

WHAT IS RECONCILIATION?

Reconciliation is a fast-track legislative process that allows a bill to pass the Senate in a limited time period, and with the support of only 51 Senators. A “normal” Senate bill can be slowed down by a single Senator, and blocked by 41 Senators. This is not true for a reconciliation bill.

The downside is that reconciliation “*protections*” apply only to a very narrow set of policy matters, all relating to changes in taxes, spending, or debt.

In the particular case of health care reform, some Senate Democrats were attracted to the reconciliation process because it would allow them to pass a bill even if there is unified Republican opposition, and even if as many as 9 Senate Democrats oppose the bill. It is, however, nowhere nearly as easy as these advocates might have hoped.

A normal Senate bill

I am going to write here only about the Senate. *Technically reconciliation procedures cover both bodies, but the practical impact of the process is to change the number of votes needed in the Senate, so that is where we should focus our attention.*

Let’s start with a “*normal*” bill, one not governed by the reconciliation process. There are three practical consequences of Senate rules that are relevant to legislative debate.

1. Any Senator can offer any “*non-germane*” amendment – *A Senator can offer a no-texting-while-driving amendment to a defense bill. Or he could try to amend a cash-for-clunkers-money bill with an amendment to ban steroids in baseball.*
2. **Debate and amendments (and therefore time) are unlimited – Unlike in the House of Representatives, where the majority decides how long debate will last, how many amendments will be offered, and when the vote on final passage will occur, in the Senate this happens only through a consensus. If one Senator wants to keep talking about a bill or amendment, he or she can keep going and going. If a Senator or group of Senators has 200 amendments they want to offer to a bill, the Senate rules allow them to do that. It is not unusual for the Senate to spend several weeks debating and amending a complex and important piece of legislation. The rules favor the protection of the debate and amendment rights of each individual Senator over process efficiency and the will of the majority.**
3. Points one and two can be shut off, after a certain amount of time has elapsed, if 60 out of 100 Senators decide so. This is called the “*cloture*” process, and it’s usually initiated by the Senate Majority Leader, who wants to close off debate and place a hard limit on amendments and time. If 60 Senators vote to “*invoke cloture*” on a bill, that imposes a strict set of limits on debate and amendments, and guarantees the bill will come to a final passage vote by a time certain.

Point (3) is why there was so much focus on a super majority in the Senate. If all 60 Senate Democrats or Senate Republicans hold together to invoke cloture on a bill, there’s not a darn thing the opposing party can do about it. A big part of the difficulty on most legislation arises because those 60 Senate D’s are not unified on substance. The Republicans are usually much more disciplined in the Senate.

There’s a very important detail. The majority needs an a firm 60 votes to invoke cloture. The minority only needs one Senator to force the majority to muster all 60 votes. So, for instance, if 2 of the 60 are out sick, and the vote was 58-40, then cloture would not be invoked and the debate/filibuster would continue. In fact, if all the other 40 opposed cloture, they technically wouldn’t even need to show up for the vote. A 58-1 vote in favor of invoking cloture would still lose.

OK, that’s a tremendously oversimplified version of the normal Senate process. Now let’s turn to a reconciliation bill.

A reconciliation bill

A reconciliation bill is a special type of bill. The full name is a “budget reconciliation” bill. It’s purpose is to combine into one bill the work of multiple committees that are changing federal spending and tax laws. It is an incredibly powerful tool that bypasses (1) and (2) above, but only for very limited purposes. Senators, and the Senate as a whole, value highly preservation of the unlimited debate and amendment rights of individual Senators, and so they allow these rules to be bypassed only for a specific purpose.

The House and Senate pass the *budget resolution* in the spring of each year. It is a budget blueprint which Congress imposes on itself, and which establishes the rules that limit how much various committees can spend in the legislation they produce. A budget resolution can contain one (or in rare cases, up to three) reconciliation instruction(s). Reconciliation *instructions* create reconciliation *bills*.

To oversimplify, **you can use a reconciliation bill only to change spending, taxes, or the debt limit**. The process was used initially to facilitate deficit reduction — various Senate committees are each given a deficit reduction target, and are “*instructed*” by the budget resolution to produce bills that reduce the deficit by those amounts. The Senate Budget Committee then packages all those deficit reduction bills into a single bill, and reports it to the Senate floor for debate, amendments, and voting, all under a fast-track process that limits the minority’s ability to filibuster or kill the bill by amendment.

