

113TH CONGRESS  
1ST SESSION

# S. 126

To prohibit earmarks.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 24 (legislative day, JANUARY 3), 2013

Mr. TOOMEY (for himself, Mrs. MCCASKILL, Mr. RUBIO, Ms. AYOTTE, Mr. PORTMAN, Mr. JOHANNIS, Mr. FLAKE, Mr. JOHNSON of Wisconsin, Mr. SCOTT, and Mr. UDALL of Colorado) 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 2013”.

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 or resolution introduced  
3           in the Senate or the House of Representatives,  
4           amendment, amendment between the Houses, or  
5           conference report that includes an earmark.

6           (2) PROCEDURE.—Upon a point of order being  
7           made by any Senator pursuant to paragraph (1)  
8           against an earmark, and such point of order being  
9           sustained, such earmark shall be deemed stricken.

10          (b) CONFERENCE REPORT AND AMENDMENT BE-  
11          TWEEN THE HOUSES PROCEDURE.—When the Senate is  
12          considering a conference report on, or an amendment be-  
13          tween the Houses, upon a point of order being made by  
14          any Senator pursuant to subsection (a), and such point  
15          of order being sustained, such material contained in such  
16          conference report shall be deemed stricken, and the Senate  
17          shall proceed to consider the question of whether the Sen-  
18          ate shall recede from its amendment and concur with a  
19          further amendment, or concur in the House amendment  
20          with a further amendment, as the case may be, which fur-  
21          ther amendment shall consist of only that portion of the  
22          conference report or House amendment, as the case may  
23          be, not so stricken. Any such motion in the Senate shall  
24          be debatable under the same conditions as was the con-  
25          ference report. In any case in which such point of order

1 is sustained against a conference report (or Senate amend-  
 2 ment derived from such conference report by operation of  
 3 this subsection), no further amendment shall be in order.

4 (c) WAIVER.—Any Senator may move to waive any  
 5 or all points of order under this section by an affirmative  
 6 vote of two-thirds of the Members, duly chosen and sworn.

7 (d) DEFINITIONS.—

8 (1) EARMARK.—For the purpose of this section,  
 9 the term “earmark” means a provision or report  
 10 language included primarily at the request of a Sen-  
 11 ator or Member of the House of Representatives as  
 12 certified under paragraph 1(a)(1) of rule XLIV of  
 13 the Standing Rules of the Senate—

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

24 (B) that—

1 (i) provides a Federal tax deduction,  
2 credit, exclusion, or preference to a par-  
3 ticular beneficiary or limited group of  
4 beneficiaries under the Internal Revenue  
5 Code of 1986; and

6 (ii) contains eligibility criteria that are  
7 not uniform in application with respect to  
8 potential beneficiaries of such provision; or

9 (C) modifying the Harmonized Tariff  
10 Schedule of the United States in a manner that  
11 benefits 10 or fewer entities.

12 (2) DETERMINATION BY THE SENATE.—In the  
13 event the Chair is unable to ascertain whether or not  
14 the offending provision constitutes an earmark as  
15 defined in this subsection, the question of whether  
16 the provision constitutes an earmark shall be sub-  
17 mitted to the Senate and be decided without debate  
18 by an affirmative vote of two-thirds of the Members,  
19 duly chosen and sworn.

20 (e) APPLICATION.—This section shall not apply to  
21 any authorization of appropriations to a Federal entity if  
22 such authorization is not specifically targeted to a State,  
23 locality or congressional district.

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