Statement of Senate Majority Leader Harry Reid

July 26, 2008

Pursuant to Rule XLIV of the Standing Rules of the Senate, I hereby certify that, to the best of my knowledge and belief based upon information provided to me by the Committees of jurisdiction, S. 3297 does not contain any congressionally directed spending item, limited tax benefit, or limited tariff benefit, as those terms are defined in Rule XLIV.

There are no tax or tariff provisions in the bill whatsoever. Nor do I believe the bill contains any "congressionally directed spending items" which Rule XLIV defines as "a provision or report language included primarily at the request of a Senator 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."

To clear up any misconceptions, the bill provides only authorizations – enactment of the bills would have no effect on the federal budget deficit or debt. As the nonpartisan CBO stated in a letter regarding S. 3297, "By themselves— that is, in the absence of subsequent legislation—those authorizations [in S. 3297] do not cause changes in federal spending or revenues." (A copy of this and a related CBO letter are included with this statement.)

As a formal matter, no provision of S. 3297 could qualify as a congressionally directed spending item under Rule XLIV because no provision was added "primarily at the request of a Senator." S. 3297 is a compilation of bills identified by my staff as meeting the following criteria: (1) the other chamber has approved companion legislation; (2) the Senate committee of jurisdiction supports the bill, e.g., by approving it in Committee, by assenting to a "hotline," etc.; (3) the bill has broad bipartisan support, and (4) to the best of our knowledge the only impediment to enacting the bill was the obstruction of a single member of the Senate. Bills were included in the package because they met these criteria, not "primarily at the request of a Senator." That is, with one exception noted below, if a bill satisfied these criteria, it was included in the package regardless of whether or not a Senator requested its inclusion, and if it did not satisfy these criteria, it was not included regardless of whether or not a Senator requested its inclusion.

The only item in the package that does not meet all of these criteria is the Prenatally and Postnatally Diagnosed Conditions Awareness Act (S. 1810), introduced by Senator Brownback and co-sponsored by Senator Kennedy, because it has not yet been passed by the House. Senator Brownback requested inclusion of the provision in the package, Senator Kennedy supported the bill, and it apparently has broad bipartisan support. No provision of that Act could be considered a congressionally directed spending item, limited tax benefit, or limited tariff benefit.

But because the spirit of transparency underlying Rule XLIV is not served by such a formal approach, my staff asked the committees of jurisdiction to identify any item that might be

considered a congressionally directed spending item in the respective bills as considered by committee. Each committee indicated that it did not believe any item included in S. 3297 within its respective jurisdiction meets the definition of a congressionally directed spending item.

The Advancing America's Priorities Act includes many important bills, including the following:

--a bill to promote research into and better care for those suffering from Lou Gehrig's Disease;

--a bill to promote research into and better care for Americans suffering paralysis, a healthcare problem all too prevalent among our brave veterans;

--a bill to promote research into and better care for individuals who suffer strokes; --a bill to promote research into and awareness of postpartum depression;

--several bills to protect children from exploitation and to crack down on child pornography;

--several bills to reauthorize successful U.S. foreign policy programs;

--a bill to promote the safety of families enjoying America's beaches;

--a bill to help increase the availability of broadband throughout the United States; --several bills to improve our understanding of the oceans;

--a bill to promote investments in mitigating risks before a disaster strikes, saving the federal and state governments money in the long run.

To avoid specious arguments that distract from the substance of these important bills, and in the interest of the broadest possible transparency, I provide here information about each of the items that even might be alleged to be a congressionally directed spending item.

One subtitle in the bill (Title VI, Subtitle A) authorizes $1.5 billion in funding for capital investments and preventive maintenance projects for the Washington Metropolitan Area Transit Authority, an authority established pursuant to a Compact provided for under federal law. Over 40% of the Washington Metro ridership consists of federal employees. The government relies upon Metro for transporting the millions of tourists who visit the nation's capital each year, for special events, and for evacuation planning. Since the Metro was first built, the federal government has made capital investments in the Metro on three separate occasions (1969, 1980, and 1990). Apparently, a Republican Senator is claiming this subtitle constitutes an "earmark." Assuming that the term "earmark" is intended to be synonymous with "congressionally directed spending item," this claim appears to be inaccurate. Under this theory of what constitutes a "congressionally directed spending item," nearly every authorization or appropriation relating to an entity within the government of Washington, DC would be considered an earmark. The House did not consider the legislation to contain an earmark under equivalent House rules. Senators Mikulski, Warner, Cardin, and Webb sent a letter supporting inclusion of this provision in the package. It was included because it satisfied the criteria noted above.

Another item in the bill (Title VII) authorizes $12 million for the Smithsonian Institution to construct a greenhouse facility at its museum support facility in Suitland, Maryland. The lease on the greenhouse currently used by the Smithsonian Institution expires next May. If the Smithsonian Institution does not obtain a new greenhouse facility, it will have to find a way to dispose of the scientifically important National Orchid Collection (over 11,000 orchids, many of

which are extinct or threatened in the wild). Further, the greenhouse is important to the historic gardens surrounding the Smithsonian Museums. The provision would not appear to meet the definition of a congressionally directed spending item in any event, because it is a House-originated item (the House committee noted that the legislation was requested by the Smithsonian Institution), the authorization is directed to a federal trust instrumentality, and money appropriated under the provision would be spent under a competitive bidding process. The House committee of jurisdiction stated that it was unclear whether the provision met the definition of a "congressional earmark" under equivalent House rules. Senators Dodd and Leahy expressed their support for including the provision in the package. It was included because it satisfied the criteria noted above.

One bill in the package (Title V, Subtitle B, Part II, subpart B) authorizes funding for the National Oceanic and Atmospheric Administration (NOAA) to advance undersea technology through the National Institute for Undersea Science and Technology. This technology supports NOAA's Undersea Research Program's (NURP) regional centers. The National Institute for Undersea Science and Technology was established in 2002 at the University of Mississippi (Oxford, MS), and the University of Southern Mississippi (Stennis Space Center, MS) in partnership with NURP. The National Technology Institute and undersea regional centers undergo periodic external review. According to the best information available to me, funds under the provision would be administered through a competitive award process and therefore this provision would not appear to constitute a congressionally directed spending item. A similar provision in a House companion bill was not treated as an earmark under equivalent House rules. According to the best information available to me, Senator Cochran requested inclusion of the provision in the original Committee-passed bill. The Part of the bill in which the provision is located was not included in the package at the request of a Senator; it was included because it satisfied the criteria noted above.

Finally, another item in the bill authorizes $5,000,000 in funding for the Museum of the History of Polish Jews (Title IV, subtitle F). This provision would not appear to meet the Rule XLIV definition of "congressionally directed spending item" as it is a House-originated item, there is no indication that the House treated it as containing an earmark under equivalent House rules, and it is clear that support for the provision is based on widespread agreement with the policy underlying it, not parochial interests – the House bill passed the House of Representatives by a vote of 407-13. The provision was not included at the request of a Senator; it was included because it satisfied the criteria noted above.