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Lawmakers and lobbyists are part of the constant stream of foot traffic at the Hart Senate Office Building on Capitol Hill in Washington, D.C. (Globe Staff Photo / Dina Rudick)

CLOSED, FOR BUSINESS

Back-room dealing a Capitol trend

GOP flexing its majority power

By Susan Milligan, Globe Staff | October 3, 2004

First of three parts

WASHINGTON -- Dismayed that the technology company Accenture had located its headquarters in Bermuda, thereby avoiding paying hundreds of millions of dollars in US taxes, the House Appropriations Committee voted 35-17 this summer to strip the firm of a \$10 billion Homeland Security contract.

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It was a rare moment of bipartisan agreement and an important victory for those who decry corporate tax loopholes. But it didn't last long. The Rules Committee, the all-powerful gatekeeper of the Republican leadership, prevented the measure from reaching the House floor. In a further show of its power to pick and choose what the full House can vote on, the Rules Committee allowed the House to vote on a ban on future Homeland Security contracts to overseas companies -- but let the \$10 billion flow to Accenture, which spent \$2 million last year lobbying the government.

The Accenture episode is emblematic of the way business is conducted in the 108th Congress, where a Republican leadership has sidelined legislation unwanted by the Bush administration, even when a majority of the House seemed ready to approve it, according to lawmakers, lobbyists, and an analysis of House activities. With one party controlling the White House and both chambers of Congress, and having little fear of retaliation by the opposing party, the House leadership is changing the way laws are made in America, favoring secrecy and speed over open

debate and negotiation. Longstanding rules and practices are ignored. Committees more often meet in secret. Members are less able to make changes to legislation on the House floor. Bills come up for votes so quickly that elected officials frequently don't know what's in them. And there is less time to discuss proposed laws before they come up for a vote.

The Boston Globe

"There is no legislative process anymore," said Fred Wertheimer, the legendary open-government activist who has been monitoring Congress since 1963. "Bills are decided in advance of going to the floor."

Republicans counter that Democrats, too, used their power to get their way when they were in the majority, and Democrats acknowledge that they sometimes used procedures to their advantage. It was the Democrats, for example, who changed the makeup of the Rules Committee to give disproportionate clout to the majority party.

But longtime Congress-watchers say they have never seen the legislative process so closed to input from minority-party members, the public, and lobbyists whose agenda is unsympathetic to GOP leadership goals.

Interviews with scores of lawmakers, lobbyists, and citizen activists reflect a growing frustration with what has become a closed shop in Washington. Among the Globe's findings:

- The House Rules Committee, which is meant to tweak the language in bills that come out of committee, sometimes rewrites key passages of legislation approved by other committees, then forbids members from changing the bills on the floor. Only five times this year were House members allowed to amend policy bills on the floor, and only 15 percent of bills this year were open to amendment. For the entire 108th Congress, just 28 percent of total bills have been open to amendment -- barely more than half of what Democrats allowed in their last session in power in 1993-94. Further, the Rules Committee has blocked floor votes on legislation opposed by the Bush administration but supported by a majority of the House. For example, a bill to extend benefits to the long-term unemployed has been kept off the House floor despite what backers say is the support of a bipartisan majority.
- The Rules Committee commonly holds sessions late at night or in the wee hours of the morning, earning the nickname "the Dracula Congress" by critical Democrats and keeping some lawmakers quite literally in the dark about the legislation put before them. On the Patient's Bill of Rights legislation in 2001, for example, the Rules Committee made a one-word change in the middle of the night that drastically limited the liability of HMOs that deny coverage to their patients. The measure was hustled through the House hours later, with few lawmakers aware of the change.
- Congressional conference committees, charged with reconciling differences between House- and Senate-passed versions of the same legislation, have become dramatically more powerful in shaping bills. The panels, made up of a small group of lawmakers appointed by leaders in both parties, added a record 3,407 "pork barrel" projects to appropriations bills for this year's federal budget, items that were never debated or voted on beforehand by the House and Senate and whose congressional patrons are kept secret. This compares to just 47 projects added in conference committee in 1994, the last year of Democratic control.
- Bills are increasingly crafted behind closed doors, and on two major pieces of legislation -- the Medicare and energy bills -- few Democrats were allowed into the critical conference committee meetings, sessions that historically have been bipartisan. The energy bill -- a sweeping package meant to lay out a national energy policy -- started in closed-door meetings held by Vice President Dick Cheney's Energy Task Force and was written in private sessions on Capitol Hill that excluded all Democrats. On the Medicare negotiations, only two Democrats -- both already supportive of the bill -- were included.
- The amount of time spent openly debating bills has dropped dramatically, and lawmakers are further hamstrung by an abbreviated schedule that gives them little time to fully examine a bill before voting on it. The House typically holds no votes until Tuesday evenings -- and then usually on noncontroversial items such as the renaming of post offices -- then adjourns for the week by Thursday afternoon. The Iraq war resolution was debated just two days in 2002; the defense authorization bill, which customarily undergoes weeks of floor discussion, was debated and voted on this year in two days.

