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The Budget Reconciliation Process: The Senate's "Byrd Rule"

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Robert Keith
Specialist in American National Government
Government and Finance Division

The Budget Reconciliation Process: The Senate's "Byrd Rule"

Summary

Reconciliation is a procedure under the Congressional Budget Act of 1974 by which Congress implements budget resolution policies affecting mainly permanent spending and revenue programs. The principal focus in the reconciliation process has been deficit reduction, but in recent years reconciliation has encompassed revenue reduction generally and spending increases in selected program areas. Although reconciliation is an optional procedure, it has been used most years since its first use in 1980 (16 reconciliation bills were enacted into law and three were vetoed).

During the first several years' experience with reconciliation, the legislation contained many provisions that were extraneous to the purpose of implementing budget resolution policies. The reconciliation submissions of committees included such things as provisions that had no budgetary effect, that increased spending or reduced revenues when the reconciliation instructions called for reduced spending or increased revenues, or that violated another committee's jurisdiction.

In 1985 and 1986, the Senate adopted the Byrd rule (named after its principal sponsor, Senator Robert C. Byrd) on a temporary basis as a means of curbing these practices. The Byrd rule has been extended and modified several times over the years. In 1990, the Byrd rule was incorporated into the Congressional Budget Act of 1974 as Section 313 and made permanent (2 U.S.C. 644).

A Senator opposed to the inclusion of extraneous matter in reconciliation legislation may offer an amendment (or a motion to recommit the measure with instructions) that strikes such provisions from the legislation, or, under the Byrd rule, a Senator may raise a point of order against such matter. In general, a point of order authorized under the Byrd rule may be raised in order to strike extraneous matter already in the bill as reported or discharged (or in the conference report), or to prevent the incorporation of extraneous matter through the adoption of amendments or motions. A motion to waive the Byrd rule, or to sustain an appeal of the ruling of the chair on a point of order raised under the Byrd rule, requires the affirmative vote of three-fifths of the membership (60 Senators if no seats are vacant).

The Byrd rule provides six definitions of what constitutes extraneous matter for purposes of the rule (and several exceptions thereto), but the term is generally described as covering provisions unrelated to achieving the goals of the reconciliation instructions.

The Byrd rule has been applied to 19 reconciliation measures considered by the Senate from 1985 through 2004. In 42 of the 55 actions involving the Byrd rule, opponents were able to strike extraneous matter from legislation (18 cases) or bar the consideration of extraneous amendments (24 cases) by raising points of order. Nine of 41 motions to waive the Byrd rule, in order to retain or add extraneous matter, were successful. The Byrd rule has been used only four times during consideration of a conference report on a reconciliation measure (twice in 1993, once in 1995, and once in 1997). This report will be updated as developments warrant.

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Introduction

Reconciliation is a process established under Section 310 of the Congressional Budget Act of 1974 (P.L. 93-344), as amended. The purpose of reconciliation is to change substantive law so that revenue and mandatory spending levels are brought into line with budget resolution policies. Reconciliation generally has been used to reduce the deficit through spending reductions or revenue increases, or a combination of the two. In recent years, however, the reconciliation process also has encompassed revenue reduction generally and spending increases in selected program areas.

Reconciliation is a two-step process. Under the first step, reconciliation instructions are included in the budget resolution, directing one or more committees in each House to develop legislation that changes spending or revenues (or both) by the amounts specified in the budget resolution. If more than one committee in each House is given instructions, each instructed committee submits reconciliation legislation to its respective Budget Committee, which incorporates all submissions, without any substantive revision, into a single, omnibus budget reconciliation measure. Reconciliation procedures during a session usually have applied to multiple committees and involved omnibus legislation.

Under the second step, the omnibus budget reconciliation measure is considered in the House and Senate under expedited procedures (for example, debate time in the Senate on a reconciliation measure is limited to 20 hours and amendments must be germane). The process culminates with enactment of the measure, thus putting the policies of the budget resolution into effect.

Reconciliation, which was first used by the House and Senate in 1980, is an optional procedure, but it has been used in most years. Over the 25-year period from 1980-2004, 16 reconciliation bills were enacted into law and three were vetoed.

During the first several years' experience with reconciliation, the legislation contained many provisions that were extraneous to the purpose of reducing the deficit. The reconciliation submissions of committees included such things as provisions that had no budgetary effect, that increased spending or reduced revenues, or that violated another committee's jurisdiction.

In 1985 and 1986, the Senate adopted the Byrd rule (named after its principal sponsor, Senator Robert C. Byrd) as a means of curbing these practices. Initially, the rule consisted of two components, involving a provision in a reconciliation act and a Senate resolution. The Byrd rule has been modified several times over the years.

The purpose of this report is to briefly recount the legislative history of the Byrd rule, summarize its current features, and describe its implementation from its inception through the present.

Legislative History of the Byrd Rule

During the first five years that the Byrd rule was in effect, from late 1985 until late 1990, it consisted of two separate components — (1) a provision in statute applying to initial Senate consideration of reconciliation measures, and (2) a Senate resolution extending application of portions of the statutory provision to conference reports and amendments between the two Houses. Several modifications were made to the Byrd rule in 1986 and 1987, including extending its expiration date from January 2, 1987, to January 2, 1988, and then to September 30, 1992, but the two separate components of the rule were preserved. In 1990, these components were merged together and made permanent when they were incorporated into the Congressional Budget Act (CBA) of 1974 as Section 313. There have been no further changes in the Byrd rule since 1990.

The Byrd rule originated on October 24, 1985, when Senator Robert C. Byrd, on behalf of himself and others, offered Amendment No. 878 (as modified) to S. 1730, the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985.[1] The Senate adopted the amendment by a vote of 96-0.[2] In this form, the Byrd rule applied to initial Senate consideration of reconciliation measures.

Senator Byrd explained that the basic purposes of the amendment were to protect the effectiveness of the reconciliation process (by excluding extraneous matter that often provoked controversy without aiding deficit reduction efforts) and to preserve the deliberative character of the Senate (by excluding from consideration under expedited procedures legislative matters not central to deficit reduction that should be debated under regular procedures). He opened his remarks by stating:

> . . . we are in the process now of seeing . . . the Pandora's box which has been opened to the abuse of the reconciliation process. That process was never meant to be used as it is being used. There are 122 items in the reconciliation bill that are extraneous. Henceforth, if the majority on a committee should wish to include in reconciliation recommendations to the Budget Committee any measure, no matter how controversial, it can be brought to the Senate under an ironclad built-in time agreement that limits debate, plus time on amendments and motions, to no more than 20 hours.
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> It was never foreseen that the Budget Reform Act would be used in that way. So if the budget reform process is going to be preserved, and more importantly if we are going to preserve the deliberative process in this U.S. Senate — which

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[1] For a detailed legislative history of the Byrd rule, see the following print of the Senate Budget Committee: *Budget Process Law Annotated — 1993 Edition*, by William G. Dauster, 103rd Cong., 1st sess., S. Prt. 103-49, October 1993, notes on pages 229-246.

[2] The Senate's consideration of and vote on the amendment occurred on pages S14032-S14038 of the *Congressional Record* (daily ed.) of Oct. 24, 1985.

> is the outstanding, unique element with respect to the U.S. Senate, action must be taken now to stop this abuse of the budget process.[3]

The Byrd amendment was included in modified form in COBRA of 1985 (P.L. 99-272), which was not enacted into law until April 7, 1986, as Section 20001 (100 Stat. 390-391). The Byrd rule, in this form, thus became effective on April 7. As originally framed, the Byrd rule was set to expire on January 2, 1987.

Figure 1. Laws and Resolutions Establishing the Byrd Rule

P.L. 99-272, Consolidated Omnibus Budget Reconciliation Act of 1985, Section 2001 (100 Stat. 390-391), April 7, 1986.

