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Backgrounder
Executive Summary

No. 1266 April 2, 1999

How Congressional Earmarks and Pork-Barrel Spending Undermine State and Local Decisionmaking

Ronald D. Utt, Ph.D.

For as long as governments have existed, they have used their power to tax and spend to favor certain constituencies with special benefits. In a democracy, elected officials generally have well-defined, geographic-specific electoral bases, so these benefits often include location-specific projects like courthouses, highways, airports, and prisons. Traditionally known as congressional "pork," this type of spending manifests itself most commonly as a specific line item, or "earmark," in an appropriations bill. Both the media and the public tend to associate "pork" with highway spending, but earmarking is used throughout the federal budget; no program area is spared.

Today, pork-barrel politics is characterized by a meteoric growth in the number of earmarks. Although the increase in the number of earmarks has been rising since 1985, the growth appears now to be accelerating rapidly: The number of earmarks in five of the 13 annual appropriations bills doubled between fiscal year 1998 and FY 1999. If allowed to continue, this trend will undermine the patterns of federalism that traditionally have defined the relationship among America's three levels of government.

Public criticism of pork-barrel spending focuses generally on the outrageous and humorous waste that such earmarks sometimes entail. Yet the more troublesome and often overlooked implication of this process is the extent to which these earmarks reflect Washington's growing propensity to micromanage local affairs through its distant bureaucracies. Over 1,000 pork-barrel projects are buried in the 13 appropriations bills for FY 1999, representing a federal rebuke of the competing priorities set by governors and local leaders far more familiar with the needs of their communities.

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Underscoring the point that Washington's earmarks do not necessarily reflect a community's most pressing needs are the findings of a 1994 study conducted by the Congressional Research

Service (CRS) on a sample of "demonstration" projects listed in the 1987 and 1991 highway bills. The CRS study concluded that:

> For demonstration projects to provide the welfare gains citizens might expect from transportation public policy, they would have to produce outcomes at least as good as those that result from the local, state and regional planning process. Evidence so far suggests that many demonstration projects may have difficulty passing this test.

Not all in Congress are enamored by opportunities to micromanage spending programs. Senator John McCain (R–AZ), a leading congressional opponent of pork, introduced legislation during debate on the highway bill to require that all earmarks be paid for with money from each state's share of the federal transportation trust fund rather than money taken from another state's share. The measure did not pass, but it did raise awareness about potential solutions.

An earlier attempt to control pork-barrel spending occurred in 1995, when the 104th Congress enacted the line-item veto as part of the Republican Party's Contract With America. Taking effect on January 1, 1997, this new veto privilege was used by President Bill Clinton to cancel $355 million in FY 1998 pork-barrel spending, much to the chagrin of many in Congress. Unfortunately, the U.S. Supreme Court took that power away from the President in mid-1998, ruling it unconstitutional.

Absent a legislative remedy, moral suasion represents an alternative that some in Congress have employed in the past to induce some measure of restraint. Although recent attempts to use moral suasion have failed to dampen the use of earmarks, an earlier effort by senior members of the House Appropriations Committee appears to have had some success in several appropriations accounts. In 1993, Representatives William H. Natcher (D–KY) and George E. Brown, Jr. (D–CA), then chairmen, respectively, of the House Appropriations and House Science Committees, worked to reduce the number of appropriated earmarks for academic institutions, which had risen from seven earmarks in 1980 to 499 in 1992.

With Congress apparently either unable or unwilling to impose such meaningful restraint on its wasteful spending practices, the last best hope for slowing the growth of federal pork-barrel spending may lie with governors and local leaders. Because their communities pay the price for congressional meddling which forces them to accept unwanted projects at the expense of locally determined priorities, governors have every incentive to encourage Congress and the President to curtail such federal micromanagement.