A typical Senate reconciliation instruction might look like this (colloquially):

By October 15th:

- *the Senate Finance Committee must report a bill that cuts spending by \$250 billion over the next ten years;*
- *the Senate HELP Committee must report a bill that cuts spending by \$50 billion over the same timeframe; and*
- *the Senate Agriculture Committee must report a bill that cuts spending by \$75 billion over the next ten years.*

“Report” is the committee version of “pass.” When a committee is done debating and amending a bill, if a majority of the committee members support the bill, they vote to “*report it out of committee*.” The Senate occasionally *passes* a bill. A Senate committee *reports* a bill.

If the above example reconciliation instruction is followed, there will be three bills reported out of three committees. Each of these three bills will then go to the Senate Budget Committee, which checks the numbers to make sure each committee has hit its savings target. If they have, the Budget Committee puts all three bills into a single pile, puts a rubber band around the pile, calls it a new single *reconciliation bill*, and reports it to the Senate floor. As long as the committees have hit their savings targets, the Budget Committee does not have authority to change the substance of any of the component bills.

When the Senate Majority Leader starts debate on this reconciliation bill, there are strict limits, unlike for a normal bill:

- Debate and voting time is limited to 20 hours. There is a fixed back-end that guarantees a vote on final passage.
- Amendments must be “*germane*” to the bill. No going wildly off-topic.
- Amendments must not violate the *Byrd Rule*.

The first point means that a reconciliation bill cannot be endlessly debated (filibustered) or endlessly amended. This means there is never a need to invoke cloture to shut off debate or amendments, so the majority needs only 51 votes to complete and pass the reconciliation bill.

Fun historical note: Usually the Senate will debate an amendment for a few hours or even days, then vote on it, then move on to the next amendment. The special procedures of both the budget resolution and reconciliation bills create a long series of stacked votes right before the vote on final passage. The Senate will often have 30-50 votes lined up, back-to-back. The Senate can do at most four votes an hour, so Senators can spend many continuous hours on the Senate floor voting.

The Byrd Rule

Now suppose the Senate HELP Committee’s bill meets its \$50 B savings target. Suppose the bill also contains a section to create a new *Green Hair Mandate*, requiring that all Americans dye their hair green. This provision is in the reconciliation bill that comes to the Senate floor.

Senator Wirwahn opposes the Green Hair Mandate. Or maybe he just thinks that it has nothing to do with the budget (he’s right), and that it therefore doesn’t belong in a reconciliation bill (also right). During the floor debate on the reconciliation bill, he raises a “Byrd rule point of order” against this provision: “Mr. President [of the Senate], I raise a point of order that section 542 of the bill violates Section 313(b) (1) (A) of the Congressional Budget Act of 1974.”

The Byrd Rule was created by the late Senator Robert C. Byrd Democrat from West Virginia. Sen. Byrd was one of the strongest defenders of individual legislative rights for Senators, and he wanted to make sure the reconciliation process would not be abused to slip non-budgetary legislation past the normal Senate debate and amendment process. The Byrd rule consists of six tests. If a provision violates any one of these tests, it must be removed from the bill (upon the challenge of a single Senator).

In this case, Senator Wirwahn asserts that the *Green Hair Mandate* provision does not affect federal spending or taxes, and is therefore “*extraneous*” to the bill and violates the Byrd Rule. In practice, the presiding officer of the Senate asks the Senate Parliamentarian for a ruling on this point of order. In this case, the Parliamentarian would agree, and would advise the chair that the *Green Hair Mandate* does not affect federal spending, taxes, or the debt limit, is therefore extraneous(not relevant or applicable), and therefore violates one of the prongs of the Byrd Rule. The Chair would then rule to uphold the point of order, and section 542 containing the *Green Hair Mandate* provision would be removed from the bill without a vote.

Now suppose that Senator Rosenfield, who authored the *Green Hair Mandate* provision, wants to try to keep that provision in the bill. She could, before the chair rules on Senator Wirwahn’s point of order, move to “*waive*” the Byrd rule: “Mr. President, I move to waive the point of order.” If 60 Senators vote to waive the Byrd rule, then the provision stays in the reconciliation bill. In this context, waiving a point of order means that a **super-majority** of the Senate is saying, “We don’t care whether it violates the Byrd Rule, and don’t bother ruling on that question. We’re OK leaving it in the bill.”

This balances out rather well. If there are 60 Senators who vote to keep it in the bill, there would in all likelihood be 60 Senators who would vote to shut off a filibuster if the *Green Hair Mandate* provision were moved as its own freestanding bill through the normal legislative process. If the provision has nothing to do with the budget and more than 50 but fewer than 60 Senators support it, it will come out.

That explains a reconciliation bill is, and what and why the Byrd rule is important.