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COMPLEXITIES OF THE LEGISLATIVE PROCESS: A CASE STUDY OF CONGRESSIONAL CONSIDERATION OF NATIONAL ENERGY LEGISLATION DURING THE 95TH CONGRESS

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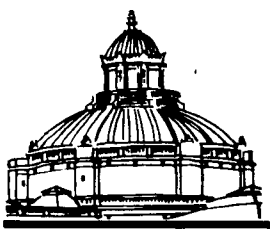

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Abstract

This report is a case study of legislative procedures in Congress. Its subject is national energy legislation during the 95th Congress, one of the most procedurally complex matters confronting Congress in recent years. The report focuses primarily on floor consideration in both chambers and emphasizes the unusual situations that arose.

Preface

During the 96th Congress, the Senate agreed to S. Res. 61, making changes in the provisions of Rule XXII concerning cloture. These changes involved such matters as limiting the total time a matter may be considered after cloture has been invoked, permitting Senators to make certain conforming changes in their amendments if the matter being considered under cloture is reprinted, and dispensing with the reading of amendments under cloture if the amendments are printed and available. In some respects, therefore, the Senate procedures discussed in the report that follows have now been modified.

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Introduction

On April 20, 1977, President Carter delivered an address before a joint session of Congress in which he presented his proposals for a national energy program. From that day until hours before the 95th Congress adjourned sine die on October 15, 1978, Members of the House of Representatives and the Senate labored to enact energy legislation. In some respects, the legislative history of the measures ultimately enacted was as complex and controversial as the legislation itself.

This report traces the procedures by which Congress debated and voted on national energy proposals, with special emphasis on the many respects in which congressional action in this instance was unusual or unique. Less attention is devoted to procedural stages or events that did not deviate strikingly from the usual course of legislative procedure, no matter how important or divisive the substantive issues involved. This study is based almost exclusively on public sources and focuses primarily on floor proceedings, especially in the Senate. It would undoubtedly be even more complex if it had been possible to include procedural considerations and decisions that are not now a matter of public record.

The purpose of this report is to illustrate how complex the legislative process can become as Representatives and Senators use the procedures available to them as Congress determines public policy.

No attempt is made here to discuss the substantive issues involved, nor to explore fully the interplay between substance and procedure. Those matters would require another report of even greater length.

Initial Action by the House of Representatives

In Committee

On April 21st, the day following the President's address, the House agreed to special procedures by which its committees would study and report on his energy program. By a voice vote, the House adopted H. Res. 508, which established the Ad Hoc Committee on Energy and specified the relationship between this Committee and the standing committees with jurisdiction over aspects of the President's program.

The Ad Hoc Committee was created pursuant to the provisions of clause 5 of House Rule X, which had been adopted by the House as part of H. Res. 988, the Committee Reform Amendments of 1974, and which became effective at the beginning of the 94th Congress. Paragraph (c) of clause 5 states that, in referring matters to the committees of the House for consideration:

> the Speaker may refer the matter simultaneously to two or more committees for concurrent consideration or for consideration in sequence (subject to appropriate time limitations in the case of any committee), or divide the matter into two or more parts (reflecting different subjects and jurisdictions) and refer each such part to a different committee, or refer the matter to a special ad hoc committee appointed by the Speaker with the approval of the House (from the members of the committees having legislative jurisdiction) for the specific purpose of considering that matter and reporting to the House thereon, or make such other provision as may be considered appropriate.

The authority for the Speaker to impose appropriate time limitations on committee consideration was added to the rule on January 4, 1977, when the House adopted its rules for the 95th Congress.

Pursuant to this authority, the House had created the Ad Hoc Select Committee on the Outer Continental Shelf during the 94th and 95th Congresses and the Select Committee on Ethics of the 95th Congress, both of which were authorized to report appropriate legislation. These committees included Members who also sat on the standing committees which otherwise would have had legislative jurisdiction over the measures considered by the ad hoc committees. Similarly, the Ad Hoc Committee on Energy was authorized to consider and report on the President's energy message and on any measure relating to the message which the Speaker might refer to it; the energy committee also was composed in large part of members of the interested standing committees.

During consideration of H. Res. 508, the majority and minority party leaders explained that they expected the resolution would facilitate consideration of a comprehensive energy program. Legislation embodying aspects of the President's program would be referred to the various standing committees of jurisdiction which would report such legislation as they deemed fit. These measures would then be considered by the Ad Hoc Committee which could devise floor amendments that would receive priority consideration when the several measures, reassembled into a single legislative package for floor action, were

taken up by the House. By these means, the Ad Hoc Committee was intended to supplement, not supplant, the usual procedures for committee consideration of legislation.

The Carter energy program was introduced as a single bill, H.R. 6831, by the Majority Leader, Representative Wright of Texas, on May 2nd. Title II of the bill was referred in its entirety to the Committee on Ways and Means; sections of Title I were referred to the Committees on Interstate and Foreign Commerce, Government Operations, Public Works and Transportation, and Banking, Finance and Urban Affairs. Under the authority of clause 5(c) of Rule X, the Speaker imposed a deadline of July 13th by which these committees were to report their recommendations.

After the five standing committees had completed action on the parts of the energy program within their respective jurisdictions, the entire package, including the amendments proposed by these committees, was re-introduced as a clean bill, H.R. 8444, on July 20th by Representative Ashley of Ohio, Chairman of the Ad Hoc Committee. The Committee already had held general hearings on the energy situation and had remained well apprised of the actions which each of the standing committees was taking. Upon its introduction, H.R. 8444 was referred formally to the Ad Hoc Committee until July 27th.

On the Floor

The amendments recommended by the Ad Hoc Committee were described in the report it submitted to the House on July 27th. Two days later, the House adopted H. Res. 727, the special rule reported by the Committee on Rules, specifying the terms of debate and amendment under which the House would consider H.R. 8444.

H. Res. 727 was noteworthy in several respects. First, it waived various potential points of order against consideration of H.R. 8444 and against several of its provisions. Second, it dispensed with the requirement that each part of the bill be read before being open for amendment. Third, it provided one legislative day for general debate rather than a specific number of hours as is customary. Fourth, it assigned control of the time for general debate to the Chairman and ranking minority member of the Ad Hoc Committee, without any specific provision for the allocation of time to the leaders of the five standing committees which had acted on parts of the bill in its earlier form. And sixth, and most importantly, it identified and limited the amendments that might be offered in Committee of the Whole

Specifically, H. Res. 727 made in order (1) the amendments recommended by the Ad Hoc Committee, some of which to be considered en bloc, (2) a series of specific amendments that had been printed previously in the Congressional Record, and (3) several additional amendments to be offered by named Members for purposes identified in the resolution. The resolution also determined the order in which

many of these amendments might be offered and it precluded amendments to the amendments, except pro forma amendments and amendments recommended by the Ad Hoc Committee or specified in the resolution itself. In support of the proposed rule, Representative Bolling of Missouri stated:

> I believe that, given all the circumstances and considering the enormous complexity of the issue and the complexity of the consideration, we have crafted a rule that makes sense and that will allow the House effectively to work its will on the major issues and on some of the minor issues.

The resolution was opposed by Members who would have preferred a rule which made other particular amendments in order or which permitted all germane amendments to be offered. Other Members, including the Minority Leader, supported the rule reluctantly, expressing the concern that consideration of H.R. 8444 under an open rule would make prompt House action unlikely. The resolution was adopted by a record vote of 238 to 148 after which a motion to reconsider was tabled by a vote of 254 to 120, thereby making House action final. Prior to these two votes, the previous question on the resolution had been ordered by a vote of 231 to 156. Had this vote failed, it would have been in order to propose an alternative or amendments to the resolution.

General debate on H.R. 8444 took place on August 1st, and the process of amendment began on the following day (the House having adjourned on August 1st, making August 2nd a new legislative day). Consideration of amendments in Committee of the Whole contined until August 5th under the terms of H. Res. 727.

The bill was considered for amendment by parts of titles, not by sections, and, pursuant to the special rule, the Clerk designated each part as it came before the Committee of the Whole without reading it in full. After each part was designated for consideration, the Ad Hoc Committee amendments, if any, were offered first, followed by any other amendments to that part which were in order under the rule. Several of the Committee's proposed amendments were described as eliminating inconsistencies or striking compromises between the proposals made by two or more of the standing committees that originally had considered provisions of the bill. With few exceptions, the House agreed to the committee amendments, although several Members regretted that consideration of some of these amendments en bloc precluded separate votes on their component parts. Normally, an amendment with several parts is subject to a demand for a division of the question, but H. Res. 727 had specifically prohibited demands for division of committee amendments, either in Committee of the Whole or later in the House.

In Committee of the Whole, amendments are debated under the five-minute rule, which permits five minutes of debate in favor of each amendment and five minutes in opposition. For many of the amendments to H.R. 8444, these ten minutes proved inadequate, and Members obtained additional debate time by unanimous consent or by offering pro forma amendments to "strike the last word" or to "strike the requisite number of words." After prolonged debate on each of two amendments,

Representative Ashley, the floor manager of the bill, made several attempts to set a time for a final vote by unanimous consent. When Members objected to these requests, he moved that debate on the amendments end at a certain time, and these motions were agreed to. Once such time limits were established, the Chairman divided the remaining time available among the Members wishing to speak.

After the Committee had acted on all the amendments in order to perfect H.R. 8444, Representative Anderson of Illinois offered the final amendment permitted by H. Res. 727: the text of another bill, H.R. 8555, as an amendment in the nature of a substitute. The special rule had waived two possible points of order against this amendment; however, Representative Dingell of Michigan contended that the amendment was subject to another point of order, not waived by the rule, for containing nongermane matter. Representative Anderson rebutted this contention, but Representative Dingell chose not to make the point of order so no ruling by the Chair was necessary. The Anderson amendment, representing the Republican alternative to H.R. 8444, was rejected by a record vote of 147 to 273.

The Committee then rose and reported back to the House. The House agreed to all the amendments that had been adopted in Committee of the Whole, including one amendment on which Representative Edgar of Pennsylvania demanded a separate record vote. After the bill was ordered to be engrossed and read the third time, Representative

Steiger of Wisconsin, who was opposed to the bill as amended, offered a motion to recommit the bill to the Ad Hoc Committee with instructions to delete the provision for a crude oil equalization tax. The recommittal motion was rejected, 203 to 219, after the ten minutes of debate permitted on a motion to recommit with instructions. The House then passed the bill by a record vote of 244 to 177. A motion to reconsider was tabled routinely, and, by unanimous consent, the Clerk was authorized to make any necessary technical corrections in engrossing the bill as passed.

Initial Action by the Senate

In Committee

H.R. 8444, as passed by the House, was received by the Senate on September 9th. Instead of being referred for committee consideration, it was held at the desk pursuant to a unanimous consent agreement proposed by the Majority Leader, Senator Byrd of West Virginia. By this date, the Senate was already pursuing a substantially different procedural approach to the development of energy legislation.

In the Senate, the President's energy proposals were introduced in the form of two bills. The tax provisions (equivalent to title II of H.R. 6831) were introduced by Senator Byrd, by request, as S. 1472 on May 5, 1977, and referred to the Committee on Finance. On the same day, Senator Jackson of Washington, Chairman of the Committee

on Energy and Natural Resources, introduced S. 1469, also by request, containing the non-tax provisions of the President's program (equivalent to title I of the House bill). Whereas the non-tax proposals of H.R. 6831 were referred to several standing committees of the House, S. 1469 was referred in its entirety to a single Senate committee.