Lawmakers say they are still finding items in the Medicare package that passed last winter that they find objectionable, such as the financial penalty on seniors who wait to sign up for the Medicare prescription drug plan.

"There was no way that every member of Congress could hold up their right hand and say, 'I read every page of that bill before the vote,'" said Nita Lowey, a New York Democrat, noting that members had just one day to examine the 400-plus-page bill before voting on a law that would change health-care allotments across the country.

- The dearth of debate and open dealing in the House has given a crucial advantage to a select group of industry lobbyists who are personally close to decision-makers in Congress. A Globe study of lobbying showed that on the Medicare and energy bills, businesses and other groups who reported lobbying on the two measures spent a staggering \$799,091,391 in efforts to influence lawmakers, frequently employing former members of Congress, former staff members, and relatives of lawmakers to lobby on the bills.

Representative David Dreier, a California Republican who is chairman of the Rules Committee, defended the majority party's tactics and said both parties have historically used their superior numbers to promote their issues.

"We have the majority, we won the election, we have an obligation to move our agenda," Dreier said. The panel acts fairly to the minority party, he added, saying, "There's a real mischaracterization of what took place in the past, compared to what it is now."

Many current and former Republican members contend that Democrats used similar procedural tactics when they held the majority. For example, former Pennsylvania Representative Robert Walker, a Republican, said he was frequently shut out of conference committee talks on science legislation when the Democrats ruled the House.

But an examination of debate schedules and activities by conference committees and the House Rules Committee reveals a more strikingly closed process than in the past, a trend that has even some Republicans complaining.

Rules Committee faulted

The chief target of ire is the Rules Committee, which decides which amendments -- and how many -- may be offered on the floor. While any member of the Senate may offer amendments on the floor, the sheer size of the 435-member House makes such freedom impractical; the Rules Committee, therefore, limits the number of amendments that may be offered.

The power is critical because it allows a few lawmakers to prevent the House from voting on ideas the leadership does not favor; for example, the House's failure so far this year to consider extension of unemployment benefits spares some Republicans from having to choose between their leaders' wishes and the demands of their constituents.

Unlike other committees, the Rules Committee is heavily lopsided in favor of the majority party. While the House is narrowly divided at 227 Republicans, 205 Democrats, and one Independent, the Rules Committee is composed of nine Republicans and four Democrats, making it easy for the majority party to ram through its legislation.

The number of bills the Rules Committee allows to go to the floor under "open rules," that is, bills to which any member

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may offer amendments, has dropped steadily. By the count of the then-minority Republicans in the 95th Congress in 1977-78, 85 percent of nonappropriations legislation in the House were offered under open rules.