S.Res. 286 (99th Congress, 1st Session), December 19, 1985.

S.Res. 509 (99th Congress, 2nd Session), October 16, 1986.

P.L. 99-509, Omnibus Budget Reconciliation Act of 1986, Section 7006 (100 Stat. 1949-1950), October 21, 1986.

P.L. 100-119, Increasing the Statutory Limit on the Public Debt, Section 205 (101 Stat. 784-785), September 29, 1987.

P.L. 101-508, Omnibus Budget Reconciliation Act of 1990, Section 13214 (104 Stat. 1388-621 through 1388-623), November 5, 1990.

P.L. 105-33, Balanced Budget Act of 1997, Section 10113(b)(1) (111 Stat. 688), August 5, 1997.

Over the years, the Senate has expanded and revised the Byrd rule through the adoption of two resolutions and the inclusion of provisions in four laws. **Figure 1** lists the laws and resolutions that have established and revised the Byrd rule.

On December 19, 1985, the Senate adopted by voice vote a resolution (S.Res. 286), sponsored by Senator Alan Simpson and others, that extended the application of portions of the statutory provision to conference reports and amendments between the two Houses. Because the enactment of COBRA of 1985 was delayed until early 1986, the portion of the Byrd rule dealing with conference reports became effective first. The provisions of S.Res. 286 were set to expire on the same date as the provision in COBRA of 1985 (January 2, 1987).

In the following year, the Senate was involved in two actions affecting the Byrd rule. First, the Senate adopted S.Res. 509 by voice vote on October 16, 1986. The measure, offered by Senator Alan Simpson and others, modified S.Res. 286 in a technical fashion. Second, the Omnibus Budget Reconciliation Act of 1986 was enacted into law, as P.L. 99-509, on October 21, 1986. Section 7006 of the law made

[3] See the remarks of Senator Robert C. Byrd on page S14032 of the *Congressional Record* (daily ed.) of Oct. 24, 1985.

several minor changes in the Byrd rule and extended its expiration date by one year — until January 2, 1988.

Further changes in the Byrd rule were made in 1987. These changes were included in a measure increasing the statutory limit on the public debt, modifying procedures under the Balanced Budget and Emergency Deficit Control Act of 1985, and making other budget process changes (P.L. 100-119, signed into law on September 29; see Title II (Budget Process Reform)). Section 205 of the law added an item to the list of definitions of extraneous matter in the Byrd rule and extended its expiration until September 30, 1992.

In 1990, Congress and the President agreed to further modifications of the budget process by enacting the Budget Enforcement Act (BEA) of 1990 (Title XIII of the Omnibus Budget Reconciliation Act of 1990). Section 13214 of the law made significant revisions to the Byrd rule and incorporated it (as permanent law) into the CBA of 1974 as Section 313 (2 U.S.C. 644).

Finally, the Budget Enforcement Act of 1997 (Title X of the Balanced Budget Act of 1997) made minor technical changes in Section 313 of the CBA of 1974 to correct drafting problems with the BEA of 1990.

Current Features of the Byrd Rule

A Senator opposed to the inclusion of extraneous matter in reconciliation legislation has two principal options for dealing with the problem. First, a Senator may offer an amendment (or a motion to recommit the measure with instructions) that strikes such provisions from the legislation. Second, under the Byrd rule, a Senator may raise a point of order against extraneous matter.

The Byrd rule is a relatively complex rule[4] that applies to two types of reconciliation measures considered pursuant to Section 310 of the CBA of 1974 — reconciliation bills and reconciliation resolutions.[5] (A reconciliation resolution could be used to make changes in legislation that had passed the House and Senate but had not yet been enrolled and sent to the President. The practice of the House and Senate has been to consider only reconciliation bills.)

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[4] Some of the complexities of the Byrd rule are examined in: (1) *Riddick's Senate Procedure* (S.Doc. 101-28, 101st Cong., 2nd sess., 1992), by Floyd M. Riddick and Alan S. Frumin, on pages 624-626; and (2) *Budget Process Law Annotated — 1993 Edition*, by William G. Dauster, op. cit., beginning on page 198.

[5] Part of the Byrd rule, Section 313(a), also applies to reconciliation measures considered pursuant to Section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985. This section, which has never been invoked, provides for the consideration of reconciliation legislation in the fall in order to achieve deficit reductions that would obviate the need for an expected sequester under the pay-as-you-go (PAYGO) requirement (or, previously, the deficit targets). The PAYGO requirement effectively expired at the end of the 107th Congress (see CRS Report RS21378, *Termination of the "Pay-As-You-Go" (PAYGO) Requirement for FY2003 and Later Years*, by Robert Keith.) All of the reconciliation measures considered by the Senate thus far have originated pursuant to Section 310 of the CBA of 1974.

In general, a point of order authorized under the Byrd rule may be raised in order to strike extraneous matter already in the bill as reported or discharged (or in the conference report), or to prevent the incorporation of extraneous matter through the adoption of amendments or motions. A point of order may be raised against a single provision or two or more provisions (as designated by title or section number, or by page and line number), and may be raised against a single amendment or two or more amendments. The chair may sustain a point of order as to all of the provisions (or amendments) or only some of them.

Once material has been stricken from reconciliation legislation under the Byrd rule, it may not be offered again as an amendment.

A motion to waive the Byrd rule, or to sustain an appeal of the ruling of the chair on a point of order raised under the Byrd rule, requires the affirmative vote of three-fifths of the membership (60 Senators if no seats are vacant).[6] A single waiver motion can: (1) apply to the Byrd rule as well as other provisions of the Congressional Budget Act; (2) involve multiple as well as single provisions or amendments; (3) extend (for specified language) through consideration of the conference report as well as initial consideration of the measure or amendment; and (4) be made prior to the raising of a point of order, thus making the point of order moot.

When a reconciliation measure, or a conference report thereon, is considered, the Senate Budget Committee must submit for the record a list of potentially extraneous matter included therein.[7] This list is advisory, however, and does not bind the chair in ruling on points of order.

Determinations of budgetary levels for purposes of enforcing the Byrd rule are made by the Senate Budget Committee.

Definitions of Extraneous Matter. Subsection (b)(1) of the Byrd rule provides definitions of what constitutes extraneous matter for purposes of the rule. The Senate Budget Committee, in its report on the budget resolution for fiscal year 1994, noted:

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[6] In the Senate, many points of order under the CBA of 1974 require a three-fifths vote of the membership to waive (or to sustain an appeal of the ruling of the chair). Most of these three-fifths waiver requirements are temporary, but in the case of the Byrd rule it is permanent. Section 503 of the FY2004 budget resolution (H.Con.Res. 95, 108th Cong.), adopted on Apr. 11, 2003, extended the expiration date for the temporary requirements to Sept. 30, 2008.

[7] For an example of such a list, see the remarks of Senator Pete Domenici regarding the conference report on the Balanced Budget Act of 1997 in the *Congressional Record* (daily ed.) of July 31, 1997, at pages S8406-S8408.

> 'Extraneous' is a term of art. Broadly speaking, the rule prohibits inclusion in reconciliation of matter unrelated to the deficit reduction goals of the reconciliation process.[8]

A provision is considered to be extraneous if it falls under one or more of the following six definitions:

(1) it does not produce a change in outlays or revenues;

(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 those covered by the reconciliation measure; and

(6) it recommends changes in Social Security.

The last definition complements a ban in Section 310(g) of the CBA of 1974 against considering any reconciliation legislation that contains recommendations pertaining to the Social Security. For purposes of these provisions, Social Security is considered to include the Old-Age, Survivors, and Disability Insurance (OASDI) program established under Title II of the Social Security Act; it does not include Medicare or other programs established as part of that act.

