

COMPROMISE NEAR ON CONTINUITY

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Roll Call

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The possibility of a logjam in the House over the budget last week brought the main factions in the debate over continuity of Congress closer than they have ever been to a compromise that would clear the way for floor debate on the issue.

Amid early signs that the budget resolution might not be ready to go to the floor, House leaders contemplated allowing at least committee debate on a constitutional amendment to reconstitute the chamber in the event of catastrophe.

But regardless of the impetus, the willingness of Republican leaders - most of whom openly oppose amending the Constitution to ensure that the House could temporarily replace dead or incapacitated lawmakers - to negotiate with amendment supporters (all of whom are Democrats) represents the first substantial movement on the issue in the House in months and the closest it has been to floor debate in the two and a half years since the terrorist attacks.

Another indication that House leaders may have reconsidered their steadfast opposition to allowing debate on a constitutional amendment is Judiciary Chairman Jim Sensenbrenner's (R-Wis.) refusal, through a spokesman, to rule out considering such language.

"The chairman has not stated that a constitutional amendment in any way would not be considered," said Judiciary spokesman Jeff Lungren. "He is focused right now on moving his bill and getting

that signed into law. He will continue to watch and monitor continuity issues."

Sensenbrenner testified at several hearings in both chambers, however, that he opposes appointments, even temporary, to the House on the grounds that they would change the fundamental character of the institution. Proponents of a constitutional amendment as the only way to ensure the continuity of the legislative branch in the event large numbers of Members are killed or incapacitated would have Members temporarily appointed - either by state legislatures, governors or from a list drawn up by current Members - until special elections can be held.

Sensenbrenner's bill, cosponsored by Rules Chairman David Dreier (R-Calif.) and Rep. Candice Miller (R-Mich.), would expedite special elections to within 45 days of a disaster killing more than 100 Members. It does not address the issue of incapacitation.

In past statements, Sensenbrenner, who avoids speaking directly with the press, has said consistently that he opposes appointments to the House under any circumstances.

"James Madison used the strongest of terms when stating the House must be composed only of those elected by the people. The House - uniquely among all branches and bodies of the entire federal government - is rooted in democratic principles that must be preserved always," he stated late last year.

House Majority Whip Roy Blunt (R-Mo.) has taken the lead in finding a way for the House to address the issue more broadly than simply taking up

Sensenbrenner's special elections bill.

"Republicans, generally speaking, don't favor the constitutional approach on this issue, but we are really working with the Democratic leadership to come up with a workable compromise," said a GOP leadership aide.

Republicans likely wouldn't need Democratic cooperation to pass the expedited special elections bill. But a party-line floor vote on an issue so fundamental to the institution would only magnify the partisan fight that broke out when it was marked up before Sensenbrenner's committee earlier this year. At that time, committee Democrats attempted to get the chairman to permit discussion about the need for a constitutional amendment, but he refused, and his bill was passed out on a party-line vote. Even Judiciary ranking member John Conyers (D-Mich.), who had cosponsored the measure, voted against it.

"They don't want it to look like a food fight," said one Democratic aide.

A senior GOP leadership aide acknowledged as much, saying, "We don't want to have a partisan amendment."

Blunt spokeswoman Burson Taylor said last week that "it's fair to say they are still in discussions about how to bring up the freestanding bill and the amendment."

Both Democratic and Republican sources indicated that GOP leaders were trying to convince Sensenbrenner to allow debate on the issue in one venue or another, but only because they are

confident that a constitutional resolution wouldn't garner anywhere close to the 290 votes (two-thirds of the House) necessary for it to pass.

A hearing on such language was held two years ago before a Judiciary subcommittee but the issue never made it onto the full panel's agenda.

Sensenbrenner's opposition remains the biggest obstacle to bringing such language to the floor.

Blunt discussed the possibility of "bringing a constitutional amendment to the floor, through regular order, through his committee," said the GOP leadership aide, who added that Blunt is "quarterbacking" the issue for the GOP.

Rep. John Larson (D-Conn.), a confidant of House Minority Leader Nancy Pelosi (D-Calif.) and her appointee as ranking member of the House Administration Committee, has been the go-to person for GOP leaders attempting to foster debate.

It's unclear at this point how Larson's constitutional resolution - possibly along with similar measures drafted by Reps. Brian Baird (D-Wash.) and Zoe Lofgren (D-Calif.) - would be brought up. Presumably, it would not be germane as an amendment to Sensenbrenner's bill.

Larson's amendment, introduced earlier this month, would permit temporary appointees (of the same party as the dead or incapacitated lawmakers) chosen by the state legislatures, or, in the event they don't act, by governors. The former history teacher has said he favors this approach because it would be similar to the way the members of the First and Second Continental Congresses were

chosen.

"There is no way the Founders could have foreseen the need to address such an issue. The terrorist acts that take place nearly every day across the globe were not a part of their world," he said in a statement. "If the Senate can accept an appointment to fill an entire term, then a temporary appointment should not be that offensive to the concept of democracy, and therefore, be acceptable for the House."

Supporters of a constitutional amendment don't see temporary appointments as mutually exclusive with expedited special elections. Rather they think both are necessary to ensure that the legislative branch could function immediately after a catastrophe.

The 17th Amendment allows governors to fill Senate vacancies by appointment in the case of death, resignation or expulsion from the chamber. But the Constitution provides that House vacancies must be filled by special election. Both chambers could potentially be rendered inoperable without a quorum if a majority of their Members were incapacitated.

Speaker Dennis Hastert (R-Ill.) has publicly said he favors the approach taken by Sensenbrenner, Dreier and Miller rather than a constitutional amendment. No Republican House Member has come out in favor of amending the Constitution.

"Procedurally, I think that if they could let Mr. Larson's amendment come up they would, because it's obviously not going to pass," the Democratic aide said. "The groundwork has not been done

there. I don't know if they can get Sensenbrenner to agree to hold a hearing or not."