

110TH CONGRESS
1ST SESSION

H. R. 1733

To prohibit the inclusion of earmarks in conference reports that were not
in the House- or Senate-passed bills.

IN THE HOUSE OF REPRESENTATIVES

MARCH 28, 2007

Mr. BILBRAY introduced the following bill; which was referred to the
Committee on Rules

A BILL

To prohibit the inclusion of earmarks in conference reports
that were not in the House- or Senate-passed bills.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Appropriations Trans-
5 parency Act of 2007”.

6 **SEC. 2. OUT OF SCOPE EARMARKS OR TAX EARMARKS IN**
7 **CONFERENCE REPORTS.**

8 (a) IN GENERAL.—In the House of Representatives
9 or the Senate, a point of order may be made by any Mem-
10 ber against consideration of a conference report that in-

1 cludes any earmark or tax earmark not committed to con-
2 ference by either House. The point of order shall be made
3 and voted on separately for each item in violation of this
4 section.

5 (b) DISPOSITION.—If the point of order against a
6 conference report under subsection (a) is sustained,
7 then—

8 (1) the earmark or tax earmark in such con-
9 ference report shall be deemed to have been struck;

10 (2) when all other points of order under this
11 section have been disposed of—

12 (A) the House or Senate, as applicable,
13 shall proceed to consider the question of wheth-
14 er the House or Senate should recede from its
15 amendment to the Senate bill or House bill, or
16 its disagreement to the amendment of the Sen-
17 ate or the House, and concur with a further
18 amendment, which further amendment shall
19 consist of only that portion of the conference
20 report not deemed to have been struck;

21 (B) the question shall be debatable; and

22 (C) no further amendment shall be in
23 order; and

24 (3) if the House or the Senate, as applicable,
25 agrees to the amendment, then the bill and the

1 House amendment thereto, or the bill and the Sen-
2 ate amendment thereto, shall be returned to the
3 Senate or the House for its concurrence in the
4 amendment of the House or the Senate.

5 (c) WAIVER AND APPEAL.—This section may be
6 waived or suspended in the House of Representatives or
7 the Senate only by an affirmative vote of a majority of
8 the Members, duly chosen and sworn. In the Senate, an
9 affirmative vote of a majority of its Members, duly chosen
10 and sworn, shall be required to sustain an appeal of the
11 ruling of the Chair on a point of order raised under this
12 section.

13 **SEC. 3. DEFINITIONS.**

14 (a) DEFINITIONS.—As used in this Act:

15 (1) The term “earmark” means a provision in
16 a bill or conference report—

17 (A) with respect to an appropriation bill or
18 conference report thereon providing or recom-
19 mending an amount of budget authority for a
20 contract, loan, loan guarantee, grant, or other
21 expenditure with or to a non-Federal entity,
22 if—

23 (i) such entity is specifically identified
24 in the bill; or

1 (ii) if the discretionary budget author-
2 ity is allocated outside of the statutory or
3 administrative formula-driven or competi-
4 tive bidding process and is targeted or di-
5 rected to an identifiable entity, specific
6 State, or Congressional district; or

7 (B) with respect to a measure other than
8 that specified in subparagraph (A) or con-
9 ference report thereon providing authority, in-
10 cluding budget authority, or recommending the
11 exercise of authority, including budget author-
12 ity, for a contract, loan, loan guarantee, grant,
13 loan authority, or other expenditure with or to
14 a non-Federal entity, if—

15 (i) such entity is specifically identified
16 in the bill;

17 (ii) if the authorization for, or provi-
18 sion of, budget authority, contract author-
19 ity loan authority or other expenditure is
20 allocated outside of the statutory or admin-
21 istrative formula-driven or competitive bid-
22 ding process and is targeted or directed to
23 an identifiable entity, specific State, or
24 Congressional district; or

1 (iii) if such authorization for, or pro-
2 vision of, budget authority, contract au-
3 thority, loan authority or other expenditure
4 preempts statutory or administrative State
5 allocation authority.

6 (2)(A) The term “tax earmark” means any rev-
7 enue-losing provision that provides a Federal tax de-
8 duction, credit, exclusion, or preference to only one
9 beneficiary (determined with respect to either
10 present law or any provision of which the provision
11 is a part) under the Internal Revenue Code of 1986
12 in any year for which the provision is in effect;

13 (B) for purposes of subparagraph (A)—

14 (i) all businesses and associations that are
15 members of the same controlled group of cor-
16 porations (as defined in section 1563(a) of the
17 Internal Revenue Code of 1986) shall be treat-
18 ed as a single beneficiary;

19 (ii) all shareholders, partners, members, or
20 beneficiaries of a corporation, partnership, asso-
21 ciation, or trust or estate, respectively, shall be
22 treated as a single beneficiary;

23 (iii) all employees of an employer shall be
24 treated as a single beneficiary;

1 (iv) all qualified plans of an employer shall
2 be treated as a single beneficiary;

3 (v) all beneficiaries of a qualified plan shall
4 be treated as a single beneficiary;

5 (vi) all contributors to a charitable organi-
6 zation shall be treated as a single beneficiary;

7 (vii) all holders of the same bond issue
8 shall be treated as a single beneficiary; and

9 (viii) if a corporation, partnership, associa-
10 tion, trust or estate is the beneficiary of a pro-
11 vision, the shareholders of the corporation, the
12 partners of the partnership, the members of the
13 association, or the beneficiaries of the trust or
14 estate shall not also be treated as beneficiaries
15 of such provision.

16 (3) The term “revenue-losing provision” means
17 any provision that is estimated to result in a reduc-
18 tion in Federal tax revenues (determined with re-
19 spect to either present law or any provision of which
20 the provision is a part) for any one of the two fol-
21 lowing periods—

22 (A) the first fiscal year for which the pro-
23 vision is effective; or

1 (B) the period of the 5 fiscal years begin-
2 ning with the first fiscal year for which the pro-
3 vision is effective; and

4 (4) The terms used in paragraphs (2) and (3)
5 shall have the same meaning as those terms have
6 generally in the Internal Revenue Code of 1986, un-
7 less otherwise expressly provided.

8 (b) CLARIFICATION.—For purposes of this Act—

9 (1) government-sponsored enterprises, Federal
10 facilities, and Federal lands shall be considered Fed-
11 eral entities;

12 (2) to the extent that the non-Federal entity is
13 a State, unit of local government, territory, an In-
14 dian tribe, a foreign government or an intergovern-
15 mental international organization, the provision shall
16 not be considered an earmark unless the provision
17 also specifies the specific purpose for which the des-
18 ignated budget authority is to be expended;

19 (3) the term “budget authority” shall have the
20 same meaning as such term is defined in section 3
21 of the Congressional Budget Act of 1974 (2 U.S.C.
22 622); and

23 (4) an obligation limitation shall be treated as
24 budget authority.

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