On the day he introduced S. 1469, Senator Jackson noted that, in addition to the committee which he chaired, the Committees on Banking, Housing and Urban Affairs, Commerce, Science and Transportation, Environment and Public Works, Human Resources, and Governmental Affairs all had "some interest in the provisions of title I." However, he secured unanimous consent that the bill be referred only to the Committee on Energy and Natural Resources:

> Mr. President, I do not think it necessary or desirable that title I of the National Energy Act be referred to five committees in addition to the Committee on Energy and Natural Resources. Such a multiple referral would be contrary to the intent of the Stevenson reforms approved by the Senate last February.
>
> I believe the interests of other committees can be accommodated by referring title I of the National Energy Act to the Committee on Energy and Natural Resources with the direction to consult with these other committees having an interest in the legislation. My conversations with the chairmen of these committees lead me to believe that they share this view.
>
> If title I is referred to the Committee on Energy and Natural Resources in this way, we would be prepared to work with other committees in any way which seems desirable. Some committees may wish to hold hearings and make formal legislative recommendations. Others may wish to participate in markups. In some cases, less formal arrangements may be satisfactory. In the course of our energy

> work over the past 5 years we have worked with several committees on legislation and would hope to continue this kind of cooperative effort.

Although hearings were held in the Senate on the provisions contained in S. 1469 and S. 1472, no further action was taken on either bill per se as a legislative vehicle for the enactment of energy legislation. Instead, the Senate acted on six separate energy bills in lieu of H.R. 8444 or the two original Senate bills.

Five of these measures were reported by the Committee on Energy and Natural Resources: S. 701, S. 977, S. 2057, S. 2104, and S. 2114.

S. 701, dealing with energy conservation, had been introduced by Senator Pell of Rhode Island on February 10, 1977, before the President submitted his proposals, and was referred initially to the Committee on Human Resources, which reported the bill on May 12th. On June 20th, S. 701 was referred to the Committee on Energy and Natural Resources until July 15th, pursuant to a unanimous consent request by Senator Byrd. The Energy Committee held hearings on the bill and the related provisions of S. 1469 and ordered S. 701 reported on July 13th with an amendment substituting a new text for the provisions of the bill as reported by the Committee on Human Resources.

S. 977, on coal conversion, had been introduced by Senator Jackson on March 10, 1977--again, before President Carter's energy message. Hearings on the bill and related proposals were held both before and after introduction of S. 1469, and the bill was ordered reported with amendments by the Committee on July 21st.

S. 2057 was an original bill on national energy conservation policy that was ordered reported by the Committee on Energy and Natural Resources on August 1, 1977. The Committee on Banking, Finance and Urban Affairs had held hearings on the subject of this legislation and made its recommendations to the Energy Committee, which considered them during its markup of the bill reported as S. 2057. Senate Report 95-409, to accompany S. 2057, included these recommendations as well as other correspondence between Chairman Jackson and members of the other committees with jurisdictional interests in S. 1469.

S. 2104 also was an original bill also reported by the Committee on Energy and Natural Resources and relating to some of the provisions of S. 1469. On September 15th, this bill on natural gas pricing policy was reported to the Senate without recommendation by a vote of 14 to 2. In Senate Report 95-436, the Committee explained why it took the unusual action of reporting S. 2104 without recommendation:

> S. 2104 was ordered reported as an original bill without amendment and without recommendation. The motion was made and passed with the express recognition that the members of the Senate Committee on Energy and Natural Resources could not resolve their differences of opinion on the pending legislation so the matter was sent to the floor of the Senate for further consideration. Members of the committee agreed to file individual views.

S. 2114 was a third original bill reported by the Energy Committee on matters to which parts of S. 1469 were addressed. This utility rate reform bill was reported to the Senate on September 20th.

The sixth energy bill to be considered by the Senate was the bill reported by the Committee on Finance after its consideration of the provisions of S. 1472 (title II of H.R. 6831) and related proposals. The Committee's energy tax proposals were reported to the Senate in the form of an amendment to H.R. 5263, a bill already passed by the House and then referred to the Committee.

H.R. 5263 as introduced was a bill to extend the suspension of tariff duties on certain bicycle parts. The bill was reported unanimously by the House Committee on Ways and Means and passed by the House on July 18th under suspension of the rules without a record vote. In the Senate, H.R. 5263 was referred to the Committee on Finance. In its report of October 21st (Report 95-529), the Committee stated that it had stricken everything after the enacting clause in H.R. 5263 as passed by the House and had inserted instead its proposals for energy tax legislation. The bill as amended in this fashion was reported favorably by the Committee by a vote of 13 to 5.

In its report, the Finance Committee also explained that it was appropriate to strike the House-passed provisions of H.R. 5263 because they had already been approved by the Senate as provisions of H.R. 2982.

On the same day that the House passed H.R. 5263, it also passed, without objection, H.R. 2982, a bill to suspend for two years the duty on synthetic tantalum-columbium concentrate. The latter bill also had been reported unanimously by the House Committee on Ways

and Means. In the Senate, the Finance Committee amended H.R. 2982 to include the House-passed provisions of H.R. 5263, which was also before the Committee, as well as the provisions of H.R. 3790, a bill to suspend temporarily the duty on poppy straw concentrate used in producing codeine or morphine--this being another bill that had been reported unanimously by the House Committee on Ways and Means, passed without objection by the House on July 18th, and referred to the Senate Finance Committee. By these amendments, the Committee on Finance consolidated three non-controversial bills which had been passed by the House.

On September 16th, H.R. 2982, as amended in this unusual fashion, was taken from the Calendar, considered, and passed by the Senate without debate. On October 25th, the bill was taken from the Speaker's table in the House by unanimous consent and the Senate amendments were agreed to, clearing H.R. 2982 for Presidential action and enactment as Public Law 95-161.

Consequently, the House-passed provisions of H.R. 5263, which were stricken by the Senate Finance Committee on October 21st, were included in a non-controversial bill that already had been passed by both chambers without opposition and that was in the process of being cleared for signature by the President. In place of these provisions, the Finance Committee inserted its energy tax proposals for reasons relating to conference procedure, to be considered in a later section of this report.

On the floor

S. 701 was the first of the six Senate energy bills to be taken up by the Senate. On July 20, 1977, the Senate proceeded to its consideration by unanimous consent; the committee amendments were agreed to, and the bill was passed without opposition. Members of the Committees on Human Resources and on Energy and Natural Resources expressed satisfaction with the consultation and cooperation which had taken place in the process of holding hearings and developing amendments to the bill, one of two energy conservation measures.

The next energy bill to be considered on the Senate floor was S. 977, relating to coal conversion. The process of debate and amendment began on September 7th under the terms of a unanimous consent agreement that had been propounded by the Majority Leader on August 5th, the last meeting of the Senate before the August recess. In brief, the agreement provided for two hours of debate on final passage of the bill, a one-hour time limit on all but one amendment to the bill, and thirty minute time limits on all amendments in the second degree and on all other debatable matters. On one specific amendment, the agreement ordered a four-hour time limit unless a motion to table the amendment failed, in which case there would be no time limit on the amendment; no other amendments on the same subject would be in order. Finally, the agreement required that all amendments to the bill be germane.

Under the terms of this agreement, the Senate considered S. 977 on September 7th and 8th, during which time 29 amendments to the bill were adopted. Of interest from a procedural point of view was the disposition of an amendment offered by Senator Hansen of Wyoming to repeal a section of the Clean Air Act. After a motion to table the amendment was rejected, and a motion to reconsider that vote was tabled, Senator Metzenbaum of Ohio raised a point of order that the amendment was not germane to the bill, as required by the unanimous consent agreement. The point of order was sustained, after which the Majority Leader made a unanimous consent request, agreed to by the Senate, regarding disposition of subsequent amendments. Senator Hansen then appealed the ruling of the Chair on the point of order that had been sustained against his amendment. However, the Presiding Officer agreed with Senator Byrd's contention that the action of the Senate in agreeing to the Majority Leader's unanimous consent request constituted the transaction of business; consequently, the appeal against the ruling of the Chair came too late and the Senate proceeded to consider additional amendments.

(Because the manner in which the Senate took final action on S. 977 and several of the other energy bills was related to conference procedure, it will be discussed at a later point in this report.)

The third bill to be considered was S. 2057, on national energy conservation policy, which the Senate proceeded to consider on September 9th by unanimous consent. The Senate continued to debate and amend the bill on September 12th and 13th. During consideration of S. 2057, 33 amendments were agreed to by voice vote, including an amendment offered by Senator Hansen that had the same effect as the amendment which had been offered to S. 977 and ruled out of order as non-germane. A motion to table the Hansen amendment was rejected by a record vote, and the amendment was then agreed to by voice vote.

S. 2104, the next of the six bills to reach the floor, stimulated the most extensive debate and procedural activity. This bill on natural gas pricing was made the pending order of business before the Senate on September 16th by unanimous consent, but actual consideration did not begin until Monday, September 19th. On the following day, an amendment in the nature of a substitute was offered by Senator Bartlett of Oklahoma which was withdrawn on September 21st. Also on September 21st, amendments in the first and second degree to the bill were tabled and a second amendment in the nature of a substitute was offered by Senators Pearson of Kansas and Bentsen of Texas. A unanimous consent agreement was entered into which provided for a vote on the following day on a motion to table the Pearson-Bentsen substitute, with votes on all other amendments to be postponed

until disposition of the motion to table. At the appropriate time on September 22nd, the motion to table was offered and rejected by a vote of 46 to 52.

When the Senate resumed consideration of S. 2104 on September 23rd, pending was an amendment offered by Senator McGovern of South Dakota. Senator Abourezk of South Dakota requested a division of the question into its twenty component sections. The first of these sections was rejected and the second was tabled, both by record votes. The Majority Leader then requested unanimous consent that the remaining 18 sections be considered en bloc, but Senator Abourezk objected. Sections 3-7 of the McGovern amendment were tabled by separate record votes with several intervening quorum calls demanded by Senator Abourezk. During the proceedings on these five sections, there was objection to a second unanimous consent request to consolidate the remaining sections and consider them en bloc. Attempts to reach a time limitation agreement on several of the sections also failed, as did a proposed unanimous consent request to consider the McGovern amendment anew (ab initio) under a time limit. However, after section 7 was tabled, the Senate did agree to consider the amendment ab initio under a ten minute time limitation. Following debate, the McGovern amendment was rejected by a record vote of 22 to 72.

During consideration of the McGovern amendment, the Majority Leader and other Senators expressed concern that quorum calls and record votes were being demanded, and time limitation agreements refused, solely to prolong debate on the bill. After rejection of the McGovern amendment, Senator Byrd filed a cloture motion to close debate on Amendment No. 862, the Pearson-Bentsen substitute which had been pending since September 21st.

Amendments to the bill in the first and second degree next were offered and tabled by record votes, after which Senator Byrd, on behalf of Senator Jackson, offered a substitute for the Pearson-Bentsen amendment in the nature of a substitute. Immediately thereafter, Senator Kennedy of Massachusetts offered a substitute for the Jackson substitute. The pending parliamentary situation was elucidated by the following discussion:

> The PRESIDING OFFICER. At this point, the amendment of the Senator from Washington is amendable in one degree. The amendment of the Senator from Kansas and the Senator from Texas is amendable in two degrees, and the bill itself is amendable in two degrees.
>
> It should have been stated in the reverse order from that in which the Chair just stated it.
>
> Mr. BUMPERS. I certainly appreciate the clarification.
>
> Mr. ROBERT C. BYRD. One further parliamentary inquiry, Mr. President.
>
> Mr. PRESIDING OFFICER. The Senator will state it.
>
> Mr. ROBERT C. BYRD. I believe I am correct in saying, in order that the whole picture may be complete, that the amendment by Mr. KENNEDY is not open to amendment.

The PRESIDING OFFICER. That is correct.

Mr. BUMPERS. A further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

MR. BUMPERS. As I understand it, the Pearson-Bentsen amendment is a substitute for the bill. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BUMPERS. The Jackson amendment is a substitute for Pearson-Bentsen?

The PRESIDING OFFICER. That is correct.

Mr. BUMPERS. And the Kennedy amendment is a substitute for Jackson?

The PRESIDING OFFICER. That is also correct.

Mr. BUMPERS. And we are not down to a third-degree amendment?

The PRESIDING OFFICER. Under the precedents of the Senate, the first full substitute for the bill does not kill a degree. It is a freebie.

The Senate then recessed.

