

# MEMORANDUM

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**To:** Peter Leibold  
**From:** Bob Dove  
**Date:** March 5, 2010  
**Subject:** Background on the Reconciliation Process

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- 1. The Issue—If the House Reconciliation Bill contains matter subject to the Byrd Rule, and a Senator raises a point of order which the Chair is prepared to sustain, the only option is to attempt to waive the Budget Act, which requires 60 votes.**

Reconciliation is an optional procedure established by Section 310 of the Congressional Budget Act.<sup>1</sup> Its purpose is to bring revenues, spending and the debt limit into conformity with the budget resolution. There are two stages to the reconciliation process: (1) the adoption of reconciliation instructions in the budget resolution, and (2) the enactment of reconciliation legislation implementing changes in revenue and spending law.

The reconciliation process allows the Senate to pass legislation with a simple majority as “reconciliation bills are insulated from debate and amendments.”<sup>2</sup> Since it was first used in 1980, Congress has enacted 20 reconciliation measures into law (see Appendix A).

At times, the reconciliation process has been used as a procedural tool to focus on key policy initiatives such as tax reform, welfare reform, and student loan program reform. However, as Sen. Robert Byrd, one of the architects of the reconciliation process, told congressional colleagues in early April, “the ironclad parliamentary procedures it authorizes were never intended for this purpose. . . . [r]econciliation was intended to adjust revenue and spending levels in order to reduce deficits.”<sup>3</sup>

The reconciliation instructions contemplated for use in moving health care reform were adopted as part of the Fiscal Year 2010 budget resolution (S. Con. Res. 13).<sup>4</sup> The resolution includes reconciliation instructions directing three House authorizing committees to report out health care reform legislation to reduce the deficit by a total of \$3 billion over five years, and instructions directing two Senate authorizing committees to report out legislation reducing the deficit by a total

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<sup>1</sup> 2 U.S.C. 641.

<sup>2</sup> “Dear Colleague” Letter from Sen. Robert C. Byrd (D-WV), April 2, 2009.

<sup>3</sup> *Id.*

<sup>4</sup> The House passed H.Con.Res. 85 on a 233-196 roll call vote on April 2, 2010. The Senate passed S.Con.Res. 13 on April 2, 55-43. The Conference Report for S. Con. Res. 13 was passed by the House on a 233-193 roll call vote on April 29, 2010. The Senate passed the Conference Report the same day 53-43.

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of \$2 billion. The resolution also instructs the committees of jurisdiction to report out such legislation by October 15, 2009 – although in practice this date is only advisory inasmuch as failing to report legislation by such date does not nullify the instructions.<sup>5</sup>

The budget plans do not require the President's signature, but the House and Senate will have to reconcile their two versions before any reconciliation process can commence (if the agreed-upon resolution provides for reconciliation). The relevant authorizing committees then will be under an obligation to craft legislation conforming with the reconciliation instructions they have received. House and Senate budget conferees are expected to meet and will likely reach agreement soon after Congress reconvenes on April 20<sup>th</sup>. Once the House and Senate adopt the Conference report, its terms will govern the rest of the budget process for the year.

Based on the assumption that the Conference agreement will include reconciliation instructions, we set forth below a "Q and A" intended to respond to some basic questions commonly posed with respect to the reconciliation process.

## **2. Which House Acts First?**

Either House may act first. Although reconciliation is considered a revenue measure, it is not necessary that the House act first. All that is required is that the bill sent to the President carry an "H.R. number."

The Senate may act on its own reconciliation bill prior to House consideration, in which case the bill will be read for the third time and held at the desk. Then, once the House passes its reconciliation bill and sends it over to the Senate, the Senate will take up the House bill, strike all after the enacting clause and substitute in its own version of reconciliation. The Senate will then either request a Conference or return the bill to the House. Once the Senate and House have considered and passed either identical versions of a reconciliation bill, or a Conference report, the final bill is sent to the President for his signature. (See Appendix A "Completion Dates of Reconciliation Legislation.")

## **3. What happens to the Senate Committee Response to Instructions?**

The role of the Budget Committee is to package into an omnibus bill, "without any substantive revisions," the recommendations of the various authorizing committees charged with reconciliation instructions<sup>6</sup>

If an authorizing committee's recommendations fail to meet its instructions, the Budget Committee will still include that committee's recommendations in the legislation. However, in those instances,

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<sup>5</sup> The FY2010 budget resolution (S. Con. Res 13), instructs the Energy and Commerce, Ways and Means, and Education and Labor Committees to reduce the deficit by a total of \$3 billion over five years, and the Senate Finance and Health, Education, Labor and Pensions Committees to reduce the deficit by a total of \$2 billion over five years.

