

The new ethics bill significantly changes the earmark provisions that were unanimously passed by the Senate in January.

The following provisions are the ones that were most significantly altered for the worse in the new ethics bill.

- 1) Prohibits Senators from trading earmarks for votes
INCLUDED IN SENATE-PASSED BILL: YES
INCLUDED IN NEW BILL: NO

Background: The original language included in the Senate-passed bill (and also included in the House rules) prohibited Members from conditioning the inclusion of earmarks on a Member's vote on any given matter. **No such prohibition is included in the new bill.** Members of the House have already used this rule against Rep. John Murtha (sadly Murtha won the vote) in response to his threat on the House floor to withhold earmarks from another Member.

Original language: "A Member may not condition the inclusion of language to provide funding for a congressional earmark, a limited tax benefit, or a limited tariff benefit in any bill or joint resolution (or an accompanying report) or in any conference report on a bill or joint resolution (including an accompanying joint explanatory statement of managers) on any vote cast by another Member, Delegate, or Resident Commissioner."

- 2) Prohibits Senators from promoting earmarks that would financially benefit themselves, their immediate family, their staff, a their staff's immediately family
INCLUDED IN SENATE-PASSED BILL: YES
INCLUDED IN NEW BILL: NO

Background: The original language included in the Senate-passed bill (and also included in the House rules) prohibited Members and their staff from promoting earmarks from which they would financially benefit. The original language was drafted very broadly to ensure that there would be no hint of corruption in the awarding of earmarks. **The new language is so narrow as to be meaningless. By using the phrase "to further only his pecuniary interest," the language would only appear to apply to an earmark that went straight to a Senator's bank account.**

Original language: "No Member shall use his official position to introduce, request, or otherwise aid the progress or passage of a congressional earmark that will financially benefit or otherwise further the pecuniary interest of such Member, the spouse of such Member, the immediate family member of such Member, any employee on the staff of such Member, the spouse of an

employee on the staff of such Member, or immediate family member of an employee on the staff of such Member.”

New language: “No Member, officer, or employee of the Senate shall knowingly use his official position to introduce, request, or otherwise aid the progress or passage of congressionally directed spending items, limited tax benefits, or limited tariff benefits a principal purpose of which is to further only his pecuniary interest, only the pecuniary interest of his immediate family, or only the pecuniary interest of a limited class of persons or enterprises, when he or his immediate family, or enterprises controlled by them, are members of the affected class.”

- 3) Allows the Senate parliamentarian to determine compliance with the new earmark disclosure rule

INCLUDED IN SENATE-PASSED BILL: YES
INCLUDED IN NEW BILL: NO

Background: The language in the Senate-passed bill gave the parliamentarian the ability to determine compliance with the earmark disclosure rule. In contrast, the language in the new bill allows the chairman of the relevant committee or the Majority Leader or his designee to certify compliance with the rule. The result is that the Senate parliamentarian must now defer to the Majority Leader on compliance with the earmark disclosure rule. Even if no earmarks are listed, if the Majority Leader certifies that the bill is in compliance, then the parliamentarian must abide by that ruling. In that event, reformers would need 60 votes to enforce the rule, even though the original language would have required only 34 votes to enforce the rule.

Original language: The original language required earmarks to be publicly available prior to the consideration of any legislation. Because of the way that language was intentionally drafted, the power of determining compliance with the rule was given to the Senate parliamentarian.

New language: “It shall not be in order to vote on a motion to proceed to consider a bill or joint resolution [etc.] reported by any committee unless the chairman of the committee of jurisdiction or the Majority Leader or his or her designee certifies—[that the required information has been made available.]”

- 4) Prohibits consideration of bills, joint resolutions, and conference reports if earmarks are not disclosed

INCLUDED IN SENATE-PASSED BILL: YES
INCLUDED IN NEW BILL: NO

Background: The language in the Senate-passed bill prohibited consideration of any legislation prior to the disclosure of all earmarks. In contrast, the language in the new bill only prevents a vote on a motion to proceed to legislation with earmarks. The result is that legislation that is proceeded to by consent, without a vote, will not be subject to the earmark disclosure rules in the new bill.

Original language: “It shall not be in order to consider—a bill or joint resolution [or a conference report until the required information has been made available.]”

New language: “It shall not be in order to vote on a motion to proceed to consider a bill or joint resolution unless the chairman of the committee of jurisdiction or the Majority Leader or his or her designee certifies—[that the required information has been made available]” AND “It shall not be in order to vote on a motion to proceed to consider a bill or joint resolution unless the chairman of the committee of jurisdiction or the Majority Leader or his or her designee certifies—[that the required information has been made available.]”

- 5) Requires earmarks attached to a conference report to be publicly available on the Internet in a searchable format 48 hours before consideration
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| INCLUDED IN SENATE-PASSED BILL: | YES |
| INCLUDED IN NEW BILL: | NO |

Background: The original language in the Senate-passed bill required information to be disclosed on the Internet in a searchable format. While the new language in the new bill applies searchability requirement to bills and joint resolutions, it does not require earmarks in a conference report to be disclosed in a searchable format. Specifically, the language in the new bill states that searchability is not required if it is not “technically feasible.” This is notable because Sen. Durbin claimed that he strengthened the original earmark provision, after initially voting to kill it, by requiring information to be disclosed in a searchable format.