Exceptions to the Definition of Extraneous Matter. Subsection (b)(2) of the Byrd rule provides that a Senate-originated provision that does not produce a change in outlays or revenues shall not be considered extraneous if the chairman and ranking minority members of the Budget Committee and the committee reporting the provision certify that —

- the provision mitigates direct effects clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit; or

- the provision will (or is likely to) reduce outlays or increase revenues: (1) in one or more fiscal years beyond those covered by the reconciliation measure; (2) on the basis of new regulations, court rulings on pending legislation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision; or (3) but reliable estimates cannot be made due to insufficient data.

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[8] See the report of the Senate Budget Committee to accompany S.Con.Res. 18, Concurrent Resolution on the Budget, FY1994 (S.Rept. 103-19, Mar. 12, 1993), at page 49.

Additionally, under subsection (b)(1)(A), a provision that does not change outlays or revenues in the net, but which includes outlay decreases or revenue increases that exactly offset outlay increases or revenue decreases, is not considered to be extraneous.

The full text of the Byrd rule in its current form is provided in **Appendix A**.

Implementation of the Byrd Rule

Congress and the President considered 19 omnibus reconciliation measures (as shown in **Table 1**) between calendar year 1980, when the reconciliation process was first used, and the present.[9] As stated previously, 16 of these measures were enacted into law and three were vetoed (by President Clinton). The Byrd rule has been in effect during the consideration of the last 14 of these 19 measures. The Byrd rule had not been established when the first five reconciliation bills were considered.

Table 1. Omnibus Budget Reconciliation Acts: Calendar Years 1980-2004

Omnibus Budget Reconciliation Act	Public Law Number	*Statutes-at-Large* Citation	Date Approved (*or Vetoed*)
Omnibus Reconciliation Act of 1980	96-499	94 Stat. 2599-2695	12-05-80
Omnibus Budget Reconciliation Act of 1981	97-35	95 Stat. 357-933	08-13-81
Tax Equity and Fiscal Responsibility Act of 1982	97-248	96 Stat. 324-707	09-03-82

[9] The Senate also considered two measures linked to the reconciliation process. On December 15, 1975, the Senate considered, amended, and passed H.R. 5559, the Revenue Adjustment Act of 1975, which reduced revenues by about $6.4 billion pursuant to a budget resolution instruction. The measure was not regarded as a reconciliation bill when it was considered by the House, but it was considered under reconciliation procedures in the Senate. The President vetoed the measure later in the year and the House sustained his veto. See the remarks of Senator Russell Long and the presiding officer on page 40540 and the remarks of Senator Edmund Muskie and others on pages 40544-40550 in the *Congressional Record* of Dec. 15, 1975, regarding the status of H.R. 5559 as a reconciliation bill.

The Deficit Reduction Act of 1984 (P.L. 98-369) was regarded as a reconciliation bill when it was considered in the House, but was stripped of that classification when it was considered in the Senate (in April and May of 1984).

For more information on the consideration of reconciliation measures, see CRS Report RL30458, *The Budget Reconciliation Process: Timing of Legislative Action*, by Robert Keith.

Omnibus Budget Reconciliation Act	Public Law Number	*Statutes-at-Large* Citation	Date Approved (*or Vetoed*)
Omnibus Budget Reconciliation Act of 1982	97-253	96 Stat. 763-807	09-08-82
Omnibus Budget Reconciliation Act of 1983	98-270	98 Stat. 157-162	04-18-84
Consolidated Omnibus Budget Reconciliation Act of 1985	99-272	100 Stat. 82-391	04-07-86
Omnibus Budget Reconciliation Act of 1986	99-509	100 Stat. 1874-2078	10-21-86
Omnibus Budget Reconciliation Act of 1987	100-203	101 Stat. 1330, 1-472	12-22-87
Omnibus Budget Reconciliation Act of 1989	101-239	103 Stat. 2106-2491	12-19-89
Omnibus Budget Reconciliation Act of 1990	101-508	104 Stat. 1388, 1-630	11-05-90
Omnibus Budget Reconciliation Act of 1993	103-66	107 Stat. 312-685	08-10-93
Balanced Budget Act of 1995	(H.R. 2491)	*(vetoed)*	*12-06-95*
Personal Responsibility and Budget Reconciliation Act of 1996	104-193	110 Stat. 2105-2355	08-22-96
Balanced Budget Act of 1997	105-33	111 Stat. 251-787	08-05-97
Taxpayer Relief Act of 1997	105-34	111 Stat. 788-1103	08-05-97
Taxpayer Refund and Relief Act of 1999	(H.R. 2488)	*(vetoed)*	*09-23-99*
Marriage Tax Relief Reconciliation Act of 2000	(H.R. 4810)	*(vetoed)*	*08-05-00*
Economic Growth and Tax Relief Reconciliation Act of 2001	107-16	115 Stat. 38-150	06-07-01
Jobs and Growth Tax Relief Reconciliation Act of 2003	108-27	117 Stat. 752-768	05-28-03

The Byrd rule was fully in effect during the consideration of all but the first of the 14 reconciliation bills. During consideration of that bill, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Byrd rule applied to the consideration of the conference report, but not to initial consideration of the bill.

There has been a total of 55 actions involving points of order or waiver motions, or both, under the Byrd rule.[10] (A point of order can be raised under the Byrd rule without a waiver motion being offered; conversely, a waiver motion can be offered without a point of order having been raised.) In total, 53 points of order were raised under the Byrd rule. In two instances, a point of order was not raised because a waiver motion previously had been offered and approved, thus making the point of order moot.

On the whole, actions under the Byrd rule have occurred more frequently in recent years. (However, there were no actions under the Byrd rule in 2001 and only one in 2003, the last two years in which reconciliation was used). Also, opponents of extraneous matter in reconciliation legislation generally have used the Byrd rule successfully.[11]

Reconciliation legislation has been considered under the Byrd rule over a 20-year period, covering calendar years 1985-2004. As **Table 2** shows, actions taken under the Byrd rule were less frequent during the first 10 years of this period (16 actions in total), covering 1985-1994, compared to the remaining 10 years (39 actions in total), covering 1995-2004.

With regard to the 55 total actions pertaining to the Byrd rule, 42 involved actions that resulted in extraneous matter being stricken or barred while 13 involved actions that resulted in such matter being retained or added.

Of the 53 points of order raised under the Byrd rule, 42 were sustained, enabling Senators to strike extraneous matter from the legislation in 18 cases and bar the consideration of extraneous amendments in 24 cases. Ten of the points of order fell, either upon the adoption of a waiver motion or upon the ruling of the chair, and one point of order was withdrawn.

A total of 41 motions to waive the Byrd rule, to permit the inclusion of extraneous matter, were made. Nine of these motions were successful, while 32 were rejected. (Two other waiver motions were withdrawn and one was changed to a unanimous consent request.) Eight of these successful motions were used to protect committee-reported language in the bill or language in the conference report; only one motion to protect a floor amendment was successful.

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[10] The Byrd rule is only one of many point-of-order provisions in Titles III and IV of the CBA of 1974, as amended (2 U.S.C. 644). In some instances, points of order or waiver motions are made under the Act by general reference only (such as a Senator raising a point of order "under Title III of the Act") rather than by specific reference to the provision(s) involved. When only general references are made, it usually is impossible to determine (by reference to debate in the *Congressional Record* alone) which provision of the act is involved. Consequently, this report reflects only those instances when specific reference was made to Section 313 of the act or to the Byrd rule and may undercount somewhat the actual number of actions involving the rule.

[11] It is difficult, if not impossible, to accurately determine the deterrent effect of the Byrd rule, so this aspect is not addressed in this report.

