

**Statement on Earmarks
Making Washington Work Project
Committee for Economic Development**

December 19, 2006

Introduction

The recent ballooning of “earmarks” in the actions of Congress – appropriations, authorizations, and tax legislation – may be the most offensive legislative manipulation, and possibly the most egregious of all forms of misbehavior by Members of Congress. The Congressional Research Service (CRS) identified some 3,000 earmarks worth \$19.5 billion that were enacted in 1996. By 2006, the number of earmarks had grown to more than 15,500, valued at \$64 billion -- and that is only for appropriations bills.

Constitutionally Congress has the “power of the purse.” No doubt there are instances in which Congress has legitimate reason to specify precisely how money is spent. However, earmarking has often evolved into a flagrant fundraising scheme through which Members receive campaign contributions in exchange for earmarks, lobbyists use earmarks to justify their fees from clients, and Congressional leaders use earmarks both to reward and to discipline their own rank-and-file Members. The worst case of earmarking is a recent criminal conviction of Representative Randy “Duke” Cunningham (R-CA) which was built on an exchange of earmarks for personal cash and in-kind payments -- bribery for earmarks. Many recent earmarks appear to have been inserted into legislation without public debate, notice or attribution. Furthermore, earmarks can circumvent the competitive process for grants, or formulas based on need and merit, which arguably leads to a better allocation of taxpayer dollars. These factors all add up to a substantial public cost from the expansion of earmarks.

It is within the power of the Congressional Leadership, by enforcing current rules, to limit earmarks. However, Congressional rules and procedures could be improved to provide consistently better control of earmarking.

What is an earmark, and what is the legitimate role of Congress to allocate funds for programs? There are ambiguities in the definition and measurement of earmarks, and in the proper role of the Congress in the exercise of its Constitutional power of the purse. However, the abuse of earmarks is clearly one of the most important reasons why public trust in Washington has waned in recent years; therefore, it is one of the most important needs for reform to make Washington work.

Definition and Terminology

The term “earmark” is commonly used to refer to funds directed by Congress to a specific entity or individual. An earmark can appear in the text of an appropriations measure, a floor amendment, or a conference report to the appropriations measure, any one of which, if enacted, makes the earmark legally binding.ⁱ An earmark can also appear in Conference Committee reports explaining a measure as reported, or in a managers’ statement accompanying the conference report. While the insertion of earmarks in conference reports and managers’ statements serves to clarify congressional intent, these earmarks are not considered to be legally binding.ⁱⁱ

Earmarks in tax bills or authorization bills can be more costly (in the case of tax bills, far more costly) than those in appropriations bills. However, because of the broad similarities in the formats of the different appropriations bills (though the bills do differ, one to another), there have been efforts to count earmarks in appropriations bills, but not in tax or authorization bills. Accordingly, the numerical analysis in this statement is limited to appropriations bills, but that should not be taken to indicate any lack of concern about tax and authorization earmarks. Please see the appendix for further important discussion of the definitional issues surrounding earmarks

Use of Earmarks in Enacted Appropriations Bills, 1994-2006

The number of earmarks in congressional appropriations bills has increased substantially since 1994.ⁱⁱⁱ The estimated value of these earmarks as a percentage of the total discretionary budget, however, has increased by only a small amount since 1994; and thus, the average dollar size of earmarks has declined – by more than one third in nominal terms, and even more so if adjusted for inflation. Figure 1 shows the number of earmarks in enacted appropriations bills. Figure 2 shows the estimated value of these earmarks as a percentage of the total discretionary appropriation.