But the number of bills open to revision dwindled to 57 percent overall and to 30 percent for nonappropriations bills in 1993-94, the last Congress controlled by Democrats, a denial of process so serious that it led the late Representative Gerald Solomon, a New York Republican, to pledge that the incoming Republicans would make the vast majority of bills open. But the opposite happened.

In the current Republican-led Congress, according to statistics offered by both parties, the percentage of nonappropriations bills open to revision has dropped to 15 percent. "The Rules Committee has become the 'break the rules' committee," said Representative James McGovern, a Worcester Democrat who is the only New England member of the panel. "It used to be used as a tool. Now it's used as a weapon."

While McGovern -- a former member of the staff of the late Representative J. Joseph Moakley, who once headed the Rules Committee -- acknowledged that Democrats tended to get their way when they controlled the committee, he contends that the committee is now a bill-laundry machine, through which the GOP rewrites legislation to suit its agenda.

"This has become a place where you can't even debate alternative approaches," McGovern said.

Representative Jim Leach, an Iowa Republican and a former chairman of the House Financial Services Committee, was stunned and angered this year when he was denied an opportunity to offer an amendment to a banking bill. The measure, designed to deregulate parts of the financial services industry, allowed corporations to provide banking services through an "industrial loan company," but would not subject the corporate holding company to the same oversight imposed on banks.

Leach worried that insufficiently regulated banking activities could lead to costly failures, leaving the government responsible for hundreds of millions of dollars in deposits. He wanted to offer an amendment that would have regulated the holding companies in the same way as banks. But the Republican leaders on the Rules Committee refused to allow his amendment.

"The fix was in," Leach said in an unusual rebuke of his GOP colleagues on the House floor. "The power groups did not want this to happen. In my time in Congress, this is the greatest microcosm evidence of special-interest reasoning that does not even allow debate on this subject in an amendment on the House floor."

Democrats are arguably suffering from their own decisions: It was the then-majority Democrats who changed the makeup of the Rules Committee to give the majority more than a 2-to-1 advantage over the other party, acknowledged a Democratic staff member close to the panel.

"Our hands are not clean, no question," the staff member said. "But it's like a thin layer of dust compared to what the Republicans are doing."

Now, rank-and-file members sometimes have trouble even finding out when the Rules Committee is meeting. The powerful committee frequently decides bills in hastily called, late-night "emergency" sessions, despite House rules requiring that the panel convene during regular business hours and give panel members 48 hours notice. So far in the current Congress, 54 percent of bills have been drawn up in "emergency" sessions, according to committee staff members.

The committee also puts bills up for House votes more quickly than in the past, leaving members little time to study the fine print. Historically, bills have been given a three-day delay in between the time the committee reports them out and the House takes them up; that requirement has been waived on numerous occasions in recent years.

The lack of time to read the bills coming out of the Rules Committee is significant because the committee sometimes alters language that has been excruciatingly negotiated by Democrats and Republicans in legislative committees.

The Patient's Bill of Rights, for example, contained a provision negotiated by House and Senate lawmakers in both parties that would hold an HMO liable for damages if its failure to pay for a health care service was "a proximate cause" of a patient's injury or death. But the Rules Committee, crafting the floor language in the early hours of the morning, changed the phrase to "the proximate cause." The one-word change dramatically elevated the burden of proof on the plaintiff to show that the missed health care treatment was the single most important factor in causing a person's death or illness.

Patriot Act heavily rewritten

The USA PATRIOT Act, too, underwent a Rules Committee remake in 2001. Urged on by the Bush administration, Republicans and Democrats on the House Judiciary Committee engaged in painstaking negotiations to write compromise language they believed gave law enforcement the tools it needed to fight terrorism while protecting the civil liberties of US citizens. The measure passed 36-0 in committee, drawing the support of such disparate political voices as Representatives Barney Frank, Democrat of Newton, and James Sensenbrenner, Republican of Wisconsin.

But after Attorney General John Ashcroft complained that the measure didn't give law enforcement enough new authority, the Rules Committee heavily rewrote the bill and presented to the House a new version greatly expanding the government's power to search people's homes without notice. The House spent just one day debating the matter before approving the historic expansion of search-and-seizure rules.

