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# CONGRESSIONAL BRIEFING

**Congressional Climate Camp #5:  
Understanding Budget Reconciliation**  
***Briefing Series: Congressional Climate Camps***

Friday, May 21, 2021

# About EESI...



## **NON-PROFIT**

Founded in 1984 by a bipartisan Congressional caucus as an independent (i.e., not federally-funded) non-profit organization



## **NON-PARTISAN**

Source of non-partisan information on environmental, energy, and climate policies



## **DIRECT ASSISTANCE**

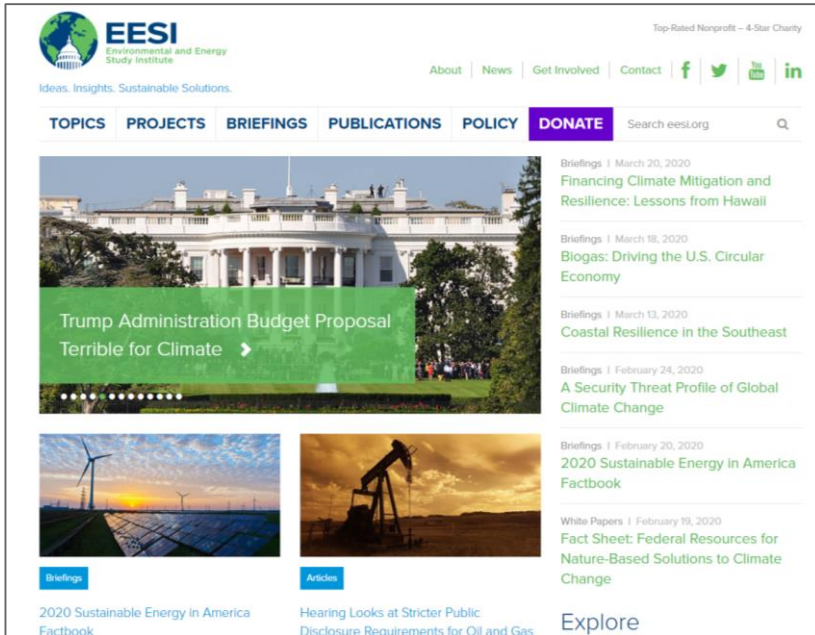
In addition to a full portfolio of federal policy work, EESI provides direct assistance to utilities to develop “on-bill financing” programs



## **SUSTAINABLE SOCIETIES**

Focused on win-win solutions to make our energy, buildings, and transportation sectors sustainable, resilient, and more equitable

# ...About EESI



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# CONGRESSIONAL CLIMATE CAMP V

FRIDAY, MAY 21 | 2 PM EST  
BONUS SESSION:  
UNDERSTANDING BUDGET RECONCILIATION

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# Congressional Climate Camp Series

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## **MAY 21--BONUS SESSION – Understanding Budget Reconciliation**

*Webcasts and written summaries available at [www.eesi.org](http://www.eesi.org)*

*Audio-only excerpts released via The Climate Conversation podcast*

*Fact sheets, fact sheets, web articles, and web articles*

# Four Things to Know About Budget Reconciliation

- Budget reconciliation in the 1974 Congressional Budget Act ≠ budget reconciliation as used in the 1980s and 1990s
- Budget reconciliation in the 1980s and 1990s ≠ budget reconciliation used more recently
- Because of these changes, we often find ourselves in uncharted territory
- The rules are not the only constraint

House:

Reconciliation Act	Directives to Submit/Report Legislation	Subr Repor T
Reconciliation Acts Involving Multiple-Committee Directives		
Omnibus Budget Reconciliation Act of 1989	10	
Omnibus Budget Reconciliation Act of 1990	12	
Omnibus Budget Reconciliation Act of 1993	13	
Balanced Budget Act of 1995	12	
Personal Responsibility and Work Opportunity Reconciliation Act of 1996 <sup>b</sup>	4	
Balanced Budget Act of 1997	8	
Taxpayer Relief Act of 1997	8	
Deficit Reduction Act (2005)	7	
Health Care and Education Reconciliation Act of 2010	4	
Restoring Americans' Healthcare Freedom Reconciliation Act of 2015	3	

Senate:

Reconciliation Act	Directives to Submit/Report Legislation	Subm Repor Tir
Reconciliation Acts Involving Multiple-Committee Directive		
Omnibus Budget Reconciliation Act of 1989	8	(
Omnibus Budget Reconciliation Act of 1990	10	I
Omnibus Reconciliation Act of 1993	14	I
Balanced Budget Act of 1995	12	;
Personal Responsibility and Work Opportunity Reconciliation Act of 1996 <sup>a</sup>	2	(
Balanced Budget Act of 1997	8	;
Deficit Reduction Act (2005)	8	(

Source: Megan S. Lynch, "Budget Reconciliation Process: Timing of Committee Responses to Reconciliation Directives," *Congressional Research Service* 19 January 2016.