Figure 1

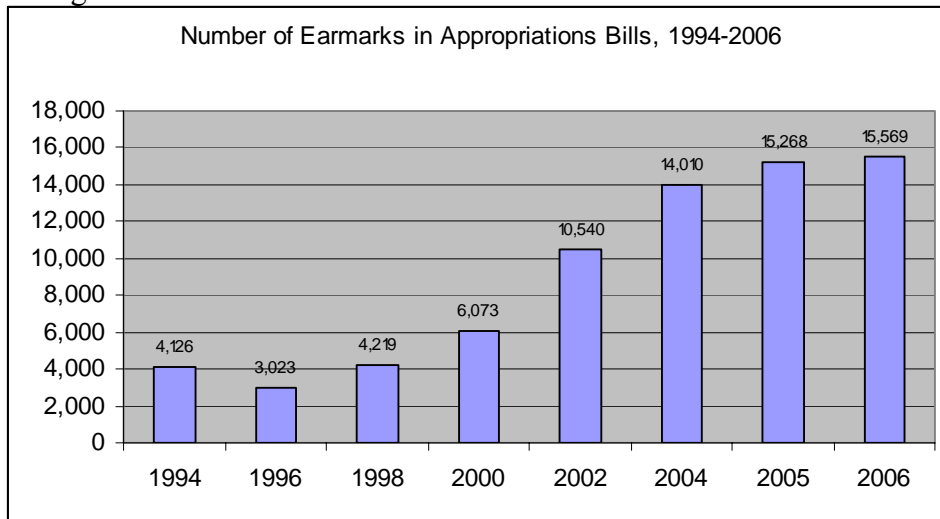


Figure 2

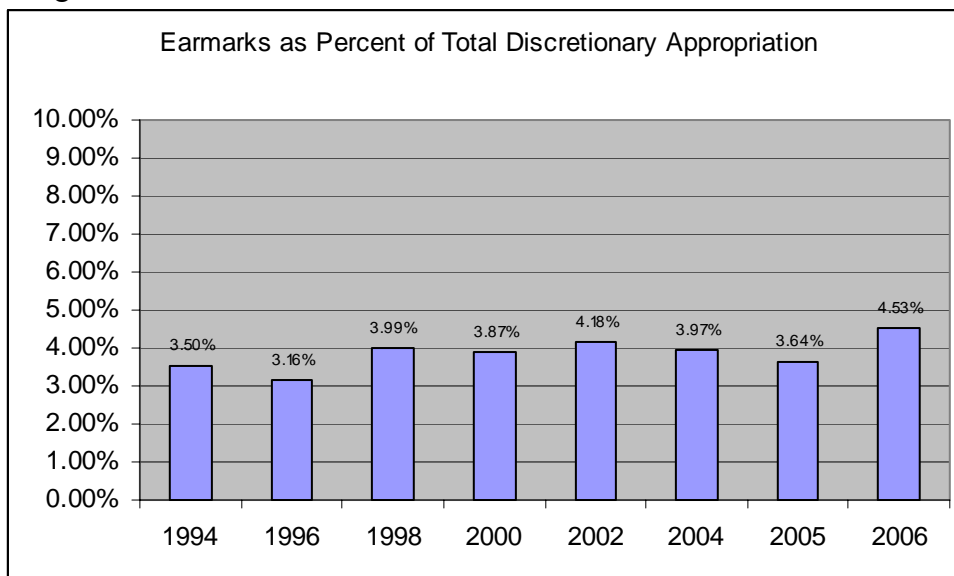


Table 1 displays the best available aggregate data regarding earmarks. The dollar amounts shown are in nominal terms, so they have not been adjusted for inflation. For this reason, it is better to compare the value of earmarks as a percent of the total discretionary budget, rather than comparing the estimated dollar value of earmarks over time.

Table 1

	Total discretionary appropriation (B\$)	Estimated value of earmarks (B\$)	Earmarks as a percent of total discretionary appropriations	Number of earmarks
1994	759.1	26.6	3.5%	4,126
1996	750.5	23.7	3.2%	3,023
1998	788.8	31.4	4.0%	4,219
2000	908.3	35.1	3.9%	6,073
2002	1,065.8	44.6	4.2%	10,540
2004	1,204.1	47.8	4.0%	14,010
2005	1,250.8	45.6	3.6%	15,268
2006	1,412.7	64.0	4.5%	15,569

Earmarks in Practice

Perhaps the most notorious of recent earmarks was the so-called “bridge to nowhere,” which for \$223 million would connect an Alaska town of 14,000 persons with an island with a population of 50. That project was removed from specific enumeration in a highway bill, but by all indications still will be built on the authority of state officials, most likely with federal funds. There are many other conspicuous examples of questionable earmarks, among them funding for:

- a teapot museum;
- an actors theater;
- a boxing club;
- a museum of glass; and
- a wild turkey federation.^{iv}

These examples point out possibly frivolous uses of taxpayer funds. However, there are many appropriations for construction or research projects, not so frivolous on their face and more difficult to identify, that can involve much more taxpayer money, that can circumvent normal competitive processes that assure the best uses of tax dollars, and that can reward undue political influence.