Table 2. Summary of Actions Under the Byrd Rule

Calendar year	Actions to strike or bar extraneous matter	Actions to retain or add extraneous matter	Total actions
1985	0	0	0
1986	1	1	2
1987	0	1	1
1988	—	—	—
1989	0	0	0
1990	5	1	6
1991	—	—	—
1992	—	—	—
1993	5	2	7
1994	—	—	—
Subtotal, 1985-1994	***11***	***5***	***16***
1995	8	0	8
1996	5	1	6
1997	12	5	17
1998	—	—	—
1999	3	1	4
2000	2	1	3
2001	—	—	—
2002	—	—	—
2003	1	0	1
2004	—	—	—
Subtotal, 1995-2004	***31***	***8***	***39***
Total	**42**	**13**	**55**

Eight of the nine successful waiver motions exceeded the required 60-vote threshold by an average margin of 12 votes (the remaining one was approved by voice vote), while 31 of the 32 unsuccessful waiver motions fell short of the

threshold by an average of 13 votes (the remaining one was rejected by voice vote). Fourteen of the unsuccessful waiver motions garnered at least 51 votes but less than the 60 votes required to be successful.

Table 3, at the end of this section, provides more detailed information on actions involving points of order and waiver motions made under the Byrd rule from 1985 through 2004.

The Byrd rule has been used primarily during initial consideration of a reconciliation measure. It was invoked only four times — twice in 1993, once in 1995, and once in 1997 — during consideration of a conference report. In 1993, two points of order against matter characterized as extraneous in a conference report were rejected by the chair. In both instances, the chair's ruling was upheld upon appeal. The two motions to appeal the chair's rulings were defeated by identical votes, 43-57. In 1995, two sections were stricken from a conference report and the two chambers had to resolve the final differences with a further amendment between them. In 1997, a section in the conference report was retained following a successful vote (78-22) to waive a point of order.

In many instances, a point of order was raised against multiple provisions, sections, or titles of the bill, sometimes covering a variety of different topics. In a few cases, the Chair ruled that most, but not all, of the provisions violated the Byrd rule.

Five of the six definitions of extraneousness (the exception being recommending changes in Social Security) have been cited as bases for invoking the Byrd rule. The most common basis for a point of order has been that the provision or amendment did not change outlays or revenues.

On three occasions (in 1985, 1989, and 2001), the Senate considered reconciliation legislation without taking any actions under the Byrd rule. No actions were taken under the Byrd rule during consideration of the conference report on the Consolidated Omnibus Budget Reconciliation Act of 1985, which began on December 19, 1985; this was the first instance in which the Byrd rule applied.

In 1989, no actions involving the Byrd rule occurred, in large part because the Senate leadership chose to use an amendment rather than the Byrd rule to deal with extraneous matter in the bill. On October 13, 1989, during consideration of the Omnibus Budget Reconciliation of 1989, the Senate adopted Mitchell Amendment No. 1004 by voice vote. The amendment struck extraneous matter from the bill; its stated purpose was "to strike all matter from the bill that does not reduce the deficit."[12]

Finally, no actions under the Byrd rule were taken in 2001 during consideration of the Economic Growth and Tax Relief Reconciliation Act. The potential

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[12] See the *Congressional Record* (daily ed.) of Oct. 13, 1989, at page S13349. The Senate leadership used an amendment for similar purposes during consideration of the Omnibus Budget Reconciliation Act of 1981.

application of the Byrd rule to the tax-cut measure was averted by the inclusion of a "sunset" provision that limited the duration of the tax cuts to 10 years.

Byrd Rule Controversies

Although the Byrd rule has advocates in the House and Senate, its use sometimes has engendered much controversy between the two Houses.

In 1993 and 1994, during the 103rd Congress, the stringent application of the Byrd rule by the Senate significantly influenced the final shape of the reconciliation act.

The House considered its version of the Omnibus Budget Reconciliation Act of 1993, H.R. 2264, on May 27. The Senate considered its version, S.1134, on June 23 and June 24 (after completing consideration of S. 1134, the Senate amended and passed H.R. 2264 for purposes of conference with the House). Senator Pete Domenici, ranking minority member of the Senate Budget Committee, inserted a list of potentially extraneous matters included in S. 1134 in the *Congressional Record* of June 24 (at page S 7984).[13] The list identified more than a dozen sections in five titles of the bill as possibly being in violation of the Byrd rule, specifically Section 313(b)(1)(A) (*i.e.*, producing no change in outlays or revenues).

At the House-Senate conference stage, the Senate leadership directed the parliamentarian and Senate Budget Committee staff to thoroughly review the legislation to identify any provisions originating in the House or Senate that might violate the Byrd rule.[14] As a result of this review, many provisions were deleted from the legislation in conference.

During Senate consideration of the conference report, Senator James Sasser, Chairman of the Senate Budget Committee, discussed this process:

> ...with regard to the Byrd rule, we worked very hard and very faithfully over a period of well over a week in going over this bill to try to clarify and remove items that might be subject to the Byrd rule.
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> As the distinguished ranking member indicated, I think over 150 items were removed from the reconciliation instrument here, because it was felt that they would be subject to the Byrd rule....

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[13] This requirement was added by Section 13214 of the Omnibus Budget Reconciliation Act of 1990. Consequently, its first application was to consideration of the Omnibus Budget Reconciliation Act of 1993.

[14] See the discussion of "Preemptive Editing of the Conference Report" in *Budget Process Law Annotated — 1993 Edition*, by William G. Dauster, op. cit., at pages 245-246. Also, see (1) Richard E. Cohen, "Running Up Against the 'Byrd Rule'," *National Journal*, Sept. 4, 1993, page 2151; (2) George Hager, "The Byrd Rule: Not an Easy Call," *Congressional Quarterly Weekly Report*, July 31, 1993, page 2027; and (3) Mary Jacoby, "Senate Parliamentarian Purges Budget Bill of Measures That Could Violate Byrd Rule," *Roll Call*, Aug. 5, 1993, page 9.

> I might say some of our House colleagues could not understand, and I do not blame them because there were a number of things that were pulled out of this budget reconciliation that had been voted on and passed by large majorities in both houses. But simply because they violated the Byrd rule, we had to go to the chairmen of the appropriate House committees and tell them they had to come out. They simply did not understand it. I think it made them perhaps have a little less high esteem for some of us here in the Senate...In the final analysis, their leadership had to demand that some of these provisions subject to the Byrd rule come out.[15]

During House consideration of the conference report, several Democratic Members criticized the Byrd rule and discussed its impact on the legislation. For example, Representative Dan Rostenkowski, chairman of the House Ways and Means Committee, stated:

> ...I also have to express my grave concerns regarding the other body's so-called Byrd rule. As a result of this procedural rule, policies that would have significantly improved the Medicare Program could not even be considered. Over 80 pages of statutory language were stripped out of the Medicare title. Staff wasted countless hours, scrutinizing every line to ensure that there is nothing that would upset our friends at the other end of the Capitol. Even more absurd is the fact that most of the items stripped were minor and technical provisions that received bipartisan support when they passed both the House and the Senate last year.
>
> I hope that Members on both sides of the aisle share my grave concerns about how this rule has been used, and its impact on reconciliation. I sincerely hope that this rule will be reconsidered before we ever return to the reconciliation process again.[16]

Controversy over the Byrd rule persisted during late 1993 and into 1994. The Joint Committee on the Organization of Congress, co-chaired by Representative Lee Hamilton and Senator David Boren, was slated to make recommendations on congressional reform, including changes in the budget process, in December of 1993. Representative Martin Olav Sabo, chairman of the House Budget Committee, wrote to Co-Chair Hamilton in October, telling him that "widespread use [of the Byrd rule] this year was extremely destructive and bodes ill for the reconciliation process in the future." Further, he stated that "the use of mechanisms like the Byrd rule greatly distorts the balance of power between the two bodies" and that strict enforcement of the Byrd rule "requires that too much power be delegated to unelected employees of the Congress."[17]

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[15] See the remarks of Senator Sasser in the *Congressional Record* (daily ed.) of Aug. 6, 1993, at page S10662.

