Companies Find Ways to Bypass Ban on Earmarks

By ERIC LIPTON and RON NIXON

TOLEDO, Ohio — Just one day after leaders of the House of Representatives announced a ban on earmarks to profit-making companies, Victoria Kurtz, the vice president for marketing of a small Ohio defense contracting firm, hit on a creative way around it.

To keep the taxpayer money flowing, Ms. Kurtz incorporated what she called the Great Lakes Research Center, a nonprofit organization that just happened to specialize in the same kind of work performed by her own company — and at the same address.

Now, the center — which intends to sell the Pentagon small hollow metal spheres for body armor that the Defense Department has so far declined to buy in large quantities and may never use — has $10.4 million in new earmark requests from Representative Marcy Kaptur, Democrat of Ohio.

The congresswoman, who has received tens of thousands of dollars in campaign contributions from Ms. Kurtz’s family and her business’s lobbyists, thought the quickly hatched nonprofit organization was a convenient solution.

“They met the requirements of the reform,” Ms. Kaptur said in an interview. “Yes, they did.”

The proposed earmarks are among dozens — totaling more than $150 million — from around the country that would indirectly benefit profit-making companies, according to an examination by The New York Times of House appropriation requests submitted after the new rule was imposed in March.

Adopted because of repeated scandals over wasteful spending — the bridges to nowhere and expensive pet projects like a water-taxi service — the ban was intended to help eliminate earmark abuses. Critics say spending on earmarks, which added $16 billion to the federal budget last year, diverts money from higher priorities, typically does not require competitive...
bids and is often directed to experimental research that will never be used.

But given the appeal of free government money, the fees that lobbyists can earn by helping businesses grab a handful of it and the persistence of lawmakers in trying to satisfy constituents or donors, the pay-to-play culture in Washington has once again proved hard to suppress.

“It reminds me of the line from “Jurassic Park” — ‘Life will find a way,’ ” said Representative Jeff Flake, Republican of Arizona, who has pushed for nearly a decade to curtail earmarks. “When you have easy money like this, it finds a way, and members find a way to enable. And that is happening again.”

In ignoring the spirit of the ban, some lawmakers are leaving it up to Congressional committees to block them, a prospect that both Democrats and Republicans on Capitol Hill concede will be near impossible.

“No matter what they tell you, there is just no way they can police all that,” Mr. Flake said. “They just don’t have the time or resources.”

Creative Approaches

Companies have shown remarkable ingenuity in skirting the rule or veiling their requests through nonprofit organizations, the Times review found. Among the examples:

¶The Virtual Reality Medical Center, a California-based company that sells visual simulation headgear as an experimental form of medical therapy, had sought nearly $6 million in earmarks before the ban. Soon after, company officials instead proposed that the money go to the Interactive Media Institute, a nonprofit group controlled by the center’s top executives, which had been set up to sponsor educational conferences.

An aide to Representative Corrine Brown, the Florida Democrat who submitted the request, acknowledged consulting with Virtual Reality executives and then jointly deciding to redirect the earmark. “The rules were that nonprofits can apply, so a nonprofit did,” said Lee Footer, a senior legislative assistant.

¶In Pennsylvania, General Electric is likely to get as much as 80 percent of a $2 million earmark proposed by Pennsylvania State University for research on clean-burning GE locomotives. At the suggestion of the company and the university’s lobbyist, according to a Penn State professor, the university is listed as the lead player in the collaboration instead of GE, as was done previously. GE executives made a series of political contributions to Representative Kathy Dahlkemper, Democrat of Pennsylvania, days after she submitted the earmark request.
In New York, the Copper Development Association, a nonprofit group controlled by copper manufacturers, is pursuing a $4.1 million earmark to hire suppliers to install its members’ copper products in New York City subway cars, asserting that the metal has qualities that inhibit the spread of infectious diseases.

And a group called the Solar Energy Consortium in Kingston, N.Y., is pursuing nearly $30 million in earmarks, with the help of Representative Maurice D. Hinchey, Democrat of New York. The group, working out of a tiny office above a machine shop, does not perform its own research. Instead, it plans to pass on most of the earmark money to local businesses, some of which directly collected federal earmarks for solar projects this year but would no longer qualify.

Profit-making companies were singled out for the earmark ban because their requests, routinely submerged in giant budget bills by their allies in Congress, tended to be more questionable than those sought by nonprofit groups, which include charities, local governments and educational institutions.

House Republicans, trying to show their resolve to clean up Congress, pledged not to propose any earmarks this year, though at least three Republicans declined to go along. Democrats have submitted billions of dollars in requests; the exact total is unknown because there is no comprehensive listing of them.

Representative David R. Obey, a Wisconsin Democrat and Appropriations Committee chairman who announced the ban, declined to comment on the new earmark rule. But his spokesman, Ellis Brachman, said he was unaware of any cases in which profit-making companies had tried to circumvent it or in which House Democrats had assisted them. He added that the panel was committed to finding such cases, if they exist.

