

S.Con.Res. 5: The Budget Resolution for FY2021

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On February 5, 2021, the House and Senate adopted S.Con.Res. 5, a budget resolution for FY2021. While a budget resolution generally represents an agreement between the House and Senate on a budgetary plan for the upcoming fiscal year, the House Budget Committee stated that this budget resolution was adopted solely to allow Congress the ability to employ the budget reconciliation process.

For Congress to use the reconciliation process, it must first adopt a budget resolution that includes reconciliation directives. Title II of S.Con.Res. 5 includes reconciliation directives to 23 House and Senate committees, instructing each to develop and report legislation within their jurisdictions increasing the deficit by a specified amount by February 16, 2021.

This report provides a summary of the provisions of S.Con.Res. 5, including the reconciliation directives.

SUMMARY

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Generally, the budget resolution establishes an annual agreement between the House and Senate on budgetary levels for the upcoming fiscal year (and at least four additional years). The budget resolution does not become law, and no money is spent or collected as a result of its adoption. Instead, it is an agreement between the House and Senate meant to assist Congress in developing federal budget policy. It also allows Congress to trigger and employ a powerful legislative process referred to as the budget reconciliation process.

On February 5, 2021, the House and Senate adopted S.Con.Res. 5, a budget resolution for FY2021 (the fiscal year that began October 1, 2020). The House Budget Committee stated that this budget resolution was adopted solely to allow Congress the ability to employ the budget reconciliation process to enact legislation to implement President Biden's proposed American Rescue Plan.¹

Legislative History

Although FY2021 began on October 1, 2020, the House and Senate had not adopted a budget resolution for FY2021. When the 117th Congress began on January 3, 2021, a budget resolution for FY2021, therefore, remained available for consideration.² Employing a budget resolution for the fiscal year that has already begun allows Congress to maximize the usage of the budget reconciliation process in a calendar year.³

H.Con.Res. 11, establishing the congressional budget for FY2021, including reconciliation instructions, was introduced and referred to the House Budget Committee on February 1, 2021. On February 2, H.Res. 85 was reported from the House Rules Committee (H.Rept. 117-3) and

¹ The House Budget Committee stated, "The 2021 budget resolution is not a comprehensive fiscal blueprint for the next 10 years. It is designed solely to provide the option of using reconciliation to deliver critical relief and achieve the goals of the American Rescue Plan." U.S. Congress, House Committee on the Budget, *The Budget Resolution and Reconciliation: An Alternative Path for the American Rescue Plan*, 117th Cong., February 1, 2021,

https://budget.house.gov/publications/report/budget-resolution-and-reconciliation-alternative-path-american-rescueplan. For more information on the American Rescue Plan, see the White House, "President Biden Announces American Rescue Plan," January 20, 2021, https://www.whitehouse.gov/briefing-room/legislation/2021/01/20/president-bidenannounces-american-rescue-plan/.

² While the House and Senate had not adopted a budget resolution for FY2021, they had agreed on enforceable budgetary parameters that allowed for the consideration of FY2021 appropriations measures. Title II of the Bipartisan Budget Act of 2019 (P.L. 116-37) directed the House and Senate Budget Committee chairs to file statements of budgetary levels, which would have the same effect in the respective chambers as if they had been included in a budget resolution. The act required that (1) for discretionary spending, the filed levels be consistent with the statutory limits on discretionary spending (as amended by the act), and (2) for mandatory spending and revenue levels, the filed levels be consistent with the most recent baseline projections of the Congressional Budget Office. Pursuant to the act, on May 1, 2020, House Budget Committee Chair Yarmuth filed such levels (Congressional Record [daily edition], pp. H1968-H1969). As required, those levels were updated to reflect revised budgetary levels on July 22, 2020 (Congressional Record [daily edition], p. H3691), and December 21, 2020 (Congressional Record [daily edition], p. H7320). These levels were extended by H.Res. 8 (117th Congress). Pursuant to the act, on May 4, 2020, Senate Budget Committee Chair Enzi filed such levels (Congressional Record [daily edition], p. S2205-S2206). As required, those levels were updated to reflect revised budgetary levels on September 24, 2020 (Congressional Record [daily edition], p. S5859-\$5860). These provisions, however, would not preclude Congress from acting on a traditional budget resolution for those years. For more information, see CRS Report R44296, Deeming Resolutions: Budget Enforcement in the Absence of a Budget Resolution, by Megan S. Lynch.

