

**AMENDMENT TO THE RULES COMMITTEE PRINT
OF H.R. 7
OFFERED BY MR. FLAKE OF ARIZONA**

Page 260, insert after line 16 the following:

1 **Subtitle H—Prohibition on**
2 **Earmarks**

3 **PART 1—HOUSE OF REPRESENTATIVES**

4 **SEC. 1801. PROHIBITING CONSIDERATION OF HIGHWAY**
5 **LEGISLATION CONTAINING EARMARKS.**

6 (a) PROHIBITION.—

7 (1) IN GENERAL.—It shall not be in order in
8 the House of Representatives to consider any high-
9 way bill, joint resolution, amendment, or conference
10 report if the highway bill, joint resolution, amend-
11 ment, or conference report, or any accompanying re-
12 port or joint explanatory statement of managers, in-
13 cludes a congressional earmark, limited tax benefit,
14 or limited tariff benefit.

15 (2) PROCEDURE.—If a point of order is raised
16 under paragraph (1) with respect to a congressional
17 earmark, limited tax benefit, or limited tariff benefit
18 and the point of order is sustained, the congressional
19 earmark, limited tax benefit, or limited tariff benefit

1 shall be deemed to be stricken from the measure in-
2 volved.

3 (3) SPECIAL PROCEDURE FOR CONFERENCE
4 REPORT AND AMENDMENTS BETWEEN THE
5 HOUSES.—

6 (A) IN GENERAL.—If a point of order is
7 raised and sustained under paragraph (1) with
8 respect to a highway conference report or a mo-
9 tion that the House recede from its disagree-
10 ment to a Senate amendment and concur there-
11 in, with or without amendment, then after dis-
12 position of all such points of order the highway
13 conference report or motion, as the case may
14 be, shall be considered as rejected and the mat-
15 ter remaining in disagreement shall be disposed
16 of under subparagraph (B) or (C), as the case
17 may be.

18 (B) CONFERENCE REPORTS.—After the
19 House has sustained one or more points of
20 order under paragraph (1) with respect to a
21 highway conference report—

22 (i) if the conference report accom-
23 panied a House measure amended by the
24 Senate, the pending question shall be
25 whether the House shall recede and concur

1 in the Senate amendment with an amend-
2 ment consisting of so much of the con-
3 ference report as was not rejected; and

4 (ii) if the conference report accom-
5 panied a Senate measure amended by the
6 House, the pending question shall be
7 whether the House shall insist further on
8 the House amendment.

9 (C) MOTIONS.—After the House has sus-
10 tained one or more points of order under para-
11 graph (1) with respect to a motion that the
12 House recede and concur in a Senate amend-
13 ment, with or without amendment, the following
14 motions shall be privileged and shall have prece-
15 dence in the order stated:

16 (i) A motion that the House recede
17 and concur in the Senate amendment with
18 an amendment in writing then available on
19 the floor.

20 (ii) A motion that the House insist on
21 its disagreement to the Senate amendment
22 and request a further conference with the
23 Senate.

1 (iii) A motion that the House insist
2 on its disagreement to the Senate amend-
3 ment.

4 (b) DETERMINATION BY HOUSE.—If a point of order
5 is raised under this section and the Chair is unable to as-
6 certain whether a provision constitutes a congressional
7 earmark, limited tax benefit, or limited tariff benefit, the
8 Chair shall put the question to the House and the question
9 shall be decided without debate or intervening motion.

10 (c) CONFORMING AMENDMENT.—Rule XXI of the
11 Rules of the House of Representatives is amended by
12 striking clause 9.

13 **SEC. 1802. DEFINITIONS.**

14 In this part—

15 (1) the term “congressional earmark” means a
16 provision or report language included primarily at
17 the request of a Member, Delegate, Resident Com-
18 missioner, or Senator providing, authorizing or rec-
19 ommending a specific amount of discretionary budg-
20 et authority, credit authority, or other spending au-
21 thority for a contract, loan, loan guarantee, grant,
22 loan authority, or other expenditure with or to an
23 entity, or targeted to a specific State, locality or
24 Congressional district, other than through a statu-

1 tory or administrative formula-driven or competitive
2 award process;

3 (2) the term “limited tax benefit” means—

4 (A) any revenue-losing provision that—

5 (i) provides a Federal tax deduction,
6 credit, exclusion, or preference to 10 or
7 fewer beneficiaries under the Internal Rev-
8 enue Code of 1986, and

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

12 (B) any Federal tax provision which pro-
13 vides one beneficiary temporary or permanent
14 transition relief from a change to the Internal
15 Revenue Code of 1986; and

16 (3) the term “limited tariff benefit” means a
17 provision modifying the Harmonized Tariff Schedule
18 of the United States in a manner that benefits 10
19 or fewer entities.

20 **PART 2—SENATE**

21 **SEC. 1811. PROHIBITION ON EARMARKS.**

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

1 (1) IN GENERAL.—It shall not be in order in
2 the Senate to consider a highway bill or resolution
3 introduced in the Senate or the House of Represent-
4 atives, highway amendment, highway amendment be-
5 tween the Houses, or highway conference report that
6 includes an earmark.

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

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

1 conference report. In any case in which such point of order
2 is sustained against a highway conference report (or Sen-
3 ate amendment derived from such conference report by op-
4 eration of this subsection), no further amendment shall
5 be in order.

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

9 (d) DEFINITIONS.—

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

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

1 (B) that—

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

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

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

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

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

1 **PART 3—HIGHWAY BILL DEFINED**

2 **SEC. 1821. HIGHWAY BILL DEFINED.**

3 In this subtitle, a “highway bill, joint resolution,
4 amendment, or conference report” means a bill, joint reso-
5 lution, amendment, or conference report (as the case may
6 be) that reauthorizes Federal-aid highway and highway
7 safety construction programs.