When the Senate next met, on September 24th, two further amendments were considered: an amendment introduced by Senator Bentsen, which was itself amended, to the Pearson-Bentsen substitute, and an amendment to the bill itself, S. 2104, offered by Senator Ford of Kentucky. (While an amendment in the nature of a substitute is pending, perfecting amendments may be offered to the bill.) No final action was taken on either amendment, leaving them pending before the Senate in addition to the three substitute amendments already pending.

On Monday, September 26th, it became in order to act on the cloture motion that had been filed by Senator Byrd to close debate on the Pearson-Bentsen substitute. Paragraph 2 of Rule XXII states that one hour after the Senate meets on the second calendar day following the filing of a cloture motion the Presiding Officer shall lay the motion before the Senate. A quorum being present, the Senate proceeds to vote on the cloture motion. Pursuant to this rule, the Senate agreed to the cloture motion by a vote of 77 to 17, more than a three-fifths majority of the Senate.

Cloture having been invoked, the following provisions of paragraph 2 of Rule XXII took effect:

> Thereafter no Senator shall be entitled to speak in all more than one hour on the measure, motion, or other matter pending before the Senate, or the unfinished business, the amendments thereto, and motions affecting the same, and it shall be the duty of the Presiding Officer to keep the time of each Senator who speaks. Except by unanimous consent, no amendment shall be in order after the vote to bring the debate to a close, unless the same has been submitted in writing to the Journal Clerk prior to the end of the vote. No dilatory motion, or dilatory amendment, or amendment not germane shall be in order. Points of order, including questions of relevancy, and appeals from the decision of the Presiding Officer, shall be decided without debate.

In light of subsequent events, it is important to note that the rule protects the right of Senators to have the Senate consider germane amendments that have been submitted in writing prior to cloture. Moreover, although each Senator may speak for no more than an hour on the matter on which cloture has been invoked, the time

required to read an amendment or to conduct a record vote or quorum call is not counted against the time of the Senator demanding it.

It is possible, therefore, for determined Senators to continue debate on a measure for an extended period of time even after cloture has been voted. And, in fact, shortly before the vote on Senator Byrd's cloture motion, Senator Abourezk indicated that he did not anticipate a prompt vote on S. 2104:

> Mr. President, I want to repeat something I said earlier in this particular hour's debate. I want to advise the Members of the Senate, and particularly the distinguished majority leader, that there are some 200 or 300 perfecting amendments to various portions of the bill that we are considering, and there are substitutes.
>
> If cloture is invoked, each and every one of those amendments, which we think will perfect the bill, will be voted on. We will have up and down votes on each and every one of those, plus others. Perhaps votes as people try to get too stringent on procedure. I am sure we would have to vote on that, as well.

After the vote on cloture, Senator Abourezk offered an amendment to the pending Ford amendment and objected to dispensing with the reading of the amendment. After a motion by Senator Abourezk to adjourn was rejected, the Ford amendment was tabled, a decision which also carried the Abourezk amendment to the table. The Bentsen amendment was then agreed to and the Kennedy substitute was tabled, leaving only the Jackson and Pearson-Bentsen substitutes pending before the Senate.

Senator Metzenbaum of Ohio then offered an amendment to the bill and asked that it be divided into three parts. Before any debate had taken place on the amendment, Senator Abourezk suggested the absence of a quorum, against which Senator Long of Louisiana made the point of order that the demand for a quorum call was dilatory. Senator Long stated that he observed that a quorum was present, that a quorum had been present for the last vote, and that no business had been transacted since that vote. The Presiding Officer noted that dilatory motions and amendments are not in order under cloture and submitted the question to the Senate which, by a voice vote, sustained the point of order against the demand for a quorum call. The Metzenbaum amendment was then rejected by record votes, and motions to reconsider were tabled, also by record votes.

Shortly thereafter, the Presiding Officer sustained a point of order that an amendment proposed by Senator Kennedy was not germane to the bill and therefore was out of order under Rule XXII. After an appeal from this ruling was rejected by a record vote, Senator Abourezk moved to reconsider the vote and asked for a record vote on his motion. The Presiding Officer agreed with a point of order by Senator Byrd that the motion was dilatory. In response, Senator Abourezk appealed from the ruling of the Chair and again requested a record vote, but his appeal also was ruled to be dilatory.

During the remainder of September 26th, a series of additional amendments were considered. In addition to quorum calls, eighteen record votes were conducted on amendments, motions to table amendments, motions to table motions to reconsider votes, votes on appeals from rulings of the Chair, and on other matters. Senator Byrd later estimated that these quorum calls and votes consumed five hours and thirty-six minutes.

The Senate convened at 9:00 A.M. on September 27th and continued in session until 7:12 A.M. on September 28th. After a two-hour recess, the Senate reconvened until 10:16 P.M. During this extraordinary meeting, still more amendments were offered and disposed of, and a second Pearson-Bentsen amendment was presented, this being an amendment to the Jackson substitute rather than the bill. There were 63 record votes, of which 49 were on motions to table amendments. Very few of the amendments were agreed to. At the conclusion of the day's business, Senator Byrd emphasized the importance of expediting Senate action on the bill. To this end, he moved to recommit S. 2104 with instructions that it be reported back forthwith with a substitute amendment for the original Pearson-Bentsen substitute. The new substitute would embody the Jackson substitute as amended by an amendment by Senator Pearson of Kansas. Neither of the Pearson-Bentsen amendments would then be pending, but the Senate would continue under cloture because the proposed new substitute would be offered to the amendment against which cloture had been voted.

Senator Byrd's recommittal motion was pending when the Senate met on September 29th. By unanimous consent, the motion was discussed for more than an hour without the time being charged to any Senator under Rule XXII. After several recesses to permit discussions off the floor, the motion to recommit was adopted by voice vote and the bill was reported back to the Senate immediately by Senator Jackson, for the Committee on Energy and Natural Resources, as instructed by the motion.

The Senate proceeded to consider further amendments to S. 2104 and to the new Byrd-Jackson amendment in the nature of a substitute. During these deliberations, it developed that many of the amendments that had been submitted in writing prior to the cloture vote were no longer in order because these amendments were intended to be offered to the first Pearson-Bentsen substitute which was no longer pending as a result of the recommittal motion. A number of amendments which referred to specific pages and lines were ruled out of order because the texts to be amended no longer appeared at these pages and lines in the Byrd-Jackson substitute. By contrast, amendments which were intended to be offered either to the bill or to the original Jackson substitute were still in order because neither of these texts had been affected by the recommittal motion (except to the extent that the Pearson amendment modified the Jackson substitute).

The Senate recessed after Senator Byrd attempted unsuccessfully to reach an agreement on a time when the Senate would be prepared to vote on the Byrd-Jackson substitute or on the second Pearson-Bentson substitute, which had been offered originally as an amendment to the Jackson substitute and which was expected to be offered again as an amendment to the Byrd-Jackson substitute.

The amending process continued on September 30th, with most of the amendments offered being tabled or ruled out of order. As on previous days, there were objections to such usually routine unanimous consent requests as requests to dispense with the reading of amendments and to rescind quorum calls. Senator Byrd again attempted to reach time limitation agreements on certain of the amendments to be proposed, but again without success. The second Pearson-Bentsen substitute was offered as an amendment to the pending Byrd-Jackson substitute, and a motion to table the substitute for the substitute was rejected.

On September 30th and again on October 1st, Senators called up amendments that had been submitted by other Senators--a practice to which objection was expressed. Several Senators also stated their concern over a ruling by the Chair that an appeal from a previous ruling of the Chair was itself dilatory. The Chair had ruled that an amendment was clearly out of order on its face and, when this ruling was appealed, ruled further that the appeal was dilatory. Later on October 1st, the Chair put the question to the Senate; the

Senate decided that the right to appeal from rulings of the Chair should be maintained, and that the Chair may not refuse to entertain an appeal from a ruling on the ground that the appeal is dilatory.

Soon after the Senate resumed consideration of S. 2104 on October 3rd, with the Vice President in the Chair, Senator Stevens of Alaska noted that floor action on the bill to date had involved 121 record votes and 34 live quorum calls, consuming almost forty hours. With perhaps several hundred amendments still eligible for consideration, Senator Byrd made a point of order against the first amendment to be called up:

> Inasmuch as it is an amendment to the bill, and in view of the fact this is the 13th day on which the Senate has been debating the bill, there has been ample time for the calling up of perfecting amendments to the bill. Any amendment offered to the bill, even if adopted, would be moot by virtue of the fact that cloture goes to 862 [the number assigned to the Byrd-Jackson substitute] and not to the bill. Now once 862, the substitute, is adopted, then there can be no more amendments offered to the bill.
>
> If, for some reason, amendment No. 862 were defeated or rejected, then there would be no cloture on the bill, and Senators could write any amendments they wished to offer at that point.
>
> But under the recent circumstance in which cloture goes to the substitute and not to the bill and the final action will be on adopting the substitute, if it is adopted, no amendment to the bill is in order at that point. Any perfecting amendments that will have been adopted to the bill prior to that point will be moot.
>
> I make the point that this is a dilatory amendment. Furthermore, Mr. President, I make the point that when the Senate is operating under cloture the Chair is required to take the initiative under rule XXII to rule out of order all amendments which are dilatory or which on their face are out of order. I make that point.

During debate on the point of order, permitted by unanimous consent, Senator Muskie of Maine asked if the Majority Leader intended to have the Senate reverse its decision of October 1st regarding opportunities to appeal rulings of the Chair. After statements by several other Senators, the Majority Leader amplified on his position:

> To begin with rule XXII says no dilatory motion or dilatory amendment or amendment not germane shall be in order.
>
> What I am asking the Chair to do by making this point of order is this: When the Senate is operating under cloture, the Chair is required to enforce this rule. The Chair is required to take the initiative to enforce this rule.
>
> Therefore, he is required to take the initiative under rule XXII to rule out of order all amendments which are dilatory or which on their face are out of order.
>
> Let us take, for example, an amendment that amends the bill at more than one place. On its face that amendment is out of order.
>
> Let us take an amendment not germane on its face. On its face that amendment is not in order because the rule says no amendment not germane shall be in order.
>
> And the right to appeal, may I say to the distinguished Senator from Maine, is not touched in this point of order. Senators may still appeal.

In response to Senator Sarbanes of Maryland, Senator Byrd reiterated the view that, under the circumstances confronting the Senate, amendments to the bill were dilatory because (1) if the substitute for the bill (or the substitute as amended by a substitute) were adopted, then the entire text of the bill itself would be supplanted,

including any amendments to it, and no further amendments would be in order, and (2) if the substitute were not adopted, the Senate would no longer be under cloture and amendments to the bill could be offered more appropriately at that time than under cloture, which is intended to spur prompt action. Senator Sarbanes, however, argued that Senators' positions on a proposed substitute might depend on what amendments had been adopted to the bill itself:

> The question of whether to vote for the substitute and insert it in place of the bill is subject to our decision as to what the bill looks like. Amendments to the bill are in order under cloture, and therefore the adoption or rejection of amendments to the bill changes the structure of the bill, and may influence the decision of a Senator whether to vote for the substitute or not to vote for the substitute.

At the suggestion of Senator Long, Senator Byrd asked for a separate ruling on his point of order that, under cloture, the Chair must take the initiative to rule out of order amendments which are dilatory or which on their face are out of order -- rulings to be made on individual amendments after they have been called up and without the necessity of Senators making points of order against them. The Vice President sustained this point of order, and an appeal from this ruling was tabled by a vote of 79 to 14.

After two additional points of order had been decided by the Senate, the Vice President recognized the Majority Leader who called up an amendment which was ruled out of order on the ground that it sought to amend the bill in two places. In rapid succession, Senator

Byrd called up 25 more amendments, each of which was ruled out of order for the same reason. He then called up 7 amendments that were ruled out of order as being non-germane, after which the following colloquy occurred:

> Mr. SARBANES. Mr. President, is it the ruling of the Chair that an appeal does not lie to the rulings of the Chair?
>
> The VICE PRESIDENT. The Chair has recognized the leader of the Senate under the customs of the Senate.
>
> Mr. SARBANES. I understand that. Does the custom of the Senate which accords recognition to the leader of the Senate, which is a custom I recognize, extend so far that an appeal from the ruling of the Chair to a point of order made by the leader of the Senate is not available to any Member of the Senate and that the Chair is entitled to continue to recognize the leader to make successive points of order without any appeal from affirmative rulings of the Chair being available to the Members of the Senate?
>
> The VICE PRESIDENT. It is the understanding of the Presiding Officer that the customs of the Senate call for recognition of the leader whenever he seeks it.