A Quick Response

At 9:33 a.m. on the day after Mr. Obey announced the earmark ban, Ms. Kurtz filed the necessary papers with the Ohio secretary of state for her nonprofit organization. She named herself the executive director, and that afternoon, her brother, Daniel K. Wedding, set up a Web site for the organization, even though it had not received the required federal approval to operate as a tax-free entity. With that, they considered the problem of the earmark ban solved.

“It’s not illegal — so what?” said Carol Ann Wedding, who is Ms. Kurtz’s sister and the president of Imaging Systems Technology, their family-owned business. She and other family members defend the charity as legitimate, though they offered varying explanations for its purpose.
Over the last four years, Imaging Systems had failed to interest the Pentagon in buying more than a few samples of its hollow metal spheres.

Undeterred, Ms. Kaptur helped the company arrange a total of $8.4 million in earmarks, part of it essentially to force the Defense Department to buy a large order of the metal spheres, which is pending.

In March, Ms. Kaptur, a 14-term congresswoman, a member of the House Appropriations Committee and a top earmark sponsor, publicly praised the new ban, telling an Ohio newspaper that it “struck the proper balance between retaining a role for the legislative branch in funding worthy projects and eliminating any potential for abuse.”

But privately, Ms. Kaptur’s office encouraged Ohio companies whose earmark requests were in peril to quickly line up deals with nonprofit organizations. Members of her staff even called University of Toledo administrators to ask about forming partnerships with local defense contractors, said Frank J. Calzonetti, the university’s vice president for research.

As a result, Ms. Kaptur is seeking at least $12 million for the university for programs that this budget year were allocated directly to profit-making companies, with the understanding that the university will pass on most of the money to the companies previously involved.

Details of how these collaborations would work were left unresolved, Mr. Calzonetti said, though the university agreed to participate only if it could make a substantive academic contribution. And, he said, the university would get a portion — at least $70,000 on a $1 million appropriation — to cover the cost of a faculty member and a researcher to work with the partners.

One of the deals involved Nokomis, a Pennsylvania-based defense contractor for which Ms. Kaptur secured a $1.2 million earmark last year. (The company had opened a small office in her district — a standard courtesy, as were the company-affiliated campaign contributions.) Now, the university would accept the earmark and then funnel most of the money back to Nokomis for that same project — designing a new type of roadside bomb detector, Mr. Calzonetti confirmed.

Each of the companies has a lobbyist to smooth negotiations with officials in Washington. Nokomis, for example, retains Scott Harshman, a former aide to the late Representative John P. Murtha, the Pennsylvania Democrat and longtime Appropriations Committee chairman legendary for securing earmarks.

Ms. Kurtz’s business has a contract with Joseph F. Boessen, a former Armed Services
Committee staff member and lobbyist at the PMA Group, a now-defunct firm under investigation over accusations that it traded campaign contributions for earmarks.

Happy to Oblige

Ms. Kaptur said she was pleased that the Ohio defense contractors could form alliances that allowed her office to resubmit the earmark requests. Her first commitment, she said, is to help the Pentagon defend the nation. But if she can deliver government money to local businesses, that is a bonus, she said.

“I am a member who does fight for my region and my state,” she said, then adding, “I don’t fight mindlessly.”

Some House members have backed away from the type of requests Ms. Kaptur has championed. Representative Jared Polis, Democrat of Colorado, for example, refused to request money for a similar collaboration between his state university and a defense contractor.

Representative Louise M. Slaughter, Democrat of New York, also withdrew a requested $2 million earmark to the Rochester Institute of Technology, which also had a corporate partner. But she did so only after being contacted by The Times last week. She said that she had misunderstood the new rules.

Many other members said through spokesmen that they were standing by their requests and leaving it up to the House Appropriations Committee to decide if they are acceptable.

Some of the earmark requests come from major corporations like General Atomics, perhaps best known for its Predator drones. Over the last several years, the company has approached state university officials in Kentucky, Mississippi and Texas about jointly pursuing federal money to accelerate research on its patented technology to convert algae into jet fuel.

Under these agreements, about half of the earmark money goes to General Atomics, officials involved in the deals said, an arrangement that would continue next year, despite the ban. But in at least one state, Texas, the company’s name has been stripped this year from the publicly listed sponsors of the project.

A General Atomics spokesman, Jim Elliott, declined to comment on the project, which is also supported through competitively awarded grants. “I don’t want to talk about how we get money,” he said. “There are a lot of competitors out there.”

Federal records show that the company has made a series of contributions to the sponsors of the requests, including Representatives Ben Chandler of Kentucky and Solomon P. Ortiz and...
Ciro D. Rodriguez of Texas, all Democrats.

General Atomic’s university partners defend the projects and their research contributions. But they concede that there is no mystery why General Atomics would seek local partners.

“You think our congressman is going to write an appropriation request for some San Diego company?” said Bruce R. Pratt, chairman of the Eastern Kentucky University Department of Agriculture, a partner with General Atomics on algae research. “Why would he do that?”