Original language: The original language stated that earmark lists must “be made available on the Internet in a searchable format to the general public for at least 48 hours before consideration” of legislation.

New language: “To the extent technically feasible, information made available on publicly accessible congressional websites under paragraphs 3 and 4 [for conference reports] shall be provided in a searchable format.”

- 6) Requires 67 votes to suspend the earmark disclosure rule
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| INCLUDED IN SENATE-PASSED BILL: | YES |
| INCLUDED IN NEW BILL: | NO |

Background: The original language in the Senate-passed bill allowed the earmark disclosure rule to be suspended only by suspending the Standing Rules of the Senate. Riddick’s Senate Procedure notes that “[a]ny rule of the Senate may be suspended at any time after a day’s notice in writing by a two-thirds vote.” The best case scenario for enforcement of the new rule is that 40 votes, instead of 34, will now be needed to force compliance with the earmark disclosure rules. The worst case scenario, due in part to the new ability of the Majority Leader to unilaterally waive the rules, is that 60 votes, instead of the original 34 votes, may now be needed to enforce the rules.

Original language: The original language provided no waiver process. The result is that the rule could only be suspended by a two-thirds vote.

New language: “Any Senator may move to waive any or all points of order under this paragraph with respect to the pending conference report by an affirmative vote of three-fifths of the Members, duly chosen and sworn. All motions to waive under this paragraph shall be debatable collectively for not to exceed 1 hour equally divided between the Majority Leader and the Minority Leader or their designees. A motion to waive all points of order under this paragraph shall not be amendable.”

- 1) Requires a full day's notice prior to attempting to suspend the earmark disclosure rule
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| INCLUDED IN SENATE-PASSED BILL: | YES |
| INCLUDED IN NEW BILL: | NO |

Background: The original language in the Senate-passed bill allowed the earmark disclosure rule to be suspended only by suspending the Standing Rules of the Senate. Riddick’s Senate Procedure notes that “[a]ny rule of the Senate may be suspended at any time after a day’s notice in writing by a two-thirds vote.” The new waiver language does not require any notice to the Senate prior to an attempt to waive the earmark disclosure rules.

Original language: The original language in the Senate-passed bill provided no process by which the earmark disclosure rule could be waived. The result was that it could be waived only according to the terms provided through Rule V of the Standing Rules of the Senate. Rule V states, in part, “No motion to suspend, modify, or amend any rule, or any part thereof, shall be in order, except on one day's notice in writing[.]”

New language: “Any Senator may move to waive any or all points of order under this paragraph with respect to the pending conference report by an affirmative vote of three-fifths of the Members, duly chosen and sworn. All motions to waive under this paragraph shall be debatable collectively for not to exceed 1 hour equally divided between the Majority Leader and the

Minority Leader or their designees. A motion to waive all points of order under this paragraph shall not be amendable.”

- 2) Requires all earmark certifications from Senators to be posted on the Internet within 48 hours after an earmark is placed into legislation or its accompanying report

INCLUDED IN SENATE-PASSED BILL: YES
INCLUDED IN NEW BILL: NO

Background: The original language in the Senate-passed bill required Member certifications to be made publicly available on the Internet no more than 48 hours after the inclusion of an earmark in legislation or an accompanying report. The new language, however, requires that disclosure to be made “as soon as practicable.” The lack of a firm deadline in the new bill increases the likelihood that this information will not be disclosed in time to allow the public to inspect all earmarks prior to consideration of legislation.

Original language: “Each committee shall maintain the written statements transmitted under subparagraph (a). The written statements transmitted under subparagraph (a) for any congressional earmarks, limited tax benefits, or limited tariff benefits included in any measure reported by the committee or conference report filed by the chairman of the committee or any subcommittee thereof shall be published in a searchable format on the committee's or subcommittee's website not later than 48 hours after receipt on such information.”

New language: “With respect to each item included in a Senate bill or joint resolution (or accompanying report) reported by committee or considered by the Senate, or included in a conference report (or joint statement of managers accompanying the conference report) considered by the Senate, each committee of jurisdiction shall make available for public inspection on the Internet the certifications under subparagraph (a)(5) as soon as practicable.”

SECRET NEGOTIATORS EVISCERATE EARMARK REFORM

*New, Secretly Negotiated Bill Guts Key Earmark
Disclosure Provisions*

Provision	Senate- Passed Bill	Brand New Bill
Prohibits Senators from trading earmarks for votes	YES	NO
Prohibits Senators and staff from promoting earmarks from which they or their families would receive a direct financial benefit	YES	NO
Allows the Senate parliamentarian, not the Majority Leader, to determine if a bill complies with earmark disclosure rules	YES	NO
Prohibits consideration of bills, joint resolutions, or conference reports if earmarks are not disclosed	YES	NO
Requires earmarks attached to a conference report to be publicly available on the Internet in a searchable format 48 hours before consideration	YES	NO

Requires 67 votes to suspend the earmark disclosure rule	YES	NO
Requires a full day's notice prior to attempting to suspend the earmark disclosure rule	YES	NO
Requires all earmark certifications from Senators to be posted on the Internet within 48 hours	YES	NO