law to provide for temporary appointments	death or resignation	“30% or more of the seats of the House”	six months or until Member is elected, whichever occurs first	- - -
Rep. Rohrabacher (H.J.Res. 92) <sup>f</sup>	Constitutional amendment <sup>n</sup>	Each candidate for general election to the House or Senate would be authorized to appoint in ranked order 3 to 5 potential temporary successors not more than one year nor less than 60 days prior to the general election; if no such appointments are made, or if all successors are unable to serve the chief executive of state shall appoint <sup>f</sup>	Death or inability to discharge the powers and duties of the office (applies in emergency and non-emergency situations)	Upon written declaration of the Member or a majority of the potential successors that the Member is unable to discharge his or her duties	until Member’s written declaration that his or her inability to serve no longer exists or for term of office for which Member was elected	- - -

Proposal	Type	Means of filling vacancies	Cause	Vacancy trigger	Term limit <sup>c</sup>	Time to fill vacancies
Rep. Sensenbrenner (H.R. 2844) <sup>g</sup>	Federal statute	Congress would enact federal law to require expedited special elections under extraordinary circumstances	“extraordinary circumstances”	under “extraordinary circumstances” when Speaker of the House announces that vacancies in the House exceed 100	- - -	Not later than 45 days after the Speaker of the House announces that vacancies exist <sup>g</sup>

<sup>a</sup> This table summarizes information on the provisions of each proposal. For further information on each proposal see the corresponding section of this report.

<sup>b</sup> Neither of the two proposals introduced by Rep. Baird during the 108<sup>th</sup> Congress (H.J.Res. 77 and H.J.Res. 83) specify the length of time the appointee may serve; however, each provides that “an individual appointed to take the place of a member of the House... shall serve until the member regains capacity or until another member is elected to fill the vacancy resulting from the death or incapacity.”

<sup>c</sup> The Cornyn proposal (S.J.Res. 23) does not specify the length of time temporary successors may serve. It does however, provide that individuals replacing Members killed or incapacitated “shall serve until the disability is removed, or a new Member is elected.” Further, it provides that “Any procedures established pursuant to such a law shall expire not later than 120days after the death or inability of one-fourth of the House of Representatives or the Senate, but may be extended for additional 120-day period ....”

<sup>d</sup> The Cornyn/Lott proposal (S. 1820) and the Cornyn proposal (S.J.Res. 23) are a proposed constitutional amendment and implementing legislation (when combined called the Cornyn Plan) which seek to provide for quickly reconstituting both houses in the event that multiple numbers of Members are killed or incapacitated.

<sup>e</sup> The Larson proposal (H.J.Res. 89) also requires that the appointee be of the same political party as the Member who previously held the seat. Further, H.J.Res. 89 provides that the appointee “may not be a candidate in the next election for the House.” Procedures and requirements specified in the proposal apply only to vacancies existing as of the date of the adoption of the resolution or to vacancies first occurring during the 20-day calendar period which begins on the date the resolution (declaring vacancies exist in the majority of House seats) is adopted. The proposal does not specify the length of time the appointee would serve; however, it provides that the appointee shall serve until an election is held to fill the original vacancy.

<sup>f</sup> The Rohrabacher proposal (H.J.Res. 92) would repeal provisions of the 17<sup>th</sup> Amendment which provide for governors’ temporary appointment of persons to fill Senate vacancies. The measure authorizes candidates in the general election for the House and Senate to identify in a publicly available written declaration their successors, but does not require them to do so. If no such declaration was made by a candidate who is elected, the chief executive of state is authorized the make the appointment. Also, note that the measure would apply in emergency and non-emergency situations; as such, any number of vacancies (whether one or 100) would trigger it.

<sup>g</sup> As amended in Committee, the Sensenbrenner proposal (H.R. 2844) also provides that if a state is scheduled to hold a general election within 75 days of the Speaker’s announcement of more than 100 vacancies, the state would not be required to schedule an expedited special election, thus allowing a 30-day extension to those states.

**Key to Symbols and Abbreviations:**    - - -        Unspecified;    NA        Not applicable

**Table 2. Selected Proposals for Filling House Vacancies in Time of National Emergency:  
Summary Table, 107<sup>th</sup> Congress <sup>a</sup>**

Proposal <sup>b</sup>	Type	Means of filling vacancies	Cause	Vacancy trigger	Term limit <sup>c</sup>	Time to fill vacancies
Rep. Baird (H.J.Res. 67)	Constitutional amendment	Governor would appoint temporary replacements	“death or incapacity”	“25% or more of the Members of the House”	90 days	no later than seven days after Member’s death or incapacity
Sen. Specter (S.J.Res. 30)	Constitutional amendment	Governor would appoint temporary replacements	“death or incapacity”	“50% or more of the Members of the House”	90 days	no later than seven days after Member’s death or incapacity
Rep. Lofgren (H.J.Res. 77)	Constitutional amendment	Congress would enact federal law to provide for temporary appointments	“death or resignation”	“30% or more of the seats of the House”	--- <sup>d</sup>	---
Glennon (“Fill in the Blanks Amendment”) <sup>e</sup>	Constitutional amendment	Congress would enact federal law to provide for filling House vacancies	“killed or incapacitated”	“substantial number”	--- <sup>e</sup>	---
Davidson (Senate vacancy procedure counterpart) <sup>f</sup>	Constitutional amendment	Constitution would provide the House a procedure similar to the Senate procedure for temporarily filling vacancies <sup>f</sup>	any vacancy (whether there is an emergency or not) <sup>f</sup>	“when a vacancy happens” <sup>f</sup>	90 days	---
Wolfensberger (To amend 2 U.S.C., ch. 1, sec. 8) <sup>g</sup>	Federal statute	Congress would enact federal law to require expedited special elections under extraordinary circumstances	“death,” “resignation,” or “incapacity”	“vacancies in House exceed half the authorized membership”	NA	no later than 60 days after vacancy is declared
Tiefer <sup>h</sup> (Emergency Appointees to Committee of the Whole)	House rules change	House would allow “emergency Delegates” to have a role in Committee of the Whole	---	---	---	---