As the 106th Congress gets underway, there will be no shortage of opportunities to show restraint and moderation in federal spending, earmarks, and congressional micromanagement. Chief among them will be the 13 appropriations bills that have to be enacted before September 30, 1999, the end of the current fiscal year. Keeping these bills clean will be a key test of Congress's willingness to honor the historic divisions of responsibility in America's federal system of governance.

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HOW CONGRESSIONAL EARMARKS AND PORK-BARREL SPENDING UNDERMINE STATE AND LOCAL DECISIONMAKING

RONALD D. UTT, PH.D.[1]

Governments have long used the power to tax and spend to favor certain constituencies with special benefits over and above what a system based on a formula or need would provide. In a democracy, elected officials generally have well-defined, geographic-specific electoral bases, so such benefits tend to be location-specific and highly visible, usually taking the form of infrastructure spending on such projects as courthouses, highways, airports, and government office buildings. Traditionally referred to as "pork," this spending often manifests itself as a specific line item, or "earmark." Earmarks appear most commonly, but not exclusively, in appropriations bills passed by Congress and signed into law by the President.

Webster's dictionary traces the American origins of the expression "pork barrel spending" back to around 1905 or 1910 and defines it as "a government appropriation…that provides funds for local improvements designed to ingratiate legislators with their constituents." In a 1936 Baltimore *Evening Sun* editorial, H. L. Mencken had this practice in mind when he charged that American government is "a broker in pillage, and every election is a sort of advance auction sale of stolen goods."[2]

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A recent example of earmarking occurred when Congress enacted the Transportation Equity Act for the 21st Century (H.R. 2400, or "TEA 21") in 1998. Many observers saw it as an inside-the-Beltway porkfest, and the bill's 1,850 earmarked projects soon became objects of media ridicule. Congress got much of the blame

1. The author thanks Research Assistant Gregg VanHelmond for his exhaustive research into dozens of past appropriations bills and other documents to compile data for this analysis.

2. H. L. Mencken, *A Carnival of Buncombe: Writings on Politics*, ed. Malcolm Moos (Chicago, Ill.: University of Chicago Press, 1984), p. 325.

for this spending, but President Bill Clinton also was an active participant. TEA 21, in fact, reserves any unspent portion of the earmarked $9 billion for projects of interest to the President.

To help deflect public cynicism about TEA 21's 1,850 earmarks, Congress tried renaming them. The highway earmarks—formerly "demonstration projects"—became "high priority" projects; but this attempt fooled neither the public nor the media. Many of the questionable earmarks became front-page news and talk-radio fodder. But however embarrassing the bill's contents, the ridicule did nothing to deter Congress from adding even more questionable pork-barrel items to the 13 appropriations bills it enacted later in 1998. Appendix A includes a sampling of some of the earmarks from recent legislation.

Indeed, the wastefulness and the number of earmarks that characterized TEA 21 seemed but modest indiscretions by the standards of fiscal excess with which Congress crafted the fiscal year (FY) 1999 Omnibus Appropriations bill, which was enacted into law during the waning days of the 105th Congress. For example, although the 1,850 transportation earmarks in TEA 21, spread over the six-year life of the legislation, amount to 300 per year, this is less than half the annual number produced by the Transportation Appropriations Subcommittee.

Although much of the public criticism of pork-barrel spending focuses on the outrageous and humorous waste such earmarks often entail, the more troublesome, yet often overlooked, implication of this escalating trend is the extent to which they reflect Washington's growing propensity to micromanage state and local affairs. All of the earmarks in TEA 21, as well as the several thousand pork projects buried in the 13 appropriations bills in FY 1999, represent a federal rebuke of the priorities set by governors and local leaders who are far more familiar with the needs of their states and more closely tied to the wishes of their communities. Were it not for such earmarks, few communities would choose voluntarily to spend scarce transportation funds on these marginal projects. In fact, half the highway earmarks go unfunded for want of local matching money—which demonstrates how marginal many of these projects really are.

Some states have challenged this Capitol Hill trend by attempting to assert their traditional right to distribute earmarked funds in accordance with local priorities. For example, Florida's Department of Transportation challenged the priority status of TEA 21 earmarks, but the U.S. Department of Transportation overruled the state's efforts.

