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*Continuity of Congress: Enacted and Proposed Federal  
Statutes for Expedited Election to the House in Extraordinary  
Circumstances*

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August 9, 2005

**Abstract.** On August 2, 2005, H.R. 2985, the Legislative Branch Appropriations Act, 2006, which includes a measure (Title III) providing for expedited special House elections in extraordinary circumstances, was signed into law (P.L. 109-55). As adopted by both houses in late July 2005, the conference report to H.R. 2985 (H.Rept. 109-189) included the "continuity in representation" provision. On June 30, 2005, the Senate passed H.R. 2985, with amendments, by unanimous consent, and asked for a conference with the House. During a markup held June 23 by the Subcommittee on Legislative Branch of the Senate Committee on Appropriations, the subcommittee, by a voice vote, recommended that the Senate strike Title III of the measure, providing for expedited special elections to replace members of the House of Representatives when 100 or more of the seats in the House are vacant due to "extraordinary circumstances."



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# CRS Report for Congress

## Continuity of Congress: Enacted and Proposed Federal Statutes for Expedited Election to the House in Extraordinary Circumstances

Updated August 9, 2005

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Prepared for Members and  
Committees of Congress

# Continuity of Congress: Enacted and Proposed Federal Statutes for Expedited Election to the House in Extraordinary Circumstances

## Summary

On August 2, 2005, H.R. 2985, the Legislative Branch Appropriations Act, 2006, which includes a measure (Title III) providing for expedited special House elections in extraordinary circumstances, was signed into law (P.L. 109-55). As adopted by both houses in late July 2005, the conference report to H.R. 2985 (H.Rept. 109-189) included the “continuity in representation” provision. On June 30, 2005, the Senate passed H.R. 2985, with amendments, by unanimous consent, and asked for a conference with the House. During a markup held June 23 by the Subcommittee on Legislative Branch of the Senate Committee on Appropriations, the subcommittee, by a voice vote, recommended that the Senate strike Title III of the measure, providing for expedited special elections to replace members of the House of Representatives when 100 or more of the seats in the House are vacant due to “extraordinary circumstances.”

On June 22, 2005 the House passed H.R. 2985, the Legislative Branch Appropriations Act, 2006, by a vote of 330 — 82. An amendment (H.Amdt. 338) offered by Representative Brian Baird to strike Title III of the bill relating to continuity in representation failed of adoption by a vote of 143 — 268.

On June 16, 2005, during the markup of a draft measure funding FY2006 legislative branch operations, the Appropriations Committee adopted an amendment providing for expedited special elections to replace Members when 100 or more of the seats in the House are vacant due to “extraordinary circumstances.” The amendment was offered by Representative Jerry Lewis, chairman of the Appropriations Committee reportedly at the request of the Speaker. The bill, which was introduced on June 20 as the Legislative Branch Appropriations Act, 2006, incorporates the text of H.R. 841, the Continuity in Representation Act of 2005, introduced by Representative James Sensenbrenner in mid-February. H.R. 841 was passed by the House on March 3 by a vote of 329 — 68 and has been placed on the Senate legislative calendar, but has not yet been called up for floor action.

The adoption of Title III of H.R. 2985, attaching a legislative proposal to a measure that must pass to fund legislative branch activities, has been reported as a signal that the majority leadership of the House place great importance on enacting a congressional emergency preparedness measure. It has been reported that should the Senate consider H.R. 841, the House might agree to strike Title III of H.R. 2985 during conference negotiations.

This report is one of several CRS products related to congressional continuity and contingency planning, and will no longer be updated. Others include CRS Report RL32031, *House Vacancies: Proposed Constitutional Amendments for Filling Them Due to National Emergencies* by Sula P. Richardson and Paul S. Rundquist; and CRS Report RL31594, *Congressional Continuity of Operations (COOP): An Overview of Concepts and Challenges* by R. Eric Petersen and Jeffrey W. Seifert.