Proposal <sup>b</sup>	Type	Means of filling vacancies	Cause	Vacancy trigger	Term limit <sup>c</sup>	Time to fill vacancies
Former Reps. Foley-Gingrich/Frye <sup>i</sup> (Interim Successors)	House rules change	House would allow Members to pre-designate their “Interim Successors”	---	---	---	---

<sup>a</sup> This table summarizes information on the provisions of each proposal. For further information on each proposal see the corresponding section of this report.

<sup>b</sup> Of the eight measures listed in the table, three (H.J.Res. 67, S.J.Res. 30, and H.J.Res. 77) have been formally introduced on the House or Senate floor by Members of Congress (Rep. Brian Baird, Sen. Arlen Specter, and Rep. Zoe Lofgren, respectively) as proposed constitutional amendments. The names and descriptions used to identify all other proposals and the persons to whom they are attributed may vary, depending upon sources consulted.

<sup>c</sup> Term limit refers to the maximum length of time that the person filling the vacancy would be allowed to serve. In some instances a maximum is specified; in some instances no maximum is set but the proposal provides that the person (e.g., interim appointee, interim designee) filling the vacancy is to serve temporarily, until a successor is elected.

<sup>d</sup> Rep. Lofgren’s proposal (H.J.Res. 77) does not specify the length of time the appointee may serve; however, it provides that “any temporary member appointed pursuant to a law enacted to carry out this article shall serve until a member is elected to fill the vacancy in accordance with the applicable laws regarding special elections in the State involved.”

<sup>e</sup> The Glennon proposal calls for amending the Constitution to empower Congress to enact laws regulating the filling of House vacancies if a substantial number of Members is killed or incapacitated. Congress’s implementing statute could provide specifics on how the vacancies would be filled, hence the term “fill in the blanks amendment” (For text see Continuity of Government website, Proposed Constitutional Amendments — Michael Glennon “[Proposed] Joint Resolution,” [<http://www.continuityofgovernment.org/pdfs/proposalglennon.htm>], visited Apr. 16, 2004.)

<sup>f</sup> The Davidson proposal calls for amending the Constitution to provide the House a procedure similar to the Senate procedure for temporarily filling vacancies. Accordingly, state legislatures would be permitted to empower governors to appoint temporary replacements to the House (*whenever* vacancies happen) until special elections can be held. The appointments would be limited to a maximum of 90 days and could be made in emergency and non-emergency situations. (For text see AEI Continuity of Congress website, Proposed Constitutional Amendments — Michael Davidson, “[Draft] Joint Resolution,” available at [<http://www.continuityofgovernment.org/pdfs/proposal davidson.htm>], visited Apr. 16, 2004.)

<sup>g</sup> Among other things, the Wolfensberger proposal prescribes the circumstances under which a vacancy by death or resignation could be declared by either the governor or by the House, and the circumstances under which the House may declare a vacancy by incapacity. For text see Continuity of Government Website, Proposed Statutory and Rules Changes — Don Wolfensberger, “Summary of Provisions of Statutory Alternative for Filling House Vacancies Under Extraordinary Circumstances (Amending 2 U.S.C., ch.1, sec. 8),” Feb. 18, 2002, [<http://www.continuityofgovernment.org/pdfs/proposalwolfensberger.htm>], visited Apr. 16, 2004. See also U.S. Congress, House Committee on the Judiciary, Committee on the Judiciary Subcommittee on the Constitution, *Temporary Filling of House of Representatives Vacancies During National Emergencies*, hearings on H.J.Res. 67, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., Feb. 28, 2002, “Prepared Statement of M. Miller Baker,” p. 31-33. (In his statement, among other things, Mr. Miller Baker also supported enactment of federal law to require expedited elections.)

<sup>h</sup> See House Subcommittee on the Constitution, *Temporary Filling of House Vacancies*, hearing on H.J.Res. 67, “Testimony and Prepared Statement of Charles Tiefer, Feb. 28, 2002, pp. 41-46.

<sup>i</sup> For background and analysis of an approach offered by former Speakers Foley and Gingrich see “If Congress Were Attacked,” *Washington Post*, Mar. 17, 2002, p. B10. For full text of similar analysis offered by Alton Frye, see *AEI Continuity of Congress Website*, Proposed Statutory and Rules Changes — Alton Frye, “Maintaining Continuity in the House of Representatives: An Urgent Solution to an Urgent Problem,” [<http://www.aeipoliticalcorner.org/continuity.htm>], visited June 14, 2002.

<sup>j</sup> Neither of the two proposals introduced by Rep. Baird during the 108<sup>th</sup> Congress (H.J.Res. 77 and H.J.Res. 83) specify the length of time the appointee may serve; however, each provides that “an individual appointed to take the place of a member of the House . . . shall serve until the member regains capacity or until another member is elected to fill the vacancy resulting from the death or incapacity.”

**Key to Symbols and Abbreviations:**

- - -	Unspecified
NA	Not applicable