Micromanaging a complex economy, even when the effort is taken more seriously than it is here in the United States, has never worked, no matter where it has been attempted. Various economic ministries of the former Soviet Union tried to do it for decades, and the principal result of their centralized plans to mandate how much of what should be produced, and where, was the near permanent impoverishment of a large portion of the globe. Fortunately, legislators in the United States have chosen generally to avoid such large-scale efforts in futility; and the federalist system, with its many levels of government and devolved responsibilities, is one factor that continues to protect the American people from the misuse of centralized power.

It is time for Congress to deal decisively with the growing intrusion of the federal government into the operations of state and local government. Congress and the President should recommit themselves to what works and use the FY 2000 budget and appropriations process to reverse the escalating trend of federal micromanagement that preempts local decisionmaking. Options available to Congress to control the earmark process include (1) enhanced rescission authority or a line-item veto acceptable to the courts; (2) more intense moral suasion from the congressional leadership to discourage Members from engaging in the practice; and (3) legislative language in spending and other bills to require that the money for such earmarks must come from a state's normal allocation formula.

THE GROWTH OF EARMARKED SPENDING

Pork-barrel politics has a long and traditional pedigree in the United States, but what differs today from past practice is the meteoric growth of earmarks in the late 1990s. This growth, if it continues, threatens to undermine the patterns of federalism that have long defined the relationship among America's three levels of government.

Between FY 1985 and FY 1999, the growth in annual earmarks increased substantially faster—between 25 to 1,000 times faster in most cases—than inflation-adjusted federal domestic discretionary spending. Moreover, although the increase in the number of earmarks has risen since 1985, the growth appears to be accelerating: The number of earmarks in five of the 13 appropriations bills doubled between FY 1998 and FY 1999.

Although project-specific earmarks represent only a fraction of the spending in most domestic

Table 1 B1266

Recent Growth in Appropriations Earmarks

	No. of Earmarks / $Millions	FY85	FY90	FY95	FY98	FY99	% Change FY85–FY99	% Change FY98–FY99
Agriculture	Number	41	217	249	212	276	573%	30%
	Dollars	$38	$111	$184	$163	$236	523%	45%
Commerce, Justice, State, Judiciary	Number	30	53	93	116	249	730%	115%
	Dollars	$53	$52	$215	$165	$406	666%	146%
Energy and Water	Number	1,340	1,455	1,504	1,776	1,813	35%	2%
	Dollars	$3,577	$3,751	$3,931	$4,331	$4,426	24%	2%
Interior	Number	205	371	327	334	441	115%	32%
	Dollars	$241	$501	$397	$576	$749	211%	30%
Labor, HHS, Education	Number	8	0	16	74	295	3,588%	299%
	Dollars	$16	$0	$36	$102	$545	3,306%	434%
Military Construction	Number	1,082	801	451	366	497	-54%	36%
	Dollars	$4,072	$3,546	$2,541	$3,005	$3,616	-11%	20%
Transportation	Number	92	194	337	346	621	575%	79%
	Dollars	$496	$734	$1,518	$1,403	$2,137	331%	52%
Treasury, Postal Service	Number	16	33	27	26	64	300%	146%
	Dollars	$55	$188	$40	$52	$47	-15%	-10%
Veterans Affairs, HUD	Number	5	89	409	299	616	12,220%	106%
	Dollars	$12	$249	$1,638	$779	$1,001	8,242%	28%
Domestic Discretionary Spending (Deflated)	Dollars	$186	$194	$231	$228	$234	26%	3%

Sources: Data are derived from each fiscal year's appropriations bills. Because this search required the review of as many as 60 separate bills, the sources for this information are listed in Appendix B.

discretionary programs, if their use continues to grow at the current rate, congressionally mandated earmarks could account for a majority of the spending in several budgetary accounts. Already in FY 1999, for example, earmarks in the Military Construction program will consume more than 40 percent of such spending, while Transportation earmarks from both the authorizing and the appropriating committees could absorb as much as 10 percent of federal surface transportation spending—and even more if the Clinton Administration takes advantage of its discretionary use of the money.

