

BUDGET RECONCILIATION

Mr. BYRD. Mr. President, I hope that the Senators who are present will listen and that those who may be watching over the television will also listen. We are about to take up the reconciliation bill in the Senate. At this moment, the Senate reconciliation bill is not available. It has not been returned from the printers, so we do not have it. I hold in my hand the House reconciliation bill, 1,563 pages—1,563 pages. The Senate bill may be a larger bill. It may not be. It may not have as many pages, but I would imagine that it is at least going to be 1,000 pages.

This bill will be called up probably tomorrow. The motion to proceed to it is not debatable. One cannot filibuster. Once we are on it, the maximum length of time is 20 hours to be equally divided, which means 10 hours to the side.

This bill is so complex and so massive that there are tables of contents scattered throughout to indicate what items are from what committees. Each committee has been given instructions, and when that committee submits the results of those instructions to the Budget Committee, the Budget Committee cannot alter them substantively. The Budget Committee is required to fold them all into a reconciliation bill.

What I am going to say is that we need more time to debate a reconciliation bill. There are all kinds of legislation that will be crammed into this bill—far-reaching legislation. Laws that are already on the statute books will be repealed, and very few Senators will know what is in the bill or will know what they are voting on. There will be comprehensive changes—Medicare, Medicaid, welfare reform, whatever.

After we have voted on this bill—and we only have 20 hours—after we have completed our work on it, there may be a half dozen Senators who will have a grasp of the actions that have been taken.

We are limited to 2 hours on any amendment in the first degree, 1 hour on any amendment in the second degree, and there is no committee report.

There is nothing here to tell us what we are going to be acting on. And it is going to hit us tomorrow morning in all likelihood, if not today, or maybe tomorrow afternoon. But think of that! Think of having to act on a bill of that size, a bill of that magnitude, and even this 1,563 page bill is not complete. On page 1,562 it refers to "Title XVIII, Welfare Reform, Text to be supplied." Page 1,563, "Title XIX, Contract Tax Provisions, Text to be supplied; Title XX, Budget Process, Text to be supplied."

So it is not all here, even in this House reconciliation bill.

What are we coming to in this Senate, in this Congress? This will be the most important bill that will be acted upon by this Senate in this session. And we all know that far-reaching

changes are being contemplated, I suppose you would call it, in the so-called Contract With America. All of these new, all of these reforms and repealing of measures are going to be included in this reconciliation bill this year.

As Members of the Senate are aware, the Congressional Budget Act of 1974 established the congressional budget process. I was here. I had a lot to do with the writing of that act. But we did not contemplate, those of us who wrote that act in 1974, who voted on it, who debated it on the floor, did not contemplate what was going to be done in subsequent years through the reconciliation legislation.

It was never intended—I would never have voted for that 1974 act if I could have just foreseen that the reconciliation process would be used as it is being used. It is a catchall for massive authorization measures that should be debated at length, and should be subject to unlimited time for amendments and unlimited time for debate.

Very controversial measures are being put into reconciliation bills. And there is no cloture mechanism that could be more than a distant speck on the horizon as compared with time restrictions in a reconciliation bill. It is a super bear trap.

Prior to the enactment of the Congressional Budget Act, there was no procedure or process through which Congress could exercise control over the total Federal budget. The appropriations process, which traditionally had overseen Federal spending through the enactment of annual appropriations bills, had increasingly become less able to do so because of the growth in "entitlement" or "mandatory spending." These entitlement programs, notably Medicare and Medicaid, obligated the Federal Government to make direct payments to qualified beneficiaries, without the payments having to first be appropriated.

Congress recognized that in order to be able to carry out its full responsibilities over the Federal purse, a new congressional budget process was needed. And through this new congressional budget process, it was our intention that all spending decisions would be considered in relation to each other. In addition, it is vital that the aggregate spending decisions we make be related carefully to revenue levels.

In order to ensure that these new congressional budget processes and procedures would work, the Congressional Budget Act created two new fast-track vehicles—the budget resolution and the reconciliation bill. Both of these measures are considered under expedited, fast-track procedures in the Senate. It is the fast-track procedures relative to reconciliation measures which cause me great concern.

And mind you, as I say, there is a limitation of 20 hours of debate. That includes debate on amendments, debatable motions, appeals, points of order. Everything is included under debate in that 20-hour limitation, except, for ex-

ample, in the case of certain quorum calls and the reading of amendments. They are not charged against the 20 hours.

But that is not all. Any Senator may move to reduce the overall time from 20 hours to 10. Any Senator may move to reduce the 20 hours to 5 or to 2 or to 1 hour.

