112th CONGRESS
1st Session

**A BILL**

To amend the Federal Election Campaign Act of 1971 to prohibit an authorized or controlled committee of a Member of Congress from accepting contributions or expenditures from any entity for which the officeholder sought an earmark.

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

## SEC. 1. SHORT TITLE.

This Act may be cited as the 'Earmark Accountability Reform Act.'

## SEC. 2. PREAMBLE

(a) It is hereby declared that all individuals, businesses, associations and other persons have a right to participate fully in the political process, including making and soliciting contributions and expenditures for candidates and officeholders in Congress. Nevertheless, when a person or business interest makes or solicits major contributions or expenditures in order to obtain an earmark awarded by an officeholder, it is a violation of the public's trust in government and raises legitimate public concerns about whether the earmark has been awarded on the basis of merit.

(b) It is further declared that the growing infusion of funds donated by business entities into the political process at all levels of government has generated widespread cynicism among the public that special interest groups are "buying" favors from elected officeholders.

(c) Thus, it is hereby declared that, for the purposes of protecting the integrity of government decisions and of improving the public's confidence in government, it will be the policy of Congress to prohibit awarding earmarks to business entities which also make substantial contributions or expenditures to candidates and officeholders of the House of Representatives and the United States Senate.

## SEC. 3. RESTRICTIONS ON ACCEPTING CONTRIBUTIONS AND EXPENDITURES FROM ENTITIES FOR WHICH OFFICEHOLDERS SEEK EARMARKS.

(a) Any other provision of law to the contrary notwithstanding, a Member of Congress shall not award an earmark to any business entity, if that business entity has solicited or made any contribution to, or expenditure in connection with election to office of, the Member's campaign, campaign committee or leadership political action committee controlled or directed by that Member, in excess of the thresholds specified in subsection (b)

during the current election cycle.

(b) Any individual or organization within a business entity each may make contributions or expenditures of no more than $1,000 for a campaign, campaign committee or leadership political action committee controlled or directed by the Member of Congress primarily responsible for requesting an earmark for the business entity, without violating subsection (a) of this section. However, any group of individuals and organizations meeting the definition of a "business entity" under this section in the aggregate, may not make contributions or expenditures in excess of $5,000 to, or in connection with the election to office of, a campaign, campaign committee, and leadership political action committee controlled or directed by the Member of Congress primarily responsible for requesting an earmark to the business entity, without violating subsection (a) of this section.

(c) No business entity which receives an earmark requested by a Member of Congress shall knowingly solicit or make any contribution to, or expenditure in connection with election to office of, the Member's campaign, campaign committee or leadership political action committee controlled or directed by that Member, between negotiations for the earmark and the later of the termination of negotiations for the earmark or the beginning of the election cycle following receipt of the earmark.

(d) A registered lobbyist that qualifies as part of a business entity or business entities shall aggregate all contributions and expenditures made by the lobbyist in connection with the Member of Congress primarily responsible for requesting an earmark toward the individual and aggregate limits of each business entity represented before that Member.

## SEC. 4. DEFINITIONS

(a) BUSINESS ENTITY DEFINED. – For the purposes of this act, a "business entity" means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, nonprofit association or any other legal commercial entity organized under the laws of the federal government or any other state or foreign jurisdiction. The definition of a business entity includes:

(1) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate;

(2) president, chief executive officer, chief operating officer, chief financial officer, or other comparable senior executive of the entity;

(3) any subsidiaries directly or indirectly controlled by the business entity;

(4) any separate segregated fund established or administered by the business entity;

(5) any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity;

(6) any person who is a registered lobbyist under the Lobbying Disclosure Act of 1995 for whom the entity was a client for the purposes of such Act; and

(7) if a business entity is a natural person, that person's spouse or child, residing therewith, are also included within this definition.

(b) EARMARK DEFINED. – The term "earmark" shall mean a provision or report language which—

(1) is included in a bill or joint resolution, a committee report to accompany a bill or joint resolution, or a conference report to accompany a bill or joint resolution (including a joint explanatory statement prepared by the managers of the conference) primarily at the request of a Member of Congress; and

(2) provides, authorizes, or recommends a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, limited tax benefit, limited tariff benefit, or other expenditure with or to an entity, other than through a statutory or administrative formula-driven or competitive award process.

(A) the term 'limited tax benefit' means any revenue provision 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;

(B) the term 'limited tariff benefit' means a provision modifying the Harmonized Tariff Schedule of the United States in a manner that benefits 10 or fewer entities.

(c) ELECTION CYCLE DEFINED. – In this subsection, the term "election cycle" has the meaning given such term in 2 U.S.C. 431(25), without regard to the second sentence of such section.

## SEC. 5. CONTRIBUTIONS MADE PRIOR TO THE EFFECTIVE DATE

No contribution of money or any other thing of value, including in-kind contributions, made by a business entity to any federal candidate or national party committee or leadership political action committee shall be deemed a violation of this section, nor shall any earmark be disqualified thereby, if that contribution was made by the business entity prior to the effective date of this section.

## SEC. 6. CONTRIBUTION STATEMENT BY BUSINESS ENTITY

(a) Prior to awarding any earmark to a business entity, the Congress shall receive a sworn statement from the business entity made under penalty of

perjury that the business entity has not made a contribution or expenditure in violation of this Act;

(b) The business entity shall have a continuing duty to report any violations of this Act that may occur during the negotiation or period following receipt of an earmark.

## SEC. 7. RETURN OF EXCESS CONTRIBUTIONS OR EXPENDITURES

A business entity may cure a violation of this Act, if, within 30 days after the general election, the business entity seeks and receives reimbursement of any contribution or expenditure in violation of this Act from the officeholder, campaign committee or leadership committee.

## SEC. 8. PENALTY

(a) Any business entity who knowingly violates the contribution and expenditure limits and prohibitions of this Act shall be disqualified from eligibility for future federal earmarks for a period of four calendar years from the date of the determination of violation, and shall have any earmark with Congress then in effect immediately terminated and returned in full.

(b) Any Member of Congress who knowingly violates the contribution and expenditure limits and prohibitions of this Act shall be subject to the penalties prescribed under the Federal Election Campaign Act of 1971 for violations of the applicable contribution limits and disclosure provisions; or penalties prescribed for violations of the congressional ethics rules for the United States House of Representatives or the Senate; or both.

## SEC. 9. SEVERABILITY

If any provision of this law, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this law to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this law are severable.

## SEC. 10. EFFECTIVE DATE

This Act shall take effect immediately.