

113TH CONGRESS
1ST SESSION

S. 1404

To prohibit the consideration of any bill by Congress unless the authority provided by the Constitution of the United States for the legislation can be determined and is clearly specified.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2013

Mr. COBURN (for himself, Mr. PAUL, Ms. AYOTTE, Mr. BARRASSO, Mr. BLUNT, Mr. BOOZMAN, Mr. BURR, Mr. CHAMBLISS, Mr. COATS, Mr. CORKER, Mr. CORNYN, Mr. CRAPO, Mr. CRUZ, Mr. ENZI, Mrs. FISCHER, Mr. FLAKE, Mr. GRAHAM, Mr. GRASSLEY, Mr. HATCH, Mr. HELLER, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON of Wisconsin, Mr. LEE, Mr. MCCAIN, Mr. MCCONNELL, Mr. MORAN, Mr. RISCH, Mr. ROBERTS, Mr. RUBIO, Mr. SCOTT, Mr. SESSIONS, Mr. THUNE, Mr. TOOMEY, Mr. VITTER, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL

To prohibit the consideration of any bill by Congress unless the authority provided by the Constitution of the United States for the legislation can be determined and is clearly specified.

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 “Enumerated Powers
5 Act”.

1 **SEC. 2. CONSTITUTIONAL AUTHORITY CLAUSE.**

2 (a) IN GENERAL.—Chapter 2 of title 1, United
3 States Code, is amended by inserting after section 102 the
4 following:

5 **“§ 102a. Constitutional authority clause**

6 “(a) IN GENERAL.—Each Act of Congress, bill, and
7 resolution, or conference report thereon or amendment
8 thereto, shall contain a concise explanation of the specific
9 authority in the Constitution of the United States relied
10 upon as the basis for enacting each portion of the meas-
11 ure.

12 “(b) FEDERAL ACTIVITIES.—To the extent that any
13 Act of Congress, bill or resolution, or conference report
14 thereon or amendment thereto, limits or abolishes any
15 Federal activity, spending, or power overall, a statement
16 of constitutionality may cite the 9th Amendment or the
17 10th Amendment to the Constitution of the United States.

18 “(c) ENUMERATED SPENDING AND NECESSARY AND
19 PROPER CLAUSES.—Invoking a clause included in the
20 enumerated spending clause under clause 1 of section 8
21 of article I of the Constitution of the United States, such
22 as the common defense clause and the general welfare
23 clause, or the necessary and proper clause under clause
24 18 of section 8 of article I of the Constitution of the
25 United States in a statement of constitutionality is not
26 sufficient to satisfy the requirement of subsection (a).

1 “(d) COMMERCE CLAUSE.—Invoking the commerce
 2 clause of section 8 of article I of the Constitution of the
 3 United States in a statement of constitutionality for any
 4 purpose other than the regulation of the buying and sell-
 5 ing of goods or services, or the transporting for those pur-
 6 poses, across boundaries with foreign nations, across State
 7 lines, or with the Indian tribes is not sufficient to satisfy
 8 the requirement of subsection (a).

9 “(e) FAILURE TO COMPLY.—

10 “(1) IN GENERAL.—A failure to comply with
 11 subsection (a) shall give rise to a point of order in
 12 either House of Congress, which may be raised by
 13 any Senator during consideration in the Senate or
 14 any Member of the House of Representatives during
 15 consideration in the House of Representatives.

16 “(2) NONEXCLUSIVITY.—The availability of a
 17 point of order under this section shall not affect the
 18 availability of any other point of order.

19 “(f) DISPOSITION OF POINT OF ORDER IN THE SEN-
 20 ATE.—

21 “(1) IN GENERAL.—Any Senator may raise a
 22 point of order that any matter is not in order under
 23 subsection (a).

24 “(2) WAIVER.—

1 “(A) IN GENERAL.—Any Senator may
 2 move to waive a point of order raised under
 3 paragraph (1) by an affirmative vote of two-
 4 thirds of the Senators duly chosen and sworn.

5 “(B) PROCEDURES.—For a motion to
 6 waive a point of order under subparagraph (A)
 7 as to a matter—

8 “(i) a motion to table the point of
 9 order shall not be in order;

10 “(ii) all motions to waive one or more
 11 points of order under this section as to the
 12 matter shall be debatable for a total of not
 13 more than 3 hours, equally divided between
 14 the Senator raising the point of order and
 15 the Senator moving to waive the point of
 16 order or their designees; and

17 “(iii) a motion to waive the point of
 18 order shall not be amendable.

19 “(g) DISPOSITION OF POINT OF ORDER IN THE
 20 HOUSE OF REPRESENTATIVES.—

21 “(1) IN GENERAL.—If a Member of the House
 22 of Representatives makes a point of order under this
 23 section, the Chair shall put the question of consider-
 24 ation with respect to the proposition of whether any
 25 statement of constitutionality made under subsection

1 (a) was adequate or, in the absence of such a state-
 2 ment, whether a statement is required under sub-
 3 section (a).

4 “(2) CONSIDERATION.—For a point of order
 5 under this section made in the House of Representa-
 6 tives—

7 “(A) the question of consideration shall be
 8 debatable for 10 minutes, equally divided and
 9 controlled by the Member making the point of
 10 order and by an opponent, but shall otherwise
 11 be decided without intervening motion except
 12 one that the House of Representatives adjourn
 13 or that the Committee of the Whole rise, as the
 14 case may be;

15 “(B) in selecting the opponent, the Speak-
 16 er of the House of Representatives should first
 17 recognize an opponent from the opposing party;
 18 and

19 “(C) the disposition of the question of con-
 20 sideration with respect to a measure shall be
 21 considered also to determine the question of
 22 consideration under this section with respect to
 23 an amendment made in order as original text.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 25 The table of sections for chapter 2 of title 1, United States

1 Code, is amended by inserting after the item relating to
2 section 102 the following:

“102a. Constitutional authority clause.”.

3 **SEC. 3. EXPLANATION OF CONSTITUTIONAL AUTHORITY.**

4 This Act is enacted pursuant to the power granted
5 to each House of Congress to determine the rules of its
6 proceedings under article I, section 5, clause 2 of the Con-
7 stitution of the United States.

○