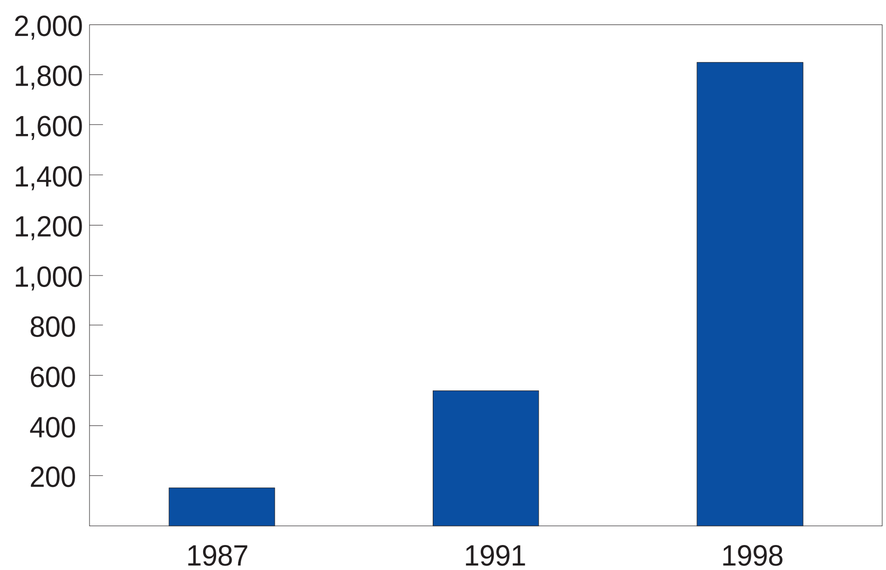
Some observers might identify such proclivities as flaws in the democratic system; others would contend that the dispensing of such pork plays a critical role in a democracy by encouraging a consensus among elected officials who hold disparate views. Be that as it may, an analysis of appropriations bills enacted into law since the mid-1980s indicates that the tendency of Congress to use the earmark process is escalating at a rapid rate. Some of the worst examples involve the enactment of routine legislation whose passage was seldom in doubt—such as the periodic renewal of surface transportation legislation, or any of the 13 appropriations bills needed to fund government.

Table 1 tracks the escalating number of earmarks in nine of the 13 appropriations bills that Congress must enact each year to fund the federal government, compared with the growth of inflation-adjusted federal domestic discretionary spending over the same intervals of time.

As the data in Table 1 illustrate, the number of location-specific earmarks in appropriations bills has risen rapidly since the mid-1980s, although some programs experienced a temporary decline in the number of earmarks in the mid-1990s. In the majority of the appropriations bills, the increase in earmarks between FY 1998 and FY 1999 exceeds the implied annual rate of increase that occurred between FY 1985 and FY 1999—suggesting a worsening of the trend and the spread of the practice to bills that heretofore usually were not subject to it, such as appropriations for Labor/Health and Human Services (HHS), Veterans Affairs (VA)/Housing and Urban Development (HUD), and Agriculture.

Chart 1 B1266

Number of Earmarks in Highway Authorization Bills, 1987–1998



Sources: "Statement by Senator Connie Mack on McCain Amendment Dealing with Demonstration Projects," March 11, 1998; Report 105-550, *Transportation Equity Act for the 21st Century*, Conference Report to Accompany H.R. 2400, 105th Cong., 2nd Sess., May 22, 1998.

Obviously, should such a trend continue at the pace it has in the recent past, federal programs will quickly approach the point at which a majority of spending in the major government functions will be earmarked for specific projects in specific places, and state and local governments will become bystanders to the public policies implemented in their communities.

