

Democrats' spending package is about more than money for unions



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The National Labor Relations Board building. | AP Photo/Jon Elswick

Unions are lobbying fiercely and spending liberally in support of Democrats' multitrillion-dollar social spending package — and not just because of the jobs it could create for their members.

Tucked amid the investments in child care, higher education and clean energy are below-the-radar provisions that would make it easier for workers to organize, such as giving the National Labor Relations Board sharper teeth and empowering it to conduct union elections

online.

Both of those policies are also included in the [Protecting the Right to Organize Act](#) — an overhaul of U.S. labor law Democrats drafted to resuscitate tapering union membership, which is stalled in the Senate.

How much the language in [the spending bill](#) could really move the needle on the fortunes of organized labor remains to be seen. It must also survive the Byrd rule, which allows only spending-related legislation to move through the reconciliation process that Democrats intend to use to pass the bill. Democrats have had one of their other top priorities — immigration reform — stymied by the rule already.

Union officials are pouring time, money and energy into making sure the provisions — which they helped shape — make it across the finish line. If they are successful, it could constitute the biggest pro-union shift in U.S. labor law since the National Labor Relations Act was enacted in 1935, labor experts said.

“Labor is not only all over supporting it, it has helped craft it,” American Federation of Teachers President Randi Weingarten said in an interview.

Some on the employer side of the table say the provisions are far too consequential to be tucked into a massive spending bill.

“These are cataclysmic questions of the most fundamental policy that have gargantuan implications for the way labor and management is going to work together or not work together in this country,” said attorney Michael Lotito, who represents employers for the law firm Littler. “And this type of fundamental policy change is being done using a backdoor approach.”

Republican lawmakers have also denounced the tactic.

"The PRO Union Bosses Act was dead upon arrival in the Senate, so Speaker [Pelosi](#) and Committee Democrats are manipulating the legislative process to enact portions," said Rep. [Virginia Foxx](#) (N.C.), the top Republican on the House Education and Labor Committee.

Unions and their allies have seen the reconciliation bill as a possible vehicle for the labor provisions since they were introduced in the PRO Act.

"We've all known reconciliation was coming for several months," said Celine McNicholas, the Economic Policy Institute's director of government affairs and labor counsel, who has been advising supporters on the technical aspects of drafting the language. "At EPI, we've been thinking about the penalties since they've been in the PRO Act, and any opportunity to move any piece of this we've wanted to be helpful with."

The most consequential language would empower the newly Democrat-controlled NLRB, responsible for implementing the NLRA, to fine offending employers up to \$100,000 for each violation.

Currently, the NLRB doesn't have the authority to penalize businesses. Giving it that power would not only discourage management interference in union organizing efforts, but raise revenue for the spending package's other provisions.

Supporters argue the revenue-raising aspect will help the union provisions survive the Byrd rule, which is enforced by the Senate parliamentarian.

"Although some of the things in the PRO Act are not about budgetary issues, we thought that actually, there's a strong case that when you're issuing penalties on bad behavior, not only is that budgetary in nature, it's a great way of raising revenue," said Dan Mauer, director of government affairs for the Communications Workers of America.

Mauer, who is leading CWA's lobbying effort, points out that a reconciliation package Congress cleared in 1993 included a provision that created penalties attached to a federal tobacco program. "There's only a couple of provisions that have ever been challenged on the floor that the parliamentarian has actually upheld, and that's one of them," he said.

"There is precedent," McNicholas said. "It's been done before. That's why penalties from the get-go were something that both committees of jurisdiction were considering: because there's a road map here."

Extensive consultation between unions and Democratic lawmakers in both chambers paved

the way for the union language's inclusion in [the House Education and Labor Committee's portion of the House's reconciliation text](#), which lawmakers approved Sept. 10. That legislation also has a section dictating which NLRA violations could trigger penalties, such as misclassifying workers, holding captive-audience meetings and forbidding collective arbitration.

The reconciliation bill also includes provisions that would expand OSHA and Wage and Hour Division penalties, and provide additional funding for the NLRB — \$350 million over five years, or \$70 million annually — in part to implement the additional enforcement, which a committee aide said lawmakers expect to be aggressive.

The agency would be required to spend \$5 million of the new cash on shifting its elections online, [a move that Democrats and unions have been pushing for years](#) and which experts say would make it easier for workers to organize.

Unions are confident that Democrats won't strip the language out even though some Democratic senators have been reluctant to support the PRO Act.

"The things that we were sorting out were largely around making sure that we were aligned on what was actually possible," Mauer said of conversations with lawmakers. "Even when you find those couple of Democratic holdouts on the PRO Act, none of the stuff that they raised concerns about is included here."

The unions don't expect opposition from the lawmaker who is considered key to the fate of the overall spending plan: Sen. [Joe Manchin](#) (D-W.Va.).

"The Senate issue-of-the-moment, Joe Manchin, is a co-sponsor of the PRO Act," McNicholas said. "I cannot imagine that he could defend making any kind of objection to these penalty provisions being included. He's already on the record in support."

National unions are pouring millions into advertising to get the spending bill enacted.

AFT, the AFL-CIO's largest affiliate, has spent more than six figures on ads supporting the bill. NEA, also one of the nation's biggest unions, [spent seven figures](#) on a digital ad campaign promoting the legislation, along with the [American Jobs Plan](#) and the [bipartisan infrastructure package](#).

SEIU announced Sept. 14 that it is doubling the amount of money it's spending on TV and digital ads from \$3.5 million to \$7 million. The union is also part of a coalition behind [a \\$10 million campaign supporting the White House's broader infrastructure proposal](#).

"We're going to fight like hell in this homestretch," SEIU President Mary Kay Henry said. "We have our members doing grassroots lobbying, banner drops, intensifying phones, doing more text messaging in their states and districts, while we also have grasstops calls happening with everybody in the House, everybody in the Senate and in the White House."

At the state-level, local unions [such as the New Jersey chapter of Operating Engineers](#) have launched ad campaigns to pressure their respective representatives.

Unions, of course, are still pushing for enactment of the PRO Act itself. [A coalition of 40 progressive organizations and unions](#) including SEIU, CWA, UAW and IUPAT launched a six-figure digital advertising campaign in September to pressure moderate senators into backing the bill.

The reconciliation bill "will absolutely make a difference," McNicholas said.

"Is this a change that would have affected the outcome" of the union organizing vote at the "Bessemer, [Ala.] Amazon facility? That's a tougher argument to make."

CORRECTION: An earlier version of this report misstated proposed funding levels for the NLRB. Democrats' reconciliation package would appropriate \$350 million over five years, or \$70 million annually, to the agency.



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