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BUDGET RECONCILIATION AND HEALTH CARE REFORM REPEAL

In the twenty-four hours since the United States Supreme Court has ruled the bulk of the Patient Protection and Affordable Care Act (PPACA) is constitutional, the question has been asked whether there is any way if Governor Romney wins the White House, the Republicans retain control of the House AND capture the majority in the Senate, that they can get around the Senate's filibuster rule? The answer is "yes" – sort of. Congress could pass a budget resolution with reconciliation instructions to essentially repeal the law. The later bill fulfilling the reconciliation instructions would not be subject to a filibuster BUT would be subject to what is known as the "Byrd Rule" in the Senate, which guess what, requires the same sixty votes if the reconciliation bill is challenged on on that basis.

Much of the following is taken from the public domain explanation at usinfo.gov, a government website. (Except for my editorially spins☺)

Budget Resolution

While the President has an obligation to present a proposed budget, there is no obligation for the Congress to consider it.

The budget process really starts with the adoption (or failure to, particularly when the chambers of Congress are held by different parties) of a concurrent budget resolution by Congress.

This resolution must ultimately pass both the House and the Senate in identical form, but does not require signature by the President. The budget resolution covers the upcoming fiscal year and at least five ensuing fiscal years. The budget resolution may include reconciliation instructions.

The important fact about the budget resolution is that in the Senate it is not subject to a filibuster.

Reconciliation

The reconciliation process begins with the inclusion of reconciliation instructions in the budget resolution. These instructions require authorizing committees with jurisdiction over mandatory spending and revenue policies (usually more than one) to make legislative changes in those

programs to effect a specified level of budgetary savings provisions.

Once the relevant authorizing committees have reported their legislation to the Budget Committees, it is the Budget Committees' responsibility to combine those bills into an omnibus package (or packages) as specified by the budget resolution.

In the Senate, total debate on a reconciliation bill is limited to 20 hours, although the actual time for consideration of the omnibus package often exceeds this time limit set in the Budget Act. The reconciliation bill is not subject to a filibuster.

Motions and amendments may be offered and considered without debate at the end of this time period. There are also restrictions on the content of a reconciliation package and on the amendments which may be offered to it. For example, any amendment to the bill that is not germane, would add extraneous material, would cause deficit levels to increase, or that contains recommendations with respect to the Social Security program, is not in order and there is also the "Byrd Rule."

Byrd Rule

Under the Byrd rule, the Senate is prohibited from considering extraneous matter as part of a reconciliation bill or resolution or conference report thereon. The definition of what constitutes "extraneous matter" is set forth in the Budget Act; however, the term remains subject to considerable interpretation by the presiding officer (who relies on the Senate Parliamentarian). The Byrd rule is enforced when a Senator raises a point of order during consideration of a reconciliation bill or conference report. If the point of order is sustained, the offending title, provision or amendment is deemed stricken unless its proponent can muster a 3/5 (60) Senate majority vote to waive the rule.

The Congressional Budget Act sets forth six tests for matters to be considered extraneous under the Byrd rule. The criteria apply to provisions that:

*do not produce a change in outlays or revenues;

* produce changes in outlays or revenue which are merely incidental to the non-budgetary components of the provision;

*are outside the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;

*increase outlays or decrease revenue if the provision's title, as a whole, fails to achieve the Senate reporting committee's reconciliation instructions;

*increase net outlays or decrease revenue during a fiscal year after

the years covered by the reconciliation bill unless the provision's title, as a whole, remains budget neutral;

*contain recommendations regarding the OASDI (social security) trust funds.

The Congressional Budget Act allows certain otherwise covered Senate-originated provisions to be excepted from the Byrd rule if the provisions are certified for exemption by the Senate Budget Committee chair and ranking minority member, as well as the chair and ranking minority member of the committee of jurisdiction. The permitted exceptions are:

*a provision that mitigates direct effects attributable to a second provision which changes outlays or revenue when the provisions together produce a net reduction in outlays;

*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;

*the provision will likely reduce outlays or increase revenues based on actions that are not currently projected by CBO for scorekeeping purposes; or

*such provision will likely produce significant reduction in outlays or increase in revenues, but due to insufficient data such reduction or increase cannot be reliably estimated.

The Byrd rule is not self-enforcing. A point of order must be raised at the appropriate time to enforce it.

The Byrd rule can only be waived by a 3/5 (60) majority vote of the Senate.

Health Care Reform and the Budget Process

The big question with health care reform and reconciliation stems from the fact reform was scored as saving money and at least at the moment, repeal would be considered increasing the deficit. Increasing the deficit is one of the issues under the budget process subject to the challenges.

However, one thing about the Byrd Rule is that Senate Parliamentarian makes the ruling and the majority appoints the parliamentarian.