

Congressional Closeup by Carl Osgood

Appropriations Process Begins To Move Again

When it comes to budget matters, Congressional leaders of both parties have been making a great show of unity in the aftermath of the Sept. 11 attacks on the World Trade Center and the Pentagon. They've appeared together numerous times on television talk shows, and Senate Majority Leader Tom Daschle (D-S.D.) and Minority Leader Trent Lott (R-Miss.) have taken to holding press conferences together as well. While the appearance of unity is useful for both sides in an emergency, there is no formal agreement between the two sides to maintain it, and that lack of agreement may become a factor as budget pressures begin to build up, again.

The two parties have agreed to move appropriations bills at a faster pace than was evidenced prior to Sept. 11, and both Houses also approved a continuing resolution to keep the government functioning until Oct. 16. The House passed it by a vote of 392 to 0 on Sept. 24, and the Senate followed suit with a voice vote, the next day. Between Sept. 20 and Sept. 24, the House appointed conferees on 6 of the 13 spending bills, as well as passing the Military Construction and District of Columbia appropriations bills. The Senate had already passed the Commerce, Justice, and State Departments appropriations bill on Sept. 13, but otherwise has continued to move more slowly than the House.

That the old budget axioms still prevail was indicated by Daschle on Sept. 21, when he said, in response to a reporter's question, that "there are very serious budgetary ramifications that we're addressing," because of the emergency, but that he had no desire to re-open the fiscal year 2002 budget resolution, which has been mooted in some circles. House Speaker Dennis

Hastert (R-Ill.), in a joint appearance with the rest of the leadership on Sept. 23, assured reporters, "We have one of the largest surpluses we've had in the history of the United States," and Lott jumped in to add that "Social Security checks are going to go out."

Tough Questions On Anti-Terror Legislation

The Bush Administration probably won't be getting the new anti-terrorism legislation it's been pushing for in the aftermath of the Sept. 11 attacks on the World Trade Center and the Pentagon, as fast as it wants, and it probably won't get everything it wants. That's the message emanating from Capitol Hill, even after Attorney General John Ashcroft spent two days testifying before the House and Senate Judiciary Committees on Sept. 24 and 25. So many questions are swirling around the proposed legislation, that House Judiciary Committee Chairman James Sensenbrenner (R-Wisc.) was forced to delay a committee vote on the bill by at least a week.

Most of the questions center around civil liberties and Constitutional concerns, but the potential for abuse was not far from the minds of many members, either. Rep. Barney Frank (D-Mass.) raised the example of the FBI's treatment of Martin Luther King in the 1960s, and called for a provision in the bill to allow any individual subject to such abuse to sue the Federal government for damages. Rep. Bob Barr (R-Ga.) noted that the Justice Department has been seeking many of the authorities in Ashcroft's proposed legislation for a number of years, but was never able to get them. He suggested that the Justice Department "now seeks to take advantage of

what is obviously an emergency situation to obtain authorities that it has been unable to obtain previously, even though the government cannot tell us . . . with any degree of certainty or with any specific examples, that had these authorities been available prior to Sept. 11, they have some confidence that these events could have been prevented."

On the Senate side, there is generally more support expressed for Ashcroft's proposal, but he was subjected to some of the same questions as in the House hearing, especially on the preventive detention provisions in the legislation. Senate Judiciary Committee Chairman Pat Leahy (D-Vt.) has asked Ashcroft to make a second appearance before the committee, and he warned that it could take weeks to iron out disagreements.

Intelligence Reorganization Is Placed On The Agenda

On Sept. 20, House Speaker Dennis Hastert (R-Ill.) announced that the working group on terrorism, which has been functioning under the auspices of the House Intelligence Committee since last year, will be elevated to a full subcommittee of the Intelligence committee. He said that the subcommittee "will be the lead Congressional entity on this issue and will examine all aspects of these terrorist attacks, including the vulnerability of American infrastructure and our counter-terrorism efforts, our preparedness and response capabilities." Saxby Chambliss (R-Ga.) will be the subcommittee chairman and Jane Harman (D-Calif.) will be the ranking Democrat.

