

## SUBMITTED RESOLUTIONS

SENATE RESOLUTION 63—TO AMEND THE STANDING RULES OF THE SENATE TO ENSURE THAT ALL CONGRESSIONALLY DIRECTED SPENDING ITEMS IN APPROPRIATIONS AND AUTHORIZATION LEGISLATION FALL UNDER THE OVERSIGHT AND TRANSPARENCY PROVISIONS OF S. 1, THE HONEST LEADERSHIP AND OPEN GOVERNMENT ACT OF 2007

Mrs. MCCASKILL (for herself and Mr. UDALL of Colorado) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 63

*Resolved,*

**SECTION 1. AMENDMENT TO THE STANDING RULES OF THE SENATE.**

(a) FURTHER TRANSPARENCY.—Rule XLIV of the Standing Rules of the Senate is amended by adding at the end thereof the following:

“13.(a) All congressionally directed spending items shall be included in the text of an appropriations or authorization bill and any conference report related to that appropriations or authorization bill.

“(b) Not later than 48 hours after the request, each request for a congressionally directed spending item for an appropriations or authorization bill made by a Senator shall be posted on the Senator’s web site. The posting of the request for a congressionally directed spending item shall include the name and location of the specifically intended recipient, the purpose of the congressionally directed spending item, and the dollar amount requested. If there is no specifically intended recipient, the posting shall include the intended location of the activity, the purpose of the congressionally directed spending item, and the dollar amount requested.

“(c) It shall not be in order to consider an appropriations or authorization bill, amendment, or conference report if it contains a congressionally directed spending item for a private for-profit or non profit entity.”

(b) CLARIFYING APPLICATION TO CONFERENCE REPORTS.—Paragraph 8 of rule XLIV of the Standing Rules of the Senate is amended by—

(1) striking subparagraph (a) and inserting the following:

“(a) A Senator may raise a point of order against one or more provisions of a conference report if they constitute a congressionally directed spending item that was not included in the measure originally committed to the conferees by either House. The Presiding Officer may sustain the point of order as to some or all of the congressionally directed spending items against which the Senator raised the point of order.”; and

(2) striking subparagraph (e).

(c) REQUIRING FULL SEARCHABILITY.—Paragraph 3(a)(2) of rule XLIV of the Standing Rules of the Senate is amended by inserting “in an searchable format” after “available”.

(d) SUPERMAJORITY REQUIREMENT.—Paragraph 10 of rule XLIV of the Standing Rules of the Senate is amended by striking “or 3” and inserting “3, or 13”.

(e) AVAILABILITY BY THE COMMITTEE OF JURISDICTION.—Paragraph 6(b) of rule XLIV of the Standing Rules of the Senate is amended to read as follows:

“(b) With respect to each congressionally directed spending item requested by a Sen-

ator, each committee of jurisdiction shall make available for public inspection on the Internet the written statements and certifications under subparagraph (a) not later than 48 hours after receipt of such statements and certifications.”

Mrs. MCCASKILL. Mr. President, I disagree with earmarks. I disagree with the process. Although we have made great strides in reforming earmarks, I do think there are further steps we need to take.

Today, I have introduced a resolution, a Senate resolution, with the senior Senator from Colorado, Mr. UDALL, to bring even more transparency to this process. Basically, this resolution requires all requests to be posted on committee Web sites and the Member’s Web site within 48 hours of request. It requires all information in the request letter be listed online, including location, purpose, and cost. This is not presently required. It requires electronically searchable text of all bills and conference reports, and it strengthens the ability to remove earmarks by a point of order.

There are some loopholes that we, I think inadvertently, created when we did S. 1 early in my first year as a Senator.

This resolution will require earmarks to be in the bill text. I discovered that there were some airdropped earmarks in a bill. Because they were in a managers’ statement, the point of order was not possible. So this requires all the earmarks to be in the bill text, which will subject them to the rules. It applies the airdrop point of order to the authorization bills in addition to the appropriations bills, and it further limits earmarks to public projects only.

In this time, I do not believe we can afford to be earmarking in the private sector or anywhere other than the public sector as we struggle with our deficits and our spending.

But I really rose today not to speak so much about the resolution I have introduced today but more to speak a little bit about how confused I have been over the last few weeks by many of my friends on the other side of the aisle. While we have a lot of work to do in regard to earmarks, I congratulate my party because we have created transparency. We now know who is earmarking, and because of that we now know that earmarking has nothing to do with party. Yes, there are thousands of earmarks in this bill by Democrats, but there are thousand of earmarks in this bill by Republicans.

