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Government Affairs

The Elevate Guide to Budget Reconciliation

With both the House and Senate in control of by one party, it is now possible for the majority to pass limited legislation without the support of the minority party bypassing the need for 60 votes in the Senate.

It is not an easy process, particularly with narrow margins in the House and the Senate. A handful of opposing votes in the House, or one vote in the Senate under the current construct, can doom reconciliation.

Budget reconciliation is a complex procedural tool that is utilized in both the House and the Senate. It has been used many times over the years when one party controls both chambers. One of the key advantages of it is that, in the Senate, it enables the majority party to pass legislation without needing to reach the 60-vote threshold required to override a legislative filibuster in the Senate.

Budget Reconciliation, Simplified

Overview

Budget reconciliation enables the controlling party to enact specific types of legislation by effectively bypassing the filibuster rules in the Senate (60 votes needed to stop a filibuster) with a simple 50+1 vote. The Democrats, with their 50+1 majority afforded by the victories in Georgia and Vice President-elect Harris's tiebreaker vote, can avail themselves of this unique process twice this year and once next year during the 117th Congress.

As the name implies, budget reconciliation comes into play when Congress prepares its annual budget resolution. Traditionally, this would leave the 117th Congress with only two instances in which reconciliation could be used, but the 116th Congress did not pass an FY 2021 budget resolution, enabling its use an addition time in the 117th Congress. The key limiting factor in considering matters to be included in a reconciliation package is that "extraneous" provisions that are not specifically related to spending and revenues can be stripped under the Senate's "Byrd Rule," discussed below is detail.

The Reconciliation Process

Step 1

Reconciliation originates with the budget resolution. The House and Senate Budget Committees each frame the need for action and provide instructions to various committees to report back legislation consistent with the resolution (spending/revenue related measures). The respective Budget Committees assemble the various legislative pieces, and each chamber then votes on its bill. The (generally)[1] yearly legislation is a nonbinding concurrent resolution, meaning an identical resolution is passed by both chambers of Congress, but does not require the President's signature, and holds no force of law. It has only been used when both chambers are controlled by the same party.

In the budget resolution, the Budget Committee will specify:

- A dollar amount of budgetary change that should be attained in the reconciliation bill, and over what time period that amount is to be measured.
- Committees that will undertake the reconciliation legislation.
- Any other associated provisions, such as what type of budgetary change, or notes regarding what policy should be instituted via reconciliation.

Step 2

After the budget resolution is adopted by Congress, the committee(s) directed to undertake reconciliation begin their work and draft their reconciliation bills. Committees may write separate recommendations for different spending areas—in the Senate, they may bundle up to three measures to be considered as a single bill, but each must belong to only one of the three categories (spending, revenue, and the debt limit).

Committees submit their legislation to their chamber's Budget Committee by the deadline laid out in the original budget resolution.

[1] A budget resolution is not required yearly. When issuing appropriations, Congress may proceed under the previously passed resolution, if one for the coming fiscal year is not available.

Step 3

The Budget Committees of the respective chambers combine the reconciliation proposals into a chamber specific unified piece of legislation and report it out without any major revision or amendment.

At this stage, the Senate Budget Committee may identify provisions it considers in violation of the Byrd Rule—though the removal of those provisions does not occur until later in the process.

Stage 4

Each chamber holds a vote on the respective reconciliation omnibuses as reported. Rules for the House and Senate regarding the debate and voting process differ radically: in the House, the Rules Committee will generally set out specific guidelines governing debate time and the amendment process; in the Senate, debate is restricted to 20 hours equally divided between the majority and minority, though relevant amendments may continue to be offered and voted on without debate after the 20 hours have expired. The Senate process allows for unlimited amendments, and the process turns into a long day and night, attracting hundreds of amendments – each is presented, argued for a short period, and then may receive a vote (termed a "vote-a-rama").

Stage 4b

The Byrd Rule may be invoked in Stage 4 by any Senator. An amendment must be offered that identifies and strikes an extraneous measure, and passed. A Senator may also object to a provision by raising a point-of-order which the Chair then will rule on. Additionally, if there is a sense that the bill does not address the directions set out in the resolution, a Senator can move to send the bill back to committee to be amended to rectify the problem.

In certain cases, the Byrd Rule may be waived wholly. However, a 60-vote majority is required to issue a waiver.

Stage 5

A conference committee is established comprised of House and Senate members, who then reconcile differences between the two bills and negotiate a final bill to be voted on by both chambers.

Stage 6

The final bill is voted upon. If passed (a simple majority required in both chambers—bypassing the filibuster in the Senate), as with any other bill, the reconciliation bill goes to the White House.

If vetoed, the reconciliation process ends without a product, and Congress cannot undertake another one until a new budget resolution is adopted. If signed, the bill becomes law.

History

Budget reconciliation was introduced in the Congressional Budget and Impoundment Control Act of 1974, and was originally centered on deficit control. The process was first used in 1980, and almost immediately departed from deficit control, as budget resolutions crafted using the tool came to include provisions that increased spending, reduced revenues, or had no budgetary effect.

In 1985, Senator Robert Byrd (D-WV) spearheaded a rule that would enable the Senate to prevent the inclusion of "extraneous matter" to instructions issued for the reconciliation process by Senate leadership. This would, fittingly, become known as the Byrd Rule. Senator Byrd provided a set of six definitions of an extraneous provision[2]:

- 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;
- it produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
- it is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
- it produces a change in outlays or revenues which is merely incidental to the nonbudgetary components of the provision;

[2] Derived from *The Budget Reconciliation Process: The Senate's Byrd Rule,* Congressional Research Service, RL30862, 2020

- it would increase the deficit for a fiscal year beyond the "budget window" covered by the reconciliation measure; and/or

- it recommends changes in Social Security.

Twenty-one reconciliation measures have been undertaken since the first use of the Byrd rule, of which seventeen saw actions taken under the rule to restrict components of the resolution in question. In recent history, some notable measures have been passed via reconciliation:

- The Health Care and Education Reconciliation Act of 2010 nationalized the student loan industry and raised subsidies for the then-recently passed Affordable Care Act.

- The Trump tax cuts, the Tax Cuts and Jobs Act of 2017, were a reconciliation act derived from instructions in the FY2018 budget resolution. The act implemented the Trump Tax Reforms, and effectively ended the individual mandate instituted under the Affordable Care Act by setting the penalty for not having insurance to $0. Notably, the actual elimination of the individual mandate would not have been possible under the reconciliation rules in place at the time.