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Earmark Reform Proposals: Analysis of Latest Versions of S. 2349 and H.R. 4975

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Summary

In response to reports of, and concern over, alleged irregularities in certain lobbying and representational activities, Congress is considering various lobby and ethics reform proposals. Some have argued that Congress should consider changes to the process by which Congress earmarks spending and tax priorities as a part of the larger focus on congressional ethics and the relationship between lobbying and legislation.

Earmark reform provisions have been included in the main legislative vehicles for reforming lobby and ethics rules in the Senate and House: S. 2349, Legislative Transparency and Accountability Act of 2006, and H.R. 4975, Lobbying Accountability and Transparency Act of 2006. On March 29, 2006, the Senate passed S. 2349, with amendments, and, on May 3, 2006, the House passed H.R. 4975, also with amendments.

Both S. 2349 and H.R. 4975 would change Senate and House parliamentary procedures, respectively, governing consideration of measures including earmarks. In addition, the House bill would amend the federal criminal code, specifically 18 U.S.C. § 201 regarding bribery of public officials.

S. 2349 and H.R. 4975 would require public disclosure of congressional sponsors of certain earmarks and timely publication of a list of those earmarks. The Senate bill would cover certain earmarks in appropriations, authorization, and revenue measures, but the definition of *earmark* provided in the bill might limit its coverage. The House bill would focus on certain earmarks, as defined by the bill, associated with only general appropriations bills. Most of the appropriations bills considered by the Congress are general appropriations bills.

The Senate bill also provides a procedure designed to facilitate the removal of new provisions added in conference reports. Under current rules and practices, the Senate must reject or recommit to conference a conference report that includes new subjects. S. 2349 would allow the Senate to strike the new matter and send the remaining provisions to the House for further action. This procedure may have a limited effect on earmarks. No similar provision is included in the House bill.

Finally, H.R. 4975 amends 18 U.S.C. § 201, which prohibits lobbyists and others from bribing Members of Congress and their staff in connection with "any official act" of theirs and prohibits all public officials from accepting such bribes. The House bill specifies that this prohibition would apply to bribery in connection with earmarks, as defined in the bill.

This report will be updated to reflect any legislative action.

Contents

Earmark Reform Proposals: Analysis of Latest Versions of S. 2349 and H.R. 4975

In response to reports of, and concern over, alleged irregularities in certain lobbying and representational activities, Congress is considering various lobby and ethics reform proposals. Some have argued that Congress should consider changes to the process by which Congress earmarks spending and tax priorities as a part of the larger focus on congressional ethics and the relationship between lobbying and legislation.

Earmark reform provisions have been included in the main legislative vehicles for reforming lobby and ethics rules in the Senate and House: S. 2349, Legislative Transparency and Accountability Act of 2006, and H.R. 4975, Lobbying Accountability and Transparency Act of 2006. On March 29, 2006, the Senate passed S. 2349, with amendments, and, on May 3, 2006, the House passed H.R. 4975, also with amendments.

This report provides background information on earmarks and a discussion of the earmark reform proposals in Senate-passed S. 2349 and House-passed H.R. 4975. A summary of congressional action on these two measures is included. Analysis and comparison of the earmark reform provisions in the Senate bill and House amendment are also provided.

Earmark Background

Earmarks may be included in appropriations, authorization, or revenue measures.[1] Appropriations measures are under the jurisdiction of the Senate and House Committees on Appropriations, whereas authorization measures are under the jurisdiction of various legislative committees. Most congressional committees (such as the Senate Committees on Environment and Public Works and Armed Services and the House Committees on Transportation and Infrastructure and Armed Services) have one or more authorization measures under their jurisdiction. Revenue measures are under the jurisdiction of the Senate Committee on Finance and the House Committee on Ways and Means.

Earmarks are not currently defined in law or congressional rule, nor is there a single common understanding of the term "earmark" accepted by all practitioners and observers of the federal budget process. Likewise, there is no universal standard earmarking practice among revenue bills, authorization bills, and appropriations bills, or even among individual appropriations bills. For some appropriations bills,

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[1] Reconciliation measures may also include earmarks, which are the same type of earmarks provided in authorization and revenue measures (see below).

"earmark" may refer to certain spending set asides for specified projects, locations, or institutions. The practice of "earmarking" in another bill may mean congressional directives allocating funds to specific countries or activities below the account level. For another bill, "earmark" may refer, in part, to funding allocations at a level of specificity below a certain spending level. In contrast, special tax relief in revenue bills for selected beneficiaries may establish narrow eligibility criteria that will apply only to the selected beneficiaries (referred to in this report as a *limited tax benefit*).