After further discussion of these developments, the Senate returned to the consideration of amendments. No decision was made by the Senate as to a point of order against amendments to a bill when an amendment in the nature of a substitute is being considered under cloture, nor did the Senate decide the propriety of the Majority Leader receiving continuous recognition, notwithstanding attempts by other Senators to appeal from rulings of the Chair.

On October 4th, attention centered on efforts to reach agreement on when votes would occur on the Pearson-Bentsen and Byrd-Jackson substitutes. After discussions both on and off the floor, a time

was set by unanimous consent for a vote on the Pearson-Bentsen amendment. The time for voting having been established, debate focused on substantive questions. The Pearson-Bentsen substitute was agreed to by a record vote of 50 to 46. The question then immediately occurred on the Byrd-Jackson substitute as amended by the Pearson-Bentsen amendment. By voice vote, the amendment was agreed to, concluding two weeks of floor action on the bill.

Later on the same day, the Senate agreed to a unanimous consent request propounded by Senator Byrd, providing for consideration of S. 2114, dealing with utility rate reform. Under the terms of the agreement, debate on final passage of the bill was limited to 4 hours, debate on most amendments was limited to 2 hours each, 30 or 90 minutes was provided for debating each of seven specific amendments, debate on each amendment in the second degree was limited to 30 minutes, and debate on each motion, appeal, and point of order was limited to 20 minutes. The agreement also required that all amendments be germane to the provisions of the bill.

During the next two days, the Senate considered S. 2114 and adopted a number of amendments, most of them by voice vote. During consideration, the unanimous consent agreement was modified in several respects to accommodate Senators and to expedite final Senate action. On October 6th, the Presiding Officer ruled out of order as being non-germane a proposed amendment in the second degree, even though it sought to amend an amendment that was itself non-germane but that was protected under the unanimous consent agreement.

After completing action on the five energy bills reported by the Committee on Energy and Natural Resources, the Senate took up the sixth and final bill, reported by the Committee on Finance, on October 25th by unanimous consent. Because the Finance Committee had chosen to use a House-passed bill, H.R. 5263, as the legislative vehicle for its tax proposals, the Senate actually was considering an amendment in the nature of a substitute recommended by the Committee.

After making his initial statement, Senator Long of Louisiana, Chairman of the Committee on Finance, modified the committee amendment in several respects to obviate points of order that might otherwise have been raised on the ground that some of its provisions were properly within the jurisdictions of other standing committees. Members of the Budget Committee indicated that the committee amendment also might be subject to a point of order for violating the revenue provisions of the second concurrent budget resolution, but no point of order was actually made. Later, Senator Abourezk did make a point of order against the committee amendment for violating another provision of the Congressional Budget Act of 1974. Before the Presiding Officer ruled, Senator Long, with the authorization of the Finance Committee, made a minor modification in the committee amendment on the basis of which the Presiding Officer then held that the point of order did not lie.

A number of preliminary committee amendments having been agreed to, Senator Long secured unanimous consent that the bill, as altered by the amendments to and modifications of the committee amendment, be reprinted so that the current text would be available to all Senators.

The Senate continued to debate and amend the Finance Committee's amendment to H.R. 5263 for five more days, during which time 41 amendments were adopted and 15 were rejected. Although the measure as a whole was not considered under a time limitation agreement, specific agreements were entered into on individual amendments. Amendments were discussed both on their merits and in light of the House bill and the anticipated negotiations in conference committee. The Majority Leader also expressed concern that extended debate on H.R. 5263 would delay action in conference on the five other energy bills already passed by the Senate.

During debate on October 28th, the Senate voted to table a motion by Senator Dole of Kansas to recommit the bill to the Committee on Finance. Shortly thereafter, Senator Hollings of South Carolina moved to commit the bill to the Committee on Appropriations with instructions that the bill be reported back forthwith with an amendment to delete certain provisions of the Finance Committee amendment which had not yet been subject to record votes on the Senate floor.

At issue were several provisions for refundable tax credits which could be considered "spending authority" within the meaning of section 401(b)(2) of the Congressional Budget and Impoundment Control Act of 1974:

> If any committee of the House of Representatives or the Senate reports any bill or resolution which provides new spending authority described in subsection (c)(2)(C) which is to become effective during a fiscal year and the amount of new budget authority which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 302(b) in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of that House with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred....

After Senator Hollings agreed to strike a specific reference to this section from his motion, it was agreed to by voice vote.

Immediately thereafter, Senator Magnuson, on behalf of the Committee on Appropriations, reported back the bill as amended, as directed by the motion, and offered an amendment to strike the provisions in question. A motion to table the amendment was rejected by a vote of 38 to 41, but the amendment itself was then rejected by a vote of 30 to 47.

After considering the last of the amendments to be offered, the Senate agreed to the Finance Committee amendment on October 31st, and proceeded to final action on the bill.

Arrangements for Conference Committee Action

The two chambers had taken significantly different procedural approaches to the passage of energy legislation, the House having passed a single omnibus bill and the Senate having acted on six separate bills. It became necessary, therefore, to devise some means by which the same measure or measures could be considered in one or more conference committees.

A bill must be passed by both chambers before a conference committee can be appointed to resolve the differences between the House and Senate versions of the bill. Consequently, the Senate could have acted on H.R. 8444 as passed by the House, or it could have acted on S. 1469 and S. 1472, the equally comprehensive package of Presidential proposals introduced by Senators Byrd and Jackson on May 5th, and then inserted the texts of both bills in lieu of the text of H.R. 8444 as passed by the House. A conference committee then could have been appointed to consider the two versions of a single bill, H.R. 8444.

But this approach was considered impractical in the Senate for reasons explained by the Majority Leader on September 8th:

> From the beginning, in consideration of the present rules of the Senate, it was obvious, and I so informed the leadership of the House of Representatives, that the Senate could not pass the President's energy package in a single bill for numerous reasons.
>
> First, a single bill would undoubtedly engender the kind of filibuster in the Senate that could not be broken by cloture.

> Second, it is not within the authority of the majority leader in this body to appoint an ad hoc committee and give it authority to report legislation. Only the Senate can do that.
>
> Third, there is no way under Senate rules in which a bill can be brought to the floor, except by unanimous consent, limiting the number of amendments thereto or specifying the Members who will be allowed to offer amendments.
>
> Consequently, the Senate, by necessity, has to deal with the energy package, as the distinguished minority leader has stated, in segments, thereupon running into the problem of getting these various measures into conference.

In view of these circumstances, the Senate took no action on S. 1469 and S. 1472, and when H.R. 8444 was received from the House, it was held at the desk by unanimous consent instead of being referred to committee for consideration.

Alternatively, the Senate could have ignored the action taken by the House in passing H.R. 8444. Instead, the Senate could merely have passed its six energy bills and then sent each of them to the House for its consideration. But this approach would have required that the House act twice on each energy proposal before a conference committee could even be convened--first, in passing H.R. 8444, and second, in acting on each of the Senate bills. The result would have been significant delays in reaching the conference stage. Moreover, it had been precisely for the purpose of avoiding piecemeal

consideration of energy bills that the House had agreed to create the Ad Hoc Committee on Energy to consolidate the recommendations of several standing committees into a single measure.

Senator Byrd summarized the dilemma confronting the two chambers as follows:

> The House of Representatives has already passed an energy bill. The only way that a measure can be gotten into conference is for that particular measure to have been acted upon by both Houses, disagreements having resulted therefrom, and the Houses agreeing to go to conference thereon. This requires a single number for the bill. The House bill on energy is over here. If the Senate sends various Senate bills dealing with energy to the House of Representatives, their paths will have crossed midway between the Senate and the House of Representatives. The House of Representatives will have Senate bills. The Senate has a House bill. There is no way to get to conference unless one of the Houses acts on the other House's bill.

To resolve this problem, a third, and unusual, approach was adopted. Instead of using either the House bill or the Senate bills, a third set of bills was selected to serve as legislative vehicles. These were bills on subjects unrelated to energy; they already had been passed by the House without opposition, and they were acceptable to the Senate without amendment. To each of these bills, the Senate added one or more of its energy bills and the corresponding parts of H.R. 8444 as passed by the House. These bills could then be returned to the House for its concurrence, House could disagree to the massive energy amendments attached to each, or agree to each set of Senate amendments with a further House amendment, and the House

could request a conference with the Senate on the matters in disagreement in each of the bills. Because there was no disagreement between the two chambers over the texts of the bills as originally passed by the House, the only matters before each of the conference committees would be the energy provisions.

Moreover, the rules of both chambers permit broad discretion in the appointment of conferees. Although conferees usually are selected exclusively from the committees which report the measure in question, this is not mandatory in either the House or the Senate. This discretion proved important for two reasons. First, it enabled both chambers to appoint conferees on each of the energy bills from the various standing committees with energy-related jurisdictions, rather than only from the House and Senate committees with jurisdiction over each of the minor bills being used as legislative vehicles. Second, it permitted each chamber, at its discretion, to appoint some or all of the same conferees on each of the energy bills, making it possible, in effect, for several of the energy bills to be considered by the same House and Senate conferees at the same time.

This strategy had an effect on the manner in which the Senate took final action on its energy bills.

The first of these bills on which the Senate completed floor action was an energy conservation measure, S. 701. After the bill was discussed on July 20th, it was passed by a voice vote, but it was not then sent to the House as usually would be done.

The second bill, S. 977, on coal conversion, was debated by the Senate on September 7th and 8th. At the beginning of the September 8th meeting of the Senate, the Majority Leader propounded the following unanimous consent request:

> Mr. President, I ask unanimous consent that when S. 977, the coal conversion bill, has been advanced to third reading the manager of that bill be authorized to proceed, without debate or intervening motion, point of order or appeal, to call up H.R. 5146, that that bill be considered at that time as having had its first and second readings, and that the manager of the bill be authorized to add to that bill two amendments, one amendment being the text of S. 977, as amended, if amended, and without further debate, intervening motion, amendment, appeal or point of order; the second amendment being the text of S. 701 as passed recently by the Senate, and two additional amendments, to wit, the text of H.R. 8444 dealing with the contents of S. 977, and the text of H.R. 8444 dealing with the relevant subject matter of S. 701, all without intervening debate, motions, further amendments, or points of order or appeals; and that H.R. 5146, as thus amended, be, without further intervening debate, amendment, motion, point of order, or appeal, passed, and the motion to reconsider laid on the table.

H.R. 5146, providing for the duty-free entry of competition bobsleds and luges, had been reported unanimously by the House Committee on Ways and Means, and had passed the House by unanimous consent on July 18th.

Before the unanimous consent request was agreed to, Senator Byrd offered the following explanation:

> The Senate has selected House bills, and will continue to do so, on which there is no differing opinion in the Senate. There is no controversy, for example, in regard to the particular House bill that has been selected in this instance. That bill would have been brought up in the Senate, passed without any amendment, and sent to the President. It would never have gone to conference. Consequently, that portion of the bill is left intact. There is not a single semicolon, period, or hyphen changed in that bill. Thus, when that portion goes back to the House, there is nothing in disagreement between the two Houses on that portion of the bill.
>
> The only disagreement is with regard to the energy parts of the bill, and consequently the leadership in this body feels that the leadership on the other side, having the authority that it has to appoint any conference committee members it wishes, can appoint the members of its ad hoc Energy Committee, as it would in the case of sending the whole House energy bill back to the House.

