

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid on the table. The President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent to speak in morning business for about 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSIDERATION OF THE ENERGY BILL

Mr. MURKOWSKI. Mr. President, as ranking member of the Energy and Natural Resources Committee, I bring to the attention of my colleagues a situation which I think bears some light.

We have a unique set of circumstances surrounding the manner in which the energy bill is likely to come up before the Senate. I understand that unofficially a date has been set for February 11.

What we have before us is a bill that has been proposed by the majority leader with the assistance of the chairman of the committee, Senator BINGAMAN. The problem with the process is that bill has not been referred to the committee of jurisdiction; that is, the Energy and Natural Resources Committee.

The question is, Why in the normal course of events would a bill under the jurisdiction of the committee not be referred to that committee? To suggest that there is an effort to obstruct the process by giving Members input on the bill through the normal process of amendments is a travesty of the process associated with the traditions of the Senate.

Let me outline where the inconsistencies are.

The Commerce Committee is holding markups on aspects of the energy bill concerning CAFE standards, as they should. Senator HOLLINGS, chairman of that committee, insisted that prior to any developed input on an energy bill CAFE standards be addressed in the committee of jurisdiction; namely, Commerce. I have no objection to that. That is quite appropriate. But it brings me back to the reality that the committee of jurisdiction on the underlying bill has not been given the opportunity. In fact, the majority leader has indicated to the chairman of the En-

ergy Committee that the matter not be taken up before the Energy Committee. One can only wonder why.

Obviously, there are portions of the energy bill with which the majority leader disagrees. I can understand that. But to circumvent the committee process is what I find unacceptable.

Let me give you another example of an inconsistency associated with the energy bill; that is, certain tax incentives that are proposed to expand our energy production, particularly in the area of renewables and new technology.

The Finance Committee, which Senator BAUCUS chairs, is in the process of holding markups, in detail, on portions of energy-related tax matters. So here we have two committees, neither of which have the underlying jurisdiction associated with the energy bill, and their chairmen are proceeding with hearings on their portions of the energy bill; namely, those associated with tax provisions in the Finance Committee and those associated with CAFE standards in the Commerce Committee.

So I would ask the majority leader why he refuses to allow the committee of jurisdiction to hold markups to encourage the participation of members of the committee to review, if you will, or have any input in the bill that is before the Senate as submitted by the majority leader.

This bill has had no referrals to the Energy Committee. It has had absolutely no input from the minority side—Republican members—of that committee. I fail to understand the rationale of the majority leader in refusing to allow the committee of jurisdiction to hold a markup. Perhaps there is a concern the majority leader has relative to how any votes would go outside of the parameters of the legislation which he and Senator BINGAMAN have introduced.

I think it is also a reflection on myself, as the ranking member, and Senator BINGAMAN, as the chairman of the committee, to have our committee circumvented by the dictate of the majority leader. Yet at the same time the majority leader, I assume, is knowledgeable and allows the Committee of Commerce and the Committee of Finance to address their portions of legislation that would be included in the underlying bill.

I bring this matter to the attention of other Members because I think it suggests that clearly the majority leader is attempting to obstruct the legislative process. This bill belongs in the Energy Committee. The Energy Committee has every right to proceed to discuss and consider aspects of this very important legislation. After all, this is one of the President's underlying priorities, along with trade legislation and stimulus. And now that the majority leader has given us an opportunity to have a date to take up energy—namely, the date of February 11—we find ourselves in the position where we have had absolutely no input in this legislation.

We have had a bill in since over a year ago, a comprehensive energy bill. We can look forward to the debate and proceed with amendments to the majority leader's bill. We can consider substitutions. But I want my colleagues to know that the committee of jurisdiction has been circumvented, with no reasonable explanation. Yet the other committees have been allowed to proceed.

I do not know whether to pursue this further, in the sense of asking my colleagues, collectively, if this is the way they believe the Senate should be run or whether we should proceed with a sense of the Senate relative to one committee, for all practical purposes, ostracized by the majority leader by not allowing the committee of jurisdiction to take up this matter. But I communicate to my colleagues that I believe this is a grave injustice. It is a reflection on myself and it is a reflection on the committee chairman, inasmuch as our responsibility has been circumvented. The majority leader has simply decided, without the input of the committee of jurisdiction, to proceed with this legislation coming up on the floor.

I encourage my colleagues to reflect on what is happening. I think it is a retreat from tradition. I find it very objectionable, and I cannot understand why the majority leader would obstruct the process associated with the responsibility of a committee of jurisdiction.

Mr. President, I am going to have more to say about this matter as time goes on, but I do appreciate the opportunity, in morning business, to bring this matter to the attention of my colleagues.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KYL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Will the Senator withhold for a unanimous consent request?

Mr. KYL. Certainly.

The PRESIDING OFFICER. The Senator from Nevada.

MORNING BUSINESS

Mr. REID. Mr. President, I have been speaking at some length this morning with Senator NICKLES. We also spent some time with Senator GRASSLEY and the majority leader. It would be in everyone's interest for the next hour to continue with discussions off the floor dealing with the stimulus package and also with the agriculture bill, which we hope can be brought up in the near future. Those discussions are ongoing.

I think the discussions have been conducted in good faith. We have spent a lot of time on this economic stimulus

bill, and not being in the Chamber debating and offering amendments I do not think is going to take away from our ability to do the bill or not do the bill. We already have pending—I do not know the exact number—probably 20 amendments we have not disposed of.

Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators permitted to speak for up to 10 minutes each, until 12:30 p.m. when we recess for our party conferences.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, at this time, I tell my friend and colleague, I will not object because I have a great deal of respect for him. We are ready to proceed with a lot of amendments on the stimulus bill. My colleague from Arizona has an amendment to make the estate tax elimination permanent. As people know, it is effective for 1 year and goes off the books; it sunsets. It should be made permanent. We have other amendments dealing with net offset carryback for 5 years. We would like to have a vote on that amendment. We have amendments that we believe will help stimulate the economy. We would like to have votes on them.

I guess we can go into a period for morning business, have the caucuses, and people can strategize. Democrats and Republicans do have several amendments pending. Frankly, a lot of us would like to vote on those amendments to improve the package the majority leader introduced, which we believe comes up a little short.

I am not going to object to his request for a period for morning business. My understanding is we can debate the stimulus package through that period. But I hope we will have a chance for Democrats and Republicans to offer their amendments later today and tomorrow. So I mention to my colleague, who is my very good friend, that we want to have some votes to improve this package today, but I shall not object to his request.

Mr. KYL. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I have a question for the Senator from Nevada. We are going back on the bill immediately after our respective caucuses; is that correct?

Mr. REID. That is the regular order.

Mr. KYL. I do not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Arizona.

REPEAL OF THE DEATH TAX

Mr. KYL. Mr. President, given the fact we are in morning business, I wish to speak to the question of the repeal

of the death tax to which the Senator from Oklahoma just referred. As my colleagues will remember, of course, the repeal of the death tax was part of the tax package that was passed earlier in the year, but because of the unique procedures of the Senate and the rules under which we operate, we could only look to a 10-year period, as a result of which, perversely, we phase down the death tax and end up repealing it in the ninth year, so it is only effective for 1 year before the whole thing sunsets and we go right back to the current situation with respect to the application of the death tax.

I do not think most Americans realize that is what has happened, but people who have to plan for their estates do realize it has happened. This is why a permanent repeal of the death tax now would be so helpful as a stimulus to the economy because all of the estate tax planning, the insurance, and all the other activities people have to do to provide against the possibility of paying the death tax must continue, as it has in the last many years, with the uncertainty of knowing whether or not, if ever, it is going to be permanently repealed and the expenses of all that have to continue to be incurred, expenses that could be put into investments so we could create jobs for our economy, precisely what the President has talked about doing with his stimulus package.

It is time for us to complete the job we began and see to it that the repeal of the death tax is, in fact, permanent and, therefore, meaningful.

Let me note some of the uncertainty that the lack of total repeal causes our family businesses, our farms, and individuals.

As I said, the business owners are going to continue to have to do the estate planning that is costly, cumbersome, and time consuming. If we repeal permanently the death tax, then these resources can be reinvested directly into these businesses, thus creating new job opportunities and providing a much needed boost to local economies.

In June 2001, a bipartisan majority of Congress did, in fact, act responsibly and provided this repeal of the death tax, much needed relief to our American families, with that historic tax package. But if we do not finish the job, we are going to be held in limbo with respect to the death tax because it comes right back into play after the end of the 10-year period.

The amendment I have offered will not be voted on until perhaps this afternoon. It will repeal the death tax forever so that our children and grandchildren will not have to worry about it or plan to have to pay for it.

Actually, last year's tax legislation has had the perverse result that more planning is necessary to deal with the death tax than currently is the case. Accountants, lawyers, and insurance companies are having a field day, frankly, with the uncertainty that is

encapsulated in the current state of the death tax legislation.

More planning is needed now because nobody knows for sure if and when it will ever be fully repealed.

The sunset provision adds to the complexity of future death tax planning, increasing wasteful costs that are an unproductive drag on our economy. Until permanent repeal is certain, family businesses, farms, and ranches must continue to pay the high cost of life insurance policies, death tax planners, and tax attorneys. These expenses total more than \$12 billion a year according to CONSAD Research Corporation in a study, "The Federal Estate Tax: An Analysis of Three Prominent Issues." That is money that could be saved, could be reinvested in these businesses to create the kinds of job opportunities the President is talking about in urging us to move on with an economic stimulus and job creation package.

Clearly, burying the death tax will enable family businesses, farms, and ranches to begin investing those billions and start providing more stimulus. A more efficient utilization of these resources will result in an immediate stimulus for the economy. More workers will be hired, more capital assets purchased, and more productive goods produced if we eliminate the confusion over the death tax's repeal.

I think we all understand why we repealed the death tax in the first instance. In addition to the fact that a huge amount of money is spent on estate tax planning, studies indicate we spend about the same amount each year on the estate tax planning as is paid in estate taxes altogether. So it is really a double taxation. We are paying an amount of money to deal with the eventuality of paying an estate tax, and that is paid by a lot of people who do not end up paying the tax but end up having to pay the expenses of dealing with the existence of a death tax, and then an equal amount of money is spent in the estate tax itself.

In 2009, families, frankly, who are grieving their lost ones will be faced with a potentially high 45-percent death tax rate. Fortunately, they are going to be able to utilize a \$3.5 million death tax exemption which was enacted into law last year, but in 2010 families grieving for lost ones will avoid the death tax entirely. They will only have a total of \$5.6 million of stepped-up basis, but that will effectively exempt them from all future capital gains tax, a tax in any event of which they would control the timing.

Then in 2011, families grieving their lost ones will feel the wrath of a resurrected death tax returned to its 2001 rate potency. Rates will be as high as 60 percent with a paltry \$675,000 death tax exemption. That is the way our repeal, at midpoint of last year, worked. So it is a very unfair and arbitrary treatment for the death of family members, as well as, as I said before, creating perverse economic incentives.