Earmarks associated with appropriations bills, however defined, generally set aside funds within a specific *account*. In a regular or supplemental appropriations bill, funding for departments and large agencies is distributed among several accounts. Each account is typically provided in a single unnumbered paragraph of an appropriations bill and includes funding for similar programs, projects, or items, such as a "research and development" account or "salaries and expenses" account. For smaller agencies, a single account may fund all of the agency's activities. The appropriations bills generally provide a lump-sum appropriation for each account, and earmarks are distributed within some of the accounts.

Although the appropriations bill provides the funding in most cases, in a few cases they do not. In these instances, the appropriations bill allocates previously enacted funding for specific earmarks (e.g., funding for federal facilities under the General Services Administration).[2]

Certain authorization bills provide funding for specified earmarks. For example, P.L. 109-59,[3] reauthorizing federal surface transportation programs, provided funding for numerous specified highway and mass transit projects.

Authorization bills may also authorize subsequent funding in appropriations bills for specified earmarks. In such cases, the appropriations committees generally select the previously authorized projects to be funded and provide the funding level.[4] For example, Water Resources Development Acts authorize subsequent appropriations for specific civilian water projects conducted by the U.S. Army Corps of Engineers.[5] Funding is then provided for selected projects in the annual Energy and Water Development regular appropriations bills.

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[2] Congress may also provide additional appropriations for federal facilities (see CRS Report RL32368, *The General Services Administration and Federal Real Property Management: Overview and Current Legislation*, by Stephanie Smith).

[3] Safe, Accountable, Flexible, Efficient Transportation Equity Act — A Legacy for Users (SAFETEA-LU or SAFETEA).

[4] Under Senate and House parliamentary rules, the appropriations bill may not exceed the authorization level (see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter).

[5] The Corps of Engineers civil works responsibilities include improving and maintaining navigable channels, flood control, emergency and disaster response, environmental restoration, and municipal water infrastructure. For additional information, see CRS Report RS20866, *The Civil Works Program of the Army Corps of Engineers: A Primer*, by Nicole T. Carter and Betsy A. Cody.

Limited tax benefits in revenue measures generally take the form of federal tax deductions, credits, exclusions, preferences, or transition rules under the Internal Revenue Code for selected beneficiaries. Such tax relief typically applies only to a narrow subgroup within a class of taxpayers or even to a single taxpayer. Examples of such beneficiaries include businesses, corporations, institutions, or organizations.

Earmarks may be provided in the form of *bill language* or *report language*. Bill language refers to the text of bills, amendments, and bills included in conference reports. A conference report provides the text of the bill as agreed to in conference. If enacted, this text becomes law and has statutory force.

Report language refers to congressional committee reports explaining a measure as reported and joint explanatory statements. These statements explain the agreements reached in conference and are attached to the conference reports. Report language does not become law and has no direct statutory force, unless required by law. It explains congressional intent for the enacted bill.

Most earmarks associated with appropriations measures are in the form of report language. Appropriators provide lump-sum appropriations generally with the understanding that the agencies will follow their detailed budget plans submitted to Congress (referred to as "justification materials") regarding each account, as well as any changes to the plans included in the congressional committee reports, such as earmarks. As the Government Accountability Office explains, "An agency that fails to 'keep faith' with the Congress may find its next appropriation reduced or limited by line-item restrictions."[6] Such restrictions limit the flexibility of an agency to reallocate funds within an account to respond to changing or unforeseen circumstances.

Earmarks may be initiated by Congress as well as the Administration. For example, the Administration's FY2006 budget requests included some earmarks under programs that were funded in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006. Administration funding requests for Department of Defense military construction appropriations include numerous individual construction projects at specific locations.[7]

[6] U.S. Government Accountability Office, *Principles of Federal Appropriations Law: Vol. II*, second edition, GAO/OGC-92-13 (Washington: Dec. 1992), pp. 6-159 — 6-160.

[7] Title 10, section 2802(a), of the *United States Code* states that "The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects as are authorized by law." As provided in CRS General Distribution Memorandum, *Earmarks in FY2006 Appropriations Acts*, "This is generally interpreted as requiring that specific projects and the necessary appropriations be specified as individual line items in the appropriations request and the authorization and appropriations bills" (see CRS General Distribution Memorandum, *Earmarks in FY2006 Appropriations Acts*, by CRS Appropriations Team, p. 28).