Although appropriations bills often are the vehicle of choice for location-specific pork-barrel spending, other legislation—including bills to authorize and reauthorize programs and emergency supplemental spending legislation—have hauled pork from Washington to privileged towns and cities across America. The legislation periodically required to reauthorize federal highway spending (of which TEA 21 is the most recent manifestation) has become a congressional favorite for rewarding privileged constituents. It also exhibits the same pattern of escalating earmarks revealed in Table 1.

Chart 1 illustrates the growth in the number of earmarks that were included in the last three highway program authorization bills.

HOW FEDERAL EARMARKS MARGINALIZE STATE AND LOCAL GOVERNMENTS

Although much of the media coverage of congressional pork projects and earmarks emphasizes the wasteful nature of such spending, the often humorous nature of this approach obscures a more troubling consideration: the extent to which the use of earmarked spending reflects Congress's increasing propensity to micromanage local affairs, override local priorities, and in the process undermine state and local decisionmaking in determining local needs and solutions.

Setting Priorities in a Federal System. Traditionally, most of the money available through federal domestic discretionary programs is distributed—at the limited discretion of the department responsible for each program—according to general legislative guidelines, formulas, and provisions to determine eligibility, the proper use of funds, and state and local allocations.

For example, absent earmarks, annual spending by the federal highway program is allocated to each state and territory using a complicated mathematical formula that takes into consideration population, miles of highway, fuel usage, and other quantitative factors in order to match surface transportation needs with available funds. Once the allocation is determined, it is each state's prerogative to determine how and where this money will be spent in accordance with the federal guidelines as well as federal functional allocations for bridges, transit, repair and maintenance, and new construction.

In theory, it is the state's prerogative, in consultation with local officials, to determine the priorities for, say, bridge repairs. At the same time, the state's transportation department generally reallocates the federal funds to each "transportation district" using quantitative formulas similar to those used at the federal level.

Federal earmarks circumvent this decisionmaking process by overriding state and locally determined priorities and substituting a series of detailed "priorities" from Washington.

Although much of the public attention focuses on transportation spending, congressional earmarks are much more intrusive in such programmatic areas as Energy and Water and spending for Military Construction. The FY 1999 Energy and Water appropriations bill, for example, contained over 1,800 separate earmarks—three times more than the Transportation appropriations bill which, with 621, was second highest. And although the Military Construction bill contained a little less than 500 earmarks, those earmarks accounted for 42 percent of all spending in the bill.

OVERRIDING LOCAL PRIORITIES: THE CASE OF TRANSPORTATION

Because the practice of earmarking highway spending is so common and several government agencies have studied it, the federal highway program and especially TEA 21 offer many examples of how Washington's priorities impinge on state and local decisionmaking. Consider just two:

- The Oregon Department of Transportation must spend its TEA 21 funds to construct a bicycle path in Springfield paralleling 42nd Street to link with an existing bike path, build right-of-way improvements to improve pedestrian access to the MAX light rail in Gresham, and construct a bike path between Main Street in Cottage Grove and the Row River Trail.

- In Virginia, state officials must repair a historic wooden bridge along the Virginia Creeper Trail near Abingdon, conduct a historic restoration of the Roanoke Passenger Station, and construct an access road and "related facilities" for Fisher Peak Mountain Music Interpretive Center. These and many other marginal projects will be at the expense of funds that could be used to widen and rehabilitate the increasingly dangerous, 35-year-old Interstate Route 81, a major north-south artery serving much of the East Coast from as far north as Canada.

In the face of criticisms that such earmarks circumvent state and local decisionmaking, most Members of Congress will claim that these earmarks reflect locally determined priorities and are included in the legislation to ensure that such "high priorities" (such as a bike path between Mount Clemens and New Baltimore in Michigan and an elevated walkway between Centre Station and the Arena in Chicago) are not overlooked by state officials. Indeed, in early 1997, faced with growing criticism of pork in the emerging highway bill, Congress renamed the earmarks "high priority" projects.[3] The new title certainly conveys a sense of urgency that was missing in the previous title of "demonstration projects," but it is likely that state transportation officials will still judge these projects to be as worthless as those Congress forced on them in the past.