[16] See the remarks of Representative Rostenkowski in the *Congressional Record* (daily ed.) of Aug. 5, 1993, at page H6126. He discusses specific programs dropped from the conference report because of the Byrd rule at page H6124. Also, see the remarks that same day of Representatives de la Garza (at page H6143), Vento (at page H6235), and Stenholm (at page H6257).

[17] Letter from Representative Martin Olav Sabo to Representative Lee H. Hamilton, October

(continued...)

Chairman Sabo attached two Budget Committee staff documents to his letter: (1) a 29-page listing of reconciliation provisions "dropped or modified" in conference in order to comply with the Byrd rule, and (2) a 3-page statement identifying specific problems caused by the rule (including a bar against including authorizations savings in reconciliation, the forcing of piecemeal legislation, incentives to use counterproductive drafting techniques to mitigate effects, and a bar against provisions achieving savings or promoting efficiency when the Congressional Budget Office was unable to assign particular savings to them).

The Senate Members of the Joint Committee on the Organization of Congress recommended in their final report that a provision clarifying "that the 'Byrd rule' is permanent, applies to conference reports, requires sixty votes to waive, and applies to extraneous matters" be included in a broad reform bill.[18] Legislation embodying the Senate recommendations (S. 1824) was introduced on February 3, 1994 (the recommendation pertaining to the Byrd rule was set forth in Section 312 of the bill). The House Members of the Joint Committee did not include any recommendations regarding the Byrd rule in their report or legislation (H.R. 3801, also introduced on February 3, 1994).

The day after the two reform bills were introduced, the chairmen of 15 House committees wrote to Speaker Tom Foley. They urged him to meet with Senate Majority Leader George Mitchell in order to get Section 312 of S. 1824, dealing with the Byrd rule, removed from the reform package.[19]

On July 19, 1994, Chairman Sabo introduced H.R. 4780. The bill would have amended the CBA of 1974 to make the Byrd rule "applicable to the Senate only," chiefly by removing references to conference reports in Section 313 of the Act.[20]

None of the three bills cited above were acted upon before the 103rd Congress adjourned.

During the 106th Congress, the budget resolutions for FY2000 and FY2001 included reconciliation instructions directing the House Ways and Means and Senate Finance Committees to develop legislation implementing substantial reductions in revenue.[21] The reconciliation instructions in the two budget resolutions called for

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[17] (...continued)
26, 1993, 2 pages.

[18] See Organization of the Congress: *Final Report of the Senate Members of the Joint Committee on the Organization of Congress*, S.Rept. 103-215, Vol. I, Dec. 1993, pages 14 and 15.

[19] The letter is discussed in: Karen Foerstel, "Byrd Rule War Erupts Once Again," *Roll Call*, Feb. 24, 1994, pages 1 and 13.

[20] See the following article for a discussion of the Sabo bill: Mary Jacoby, "Sabo Bill Would Kill Byrd Rule For Good," *Roll Call*, July 25, 1994, page 12.

[21] See Sections 104 and 105 of H.Con.Res. 68, the FY2000 budget resolution (the conference report was H.Rept. 106-91, Apr. 14, 1999), and Sections 103 and 104 of (continued...)

total revenue reduction over five years of $142 billion and $150 billion, respectively.[22] Neither budget resolution included any instructions regarding spending. This marked the first time that the House and Senate had recommended substantial reductions in revenue through the reconciliation process without offsetting savings to be achieved in spending programs. Any resultant reconciliation legislation was expected under these budget resolutions to reduce large surpluses, not to incur or worsen deficits.

In each of these two years, there was controversy in the Senate regarding the appropriateness of using reconciliation procedures under circumstances that worsened the federal government's fiscal posture. Some Senators argued that the use of reconciliation, with its procedural restrictions that sharply curtail debate time and limit the offering of amendments in comparison to the usual Senate procedures, could be justified only when it was necessary to reduce or eliminate a deficit (or to preserve or increase a surplus). Other Senators maintained that reconciliation is neutral in its orientation — the language in Section 310 of the CBA of 1974 refers to "changes" in spending and revenue amounts, not increases or decreases — and is intended to expedite the consideration of important and potentially complex budgetary legislation.

Against the backdrop of the larger issue of the appropriate use of reconciliation under these circumstances, Senators also debated in particular the impact of the Byrd rule on the scope of the resultant tax-cut legislation. One of the determinants of extraneousness under the Byrd rule is whether the legislation reduces revenues or increases spending in the net beyond the period to which the reconciliation instructions apply. Changes in tax law, however, often are made on a permanent basis. As a consequence, reconciliation legislation recommending permanent tax cuts may run afoul of the Byrd rule.

During consideration of the Taxpayer Refund and Relief Act of 1999 and the Marriage Tax Relief Reconciliation Act of 2000, the Byrd rule was used successfully to ensure the inclusion of sunset provisions in the bills, limiting the effectiveness of the tax cuts to the period covered by the reconciliation instructions.[23]

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[21] (...continued)
H.Con.Res. 290, the FY2001 budget resolution (the conference report was H.Rept. 106-577, Apr. 12, 2000). The FY2001 budget resolution also included reconciliation instructions directing the House Ways and Means Committee to develop legislation reducing the debt held by the public.

[22] The instructions in the FY2000 budget resolution covered 10 fiscal years, while the instructions in the FY2001 budget resolution covered five fiscal years. The reconciliation instructions in the FY2000 budget resolution also provided for total revenue reductions of $778 billion over 10 years.

[23] Proceedings under this aspect of the Byrd rule, in the case of the Taxpayer Refund and Relief Act of 1999, occurred on July 28, 1999; see the remarks of Senators Roth, Moynihan, Conrad, Gramm, and others in the *Congressional Record* (daily ed.) of that date on pages S9478-S9484. With regard to the Marriage Tax Relief Reconciliation Act of 2000, see the remarks of Senator Roth in the *Congressional Record* of July 14, 2000, on pages S6782-

During the first session of the 107th Congress, the Senate again addressed these issues as it considered H.R. 1836, largely embodying President Bush's proposal for a $1.6 trillion tax cut.[24] In addition to debating the appropriateness of using the reconciliation process to expedite tax-cut legislation, Senators argued for and against the inclusion of the 10-year "sunset" provision necessary to achieve compliance with the Byrd rule. Some Senators maintained that permanent changes in tax law should be allowed under reconciliation procedures, just as they often are customarily made in freestanding tax legislation. Other Senators praised the value of being able to reexamine such significant modifications in budgetary policy in future years when economic circumstances may have changed materially.

The sunset provision was retained in the final version of the legislation, as Section 901 (115 Stat. 150) of P.L. 107-16, the Economic Growth and Tax Relief Reconciliation Act of 2001.

In 2003, during the first session of the 108th Congress, the Byrd rule influenced the form of revenue reconciliation directives in the FY2004 budget resolution (H.Con.Res. 95).[25] Initially, House and Senate leaders indicated that they would settle on a conference agreement instructing the House Ways and Means Committee to reduce revenues through reconciliation by $550 billion or more for the period covering FY2003-FY2013 and the Senate Finance Committee to reduce revenues by $350 billion for the same period. A majority of Senators had indicated their opposition to revenue reductions greater than $350 billion.

The use of dual reconciliation instructions in the budget resolution would enable the leadership to secure passage of the budget resolution while leaving open the possibility that a subsequent conference on the differing versions of the revenue reconciliation measure passed by the two Houses might reach an acceptable compromise between these two amounts.

However, it soon became apparent that, if the Senate initially passed a revenue reconciliation measure consistent with the directive in the budget resolution (i.e., reducing revenues by $350 billion), the later consideration of a conference agreement reflecting a compromise level of revenue reductions greater than $350 billion could violate the Byrd rule. In particular, Section 313(b)(1)(B) defines as extraneous any provision reported by a committee that reduces revenues (or increases outlays) if the net effect of all of the committee's provisions is that it fails to achieve its reconciliation instructions. Proposing revenue reductions greater than the level of reductions set in the reconciliation instructions would be considered a failure to achieve the instructions.