Earmark Reform Proposals

Action on S. 2349 and H.R. 4975

On February 2, 2006, Senator Trent Lott, Chairman of the Senate Committee on Rules and Administration, introduced S.Res. 365, a measure that included earmark reform proposals. On March 1, 2006, the committee reported an original bill, S. 2349, the Legislative Transparency and Accountability Act of 2006. This measure generally focused on earmark and ethics reform. On March 6, 2006, the Senate adopted a committee amendment in the nature of a substitute combining the provisions in S. 2349 and S. 2128, the Lobbying Transparency and Accountability Act of 2005, which had been reported by the Senate Committee on Homeland Security and Governmental Affairs. On March 29, 2006, the Senate passed S. 2349 with additional amendments.[8]

On March 16, 2006, Representative David Dreier, Chairman of the House Committee on Rules, introduced H.R. 4975, the Lobbying Accountability and Transparency Act of 2006. The bill was referred to five House committees: the Committee on the Judiciary as well as the Committees on House Administration, Rules, Government Reform, and Standards of Official Conduct, all of which completed action on their portions of the bill. The first four committees reported portions of the bill under their jurisdiction, in some cases with amendments. The Committee on Standards of Official Conduct was discharged from consideration of its portion of the bill. The earmark and associated provisions of the bill are under the jurisdiction of the House Committee on Rules, which ordered reported its portion of the bill, with amendments, on April 5, 2006, and reported its portion on April 25, 2006.

During negotiations on another measure, H.Con.Res. 376, the congressional budget resolution for FY2007, the House leadership reportedly reached agreement with certain members of the House Republican Study Committee on language to be considered at some point. The language was a modified version of the Committee on Rules' earmark reform proposal.

On April 21, 2006, chairman Dreier proposed a managers' amendment in the nature of a substitute to H.R. 4975, as ordered reported, that would change certain provisions in the bill. The substitute amendment included the modified version.[9]

On May 3, 2006, the House passed H.R. 4975, which included the substitute amendment plus several additional amendments.

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[8] For information detailing action on S. 2349 and H.R. 4975, see CRS Report RL33293, *Lobbying and Related Reform Proposals: Consideration of Selected Measures, 109th Congress*, by R. Eric Petersen.

[9] U.S. Congress, House Committee on Rules, Committee Print, *Amendment in the Nature of a Substitute to H.R. 4975, as Reported*, 109th Cong., 2nd sess., Apr. 21, 2006, available at [http://www.rules.house.gov/], visited April 24, 2006.

Analysis

Both S. 2349 and H.R. 4975 would change Senate and House parliamentary procedures, respectively, governing consideration of certain measures including earmarks. In addition, the House bill would amend the federal criminal code, specifically 18 U.S.C. § 201 regarding bribery of public officials.

Regarding parliamentary procedures, both S. 2349 and H.R. 4975 would require public disclosure of congressional sponsors of certain earmarks as well as a list of those earmarks. The Senate measure also provides a new procedure to prohibit new matter from being added in conference reports and a 48-hour layover requirement for conference reports. The House bill does not include similar conference report provisions.

Public Disclosure. S. 2349 and H.R. 4975 would require both the identification of the Senator(s) or Representative(s), respectively, who request certain approved earmarks and a list of the approved earmarks. The enforcement mechanism for each would be a prohibition of consideration of applicable legislation on the floor. The Senate bill also requires a 48-hour layover requirement. Neither proposal is self-enforcing; however, a Member of Congress would need to raise a point of order to enforce it.

In current practice, congressional public documents (such as Senate and House measures and accompanying committee reports, conference reports, and joint explanatory statements) generally do not identify earmark sponsors. Information on earmarks and the amounts provided are generally available in these documents, but a single list of earmarks by bill is not frequently provided.

S. 2349. Section 103 would add a new Senate Standing Rule prohibiting Senate consideration of any Senate bill, Senate amendment,[10] or conference report, unless a list of all earmarks provided in the applicable document, the Senate sponsor(s) of each earmark, and essential governmental purpose of each earmark have been made available to each Senator, and also made available to the public on the Internet for at least 48 hours prior to consideration.