Some have argued that the growth in the incidence of earmarks is a massive incumbent protection device.^v Congressional leaders – likely both of the majority and the minority, with the majority so empowering the minority in exchange for the minority’s tacit approval of the entire process – dole out earmarks to their Members, especially those who are electorally vulnerable, so that they can trumpet their accomplishments for the folks back home (“bringing home the bacon”). And in return for the ribbon-cutting ceremonies and often new jobs back home, the leaders, by controlling the availability of

earmarks, may receive in return loyalty, or at least obedience. The cost is a slide down a slippery slope with an increasingly inefficient use of taxpayer dollars, and an increase of spending.

We are also concerned that the generous and non-transparent allotment of earmarks is a flagrant fundraising scheme. Lobbyists can recruit clients seeking earmarks by showing what other lobbyists can accomplish. The process spirals into an increasing diversion of federal funds around competitive processes and formulas based on need. Meanwhile, lobbyists can participate in fundraising efforts to increase their political access – or Members of Congress can implicitly demand fundraising as a condition of future access.

Because of the benefits to Members in projects back home and also in fundraising, and the benefits to leaders in the control of their Members, the Congress has failed to bring an end to this practice.

Proposals for Reform

Several measures for reforming the earmarking process were included in Senate lobbying and ethics reform proposals during 2006. S. 2261, introduced by Senator Obama, and S. 2265, sponsored by Senator McCain, defined an earmark as an appropriation that is restricted to an “identifiable person, program, project, entity, or jurisdiction” in a manner that “discriminates against other persons, programs, projects, entities, or jurisdictions similarly situated that would be eligible but for the restriction”.^{vi} S. 2265 categorized earmarked appropriations as “unauthorized” and in some instances restricted their use. S. 2261 proposed that all earmarks must be germane to an appropriations bill to be considered.

S. 2349, sponsored by Senator Lott, was a compromise measure that passed the Senate on March 29, 2006. Its companion House legislation, H.R. 4975, sponsored by Rep. Dreier, passed the House on May 3, 2006. Although the approved bills do not propose restrictions as stringent as those outlined in the Obama and McCain bills, both approved bills attempt to bring more transparency to the earmarking process. Both measures require the identification of earmark sponsors.^{vii} S. 2349 covers earmarks in appropriations, authorization, and revenue bills. H.R. 4975 covers only earmarks in general appropriations bills. Though passed by the House and the Senate, the bills never went formally to a conference committee.

Weakened earmark reforms have passed the House and the Senate in August 2006, but those bills also were not sent to a formal conference committee, and so nothing was agreed upon in conference with respect to earmark reform in the 109th Congress, Second Session.

Recommendations

CED supports transparency, accountability, and deliberation reforms for earmarks in all bills –appropriations, authorization, and revenue legislation. (For a discussion of potential definitions of “earmark” for purposes of legislation, see the appendix.)

We believe that the sponsor of every earmarking provision, outlay or revenue, should be identified, and any relationship between that sponsor and the recipient of the earmark explained. We believe that bills with earmarks should be subject to an extended layover period of three days (72 hours – not some derivative of the manipulable “legislative day”) after copies of the bills are available to Members.

We recognize that some Members would be more than happy to advertise their efforts on behalf of specific earmarks. Therefore, we believe that both chambers of the Congress, in their rules, should allow a single Member to demand a separate roll-call vote for any individual earmark. (A separate point of order should apply to any earmark that is not germane to the underlying legislation.) This would break down the protection enjoyed by every small provision within a larger, more important (or even essential) bill, and would allow Congress as a whole to determine whether any earmark is a worthy use of federal funds. Such transparency and accountability is essential for Congress to regain the public’s trust.

Appendix

There is no formal or universally accepted definition of the term “earmark.” According to a recent CRS Report:

One of the principal challenges to measuring earmarks in appropriations bills is defining the term and applying it consistently... There is not a single definition of the term “earmark” accepted by all practitioners and observers of the appropriations process, nor is there a standard earmark practice across all appropriations bills. In the broadest definition, according to *Congressional Quarterly’s American Congressional Dictionary*, “virtually every appropriation is earmarked.”^{viii}

Measures of the prevalence of earmarks depend crucially on the definition applied. Furthermore, the definition and counting of earmarks is somewhat different from appropriations bills, to authorization bills, to tax bills.