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[23] (...continued)
S6784.

[24] See, for example, the remarks of Senator Robert C. Byrd, "Reconciliation Process Reform," in the *Congressional Record* (daily ed.) of Feb. 15, 2001, on pages S1532-S1536, and opening remarks of Senator Byrd and others during Senate consideration of H.R. 1836 in the *Congressional Record* (daily ed.) of May 17, 2001, beginning on page S5028.

[25] See H.Rept. 108-71 (Apr. 10, 2003).

In order to resolve the problem, the conference agreement on the FY2004 budget resolution instructed both the House Ways and Means Committee and the Senate Finance Committee to reduce revenues by $550 billion over FY2003-FY2013, but a point of order barred the initial consideration in the Senate of a reconciliation measure (as distinct from a conference report) containing revenue reductions in excess of $350 billion for this period.[26] The FY2004 budget resolution further provided that the Senate point of order could be waived only by the affirmative vote of three-fifths of the Members duly chosen and sworn (i.e., 60 Senators, if no seats are vacant). This procedural formulation strengthened the position of those who favored initial Senate passage of a reconciliation measure limited to $350 billion in revenue reductions, but removed the potential Byrd rule hurdle should a majority of Senators later choose to support a conference agreement providing as much as $550 billion in revenue reductions.[27]

Senator Max Baucus, the ranking minority member of the Senate Finance Committee, questioned whether the directive to the committee should be regarded as $350 billion or $550 billion.[28] Ultimately, Senator Charles Grassley, chairman of the Senate Finance Committee, indicated that he had reached agreement with other Senators to adhere to the $350 billion level in the conference on the reconciliation measure, notwithstanding the fact that the limitation in Section 202 of the budget resolution only applied to initial consideration of the measure.[29] The resultant reconciliation measure (H.R. 2), according to final estimates of the Congressional Budget Office and Joint Tax Committee, contained $349.7 billion in revenue reductions and related outlay changes.[30]

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[26] The reconciliation directives are set forth in Section 201 of H.Con.Res. 95; the Senate point of order is set forth in Section 202. A portion of the reconciled amounts is set forth as outlay increases in order to accommodate changes in tax programs (e.g., refundable tax credits) that are scored as outlays. Consequently, the aggregate instruction of $550 billion is actually $535 billion in revenue reductions and $15 billion in outlay increases in the House, and $522.524 billion in revenue reductions and $27.476 billion in outlay increases in the Senate.

[27] For further discussion of this matter, see CRS Report RL31902, *Revenue Reconciliation Directives in the FY2004 Budget Resolution*, by Robert Keith. Also, see (1) "Concessions to Moderates Imperil Early GOP Tax Cutting Accord," by Andrew Taylor, *CQ Weekly*, Apr. 12, 2003; and (2) "Grassley Promises GOP Moderates Final Tax Cut Will Not Top $350 Billion," by Bud Newman, BNA's *Daily Report for Executives*, Monday, Apr. 14, 2003, page G-7.

[28] See the remarks of Senator Max Baucus in the *Congressional Record* (daily ed.) of Apr. 11, 2003, at pages S5296-S5298, in which he inserts a letter from Senate Parliamentarian Alan Frumin to Senate Democratic Leader Thomas Daschle regarding the potential application of the Byrd rule to the consideration of reconciliation legislation.

[29] See the remarks of Senator Grassley in the *Congressional Record* (daily ed.) of Apr. 11, 2003, at pages S5295-S5296.

[30] See the CBO cost estimate on H.R. 2 (108th Cong.) of May 23, 2003, available at [www.cbo.gov]; the bill became P.L. 108-27, the Jobs and Growth Tax Relief Reconciliation Act of 2003.

Table 3. Listing of Actions Under the Senate's Byrd Rule (Calendar Years 1985 Through 2004)

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
1. Consolidated Omnibus Budget Reconciliation Act of 1985 [d]				
To Strike Provision(s) From Bill or Conference Report				
[none]				
To Bar Consideration of Amendment(s)				
[not applicable]				
2. Omnibus Budget Reconciliation Act of 1986				
To Strike Provision(s) From Bill or Conference Report				
Section 403	Outlay increase when committee not in compliance	Conservation programs	Rejected, 32-61	Sustained; section stricken (September 19, 1986)
Page 139, line 1-p. 161, line 17; and p. 162, lines 1-24	Outside committee's jurisdiction	Program fraud civil remedies	Approved, 79-15	Fell (September 19, 1986)
To Bar Consideration of Amendment(s)				
[none]				

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
3. Omnibus Budget Reconciliation Act of 1987				
To Strike Provision(s) From Bill or Conference Report				
[none]				
To Bar Consideration of Amendment(s)				
Byrd-Dole Amendment No. 1254; Kassebaum Amendment No. 1259; and Gramm Amendment No. 1260	[specific basis not cited]	[various topics]	Approved, 81-13	[none raised]
4. Omnibus Budget Reconciliation Act of 1989 [e]				
To Strike Provision(s) From Bill or Conference Report				
[none]				
To Bar Consideration of Amendment(s)				
[none]				

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
5. Omnibus Budget Reconciliation Act of 1990				
To Strike Provision(s) From Bill or Conference Report				
Section 7405(j)	Outside committee's jurisdiction	Apportionment of highway funds between states	None	Sustained; subsection stricken (October 17, 1990)
Page 1017, line 5-p. 1018, line 19; and p. 1018, line 22-p. 1019, line 18	Budgetary changes merely incidental to non-budgetary components	Occupational Safety and Health Administration (OSHA) penalties	None	Sustained; provisions stricken (October 18, 1990)
Sections 4003-4016	No change in outlays or revenues	Harvesting of timber in the Tongass National Forest in Alaska	None	Sustained; sections stricken (October 18, 1990)
Title III, Subtitle B (as modified)	No change in outlays or revenues	National aviation noise policy, limitations on airport improvement program revenues, high density traffic airport rules, and related matters	Approved, 69-31	Fell (October 18, 1990)
To Bar Consideration of Amendment(s)				
Graham Amendment No. 3025	No change in outlays or revenues	Authorize Federal Deposit Insurance Corporation (FDIC) to develop risk-based insurance system	Rejected, voice vote	Sustained; amendment fell (October 18, 1990)
Symms Amendment No. 3039	No change in outlays or revenues	Deposit of all increased motor fuel taxes (other than taxes on railroads) into Highway Trust Fund	Rejected, 48-52	Sustained, amendment fell (October 18, 1990)

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
6. Omnibus Budget Reconciliation Act of 1993				
To Strike Provision(s) From Bill or Conference Report				
Section 1105(c)	No change in outlays or revenues	Commercial use of bovine growth hormone in other countries	Rejected, 38-60	Sustained; subsection stricken (June 24, 1993)
Section 7801; Section 7803(a) (proposing in part new Sections 2106 and 2108(b)(2) of the Social Security Act); and Section 8252(a)(2), (b), and (c)	No change in outlays or revenues	Childhood immunizations and tax return preparer standards	None	Sustained; most provisions stricken [f] (June 24, 1993)
Section 13631(b) (proposing in part a new Section 1928 of the Social Security Act)	No change in outlays or revenues; budgetary changes merely incidental to non-budgetary components	Childhood immunizations	None	Fell. Motion to appeal Chair's ruling rejected, 43-57 (August 6, 1993)
Section 1106(a)	Budgetary changes merely incidental to non-budgetary components	Imposition of domestic content requirements on U.S. cigarette manufacturers	None	Fell. Motion to appeal Chair's ruling rejected, 43-57 (August 6, 1993)