Existing Senate rules and practices regarding the disposition of points of order against the consideration of legislation would apply to the new rule. The Senate typically brings up a measure by unanimous consent or on a motion to proceed, requiring a majority vote. If a motion is used, a point of order against its consideration could be raised. The chair would rule on the point of order, although the ruling would be subject to appeal. Sustaining the chair's ruling would require a majority vote.

For purposes of enforcing this public disclosure requirement, section 103 defines "earmark" as a provision that specifically identifies a nonfederal entity (such

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[10] This would include managers' amendments in the nature of a substitute, Senate amendments to House-passed bills, floor amendments, and Senate amendments between the Houses. It would not include House bills or House amendments between the Houses.

as a nonfederal government organization, institution, or business) to receive assistance. (The assistance is in the form of budget authority, contract authority, loan authority, other expenditures, tax expenditures, or other revenue items.)

Although section 103 specifically states that the disclosure requirement applies to appropriations, authorization, and revenue measures, the proposed "earmark" definition may limit this coverage. Under current earmarking practices, the identity of an entity receiving an earmark is not always provided in a measure or conference report.[11] Special tax relief in revenue bills for selected beneficiaries typically does not identify the beneficiary; instead the bills establish narrow eligibility criteria that could apply only to the selected beneficiary.[12] Certain earmarks in appropriations or authorization bills may not specify the receiving entity. For example, certain earmarks provided in P.L. 109-59 reauthorizing federal surface transportation programs were not identified by recipient, but by project.

Focusing the "earmark" definition on "nonfederal entities" may exclude other funding set-asides that some might consider earmarks. For example, funding set-asides for individual military construction projects under the Department of Defense, federal buildings projects under the General Services Administration, or federally funded research conducted by the National Institutes of Health would not be included. This distinction may be important for persons or groups that are more concerned about funding of nonfederal organizations, institutions, and businesses than about funding set-asides for federal government projects.

Section 103 applies only to earmarks included in measures, amendments, or conference reports (bill language); it does not apply to earmarks in committee reports or joint explanatory statements (report language). Most earmarks associated with appropriations measures are included in report language, as opposed to bill language.

H.R. 4975. Section 501 provides a special order of the House that would prohibit House consideration of any general appropriations bill[13] reported by the House Committee on Appropriations unless the accompanying committee report includes a list of earmarks provided in the reported bill or in the committee report. The list must also identify the Representative who requested earmarks in the list. The section also prohibits House consideration of a conference report for a general appropriations bill unless the attached joint explanatory statement contains a list of new earmarks (and the Representative who requested the earmarks on the list) that originated at the conference stage. A point of order against consideration of a bill could be made only against the failure to include a list of earmarks. In contrast, a

[11] It also may not be provided in a committee report or joint explanatory statement.

[12] Examples of such a beneficiary would include a business, corporation, institution, or organization. Presumably, these would be considered entities. It should be noted that special tax relief for an individual would probably not be included under this definition because an individual may not be considered an entity.

[13] In the House, "general appropriations bill" refers to all 11 annual regular appropriations bills and most supplemental appropriations measures. It does not include continuing resolutions. Appropriations earmarks are generally associated general appropriations bills.

point of order against consideration of a conference report could be made against the failure to include a *complete list* of earmarks.[14]

Unlike typical House procedures, the chair would not resolve the issue by ruling on a point of order raised under section 501.[15] The House bill would provide that the House decide, by a majority vote, whether to consider the bill or conference report. Section 501 would not prohibit the House from considering bills or conference reports in cases in which the public disclosure requirements are not met; instead, it would allow the House to decide on a case-by-case basis whether to consider the bill or conference report. The House bill provides 30 minutes of debate, equally divided and controlled by the Member initiating the point of order and an opponent, probably the floor manager.[16] No other intervening motion would be allowed, except one motion that the House adjourn.

In current practice, the House typically adopts a special rule waiving all points of order against consideration of a general appropriations bill, as well as a conference report for such a bill.

Due, in part, to some Representatives' particular concern about new earmarks added in conference reports or joint explanatory statements, the House bill would provide an additional procedural hurdle to consideration of conference reports. Members opposed to new earmarks in conference reports do not have an opportunity to remove them because both the House and Senate must vote on a conference report in its entirety.[17] While maintaining the public disclosure focus of the House bill, section 501(b) would provide a new hurdle by prohibiting the House from considering an order or rule waiving the new public disclosure rule regarding conference reports.[18] If a point of order were raised against such a rule or order, the House would decide, by majority vote, whether to consider the special rule, following the same procedures above.