Earmarking is not about party. Earmarking is about power. This is about whether you have the power to get an earmark, and power depends on various things when it comes to earmarking. It depends on what committee you are on. It depends on whether you are an appropriator. It depends on your seniority. It depends on whether you have a tough election fight. It depends, to some extent, on whether you are in the minority party or in the majority

party because the split is 60–40 right now. Sixty percent of the earmarks—it is kind of an unwritten rule—go to the majority party and 40 percent go to the minority party. It was the other way around when the Democrats were not in power. That doesn’t seem to me to be a very logical way to spend public money. It should be about the merit of the project. It should be about cost-benefit.

There are many people making the argument that we should not let bureaucrats decide. Congress has had the power of the purse for over 200 years. Congress has been directing spending in this country for over 200 years.

Earmarks are a new creation. The first earmarking started in the 1970s, that ability to make a solitary, lonely decision as to where money is going to be directed. In fact, in 1991, there were only 541 earmarks, and at the height of earmarking, under President Bush and under a Republican-controlled Congress, there was \$27 billion in earmarks. In fact, the number of earmarks has been cut in half under the leadership of my party.

This notion that bureaucrats are doing the decisionmaking is wrong—we have the power to tell the bureaucrats how to spend the money. We can tell them it is formula grants. We can tell them it is competitive grants. In fact, that is what we do for 99 percent of the budget. We tell the executive branch how to spend the money. It is now only for 1 percent that we decided we cannot tell the bureaucrats how to spend the money, so this notion that somehow we need to do earmarks because the bureaucrats are going to run amok—I don’t get it.

In fact, most earmarks skim money off other programs. You can look at the history of the Byrne grants. They have gone down over the last 8 or 9 years. Now we are increasing them—which is great. Byrne grants are competitive at the local level. But what happened while the Byrne grants were going down? In the same time, earmarks were going up. There is a connection.

When money is skimmed off the formula for highways, that is just more local projects that the local people want to build that are not built because a Senator or Congressman knows better.

Now, here is the weird part about this. This is what I want to focus on today: my friends on the other side of the aisle. I listened while podiums were pounded about wasteful spending during the debate on the stimulus bill, during the debate on the economic recovery bill. I watched as my friends across the aisle took to the airwaves and gave many different speeches about wasteful spending in the stimulus bill.

Let me quote some of the things they said:

Pet programs. Honey pot for whatever you need. A porkulus bill. Wasteful spending. Pet projects. Earmarks. Earmarks. Earmarks. An orgy of spending.

That was what they said about the stimulus bill, when, in reality, there were no earmarks in the stimulus bill. Everything that was spent in the stimulus bill was either competitive grants or formula funding.

Now, here is the weird part. They went on and on and on during the stimulus bill about earmarking. No fewer than 17 different Senators stood, and with absolute righteous indignation, talked about the pet projects in the stimulus bill. Guess what? Every single one of them has earmarks in this bill. One member of Republican leadership said:

That is the problem with earmarks. All Senators are equal, except some Senators are more equal than others when it comes to slipping things in bills.

Every single member of the Republican leadership has earmarks in this bill. Every single one of them. Every single one of those people rejected the stimulus that was one of the largest tax cuts in American history, but had no earmarks, because supposedly they were so upset about wasteful spending.

Those very same Senators have earmarks in this bill, such as the Interstate Shellfish Sanitation Conference. The Interstate Shellfish Sanitation Conference, beaver management, parking lots, all brought to you by the very same people who called out wasteful spending in the President's economic recovery bill.

If you do not take my word for it, check out the Taxpayers For Common Sense Web site. According to their statistics, 6 of the top 10 earmarkers in this bill are my friends on the other side of the aisle. In fact, the Republican leader has twice as many solo earmark dollars in this bill than the Democratic leader.

America, do not be fooled. Earmarking is an equal opportunity activity. It is a bad habit. The minority party is taking full advantage of it. Do not take anyone seriously who says one thing and does another. That is the worst sin of all. Any parent knows one basic rule: The example you set is way more important than anything you say.

Mr. UDALL of Colorado. Mr. President, I rise in support of the McCaskill-Udall resolution on earmark reform, and I am proud to be an original cosponsor of this legislation so ably authored by my colleague, Senator McCASKILL. I have appreciated the opportunity to work with her in developing this bill, which is designed to strengthen transparency and accountability in the way Congress authorizes and appropriates Federal dollars.

If there was ever a time in our history when we needed to reassure the American people that Congress understands the need for reform and integrity in the process of authorizing and appropriating Federal funds, it is now. It is today. As our economy continues a deep slide into recession, we have found it necessary to stimulate recovery with historic levels of public spending.

Now, the American people expect us to act with speed but not haste. They also expect Federal spending will reflect critical national priorities and broader public purpose. Most of all, they expect Congress to pass funding bills in ways that ensure wise use of taxpayer dollars.

