



A Primer: Byrd rule and reconciliation process

Overview of the budget reconciliation process

The reconciliation process is a procedure used regularly by Congress since 1980 to facilitate passage of tax and spending bills when a filibuster is likely. A filibuster is the Senate procedure that allows for unlimited debate. A filibuster can only be stopped by *cloture*, which requires the votes of 60 Senators.

Earlier this year, Congress authorized use of reconciliation for health reform when it passed a budget resolution covering the period 2009-2014. Congress directed the three House committees and two Senate committees overseeing health reform to submit reconciliation bills no later than Oct. 15 if needed to pass health reform, and required that the bills reduce the deficit by at least \$1 billion.

Under the process, committees deliver bills to the chairman of the Budget Committee, who packages the provisions into one bill and sends it to the floor.

The reconciliation process is not vulnerable to filibuster; debate is limited to 20 hours; proposed amendments are also limited; and a reconciliation bill only needs a majority to pass. The process is typically more necessary in the Senate, because Senate rules allow unlimited debate.

Thus instead of the 60 Senate votes required to stop a filibuster, under reconciliation only 51 votes are needed. That is why Senate leaders are considering using the reconciliation process to pass health reform in their chamber.

The reconciliation process has been used to pass other major legislation, including tax cuts and an overhaul of college student loans.

(For more information, see [Center on Budget and Policy Priorities memo](#).)

The Byrd rule can control the process in the Senate

What is it?

The rule is a constraint on what can be passed through the reconciliation process in the Senate. Named for West Virginia Senator Robert Byrd, it was imposed by the Senate in the mid-eighties to prevent non-budget matters from being resolved through reconciliation. Under the Byrd rule, any senator can challenge a provision of a reconciliation bill or an amendment to the bill as not central to taxes or spending. This sets in motion a process that may eliminate these “extraneous” provisions or amendments.

How does the process work?

During floor debate, a senator may call a ‘point of order’ questioning whether a provision is extraneous. The Senate Parliamentarian then determines whether or not the provision violates

the Byrd rule. If yes, the measure is stricken from the bill. It may not be re-introduced as an amendment.

Can the Byrd rule be overridden?

Yes, but 60 senators must vote affirmatively to waive the Byrd rule for each provision that is questioned as extraneous.

What is a provision?

There is a lack of clarity on this point. According to some, a provision could be a section of the bill or simply a line.

What is extraneous?

“Extraneous” is defined as any provision that does not affect spending, taxes or the deficit, but there is substantial gray area.

There are six tests outlined by the Byrd rule that determine whether material is extraneous and should be omitted. A provision can be judged “extraneous” if it does not produce changes in outlays or revenues; if it strays from the jurisdiction of the committee that submitted the provision; if it results in “merely incidental” expenditures or revenues to non-budgetary components of the bill; if it increases the deficit beyond a “budget window” covered by the reconciliation measure; or it makes changes to Social Security. Additionally, no provision can make any changes to employment law or civil rights law. (See House Committee On Rules [Summary](#).)

Can any provisions be exempted from the Byrd rule?

The chairman and ranking minority members of the Budget Committee and the reporting committee can certify that a provision is exempt, even if it has no direct effect on spending or revenues, if any of the following three situations apply:

1. It is a condition of another provision that does impact spending and revenues.
2. Taken together with other provisions, it produces a net reduction in spending.
3. Insufficient data exists to draw conclusions about spending or cuts.

Who is the Senate Parliamentarian?

Alan Frumin is the current Senate Parliamentarian. Frumin joined the parliamentarian’s office in 1977 and has held the position of Senate Parliamentarian twice during that time – under both parties. Interestingly, [Slate reports](#) that Vice President Joe Biden may overturn a Byrd rule interpretation made by Frumin – this as reported to *Slate* by Frumin’s predecessor, Robert Dove.

What health reform provisions could be vulnerable to the Byrd rule?

- The health exchange, if viewed as a non-budgetary item.
- Some insurance reforms
- The public option, if drafted as independent of federal spending
- Prevention and wellness initiatives
- Delivery system reform initiatives
- Requirements for reporting or data collection

What options could Senate leaders use to get around the Byrd rule?

One option under discussion would bring two bills to the Senate floor. One bill would include revenue provisions, tax credits to help low-income people afford coverage, and other fiscal issues. This bill would be considered under the reconciliation process, and would likely survive challenges under the Byrd rule. A second bill would include the insurance reforms and delivery system initiatives. This second bill would be considered under regular procedures, but Senate leaders think they would be more likely to get 60 votes to end debate on these less controversial issues.

Brief legislative history of the Byrd rule

The Byrd amendment or the Byrd rule was first enacted in the mid-eighties as a tool during the budget reconciliation of COBRA (1986). Over the years, Congress has altered the rule but it continues to serve as an important tool during the reconciliation process; the rule became permanent in 1990 when incorporated into the Congressional Budget Act of 1974. Between 1985 - 2004, according to the [Congressional Research Service](#), the Byrd rule was applied to 19 reconciliation measures. In this period, there were 55 actions to remove “extraneous” material; 42 actions were successful.