³ Using a FY2021 budget resolution to trigger this round of reconciliation leaves open the future opportunity for Congress to later adopt a budget resolution for FY2022 that could then be used to trigger reconciliation again in calendar year 2021. For more information on this and the reconciliation process generally, see CRS Congressional Distribution Memorandum "Number of Reconciliation Bills Allowed in a Single Calendar Year" by James V. Saturno, available from the author, and CRS Report R44058, *The Budget Reconciliation Process: Stages of Consideration*, by Megan S. Lynch and James V. Saturno.

adopted the same day by a vote of 216-210. Among other things, H.Res. 85 provided for the consideration of the budget resolution, H.Con.Res. 11. Under the terms of H.Res. 85, all points of order against consideration of H.Con.Res. 11 were waived, and an amendment adjusting the reconciliation instruction to the House Education and Labor Committee printed in the Rules Committee report was considered as adopted. The resolution further provided for two hours of general debate equally divided and controlled by the chair and ranking minority member of the Budget Committee and an additional hour of debate on the subject of economic goals and policies⁴ equally divided and controlled by Representative Beyer and Representative Schweikert (representing the Joint Economic Committee) or their respective designees. On February 3, H.Con.Res. 11 was debated and adopted, 218-212.

In the Senate, S.Con.Res. 5 was introduced on February 2, 2021, and referred to the Senate Budget Committee, which was automatically discharged from consideration of the resolution pursuant to Section 300 of the Congressional Budget Act.⁵ The same day, the Senate agreed to a motion to proceed to the consideration of S.Con.Res. 5 by a vote of 50-49. The measure was considered by the Senate on February 3, 4, and 5. During consideration, 13 amendments failed (including a substitute offered by Senator Paul), and nine fell on points of order. Twenty amendments were adopted, but these were superseded when a substitute offered by Senator Schumer was adopted 51-50 (with Vice President Harris voting to break a 50-50 tie). After an amendment to the Schumer substitute offered by Senator McConnell failed on a 50-50 vote, the Senate adopted S.Con.Res. 5 by a vote of 51-50 (with Vice President Harris voting to break a 50-50 tie).

On February 5, 2021, H.Res. 101 was reported from the House Rules Committee (H.Rept. 117-5). H.Res. 101 provided for the adoption of S.Con.Res. 5. After one hour of debate, H.Res. 101 was adopted by the House, 219-209, and S.Con.Res. 5 was deemed to be adopted by the same vote.

Budgetary Totals

A budget resolution is required to include levels of budget authority, outlays, revenue, deficits, and debt for the budget year⁶ and at least four additional years.⁷ Once the budget resolution has been agreed to by both chambers, certain levels contained in it are enforceable through points of order.⁸ Budgetary levels that are enforceable include spending and revenue aggregates, as well as

⁴ As provided under Section 305(a)(3) of the Congressional Budget Act and colloquially known as "Humphrey-Hawkins debate."

⁵ By precedent, if the Senate Budget Committee has not reported a budget resolution by April 1, as set out in Section 300, the committee will be discharged from consideration of any resolution referred to it. Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, 101st Cong., 2nd sess., S.Doc. 101-28 (Washington: GPO, 1992), p. 599.

 $^{^{6}}$ Generally, the budget year refers to the upcoming fiscal year but may refer to the fiscal year already in progress if the budget resolution is adopted after the start of the fiscal year on October 1.

⁷ In current practice, it is typical for budget resolutions to cover a 10-year period, although they are required to cover only five years.

⁸ This means that if legislation is being considered on the House or Senate floor that would violate certain levels contained in the budget resolution, a Member may raise a point of order against the consideration of that legislation. Points of order can be raised against bills, resolutions, amendments, or conference reports. If such a point of order is raised against legislation for violating levels in the budget resolution, the presiding officer makes a ruling on the point of order based on estimates provided by the relevant budget committee. The process for waiving points of order varies by chamber. Generally, such points of order can be waived in the House by a simple majority of Members and in the Senate by three-fifths of all Senators.

committee spending allocations.⁹ Certain budgetary totals included in S.Con.Res. 5 are included below in **Table 1**.