Later on September 8th, the Senate completed action on amendments to S. 977. The bill then was ordered to be engrossed and read the third time, after which Senator Byrd received unanimous consent for all references to S. 701 in the unanimous consent agreement quoted above to be vitiated. H.R. 5146 was read, amended pursuant to the unanimous consent agreement, and passed by a vote of 74 to 8. Thus, the bill passed by the Senate was H.R. 5146, not S. 977; it included the text of H.R. 5146 as passed by the House, the text of S. 977 as amended by the Senate, and those portions of the text of H.R. 8444, as passed by the House, that dealt with the same subjects as S. 977.

On the following day, during consideration of S. 2057, the third energy bill (and the second conservation measure) to be considered, Senator Byrd secured agreement to a similar unanimous consent request:

> Mr. President,I ask unanimous consent that when S. 2057, the National Energy Conservation Policy Act, has been advanced to third reading, the manager of that bill be authorized to proceed, without debate or intervening motion, point of order or appeal, to a House bill agreed to by both of the leaders, including, if necessary, discharge from committee, and that the manager of the bill be authorized to add to that bill amendments adding the text of S. 2057, as amended, if amended, S. 701 as passed by the Senate, and the pertinent text of H.R. 8444 which deals with the same subject matter as S. 2057 and S. 701, all without intervening debate, motions, further amendments, points of order, or appeals, and that the House measure thus amended be immediately advanced to third reading and passed, without any further intervening action and a motion to reconsider the passage of that measure being laid on the table.

The bill subsequently selected for this purpose was H.R. 5037, a private bill for the relief of Jack R. Misner, which had passed the House by unanimous consent on July 18th and which was pending before the Senate Committee on Finance.

On September 13th, S. 2057 was ordered advanced to a third reading by a vote of 78 to 4. H.R. 5037 then was called up and the Presiding Officer stated:

> Under the previous order, the text of S. 2057, as amended, the text of S. 701, as passed by the Senate, and the pertinent text of H.R. 8444, dealing with the subject matter of the aforementioned two bills, are added as amendments, the bill is read the third time and passed, and the motion to reconsider the vote by which the bill was passed is laid on the table.

A similar unanimous consent agreement had been reached on the previous day for taking final action on the remaining energy bills. This agreement was in essentially the same form as the agreement relating to S. 2057, and gave the Majority and Minority Leaders discretion to select appropriate bills, passed by the House, to serve as the needed legislative vehicles. The bills selected were H.R. 5289, a private bill for the relief of Joe Cortina, and H.R. 4018, a bill suspending the duty on certain doxorubicin hydrochloride antibiotics. Both bills had been reported by the House Committee on Ways and Means, passed by the House by unanimous consent on July 18th, and referred to the Senate Committee on Finance.

The fourth energy bill was passed by the Senate on October 4th, after the Pearson-Bentsen substitute to S. 2104 had been agreed to. After this bill on natural gas pricing had been ordered to be engrossed and read the third time, Senator Byrd called up H.R. 5289, which was read and amended to include the text of S. 2104, as amended, and the pertinent text of H.R. 8444. H.R. 5289, as amended, then was passed by a voice vote. In the same way, two days later, the text of S. 2114, as amended, on utility rate reform, and the pertinent text of H.R. 8444 were added as amendments to H.R. 4018 which then was passed, as amended, by a vote of 86 to 7.

By these means, the five energy bills that had been reported by the Senate Committee on Energy and Natural Resources and considered by the Senate were passed as amendments to four bills already passed by the House: H.R. 4018, H.R. 5037, H.R. 5146, and H.R. 5289. As passed by the Senate, each of these bills also included those portions of the text of H.R. 8444, as passed by the House, that corresponded to the Senate bills that had been added as amendments.

The House acted on these four bills, as amended by the Senate, on October 13th. In each case, Representative Staggers of West Virginia, Chairman of the Committee on Interstate and Foreign Commerce, first asked unanimous consent to take the bill from the Speaker's table and concur in the Senate amendment relating to energy matters with a further House amendment. The House amendment struck out the Senate energy provisions and inserted in their place the text of H.R. 8444, as passed by the House, except title II and references relating to it. There being no objection, Representative Staggers again asked that the bill be taken from the Speaker's table, that the House insist on its amendment to the Senate amendment, and that the House request a conference with the Senate thereon. No objection was made to either request on any of the four bills. The Speaker then appointed the same House Members to serve as conferees on each of the bills.

Later on the same day, the Senate disagreed to the House amendment to each of the bills and agreed to the request for a conference on each. Unlike the House, the Presiding Officer did not appoint the same Senators as conferees on each bill, but five Senators were among the conferees on all four of the bills and only three Senators were named as conferees on only one of them.

The Senate completed action on amendments to the remaining energy bill, H.R. 5263, on October 31st. The Senate Committee on Finance had elected to report its energy bill as an amendment to H.R. 5263, a bill passed by the House to extend the suspension of tariff duties on certain bicycle parts. Consequently, the Senate's energy tax provisions already had been inserted in a House-passed legislative vehicle before they were debated and amended on the Senate floor. After this process was completed, and pursuant to the unanimous consent agreement of September 12th, the text of the energy tax provisions of H.R. 8444 (Title I) was added as an amendment to H.R. 5263, and the bill as thus amended passed the Senate by a vote of 52 to 35.

On November 3rd, the House disagreed to the Senate amendments to the bill and requested a conference with the Senate. Representative Ullman of Oregon, Chairman of the Committee on Ways and Means, first asked that this be done by unanimous consent, but there was objection. Later on the same day, therefore, he announced that he had been directed by the Ways and Means Committee to make a motion

to the same effect, pursuant to clause 1 of Rule XX. The motion to disagree to the Senate amendments and to request a conference was agreed to by voice vote, and the Speaker then proceeded to appoint the same House conferees that had already been appointed to meet with Senate conferees on the four energy bills previously sent to conference. On the following day, the Senate insisted on its amendment and agreed to the conference. The Presiding Officer appointed a substantially different group of Senators to serve as conferees on this bill.

By November 4th, then, the House and Senate could begin efforts to reconcile the differences in their responses to President Carter's energy message of April 20th. The two chambers had passed different versions of five bills--four non-tax bills and one tax bill. Each of the Senate versions contained the text of one or more of the six Senate bills which the Senate had debated and amended, plus the corresponding provisions of the comprehensive bill, H.R. 8444, originally passed by the House. Each of the House versions of the non-tax bills contained all of title II of H.R. 8444, as passed by the House; title I of H.R. 8444 was not inserted as a House amendment to the Senate amendment to H.R. 5263, the Senate's energy tax bill.

Conferees had been appointed on five different bills, but in a manner which made it possible for the conferees to coordinate their actions on all the measures. The same Representatives and many of the same Senators had been appointed conferees on each of

the non-tax bills, and the House version of each of the bills contained all of the non-tax provisions of H.R. 8444 as passed. As a result, the conferences on these bills could meet as one, with a slightly different group of Senators participating in votes on each. Moreover, the same House Members also were appointed conferees on the energy tax bill, permitting close coordination of conference decisions on the tax and non-tax aspects of a single energy program.

Action Relating to Conference Reports

It was not until July 14, 1978 -- more than eight months after the various energy bills had been committed to conference -- that either chamber began to consider the conference report on any one of them. According to statements made in the Record by Senator Bayh of Indiana and Representative Moffett of Connecticut, agreement was reached promptly in conference on most of the provisions of three of the four non-tax measures: on H.R. 5037, on energy conservation, by November 1st; on H.R. 5146, on coal conversion, by November 11th; and on H.R. 4018, on utility rate reform, by December 1st. However, the conferees enjoyed much less success in resolving House-Senate differences over the natural gas pricing provisions of H.R. 5289, and the conferees on the energy tax bill, H.R. 5263, chose to await resolution of this controversial question before attempting to reach full accord on the bill before them.

The non-tax conferees discussed natural gas pricing at public meetings during December, but the conference did not re-convene officially until a brief public meeting on March 22, 1978. During the interim, negotiations continued among conferees, sometimes with the participation of interested White House and executive branch officials, in an attempt to devise a compromise that could be presented to the conference as a whole. Meanwhile, two procedural issues arose -- one relating to meetings among conferess, the other concerning how and when the two chambers would act on the conference agreements that had been reached.

The negotiations on natural gas pricing were conducted among some of the conferees meeting in private, a procedure that some Representatives concluded to be in violation of clause 6(a) of House Rule XXVIII, which states:

> Each conference committee between the House and Senate shall be open to the public except when the House, in open session, has determined by a rollcall vote of a majority of those Members voting that all or part of the meeting shall be closed to the public.

To bring this concern before the House, Representative Moffett, with the support of Representative Brown of Ohio, offered the following privileged motion in the House on April 13, 1978:

> Mr. MOFFETT moves, pursuant to rule XXVIII 6(a) of the House rules that the conference committee meetings between the House and Senate on H.R. 5289, relating to natural gas regulation, be closed to the public, provided however, that any sitting Member of Congress shall have the right to attend any closed or open meeting.

Representatives Moffett and Brown, both members of the conference committee, explained that this motion was the only available means by which the House could vote in support of their position that all future meetings among conferees should be open to the public and open to participation by all House and Senate conferees. They urged defeat of the motion as an expression of the opinion of the House. In response, Representative Ashley of Ohio, Chairman of the Ad Hoc Committee on Energy, expressed the view that the meetings in question had not been meetings of the conference committee, and therefore, were not subject to the provisions of Rule XXVIII. After a number of Members expressed their support for the principle of open meetings, the Moffett motion was rejected by a vote of 6 to 371, with Representative Ashley joining Representatives Moffett and Brown in opposition. The question of what constitutes a meeting of a conference committee, subject to Rule XXVIII, remained unresolved.

To protest the continuation of closed meetings among conferees after the April 13th vote, several Members joined in a series of dilatory tactics when the House convened on April 20th, the anniversary of President Carter's presentation of his energy proposals to a joint session of Congress. On April 20th, legislative business was delayed by: (1) an objection to the routine approval of the Journal of the previous day; (2) an unsuccessful attempt to require a record vote on approving the Journal; (3) an objection to dispensing with further proceedings under a call of the House after the

presence of a quorum had been established; (4) a demand that the motion to dispense with further proceedings under the call be reduced to writing; (5) an unsuccessful attempt to require a record vote on the motion; and (6) successful demands for record votes on a motion to resolve into Committee of the Whole and on a motion to table a motion to reconsider the vote on the motion to resolve.

The Members supporting this protest expressed continued opposition to private meetings among conferees, and also voiced their disappointment that no part of the President's package of proposals had yet been enacted. In view of the difficulties the conferees were facing in resolving energy tax and natural gas pricing questions, some Members urged that the two chambers take final action on the three non-tax bills on which basic agreement had been reached in conference.

House leaders opposed this strategy on the ground that the House originally had passed a single energy bill and that it should act on the conference reports in a similarly comprehensive fashion. Supporters of this approach also feared that the two controversial bills would have less chance of enactment, when reported from conference, if they were no longer tied to the three other measures, which most Members supported. On the other hand, the Members who advocated taking final action on each bill when agreement was reached argued that it was necessary to demonstrate some legislative response to the President's message of a year earlier, especially

because it was unclear if and when there would ever be agreement in conference on energy taxes and natural gas pricing. The expectation of a Senate filibuster on a conference report providing for eventual natural gas deregulation also caused concern that all the energy measures would be jeopardized by insisting on acting on them together.

To underscore their desire for enactment of the energy proposals on which conference agreement could then be obtained, the House Subcommittee on Energy and Power voted on April 27th not to report H.R. 11392, authorizing necessary appropriations for the Department of Energy. Two other circumstances also were reported to have encouraged separate action in the Senate on at least one energy conference report. First, progress was being made toward achieving agreement in conference on natural gas pricing, the primary non-tax issue yet to be resolved. And second, there was a desire to demonstrate substantial progress toward enacting a national energy program before the beginning of an economic summit conference in mid-July. Press reports suggested that it was also for this reason that the energy tax conferees met on July 14th, for the first time in 1978.

