



BUDGET BULLETIN



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INFORMED BUDGETEER

HURRICANE KATRINA

- Two weeks ago, Hurricane Katrina devastated the Gulf Coast and overwhelmed New Orleans' levee system. At this moment, the magnitude of the total necessary federal fiscal response is, while undoubtedly enormous, unknowable.
- The federal government has initiated efforts to ameliorate Katrina's destruction, but the impact of this hurricane will extend far beyond what the government can reasonably be expected to "fix." The economic impacts that will cascade through the economy are complex. On September 6, the Congressional Budget Office (CBO) released a letter analyzing the possible effects of Katrina. While CBO identified the ways in which the economy could be affected, it prudently would not make a statement about the degree to which the federal budgetary response to Katrina would affect the deficit in 2006 or in any subsequent year.
- What we do know is that Congress already has enacted two bills providing appropriations to fund federal agencies' response and assistance after the hurricane. The speed of this response rivals congressional responsiveness after 9/11, and exceeds that \$40 billion in supplemental funding enacted four years ago. The first Katrina supplemental provided \$10.5 billion, and the second one delivered an additional \$51.8 billion. It is widely expected that significant further appropriations will be necessary as the extent of the damage is assessed in the coming weeks and months.
- The largest component of the first Katrina relief package that Congress enacted is \$3.4 billion for FEMA to provide emergency shelter and purchase 200,000 temporary housing units and trailers for the victims of Hurricane Katrina. In the second package, nearly half (\$23.2 billion) of the total appropriated is for rental of alternative housing, repair assistance, as well as medical costs and coverage for the loss of personal property.

Hurricane Katrina Disaster Relief Funding (\$ in billions)		
	1st Supp. 1/	2nd Supp.
FEMA	\$10.7	\$50.0
Manufactured Housing	3.3	1.6
Supplies/Materials	0.4	1.9
Temporary Financial Assistance	0.8	23.2
FEMA Logistics	0.5	2.6
Infrastructure Repair	0.1	7.7
Damage Inspections	0.1	0.3
Urban Search/Rescue	0.1	0.1
Army Corps of Engineers 2/	2.4	3.0
Department of Defense 2/	2.1	2.5
Other	1.0	7.2
Army Corps of Engineers	--	0.4
Department of Defense	0.5	1.4
Total	11.2	51.8

Source: OMB

1/ Includes \$681 million previously appropriated for FEMA that was spent on the response to Katrina

2/ Reflects funds appropriated to FEMA, then transferred as reimbursement for services provided in response to Katrina

NOTE: Details may not add to totals due to rounding

BYRD RULE PRIMER – TIME TO GET REFRESHED

- It has been eight years since the Senate last considered a sweeping reconciliation bill that affected committees other than the Finance Committee (see recommended reading from the Congressional Research Service (CRS) -- *The Budget Reconciliation Process: House and Senate Procedures*, <http://www.congress.gov/erp/rl/pdf/RL33030.pdf>). Given the new generation of congressional staff, media, and other informed budgeteers who have not been through this process before, it is important to understand the "Byrd rule" to fully comprehend the budget reconciliation process in the Senate.
- The Byrd rule -- named after its sponsor, Senator Robert C. Byrd -- was first adopted in 1985 (on a 96-0 vote) on a temporary basis as a means to address what many members felt had been abuses of the reconciliation process. Because a reconciliation bill is a privileged vehicle that cannot be filibustered and can pass with a simple majority, such bills had often contained "piggybacking" provisions unrelated to achieving the goals of the reconciliation instructions contained in the Budget Resolution. Over the years, the Byrd Rule was extended and modified, and in 1990, it was incorporated into the Congressional Budget Act of 1974 (Section 313) and made permanent.
- Ordinarily, if a senator does not like a provision in any bill, including a reconciliation bill, an amendment to strike the offending provision is always an available option, and the amendment will be successful as long as there is a majority (usually 51 votes) of senators voting to strike. Given the special status of reconciliation (which can be easily passed if the majority wants to), the option to strike is not much of a hurdle to prevent provisions unrelated, or "extraneous," to the reconciliation instruction.
- But under the Byrd rule, any senator may raise a point of order against extraneous matter in a reconciliation bill (as reported or in a conference report). Another senator may move to waive the point of order. If the motion to waive fails and the Presiding Officer agrees the provision is extraneous and the point of order lies, then the provision is struck from the bill. Such a motion to waive, however, requires 60 votes to prevail, so opponents of an extraneous provision in a reconciliation bill need only 41 votes to remove it, not 51. The Byrd rule point of order is also available to prevent the incorporation of extraneous matter through the adoption of amendments or motions. The point of order may be raised against a single provision or against a set of identified provisions.
- The Byrd rule provides a uniquely effective tool to strike matter from a bill. Most points of order, if sustained, will bring down an entire bill, amendment, or conference report. A point of order under the Byrd rule will strip offending provisions, but not kill the entire measure. Once the material has been stricken, it may not be offered again as an amendment.