The levels in the budget resolution represent federal aggregates and do not include programmatic spending details. Assumptions concerning some major programs may be noted in documents accompanying the budget resolution, but these assumptions are not binding on the committees of jurisdiction.

As mentioned earlier, the House Budget Committee stated that S.Con.Res. 5 was adopted with the sole purpose of granting Congress the ability to employ the budget reconciliation process. The adoption of S.Con.Res. 5 is therefore not expected to affect the status of the regular appropriations process for FY2021.¹⁰ In addition, while a budget resolution is required to address the appropriate level of public debt, no action on the debt limit is expected as a consequence of S.Con.Res. 5.¹¹

Fiscal Year	Revenues	Outlays	Deficits	Debt Held by the Public
2021	\$2,303,274	\$6,140,857	\$3,837,583	\$24,081,000
2022	\$2,768,717	\$4,298,244	\$1,529,527	\$25,818,000
2023	\$2,971,083	\$4,070,343	\$1,099,260	\$27,153,000
2024	\$3,092,643	\$4,070,242	\$977,599	\$28,380,000
2025	\$3,236,199	\$4,250,436	\$1,014,237	\$29,610,000
2026	\$3,5 4,253	\$4,425,376	\$911,123	\$30,730,000
2027	\$3,762,577	\$4,606,887	\$844,310	\$31,882,000
2028	\$3,883,209	\$4,950,170	\$1,066,961	\$33,333,000
2029	\$4,007,991	\$5,019,083	\$1,011,092	\$34,768,000
2030	\$4,121,665	\$5,419,949	\$1,298,284	\$36,518,000

Table 1. Budgetary Totals Included in S.Con.Res. 5

In millions

⁹ The Budget Act requires that the budget resolution allocate total spending among committees, typically referred to as 302(a) allocations. The allocations act as a limit on the total spending within a specific committee's jurisdiction and are required to be included in the joint explanatory statement accompanying the conference report on the budget resolution. Section 4001 of S.Con.Res. 5 requires that if a budget resolution is adopted without the House and Senate engaging in a conference committee (and therefore issuing a joint explanatory statement), the House and Senate Budget Committee chairs submit a statement for publication in the *Congressional Record* establishing committee allocations.

¹⁰ Full-year appropriations for FY2021 were provided in H.R. 133, which was enacted on December 27, 2020 (P.L. 116-260). For more information, see CRS's Appropriations Status Table at https://www.crs.gov/AppropriationsStatusTable/Index.

¹¹ The Bipartisan Budget Act of 2019 (P.L. 116-37) suspended the debt limit until August 1, 2021. Upon reinstatement, the act provides for a debt limit adjustment to accommodate borrowing activity that occurred during the suspension. Although House Rule XXVIII provides for a measure to automatically be engrossed and deemed to have been passed by the House by the same vote as the adoption by the House of a budget resolution setting forth a level of the public debt different from the existing statutory limit, Section 6 of H.Res. 85 (the resolution that also provided for House consideration of H.Con.Res. 11) specified that "Rule XXVIII shall not apply with respect to the adoption by the House of a concurrent resolution on the budget for fiscal year 2021." For more on Rule XXVIII, see CRS Report RL31913, *Debt Limit Legislation: The House "Gephardt Rule*", by Bill Heniff Jr. For more information on the debt limit generally, see CRS In Focus IF10292, *The Debt Limit*, by Grant A. Driessen.

Source: S.Con.Res. 5, Title I.

Reconciliation Directives

If Congress intends to use the reconciliation process, reconciliation directives (also referred to as reconciliation instructions) must be included in the budget resolution. These directives instruct individual committees in the House and Senate to develop and report legislation that would change laws within their jurisdictions to accomplish a specific budgetary goal. Such reconciliation legislation is then eligible to be considered under special expedited procedures in both the House and Senate. These procedures are especially important in the Senate, as they include a 20-hour limit on debate time and therefore mean that a budget resolution does not require the support of three-fifths of Senators to bring debate to a close.¹²