<sup>6</sup> 2 U.S.C. 641(b)(2).

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it will be in order for any Senator to offer on the Floor, a motion to recommit the reconciliation bill with instructions to report back forthwith with an amendment -- which need not be germane -- that achieves the savings the committee failed to achieve.<sup>7</sup>

For example, if the Senate Finance Committee is given instructions with respect to health care issues within its jurisdiction, but fails to meet its instructions, Budget Committee Chairman Kent Conrad (R-ND) cannot “write” the health care section for inclusion in the omnibus reconciliation bill reported by the Budget Committee. However, once reconciliation gets to the Floor, Chairman Conrad (or any other Senator for that matter) may offer, in the form of a motion to recommit, his or her own health care section that does meet the instructions.

#### **4. How About Floor Consideration in the Senate?**

The motion to proceed to consideration of a reconciliation bill is not debatable. Debate on the bill itself is limited to 20 hours,<sup>8</sup> with debate on amendments limited to two hours equally divided. Debate on amendments to amendments is limited to one hour equally divided.<sup>9</sup> Time consumed by votes, quorum calls preceding roll call votes, or reading of amendments does not count against the 20 hours.

There is no limit to the number of amendments (or motions) Senators may offer after the 20 hours have expired. With respect to any amendments (or motions) offered after time has expired, there is no time permitted for debate unless unanimous consent is given to do otherwise.

In addition, during Senate consideration of a reconciliation bill, only “germane” amendments are deemed to be in order. Under the precedents of the Senate, “germaneness” is a narrower standard than “relevance” (which requires only subject matter relationship). Per se germane amendments are:

- (a) Committee amendments;
- (b) Amendments to Strike;
- (c) Amendments to change numbers or dates; and,
- (d) Non-binding amendments limited to matters within the jurisdiction of the committee reporting the bill.<sup>10</sup>

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<sup>7</sup> Senate Precedent PRL19810617-001 (June 17, 1981).

<sup>8</sup> 2 U.S.C. 641(e)(2).

<sup>9</sup> 2 U.S.C. 641(e)(1), see also 2 U.S.C. 636(b)(2).

<sup>10</sup> The abuse of such non-binding amendments has led to their being made subject to points of order, if the predominance of the amendment is sense of the Senate or sense of Congress language.

An amendment that does not fall into one of these categories may still be deemed germane if it substantively affects or limits some power, authority, duty, class, or other provision of the underlying bill or amendment, without adding any new subject matter.

Also, an amendment will be subject to a point of order if it reduces savings without a corresponding offset. Floor amendments offered in the House must also be deficit-neutral, unless the Rule specifically modifies or waives this requirement.

## **5. What is the Byrd Rule?**

The Byrd Rule<sup>11</sup> makes “extraneous” provisions subject to a point of order during Senate consideration of reconciliation legislation -- whether those provisions are within the bill, or within an amendment offered to the bill. If a “Byrd Rule” point of order against a provision is sustained, the provision is stricken from the bill, or the amendment falls, as the case may be. Appealing the rule of the chair requires 3/5 vote of duly elected and sworn Senators (60 votes).

The “Byrd Rule” defines a provision as “extraneous”:

- (a) if it does not produce a change in outlays or revenues;
- (b) if it produces an outlay increase or revenue decrease when the instructed committee fails to achieve its reconciliation instructions;
- (c) if it is outside the jurisdiction of the committee that submitted the provision for inclusion in the reconciliation measure;
- (d) if it produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision;
- (e) if it would increase the deficit for a fiscal year beyond those covered by the reconciliation measure; or,
- (f) if it recommends changes in Social Security.<sup>12</sup>

There are certain exceptions to the Byrd Rule, which either require certification by the Chairman and Ranking Member of the authorizing committee and of the Budget Committee, or relate to the issue of items not in the jurisdiction of the reporting Committee. These exceptions are listed in Appendix B.

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<sup>11</sup> 2. U.S.C. 644.

<sup>12</sup> Note that it is not in order for the House to consider any reconciliation bill, amendment, or Conference Report with respect to Social Security.