## Contents

Recent Action .....	1
Title III, P.L. 109-55 as Enacted .....	2
H.R. 841 .....	3
Issue Background .....	5
Legislative Proposals, 108 <sup>th</sup> Congress .....	7
H.R. 2844 .....	7
S. 1820 .....	8
Further Reading .....	9
Continuity and Emergency Preparedness of Congress .....	9
Continuity and Preparedness in the Federal Government .....	9

# Continuity of Congress: Enacted and Proposed Federal Statutes for Expedited Election to the House in Extraordinary Circumstances

## Recent Action

On August 2, 2005, the President signed the Legislative Branch Appropriations Act, 2006 (P.L. 109-55), which includes a provision (Title III) for expedited special House elections in extraordinary circumstances. As adopted by the House (305-122) on July 28, 2005, and the Senate (96-4) on July 29, 2005, the conference report to H.R. 2985 (H.Rept. 109-189) included the “continuity in representation” provision.<sup>1</sup>

On June 30, 2005, the Senate passed H.R. 2985 with amendments, by unanimous consent. At the same time, the Senate asked for a conference and appointed conferees. (Unlike the House-passed version of H.R. 2985, the Senate-passed version of H.R. 2985 did not include the “continuity in representation” provision.) During a markup held June 23 by the Subcommittee on Legislative Branch of the Senate Committee on Appropriations, the subcommittee, by a voice vote, recommended that the Senate strike Title III of the measure, providing for expedited special elections to replace members of the House of Representatives when 100 or more of the seats in the House are vacant due to “extraordinary circumstances.”<sup>2</sup> Consideration of the language relating to special elections was reportedly included in the proposal submitted to the subcommittee by Senator Allard at the request of House leaders.<sup>3</sup>

On June 22, 2005 the House of Representatives passed H.R. 2985, the Legislative Branch Appropriations Act, 2006, by a vote of 330 — 82. In the course of the debate, Representative Brian Baird offered H.Amdt. 338, to strike Title III of

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<sup>1</sup> This report was originally coauthored by Sula P. Richardson, who has retired from the Congressional Research Service.

<sup>2</sup> U.S. Congress, Senate, Legislative Branch Appropriations, 2006, report to accompany H.R. 2985, 109<sup>th</sup> Congress, 1<sup>st</sup> sess., S.Rept. 109-89 (Washington: GPO, 2005), available at [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_reports&docid=f:sr089.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:sr089.109.pdf)].

<sup>3</sup> Daphne Retter, “Legislative Branch Appropriations: Spending Bill for Congressional Operations Heads to Conference committee,” *CQ Today*, July 1, 2005; and Daphne Retter, “Legislative Branch Appropriations: Senate Panel Strikes Congressional Continuity Language Sought by House,” *CQ Today*, June 23, 2005. Articles retrieved from the [cq.com](http://cq.com) website.

the bill relating to continuity in representation. The amendment failed of adoption by a vote of 143 — 268.

On June 16, 2005, Representative Jerry Lewis, Chairman of the House Committee on Appropriations, offered an amendment to a draft measure funding legislative branch operations for FY2006. Chairman Lewis's amendment was reportedly offered at the request of the Speaker.<sup>4</sup> The amendment was adopted by the committee as Title III of the funding bill by a voice vote, as was the full measure funding legislative branch activities.<sup>5</sup> The appropriations bill was introduced on June 20 as H.R. 2985. Title III of H.R. 2985 is the same text as H.R. 841, the Continuity in Representation Act of 2005, introduced by Representative James Sensenbrenner, which the House passed by a vote of 329 — 68 on March 3, 2005. On March 19, H.R. 841 was read in the Senate the second time, and placed on Senate legislative calendar.

