

## Congressional Closeup by Carl Osgood

### Energy Bill Stalls In Senate Filibuster

Seven Republicans joined with 32 Democrats and one Independent on Nov. 21 to sustain, by a 57-40 vote, a filibuster against the conference report on the energy bill.

Opponents of the bill complained about many of its provisions, but the repeal of the New Deal-era Public Utility Holding Company Act did not appear to figure prominently in the debate. Under the PUHCA, electric utilities were able to provide highly reliable, affordable, and universal electricity service—when regulatory agencies ensured they did so. The repeal of PUHCA turns electricity grids over to the “free market,” where companies will decide to build additional capacity when it is “profitable” for them to do so. The bill also includes \$20 billion in tax incentives to coal, oil, and natural gas producers, many of which reportedly helped Vice President Dick Cheney write the bill.

The provision that drew the most opposition, however, was the exemption put in for producers of the gasoline additive MTBE, from liability for groundwater contamination. It drew together an unusual coalition of New York Democrats and New Hampshire Republicans to lead the filibuster. Sen. Charles Schumer (D-N.Y.) called the MTBE provision “a disgrace” because it “chose the large oil companies over homeowners.” Judd Gregg (R-N.H.) charged that the bill was “almost a gratuitous attack on the Northeast,” because MTBE was mandated for use in the Northeastern part of the country, where it is causing many problems, but is manufactured in Texas, which stands to benefit from the provision.

As for the fate of the bill, Senate Majority Leader Bill Frist (R-Tenn.) used a parliamentary maneuver that

allows him to recall a bill for further consideration by voting against it now, in the hope that the two more votes can be found in future. The only way that might happen is if some changes are made to placate some of its opponents; but that would require that the bill then go back to the House, which passed it on Nov. 18. Schumer vowed that the opponents of the bill “are going to stick together as a coalition. We are going to do our best that no one is picked off . . . because this is a bad policy.”

The earlier House action on the bill was accompanied by the GOP thuggery which has come to characterize House proceedings since the accession of Tom DeLay (R-Tex.) to the post of Majority Leader. The leadership brought the conference report to the House floor only ten hours after the conference negotiators finished work on it, instead of waiting the three days called for by House rules. Democrats charged that the Republicans negotiated the bill in secret, in exactly the same way Vice President Cheney’s 2001 energy task force functioned. “This is not just an outrageous abuse of the process,” charged Rep. Martin Frost (D-Tex.), “it is an insulting attempt to pull the wool over the eyes of the American people.” The bill had passed the House by a vote of 246-180, showing that at least two dozen Democrats joined the Republicans in that wool-pulling.

### Medicare Bill Sent to Bush

The drive to privatize Medicare took a giant step on Nov. 25, when the Senate voted 54-44 for the Medicare reform package. The bill had been muscled through the House in the

early morning hours of Nov. 22, when House leaders held open the vote on it for three hours, instead of the customary 15 minutes, while arms were twisted and threats and deals made to gain passage. This was made necessary because about 20 conservative Republicans considered the bill a “massive expansion” of the Medicare program, because of its \$400 billion prescription drug program, and had voted against it, causing the bill actually to lose by a 216-218 vote that held for more than an hour. House Speaker Dennis Hastert (R-Ill.) and Majority Leader Tom DeLay (R-Tex.) had no intention of closing the vote until they succeeded in getting some of those recalcitrant Republicans to change their votes, which they finally succeeded in doing at about 6:00 in the morning.

Not surprisingly, the way the GOP handled the vote enraged Democrats. House Minority Leader Nancy Pelosi (D-Calif.) angrily declared after the vote, “We won it fair and square, and they stole it by hook and crook.” Minority Whip Steny Hoyer (D-Md.) added, “We have prevailed on this vote. Arms have been twisted and votes changed.”

Democrats had been ready to let the bill sail through the Senate without a fight, but the behavior of the GOP leadership of the House caused Sen. Edward M. Kennedy (D-Mass.) to launch a filibuster, even though it was not clear he had the votes to stop the bill. Kennedy said, on ABC’s “This Week,” on Nov. 23, that he had told Majority Leader Bill Frist (R-Tenn.) he would drop his filibuster if the House took a re-vote on the bill. “In the House of Representatives,” he said, “with this program that is supposed to be so good, why did they have to effectively abuse the rules?”

