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RECONCILIATION: THE BYRD RULE EXPLAINED

> **"Using reconciliation to ram through complicated, far-reaching legislation is an abuse of the budget process. The writers of the Budget Act, and I am one, never intended for reconciliation's expedited procedures to be used this way. These procedures were narrowly tailored for deficit reduction. They were never intended to be used to pass tax cuts, or to create new Federal regimes. Additionally, reconciliation measures must comply with Section 313 of the Budget Act, known as the Byrd Rule…"**
>
> - Sen. Robert C. Byrd
>   April, 29, 2009

Overview: Giving Them the Byrd

When reconciliation was first codified in the *Congressional Budget Act of 1974*, there were no real rules governing how the procedures should be used to pass legislation. Before the adoption of the Byrd Rule, consideration of reconciliation bills was like the Wild West: lawmakers tried to stick all kinds of provisions in the reconciliation legislation since such bills required only a simple majority for passage. As a result, early reconciliation legislation contained many provisions that were non-germane, with no budgetary effect whatsoever. The free-for-all came to an end when Sen. Robert Byrd introduced the Byrd Rule to prevent the inclusion of extraneous provisions in the reconciliation legislation. The Byrd Rule was adopted on a temporary basis in the Senate in the 1980s. It was made permanent in 1990 when the rule was formally added to the budget act of 1974 under Section 313.

In short, the main purpose of the Byrd Rule is to protect the integrity of reconciliation bills. Sen. Byrd wanted to make sure that such bills actually fulfill their principal objective: deficit reduction. Thus, the rule prevents the inclusion of any *extraneous* matters that do not help achieve the budgetary goals set out in the reconciliation instructions. But who gets to determine what is extraneous?

It Depends on What the Meaning of "Extraneous" Is

The Byrd Rule provides a six-point definition to help identify what is extraneous:

1. It does not produce a change in outlays or revenues or a change in the terms and conditions under which outlays are made or revenues are collected.
2. It produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions.
3. It is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure.
4. It produces a change in outlays or revenues, which is merely incidental to the non-budgetary components of the provision.
5. It would increase the deficit for a fiscal year beyond the "budget window" covered by the reconciliation measure.
6. It recommends changes in Social Security.

If any provision within the reconciliation legislation is determined to be extraneous, a senator can invoke the Byrd Rule by raising a point of order against the offending provision and have it stricken from the bill. Such points of order can only be waived with a 60-vote majority. Alternatively, to target extraneous provisions, a senator can also simply introduce an amendment with language striking out the extraneous materials.

The Byrd Rule may be invoked at any time during Senate consideration of the reconciliation bill/conference report. And there's one interesting note to keep in mind: if no senator raises a point of order against an extraneous provision, the provision, even if it is extraneous, will remain in the bill. In other words, the Byrd Rule is only enforced when senators want to enforce it.

Exceptions to the Rule

To every rule, there are exceptions. In the Senate, the chairmen and ranking members of the Senate Budget Committee and the instructed committee(s) can provide certification that a given provision or set of provisions is not extraneous — if the provision:

- mitigates the direct effects clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit; or
- reduces outlays or increase revenues in one or more fiscal years beyond those covered by the reconciliation measure; or
- reduces outlays or increases revenue based on actions that are not currently projected by the Congressional Budget Office for scorekeeping purposes; or
- produces a significant reduction in outlays or increase in revenue but due to insufficient data such effects cannot be reliably estimated.

Typically, before a reconciliation bill receives floor consideration, the Senate Budget Committee, with help from the parliamentarian, produces a list of "Byrdable" provisions. That is, provisions that could potentially be considered extraneous under the Byrd Rule. When policymakers and lawmakers speak of the "Byrd bath" and "Byrd droppings," they are referring to this process of screening the reconciliation bill for possible extraneous materials and dropping any offending provisions from the bill.

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