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## Hastert, Frist said to rig bill for drug firms

*Frist denies protection was added in secret*

By BILL THEOBALD  
Gannett News Service

**WASHINGTON** — Senate Majority Leader Bill Frist and House Speaker Dennis Hastert engineered a backroom legislative maneuver to protect pharmaceutical companies from lawsuits, say witnesses to the pre-Christmas power play.

The language was tucked into a Defense Department appropriations bill at the last minute without the approval of members of a House-Senate conference committee, say several witnesses, including a top Republican staff member.



Senate Majority Leader Bill Frist

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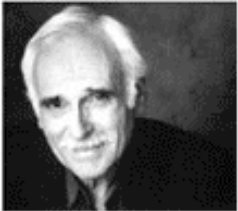
House Speaker Dennis Hastert

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In an interview, Frist, a doctor and Tennessee Republican, denied that the wording was added that way.

Trial lawyers and other groups condemn the law, saying it could make it nearly impossible for people harmed by a vaccine to force the drug maker to pay for their injuries.

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Many in health care counter that the protection is needed to help build up the vaccine industry in the United States, especially in light of a possible avian flu pandemic.

The legislation, called the Public Readiness and Emergency Preparedness Act, allows the secretary of Health and Human Services to declare a public health emergency, which then provides immunity for companies that develop vaccines and other "countermeasures."

Beyond the issue of vaccine liability protection, some say going around the longstanding practice of bipartisan House-Senate conference committees' working out

compromises on legislation is a dangerous power grab by Republican congressional leaders that subverts democracy.

"It is a travesty of the legislative process," said Thomas Mann, senior fellow at the Brookings Institution, a Washington think tank.

"It vests enormous power in the hands of congressional leaders and private interests, minimizes transparency and denies legitimate opportunities for all interested parties, in Congress and outside, to weigh in on important policy questions."

At issue is what happened Dec. 18 as Congress scrambled to finish its business and head home for the Christmas holiday.

That day, a conference committee made up of 38 senators and House members met several times to work out differences on the 2006 Defense Department appropriations bill.

Rep. David Obey, D-Wis., the ranking minority House member on the conference committee, said he asked Sen. Ted Stevens, R-Alaska, the conference chairman, whether the vaccine liability language was in the massive bill or would be placed in it.

Obey and four others at the meeting said Stevens told him no. Committee members signed off on the bill and the conference broke up.

A spokeswoman for Stevens, Courtney Boone, said last week that the vaccine liability language was in the bill when conferees approved it. Stevens was not made available for comment.



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#### About the law

The new law providing vaccine makers with protection against lawsuits is called the Public Readiness and Emergency Preparedness Act.

Among its key provisions are:

- It allows the secretary of Health and Human Services to issue a declaration that a "disease or other health condition or other threat to health constitutes a public health emergency."
- The secretary may also issue a declaration if there is a "credible risk" that there may be such a problem in the future.
- The protection against lawsuits then kicks in covering the "manufacture, testing, development, distribution, administration or use of one or more countermeasures," a term that includes vaccines and other drugs.
- Requires someone who is injured to prove "willful misconduct," and states that the standard will be "more stringent than a standard of negligence in any form or recklessness."
- Excludes any state or federal court from reviewing the secretary's decisions under the law.

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#### On the Web

During a January interview, Frist agreed. Asked about the claim that the vaccine language was inserted after the conference members signed off on the bill, he replied: "To my knowledge, that is incorrect. It was my understanding, you'd have to sort of confirm, that the vaccine liability which had been signed off by leaders of the conference, signed off by the leadership in the United States Senate, signed off by the leadership of the House, it was my understanding throughout that that was part of that conference report."

But Keith Kennedy, who works for Sen. Thad Cochran, R-Miss., as staff director for the Senate Appropriations Committee, said at a seminar for reporters last month that the language was inserted by Frist and Hastert, R-Ill., after the conference committee ended its work.

"There should be no dispute. That was an absolute travesty," Kennedy said at a videotaped Washington, D.C., forum sponsored by the Center on Congress at Indiana University.

"It was added after the conference had concluded. It was added at the specific direction of the speaker of the House and the majority leader of the Senate. The conferees did not vote on it. It's a true travesty of the process."

After the conference committee broke up, a meeting was called in Hastert's office, Kennedy said. Also at the meeting, according to a congressional staffer, were Frist, Stevens and House Majority Whip Roy Blunt, R-Mo.

"They (committee staff members) were given the language and then it was put in the document," Kennedy said.

About 10 or 10:30 p.m., Democratic staff members were handed the language and told it was now in the bill, Obey said.

He took to the House floor in a rage. He called Frist and Hastert "a couple of musclemen in Congress who think they have a right to tell everybody else that they have to do their bidding."

Rep. Dan Burton, R-Ind., also was critical of inserting the vaccine language after the conference committee had adjourned.

"It sucks," he told *Congress Daily* that night.

Rep. Jim Moran, D-Va., another member of the conference committee, was upset, too, a staff member said, because he didn't have enough time to read the language. The final bill was filed in the House at 11:54 p.m. and passed 308-102 at 5:02 the next morning.

The Center on Congress at Indiana University is at <http://congress.indiana.edu>. Click on "News" item about media seminar, then click on "Part Three" for video of staffer's comments.

#### What's next?

Here's what could happen next regarding the vaccine liability protection law:

- House and Senate Democrats have proposed changing the rules to block votes on any provision that has not been approved by a conference committee.
- Members of Congress could try to amend the vaccine law.
- The law's constitutionality could be challenged in court.

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The Senate unanimously approved the legislation Dec. 21, but not before Senate Democrats, including several members of the conference committee, bashed the way the vaccine language was inserted.

"What an insult to the legislative process," said Sen. Robert Byrd, D-W.Va., a member of the conference committee. Byrd is considered the authority on legislative rules and tradition.

President Bush signed the legislation into law Dec. 30.

When asked about Frist's earlier denial, spokeswoman Amy Call said: "Bill Frist has fought hard to protect the people of Tennessee and the people of the United States from a bioterror emergency and that's what he did throughout this process."

Hastert's office did not provide a response.

### **Not against the rules**

The practice of adding to a compromise bill worked out by bipartisan House-Senate conference committees, while highly unusual, is not thought to violate congressional rules.

Some Senate and House Democrats have proposed banning the practice as part of broader attempts at ethics reform in Congress.

They, consumer groups and others with concerns about possible harm caused by vaccines charge that the move was a gift by Frist to the pharmaceutical industry, which they point out has given a lot of campaign cash to the Nashville doctor through the years.

"The senator should be working to ensure there are safe vaccines to protect American families rather than protecting the drug industry's pocketbooks," Pamela Gilbert, president of Protect American Families, said in a statement. The group is an alliance of consumer, labor and advocacy organizations.

Frist has received \$271,523 in campaign donations from the pharmaceutical and health products industry since 1989, according to the Center for Responsive Politics, a watchdog group.

He is also a possible candidate for president in 2008.

In the interview, Frist reiterated how important he thinks the vaccine protections are.

"The United States of America, if a pandemic occurs, is totally unprepared," he said. "And the only way we are going to be prepared is rebuilding our manufacturing base to build a vaccine infrastructure

that can be timely and responsive. We don't have it today."

Frist has long advocated liability protection for vaccine makers, and it was widely reported that he would attempt to attach the legislation to the Defense Appropriations bill because it is considered must-pass legislation.

Ken Johnson, senior vice president of the Pharmaceutical Research and Manufacturers of America, said that, while the group favors liability protection, it did not take a position nor did it lobby on behalf of the law that passed. •

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