Well, that would be a rather unreasonable thing to do, but the rule allows it. And that would be a nondebatable motion. If a Senator elects to move to reduce the time—it does not have to be the majority leader or the minority leader—the newest Member of the Senate can make that motion to reduce the time. It is a nondebatable motion. It would be decided by a majority vote. So if a majority were so minded, it could reduce the time. This is an astonishing thing that we have done to ourselves.

I think it is fair to say that the participants in the creation of the Congressional Budget Act recognized that this new process, as I say, was a dramatic departure from the budget practices and procedures that existed at the time. It was, therefore, obvious that no one could anticipate all of the effects that could result from enactment of the Congressional Budget Act. I do not believe that the Congress fully anticipated the uses that would be made of the fast-track reconciliation process.

The reconciliation process is a fast-track, deficit-reduction vehicle which, under the Congressional Budget Act, cannot be filibustered against. A simple majority of Senators voting determines what amendments the Senate will adopt to a reconciliation measure, and a simple majority is sufficient to pass the legislation.

First degree amendments, as I say, get 2 hours of debate; second degree amendments get 1 hour. All debate must fall within the act's 20-hour cap. It is for this reason that I have called reconciliation a colossally super gag rule. It is a gigantic bear trap.

I do not believe, Mr. President, the participants in the creation of the Congressional Budget Act recognized the way—I do not believe they recognized the way; I did not recognize it—in which this expedited reconciliation process would be used. They intended the reconciliation process to be a way to ensure that the spending and revenue and deficit targets for a given fiscal year would be met. In fact, there were no reconciliation instructions in budget resolutions for fiscal years 1975, 1976, 1977, 1978, or 1979. The Senate Budget Committee first reported a budget resolution containing reconciliation procedures for FY 1980, under the chairmanship of Senator Muskie, Ed Muskie. The following year, the new Budget Committee chairman, Senator HOLLINGS, included reconciliation instructions in the 1981 budget resolution in the form of a binding revision of the 1980 budget resolution.

Then, for fiscal year 1982, Senator DOMENICI assumed the chairmanship of

the Budget Committee, a post which he also holds today, and he made further innovations in the reconciliation process. In fact, I understand that it was during this period that the revised budget resolution for fiscal year 1981 included reconciliation instructions for years beyond the first fiscal year covered by the resolution, thereby extending the reach of reconciliation to more permanent changes in law. No longer was reconciliation just a ledger adjustment for one year.

Since that time, reconciliation instructions have been included in budget resolutions for FY 1981, 1982, 1984, 1986, 1987, 1988, 1990, 1991, 1994, and 1996. By the same light, budget resolutions did not include reconciliation instructions in many fiscal years, including fiscal years 1989, 1992, and 1993, during multi-year budget agreements.

Over this period, Congress used reconciliation legislation to accomplish substantial deficit reduction. At the same time, however, many legislative items were included in reconciliation bills that had no business being there. And it is not surprising, Mr. President, that attempts have been made to include extraneous matters in reconciliation bills. After all, the fast-track procedures for considering reconciliation bills, as well as conference reports thereon, make them almost irresistible vehicles to which Senators will attempt to attach non-budgetary legislative matters.

It was in response to this problem that I offered an amendment to the Consolidated Omnibus Budget Reconciliation Act of 1985, originally adopted as a temporary rule and made permanent in 1990 as Section 313 of the Congressional Budget Act of 1974, as amended. The purpose of what is commonly referred to as the "Byrd Rule" was to curb this tendency to include extraneous matter in reconciliation measures. That is why the Byrd rule came about. The Congressional Research Service recently issued a report for Congress entitled, "The Senate's Byrd Rule Against Extraneous Matters in Reconciliation Measures: A Fact Sheet." According to that report, in the five reconciliation measures to which it applied, there have been 16 cases involving the Byrd Rule. In 11 of those cases, opponents were able to either strike extraneous matter from legislation—in six cases—or bar the consideration of extraneous amendments—in five cases—by raising points of order. Three of ten motions to waive the Byrd Rule were successful and two points of order against matter characterized as extraneous in a conference report were rejected. It appears, then, that the Byrd Rule has had some success in keeping extraneous matter out of reconciliation measures.

Yet, Mr. President, more needs to be done to ensure that Senators and the American people are fully informed as to what is included in these massive reconciliation bills before they are voted upon.

The people have a right to know, our constituents have a right to know what is in this bill, and we Senators have a right to know, and we Senators have a responsibility to know. But how can we know under the circumstances—under the circumstances?

As it stands now, the Budget Act allows only 20 hours of debate on reconciliation bills and only 10 hours of debate on reconciliation conference reports. And that does not even begin to be a sufficient amount of time to address the massive number of items that are contained in reconciliation bills. These bills contain a large number of permanent changes in law which would otherwise have extended debate, which would otherwise have to go through the process of amendments and thoughtful consideration, debate, perhaps days of debate.

