

PANEL SUPPORTS CONSTITUTIONAL AMENDMENT

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WASHINGTON – Experts and lawmakers appearing before a special committee on government continuity said Monday that a constitutional amendment would likely be required to solve the problem of what to do if a terrorist attack kills or injures more than half of the House of Representatives.

"There is a hole in our otherwise wonderful Constitution that needs plugging, and it is something that we can and should fix," said Lloyd Cutler, co-chair of the Continuity of Government Commission and former counsel to President Bill Clinton. "There is a great deal of sentiment that this can only be fixed by a constitutional amendment."

The issue was given special urgency by the events of last Sept. 11. Hijacked United Flight 93 is thought to have been heading for the Capitol when it crashed at 10:10 a.m. in a Pennsylvania field. Hundreds of lawmakers could have been killed in the attack.

While ensuring a clear succession is a non-partisan issue, the language of an amendment promises to be the subject of considerable debate. Three draft amendments have already been floated by lawmakers. They vary in a number of ways, underscoring how difficult it may be to get lawmakers to agree on terms for appointing new members that would not change the voters' intentions.

Under current law, vacancies in the House of Representatives can be filled

only by a special election within states -- a process that the panel said takes four months on average to complete.

According to the 17th Amendment, state governors can make temporary appointments to fill Senate vacancies. But because no such arrangement has been made for the House, if the majority of Congressmen are killed or injured at once, Congress would be incapacitated until elections could establish a new majority.

"We could not declare war, we could not appropriate money, we could not pass laws, and we could not appoint judges. We could not do any of the things that a functioning government has to do," said Cutler.

The bi-partisan commission, a joint project of the American Enterprise Institute and the Brookings Institute, met for the first time Monday. It is co-chaired by former Sen. Alan Simpson and includes former House Speakers Thomas Foley, Newt Gingrich, and Bob Michel, and former Cabinet members Lynn Martin and Donna Shalala.

The commission was started in part to push Congress to take the issue of House succession more seriously, said congressional scholar Norman Ornstein, who is advising the panel.

A bi-partisan House task force has held meetings on the issue since shortly after the Sept. 11 attacks. But the panel has not yet offered any recommendations, and has not begun serious discussions on the shape of a future constitutional amendment, panel members said.

Task Force Chair Christopher Cox, R-

Calif., said Monday that his panel would propose its first legislation on the House floor next week. That bill would ask states to examine and speed up the process by which they hold special elections for vacant seats, Cox said.

The Task Force is also planning to propose alterations to House rules regarding a quorum, so the House would be able to adapt to a situation with fewer members in the case of a catastrophic event.

"We're trying everything short of an amendment first," Cox said. "It is extraordinarily difficult to make progress on an amendment, which requires two-thirds of Congress, and ratification from three-quarters of the states," he said.

Since Sept. 11, three legislators have proposed draft constitutional amendments to smooth House succession. Rep. Brian Baird, D-Wash., Monday proposed an amendment that would require each member of the House to designate one or more potential successors, who would take office in the event of death or incapacity of an elected member of the House.

Rep. Zoe Lofgren, D-Calif., proposed to allow Congress to make a special rule providing for the appointment of temporary members if 30 percent or more of House seats were vacant. A special election would follow as soon as possible.

A proposal by Sen. Arlen Specter, R-Pa., requires that more than 50 percent of members be incapacitated or killed before a state governor can appoint temporary members. It also stipulates that newcomers be of the same party as

the member they replace.

Similar constitutional amendments were proposed by the Senate in the 1950s, but were not passed because the House could not agree on language, the panel said.

Fear of a similar delay over the details of an amendment would be a key reason to keep the language of an amendment simple and let legislation deal with the details, said Michael Glennon, a constitutional scholar at the Woodrow Wilson Center.

"The momentum that now exists for a constitutional amendment could fade if the debate bogs down over competing solutions. Better to take advantage of the widespread belief that some solution is needed, and to open the door to when a consensus finally develops on specifics," he said in a statement.

Because they must be ratified by the legislatures of three-quarters of the states, constitutional amendments have historically taken years to pass. Cutler said Monday that he would recommend Congress push hard to move states along faster.

"We haven't got seven years. At most, we could allow one state legislative session, not more before we deal with this," he said.

Baird, who addressed the panel, said he believed the House should take up the issue of an amendment by January 2003. The Commission plans to also present its findings in January.