The House has passed similar legislation authorizing special elections in extraordinary circumstance in the 108<sup>th</sup> and 109<sup>th</sup> Congresses. The adoption of Title III of H.R. 2985, attaching a legislative proposal to a measure that must pass to fund legislative branch activities, was reported as a signal that the majority leadership of the House placed great importance on enacting a congressional emergency preparedness measure. It was further reported that had the Senate agreed to consider H.R. 841, the House might have agreed to the elimination of Title III during conference negotiations on H.R. 2985.<sup>6</sup>

### **Title III, P.L. 109-55 as Enacted**

Title III of P.L. 109-55, making appropriations for the legislative branch for the fiscal year ending September 30, 2006, requires that states<sup>7</sup> in which a vacancy exists in its representation in the House of Representatives:

- hold a special election within 49 days<sup>8</sup> following an announcement by the Speaker of the House that because of extraordinary

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<sup>4</sup> Jennifer Yachnin, "House OKs \$2.9 Billion Legislative Branch Bill," *Roll Call*, June 23, 2005, at [[http://www.rollcall.com/pub/50\\_136/news/9794-1.html](http://www.rollcall.com/pub/50_136/news/9794-1.html)]; and Suzanne Nelson, "GOP Prods Senate on Continuity," *Roll Call*, June 20, 2005 at [[http://www.rollcall.com/issues/50\\_133/news/9716-1.html](http://www.rollcall.com/issues/50_133/news/9716-1.html)]; website visited July 14, 2005.

<sup>5</sup> House Rule XXI (2)(b) prohibits provisions changing existing law from being reported in general appropriations bills. H.Res. 334, adopted by the House on June 22, 2005, provided for a waiver of this prohibition during consideration of H.R. 2985.

<sup>6</sup> Jonathan Allen, "Legislative Branch Appropriations: House Uses Must-Pass Bill as Insurance for Congressional Continuity," *CQ Today*, June 16, 2005, retrieved from the *cq.com* website; and Suzanne Nelson, "GOP Prods Senate on Continuity," *Roll Call*, June 20, 2005 at [[http://www.rollcall.com/issues/50\\_133/news/9716-1.html](http://www.rollcall.com/issues/50_133/news/9716-1.html)], visited June 23, 2005.

<sup>7</sup> The measure would also apply to election officials in the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, and the U.S. Virgin Islands.

<sup>8</sup> As introduced, H.R. 841 called for special elections within 45 days. This was changed to 49 days by amendment on the floor.

circumstances, vacancies in representation from the states have exceeded 100 seats. The 49-day requirement would be waived if, during the 75-day period beginning on the date of the vacancy announcement, a regularly scheduled general election or another special election for the office involved is scheduled to be held;

- make a determination of the candidates who will run in the special election (1) not later than 10 days after the vacancy announcement by the political parties authorized by state law to nominate candidates; or (2) by any other method the state considers appropriate;
- ensure to the greatest extent practicable that absentee ballots for the election are transmitted to absent uniformed services voters and overseas voters not later than 15 days after the Speaker of the House announces that the vacancy exists; and
- accept and process any otherwise valid ballot or other election material from an absent uniformed services voter or an overseas voter, as long as the ballot or other material is received by the appropriate state election official not later than 45 days after the state transmits the ballot to the voter.

In addition, Title III of P.L. 109-55 sets forth requirements for judicial review of any action brought for declaratory or injunctive relief to challenge a vacancy announcement, and require the judiciary to provide a final decision within three days of the filing of such an action. The law makes a final decision non-reviewable.<sup>9</sup>

## **H.R. 841**

On February 16, 2005, Representative James Sensenbrenner introduced H.R. 841. The bill would require expedited special elections to be held within 45 days of an announcement by the Speaker of the House that there are more than 100 vacancies in the House.

