

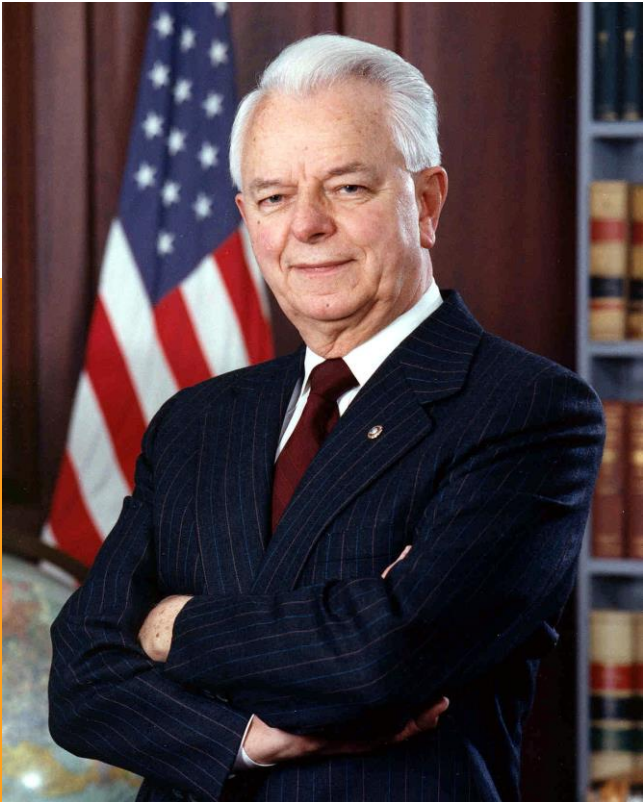
# What's In and Out of Budget Reconciliation

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