Infrastructure, Social Spending, Tax Increases, and “Reconciliation”
June 2021

There have been a lot of press reports on the Biden/Congressional Democratic majority plans to pass two more significant spending and tax measures, in addition to the already-enacted $1.9 trillion American Rescue Plan. Much of that discussion has focused on when and whether the Democratic-controlled Senate will try to pass one or both additional bills through a “reconciliation” process.

Reconciliation is a Congressional procedure that limits debate on legislation in the Senate so that it cannot be filibustered and can therefore pass with just 51 votes instead of the 60 needed to “invoke cloture” – cut off debate – on regular bills. And it is critically important, because reconciliation allows the Senate majority – of either Party and even in a tied 50-50 Senate like we have today – to completely bypass the minority members and pass legislation with just the Majority’s votes.

Reconciliation “instructions” are part of the Congressional Budget process so must be included in the official Congressional Budget Resolution and passed by both houses of Congress (the President does not sign Congressional budgets). Each Fiscal Year Budget resolution may contain reconciliation instructions – literally instructions to one or more Congressional committees to enact legislation to raise or lower revenue or spending by specific targeted dollar amounts.

Reconciliation can only be used to pass legislation dealing with money – taxes, spending, and the debt limit. It cannot be used to enact policy legislation unrelated to taxes and spending. And it has been used infrequently in the past – just 21 reconciliation bills have been signed into law since 1974. Under normal processes, only one reconciliation bill is considered in each fiscal year; since the fiscal year ends on September 30th, two reconciliation bills can be passed in a calendar year.

But reconciliation is being considered in a whole new dimension today. Senator Majority Leader Chuck Schumer (D-NY) announced a couple months ago that he could pass multiple reconciliation bills in a single fiscal year, based on a provision of the Budget Act that allows Congress to enact revised budgets.

The Senate parliamentarian initially confirmed that it is possible to do a revised budget that could create additional reconciliation instructions, and Senator Schumer said they would pass their multi-trillion-dollar American Jobs Act and American Families Act under reconciliation, with just 51 votes – and no need to negotiate with the GOP 50-vote minority.

However, late last week the Parliamentarian threw cold water on Senator Schumer’s plan to do multiple reconciliation bills.

Without going into all the statutory and procedural details, the Parliamentarian ruled that in order to have a second reconciliation bill in Fiscal Year 2021, Congress would have to pass a formal modification of the FY 21 Budget Resolution and that, unlike the original FY Budget, revised budgets could not be discharged from the Budget Committee and taken directly to the Senate floor.
In other words, the Senate and House Budget Committees would have to start over, report a new budget out of the committee with a majority of committee members voting for it, then pass an identical resolution on the floor of both houses of Congress.

That process would take days of Senate floor time and provide the opportunity to both Republicans and Democrats to offer dozens of amendments during floor consideration, forcing votes on political issues unrelated to the Budget.

Even more challenging in the Senate, with the 50-50 tie, Senate Budget Committee Chair Bernie Sanders (D-VT) would have to persuade at least one GOP member of the Committee to vote for the Budget, and that is an unachievable goal. The short-cut Senator Schumer had presumed he could use – discharging the Budget Resolution from the Committee without a vote – would not be available to him with a revised Budget.

Finally, Congress has to adopt a FY 2022 budget by September 30, and Majority Leader Schuner has said that the Senate will take up that Budget in July, leaving him no time to try to revisit the FY 2021 budget.

In conclusion: while passing a FY 2022 budget will give the Majority another traditional reconciliation bill that he can use to pass their spending and tax bills, we are not likely to see those bills on the House and Senate floor until the fall.

As an aside for anyone interested a bit of inside-the-beltway commentary: in her ruling that Senator Schumer could not bring additional reconciliation bills to the floor as he had claimed, the Senate Parliamentarian took the very rare step of subtly chastising the Leader for attempting to do so.

As the Capitol Hill newspaper Roll Call reported:

MacDonough wrote that lawmakers intended the provision to be used only “in extraordinary circumstances and not for things that should have been or could have been foreseen and handled” in a regular budget resolution.

"The potential for abuse was clear in 1974 and is all the more obvious now," she wrote. MacDonough added that "overuse and over-reliance on a hyper-fast track procedure in the ordinarily deliberative Senate ... will change the culture of the institution to the detriment of the committee and amendment processes and the rights of all Senators."

https://www.rollcall.com/2021/06/02/democrats-reconciliation-strategy-dealt-blow-senate-parliamentarian/