Table 1. Reconciliation Bills, 1980–2017

Year	Bill	Final Senate Vote Margin	Unified Senate-President Control?
1980	Omnibus Reconciliation Act of 1980	83–4	Yes
1981	Omnibus Budget Reconciliation Act of 1981	80–14	Yes
1982	Tax Equity and Fiscal Responsibility Act of 1982	52–47	Yes
1982	Omnibus Budget Reconciliation Act of 1982	67–32	Yes
1983	Omnibus Budget Reconciliation Act of 1983	67–26	Yes
1986	Consolidated Omnibus Budget Reconciliation Act of 1985	78–1	Yes
1986	Omnibus Budget Reconciliation Act of 1986	61–25	Yes
1987	Omnibus Budget Reconciliation Act of 1987	61–28	No
1989	Omnibus Budget Reconciliation Act of 1989	Voice vote*	No
1990	Omnibus Budget Reconciliation Act of 1990	54–45	No
1993	Omnibus Budget Reconciliation Act of 1993	51–50	Yes
1995	Balanced Budget Act of 1995	52–47 (vetoed)	No
1996	Personal Responsibility and Work Opportunity Reconciliation Act of 1996	78–21	No
1997	Balanced Budget Act of 1997	85–15	No
1997	Taxpayer Relief Act of 1997	92–8	No
1999	Taxpayer Refund and Relief Act of 1999	50–49 (vetoed)	No
2000	Marriage Tax Relief Reconciliation Act of 2000	60–34 (vetoed)	No
2001	Economic Growth and Tax Relief Reconciliation Act of 2001	58–33	Yes
2003	Jobs and Growth Tax Relief Reconciliation Act of 2003	51–50	Yes
2005	Deficit Reduction Act of 2005	51–50	Yes
2005	Tax Increase Prevention and Reconciliation Act of 2005	54–44	Yes
2007	College Cost Reduction and Access Act	79–12	No
2010	Health Care and Education Reconciliation Act of 2010	56–43	Yes
2015	Restoring Americans' Healthcare Freedom Reconciliation Act of 2015	52–47 (vetoed)	No
2017	American Health Care Act of 2017	49–51†	Yes
2017	Tax Cuts and Jobs Act of 2017	51–49	Yes

Note. For vote margins through 2007, see Beth et al. (2009); for years since 2007, data collected by the author.

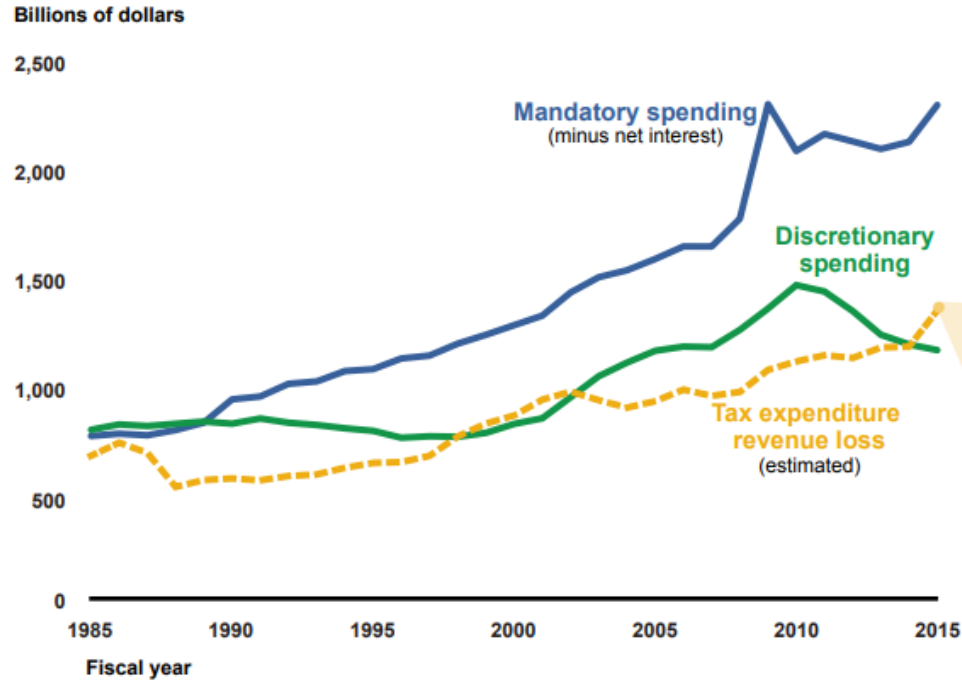
\* The vote on initial passage of the Senate version of the legislation was 87–7.