The Accenture contract became another example this year of how the Rules Committee could use its power to protect a contract that critics in Congress say would not have withstood public debate.

"Accenture is trying to have it both ways," said Representative Rosa DeLauro, a Connecticut Democrat, who noted that by incorporating in Bermuda, Accenture avoided US taxes on its income. "By setting up an elaborate tax avoidance scheme while still insisting it is entitled to feed at the public trough, it wants all the perks and benefits of being a US company without having to live up to its responsibilities as a corporate citizen." Nevertheless, she said, the Rules Committee "gutted the bill."

Dreier, the Rules Committee chairman, defended the decision, saying that it would have taken a "waiver of House rules to make the amendment in order," and that the committee simply followed its normal procedures in rejecting the Appropriations Committee's changes.

But the Rules Committee had no trouble waiving its procedures to allow another of the Appropriations Committee's changes to the bill denying future Homeland Security contracts to businesses that locate overseas to avoid US taxes.

DeLauro believes the decision was the result of heavy lobbying by a huge corporation. "Accenture was everywhere," she said. Indeed, lobbying documents tallied by the Globe reveal that Accenture spent \$2,060,000 on lobbying last year to protect its contract and other interests, including hiring Charles Black, a former adviser to former presidents Ronald Reagan and George H. W. Bush.

Jim McAvoy, a spokesman for Accenture, said the Rules Committee was justified in preserving the company's contract. Accenture never was incorporated in the United States and therefore could not be accused of leaving the country to avoid paying taxes, he said, adding that company executives chose Bermuda as the firm's headquarters because it was a "neutral" location for a company with dealings all over the world.

The Rules Committee is hardly the only source of behind-the-scenes dealing in the House. Conference committees have also grown more powerful and are increasingly making changes and additions to legislation approved by both chambers of Congress, sometimes with little or no input from the minority party.

Conference committees are appointed when the House and Senate approve differing versions of the same legislation. Leaders in both parties appoint conferees, who then are asked to iron out differences between the two bills in an effort to make the final product palatable to both the House and Senate.

But with one party in control of both chambers -- and unlikely to face a veto threat from their fellow GOP president -- lawmakers and analysts say conference committees have merely become additional opportunities for special interests to get funding for pet projects with little or no scrutiny.

Special provisions added

By tradition, the conference committees are not supposed to add anything that was not approved by either house, or delete anything that was approved by both chambers. But increasingly, pork projects and other special provisions are being tacked on in conference without ever having gone through the committee process or floor debate, according to analyses by government watchdog groups.

Citizens Against Government Waste calculates that there were 2,549 projects added on in various conference committee meetings in 2002, rising to 2,856 in 2003, and a record 3,407 in 2004. The numbers don't reflect policy changes that could be made with the change of a comma or the deletion of regulatory language.

David Williams, Citizens Against Government Waste's vice president of policy, said one-party rule in Washington has exacerbated the influence of certain special interests.

"Our theory has been that there's no such thing as a political party when it comes to appropriations," Williams said. "Everyone has his hand in the pot. But it doesn't help if you have one party controlling everything. . . . There really is a case to be made for divided government."

On two of the most critical bills this Congress has considered -- the Medicare and energy bills -- Republican conference committee members met in private, refusing to allow entry to Democrats picked to be on the negotiating committee by claiming that the meetings were not official conference sessions.

While Republican leaders claimed to obey congressional rules by allowing Democrats to attend the opening and closing sessions, the actual work of writing the bills was done in secret and exclusively by Republicans; in some cases, Democrats didn't even know in which room their conference-committee colleagues were holed up writing the bill.

Representative Edward J. Markey, a Malden Democrat who is a senior member of the House Energy and Commerce Committee, was appointed as a conferee on the energy bill. But after being shut out of all but the opening and closing sessions of the conference committee, Markey said he had to talk to lobbyists to find out what was in the bill.