Under this new procedure, affected conference reports could be brought up by a four-stage process:

[14] The bill, as reported by the House Committee on Rules, required a list for both bills and conference reports, not a complete list for either. Chairman Dreier's substitute amendment added the requirement of a complete list of earmarks originating in conference.

[15] The new procedure is similar to certain House procedures regarding the consideration of unfunded mandates. (See CRS Report RS20058, *Unfunded Mandates Reform Act Summarized*, by Keith Bea and Richard S. Beth).

[16] The substitute amendment increased the amount of debate time in the reported bill from 20 minutes to 30 minutes.

[17] For an explanation of action on conference reports, see *New Matter in Conference Reports*, below.

[18] Generally, House procedures do not prohibit an order or rule waiving one of its standing rules, however, a similar exception would be House parliamentary rules regarding unfunded mandates (see CRS Report RS20058, *Unfunded Mandates Reform Act Summarized*, by Keith Bea and Richard S. Beth).

1. As under current practice, the House Committee on Rules reports a special rule, in the form of a House resolution, waiving all points of order against consideration of the conference report and the conference report itself.

2. A Representative raises a point of order that the special rule waives section 501(b).

3. The chair submits the following question, which is provided in the House bill, to the House: "Shall the House now consider the resolution notwithstanding the assertion [of the maker of the point of order] that the object of the resolution introduces a new earmark or new earmarks?"

4. If the House votes to consider the special rule, the House considers and votes on adoption of the special rule.

If the House adopts the special rule, then it may consider the conference report.

For purposes of enforcing these public disclosure requirements, section 501 provides a definition of *earmark* designed to capture two types of funding set asides. Under section 501, an "earmark" is defined as a provision in a general appropriations measure (or accompanying committee report, conference report, or joint explanatory statement) that provides or recommends a specific amount of discretionary budget authority that (1) is for a nonfederal entity specifically identified in these documents or (2) is allocated outside of a normal formula-driven or competitive bidding process and is targeted or directed to a specific state or congressional district (or identifiable person). For example, it might affect an instance in which, under existing law or regulations, funds for a particular program would be distributed by an agency based on a formula, but instead the appropriations bill set aside those funds for specified activities within a specific state.[19]

The specific question included in the House bill ("Shall the House now consider the resolution notwithstanding the assertion [of the maker of the point of order] that the object of the resolution introduces a new earmark or new earmarks?") does not have a direct impact on earmarks. Instead, the procedural issue before the House would be whether the House will vote to consider a special rule waiving section 501(b). This provision prohibits consideration of a special rule that waives the rule requiring public disclosure of new earmarks and sponsors added in conference, not prohibiting new earmarks. The question provided in the House bill may have the effect of discouraging some Representatives from voting to consider the special rule. Some may argue that if a sufficient number of Representatives would potentially vote against consideration of the special rule, members of the conference committee may decide to reduce or eliminate new earmarks.

The lack of a threshold burden on the initiator of a point of order under section 501 may allow points of order for dilatory purposes by requiring an additional vote.

[19] The definition also describes the treatment of federal facilities, federal lands, government-sponsored enterprises, states, territories, Indian tribes, foreign governments, and intergovernmental international organizations.

Under the House bill, the initiator of a point of order is not required to demonstrate that the public disclosure requirements have not been met and the chair does not make a threshold determination on whether the point of order has merit; instead, the House votes on the question of consideration. Theoretically, a point of order may be raised against a conference report that complies with the public disclosure requirement, but the House would still be required to vote.

Conference Reports. The Senate bill would provide a new mechanism to eliminate new subjects added in a conference report and require a 48-hour layover requirement for conference reports. The House bill did not include provisions on these issues.

New Matter in Conference Reports. Section 102 of S. 2349 would add a new freestanding rule that provides procedures designed to allow Senators to more easily strike new subjects added in conference to a conference report. Under existing rules, conference reports cannot be amended because doing so would undermine the ability of conferees to negotiate with their counterparts from the other chamber in good faith. Each chamber is required to vote on a conference report in its entirety. The new rule is designed to provide a better opportunity for Senators to strike provisions in a conference report that neither chamber had considered during initial floor action on the bill, when it could have been more thoroughly debated and possibly amendments considered.