The House Administration Committee held a markup on H.R. 841 on February 17, 2005. The committee agreed to an amendment in the nature of a substitute offered by Representative Robert Ney, the committee chairman. Among other things, the Ney amendment added a provision giving states authority to set up their own candidate nominating processes, so long as the vacancies are filled within the prescribed time. It also added a section on the “Application to District of Columbia and Territories”

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<sup>9</sup> See U.S. Congress, House, *Continuity in Representation Act of 2005, Report to accompany H.R. 841*, 109<sup>th</sup> Congress, 1<sup>st</sup> sess., H.Rept. 109-8, Part I (Washington: GPO, 2005), at [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_reports&docid=f:hr008p1.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:hr008p1.109.pdf)] and U.S. Congress, House, *Report to accompany H.R. 2985*, 109<sup>th</sup> Congress, 1<sup>st</sup> sess., H.Rept. 109-139 (Washington: GPO, 2005), at [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_reports&docid=f:hr139.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:hr139.109.pdf)].

(namely, that the measure applies to the District of Columbia and territories, but that vacancies in those jurisdictions shall not be taken into account by the Speaker in determining whether vacancies from the states in the House exceed 100). The committee rejected an amendment by Representative Juanita Millender-McDonald, the ranking minority member. It would have lengthened the timetable for holding the expedited elections to 60 days (rather than 45 days). The House Administration Committee reported H.R. 841 favorably, as amended, on February 24, 2005.<sup>10</sup>

On March 1, 2005, the House Rules Committee ordered by voice vote a special rule providing for the consideration of H.R. 841. The structured rule provided for the consideration of two amendments: an amendment by Representative Millender-McDonald expanding from 45 to 60 days the period within which special elections must be held (amendment previously offered in House Administration Committee and defeated) and an amendment by Representative Jackson-Lee broadening the grounds upon which a legal challenge may be made against the expedited processes outlined in the bill. When the special rule providing for consideration of H.R. 841 was brought up for floor action, Representative Tom Cole, the majority floor manager, moved to amend the rule to permit the offering of a “manager’s amendment” that would extend the 45-day timetable to 49 days, or seven full weeks. The Cole amendment was agreed to by voice vote, and the special rule was also later agreed to by voice vote.

During consideration of H.R. 841, Representative Ney offered the specified manager’s amendment which was agreed to by voice vote. The Millender-McDonald amendment to extend the 49-day to 60 days was defeated by a recorded vote of 192-229. The Jackson-Lee amendment to broaden the grounds on which legal challenges to the expedited elections could be made was similarly defeated by a vote of 183-239.

Representative Baird of Washington offered a motion to strike the enacting clause of the bill, a parliamentary motion which, if successful, would have defeated the measure by eliminating the language that gave the bill its legal authority. Representative Baird and Representative Rohrabacher spoke briefly about their view that the bill did not go far enough to ensure the continuity of House operations. They endorsed proposals to amend the Constitution to permit the temporary appointment of acting Representatives to fill House vacancies immediately, rather than waiting possibly for nearly two months until the full House membership could be reconstituted. Representative Baird, after speaking in favor of changes in the Constitution, withdrew his motion before it could come to a vote.

Representative Conyers, the ranking minority member on the Judiciary Committee, offered a motion to recommit which directed the addition of language to the bill requiring states to establish equitable means for the allocation of voting machines to all precincts. The Conyers amendment sought to prevent long lines and

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<sup>10</sup> See U.S. Congress, House, *Continuity in Representation Act of 2005, Report to accompany H.R. 841*, 109<sup>th</sup> Congress, 1<sup>st</sup> sess., H.Rept. 109-8, Part I (Washington: GPO, 2005), at [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_reports&docid=f:hr008p1.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_reports&docid=f:hr008p1.109.pdf)], visited June 23, 2005.



voting delays in precincts to which an inadequate number of voting machines had been assigned. The Conyers motion was defeated by a vote of 196-223. The bill passed by a vote of 329-68 after the House vitiated by unanimous consent the voice vote passage of the bill. The House took that action after it was brought to the Speaker pro tempore's attention that Representative Miller-McDonald had been seeking recognition to demand a yea-and-nay vote but had not been recognized to offer that motion.<sup>11</sup>

In the Senate, H.R. 841 was not referred to committee but was placed on the Senate Legislative Calendar on March 19, 2005.