"It's at a historical level, a modern historic record for secrecy in the production of a piece of important legislation," Markey said. "It's a process that has excluded Democrats and largely disregarded the voices of environmentalists, consumers, and labor."

The energy bill was mired in secrecy from its inception, when Vice President Cheney's energy task force met to develop proposals that formed the basis of the legislation. An analysis by Public Citizen of some public documents shows that at least seven energy industry executives and lobbyists met with the task force, and that several members of that group are major fund-raisers for the Bush-Cheney campaign. Virtually all of the energy companies whose leaders met with the task force would benefit from the tax credits, subsidies, and deregulation laid out in the energy package.

Little time for examination

Once the energy proposal went to the Hill, Democrats were not permitted entry into the closed-door talks to write the complicated bill. Senator Pete Domenici, a New Mexico Republican who was one of the bill's leading negotiators, said the exclusive conference process was the only way to get a bill written, given all of the regional and ideological disagreements.

On a Saturday, when Congress was not in session, the conference committee released the more than 1,000-page bill on its website, sending lawmakers scrambling to read the document. The House was presented with the bill for a full vote the following Tuesday, leaving little time for a close examination by House members.

"I don't recall ever having one entire piece of a conference [committee] left out of a conference meeting," said Anna Aurilio of the Massachusetts Public Interest Research Group. "Leadership is leadership, and they're always going to try to seize power, but this is the worst I've seen in 11 years. There's this trend of trying to keep people in the dark."

House Democrats were also excluded from conference committee talks on the Medicare prescription drug bill, talks to which only two sympathetic Senate Democrats were invited. When House Democrats tried to crash the meeting, they were rejected.

On another occasion, Ways and Means Committee ranking Democrat Charles Rangel of New York, furious that a pension bill was about to be propelled through the tax-writing panel without sufficient time for study, used a parliamentary rule to

delay the vote, then escorted his fellow Democrats to a House library to discuss strategy. Republicans called the Capitol Police and had the Democrats ousted, claiming they had not reserved the room.

Once bills come to the House floor, they are frequently pushed ahead for a vote with little debate. While lawmakers in both parties agree that controlling debate time is sensible to keep rogue members from paralyzing the chamber with endless discussion, an analysis of major legislation and session schedules shows that the House is running on an abbreviated schedule and spending dramatically less time discussing major issues.

While the House typically meets for 140 or more legislative days each year -- reaching a recent historical high of 167 days in 1995, the first year of the Newt Gingrich-led GOP majority -- it has met for legislative business just 97 days this year, with only five more days of work scheduled for the year. If no additional days are scheduled, the 102 days would be the lowest in decades. And bills are given little airing on the floor.

The resolution authorizing the use of force against Iraq, for example, was debated just two days. The defense authorization bill, a complicated package that lays out the Pentagon's spending and program priorities for the following year, once commanded extended discussion in the House; in 1994, the last year Democrats held the majority, the measure was discussed for three weeks, and House members had several days to read the Rules Committee version before they began debating the measure. This year, the defense authorization bill was ushered through the House in two days, with members having just a few hours to examine the bill before the full House considered it.

Republican leaders and some former members say the Democrats are merely experiencing the natural downside of being outnumbered in Washington. With Republicans in the White House and in control of both chambers of Congress, Democrats should not expect to win many legislative fights, they say.

"The clear benefit of being in the majority is being able to dictate what the agenda is," said Raymond McGrath, a former Republican member of Congress from New York who is now a lobbyist.

But some changes go beyond setting priorities and alter the structural workings of the House. The first votes of the week, usually on noncontroversial issues such as the renaming of post offices or the commendation of a local high school band, aren't generally held until 6 p.m. on Tuesdays, and members tend to nip in and out of the chamber for a half hour of voting.

Even Wednesdays have become weaker legislative days, since the Rules Committee last year changed procedures to allow bills "under suspension" to be taken up on Wednesdays, leaving even less time for discussing more serious bills.