Title II of S.Con.Res. 5 includes reconciliation directives to 23 House and Senate committees instructing them each to develop and report legislation within their jurisdictions increasing the deficit by a specified amount. Committees and their specified amounts are listed below in **Table 2** and **Table 3**. Each committee is directed to submit its legislative recommendations to its chamber's Budget Committee, which then is to package the committee responses into an omnibus budget reconciliation bill and report the measure to its respective chamber without "any substantive revision."¹³ The directives to the 12 House committees total approximately \$2.1 trillion in deficit increases, while the directives to the 11 Senate committees total \$1.9 trillion. The House Budget Committee has indicated that this difference is due to "overlapping committee jurisdictions in the House" and that the budget resolution assumes that the net effect of a reconciliation bill will not exceed \$1.9 trillion.¹⁴

While it has been stated that any reconciliation process triggered pursuant to S.Con.Res. 5 would be used to enact policies included in the American Rescue Plan,¹⁵ nothing in the resolution or the Budget Act requires that such policies ultimately be included in either the committee's legislative response or the final reconciliation legislation.

S.Con.Res. 5 directs the specified House and Senate committees to submit their legislative text to the Budget Committees of their respective chambers not later than February 16, 2021.¹⁶ There is no procedural mechanism for requiring a committee to report reconciliation legislation in response to its directive. Each chamber, however, may employ methods of moving forward with

¹² For more information on the reconciliation process, see CRS Report R44058, *The Budget Reconciliation Process: Stages of Consideration*, by Megan S. Lynch and James V. Saturno.

 $^{^{13}}$ Pursuant to Section 310(b)(2) of the Budget Act. In fulfilling this requirement, the Budget Committee will typically hold a business meeting before voting to report to the chamber, and while amendments are not in order during the markup, members of the Budget Committee may still communicate support or concern related to the underlying legislation.

 $^{^{14} \} See, \ U.S. \ Congress, \ House \ Committee \ on the \ Budget, \ https://budget.house.gov/publications/report/section-section-analysis-2021-budget-resolution.$

¹⁵ U.S. Congress, House Committee on the Budget, *The Budget Resolution and Reconciliation: An Alternative Path for the American Rescue Plan*, 117th Cong., February 1, 2021.

¹⁶ Historically, most committees have responded to their reconciliation directives by the date specified, but the Budget Committee may wait for additional committees to respond to their directives, if necessary, with no impact on the privileged status of the reconciliation bill. For more, see CRS Report R41186, *Reconciliation Directives: Components and Enforcement*, by Megan S. Lynch; and CRS Report R41151, *Budget Reconciliation Process: Timing of Committee Responses to Reconciliation Directives*, by Megan S. Lynch.

reconciliation legislation and include legislative language that falls within the non-reporting committee's jurisdiction in the event that the committee has not reported.¹⁷

Committee	Amount by which the committee is instructed to increase the deficit
Agriculture	\$16,112,000,000
Education and Labor	\$357,926,000,000
Energy and Commerce	\$188,498,000,000
Financial Services	\$75,000,000
Foreign Affairs	\$10,000,000
Natural Resources	\$1,005,000,000
Oversight and Reform	\$350,690,000,000
Science, Space, and Technology	\$750,000,000
Small Business	\$50,000,000
Transportation and Infrastructure	\$95,620,000,000
Veterans Affairs	\$17,000,000,000
Ways and Means	\$940,718,000,000
Total	\$2,103,319,000,000

 Table 2. House Committees Given Reconciliation Instructions in S.Con.Res. 5

 To submit to the House Budget Committee by February 16, 2021

Source: S.Con.Res. 5, Section 2001.

Note: Committees are instructed to increase the deficit by such amounts over the period of FY2021-FY2030.

Table 3. Senate Committees Given Reconciliation Instructions in S.Con.Res. 5

To submit to the Senate Budget Committee by February 16, 2021

Committee	Amount by which the committee is instructed to increase the deficit
Agriculture, Nutrition, and Forestry	\$22,717,000,000
Banking, Housing, and Urban Affairs	\$89,250,000,000
Commerce, Science, and Transportation	\$35,903,000,000
Environment and Public Works	\$3,206,500,000
Finance	\$1,296,487,000,000
Foreign Relations	\$10,000,000,000

¹⁷ In the House, if a committee has not responded to a reconciliation directive, Section 310(d)(5) of the Budget Act states that the House Rules Committee may make in order amendments to a reconciliation bill to satisfy reconciliation directives if a committee has not submitted reconciliation legislation. In the Senate, if a committee has not responded to a reconciliation directive, it may still be possible to consider reconciliation legislation on the Senate floor that would satisfy the committee's directive. For example, by precedent, it would be in order for a Senator to offer a motion to recommit the bill to that committee with instructions that it report the measure back to the Senate forthwith with an amendment. Unlike amendments to the reconciliation bill, the motion to recommit would not have to be germane if it were made in this situation.