The bill prohibits consideration on the Senate floor of any conference report that includes matter that is not included in the House- or Senate-passed versions of the bill (referred to as *new matter*). If a point of order under section 102 were sustained, the new matter would be stricken and the Senate would consider whether to send an amendment containing the remaining provisions in the conference report to the House. A point of order could be raised against each provision that violates this rule, and the Senate would consider the amendment after all points of order had been disposed of. This question would be debatable, although no further amendments would be allowed. Under the existing Senate rule prohibiting new matter (Senate Rule XXVIII), if a point of order against new matter is sustained, the conference report is rejected or recommitted to the conference committee.[20] Senators are generally presumed to be reluctant to reject a conference report, but they might be more willing to remove new matter if the remaining portions of the conference report could still be sent to the House for action.

The Senate bill would also require a three-fifths vote of all Senators (usually 60 votes) to waive or suspend section 102 or, on appeal, overrule the chair's ruling. Under the existing rule, there is no mechanism for a waiver and a majority vote is required to appeal the chair's ruling.

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[20] If the House has not already acted on the conference report, the report would be recommitted to the conference committee. Conference committees are automatically dissolved after one chamber adopts the conference report. If the House has adopted the conference report, the conference report would be rejected.

Section 102 would probably not have a major impact on most earmarks. The section is proposed as a freestanding rule that does not specifically amend or repeal the existing Senate Rule XXVIII, regarding conference reports. Senate precedents provide that this rule allows that in cases in which conferees are negotiating over a bill and a complete substitute amendment from the other chamber, conferees may include in the conference report a new substitute on the same subject. Although conferees may not include new matter, they may include matter that is a germane modification of provisions in either the bill or the original substitute amendment. Earmarks tend to be germane modifications or part of a larger provision that is considered new matter.

48-Hour Layover Requirement. Senate Rule XXVIII allows a motion to proceed to consider a conference report at any time if copies of the conference report are available to each Senator.

Section 104 of S. 2349 would amend Senate Rule XXVIII to increase the time available for Senators to review a conference report and the accompanying joint explanatory statement before floor consideration. The Senate bill would provide a point of order to prohibit consideration of a conference report, unless the report were available to all Senators and available on Internet for at least 48 hours before its consideration.[21]

As under existing practices, the chair would rule on the point of order, although the ruling would be subject to appeal. An appeal of the chair's ruling would require a majority vote, a quorum being present.

Bribery. Under 18 U.S.C. § 201, it is a federal crime, in part, to offer things of value to Members of Congress and congressional staff as "bribes" or as "illegal gratuities" in connection with "any official act" of such Members or staff. Section 201 also prohibits all public officials from accepting such bribes or illegal gratuities. Those violating this statute shall be fined or imprisoned for not more than 15 years, or both. A new section in H.R. 4975 specifies that the prohibitions in 18 U.S.C. § 201 would apply to bribery and illegal gratuities in connection with earmarks, as defined in H.R. 4975 (for a description of the definition, see *H.R. 4975* above). The Senate bill did not include a similar provision.

Comparison of Selected Senate and House Provisions

Both S. 2349 and H.R. 4975 primarily focus on public disclosure of certain earmarks and earmark sponsors.

Coverage. The Senate bill covers certain earmarks in appropriations, authorization, and revenue bills, but the earmark definition provided in the bill may

[21] In addition, the effective date of section 104 would be 60 days after enactment. Not later than this date, the Secretary of the Senate would be required to develop a website capable of meeting the above requirement, after consulting with the Clerk of the House of Representatives, the Government Printing Office, and the Senate Committee on Rules and Administration.

limit this coverage (see *S. 2349*, above). In contrast, the House bill focuses only on certain earmarks associated with general appropriations bills. The Senate bill only addresses earmarks provided in bill language,[22] whereas the House bill affects earmarks in report language as well.[23]

Enforcement Mechanism. In the Senate version, the chair would determine whether the public disclosure requirements are met and would rule on any points of order raised under the new rule. The ruling would be subject to appeal, requiring a majority vote to overturn the presiding officer. If the chair's ruling were sustained, the bill could not be considered by the Senate.

In contrast, upon a point of order raised under the House amendment, the chair would not rule on whether a committee report or joint explanatory statement included a list of earmarks, as defined by section 501, and their sponsors. Instead, the House would vote to decide whether to consider the bill or conference report.

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[22] More specifically, it focuses on earmarks in Senate bills and amendments as well as conference reports.

[23] More specifically, it focuses on earmarks in reported bills, committee reports, conference reports, and joint explanatory statements.