## Issue Background

The terrorist attacks of September 11, 2001, biological agent incidents affecting Congress in 2001, 2002, and 2003, and legislative branch-wide evacuations due to incursions of unidentified aircraft near the Capitol in 2004 and 2005 have prompted increased concerns about the activity of government in an emergency. This uncertainty has prompted some Members of Congress, scholars, and other political observers to consider options for congressional succession, or for temporarily filling multiple House vacancies that might occur, due to injury or death of Members in emergency situations.<sup>12</sup> In the 108<sup>th</sup> Congress, several contingency measures were introduced that would have: (1) amended the Constitution by allowing for the temporary appointment of individuals pre-designated by Members; (2) allowed state legislatures or governors to make temporary appointments; (3) authorized Congress to provide a temporary appointment process; and (4) authorized Congress to regulate the temporary filling of vacancies by law.<sup>13</sup>

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<sup>11</sup> The full debate on the special rule and on H.R. 841 can be found in the *Congressional Record* (daily edition), vol. 151, 109th Cong., 1st sess., March 3, 2005, pp. H948-H971.

<sup>12</sup> Filling large numbers of vacant seats in the House is one of several contingency planning challenges facing Congress, some of which predate the September 2001 attacks. Planning in support of legislative and administrative operations began pursuant to a joint bipartisan leadership directive issued on September 6, 2000, directing the Capitol Police Board (comprising the Sergeants at Arms of the House and Senate and the Architect of the Capitol) to “develop and manage” a “comprehensive Legislative Branch emergency preparedness plan.” To facilitate this effort, the board was to work “with the Attending Physician and the Chief, US Capitol Police, and in coordination with the Officers of the Senate and House” to develop “an integrated architecture which will address all hazards which could impede the continuity of essential Legislative Branch functions.” According to the directive, this integrated architecture is to include “at a minimum, emergency preparations, response, mitigation and stabilization activities, and recovery operations.” Trent Lott, Senate Majority Leader, J. Dennis Hastert, Speaker of the House, Thomas A. Daschle, Senate Minority Leader, Richard A. Gephardt, House Minority Leader, “Directive to the United States Capitol Police Board.” September 6, 2000. See CRS Report RL31594, *Congressional Continuity of Operations (COOP): An Overview of Concepts and Challenges*, by R. Eric Petersen and Jeffrey W. Seifert, pp. 3-9.

<sup>13</sup> Several CRS reports address measures proposing constitutional amendment and the issues underlying vacancy contingency proposals. For detailed analyses of recent proposals to fill mass vacancies in the House of Representatives, see CRS Report RS22067, *House* (continued...)

Some observers contend that instead of amending the Constitution, Congress could exercise its constitutional authority to preempt state law regarding the “Times, Places, and Manner of Holding Elections”<sup>14</sup> for the House and pass legislation that would require states to hold expedited special elections within a specified time frame.<sup>15</sup> They assert that the legislation could amend current law,<sup>16</sup> which leaves it to state law to determine when an election must be held to fill a House vacancy. Supporters of this approach 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 argued 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. In congressional testimony, several experts in election administration expressed concerns regarding the administrative capacity of some states to administer special elections within the 45 days originally proposed in H.R. 841.<sup>17</sup> Aside from the administrative challenges, if a number of

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<sup>13</sup> (...continued)

*Vacancies: Proposals for Filling Them After the Death or Injury of Large Numbers of Members, 2005-2006*, by Sula P. Richardson and Paul S. Rundquist; CRS Report RL31394, *House Vacancies: Selected Proposals for Filling Them After a Catastrophic Loss of Members, 2001-2004*, by Sula P. Richardson and Paul S. Rundquist; and CRS Report RL32031, *House Vacancies: Proposed Constitutional Amendments for Filling Them Due to National Emergencies*, by Sula P. Richardson and Paul S. Rundquist. Background reports on contingency planning include CRS Report RS21089, *Continuity of Government: Current Federal Arrangements and the Future*, by Harold C. Relyea; CRS Report RL31594, *Congressional Continuity of Operations (COOP): An Overview of Concepts and Challenges*, by R. Eric Petersen and Jeffrey W. Seifert; and CRS Report RL31857, *Executive Branch Continuity of Operations: An Overview*, by R. Eric Petersen.