On the Senate side, Intelligence Committee Chairman Bob Graham

(D-Fla.) has introduced two new pieces of legislation, one to “enhance intelligence and intelligence-related activities” of the government, and the other to establish a National Office for Combatting Terrorism. Graham said, on Sept. 23, that the second bill makes the Homeland Defense office set up by President Bush permanent, “giving it the ability to direct other agencies . . . where they must be coordinated for purposes of an effective, comprehensive defense and attack against terrorism.” He said the first bill gives law enforcement intelligence agencies “sufficient authority that they can track down who committed these acts, and those who might want to launch future terrorist assaults against the United States.”

These actions come amid a growing chorus of criticism of the intelligence community. During a Sept. 23 appearance on CBS’s “Face The Nation,” Sen. John Kerry (D-Mass.) said that “the single most important weapon for the United States is intelligence,” yet, “we are weakest, frankly, in that particular area.”

Senate Takes Up Defense Authorization Bill

On Sept. 21, the Senate began debate on the fiscal year 2002 Defense authorization bill. One immediate casualty of the Sept. 11 terror attacks, was the language that had been inserted into the bill by the Democrats requiring certification of any missile defense test that would violate the 1972 ABM Treaty. Armed Services Committee Chairman Carl Levin (D-Mich.) told the Senate that he had decided to withdraw the language, rather than try to resolve the issue in the aftermath of the Sept. 11 attacks. Levin, instead, put

the language into a separate bill which is available to be called up at any time. The \$1.3 billion that had been cut from missile defense in committee was also restored.

The bill also includes a provision for another round of base closures. The Pentagon has been arguing for a number of years that it needs to reduce its infrastructure by about 25% in order to free up funds for transformation efforts. That argument has received only a lukewarm reception on Capitol Hill, however, although the provision was approved by the Armed Services Committee by a vote of 17 to 8. Levin told the Senate that he had sent a request to the Defense Department asking whether, in light of the events of Sept. 11, their position on base closures was still the same.

Sen. Jim Bunning (R-Ky.), however, couldn’t wait for an answer from the Pentagon and went ahead and introduced an amendment to strike the language. He argued that because of the uncertainty following the Sept. 11 attacks, “it is unwise to begin hacking away at our military infrastructure.” Sen. John Warner (R-Va.), the ranking member on the committee, responded that the provision gives the Secretary of Defense the authority to go ahead with the base closure round, but doesn’t require him to do anything. If the President fails to appoint anyone to the base closure commission, the provision will expire automatically in 2003. Warner’s argument prevailed, as Bunning’s amendment was tabled on Sept. 25 by a vote of 53 to 47.

After the vote on the Bunning amendment, the Senate bill stalled over disagreements on amendments relating to military testing on Vieques Island and preferences for Federal Prison Industries products. The House faced no such problems and passed its bill on Sept. 25 by a vote of 398 to 17.

Leahy Targets McDade Citizens Protection Rule

On Sept. 19, Senate Judiciary Committee Chairman Pat Leahy (D-Vt.) introduced a bill to amend the so-called McDade law of 1998. What became the McDade law started out as the Citizens Protection Act, co-sponsored by then-Rep. Joe McDade (R-Pa.) and Rep. John Murtha (D-Pa.), to protect citizens from misconduct by Federal prosecutors. The original bill included a list of prohibited practices, such as lying to the court and knowingly suppressing exculpatory evidence, but was never given a hearing. McDade then took the unusual step of adding the bill to that year’s appropriations bill funding the Department of Justice, but only one provision of it, that requiring Federal prosecutors to abide by state ethics rules, survived the conference committee.

Leahy claimed that the McDade law has been wreaking havoc in Federal investigations, and he provided a number of examples where this is supposedly the case. He further claimed that the McDade law “seriously threatens to impede” the investigation into the Sept. 11 attacks. He said the McDade law will subject Federal attorneys to different rules of conduct, because the investigation will spread across many states and jurisdictions.

Leahy said that his bill retains the “basic premise” of the McDade law, which is that the Department of Justice doesn’t have the authority it has long claimed to regulate the conduct of its attorneys. “This legislation establishes that the Department may not unilaterally exempt Federal trial lawyers from the standard of professional responsibility adopted by the Federal courts. Federal courts are the more appropriate body to establish such standards for Federal prosecutors.”