Those are the purposes of this legislation. It is not just about preventing the abuse of so-called congressional earmarks, it is, rather, about reassuring the American people that their dollars and the debt future generations will incur as a result of our spending will be debated in the sunshine of public scrutiny.

In short, this bill is about restoring integrity to a legislative process that has, for a number of reasons, gone off track. It is about restoring public confidence in the legislative branch. Now, I say this without casting any aspersions on the motive of my colleagues in this institution or my former colleagues in the other body. Most of us have sought earmarks for our States and our districts because of a sincere desire to help our constituents and support worthy projects.

Along the way, however, the public has lost confidence in the integrity of this process. Although there have been too many "bridges to nowhere," the problem is as much about the process that yields these earmarks. They are tucked into spending bills without an opportunity to debate or consider their merits or even their true authors.

This bill brings important reform to the earmark process. First, it requires that all earmarks be included in the text of bills rather than a separate "statement of managers" that is not technically part of the bill text. Previously legislation allows Senators to strip out earmarks from bill text only, not from the statement of managers.

This reform will result in greater transparency because it will make it possible for any earmark to be stripped out of the bill. Second, the bill requires that all earmarks requested by a Senator be posted on a Senator's Web site within 48 hours after the request. It also requires committees to post on their Web sites all information that Senators are required to submit about an earmark request, including the name of the proposed recipient, the location, purpose, and financial certification from Senators certifying they have no financial interest in that project and all within 48 hours of receiving that request.

This reform, in short, offers a check against the information that Senators post on their own Web sites and provides fuller transparency by requiring this information to be compiled in a central location. Citizens know how to use the Web, and it has increasingly become a watchdog tool for Government. Instead of shrinking from it, I believe we should embrace this technology to inform our constituents and, yes, invite their comment and even criticism.

Third, this bill prohibits earmarks from private or nonprofit entities. By

limiting earmark requests to the public sector, we avoid the risk of inadvertently helping a campaign donor or mixing a private gain with a public purpose. An earmark to help our communities ought to be community based and community supported. There ought to be a public benefit that is recognized in a way that is accountable to public decisionmakers.

Fourth, this bill prevents earmarks from mysteriously surfacing in conference negotiations on authorization bills. Previous legislation already prohibits this air dropping of earmarks in conference negotiations on appropriations bills, but this reform would broaden that proposition to include authorization bills, which are often considered to be blueprints for the annual funding bills.

Let me be clear. I admire the hard work of our committee chairs and their staffs, and my experience in both Chambers has led me to the conclusion that great effort is made to ensure integrity and accountability in spending bills. Important, and often very complex bills, can be undermined in the public eye when individual earmarks are not carefully scrutinized. We can all agree that it often takes only one bad apple to spoil even the best barrel, and this provision is designed to keep out the bad apples.

Fifth, the bill requires that all appropriations and authorization conference reports be electronically searchable at least 48 hours before they can be considered by the full Senate. This reform will help the public and Congress identify earmarks that were added during the conference in appropriations bills that can be thousands of pages long.

In conclusion, I believe we can begin the important work of restoring public confidence in the way Congress legislates if we continue on the path we began in 2007, with earmark and ethics reform. This bill closes loopholes in the law we passed in 2007, and strengthens accountability, transparency, and integrity.

Now, there are some who would argue for abolishing all earmarks, including those supporting governmental entities. I have to tell you, I think that may be a case of throwing the baby out with the bathwater. At a time of economic crisis, I believe it is important for Senators to have the tools that can direct Federal funding to job-creating projects in their home States.

For those of us who are not fortunate enough to be appropriators, the opportunity to offer carefully considered earmarks is important. I have not come to the conclusion that all earmarks are bad; in fact, it is the process of their consideration and inclusion that needs reform.

Along with a constitutional line item veto and other reform measures, I believe that, in fact I know, we can construct a path of reform that is both fiscally responsible and in keeping with the highest ethical standards.

SENATE RESOLUTION 64—RECOGNIZING THE NEED FOR THE ENVIRONMENTAL PROTECTION AGENCY TO END DECADES OF DELAY AND UTILIZE EXISTING AUTHORITY UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT TO COMPREHENSIVELY REGULATE COAL COMBUSTION WASTE AND THE NEED FOR THE TENNESSEE VALLEY AUTHORITY TO BE A NATIONAL LEADER IN TECHNOLOGICAL INNOVATION, LOW-COST POWER, AND ENVIRONMENTAL STEWARDSHIP

Mrs. BOXER (for herself and Mr. CARPER) submitted the following resolution; which was referred to the Committee on Environment and Public Works:

S. RES. 64

Whereas the burning of coal creates more than 130,000,000 tons of coal combustion waste a year;

Whereas coal combustion waste is made up of various types of waste, including fly ash, bottom ash, boiler slag, and flue gas emission control waste;