Consequently, on July 14, 1978, the Senate began consideration of the conference report on the coal conversion bill, H.R. 5146 -- originally a bill to permit the duty-free entry of competition bobsleds and luges, but now designated the Powerplant and Industrial Fuel Use Act of 1978. Although basic agreement among the conferees

had been reached on the bill during Novermber 1977, completion of the conference report itself was postponed while the conference wrestled with the problem of natural gas pricing. It was not until July 13th that a majority of the conferees from each chamber signed the conference report to accompany H.R. 5146.

When the Senate began to debate the conference report, the Majority Leader emphasized the desirability of voting on it on July 14th -- two days before the President would be meeting with other heads of state to discuss economic matters, including energy policies. However, after Senator Schmitt of New Mexico stated that he would continue to debate the report, and pose questions concerning it, so that no vote could occur on the 14th, Senator Byrd secured unanimous consent that the Senate vote on the conference report on the afternoon of July 18th. After extensive discussion of the conference report on July 17th, including responses to twenty-six questions that had been raised by Senator Schmitt, and fifteen minutes of concluding debate on July 18th, the conference report on H.R. 5146 was agreed to by a vote of 92 to 6.

Nine days later, Senator Baker, the Minority Leader, expressed surprise that the conference report had not been transmitted to the House until that morning. The Presiding Officer, Senator DeConcini, noted that there is no rule governing when conference reports are to be transmitted to the other body, but that it is usually done within one or two days after action by the Senate. Whatever the

reason for delay, however, it did not affect House action on the report because House leaders intended to postpone consideration of any of the conference reports until most or all of them were available for consideration.

One reason that Members favoring a package approach to consideration of the conference reports did not oppose Senate action on the coal conversion conference report was that progress was being made on the difficult issue of natural gas pricing. By late April, agreement had been reached among some of the conferees, and the compromise was accepted in principle by the full conference committee on May 24th. By mid-June, the remaining details had been arranged, and the staff was directed to transform the agreements into appropriate legislative language and to draft the accompanying conference report.

However, the compromise was fragile and uncertain. There were fears, for example, that it might be jeopardized by House floor action on H.R. 11392, a Department of Energy authorization bill, which had been reported after the delay mentioned previously and after resolution of jurisdictional conflicts among several House committees. The bill was scheduled tentatively for floor consideration on July 17th, under the terms of a special rule that would have made in order a non-germane amendment affecting oil price controls. But action on the bill was postponed when several conferees became concerned that adoption of the amendment on oil pricing might unsettle the conference agreement on natural gas pricing.

Preparation of the conference report also was accompanied by indications that it would be the subject of a filibuster, if and when it was taken up by the Senate. On July 24th, Senator Abourezk gave credence to this expectation by delaying the conduct of routine Senate business. When the Senate convened, he objected to unanimous consent requests for (1) routine approval of the Journal, (2) a period for transacting morning business, (3) a brief recess, and (4) rescinding the order for a quorum call. These and other dilatory tactics were interpreted as a warning that the conference report, if ultimately signed by majorities of House and Senate conferees, would be challenged on the Senate floor.

On the following day, the Majority Leader responded by noting that it had been his intention to allow two days of debate on the conference report before filing a cloture motion. This would mean that, under the provisions of Rule XXII, there could be four days of debate before the Senate would vote on limiting further debate. However, he now informed the Senate that he might file a cloture motion as soon as the Senate formally took up the conference report if the dilatory tactics of the previous day indicated that a filibuster had, in effect, already begun.

Although the conferees apparently had reached agreement during May and June on natural gas pricing, considerable time was required to translate this agreement into appropriate legislative and explanatory language. Several conferees from both chambers then found

that there were discrepancies between the conference report as drafted and their understanding of the compromises to which they had agreed. A number of additional changes were made in the report, which was finally signed by majorities of House and Senate conferees on August 17th.

During the following week, opponents of the conference report announced their intention to offer a motion to recommit the report to conference with instructions to report a different, abbreviated version. Thus, Senators would be presented with three alternatives: no bill, the bill embodied in the conference report, and the substitute to be specified in the recommittal motion. Supporters of the conference report opposed the recommittal motion both on its merits and on the ground that the recommittal version could not be enacted before the end of the Congress. They concluded, therefore, that adoption of the recommittal motion would preclude enactment of any bill on natural gas pricing and that the Senate should vote either to accept or reject the conference report as submitted.

Senators anticipated that one or more of four votes might occur after the conference report was brought up: a vote on the conference report itself, a vote to recommit the report to conference with instructions, and votes on motions to table either the conferenence report or the recommittal motion. Under the rules of the Senate, the conference report and the motion to recommit are debatable matters; motions to table are not debatable. Before the

conference report was brought up, the Majority Leader sought a unanimous consent agreement as to when these various votes might take place.

On September 7th, Senator Byrd proferred several unanimous consent requests, all of which were designed to provide a number of days for debate before any votes took place on the conference report, the anticipated recommittal motion, or any motion to table. There was objection to each of these requests.

In support of his requests, Senator Byrd stressed the importance of all Senators having adequate advance notice of when votes would occur on such major and controversial legislation. He noted that a number of Senators had made commitments to be in their home States and that, in the absence of such unanimous consent agreement, they either would have to cancel these commitments or risk being absent when a nondebatable motion to table was made. His purpose, he stated, was to protect all Senators, regardless of their positions on the conference report and recommittal motion, by ensuring that no tabling motion would be made and immediately put to a vote without all Senators having an ample opportunity to return to Washington if necessary.

As one of the Senators objecting to these requests, Senator Abourezk argued that Senators would not feel compelled to be present for the debate on the conference report if they were assured that no votes would occur. He emphasized the need for all Senators to

listen to and participate in the debate; preserving the possibility that a tabling motion might be made and voted on at any time would encourage Senators to be present in Washington, if not on the floor at all times.

Many of the same arguments were repeated on the next day. When it became clear that a unanimous consent agreement could not be obtained, the Majority Leader announced that the conference report would be called up by Senator Jackson when the Senate reconvened on the following Monday. Senator Byrd also alerted the Senate that votes on a variety of procedural matters might occur at any time after the conference report was called up. After describing some of the parliamentary circumstances that might arise, he concluded with the following peroration:

> I close by saying that I hope that, from time to time, we can get time agreements that will give Senators on both sides of the aisle and both sides of the question notice in advance as to when a critical vote is going to occur such as a vote on a motion to recommit or a vote up or down on the conference report.
>
> I should like to see us be able to work out time agreements, but this cannot be guaranteed at this time.
>
> Having said that, I think I have said enough to alert Senators who read the RECORD that this situation that we are now about to confront is one in which every Senator had better have his eyes glued on the legislative radar, because storm warnings are apparent. I suggest that the seat belts be buckled and that people stay out of the aisle and be ready for politically climatic and procedurally climatic conditions that will be quite turbulent at points, with strong winds coming from various directions; and that everybody be prepared for a rough ride and sudden jolts, but keep the faith and be prepared to vote at any time.

Thus, on Monday, September 11th, Senator Jackson received unanimous consent that the Senate proceed to the consideration of the conference report on natural gas pricing, which the clerk reported as follows:

> The committee of conference on the disagreeing vote of the two Houses on the amendment of the House to the amendment numbered 8 of the Senate to the bill (H.R. 5289) for the relief of Joe Cortina of Tampa, Florida, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The Senate debated the conference report on September 11th and 12th, and negotiations to reach a time agreement continued on September 13th, both on and off the Senate floor. On September 13th, the Majority Leader propounded a unanimous consent request that (1) the vote on the expected recommittal motion should occur on the following Tuesday, (2) if the motion were to fail, the vote on the conference report would occur after three additional hours of debate, and (3) no motion to table either the recommittal motion or the conference report would be in order. Senator Bartlett of Oklahoma objected to this request on the ground that he wished to preserve the possibility that, if the recommittal motion failed, he might then offer another recommittal motion with different instructions. Objection being heard, Senator Byrd urged all interested Senators to continue working toward a time agreement that would be acceptable.

Also on September 13th, Senator Metzenbaum included in the Record the tentative text of the recommittal motion that would be offered, and possible amendments to the instructions were discussed. Senator Jackson informed the Senate of his understanding that the House conferees were unlikely to return to conference if the recommittal motion were successful, which would mean that no bill would be enacted during the 95th Congress. Senator Hansen noted that the Senate could not bind or instruct the House conferees, but he expressed concern that the instructions would not be binding even on the Senate conferees, and sought assurances that the Senate conferees would advocate House acceptance of the Senate instructions.

Success in framing a time agreement was achieved on September 14th. After discussions throughout most of the day, Senator Byrd propounded a unanimous consent agreement with the following elements:

1) that the vote on the motion to recommit with instructions, to be offered by Senator Metzenbaum, would occur on Tuesday, September 19th;
2) if that motion were to fail, that additional motions to recommit, with or without instructions, would be in order, including one such motion to be offered by Senator Bartlett;
3) that votes on all such motions would take place by no later than 1:00 p.m. on Wednesday, September 27th;

4) that if no motion to recommit were to carry, the vote on the conference report would occur at 1:00 p.m. on September 27th; and

5) that neither the conference report nor any motion to recommit would be subject to a motion to table.

The agreement also provided for control of the time for debate to be divided between Senator Jackson and Senator Hansen on the conference report, and between Senator Jackson and the mover of each motion to recommit.

In order to facilitate action on other pending legislation before adjournment, the Senate also agreed to operate on a two-track system--each day's session to be divided between consideration of the conference report and other matters. Senator Byrd stated, however, that the conference report would continue to be given priority, and that every effort would be made to accommodate Senators wishing to offer or debate recommittal motions.

On September 15th, Senator Metzenbaum sent to the desk a somewhat different version of the recommittal motion he intended to offer. Also submitted for printing was an amendment to the instructions to be proposed by Senator Stevens of Alaska. During debate on the conference report, Senator Byrd emphasized that the time pressures on the Congress as it approached adjournment were such that,

even if there were a post-election session, defeat or recommittal of the conference report would preclude enactment of any legislation on natural gas pricing. Debate continued on September 16th.

Under the terms of the time agreement previously agreed to, the Senate prepared to vote on the recommittal motion on September 19th. Senator Humphrey of Minnesota first called up an amendment to the instructions in the recommittal motion; the amendment was accepted by Senator Metzenbaum and agreed to by a voice vote. After additional debate, the vote occurred on the recommittal motion as amended, which was rejected by a vote of 39 to 59. After the vote several Senators indicated that one or more additional recommittal motions might be offered before the date and time agreed upon for a vote on the conference report itself. During its next five meetings, the Senate attended to other pending matters.

On September 26th, a second motion to recommit with instructions was offered by Senator Dole of Kansas. Before the vote on the motion, there was objection to a unanimous consent request proposed by Senator Byrd that sufficient live pairs be arranged so that the absence of unequal numbers of proponents and opponents of the motion would not affect the outcome of the vote. The recommittal motion was then rejected by a vote of 36 to 55, with Senator Long of Louisiana giving a live pair to Senator Randolph of West Virginia, who would have voted against recommittal if he had been present and voting.

Pursuant to the unanimous consent agreement, the Senate returned to consideration of the conference report at noon on September 27th for one hour of concluding debate. At the expiration of the time for debate, the conference report was agreed to by a vote of 57 to 42, and a motion to reconsider was laid on the table.

The conference reports on the two remaining non-tax energy bills, H.R. 4018 on public utility rates and H.R. 5037 on energy conservation policy, were submitted to the Senate by Senator Jackson on October 7th. To conserve the time of the Senate as the 95th Congress approached adjournment, Senator Jackson asked unanimous consent that the two reports be considered en bloc and then voted on separately and sequentially. After discussion of how the debate and votes on the conference reports would be coordinated with action on the pending tax bill and related cloture motions, a unanimous consent agreement was arranged regarding debate and votes on the reports without specifying when the votes would occur. With one show of seconds, the Senate agreed that there would be roll call votes on both conference reports, pursuant to a unanimous consent request by the Majority Leader.

The conference reports were discussed briefly on October 7th and, after considerably more discussion of scheduling, the Senate agreed upon a time for voting on the reports on Monday, October 9th.