<sup>14</sup> U.S. Const. art. I, § 4, Clause 1.

<sup>15</sup> Testimony and Prepared Statement of M. Miller Baker, U.S. Congress, House Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights and Property Rights, *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 June 23, 2005.

<sup>16</sup> 2 U.S.C. 1, §. 8.

<sup>17</sup> Individual testimony, prepared statements and written submissions of Thad Hall, Doug R. Lewis, Cory G. Fong, and Curtis Gans, in U.S. Congress, Senate, Committee on the  
(continued...)

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.

## Legislative Proposals, 108<sup>th</sup> Congress

**H.R. 2844.** In the 108<sup>th</sup> Congress, the most extensive congressional consideration of statutory approaches to mass vacancy issues centered on H.R. 2844, the Continuity in Representation Act of 2003, introduced by Representative James Sensenbrenner on July 24, 2003. The measure was referred to the Committee on House Administration and, sequentially, to the House Committee on the Judiciary. The bill would have 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. In a written statement, a witness representing a group of state election administrators observed that most election officials believed that 45 days was the minimum period in which special elections could be held, and that “it seems to us that every day you can give us beyond 45 helps us have a more valid election that the public will buy into, live with, understand and have some appreciation for.”<sup>18</sup>

Subsequently, at the House Administration Committee markup of H.R. 2844 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 a 21-day schedule, set in the bill as introduced, to 45 days.<sup>19</sup> The measure was reported by a 4-3 vote. The report of the committee was issued on December 8, 2003.<sup>20</sup> The Committee on the Judiciary held no separate hearings on the measure, relying on testimony it received on proposed constitutional amendments

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<sup>17</sup> (...continued)

Judiciary, *Ensuring the Continuity of the United States Government: The Congress*, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess., Sept. 9, 2003 (Washington: GPO, 2003), pp. 22-24, 26-41, 86-100, available at [<http://a257.g.akamaitech.net/7/257/2422/28dec20041100/www.access.gpo.gov/congress/senate/pdf/108hrg/96926.pdf>].

<sup>18</sup> Statement of Doug Lewis, Executive Director, Election Center, U.S. Congress, House, Committee on House Administration, *Continuity of Congress: Special Elections in Extraordinary Circumstances*, 108<sup>th</sup> Congress, 1<sup>st</sup> sess., Sept. 24, 2003 (Washington: GPO, 2003), available at [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_house\\_hearings&docid=f:90083.wais](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:90083.wais)].

<sup>19</sup> U.S. Congress, House, Committee on House Administration, *Mark-Up of H.R. 2844, the Continuity in Representation Act of 2003*, 108<sup>th</sup> Cong., 1<sup>st</sup> sess., Nov. 19, 2003 (Washington: GPO, 2004).

<sup>20</sup> U.S. Congress, House, *Report to accompany H.R. 2844*, 108<sup>th</sup> Congress, 1<sup>st</sup> sess., H.Rept. 108-404, Part I, (Washington: GPO, 2003).

in the 107th Congress,<sup>21</sup> and testimony taken by the Cox-Frost task force, a bipartisan House panel created in the spring of 2002 to study the continuity issue.<sup>22</sup> The Judiciary Committee reported the measure on January 21, 2004, and the report was filed on January 28, 2004.<sup>23</sup> On April 22, 2004, the House passed H.R. 2844, by a vote of 306 to 97. The measure was placed on the Senate calendar. No further action on it was taken during the 108th Congress.