Whereas the National Academy of Sciences found that coal combustion waste “often contain a mixture of metals [including arsenic, lead, selenium, mercury, cadmium, beryllium, chromium, thorium and uranium] and other constituents in sufficient quantities that they may pose public health and environmental concerns if improperly managed.”;

Whereas the 2 most common forms of disposal for coal combustion waste are landfills and surface impoundments, with impoundments generally holding a “wet” waste mixture of water and landfills holding a “dry” waste that does not include intentionally added water, although other forms of disposal also occur in other areas including mines;

Whereas a 1993 report prepared for the United States Department of Energy found that over the preceding 50 years, roughly 500,000,000 tons of coal combustion waste were disposed of at then-existing or operating waste management units, and that about 1,000,000,000 tons of coal combustion wastes had been disposed of at an estimated 759 closed units;

Whereas the United States Environmental Protection Agency reported to Congress in 1999 that there were roughly 600 fossil fuel combustion waste disposal units operating at approximately 450 coal-fired power plants;

Whereas the United States Department of Energy in 2006 found: “The total number of [coal combustion waste] disposal units permitted, built, or laterally expanded between January 1, 1994 and December 31, 2004 (‘new units’) is not known, as no industry organization or government agency tracks this information.”;

Whereas on Monday, December 22, 2008 at 1:00 a.m. a wall constructed of coal combustion waste and dirt failed on a 84-acre surface impoundment holding coal combustion waste and water at the Kingston Fossil Plant in Harriman, Tennessee, 40 miles west of Knoxville;

Whereas the spill from this “wet storage” impoundment at the Kingston plant released 5,400,000 cubic yards of waste, equaling more than 1,000,000,000 gallons or an amount nearly 100 times greater than the amount of oil spilled in the Exxon Valdez disaster, into the Emory River and the surrounding valley and community;

Whereas the spill from the Kingston plant covered half of a square mile of land and water with waste up to 12 feet deep, destroying roads, waterways, wildlife, trees, railroad tracks, and impacting 42 properties, 40 homes, and sections and coves of the Emory River used by businesses, community members, families, and children;

Whereas the Kingston spill occurred around 1:00 a.m. in the morning in December, but if it had occurred at midday during the summer, when businesses, community members, families, and children regularly use the river and coves, the already-extensive property damage could have been far greater and the loss of life could have been catastrophic;

Whereas the United States Department of Energy has information demonstrating wet storage impoundments present risks to public safety, health, and the environment: “[W]et impoundment systems require substantially greater disposal site volumes than dry systems... Also, the presence of free liquid increases the possibility of leachate (i.e., a combination of ash solids and water) creation and its potential for migration into underlying soils and groundwater”;

Whereas in 2006 the United States Department of Energy reported inconsistent coal combustion waste disposal standards, with some States weakening safeguards and others improving protections;

Whereas the United States Environmental Protection Agency in 2000 produced a draft regulatory determination that certain fossil fuel combustion wastes, including coal ash, should be regulated as a hazardous waste under the Resource Conservation and Recovery Act; and

Whereas the United States Environmental Protection Agency has continued to issue information on the adverse effects of coal combustion waste but the agency has so far not required any consistent Federal regulatory protections for coal combustion waste disposal practices despite their clear authority to do so: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes the need for the United States Environmental Protection Agency to—

(A) immediately conduct and complete reviews, including onsite confirmatory examinations, of all coal combustion waste impoundments and landfills to ensure the safety of people and the environment located in any area that may be threatened by a spill or release from an impoundment or landfill;

(B) report to the Senate Committee on Environment and Public Works on the earliest date possible that the Agency can regulate coal combustion waste using their existing authority under the Resource Conservation and Recovery Act;

(C) propose rules as quickly as possible to regulate coal combustion waste under the Resource Conservation and Recovery Act using the substantial information currently available to the Agency; and

(D) issue final rules as quickly as possible on regulating coal combustion waste under the Resource Conservation and Recovery Act; and

(2) recognizes the need for the Tennessee Valley Authority to meet the intentions of Congress and be “a national leader in technological innovation, low-cost power, and environmental stewardship”.

AMENDMENTS SUBMITTED AND PROPOSED

SA 640. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, making omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes; which was ordered to lie on the table.

SA 641. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 642. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 643. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 644. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 645. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 646. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 647. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 648. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 649. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 650. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 651. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 652. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 653. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 654. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 655. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 656. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 657. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 658. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 659. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 660. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 661. Mr. TESTER (for himself and Mr. BARRASSO) submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.

SA 662. Mr. THUNE (for himself, Mr. DEMINT, Mr. INHOFE, and Mr. ENZI) submitted an amendment intended to be proposed by him to the bill H.R. 1105, supra; which was ordered to lie on the table.