† The vote listed is the last in a series of votes taken on full-text substitute amendments, none of which received majority support.

Source: Molly E. Reynolds, “What If You Could Pick the Pivot? Budget Reconciliation and Pivotal Politics in the Contemporary Congress,” *Journal of Politics* 80.3 (July 2018): 1069–1075.



### Mandatory Spending, Discretionary Spending, and Estimated Tax Expenditure Revenue Loss, 1985-2015 (in 2015 dollars)



Source: GAO analysis of Department of the Treasury and Office of Management and Budget data.

Source: Government Accountability Office, “Spending Through the Tax Code”  
<<https://www.gao.gov/infographic/infographic-spending-through-tax-code>>.

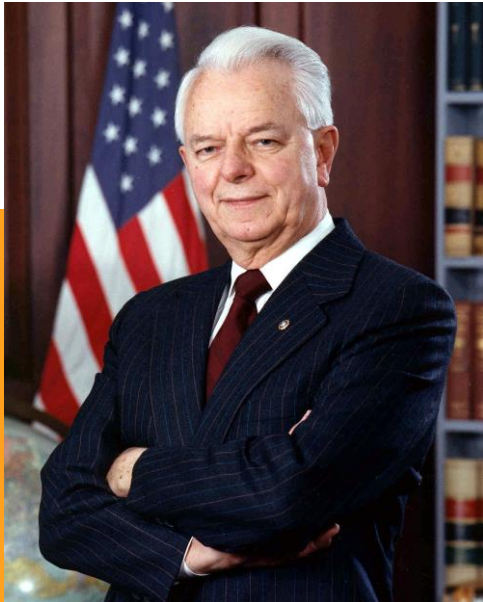
# What's In and Out of Budget Reconciliation

May 2021

## Playing by the Rules

- Frankly, it's all about the Senate
- Instructions from the budget resolution to the committee must be followed.
  - Committee Jurisdictions
  - Meet a savings target / don't go over the "cost" target
- Amendments to the bill must be germane, may not increase the deficit (unless to strike), and are still subject to the rules (including the Byrd Rule)

# Playing by the (Byrd) Rules



## A surgical point of order against “extraneous matter”

- 1) it does not produce a change in outlays or revenues;
- 2) it produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
- 3) it is outside of the jurisdiction of the committee that submitted the title or provision;
- 4) it produces a change in outlays or revenues which is **merely incidental** to the nonbudgetary components of the provision;
- 5) it would increase the deficit for a fiscal year beyond the “budget window” covered by the reconciliation measure;
- 6) it recommends changes in Social Security.

## Clearly Allowed

- “Rates and Dates”
- Tax policy (but don’t be too specific)
- Expand or trim existing mandatory spending (except Social Security)
- New direct spending programs (with some limits)

## Clearly Not Allowed

- Changing Social Security
- Things that do not “score” – regulations
  - Points of Order
  - Civil and Criminal Code
- Provisions/policy from the wrong committee
- Long-term deficit increases without an on-committee offset

## Everything In Between



- The “merely incidental” test is subjective.
  - The Senate Parliamentarian makes the advisement/ruling based on established precedent.
  - It is argued by staff or Senators behind closed doors.
- The key is: can you successfully argue what you are doing is about the spending or revenue changes proposed?
- Edge Case Examples:
  - Single Target - Newman’s Own and Planned Parenthood
  - Waivers - Shield rural areas from IPAB
  - Changing a regulation on industry - Essential health benefits

## Lessons from The American Rescue Plan Act of 2021

- Direct spending from authorizing committees is more permitted than previously thought
- Filling up a pot of money that has restrictions is easier than new money with restrictions
- Reinforced the single-target limitations which is relevant for infrastructure
- Keep your provisions' jurisdiction boundaries clean





# What did you think of the briefing?

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