

Budget reconciliation puts Biden agenda in play despite tight Congress

Blog post by Senior Associate Miranda Lutz, 15 January 2021

The Democrats' historic win in the Georgia Senate races on January 5th was largely overshadowed by the violent storming of the US Capitol the next day. While the implications of that attack will continue to reverberate throughout American politics, it is worth zeroing in on how Georgia Democratic candidates Raphael Warnock's and Jon Ossoff's wins impact President-elect Biden's domestic policy agenda.

A 50-50 split of the Senate will not usher in an era of transformative change envisioned by the progressive wing of the Democratic party, even with Vice President Kamala Harris able to break ties (Democrats' narrow House majority is also a factor). But Democrats will now be able to utilise a legislative process known as budget reconciliation to push through portions of their policy agenda. The budget reconciliation process is unique because it is not subject to the filibuster - a mechanism that allows the minority party in the Senate (now Republicans) to block legislation. A budget reconciliation package only needs a simple majority to pass, which is exactly what Democrats now have in the Senate. In recent years, the budget reconciliation process was used to enact the Bush tax cuts, the Affordable Care Act (ACA) and the Tax Cuts and Jobs Act (TCJA). However, there are limits to what Democrats can achieve policy-wise with this process. So, what is possible?

Budget reconciliation only allows lawmakers to generate revenue, alter federal spending, or change the debt ceiling. As a result, the process cannot be used to make regulatory policy changes. For instance, Democrats cannot create new environmental standards, change immigration laws, make changes to Social Security, or enact reforms like automatic voter registration. Democrats are also unable to make moves that would increase the deficit after ten years, which is why most of the Bush tax cuts were scheduled to expire at the end of 2010.

Since budget reconciliation is often used to enact tax-related measures, Democrats are undoubtedly considering rolling back aspects of President Trump's tax cuts, especially the reduction in the corporate tax rate. In 2017, the Trump tax bill lowered the corporate rate from 35% to 21%. There is consensus within the Democratic party to increase the corporate rate up to 28% to provide funds to finance the Democratic agenda and to begin to close the yawning federal deficit, though some progressives will advocate for an even higher tax. These discussions will be impacted by the struggling economy, but even moderate Democratic Senators like Joe Manchin (WV) opposed the Trump tax bill. Undoing Trump's tax breaks for corporates was a key plank of the Democratic platform and a policy objective that unites the progressive and moderate wings of the party making it more likely Democrats increase the corporate tax rate in order to generate revenue for other job-creating efforts. Importantly, however, early indications are that Democrats would target late 2021 for a tax effort, in line with past processes that go into effect at the start of the calendar (and tax) year.

Also high on the priority list for use of budget reconciliation will be expanding the eligibility and subsidies for people seeking to buy insurance on the ACA public health exchanges. Democrats could achieve this by increasing the current income caps or altering the formula so that people only pay a certain percentage of their income on health insurance. As a trade-off, it is possible that Democrats could give the Centers for Medicare and Medicaid Services (CMS) more authority to negotiate drug prices. Remember, budget reconciliation only applies to revenue-generating measures. Usually that means tax increases, but Congress could require CMS to meet a certain amount of savings in drug purchases. Progressives are likely to push for the creation of a public option through this process. However, given that the measures cannot increase the deficit beyond a ten-year window that makes the process trickier. Any type of expansion of public health care at the federal level faces an uphill battle with the current congressional landscape.

Outside of the health sector, it is likely that Democrats will push part of their climate agenda by making changes to the tax code using budget reconciliation. Extensions of tax breaks on electric vehicles, renewable energy, and energy storage are all a high possibility. Similarly, Democrats could establish new tax incentives for lower-emission manufacturing, green infrastructure, and sustainable agriculture practices.

Infrastructure spending will be another major priority. The budget reconciliation process could be the mechanism to drive investments in upgrading the national energy grid and electrifying the rail system. Lawmakers had been considering a vehicle miles travelled (VMT) tax to help generate revenue for the Highway Fund which is supported by the national gas tax which has not been increased in over 30 years. A VMT pilot program could be a revenue-generating measure in the budget reconciliation.

President-elect Biden recently released plans for a \$1.9trn stimulus plan. While his intent is to have the aid package pass swiftly through Congress under normal legislative proceedings, if Democrats are unsuccessful in getting it across the line they could fold some of the stimulus into budget reconciliation. In particular, school fund, individual stimulus checks, expanded unemployment benefits, expansion of the child tax credit, and emergency funding for state/local aid could all pass through budget reconciliation.

This is not an all-encompassing list of policy possibilities within reconciliation and Democrats could try and get creative with the process if they are able to build consensus on the need to “go big.” But Biden - with an eye towards picking up more Senate seats in 2022 - will be sensitive to burning too many bridges with Republicans in the process, which could rein in some of the Democrats’ more ambitious policy goals. However, budget reconciliation gives Democrats much greater options than they would otherwise have given the 50-50 Senate split, especially since they could have two opportunities for this process in the first year of the Biden administration - one for FY 2021 and one for FY 2022.