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July 10, 2015, 01:00 pm

# Is this the most anti-environmental bill of 2015?

By Thomas McGarity and Richard Murphy



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GOP leadership of the House of Representatives have recently brought to the floor a bill that, if enacted, **could result** in 10,900 premature deaths; 5,000 non-fatal heart attacks; 1,110,000 asthma attacks in children; and 1,690,000 missed school and work days. Passage would also enable the emission of **730 metric tons of climate-disrupting carbon dioxide** and **waste up to \$572 million in taxpayer money**. All of these harms and more would come courtesy of **H.R. 2822**, the appropriations bill to fund the Department of the Interior, the Environmental Protection Agency (EPA), and several related environmental agencies for the next fiscal year.

How could a piece of legislation that is nominally about funding agencies to carry out their statutory missions of protecting public health and the environment so seriously undermine the public interest? The answer is that this bill, like virtually all of the appropriations measures the Republican-controlled House of Representatives has considered in recent years, has been larded up with "negative earmarks"—that is, riders that specifically prohibit an agency from spending any of the appropriated funds on a particular activity. These riders that block agencies from spending on disfavored projects deserve this name of "negative earmarks" because they suffer from all the democracy-denying defects associated with those earmarks, like the infamous "Bridge to Nowhere," that force agencies to spend on favored projects. Either type of earmark abuses the appropriations process by conferring benefits on special interests, often at the expense of the broader public interest. Congress, responding in part to the calls of conservative lawmakers, has barred "classic" earmarks to force wasteful spending. Negative earmarks should suffer the same fate.

When these negative earmarks are used to block vital public health and environmental programs, the damage adds up quickly. The House Interior and Environment appropriations bill includes negative earmarks that would stop EPA rules aimed at limiting greenhouse gases from fossil-fueled power plants, protecting children and the elderly from dangerous levels of ozone air pollution, and safeguarding families against toxic lead paint. The bill would also block the Department of Interior from protecting fragile mountain streams against harmful mountaintop removal mining and improving the safety of hydraulic fracturing operations.

What is also disturbing is the large amount of financial support the legislative sponsors of these negative earmarks have received from the very industries that would directly benefit from the regulatory relief they provide. Rep. Tom Cole (R-Okla.) sponsored the negative earmark to block the Department of the Interior's hydraulic fracturing rule. During the most recent election cycle,

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**Cole received \$114,500 from the oil and gas industry.** Rep. Evan Jenkins (R-W.Va.) sponsored the negative earmark blocking the EPA's ozone air pollution standard. During the past election cycle, **Jenkins received \$187,400 from the mining industry, \$48,666 from the oil and gas industry, and \$25,950 from the manufacturing industry.** In all, just three of the most influential House appropriators received a whopping \$546,816 from polluting industries that would receive millions of dollars in regulatory relief from these negative earmarks.

As the pending House Interior and Environment appropriations bill illustrates, the use of "negative earmarks" is wholly inconsistent with our system of representative democracy and ought to be abandoned. By attaching them to "must pass" appropriations bills, the sponsors of negative earmarks rely on coercion rather than persuasion to obtain their policy demands. Compared to normal legislative order, the process of adding negative earmarks involves little transparency and deliberation. Because they confer significant benefits on favored industries, negative earmarks also risk encouraging lawmakers to pander to corporate interests.

One straightforward solution to the earmark problem is for Congress to enact legislation with restrictions similar to those imposed by the **"Byrd Rule"** for budget reconciliation bills. The bill could specify that negative earmarks constitute "extraneous provisions" and are thus subject to a legislative point of order, which any member could raise during consideration of the underlying appropriations bill. Unless the point of order is waived by a three-fifths majority vote, the offending provision would be automatically stricken from the bill. Congress began the process of cleaning up the appropriations process when it restricted the use of positive earmarks; it should now turn its attention to eliminating negative earmarks as well.

*Professors McGarity (University of Texas at Austin School of Law) and Murphy (Texas Tech University School of Law) are member scholars of the Center for Progressive Reform and co-authors of a new study, "Earmarking Away the Public Interest: How Congressional Republicans Use Antiregulatory Appropriations Riders to Benefit Powerful Polluting Industries."*



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