

**CONTINUITY GAINS STEAM;
HATCH SEEKS AMENDMENT
PREPARING FOR CATASTROPHE**

By: Suzanne Nelson and Mark Preston
Roll Call
June 9, 2003

Adding to already burgeoning momentum in both chambers to address continuity of Congress, Sen. Orrin Hatch (R-Utah) plans to introduce a constitutional amendment to allow the legislative branch to be reconstituted in the event of a catastrophe.

On the other side of the Capitol, Speaker Dennis Hastert (R-Ill.) indicated Thursday that he would consider amending the Constitution for such a purpose. "I haven't ruled out anything," he said in an interview, although he said he would prefer to first exhaust statutory changes.

Hastert expressed support for a bill Reps. Christopher Cox (R-Calif.) and Martin Frost (D-Texas) introduced last week to clarify the 1947 Presidential Succession Act and remove ambiguities that could result if all of the top constitutional officers are killed simultaneously.

"Congress can go ahead and do something anyway. We don't need a constitutional amendment" to move forward immediately, Hastert said.

Since Sept. 11, 2001, Members have been grappling with how to ensure continuity of the first branch of government should a cataclysmic incident debilitate or kill large numbers of Members.

The 17th Amendment gives state governors appointment power if a Senator dies (it doesn't address the issue of incapacitation, however). But as the Constitution is written, the House has an intractable problem: If many of its Members were killed, the 60 or 90 days it would take before special elections could fill the seats would, at the very least, leave the country without a representative House during a time of national crisis.

Hatch is looking at several different proposals to address continuity for both chambers, according to Makan Delrahim, staff director for the Judiciary Committee. Hatch could introduce his plan "in the coming weeks or months" and intends to discuss it with ranking member Patrick Leahy (D-Vt.), Delrahim said.

"Senator Hatch has instructed us to draft a constitutional amendment for the continuity of Congress and to examine different ways it could be done," Delrahim added.

The continuity issue is picking up steam in other places as well.

House Rules Chairman David Dreier (R-Calif) introduced a resolution to create a joint committee on continuity of government, co-chaired by Senate Rules and Administration Chairman Trent Lott (R-Miss.). The bill passed the House last week and has been sent to the Senate and referred to Lott's committee.

The Mississippi Senator indicated that he strongly supports the select committee, which would present a preliminary report to the Speaker and Senate Majority Leader by Jan. 31,

2004, and a final report on May 31, 2004.

"We believe it's a good thing," Lott said Thursday, adding that he's talked briefly with House leaders about it.

"They do have a problem different from ours. Generally the two bodies have acted with comity" with issues that primarily affect only one chamber, Lott said of the two chambers' tradition in not meddling with the other's affairs.

But since this could involve a constitutional amendment, Lott said, the Senate would be deeply involved in the debate.

"I assume we're going to get that done," Lott said of the amendment, adding that he supports the idea generally.

As to other Senators who will probably get involved in the discussions, Lott remarked: "When it comes to rules and the Constitution, fortunately or unfortunately, you have to check with Senator [Robert] Byrd [D-W.Va.]."

Three constitutional amendments allowing appointments to the House have passed the Senate, all between 1954 and 1960, but such efforts have never made headway in the House.

In the previous Congress, Reps. Brian Baird (D-Wash.) and Zoe Lofgren (D-Calif.) and Sen. Arlen Specter (R-Pa.) all introduced different proposals to deal with mass deaths or incapacitation of Members.

Sen. John Cornyn (R-Texas), who chairs the Judiciary subcommittee on the

Constitution, said early last week that he would hold hearings this year on a constitutional amendment, and Hatch's proposal, upon being drafted, will be referred to that panel.

Cornyn's announcement came after the release of a joint American Enterprise Institute-Brookings Institution continuity of government report that recommended amending the Constitution as the only comprehensive action to stave off chaos in the event of a wide-scale attack on the federal government.

Members of the commission, chaired by ex-Sen. Alan Simpson (R-Wyo.) and former presidential adviser Lloyd Cutler, have expressed hope that Congress will take up the issue in earnest in the next few months.

"We do want to stress the urgency of this. We'd love for it to be taken up immediately," Continuity of Government Commission Executive Director John Fortier said.

But he added that the relevant committees are likely to want full hearings of their own. "It's not that long until January in terms of legislative process," he said. "But time might not be on our side. Any terrorist attack is coming on the terms of the people who commit it."

In proposing their changes to the Presidential Succession Act, Cox and Frost hope to resolve the continuity of government issues that can be addressed short of amending the constitution.

Among other things, the bill seeks to address the dubious line of succession if the president, vice president, Speaker

and Senate Pro Tem were killed. The executive branch would then be headed by the secretary of State, and the House would elect a new Speaker.

"Would that person supplant the acting president?" Cox asked. "These are the kinds of questions that need clarifying."

Frost said the new president in that scenario "should not be subject to being bumped [because of] a quirk in the law."

The other problem, according to Frost and others, is that the number of sworn and living Members of the House "could be five." So it's possible that three people, a majority, could elect a new Speaker and that person could then challenge the former secretary of State for the presidency.

"This does not lead to continuity. This does not lead to a situation in which people would have confidence in government," the Texas Democrat said at a press conference announcing the bill.

The measure would also add the secretary of Homeland Security into the line of succession after the attorney general. Traditionally, the Cabinet secretaries have queued for the presidency in the order their departments were created, but Cox and Frost said that position's relative import at a time of crisis makes it worthy to leap over other posts.

Sen. Mike DeWine (R-Ohio) introduced a stand-alone bill that would likewise put the newest Cabinet agency behind the attorney general in succession. The measure is currently before the Rules and Administration

Committee, and DeWine said Lott and ranking member Chris Dodd (D-Conn.), who also co-sponsored the bill, have agreed to move on it.