At the agreed upon time on October 9th, the Senate completed debate on the two conference reports. Following additional debate on the pending tax bill, the Senate first voted to invoke cloture on the tax bill and, immediately thereafter, agreed to the conference report on H.R. 4018 by a vote of 76 to 13 and the conference report on H.R. 5037 by a vote of 86 to 3.

When, on October 12th, Senator Long of Louisiana sent to the desk the conference report on H.R. 5263, concerning energy taxes, Senator Abourezk demanded that the report be read. The Senator from South Dakota then objected to consideration of the conference report by unanimous consent, so Senator Byrd moved that the Senate proceed to its consideration, a motion to which the Senate agreed by a vote of 77 to 8. Immediately thereafter, the Majority Leader filed a cloture motion to close debate on the report. The Senate then considered other matters.

The cloture motion was taken up by the Senate two days later, pursuant to Rule XXII. At 10:30 a.m., after the presence of a quorum was established, the Senate invoked cloture by a vote of 71 to 13 and proceeded to consider the conference report on H.R. 5263. After several statements on the report, Senators Abourezk and Proxmire demanded quorum calls, and Senator Proxmire then requested unanimous consent to proceed to the consideration of the conference report on a housing bill. Senator Byrd objected, noting that two cloture motions had been filed on October 12th -- one on the conference

report then before the Senate, and the second on S. 3279, an aircraft noise bill. The Majority Leader stated that, if the energy conference report was put aside in favor of the housing conference report, Rule XXII then would require that the Senate vote on the cloture motion on S. 3279 after disposition of the housing conference report. If cloture were invoked on S. 3279, the Senate would not be able to return to consideration of the energy conference report until after disposition of S. 3279, a bill which promised to evoke extended debate.

Senator Proxmire again suggested the absence of a quorum, but Senator Byrd contended that no business had been transacted since the previous call which had disclosed the presence of a quorum, and cited the following precedent:

> Business must intervene before a second quorum call or between calls, or a quorum call is not in order when there has been no business transacted since the previous call if a point of order is made.

The Presiding Officer concurred and ruled that a quorum call under these circumstances would be dilatory. A unanimous consent agreement then was arranged by which the Senate could dispose of the housing conference report and return immediately to the energy conference report without voting on the cloture motion on the aircraft noise bill.

After the Senate resumed consideration of the energy conference report, Senator Proximire made a point of order that a quorum was not present, rather than suggesting the absence of a quorum as is

customary. The Presiding Officer ruled that the point of order was not well taken, not because a quorum was in fact present at that time, but because "a quorum call at this point is not in order, the question having been raised, because no business was transacted since the last time a quorum was established." The following colloquy ensued:

> Mr. PROXMIRE. Mr. President, I ask unanimous consent that the Republican Party in this country be abolished as an institution.
>
> Mr. DOLE. I object.
>
> Mr. PROXMIRE. Mr. President, objection has been heard and business has been transacted and, therefore, I suggest the absence of a quorum.
>
> Mr. ROBERT C. BYRD. Mr. President, it is a dilatory unanimous-consent request, patently dilatory, and it does not constitute business.
>
> Mr. PROXMIRE. An objection was heard and it is clearly transacting business.
>
> The PRESIDING OFFICER. Under the precedents, the Senator from West Virginia is correct.

Several minutes later, Senator Weicker of Connecticut moved that the Senate recess until later in the day. The Presiding Officer ruled that the motion was dilatory, but did not agree with the Majority Leader's contention that an appeal from a ruling of the Chair that a motion is dilatory is itself dilatory. A record vote then occurred on a motion to table the appeal from the ruling of the Chair. After the Senate agreed to the motion to table, motions to reconsider and to lay that motion on the table both were held

to be dilatory. In response to an inquiry by Senator Metzenbaum, the Presiding Officer also noted that "the making of a parliamentary inquiry does not constitute business for purposes of another quorum at any time pre- or post-cloture."

Senator Abourezk also inquired if agreement or objection to a unanimous consent request would constitute transaction of business. The Presiding Officer responded that "under the precedents of last fall, the answer to his question though ordinarily yes in a pre-cloture situation, is no in a post-cloture situation." Specifically, the Chair cited the following precedent of October 3, 1977:

> An instance where the Senate decided when it was operating under cloture that a request by a Senator to conduct business which the Senate declines to conduct -- for example, the making of a motion that is ruled dilatory, the offering of an amendment which is ruled out of order or dilatory, or a request for the yeas and nays which is refused -- is not the transaction of business for the purpose of calling another quorum.

The Presiding Officer then stated that he "would have to hold a refusal to grant unanimous consent in the same category."

Senator Abourezk sought to appeal this ruling, but the Chair sustained Senator Byrd's point of order that "an appeal from the ruling of the Chair to the effect that a matter is dilatory is also, ipso facto, dilatory, under cloture." In response to this last ruling, Senator Baker recalled that appeals from the ruling of the Chair had been specifically excluded from the precedent which the Presiding Officer had cited. By a vote of 59 to 23, the Senate

then voted to table the appeal from the decision of the Chair, deciding "that after cloture has been invoked, the denial of a unanimous-consent request does not constitute the transaction of business for the purpose of another quorum call." After further discussion of what constitutes business under cloture, a motion to adjourn was held to be dilatory and an appeal from this ruling was tabled by a vote of 63 to 19.

After the Senate rejected a motion to table the conference report by a vote of 22 to 56, Senator Abourezk appealed a ruling of the Chair that the Senate does not transact business when operating under cloture by granting unanimous consent for the insertion of material in the Congressional Record. By a vote of 54 to 11, the Senate agreed to a motion to lay the appeal on the table. The Senator from South Dakota then offered a motion to recommit the conference report with instructions, which was laid on the table by a vote of 58 to 16. A second motion to recommit with instructions was tabled as well, as was a third motion to recommit the conference report to the Committee on Finance. Following several closing statements, the Senate then adopted the conference report on H.R. 5263, on energy taxes, by a vote of 60 to 17, and a motion to reconsider was laid on the table.

During the closing hours of Senate debate on the energy tax conference report, several Senators referred to the parliamentary situation in the House, and especially to the possibility that the House might act on the Senate amendments to H.R. 112.

As passed originally by the House, H.R. 112 had reduced the excise tax on the investment income of private foundations. But during Senate consideration on August 23rd, the bill had been amended to include tax credits for residential energy conservation and alternative energy source expenditures. The subjects of this amendment, offered by Senator Hart of Colorado, were included also in the energy tax bill which was in conference at that time. The Senate passed H.R. 112 by a voice vote after rejecting other energy-related amendments offered by Senator Gravel of Alaska.

The House Committee on Rules had reported a resolution, H. Res. 1349, providing for the consideration of the Senate amendments to H.R. 112; hence, it was possible for the House to act on the bill at any time on October 14th.

The House already had adopted a special rule providing for en bloc consideration of the various energy conference reports; under the terms of this rule, the energy tax report could be, but need not be, included in the package, depending on whether it was agreed to by the Senate before the House acted (see page 73). Thus, if Senate agreement to the energy tax conference report were delayed, the House could agree to the four non-tax energy conference reports

en bloc and then agree also to the Senate amendments to H.R. 112, clearing that bill for presidential approval. Some Members in both chambers preferred this alternative to adoption by the House of the five conference reports en bloc in the belief that the energy tax provisions of the Senate amendments to H.R. 112 were preferable to the provisions of the energy tax conference report. Also, some Members evidently expected that separating energy tax legislation from the non-tax conference reports might encourage Members opposed to the natural gas pricing report to reject the four non-tax conference reports en bloc. Finally, if the House acted on the Senate amendments to H.R. 112, there would be no purpose served by continuing the Senate debate on the energy tax report.

In view of these possibilities, Senator Byrd took the floor several times during the evening of the 14th to advise the Senate that the House would not act on H.R. 112, repeating assurances to this effect that he had received from House leaders. Nevertheless, other Senators did not share his confidence and continued their extended debated on the conference reports. Some Senators apparently thought that the parliamentary situation in the House would change if the Senate debate could be prolonged past midnight, believing that the House would then be more likely to act on the four non-tax reports and then on H.R. 112.

The circumstances prevailing during the closing hours of a Congress are often complex and sometimes confusing, even to the participants. It is by no means certain that all the interested Representatives and Senators shared the same understanding of the procedural rules and possibilities affecting their situation. However, some of their calculations and decisions seem to have been based upon their interpretation of the following provisions of clause 4(c) of House Rule XI:

> The Committee on Rules shall present to the House reports concerning rules, joint rules, and order of business, within three legislative days of the time when the bill or resolution involved is ordered reported by the committee. If any such rule or order is not considered immediately, it shall be referred to the calendar and, if not called up by the Member making the report within seven legislative days thereafter, any Member of the Rules Committee may call it up as a question of privilege and the Speaker shall recognize any Member of the Rules Committee seeking recognition for that purpose. (emphasis added)

It should be noted that October 14th was considered to be the seventh legislative day since H. Res. 1349, providing for consideration of H.R. 112 as amended, had been reported to the House.

Reports of the Rules Committee affecting the order of business are privileged matters in the House. But other matters, such as the consideration of conference reports, also are privileged, and there is no definitive and authoritative order of precedence among all privileged matters. Moreover, the Speaker enjoys some discretion in determining who shall be recognized and for what purpose. Expectations

in the Senate as to what would or might happen in the House seem to have differed, depending on whether Senators believed that H. Res. 1349 would be taken up by the House. For example, Senator Hart of Colorado expressed the belief that the Speaker would be obligated to recognize the appropriate Member of the Rules Committee, Representative Dodd of Connecticut, if he sought recognition to call up the resolution. On the other hand, Senator Byrd emphasized the Speaker's discretionary control of recognition, and repeated his understanding that the Speaker could and would prevent House consideration of the resolution.

Also at issue were the provisions of clause 4(c) of Rule XI that, after the expiration of seven legislative days, any Member of the Rules Committee might call up the resolution, and that "the Speaker shall recognize" the Member seeking recognition for that purpose. A new legislative day begins in the House when the House convenes after having adjourned, and there may have been some confusion, especially in the Senate, between legislative and calendar days.

The statements of several Senators indicated that they believed it important to extend their debate on the energy tax conference report past midnight. It seems likely that they believed that, even if the Speaker could prevent consideration of H. Res. 1349 on October 14th, he might not be able to do so after midnight -- that some Member of the Rules Committee would seek recognition to call up H. Res. 1349

and that the Speaker would be required under Rule XI to recognize that Member. In view of the fact that the distinction between calendar and legislative days was not mentioned during the Senate debate, some Senators may have believed that the parliamentary situation in the House would change automatically at midnight. Others, however, may have realized that the House would continue in the same legislative day on October 15th unless the House first agreed to a motion to adjourn, however briefly. There also may have been different expectations as to whether or not the language of Rule XI eliminated any discretionary control over recognition by the Speaker.

The precise understandings and expectations of the Representatives and Senators involved must remain somewhat speculative. In any event, however, the Senate continued debate on the conference report past midnight without any action occurring in the House on either H. Res. 1349, providing for consideration of H.R. 112, or the four energy conference reports that the Senate already had agreed to. Shortly after midnight, one or more House Members apparently failed in an effort to offer a motion to adjourn, so that a new, and eighth, legislative day would then begin. Also in the early minutes of October 15th, Senator Abourezk announced that "(i)t has become obvious, after watching the efforts over in the House all night long, that they are not going to succeed in separating the

energy tax bill from the rest of what they call the energy package." The vote on agreeing to the conference report occurred shortly thereafter.

From the outset, the House and Senate had adopted different procedural approaches to considering national energy legislation, the House passing one bill and the Senate passing six separate bills instead. Because of the Senate's approach, five bills were considered in conference, but it remained the intention of the House leadership to re-unite the five bills into a single package for final House action if and when conference agreements were reached.

For this reason, the House did not act on each of the energy conference reports immediately after they were agreed to by the Senate. Instead, the House waited until the Senate had disposed of the four non-tax conference reports and was considering the fifth report, on energy taxes. At that point on October 13th, the House considered a special rule reported by the Rules Committee to allow the House to act on the five reports by one vote.