Committee	Amount by which the committee is instructed to increase the deficit
Health, Education, Labor, and Pensions	\$304,956,000,000
Homeland Security and Government Affairs	\$50,687,000,000
Indian Affairs	\$8,604,000,000
Small Business and Entrepreneurship	\$50,000,000,000
Veterans Affairs	\$17,000,000,000
Total	\$1,888,810,500,000

Source: S.Con.Res. 5, Section 2002.

Note: Committees are instructed to increase the deficit by such amounts over the period of FY2021-FY2030.

Reserve Funds

Congress frequently includes "reserve funds" in the annual budget resolution. These provisions are not technically a reserve or a fund but instead give the chairs of the House or Senate Budget Committees the authority to adjust the budgetary levels included in the budget resolution in the future if the chamber is considering a specified legislative policy. Generally, the procedural effect of a reserve fund is to allow certain legislative policies to be considered on the floor without triggering a point of order for violating levels in the budget resolution. Often, reserve funds will require that the net budgetary impact of the specified future legislation not increase the deficit and are referred to as "deficit neutral" reserve funds.

While reserve funds may have a budget procedure effect, they do not provide funding for any specific policy. Additionally, they do not require Congress to include such a policy in future legislation, nor do they prohibit Congress from taking future action on a policy. They have sometimes been characterized as a way for Senators to receive a non-binding vote on a certain policy in the same manner as a "sense of the Senate" provision.¹⁸

Title III of S.Con.Res. 5 includes multiple reserve funds for the House and Senate. While most of the reserve funds are deficit-neutral reserve funds, the resolution also included a reserve fund for each of the House and Senate Budget Committees that is not deficit neutral. This reserve fund allows the relevant Budget Committee chair to adjust budgetary levels in the resolution to accommodate a reconciliation bill developed pursuant to the reconciliation instructions included in the budget resolution. In addition, the provision exempts such a reconciliation bill from other budgetary chamber rules.¹⁹

¹⁸ Paul M. Krawzak, "Biden Coronavirus Relief Plan Clears Senate Budget Hurdle After 'Vote-a-Rama'," *Roll Call*, February 5, 2021. Senators have sometimes expressed concern regarding reserve funds and whether their presence would result in a situation in which legislative questions, which would otherwise have required a three-fifths threshold in the Senate, could be agreed to with only a simple majority. Such a reserve fund provision, however, would have an impact only on whether a budgetary point of order could be made. It would not affect the Senate's other rules and procedural requirements, such as the cloture process, and the possibility that the measure would need three-fifths of the Senate to agree to end debate on a legislative question, such as final passage. A colloquy on this subject occurred on the Senate floor. Senators Portman and Murray, "Budget Act Section 114(c)," *Congressional Record*, daily edition, vol. 160, part 2 (January 7, 2014), p. S67. For more information on the cloture process, see CRS Report 98-425, *Invoking Cloture in the Senate*, by Christopher M. Davis.

¹⁹ In the House, Section 3001(a)(3) provides that any reconciliation bill would be exempt from the House PAYGO rule (House Rule XXI, clause 10). For more information on the House PAYGO rule, see CRS Report R41510, *Budget Enforcement Procedures: House Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr. In the Senate, Section 2001(b)

Deficit-neutral reserve funds were also included in S.Con.Res. 5. In the House, one deficit-neutral reserve fund is included for unspecified deficit-neutral legislation. In the Senate, such deficit-neutral reserve funds are included for:

- Establishing a fund to provide grants to food service and drinking establishments affected by the Coronavirus Disease 2019 (COVID-19) pandemic;
- Preventing tax increases on small business during a pandemic;
- The authority of states and other taxing jurisdictions to tax certain income of employees working in other states and jurisdictions;
- Targeting economic impact payments to Americans who are suffering from the effects of COVID-19;
- COVID-19 vaccination administration and a public awareness campaign;
- Supporting elementary and secondary schools in states with lost revenue due to the federal moratorium on oil and natural gas leasing on public lands and offshore waters;
- Strengthening the provider relief fund;
- Improving services and interventions relating to sexual assault, family violence, domestic violence, dating violence, and child abuse;
- Supporting hospitality, conventions, trade shows, entertainment, tourism and travel, and their workers;
- Maintaining the U.S. embassy in Jerusalem, Israel;
- Increasing the federal minimum wage during the COVID-19 pandemic;
- Funding the police;
- Providing information online regarding the expenditure of COVID-19 relief funds;
- Improving the solvency of federal trust funds;
- Federal environmental and water policies;
- Federal relief funds for state or local governments;
- Federal relief funds for state and local governments prohibiting actions by the executive branch that would make the United States more reliant on countries with weaker environmental or labor standards for oil, gas, or hardrock mineral production; and
- Expanding health savings accounts.

Other Provisions

S.Con.Res. 5 includes various other procedural provisions, many of which are commonly included in a budget resolution. For example, S.Con.Res. 5 includes the following:

• A provision relating to committee spending allocations. The Budget Act requires that the budget resolution allocate total spending among committees, typically

provides an exemption from the Senate PAYGO rule as well as the Senate's short-term deficit point of order and longterm deficit point of order. For more information on those points of order, see CRS Report RL31943, *Budget Enforcement Procedures: The Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr., and CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

referred to as 302(a) allocations. The allocations act as a limit on the total spending within a specific committee's jurisdiction and are required to be included in the joint explanatory statement accompanying the conference report on the budget resolution. This provision states that in the event that S.Con.Res. 5 was agreed to without the House and Senate engaging in a conference committee (and therefore issuing a joint explanatory statement) that the House and Senate Budget Committee chairs submit a statement for publication in the *Congressional Record* establishing committee allocations.²⁰

- A provision requiring that the House and Senate Appropriations Committees receive a separate allocation for discretionary administrative expenses of offbudget entities (the Social Security Administration and the U.S. Postal Service).²¹
- A provision specifying the timing of when any adjustments of budgetary levels made by the House and Senate Budget Committee chairs (pursuant to authority granted in the resolution) should occur and requiring that the adjustments be published in the *Congressional Record* as soon as practicable. The provision also specifies that for the purposes of enforcing the budgetary levels in the resolution, budgetary amounts are determined on the basis of estimates made by the House and Senate Budget Committee chairs.²²
- Provisions granting authority to the House and Senate Budget Committee chairs to make adjustments to the budget resolution to account for (1) any changes in concepts and definitions and (2) changes resulting from the Congressional Budget Office's updates to its baseline for FY2021-FY2030.²³
- A provision extending for the remainder of FY2021 the prohibition in the House against legislation making advance appropriations except for certain accounts.²⁴
- A provision reducing the number of Senators required to waive rules related to the Senate consideration of legislation that would increase the direct costs of federal intergovernmental mandates.²⁵
- A provision noting that the budget resolution is being adopted as an exercise of Congress's constitutional rulemaking authority and should therefore be considered as if they were a part of the rules of the House and Senate.²⁶

²⁶ S.Con.Res. 5, §4008.

²⁰ S.Con.Res. 5, §4001. Requirements associated with 302(a) allocations can be found in Section 301(e)(2) of the Budget Act.

²¹ S.Con.Res. 5, §4002.

²² S.Con.Res. 5, §4003.

²³ S.Con.Res. 5, §§4004 and 4005, respectively.

²⁴ S.Con.Res. 5, §4006.

²⁵ S.Con.Res. 5, §4007. Such points of order under Sections 425(a)(1) and 425(a)(2) of the Budget Act had previously been subject to the three-fifths threshold in the 109th Congress under Section 403(b) of H.Con.Res. 95 (109th Congress). Section 205 of S.Con.Res. 21 (110th Congress), however, provided that Section 403 no longer applies in the Senate. The three-fifths threshold was again established under Section 3203 of S.Con.Res. 11 (114th Congress) before being repealed by S.Con.Res. 5.

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