

115TH CONGRESS  
2D SESSION

# S. 2330

To prohibit earmarks.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 23, 2018

Mr. FLAKE (for himself, Mrs. MCCASKILL, Mr. TOOMEY, Mr. MCCAIN, Mr. LEE, Mr. PORTMAN, Mr. JOHNSON, Mr. RUBIO, Mrs. ERNST, Mrs. FISCHER, Mr. SASSE, Mr. CRUZ, and Mr. PAUL) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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## A BILL

To prohibit earmarks.

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 “Earmark Elimination  
5       Act of 2018”.

6       **SEC. 2. PROHIBITION ON EARMARKS.**

7       (a) BILLS AND JOINT RESOLUTIONS, AMENDMENTS,  
8       AMENDMENTS BETWEEN THE HOUSES, AND CON-  
9       FERENCE REPORTS.—

1           (1) IN GENERAL.—It shall not be in order in  
 2           the Senate to consider a bill, joint resolution, mo-  
 3           tion, amendment, amendment between the Houses,  
 4           or conference report that includes an earmark.

5           (2) PROCEDURE.—

6           (A) IN GENERAL.—Upon a point of order  
 7           being made by any Senator under paragraph  
 8           (1) against an earmark, and such point of order  
 9           being sustained, such earmark shall be stricken.

10          (B) FORM OF THE POINT OF ORDER.—A  
 11          point of order under paragraph (1) may be  
 12          raised by a Senator as provided in section  
 13          313(e) of the Congressional Budget Act of  
 14          1974 (2 U.S.C. 644(e)).

15          (b) CONFERENCE REPORT AND AMENDMENT BE-  
 16          TWEEN THE HOUSES PROCEDURE.—When the Senate is  
 17          considering a conference report, or an amendment between  
 18          the Houses—

19               (1) upon a point of order being made by any  
 20          Senator under subsection (a) with respect to one or  
 21          more earmarks, and such point of order being sus-  
 22          tained, such earmarks shall be stricken; and

23               (2) after all points of order under subsection  
 24          (a) have been disposed of—

1 (A) the Senate shall proceed to consider  
2 the question of whether the Senate shall recede  
3 from its amendment and concur with a further  
4 amendment, or concur in the House amendment  
5 with a further amendment, as the case may be,  
6 which further amendment shall consist of only  
7 that portion of the conference report or House  
8 amendment, as the case may be, not so strick-  
9 en;

10 (B) any such motion in the Senate shall be  
11 debatable under the same conditions as was the  
12 conference report or amendment between the  
13 Houses; and

14 (C) in any case in which such point of  
15 order is sustained against a conference report  
16 (or Senate amendment derived from such con-  
17 ference report by operation of this subsection),  
18 no further amendment shall be in order.

19 (c) WAIVER; APPEAL.—A point of order under sub-  
20 section (a) may be waived only by an affirmative vote of  
21 two-thirds of the Members of the Senate, duly chosen and  
22 sworn. An affirmative vote of two-thirds of the Members  
23 of the Senate, duly chosen and sworn, shall be required  
24 to sustain an appeal of the ruling of the Chair on a point  
25 of order raised under subsection (a).

1 (d) DEFINITIONS.—

2 (1) EARMARK.—For the purpose of this section,  
3 the term “earmark” means a provision or report  
4 language included primarily at the request of a Sen-  
5 ator or Member of the House of Representatives as  
6 certified under paragraph 1(a)(1) of rule XLIV of  
7 the Standing Rules of the Senate—

8 (A) providing, authorizing, or recom-  
9 mending a specific amount of discretionary  
10 budget authority, credit authority, or other  
11 spending authority for a contract, loan, loan  
12 guarantee, grant, loan authority, or other ex-  
13 penditure with or to an entity, or targeted to a  
14 specific State, locality or Congressional district,  
15 other than through a statutory or administra-  
16 tive formula-driven or competitive award proc-  
17 ess;

18 (B) that—

19 (i) provides a Federal tax deduction,  
20 credit, exclusion, or preference to a par-  
21 ticular beneficiary or limited group of  
22 beneficiaries under the Internal Revenue  
23 Code of 1986; and

1                   (ii) contains eligibility criteria that are  
2                   not uniform in application with respect to  
3                   potential beneficiaries of such provision; or  
4                   (C) modifying the Harmonized Tariff  
5                   Schedule of the United States in a manner that  
6                   benefits ten or fewer entities.

7                   (2) DETERMINATION BY THE SENATE.—In the  
8                   event the Chair is unable to ascertain whether a pro-  
9                   vision with respect to which a Senator raises a point  
10                  of order under subsection (a) constitutes an ear-  
11                  mark, the question of whether the provision con-  
12                  stitutes an earmark shall be submitted to the Senate  
13                  and be decided without debate by an affirmative vote  
14                  of two-thirds of the Senators, duly chosen and  
15                  sworn.

16                  (e) APPLICATION.—This section shall not apply to  
17                  any authorization of appropriations to a Federal entity if  
18                  such authorization is not specifically targeted to a State,  
19                  locality, or congressional district.

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