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
6. Omnibus Budget Reconciliation Act of 1993 — continued				
To Bar Consideration of Amendment(s)				
Domenici/Nunn Amendment No. 544	No change in outlays or revenues	Extend discretionary caps on defense, international, and domestic spending through FY 1995	Rejected, 53-45	Sustained; amendment fell (June 24, 1993)
Bradley Amendment No. 542	No change in outlays or revenues	Separate enrollment requirement for appropriations and tax expenditures	Rejected, 53-45	Sustained; amendment fell (June 24, 1993)
Gramm Amendment No. 557	No change in outlays or revenues	Restoration of maximum deficit amounts	Rejected, 43-55	Sustained; amendment fell (June 24, 1993)
7. Balanced Budget Act of 1995				
To Strike Provision(s) From Bill or Conference Report				
Section 7171	No change in outlays or revenues	Raising the age of Medicare eligibility	None	Sustained; section stricken (October 27, 1995)
Section 7191(a)	No change in outlays or revenues	Bar against the use of federal funding of abortions under Medicaid	Rejected, 55-45	Sustained; subsection stricken (October 27, 1995)
49 provisions in various titles of the bill	[various bases cited]	[various topics, dealing primarily with welfare reform]	Rejected, 53-46	Sustained against 46 provisions, which were stricken; not sustained against 3 provisions, which remained in bill (October 27, 1995)

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
7. Balanced Budget Act of 1995 — continued				
Section 8001 (proposing in part a new Section 1853(f) to the Social Security Act) and Section 13301	No change in outlays or revenues; budgetary changes merely incidental to non-budgetary components	Application of antitrust rule to provider-sponsored organizations (MedicarePlus) and exemption of physician office laboratories.	Rejected, 54-45	Sustained; provisions stricken from conference report (November 17, 1995)
To Bar Consideration of Amendment(s)				
Dorgan Amendment No. 2977	[specific basis not cited]	Ending deferral for U.S. shareholders on income of controlled foreign corporations attributable to imported property	Rejected, 47-52	Sustained; amendment fell (October 26, 1995)
Specter Modified Amendment No. 2986	No change in outlays or revenues	Expressing sense of the Senate regarding a flat tax	Rejected, 17-82	Sustained; amendment fell (October 27, 1995)
Bumpers Amendment No. 3028	No change in outlays or revenues	Prohibition against the scoring of assets sales as budget savings	Rejected, 49-50	Sustained; amendment fell (October 27, 1995)
Byrd/Dorgan Amendment No. 2942	No change in outlays or revenues	Increase time limit on debate in Senate on reconciliation legislation	Rejected, 47-52	Sustained; amendment fell (October 27, 1995)

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
8. Personal Responsibility and Work Opportunity Reconciliation Act of 1996				
To Strike Provision(s) From Bill or Conference Report				
Section 2923 (proposing a new Section 1511 of the Social Security Act), page 772, line 13-p. 785, line 22	Outlay increase when committee not in compliance	Medicaid supplemental umbrella fund	None	Sustained; provision stricken (July 18, 1996)
Section 408(a)(2)	No change in outlays or revenues	Family cap (no additional cash assistance for children born to families receiving assistance)	Rejected, 42-57	Sustained; provision stricken (July 23, 1996)
Section 2104	No change in outlays or revenues	Social services provided by charitable or private organizations	Approved, 67-32	Fell (July 23, 1996)
Section 2909	No change in outlays or revenues	Abstinence education programs	Rejected, 52-46	Sustained; provision stricken (July 23, 1996)
22 provisions in various titles of the bill	[various bases cited]	Various topics involving the Food Stamp, School Lunch, and Child Nutrition programs and welfare reform	None	Sustained against 21 provisions, which were stricken from the bill; not sustained against 1 provision, which remained in the bill (July 23, 1996)

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
8. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 — continued				
To Bar Consideration of Amendment(s)				
First Modified Amendment No. 4914	No change in outlays or revenues	Expressing the sense of Congress that the President should ensure approval of state welfare reform waiver requests	Rejected, 55-43	Sustained; amendment fell (July 19, 1996)
9. Balanced Budget Act of 1997				
To Strike Provision(s) From Bill or Conference Report				
Section 5611	No change in outlays or revenues	Raising the age of Medicare eligibility	Approved, 62-38	Fell (June 24, 1997)
Section 5822	Budgetary changes merely incidental to non-budgetary components	Enrollment eligibility (Welfare-to-Work Grant Program)	[waiver motion withdrawn]	Sustained; provision stricken (June 25, 1997)
Section 1949(a)(2)	No change in outlays or revenues	Bar against the use of federal funding of abortions under Medicaid	None	[point of order withdrawn]
Sections 5713, 5833, and 5987	Outside committee's jurisdiction	[various topics]	None	Sustained; sections stricken (June 25, 1997)
Section 5001	No change in outlays or revenues	Establishment of a Medicare Choice program (balanced billing protection)	Approved, 62-37	Fell (June 25, 1997)

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
9. Balanced Budget Act of 1997 — continued				
To Bar Consideration of Amendment(s)				
Levin Amendment No. 482	No change in outlays or revenues	Allowing vocational educational training to be counted as a work activity under the Temporary Assistance for Needy Families program	Rejected, 55-45	Sustained; amendment fell (June 25, 1997)
Kennedy Amendment No. 490	Increase in deficit or reduction of surplus in fiscal year beyond those covered by instructions	Student loan programs	Rejected, 43-57	Sustained; amendment fell (June 25, 1997)
Kennedy Amendment No. 504	[no basis cited]	Immediate transfer to Medicare Part B of certain home health benefits	Rejected, 38-62	Sustained; amendment fell (June 25, 1997)
10. Taxpayer Relief Act of 1997				
To Strike Provision(s) From Bill or Conference Report				
Section 602	No change in outlays or revenues	District of Columbia Government reform	[waiver motion withdrawn]	Sustained; section stricken (June 26, 1997)
Section 702(d)	No change in outlays or revenues	Intercity passenger rail funding	Approved, 77-21	Fell (June 27, 1997)
Section 1604(f)(3)	No change in outlays or revenues	Crediting of new cigarette tax against “global settlement”	Approved, 78-22	Fell (July 31, 1997)

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
10. Taxpayer Relief Act of 1997 — continued				
To Bar Consideration of Amendment(s)				
Gramm Amendment No. 566	No change in outlays or revenues	Balanced budget enforcement procedures	Rejected, 37-63	Sustained; amendment fell (June 27, 1997)
Bumpers Amendment No. 568	[no basis cited]	Prohibition against scoring, for budget purposes, revenues from sale of certain federal lands	Rejected, 48-52	Sustained; amendment fell (June 27, 1997)
Craig Amendment No. 569	No change in outlays or revenues	Prohibition in PAYGO budget process against using tax increases to pay for mandatory spending increases	Rejected, 42-58	Sustained; amendment fell (June 27, 1997)
Brownback/Kohl Amendment No. 570	No change in outlays or revenues	Balanced budget enforcement procedures	Rejected, 57-43	Sustained; amendment fell (June 27, 1997)
First Amendment No. 571	No change in outlays or revenues	Balanced budget enforcement procedures	Rejected, 59-41	Sustained; amendment fell (June 27, 1997)
Abraham Amendment No. 538	No change in outlays or revenues	Reservation of future revenue windfalls for tax or deficit reduction	Rejected, 53-47	Sustained; amendment fell (June 27, 1997)