Yet, we are all put under the gun, on both sides of the aisle, to get the reconciliation bill through with a modicum of debate, both in the Budget Committee and here on the Senate floor. I am having to make this speech on my amendment today, the day before we will actually take up the reconciliation bill because there will likely not be time to discuss my amendment during regular consideration of the bill.

I have an amendment. It will be subject to a 60-vote point of order. It probably will not be adopted, but I am going to offer it anyhow. Do you think I will have time to debate that amendment when this bill is up before the Senate? We have a very little amount of time.

I do not raise this issue for any partisan purpose. When Democrats controlled the House and Senate, reconciliation bills were also far-reaching and yet received no more consideration than will the 1996 reconciliation bill. I am convinced, though that regardless of which party is in the majority, reconciliation bills and conference reports require more of the Senate's time than the Budget Act presently allows. So I intend to offer an amendment to the reconciliation bill which will increase from 20 to 50 hours the time limitation for debate on future reconciliation measures and to increase from 10 to 20 hours the time limitation for Senate consideration of conference reports thereon. I recognize, as I say, that a Byrd Rule point of order can be raised against my amendment, in that it has no effect on outlays or revenues.

Nevertheless, I urge my colleagues to refrain from raising a point of order against this amendment and, instead, to join me in adopting the amendment, both sides, Senators on both sides need more time for consideration of such a leviathan as this. While not a magic pill that will solve all the problems we face in reconciliation bills, I feel that this increased time for consideration of reconciliation bills and conference reports in the future does constitute a much-needed improvement to the present reconciliation process.

Analogies between the legislative process and making sausage have often been made, but in no instance does legislating resemble sausage making more than in the process known as reconciliation.

Unlike most legislative vehicles which emanate from only one committee, the reconciliation bill is a hodgepodge, a catchall, of proposals from every authorizing committee, sewn into one skin called a reconciliation package. The package is usually massive, as we have noted here today, and contains far-reaching changes in the law—some of them beneficial, some of them detrimental, and some of them downright ridiculous. The point here is that the expedited procedures and very tight time limits have, over the years, become opportunities for those who would abuse the process. Unfortunately, the Byrd Rule, which was intended to help lessen the prospects for abuse in reconciliation has, over time, become a favorite parlor game for many of Washington's fertile legal minds, and ways have been found to circumvent its intent.

It is my belief that very often the final reconciliation sausage would not pass public inspection if there were a little more time for examination and debate. Our aim in the Senate should never be to hide important public issues from the public eye. While we need to keep the deficit reduction train on track with some sort of time limits, we do not need to be in such a hurry that the toxic material in the boxcars is rushed by without even a moment for a cautionary warning flag to be raised.

We should give the American people a little more of a window on the reconciliation process here in the Senate, and at least allow for some additional debate and some additional opportunity to amend the bill. My amendment would make the ingredients of the reconciliation process a little more pure and, hopefully, a little better seasoned. I believe mine is a constructive change, and I will hope for bipartisan support when I offer it to the reconciliation bill.

Mr. DORGAN. Mr. President, I wonder if the Senator from West Virginia will yield to me for a question?

Mr. BYRD. Yes, I gladly yield.

Mr. DORGAN. Mr. President, let me first indicate that I hope that the Senator will add me as a cosponsor to his amendment that would expand the amount of time available for which there would be debate on the reconciliation bill.

Mr. BYRD. I will be happy to do that.

Mr. DORGAN. I think that is a very important amendment, and I hope people will not raise points of order against it. But even that is a minuscule amount of time with which to evaluate this kind of legislation.

My understanding is that the reconciliation bill, when it comes to the floor of the Senate, will be somewhere over 2,000 pages, and that includes everything. It is now 20 minutes to 1. We

are told today may be the day we will begin considering the bill. It is not available. I have not seen a bill. I have asked for it. It is not available. So a piece of legislation that will be probably 2,000 pages long, if it includes everything—the House version is 1,500 pages long but does not include the three major areas, that is text to be added later, I understand.

Mr. BYRD. The Senator is correct.

Mr. DORGAN. So we are talking about a proposal that will have some of the most profound changes we have seen in 30, 40, 50 years coming to the floor of the Senate later today, and it is now 20 minutes to 1 and it is not yet available, not yet written, not yet provided to Members of the Senate. Fifty hours is not enough. I support the Senator's amendment.

I have heard in the past people say, "Well, how can we legislate if we don't have access to what is being done here?"

The Senator from West Virginia comes from a rural State, as do I. This will contain, when it gets here, essentially, a new farm bill. We are required to write a farm bill every 5 years. This is a year to write a farm bill. It is now late October. We do not yet have a farm bill.