This resolution, H. Res. 1434, had been reported by the Rules Committee on the morning of the same day it was considered in the House. Under normal parliamentary circumstances, therefore, its consideration would have required a two-thirds vote, because clause 4(b) of Rule XI provides in part that:

> It shall always be in order to call up for consideration a report from the Committee on Rules on a rule, joint rule, or the order of business (except that it

> shall not be called up for consideration on the same day it is presented to the House, unless so determined by a vote of not less than two-thirds of the Members voting, but this provision shall not apply during the last three days of the session)....

However, earlier on October 13th, the House had agreed to H. Res. 1426, by a vote of 260 to 134, which suspended for the remainder of the Congress the requirement for a two-thirds vote for consideration of a resolution from the Rules Committee on the same day it was reported. In support of the resolution, Representative Bolling of Missouri had noted that the Congress intended to adjourn sine die on the following day, October 14th, but that H. Res. 1426 was necessary because the House and Senate had not yet passed a concurrent resolution to set formally the date for adjournment.

Therefore, it was in order on October 13th to consider H. Res. 1434, which read as follows:

> Resolved, That upon the adoption of this resolution, any rule of the House to the contrary notwithstanding, it shall be in order in the House to consider en bloc the conference reports on the bills H.R. 4018, H.R. 5146, H.R. 5037, H.R. 5289 (and H.R. 5263 if first adopted by the Senate), and all points of order against said conference reports are hereby waived. After debate in the House on said conference reports, which shall continue not to exceed four hours, to be equally divided and controlled by the chairman and ranking minority member of the Ad Hoc Committee on Energy, the first hour of which shall be confined solely to the conference report on the bill H.R. 5289, the previous question shall be considered as ordered on said conference reports to one vote on their final adoption, and the vote on said conference reports shall not be subject to a demand for a division of the question or to a motion to reconsider.

This special rule had several components. First, it waived points of order against consideration of the conference reports. On October 6th, the House had agreed to H. Res. 1404, which made certain changes in House procedure for the duration of the 95th Congress, one of which was to suspend the requirement of clause 2 of Rule XXVIII that, before being considered by the House, a conference report must lay over three days after the report has been filed in the House. However, the resolution explicitly left in force another requirement of the same rule that copies of a conference report must be available to Members for at least two hours before it may be considered. Probably in the expectation that the energy tax conference report might not be available until the last minute, H. Res. 1434 waived this requirement, as well as any other rule that might have provided the basis for a point of order against consideration of one or more of the reports.

Second, the reolution provided for consideration of the five reports en bloc, and for a single vote on agreeing to all of them. Many Members wished the opportunity to vote separately on at least one of the reports -- the controversial conference report on H.R. 5289, on natural gas pricing. In the absence of these provisions, the conference reports would have been considered individually with votes occurring on each of them.

Third, H. Res. 1434 waived all points of order against the conference reports. Because the Senate had chosen to attach its energy bills to minor House-passed bills on different subjects, one or more of the conference reports otherwise might have been subject to points of order, based on Rule XXVIII, for including a provision that would have been non-germane if offered as an amendment in the House to the original text of the House bill. Points of order also might have been based on assertions that, in reaching their agreements, the conferees exceeded the scope of the matters committed to them.

Fourth, the resolution provided for four hours of debate on the reports and specified that the first hour should be devoted exclusively to H.R. 5289 which included the natural gas pricing provisions. Normally, conference reports are debated for a maximum of one hour.

Finally, H. Res. 1434 precluded a demand for a division of the question. In the absence of this provision, a Member might have demanded a division, which would have required the House to vote separately on each report.

The terms of this resolution had been the subject of considerable debate before the Rules Committee on October 12th. A number of the House energy conferees appeared before the Committee to discuss the contents of the conference reports and to advocate differing positions as to the special rule or rules under which they

should be considered by the House. Representatives Ashley and Dingell, among others, advocated a special rule permitting only a single vote on the four or five conference reports (the number of reports to be considered en bloc depending on whether the energy tax conference report would be available for House action). Representative Bolling supported their position while stating that he knew of no precedent for such a special rule. Opponents of this proposal acknowledged that the House originally had passed one composite energy bill, but they emphasized that the special rule governing floor consideration of that bill, H.R. 8444, had effectively permitted a separate vote on the question of natural gas pricing.

After the completion of hearings, Representative Bolling moved the adoption of a special rule providing for immediate consideration of the conference reports and for a single vote on their adoption. Representative Long of Louisiana offered an amendment to permit a separate vote on the natural gas pricing report, after one hour of debate, before the consideration en bloc of the other energy conference reports. There seemed to be general agreement that a separate vote on the most controversial of the reports would diminish the likelihood of its being accepted by the House. The Long amendment was defeated by an 8 to 8 tie vote.

Several other amendments were offered to the Bolling motion. Representative Dodd of Connecticut proposed that the special rule permit consideration en bloc and a single vote on the four reports already agreed to by the Senate, plus the Senate amendments to H.R. 112 instead of the energy tax conference report then pending in the Senate. A motion by Representative Young of Texas to table the amendment carried by a voice vote. Representative Anderson of Illinois then offered a substitute amendment, but the Chairman, Representative Delaney of New York, sustained Representative Bolling's point of order that the substitute was essentially the same as the Long amendment previously rejected by the Committee.

A second substitute was offered by Representative Bauman of Maryland to provide, first, for a separate vote on the natural gas conference report, then for a single vote on the other three non-tax reports, and finally, for the House then to consider the Senate amendments to H.R. 112. After the Committee agreed to a motion to table the Bauman substitute, Representative Lott of Mississippi argued that the effect of tabling the substitute was to table the Bolling motion as well. On an earlier occasion, Representative Lott had called the Committee's attention to precedents cited in connection with clause 4 of House Rule XVI to the effect that "(w)hen a bill is laid on the table, pending motions connected therewith go to the table also . . . and when a proposed amendment is laid on the table the pending bill goes there also...." Such is

not the practice of the Senate, and this difference probably accounts in large part for the much greater frequency with which tabling motions are offered in the Senate than in the House.

Representative Bolling acknowledged the force of this precedent and its applicability to the parliamentary situation in which the Committee found itself. His originial motion having been tabled, he then offered a new motion with the same provisions except that the time provided for debating the several conference reports was increased from three to four hours. On a roll call vote, the new Bolling motion was agreed to by a vote of 9 to 7, but Representative Chisholm of New York changed her vote to create an 8 to 8 tie, defeating the motion. After brief consideration of another matter, the Committee adjourned.

On the following day, October 13th, Representative Bolling offered a third motion which differed from the second in two respects: first, it specified that one hour of debate should be devoted to the conference report on natural gas pricing; second, it made it in order for the House to consider the conference reports instead of providing for their immediate consideration. He explained that the energy tax report was still before the Senate and that this change in the resolution would allow the House to adopt the special rule and then to await final Senate action on the fifth conference report before proceeding to the consideration of all of them on the House floor.

Representative Long offered an amendment, with the same effect as his amendment of the previous day, which was rejected by a vote of 7 to 8 with one member voting "Present." The Bolling motion then was agreed to by a roll call vote of 9 to 5 with two members voting "Present."

When the resolution was called up later that day, Representative Anderson of Illinois urged that the House refuse to order the previous question, which would enable him to offer a substitute resolution providing for immediate consideration of the conference report on natural gas pricing and, after one hour of debate, a separate vote on that report, and then for consideration en bloc of the other energy conference reports. If the substitute had been agreed to, the energy tax report would not have been available for consideration en bloc at that time because it was then still before the Senate. Consequently, Representative Jeffords of Vermont supported Representative Anderson on the grounds that the energy tax report would require separate consideration on the following day, and that the House then could vote to reject that conference report and act instead on H.R. 112 as amended by the Senate.

The House had not acted on H.R. 112 as it had been amended by the Senate; for reasons discussed previously, House leaders preferred not to act separately on any one aspect of the matters that had been included originally in H.R. 8444 as passed by the House. But if the energy tax conference report were not available for

consideration under the terms of a special rule that called for immediate consideration en bloc of the other available energy reports after disposition of the report on natural gas pricing, two possibilities would have been created: either to consider H.R. 112 as amended instead of the energy tax report (which would have made it unnecessary for the Senate to act on the energy tax report) or to consider the report and, if rejected, take up H.R. 112 instead.

Thus, Members opposed H. Res. 1434 both on strategic grounds and on the grounds that it denied Members the opportunity to vote separately on conference reports which merited individual consideration. After considerable debate, however, the previous question was ordered on the resolution by a vote of 207 to 206 with one Member voting "Present." The resolution itself was then agreed to by voice vote.

Having adopted H. Res. 1434 on October 13th, the House waited throughout the following day for the Senate to vote on the energy tax conference report so that, pursuant to the resolution, the House could vote on all five reports as one package. The Majority Leader, Representative Wright of Texas, informed the House that a filibuster was still underway in the Senate and that the House would take up other pending measures while it waited for the Senate to act. As already noted, the House could have agreed to H. Res. 1349 and then considered the Senate amendments to H.R. 112 at any time on October 14th, but it did not do so. Under the terms of H. Res. 1434,

the House also could have acted on the four non-tax conference reports en bloc without waiting for the Senate to vote on the fifth report. But the House leaders insisted upon waiting until all of the energy conference reports were available for consideration by the House at the same time.

Finally, at 2:40 a.m. on Sunday, October 15th, shortly after final Senate action, Representative Ashley of Ohio, Chairman of the Ad Hoc Committee on Energy, rose:

> Mr. Speaker, pursuant to House Resolution 1434, I call up the conference reports on the bills (H.R. 4018) to suspend until the close of June 30, 1980, the duty on certain doxorubicin hydrochloride antibiotics, (H.R. 5037) for the relief of Jack R. Misner, (H.R. 5146) to amend the Tariff Schedules of the United States to provide for the duty-free entry of competition bobsleds and luges, (H.R. 5289) for the relief of Joe Cortina of Tampa, Fla., and (H.R. 5263) to suspend until the close of June 30, 1980, the duty on certain bicycle parts.

Through the early hours of October 15th, the House debated the conference reports, discussing both the substance of the reports and the procedures by which this stage had been reached. Colloquies also were conducted to clarify certain provisions of the reports and to establish congressional intent.

At the conclusion of the four hours of debate, the Speaker announced that:

> The previous question is considered as ordered to one vote on the final adoption of the conference reports. Such conference reports shall not be subject to demand for a division of the question or a motion to reconsider. There is one vote on all five conference reports.

By a record vote of 231 to 168, the House agreed to the conference reports at 7:30 a.m. on Sunday, October 15th.

After the transaction of other legislative business, Representative Dingell asked and received unanimous consent for the immediate consideration of H. Con. Res. 759, directing the Clerk of the House to make corrections in the enrollment of the five measures. In his explanatory statement, Representative Dingell reminded the House that:

> each bill was sent over from the Senate as a nongermane amendment to a private relief bill originating in the House. This was a convenient parliamentary device for going to conference. The matter in the original House private relief bills was separately enacted long ago. However, it still remains in these bills as well. This matter should be deleted so as to avoid confusion from duplicate enactment.

He stated further that these provisions could not have been deleted by the conferees because they were not among the matters in disagreement between the House and the Senate.

Thus, the resolution provided for striking out the matter following the enacting clause and preceding section 1 in H.R. 5037, H.R. 5146, and H.R. 5289. The remaining provisions of the concurrent resolution made technical and typographical corrections in the energy provisions of the various bills. The resolution was agreed to by voice vote without opposition. The Senate, however, did not act on the resolution.

Several hours later, the 95th Congress adjourned sine die. On Saturday, October 14th, and Sunday, October 15th, during which the Congress completed legislative action on national energy legislation,

the House had been in continuous session for 30 hours and 46 minutes, and the Senate for 34 hours and 16 minutes. During this two day period, the House took final action on 118 measures and the Senate on 86, in addition to the five energy conference reports.

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