Kennedy’s filibuster was defeated

on Nov. 24, by 70-29, ten more votes than are needed for cloture—to cut off debate. Minority Leader Tom Daschle (D-S.D.) immediately made a point of order against the bill—that it was in violation of the 1974 Budget Act—which was then overridden by a vote of 61-39. After the final vote, Senate Democrats promised the Medicare debate would now go from Capitol Hill to the ballot box. Sen. Barbara Mikulski (D-Md.) said the Democrats would now “go out and do grass-roots, shoe-leather education on what this bill means.”

Besides subsidizing pharmaceutical companies to the tune of \$139 billion over ten years, the bill includes a 45% cap on the level of Federal revenues that can be used to fund Medicare. When Medicare spending reaches that arbitrary level, the program will be declared “insolvent,” the budget capped, services cut, and premiums increased. With tax revenues generally declining, it is likely that the program will exceed that limit within a few years.

## Senators Question Army End Strength

Army Chief of Staff Gen. Peter Schoomaker and Acting Secretary of the Army Les Brownlee were subjected to a barrage of questions on Army end strength when they appeared before the Senate Armed Services Committee on Nov. 19. Neither had made much effort to elaborate on the difficulties the Army is facing as a result of very large commitments in Iraq and Afghanistan, preferring, apparently, to leave those issues to the questions of the members.

On the end-strength issue, Schoomaker surprised the committee mem-

bers when he reported that the Army, due to stop-loss and other personnel actions, is 20,000 soldiers over its authorized strength. “But the greatest move that we can make,” he said, “and we’re in the throes of making this move right now, is to get the proper utilization of the soldiers within the Army that we have authorized,” such as those who are in positions from which they are currently not deployable.

Sen. Jack Reed (D-R.I.) took issue with Schoomaker’s measures, calling them short term. “Everyone around this table,” he said, “has said we’re in for the long term. This is a generational struggle. . . . But in the long term, if we’re going to stay the course, we’re going to need more soldiers, I think.” He suggested that the Army was in violation of the law for being over strength, to which Schoomaker disagreed. Schoomaker clarified, “What I am not telling you is that we will never need more soldiers in the United States Army. What I am telling you is that what we are doing right now is informing us as to how much better we can do with what we have, and we ought to do that first.”

## GOP To Ram Through Appropriations Bill

The long-rumored omnibus Appropriations bill finally emerged on Nov. 25, when House Appropriations Committee chairman Bill Young (R-Fla.) filed a conference report merging the seven remaining Appropriations bills into one. As has become characteristic of the 108th Congress, the conference report includes changes in language and provisions that were not voted on by either the House or the Senate, and removes provisions that were widely

supported in both chambers.

Democrats denounced the package, charging that it was made by backroom deals to placate the White House. Rep. David Obey (D-Wisc.), the ranking Democrat on the Committee, noted that rather than the engaging the Constitutional legislative process, conference negotiators repeatedly “disregarded the will of members of both Houses, went into a back room, and decided on their own, without consulting anybody but themselves and the White House, that they were going to cut the cards a different way and deal a new hand to everyone.”

The change inciting the most anger raises media-ownership limits from 35% to 39% in any location. The Senate had added an amendment to the Commerce, Justice, State Department, and the Judiciary Appropriations bill, setting the limit at 35%, in response to last June’s ruling of the Federal Communications Commission raising it to 45%; the House had approved 35% on a motion to instruct the conferees. Also inciting anger was the removal of language in the Labor, Health and Human Services, and Education Departments funding bill prohibiting the Labor Department from implementing new overtime work rules that would have the effect of making ineligible for overtime pay, up to 8 million workers who are currently eligible. Sen. Arlen Specter (R-Pa.), the chairman of the Labor-HHS Appropriations subcommittee, practically admitted on the floor that he was blackmailed into removing the prohibition, with a threat to cut \$4 billion out of the bill.

The House and Senate return from their Thanksgiving break on Dec. 8 and 9 to take up the omnibus bill, but, at this point, it is anybody’s guess as to whether or not it can be passed in its present form.