This will contain the structure of the new farm bill. It should not be here. That is a slap in the face at rural States. It is in there. Yet, like everything else, it will have a profound impact on a rural State and almost no opportunity will exist to get at it, to amend it, and to have a thoughtful, responsible debate about what farm policy will be in our country.

This will have a substantial impact on men and women all over this country who are trying to run a family-sized farm.

Does the Senator from West Virginia have a copy of the reconciliation bill yet, or has the Senator from West Virginia sought to get a bill?

Mr. BYRD. I have sought to get a copy and a copy is not available. I have in my hands a copy of the House reconciliation bill covering 1,563 pages. As the distinguished Senator from North Dakota has pointed out, there are three titles which are yet to be supplied.

I do not know what the size of the Senate reconciliation will be. It may be longer or shorter. I think the Senator is well within reason to expect at least 1,200 to 1,500 pages.

These will be changes of great magnitude—complex—in Medicare, Medicaid, and as the Senator has already said, farm legislation. Various and sundry laws will be repealed and amended which otherwise would perhaps require hours and hours or days, even, for debate on the Senate floor.

I will certainly be pleased to add the Senator's name to my amendment. I hope that Republicans will join in supporting this amendment because they, too, should be concerned about what we are doing here—enacting legislation

of this enormity without knowing what is in the legislation, without having an opportunity to adequately study it or amend it.

I thank the Senator for his willingness to join in the presentation.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:42 p.m., recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. GREGG].

TEMPORARY FEDERAL JUDGESHIPS COMMENCEMENT DATES AMENDMENT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to consideration of S. 1328, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 1328) to amend the commencement dates of certain temporary Federal judgeships.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am pleased that the Senate is taking up S. 1328, a bill that amends the commencement dates of certain temporary judgeships that were created under section 203(c) of the Judicial Improvements Act of 1990 [Public Law 101-650, 104 Stat. 5101].

The minor adjustment embodied in this bill should improve the efficiency of the courts involved. This is not a controversial change, but it is a necessary one.

I am pleased to have Senators BIDEN, GRASSLEY, HEFLIN, SPECTER, SIMON, DEWINE, FEINSTEIN, and ABRAHAM as original cosponsors of this bill.

I also want to thank the Administrative Office of the U.S. Courts and the fine Federal judges, particularly Chief Judge Gilbert of the southern district of Illinois, who called to my attention the need for this legislative fix—and the need for it to be passed before December 1, 1995.

The Judicial Improvements Act of 1990 created the temporary judgeships at issue in two steps.

First, the 1990 act provided that a new district judge would be appointed to each of 13 specified districts.

Second, the act then provided that the first vacancy in the office of a district judge that occurred in those districts after December 1, 1995 would not be filled.

That two-step arrangement, which is typical in temporary judgeship bills, is required in order to ensure that the judge filling a temporary judgeship is still a full-fledged, permanent, article

III judge in accordance with the Constitution.

Thus, although a new judgeship in a given district has only a temporary effect, the individual judge appointed serves on a permanent basis in the same manner as any other article III judge.

It is the time between the appointment of a judge to a temporary judgeship and the point at which a vacant permanent judgeship is left unfilled that is key. That overlap is what effectively adds another judge to the district for a temporary period of time.

The 1990 act created the temporary judgeships in the following 13 districts: the northern district of Alabama, the eastern district of California, the district of Hawaii, the central district of Illinois, the southern district of Illinois, the district of Kansas, the western district of Michigan, the eastern district of Missouri, the district of Nebraska, the northern district of New York, the northern district of Ohio, the eastern district of Pennsylvania, and the eastern district of Virginia.

However, due to delays in the nomination and confirmation of many of the judges filling those temporary judgeships, many districts have had only a relatively brief period of time in which to take advantage of their temporary judgeship.

In the district of Hawaii and the southern district of Illinois, for example, new judges were not confirmed until October 1994. Other districts have faced similar delays.

Those delays mean that many of the temporary judgeships will be unable to fulfill congressional intent to alleviate the backlog of cases in those districts.

Many of the districts faced a particularly heavy load of drug enforcement and related matters. Those cases will not be absorbed adequately if the first judicial vacancy that occurs in those districts after December 1, 1995 must go unfilled.

This bill solves the problem by changing the second part of the temporary judgeship calculus.

The bill provides that the first district judge vacancy occurring 5 years or more after the confirmation date of the judge appointed to fill the temporary judgeship would not be filled.

In that way, each district would benefit from an extra active judge for at least 5 years, regardless of how long the appointment process took.

This will help alleviate the extra burden faced in those districts. The only district excluded from this treatment is the western district of Michigan. That district requested to be excluded because its needs will be met under the current scheme.

I also note that the judges from the affected districts have requested that this bill be enacted before December 1, 1995. After that date, some vacant judgeships will be unable to be filled under current law.

That is why this bill has some urgency. And that explains why the bill