## **6. What is the Role of the Byrd Rule?**

Because of its expedited procedures, consideration of a reconciliation bill favors the majority, in effect, making the Senate more like the House (a distinguishing characteristic of the Senate being unlimited debate). The Byrd Rule was developed as a means to protect the rights of the minority and thereby restore some of that particular tradition of the Senate for consideration of this legislation.

To help enforce the Byrd Rule, the Senate Budget Committee is required to identify all extraneous provisions in any omnibus reconciliation bill it reports, and all extraneous provisions in any reconciliation Conference Report received in the Senate.<sup>13</sup> Note that these are items the Committee determines to be extraneous. The list is advisory only and does not bind the Chair. However, the list does serve to put Senators on notice as to which items may be extraneous.

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<sup>13</sup> 2 U.S.C. 644(c).

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## Appendix A

### I. COMPLETION DATES OF THE RECONCILIATION LEGISLATION

	Dates passed by Congress	Enactment or Vetoed
Reconciliation Act of 1975 H.R. 5559	December 17, 1975	Vetoed --December 17, 1975
Omnibus Reconciliation Act of 1980 H.R. 7765; P.L. 96-499	December 3, 1980	December 5, 1980
Omnibus Budget Reconciliation Act of 1981 H.R. 3982; P.L. 97-35	July 31, 1981	August 13, 1981
Omnibus Budget Reconciliation Act of 1982 H.R. 6955; P.L. 97-253	August 18, 1982	September 8, 1982
Omnibus Budget Reconciliation Act of 1983 H.R. 4169; P.L. 98-270	April 5, 1984	April 18, 1984
Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), H.R. 3128; P.L. 99-272	March 20, 1986	April 7, 1986
Omnibus Budget Reconciliation Act of 1986 H.R. 5300; P.L. 99-509	October 17, 1986	October 21, 1986
Omnibus Reconciliation Act of 1987 H.R. 3545; P.L. 100-203	December 22, 1987	December 22, 1987
Omnibus Budget Reconciliation Act of 1989 R. 3299; P.L. 101-239	November 22, 1989	December 19, 1989
Omnibus Budget Reconciliation Act of 1990 H.R. 5835; P.L. 101-508	October 27, 1990	November 5, 1990
Omnibus Budget Reconciliation Act of 1993 H.R. 2264; P.L. 103-66	August 6, 1993	August 19, 1993
Balanced Budget Act of 1995 H.R. 2491	November 20, 1995	Vetoed, December 6, 1995
Welfare and Medicaid Reform Act of 1996 H.R. 3734; P.L. 104-193	August 1, 1996	August 22, 1996

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Revenue Reconciliation Act of 1997 H.R. 2014, P.L. 105-34	July 31, 1997	August 5, 1997
Reconciliation for FY 2000 H.R. 2488	August 5, 1999	Vetoed September 23, 1999
Reconciliation for FY 2002 H.R. 1836	May 26, 2001	June 7, 2001
Jobs and Growth Tax Relief Reconciliation Act of 2003 H.R. 2	May 23, 2003	May 28, 2003
Deficit Reduction Act of 2005 H. Con Res. 95	February 1, 2006	February 8, 2006
Tax Increase Prevention and Reconciliation Act of 2005 H.R. 4297	May 11, 2006	May 17, 2006
College Cost Reduction And Access Act H.R.2669	September 7, 2007	September 27, 2007

## **Appendix B -- Extraneous Matter in Reconciliation Legislation**

### **Exceptions to The Byrd Rule**

A provision that produces no changes in outlays or revenues in the Senate-originated reconciliation measure will not be extraneous if the Chairman and Ranking Member of the authorizing committee and the Senate Budget Committee certify the provision:

- (1) Mitigates the effects of the provision that changes outlays or revenues and that both provisions produce a net reduction in the deficit;
- (2) Will produce a substantial reduction in outlays or increase in revenues in the out-years beyond the years covered by the budget resolution;
- (3) Will likely reduce outlays or increase revenues based on actions that are not currently projected by CBO for scorekeeping purposes; or,
- (4) Will likely produce a significant decrease in outlays or increase in revenues, but insufficient data exists to reliably estimate such effects.

A provision that is not in the jurisdiction of the committee reporting that provision will not be extraneous if:

- (1) The provision is an integral part of a provision or title which would be referred to the committee and implements the substantive provisions that were reported and are in the jurisdiction of the committee; or,
- (2) The provision is an exception for, or an application of, the general provision or title and such general provision or title would be referred to the committee.