Two current Senate reform proposals (S. 2261 and S. 2265) define an earmark as an appropriation that is restricted to an “identifiable person, program, project, entity, or jurisdiction” in a manner that “discriminates against other persons, programs, projects, entities, or jurisdictions similarly situated that would be eligible but for the restriction”.^{ix}

The organization Citizens Against Government Waste (CAGW), which releases the annual *Congressional Pig Book* that documents what that organization deems to be “pork-barrel spending,” defines a congressional appropriation as “pork” if it meets one of the following criteria:

- Requested by only one chamber of Congress;
- Not specifically authorized;
- Not competitively awarded;
- Not requested in the President’s budget;
- Greatly exceeds the President’s budget request or the previous year’s funding;
- Not the subject of congressional hearings; or
- Serves only a local or special interest.^x

Although there always will be ambiguity in the concept, taken together all of these criteria probably convey the public sense of what an “earmark” is. (On the other hand, representatives of the Congressional appropriations process would object at least to the suggestion that provisions not requested in the President’s budget are objectionable, and conversely, that projects requested in the President’s budget are not. Those advocates of the Congress would argue that the budget routinely includes many “Presidential earmarks.” Advocates of the Executive would counter that the President’s proposals represent the national interest rather than some narrow interest.)

Because there is no universally agreed upon definition of the term “earmark,” and because appropriations bills differ somewhat in construction and detail, the CRS reports that summarize the use of earmarks in appropriations bills employ a method of analysis that examines each appropriation bill separately. CRS analysts apply separately to each of the annual appropriations bills a definition of “earmark” that is derived specifically for the practices used in that bill.^{xi}

For consistency, this statement relies upon the definition and measurement of earmarks in appropriations bills from 1994 to 2006 as reported by CRS.^{xiii} Earmarking in tax and authorization legislation is of equal concern to that in appropriations. However, surely in part because there is no consistent legislative practice over time in tax and authorization bills such as there is in appropriations bills, there has been no authoritative accounting of taxation and authorization earmarks. This is in no way to suggest that earmarks in authorization and tax bills are less problematic; in fact, they may well be more so.

Although the number of earmarks in appropriations bills has increased substantially, from 4,126 in 1994 to 15,569 in 2006, the value of earmarks as a percentage of total discretionary spending has increased only slightly, from 3.5% in 1994 to 4.5% in 2006. The value in nominal dollars has increased from \$26 billion to \$64 billion.

ⁱ “Earmarks and Limitations in Appropriations Bills” by Sandy Streeter. CRS Report for Congress. December 12, 2004.

ⁱⁱ “Earmarks and Limitations in Appropriations Bills” by Sandy Streeter. CRS Report for Congress. December 12, 2004.

ⁱⁱⁱ To quantify the use of earmarks over time and their impact on the budget, we combined the separate analyses conducted by CRS of each appropriations bill to calculate the total number of earmarks appearing each year and the value of those earmarks as a percent of each year’s combined discretionary budget. Although CRS maintains that each regular appropriations bill should be analyzed separately because there is not a “standard earmarking practice” across all appropriations committees, we believe that it is important to look at the aggregate number of earmarks used in a given year, and to compare those years to see if the use of earmarks and their impact on the budget has indeed grown. Given that there is no commonly accepted earmarking practice across committees, we acknowledge that this analysis is at best an approximation of the number of earmarks used and their impact on the total budget. And of course, this methodology applies only to appropriations bills; there are no consistent data on tax or authorization earmarks.

^{iv} Citizens Against Government Waste, “2006 Congressional Pig Book Summary,” <http://www.cagw.org/site/DocServer/2006PigBookSummary.pdf?docID=1541> .

^v Mann and Ornstein, pp. 175-179.

^{vi} “Comparison of Selected Senate Earmark Reform Proposals” by Sandy Streeter. CRS Report for Congress. March 6, 2006.

^{vii} “Earmark Reform Proposals: Analysis of the Latest Versions of S. 2349 and H.R. 4975” by Sandy Streeter. May 12, 2006.

^{viii} “Earmarks in FY2006 Appropriations Acts.” CRS Report for Congress. March 6, 2006.

^{ix} “Comparison of Selected Senate Earmark Reform Proposals” by Sandy Streeter. CRS Report for Congress. March 6, 2006.

^x “All About Pork: The Abuse of Earmarks and the Needed Reforms” by Tom Finnigan. Citizens Against Government Waste Policy Briefing Series. May 3, 2006. Available at: <www.cagw.org>

^{xi} “Earmarks in FY2006 Appropriations Acts.” CRS Report for Congress. March 6, 2006.

^{xii} “Earmarks in FY2006 Appropriations Acts.” CRS Report for Congress. March 6, 2006.
“Earmarks in Appropriations Acts: FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, FY2005.” CRS
Memorandum. October 13, 2005.