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
11. Taxpayer Refund and Relief Act of 1999				
To Strike Provision(s) From Bill or Conference Report				
Section 1502	Increase in deficit or reduction of surplus in fiscal year beyond those covered by instructions	General extension of revenue-reduction provisions	Rejected, 51-48	Sustained; section stricken (July 28, 1999)
Section 202	Increase in outlays	Enhancement of the Earned Income Tax Credit for married couples	Approved, voice vote	[none raised]
To Bar Consideration of Amendment(s)				
Bingaman Amendment No. 1462	No change in outlays or revenues	Expressing the sense of the Senate regarding investment in education	Rejected, 48-52	Sustained; amendment fell (July 30, 1999)
First Amendment No. 1467	No change in outlays or revenues	Expressing the sense of the Senate regarding the Medicare Reserve Fund	Rejected, 54-46	Sustained; amendment fell (July 30, 1999)
12. Marriage Tax Relief Reconciliation Act of 2000				
To Strike Provision(s) From Bill or Conference Report				
Section 4	Increase in outlays	Enhancement of the Earned Income Tax Credit for married couples	On July 17, the waiver motion (made on July 14) was changed to a unanimous consent request and agreed to	Fell (July 17, 2000)

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
12. Marriage Tax Relief Reconciliation Act of 2000 — continued				
To Bar Consideration of Amendment(s)				
Roth Amendment No. 3864	Increase in deficit or reduction of surplus in fiscal year beyond those covered by instructions	Striking the sunset provision in the legislation	Rejected, 48-47 (waiver motion also applied to amendment listed below)	Sustained; amendment fell (July 17, 2000)
Roth Amendment No. 3865	Increase in deficit or reduction of surplus in fiscal year beyond those covered by instructions	Striking the sunset provision in the legislation	Rejected, 48-47 (waiver motion also applied to amendment listed above)	Sustained; amendment fell (July 17, 2000)
13. Economic Growth and Tax Relief Reconciliation Act of 2001				
To Strike Provision(s) From Bill or Conference Report				
[none]				
To Bar Consideration of Amendment(s)				
[none]				
14. Jobs and Growth Tax Relief Reconciliation Act of 2003				
To Strike Provision(s) From Bill or Conference Report				
[none]				

Object of Point of Order [a]	Basis of Point of Order [b]	Subject Matter	Waiver Motion [c]	Disposition of Point of Order
14. Jobs and Growth Tax Relief Reconciliation Act of 2003 — continued				
To Bar Consideration of Amendment(s)				
Sessions Amendment No. 639	Increase in deficit or reduction of surplus in fiscal year beyond those covered by instructions	Applying the sunset provision to the revenue increase provisions	Rejected, 51-49	Sustained; amendment fell (May 15, 2003)

[a] The Byrd rule is Section 313 of the Congressional Budget Act of 1974, as amended (2 U.S.C. 644). There are many point-of-order provisions in Titles III and IV of the act. In some instances, points of order or waiver motions are made under the act by general reference only (such as a Senator raising a point of order "under Title III of the Act") rather than by specific reference to the provision(s) involved. When only general references are made, it usually is impossible to determine (by reference to debate in the *Congressional Record* alone) which provision of the act is involved. Consequently, this table reflects only those instances when specific reference was made to Section 313 of the act or to the Byrd rule. The object of a point of order under the Byrd rule may be to strike one or more provisions (as designated by title or section number, or by page and line number) in a reconciliation measure or a conference report thereon, or to bar consideration of one or more amendments thereto.

[b] A provision is regarded as extraneous under the Byrd rule if it:

(1) does not produce a change in outlays or revenues;
(2) produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
(3) is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
(4) produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision;
(5) would increase the deficit for a fiscal year beyond those covered by the reconciliation measure; or
(6) recommends changes in Social Security.

The Byrd rule sets forth specific exceptions to the criteria to determine extraneousness.

[c] Under the Byrd rule, a successful waiver motion requires the affirmative vote of three-fifths of the membership (60 Senators, if no seats are vacant). A single waiver motion can: (1) apply to the Byrd rule as well as other provisions of the CBA of 1974; (2) involve multiple as well as single provisions or amendments; (3) extend (for specified language) through consideration of the conference report as well as initial consideration of the measure or amendment; and (4) be made prior to the raising of a point of order, thus making the point of order moot.

[d] On October 24, 1985, Senator Robert C. Byrd offered an amendment containing the Byrd rule to the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, which the Senate adopted. In this form, the Byrd rule applied to initial Senate consideration of reconciliation measures. On December 19, 1985, the Senate adopted S.Res. 286, which extended the application of portions of the provision in COBRA of 1985 to conference reports and amendments between the two Houses. Because the enactment of COBRA of 1985 was delayed until early 1986, the portion of the Byrd rule dealing with conference reports became effective first. Senate consideration of the conference report on COBRA of 1985, and amendments between the two Houses thereon, occurred beginning on December 19, 1985. Therefore, only the portion of the Byrd rule dealing with conference reports and amendments between the two Houses applied during the consideration of COBRA of 1985. No actions were taken under the rule.

[e] On October 13, 1989, during consideration of the Omnibus Budget Reconciliation Act of 1989, the Senate adopted Mitchell Amendment No. 1004 by voice vote. The amendment struck extraneous matter from the bill; its stated purpose was "to strike all matter from the bill that does not reduce the deficit"; (see the *Congressional Record* (daily ed.) of Oct. 13, 1989, at page S13349).

[f] The point of order was not sustained against that part of Section 7803(a) proposing a new Section 2106 of the Social Security Act.

Appendix A. Text of the Byrd Rule
(Section 313 of the Congressional Budget Act of 1974)

EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION

Sec. 313. (a) **In General**. — When the Senate is considering a reconciliation bill or a reconciliation resolution pursuant to Section 310, (whether that bill or resolution originated in the Senate or the House) or Section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985 upon a point of order being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an amendment to the bill or resolution, and the point of order is sustained by the Chair, any part of said title or provision that contains material extraneous to the instructions to said Committee as defined in subsection (b) shall be deemed stricken from the bill and may not be offered as an amendment from the floor.

(b) **Extraneous Provisions**. — (1)

(A) Except as provided in paragraph (2), a provision of a reconciliation bill or reconciliation resolution considered pursuant to Section 310 shall be considered extraneous if such provision does not produce a change in outlays or revenues, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected (but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph);

(B) any provision producing an increase in outlays or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions;

(C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title or provision shall be considered extraneous;

(D) a provision shall be considered extraneous if it produces changes in outlays or revenues which are merely incidental to the non-budgetary components of the provision;

(E) a provision shall be considered to be extraneous if it increases, or would increase, net outlays, or if it decreases, or would decrease, revenues during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution, and such increases or decreases are greater than outlay reductions or revenue increases resulting from other provisions in such title in such year; and

(F) a provision shall be considered extraneous if it violates Section 310(g).

APPENDIX A. Text of the Byrd Rule
(Section 313 of the Congressional Budget Act of 1974) — continued

(2) A Senate-originated provision shall not be considered extraneous under paragraph (1)(A) if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that:

(A) the provision mitigates direct effects clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit;

(B) the provision will result in a substantial reduction in outlays or a substantial increase in revenues during fiscal years after the fiscal years covered by the reconciliation bill or reconciliation resolution;

(C) a reduction of outlays or an increase in revenues is likely to occur as a result of the provision, in the event of new regulations authorized by the provision or likely to be proposed, court rulings on pending litigation, or relationships between economic indices and stipulated statutory triggers pertaining to the provision, other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes; or

(D) such provisions will be likely to produce a significant reduction in outlays or increases in revenues but, due to insufficient data, such reduction or increase cannot be reliably estimated.

(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C) if

(A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or

(B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.

(c) **Extraneous Materials**. — Upon the reporting or discharge of a reconciliation bill or resolution pursuant to Section 310 in the Senate, and again upon the submission of a conference report on such reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of this section to the instructions of a committee as provided in this section. The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of the Senate.

APPENDIX A. Text of the Byrd Rule
(Section 313 of the Congressional Budget Act of 1974) — continued

(d) **Conference Reports**. — When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or reconciliation resolution pursuant to Section 310, upon —

(1) a point of order being made by an Senator against extraneous material meeting the definition of subsections (b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(1)(E), or (b)(1)(F), and

(2) such point of order being sustained, such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for 2 hours. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.

(e) **General Point of Order**. — Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point or order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.