- So what is “extraneous matter” exactly? Section 313 (b)(1) defines extraneous matter for purposes of the rule:

BYRD RULE TESTS: Section 313 (b)(1)	
	A provision is extraneous if it falls under at least one of the following six definitions:
(A)	It does not produce a change in outlays or revenues;
(B)	It produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
(C)	It is outside of the jurisdiction of the committee that submitted the title or provision (jurisdiction determined by the Chair);
(D)	It produces a change in outlays or revenues that is merely incidental to the non-budgetary components of the provision;
(E)	It would increase the deficit for a fiscal year beyond those covered by the reconciliation measure;
(F)	It violates section 310(g), which prohibits recommendations in a reconciliation bill with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act.

- Who determines if a provision is extraneous? Section 313 (c) of the Budget Act says that upon reporting a reconciliation bill (and again upon the submission of a conference report on a reconciliation bill), the Senate Budget Committee shall submit for the record a list of material considered to be extraneous under definitions (A), (B) and (E). However, it is up to the Presiding Officer of the Senate to determine whether a provision is extraneous, and the inclusion or exclusion of a provision from the Budget Committee’s list does not constitute a determination by the Presiding Officer.
- Sometimes it is easy to determine whether a provision violates the Byrd rule. For example, a provision requiring a Government Accountability Office study would not produce a change in outlays or revenues, and therefore would be extraneous under section 313(b)(1)(A). Alternatively, if the Agriculture Committee did not meet its reconciliation instruction, all provisions in the Agriculture title that increase outlays would be extraneous under section 313(b)(1)(B).
- Determinations of extraneousness under section 313(b)(1)(D) are more subjective. Each individual case is evaluated on its merits, keeping in mind that the drafters of this subparagraph meant to make it difficult to attach significant policy changes to a reconciliation bill on the slim reed of a notional budgetary effect. For example, if a provision outlawed the sale and use of guns, that would be more consequential as a policy change than as a budgetary change (potential lost tax revenue from gun-sale profits).

- Many rules have exceptions, and the following table (summarizing section 313(b)(2)) lists those for the Byrd rule:

BYRD RULE EXCEPTIONS: Section 313 (b)(2)	
	A provision that does not produce changes in outlays or revenues shall not be considered extraneous if the Chairman and Ranking Member of the Senate Budget Committee and the Chairman and Ranking Member of the Committee that reported the language all certify that:
(A)	The provision mitigates direct effects clearly attributable to a provision changing outlays or revenue, and both provisions together produce a net reduction in the deficit;
(B)	It will result in a substantial reduction in outlays or a substantial increase in revenue during fiscal years after the fiscal years covered by the reconciliation bill;
(C)	It will likely reduce outlays or increase revenue based on actions that are not currently projected by CBO for scorekeeping purposes; or
(D)	It will likely produce a significant reduction in outlays or increase in revenue, but due to insufficient data such a reduction or increase cannot be reliably estimated.

- The Senate may also simply waive a Byrd rule point of order by a vote of 3/5ths of the members duly chosen and sworn. Waivers may:
 - ~ Apply to the Byrd Rule as well as other provisions of the Budget Act;
 - ~ Involve multiple as well as single provisions or amendments;
 - ~ Extend (for specified language) through consideration of the conference report as well as initial consideration of the measure or amendment; and
 - ~ Be made prior to the raising of a point of order, thus making the point of order moot.
- A recent CRS report (*The Budget Reconciliation Process: The Senate’s “Byrd Rule,”* <http://www.congress.gov/erp/r1/pdf/RL30862.pdf>) summarizes the Senate’s experience with the Byrd rule as follows: “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)” [on this last point, see page 11 of the report especially].
- The Byrd rule has a significant impact on consideration of conference reports on reconciliation. If successfully raised, such a point of order will require the Senate to remove the offending language, and only that language. The remainder of the conference report is treated as a further amendment by the Senate. If the Senate passes the amended version, the House and Senate must then take the next steps (either the House passes the amended Senate bill, ping-pongs it back if further amended by the House, or both go back to conference) to resolve their disagreement over the further action taken by the Senate.