



Insight

The Senate Budget: Floor Consideration

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This week will see a process unfold that hasn't happened in four years: the Senate as a whole will consider and almost certainly pass a budget resolution. A unique set of rules governs how the Senate debates budgets that will make for a colorful and busy week. Because of these rules, Senators can look forward to late nights and dozens of roll-call votes on potentially painful amendments. This week will likely unfold as a fairly rancorous partisan debate - but that is in many ways a function of the rules themselves. The key feature that dominates this process and separates it from usual order in the Senate is limitation of debate. It is a set of rules that sets aside, at least for about a week, the uneasy truce (at least procedurally) that more often-than-not characterizes legislating on the Senate floor.

Debate in the Senate

Perhaps the most important aspect of Senate deliberation that distinguishes it from that in the House of Representatives is the concept of unlimited debate. It is this concept that, in large part, gives individual senators procedural power. Individual senators have the right, under normal rules, to amend legislation with little restriction and engage in extended commentary on just about anything they so choose. This is by design, and ensures the views of states (to the extent senators represent entire states) and political minorities are represented. Contrasted with the House of Representatives, where majority rule prevails, the Senate is a deliberate and potentially slow-moving body.

Individual senators can effectively grind the Senate to a halt under the normal rules unless a super-majority (60 Senators) agrees to limit debate - known as cloture. However, the entire process by which cloture may be invoked is also time-consuming. As a result the Senate rarely operates under the normal rules. Instead the Senate typically operates through unanimous consent (UC) agreements that govern the schedule and consideration of legislative matters on the Senate floor and provide some degree of structure, predictability, and relative brevity of debate. This is the uneasy procedural truce that usually governs what legislation gets voted on and how much time will be spent on it. However, such agreements

require the consent of all senators, and therefore do not limit a senator's ability to engage in extended debate over their objection, as cloture can have the effect of doing.

Why the Budget Resolution is Different

The consideration of the budget resolution is a different matter altogether, and is governed by statute – specifically section 305(b) of the Congressional Budget Act of 1974. The most critical element of this set of rules is the limitation of debate “to not more than 50 hours.” This is important for two reasons. The first appears obvious – it makes clear just how long the Senate will spend on the matter – a total of 50 hours, which includes debate on amendments, motions, or the routine quorum calls in which the Senate is often engaged. This time is divided equally between the majority and minority parties. Within that 50 hour limit, time for debate on first-degree amendments is further limited to 2 hours, with time for debate on second degree amendments and certain other matters limited further still to 1 hour. Importantly, this time does *not* include time spent taking votes, which becomes important when the full 50 hours is expended and can add considerably to the time ultimately spent considering a budget resolution.

Secondly, to the extent that the debate is limited, the super-majority vote thresholds that are otherwise necessary to limit debate during normal order are irrelevant. As a result, the budget resolution and related amendments require only simple majorities for passage.

This feature can dramatically change the nature of the underlying bill. In the absence of 60 vote super-majorities (such as those held by Senate Democrats in 2009 and 2010), measures typically require *some* bipartisanship to pass. As a result, if passage is the goal, legislation will be written to adequately accommodate the interests of a sufficient number of Senators of the minority party to gain at least 60 supporting votes. However, if these votes are not required such as with a budget resolution– the exercise becomes more purely partisan. As a result, floor consideration of a budget resolution is adversarial in nature.

Once drafted and released by the Budget Committee Chairman (in this case, Senator Murray), Senate passage of the budget resolution is virtually guaranteed – fellow members of the majority are generally expected to fall in line. With passage a foregone conclusion, there is little incentive for substantive amendment on the floor. As a result, the amendment process becomes a political exercise, with debate and amendments designed to highlight differences between the majority and minority.

As noted above, time spent voting on amendments is not limited by the 50 hour cap. This feature has given rise to a process known as “vote-a-rama,” whereby the senate considers and votes on dozens of amendments. While the 50 limit applies to *debate* on amendments,

the ability of a Senator to offer and secure a vote on an amendment (subject to certain technical limitations) during the consideration of a budget resolution is largely unfettered. As a result, upon the expiration of the 50 hour time limit, there can be literally hundreds of amendments pending that would require multiple days on end of continuous voting to dispose of. At one point, for example, during floor consideration of the last budget resolution, then-Chairman Conrad noted: "As of now, we have over 230 amendments pending. If you divide 230 by 3 [the time required for a roll-call vote], that is almost 80 hours - about 76, 77 hours. That would mean we would be here all day today, tomorrow, and all day Saturday."^[1] Ultimately many amendments are disposed of in less time-consuming ways such as voice-votes. However, the 38 roll-call votes on amendments and motions related to the FY2010 budget resolution is a significant number of recorded votes over the course of just three days.

This process is informed by the partisan nature of budget consideration and offers the opportunity to force the majority to take votes on politically difficult amendments. It is likely this feature that has encouraged the Senate leadership to avoid taking up a budget in the last 4 years. One should expect that many of the votes that senators take this week will show up again in their re-election campaigns. With the Senate committed to moving a budget resolution on the floor this week, observers will witness a unique legislative process that reflects the confluence of budget and legislative arcana with familiar partisan debate.

^[1] Congressional Record, "CONGRESSIONAL BUDGET FOR THE UNITED STATES GOVERNMENT FOR FISCAL YEAR 2010,"(Senate - April 02, 2009), page: S4254