...Use of filibuster at all-time high, labor bills a prime target

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to close off debate, and the onus is on a bill's supporters to round up 60 votes — out of 100 senators — to shut it off.

"In the old days, you'd only filibuster if it was something you were really passionate about," Koger said. "These days, because there's no effort involved, it is much easier to filibuster on things that are not of great importance."

Use of the filibuster is at an all-time high. By one count, there were 139 in the 2007-08 Congress, compared to one every two years in the 1950s.

And the filibuster's effect is not just to defeat bills, but to change the character of those that pass. To overcome a filibuster, a party in power will compromise with opponents — and less loyal members. Sometimes the price of a vote is "pork" — money for pet projects in a senator's home state. Other times, getting to 60 means ridding a bill of important parts, even though they may have majority support. The Senate's stimulus bill reduced job-creating public works to make room for more tax cuts. The Senate's health care reform bill dropped the much-publicized public insurance option. Seeking 60 for passage of the Employee Free Choice Act at a time when support from several Democrats was wavering, union backers were resigned to go along with cutting the "card check" union recognition portion of the bill.

It didn't matter: The Employee Free Choice Act never got a vote during the time Democrats held 60 Senate seats. The year 2009 was a painful waiting game for labor, first for Minnesota Democrat Al Franken to be seated, then for Ted Kennedy to recover, and finally for Massachusetts voters to elect Kennedy's replacement. Their election of Republican Scott Brown closed the chapter.

Now the fate of the Employee Free Choice Act will depend on finding a single Republican vote (a challenging prospect) — or reforming the filibuster rule.

If they choose to do so, Democratic leaders would have a number of avenues to get around the filibuster. The simplest, though most radical, would be to eliminate the filibuster rule by simple majority. Senate rules say it takes a two-thirds majority (67 votes) to change the rules, but an 1888 Supreme Court decision affirmed it can do so with a simple majority. That's the so-called "nuclear option" Republican leaders considered in 2005 when Democrats were using filibuster threats to block some of President Bush's judicial nominees.

Another option would be to pass major legislation through a process known as reconciliation. Under a Senate rule in effect since 1974, reconciliation bills can't be filibustered. Republicans used reconciliation to pass the three successive Bush tax cuts. Reconciliation is only used on budget bills, not policy bills, so reconciliation couldn't be used to pass new restrictions on insurance companies, for example, or the Employee Free Choice Act.

Option three would be to let opponents of a bill actually filibuster — talk at length on the Senate floor. That hasn't happened since 1992, but it could happen if an issue is important enough. Oregon got its statehood when supporters outlasted a filibuster by Southern slave state senators opposed to its admission as a "free" state.

In theory, the length of a filibuster is limited only by the determination of both sides to prevail; today's 41 Senate Republicans could stretch a filibuster out to Election Day. But in practical terms, one or the other side would relent, and public judgment could determine which side prevailed.

So far, Republicans seem to have shown a greater propensity to filibuster than Democrats: Democrats held up some federal judges nominated by President Bush, but Republicans have blocked even low-level executive appointments by President Obama. In 2002, a Senate Democratic majority approved all five of Bush's appointments to the National Labor Relations Board (NLRB) in one unanimous vote. In 2010, the first act of the Republican minority after Scott Brown was sworn in Feb. 4 was to filibuster Obama's NLRB appointments.

Democrats have ways to get around the filibuster. It will come down to political will whether they use them.

GOP filibuster kills NLRB nomination

WASHINGTON, D.C. (PAI) — In its only action between two winter blizzards, the Senate yielded Feb. 9 to yet another Republican filibuster and killed President Barack Obama's nomination of union attorney Craig Becker to the National Labor Relations Board.

The vote drew denunciations from AFL-CIO President Richard Trumka and Service Employees President Andy Stern. Becker was a counsel for both labor groups.

The U.S. Chamber of Commerce and National Association of Manufacturers led the opposition.

Senators voted 52-33 to end debate on Becker's nomination. Democrats needed 60 votes. Fifteen senators (four Democrats, one independent, and 10 Republicans) were absent. The other 31 Republicans and Sens. Ben Nelson, D-Neb., and Blanche Lincoln, D-Ark., voted for the filibuster.

The vote is important because the five-person board has had only two members since the last day of 2007. The Board is tasked with protecting American workers' rights.

"It is reprehensible that a minority in the Senate blocked an up-or-down vote on Becker," Trumka said.

The AFL-CIO recently learned that the Senate and the White House cut a last-minute deal with Republicans to approve some of President Obama's nominees. That deal did not include NLRB appointees.

Trumka is asking union members to call the White House and demand that Obama use his executive power to appoint Becker during the Presidents Day recess. The number is 202-456-1111.