'Two-day work week'

The House is frequently finished by Thursday afternoon. Lawmakers then tend to go home to their districts, missing opportunities to develop personal relationships that could foster greater bipartisan cooperation on legislation, as in the Senate, where the minority party has considerably more input.

For example, Senator Edward M. Kennedy, Democrat of Massachusetts, is close friends with Republican Senator Orrin G. Hatch of Utah, and both say their personal relationship has helped them work together on legislation. Domenici worked on mental health matters with the late Senator Paul Wellstone, a Minnesota Democrat who was one of the most liberal members in the chamber.

But in the House, the truncated schedule keeps lawmakers from forming alliances across party lines that might challenge the wishes of the GOP leadership. "Today, members don't really know the other members of Congress," said Vic Fazio, a former Democratic Representative from California. "The two-day work week is another contributor to that."

The short in-town work week means less access, too, for constituents and for lobbyists who don't already have close connections to members of Congress, according to Congress watchers, lawmakers, and the lobbyists themselves. But the limited public access to lawmakers is a boon to a select, elite group of lobbyists, particularly former members who are allowed unusual access to private areas on Capitol Hill.

Lobbyists can no longer "lobby" in the traditional sense of the word on the House side, where representatives of interest groups are barred from skulking around the halls near the House chamber to buttonhole a member of Congress. Increased security after the Capitol shootings of 1998 and the Sept. 11, 2001, terrorist attacks has meant long lines to get into House and Senate office buildings and limited freedom to enter the Capitol.

Constituents who want to visit their congressmen basically have one day, Wednesday, when they can do so, noted Hill staff member Billy Tranchese, who works for Representative Richard E. Neal, a Springfield Democrat.

Former members can go onto the House floor, though they are not allowed to lobby there, and they may use the House gym, a privilege that gives them the extraordinary opportunity to chat up a former colleague on the basketball court.

"It's a system that ultimately, I think, can be subject to a lot of abuse," said Walker, the lobbyist and former Republican congressman.

McGrath, also a lobbyist and former Republican congressman, said he, too, is frustrated by the long security waits and the shortened work week. But his status and connections as a former House member help him cut through those limits, he said. McGrath recalled a recent luncheon to discuss an arts program with Kennedy, Hatch, and several arts luminaries, including composer Stephen Sondheim; playwrights Wendy Wasserstein and Arthur Miller; and McGrath's lobbying partner, former Democratic Representative Tom Downey. "I've known these guys for 100 years," McGrath said of the powerful lawmakers.

Lobbying reports for the energy and Medicare bills alone read like a Who's Who of Congress. Former Representative J.C. Watts, who was chairman of the Republican Conference, has a lobby shop in Oklahoma serving 14 clients. He joins such former House and Senate members as South Dakota Republican John Thune, Louisiana Democrat J. Bennett Johnston, Pennsylvania Republican Joseph McDade, Arkansas Democrat Dale Bumpers, and Washington Republican Slade Gorton among those lobbying their former colleagues.

Clients and lobbyists say there is an obvious advantage to hiring a former member of Congress or staff member, since they know how Washington works and have extensive contacts. But lobbyists from less-connected groups say they can't compete with a former congressman who can approach a lawmaker on the treadmill at the House gym.

Lois Gibbs, who earned fame in the 1970s as the housewife-turned-activist who exposed the toxic contamination in Love Canal, N.Y., managed to speak directly with then-president Jimmy Carter about the environmental problems in her community. Now, the activist says, she can barely get in the door to speak to leaders of the GOP-controlled Congress or their staff members.

"Anybody who's an advocate for the environment or public health or on the other side of corporate interests is just immediately dismissed," said Gibbs. "It's just a whole sort of closed feeling you get that there is no discussion, no listening, no conversation."

This report was prepared with the assistance of research manager Maud S. Beelman and researchers Kevin Baron and Samiya Edwards. ■

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