115TH CONGRESS
2D SESSION

S. _____

To prohibit earmarks.

IN THE SENATE OF THE UNITED STATES

Mr. FLAKE (for himself, Mrs. MCCASKILL, Mr. TOOMEY, Mr. MCCAIN, Mr. LEE, Mr. PORTMAN, and Mr. JOHNSON) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit earmarks.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Earmark Elimination Act of 2018''.

SEC. 2. PROHIBITION ON EARMARKS.

(a) BILLS AND JOINT RESOLUTIONS, AMENDMENTS, AMENDMENTS BETWEEN THE HOUSES, AND CONFERENCE REPORTS.—

(1) IN GENERAL.—It shall not be in order in the Senate to consider a bill, joint resolution, mo-

tion, amendment, amendment between the Houses, or conference report that includes an earmark.

(2) PROCEDURE.—

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

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

(b) CONFERENCE REPORT AND AMENDMENT BETWEEN THE HOUSES PROCEDURE.—When the Senate is considering a conference report, or an amendment between the Houses—

(1) upon a point of order being made by any Senator under subsection (a) with respect to 1 or more earmarks, and such point of order being sustained, such earmarks shall be stricken; and

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

(A) the Senate shall proceed to consider the question of whether the Senate shall recede from its amendment and concur with a further

amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken;

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

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

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

(d) DEFINITIONS.—

(1) EARMARK.—For the purpose of this section, the term ''earmark'' means a provision or report

language included primarily at the request of a Senator or Member of the House of Representatives as certified under paragraph 1(a)(1) of rule XLIV of the Standing Rules of the Senate—

(A) providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process;

(B) that—

(i) provides a Federal tax deduction, credit, exclusion, or preference to a particular beneficiary or limited group of beneficiaries under the Internal Revenue Code of 1986; and

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

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

(2) DETERMINATION BY THE SENATE.—In the event the Chair is unable to ascertain whether a provision with respect to which a Senator raises a point of order under subsection (a) constitutes an earmark, the question of whether the provision constitutes an earmark shall be submitted to the Senate and be decided without debate by an affirmative vote of two-thirds of the Senators, duly chosen and sworn.

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