**S. 1820.** A bill, S. 1820, introduced by Senator John Cornyn on November 5, 2003, would have authorized the states to take emergency action to fill vacant seats of Members or replace incapacitated Members if 25% of the House or Senate were deceased or incapacitated. The emergency procedures would have been 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 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 have authorized 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 determined appropriate. Under each of the latter three options, a subsequent special election would have been required. With regard to Senate vacancies, the bill would have provided 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 determined. The Cornyn bill did not appear to contemplate the holding of special elections to fill a Senate vacancy, although Oregon, Wisconsin, and, in some circumstances, Oklahoma require special elections to fill vacancies. The proposal was referred to the Senate Committee on Rules and Administration.<sup>24</sup> No further action was taken on S. 1820.

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<sup>21</sup> For a discussion of contingency-related constitutional amendments proposed in the 107<sup>th</sup> Congress, see CRS Report RL31394, *House Vacancies: Selected Proposals for Filling Them After a Catastrophic Loss of Members, 2001-2004*, by Sula P. Richardson and Paul S. Rundquist.

<sup>22</sup> The group was headed by Rep. Christopher Cox, then-chair of the Republican Policy Committee, and Rep. Martin Frost, then-chair of the Democratic Caucus.

<sup>23</sup> U.S. Congress, House, Committee on the Judiciary *Continuity of Representation Act of 2003*, report to accompany H.R. 2844, 108<sup>th</sup> Congress, 2<sup>nd</sup> sess., H.Rept. 108-404, Part II, (Washington: GPO, 2004).

<sup>24</sup> Another measure introduced by Senator Cornyn, S. 2031 (108<sup>th</sup> Congress), introduced January 27, 2004, would have addressed only the issue of senatorial incapacity. Under procedures set in the bill, if the Senate found itself without a quorum, the majority and minority leaders (or their designees) could 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 the bill authorizing states to enact into law would have been triggered, permitting the replacement of Senators unable to serve.

## Further Reading

### Continuity and Emergency Preparedness of Congress

CRS Report RS22067. *House Vacancies: Proposals for Filling Them After the Death or Injury of Large Numbers of Members, 2005-2006*, by Sula P. Richardson and Paul S. Rundquist.

CRS Report RL32031. *House Vacancies: Proposed Constitutional Amendments for Filling Them Due to National Emergencies*, by Sula P. Richardson and Paul S. Rundquist.

CRS Report RL31394. *House Vacancies: Selected Proposals for Filling Them After a Catastrophic Loss of Members, 2001-2004*, by Sula P. Richardson and Paul S. Rundquist.

CRS Report RL31594. *Congressional Continuity of Operations (COOP): An Overview of Concepts and Challenges*, by R. Eric Petersen and Jeffrey W. Seifert.

CRS Report RS21140. *Emergency Electronic Communications in Congress: Issues and Legislative Proposals, 107th and 108th Congresses*, by Jeffrey W. Seifert and R. Eric Petersen.

CRS Report RL31103. *House of Representatives Information Technology Management Issues: An Overview of the Effects on Institutional Operations, the Legislative Process, and Future Planning*, by Jeffrey W. Seifert and R. Eric Petersen.

CRS Report RS21089. *Continuity of Government: Current Federal Arrangements and the Future*, by Harold C. Relyea.

### Continuity and Preparedness in the Federal Government

CRS Report RL32752. *Continuity of Operations (COOP) in the Executive Branch: Issues in the 109th Congress*, by R. Eric Petersen.

CRS Report RL31857. *Executive Branch Continuity of Operations (COOP): An Overview*, by R. Eric Petersen.

CRS Report RL31978. *Emergency Preparedness and Continuity of Operations (COOP) Planning in the Federal Judiciary*, by R. Eric Petersen.

CRS Report RL31761. *Presidential Succession: An Overview with Analysis of Legislation Proposed in the 108th Congress*, by Thomas H. Neale.

CRS Report RS21017. *Terrorist Attacks and National Emergencies Act Declarations*, by Harold C. Relyea.

CRS Report 98-505. *National Emergency Powers*, by Harold C. Relyea.