

**SUMMARY OF PROVISIONS OF STATUTORY ALTERNATIVE
FOR FILLING HOUSE VACANCIES
UNDER EXTRAORDINARY CIRCUMSTANCES
(Amending 2 U.S.C., ch. 1, sec. 8)
(Draft: Feb. 18, 2002)**

- Existing language in the law which leaves it to the states and territories to prescribe the time for holding special elections to fill vacancies in the House under ordinary circumstances is left unchanged.
- Under the extraordinary circumstances in which vacancies in House exceed half the authorized membership, the executive authority of each affected state affected shall issue a writ of election to fill the vacancy not later than 60 days after the vacancy is declared, unless a regular election occurs during that period or within 30 days thereafter.
- A vacancy by death or resignation can be declared either by the governor of the state or by the House (by adoption of a resolution), and, if both the House and governor declare a vacancy, the 60 day time frame for the election to take place begins with the date on which the earlier such declaration is made.
- The House may, by a two-thirds vote, declare a vacancy by incapacity based on the request of the incapacitated member or on its own determination, based on competent medical authority that the member is unlikely to be able to carry out the trust and duties of office for the remainder of that term.
- If the House finds that a member is temporarily incapacitated and likely at some future point during that term to be able to resume the trust and duties of office, the House shall adopt a resolution declaring temporary incapacity and authorizing a leave of absence (with compensation and benefits). During the period of absence the Representative shall not be counted as a Member of the House for purposes of a quorum.
- A person declared temporarily incapacitated who resumes the duties of office shall be counted for the purposes of determining a quorum.
- Any Representative named in a resolution declaring a vacancy or temporary incapacity shall not be counted for purposes of determining a quorum during consideration of that resolution.
- The provisions affecting the internal proceedings of the House, are enacted as part of its rule making authority; are considered rules of the House as they apply to the procedures to be followed during extraordinary circumstances; supersede other House rules only to the extent they are inconsistent with them; and are subject to the constitutional right of the House to change its rules at any time.

**A STATUTORY APPROACH TO FILLING HOUSE VACANCIES
UNDER EXTRAORDINARY CIRCUMSTANCES**

(Draft: Feb. 18, 2002)

Title 2 U.S. Code (“The Congress”), Chapter 1 (“Election of Senators and Representatives”), section 8 (“Vacancies”) is amended to read as follows (with new language printed in *italic*):

1 Sec. 8. Vacancies.

2 (a) The time for holding elections in any State, District, or Territory for a Representative or
3 Delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed
4 by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws
5 of the several States and Territories respectively.

6 ***(b)(1) Notwithstanding subsection (a), under extraordinary circumstances (as defined in paragraph 2(A)), the***
7 ***executive authority of any state in which a vacancy exists shall issue a writ of election to fill any such vacancy, with the***
8 ***election to take place not later than 60 days after the vacancy is declared unless a regularly scheduled election for the***
9 ***office is to be held during such 60 day period or within 30 days thereafter.***

10 (2) *For the purposes of this subsection only –*

11 (A) *“extraordinary circumstances” shall be those in which vacancies in the representation of the*
12 *states in the House of Representatives exceed half of the authorized membership of the House;*

13 (B) *a vacancy caused by death or resignation may be declared by the executive authority of a state*
14 *or by resolution of the House, but the 60 day period in which an election shall take place shall begin with the earliest*
15 *such declaration made; and*

16 (C) *a vacancy caused by incapacity may only be declared with the concurrence of two thirds of the*
17 *House either upon a written request signed by the incapacitated Representative or upon a determination by the House,*
18 *based on competent medical opinion, that the Representative is unlikely to regain the ability to carry out the trust and*
19 *duties of office during that term.*

20 (3)(A) *If a Representative is found to be temporarily incapacitated and likely at some future point during*
21 *that term to regain the ability to carry out the trust and duties of office, the House may declare by resolution that the*
22 *Representative is temporarily incapacitated and is granted a leave of absence with full compensation and benefits.*

23 (B) *A Representative granted a leave of absence by reason of temporary incapacity under*
24 *extraordinary circumstances shall not be counted for purposes of determining a quorum during such absence.*

25 (C) *If a Representative who has been declared temporarily incapacitated resumes the trust and*
26 *duties of office, the leave of absence shall be vacated and the Representative shall be counted for the purposes of*
27 *determining a quorum.*

28 (D) *Any declaration by the House of a Representative’s temporary incapacity shall not extend*
29 *beyond the current term of the Representative.*

30 (4) *A Representative named in any resolution considered pursuant to paragraphs (2) or (3) shall not be*
31 *counted for purposes of determining a quorum during consideration of that resolution.*

1 (5) *The provisions of paragraphs (2), (3), and (4), insofar as they affect the internal proceedings of the*
2 *House, are enacted–*

3 (A) *as an exercise of the rule-making power of the House and as such are deemed a part of the rules*
4 *of the House, but applicable only to the procedures to be followed by the House under extraordinary circumstances;*

5 (B) *supersede other rules only to the extent they are inconsistent therewith; and,*

6 (C) *with full recognition of the constitutional right of the House to change its rules at any time, in*
7 *the same manner, and to the same extent as in the case of any other rule of the House.*