State Impact. How these earmarks affect a state is vividly described in a 1996 performance audit conducted by Pennsylvania's Legislative Budget and Finance Committee. Pennsylvania is burdened with a congressional delegation whose Members' relative seniority has brought vast quantities of earmarked pork back to the state; the audit's detailed conclusion summarizes the adverse impact such "influence" has had on Pennsylvania motorists. In a section entitled "Congressionally Earmarked Projects Directly Affect Commonwealth Priorities," the audit concludes:

> Although the planning process established under ISTEA [the 1991 Intermodal Surface Transportation Efficiency Act] appears sound, the process can be undermined when Congress targets specific highway projects for federal funding. The local planning organizations and the Department [PA D.O.T.] are then put in the position of either giving the project a high priority on their transportation plans, which means that the monies are not available for other potentially more worthy projects, or rejecting the project….
>
> The practice of Congress earmarking funds for specific purposes can significantly impact the Commonwealth's ability to fund the projects of greatest need. For example, approximately 27.5 percent ($1.32 billion of $4.8 billion) of the total funding projected to be available for the highway and bridge component of the 1997-2000 Statewide Transportation Improvement Program is for specific projects earmarked by Congress. When only the funding available for major highway construction projects is considered, the percentage applied to earmarked projects rises to 84 percent ($1.32 billion of $1.57 billion). Most (70 percent) of this $1.32 billion is for projects in central Pennsylvania. Rather than turn down these projects and risk losing the associated federal funding, the Department accepts the earmarked projects. *The earmarking by Congress of funding for specific major construction*

3. Such earmarking actually began with ten potentially legitimate demonstration projects earmarked in the 1982 highway bill. At that time, each project was accompanied by a paragraph describing the specific demonstration to be evaluated, and the U.S. Department of Transportation (DOT) was required to submit a report annually that evaluated the effects of each project. But as the projects became more pork-like and their evaluations more critical, Congress removed the legal provision requiring the DOT evaluations; no evaluations have been done since 1991.

> *projects therefore severely limits the ability of the Department and the State Transportation Commission to allocate funds to other projects that may be of higher priority.*[4]

It should be noted that Pennsylvania's harsh assessment of congressional munificence referred to the ISTEA as enacted in 1991, which included only 538 earmarks, not the 1,850 included in the ISTEA's 1998 successor, TEA 21.

Government Studies Confirm Marginal Value. A Congressional Research Service (CRS) study of a sampling of demonstration projects incorporated in the 1987 and 1991 highway authorization bills came to a similar conclusion:

> For demonstration projects to provide the welfare gains citizens might expect from transportation public policy, they would have to produce outcomes at least as good as those that result from the local, state and regional planning process. Evidence so far suggests that many demonstration projects may have difficulty passing this test.[5]

Much of the research cited in the CRS report was derived from an earlier U.S. General Accounting Office (GAO) study that evaluated 66 of the 152 demonstration projects included in the 1987 highway bill.[6] The 1987 bill allocated $1.4 billion to these projects; but after five years, about 64 percent of these funds had not been obligated because of inaction in the states. In a survey of state transportation officials, the GAO found that more than half of the earmarked projects were not included in state transportation plans because state officials felt the projects would add little to mobility goals based upon state and regional needs. The GAO also reported that many of the earmarks that did address real state and local mobility needs were not undertaken because state officials judged them to be too costly to implement, and the earmarked funds significantly understated the actual cost of the projects.

The earmarked demonstration projects in the subsequent highway bill—the 1991 ISTEA—did not fare much better as local officials declined to build them in their communities despite the fact that the federal government would cover 80 percent of the cost. Of the $6.23 billion earmarked for 538 location-specific projects listed in the 1991 ISTEA, slightly more than half the money, or $3.3 billion, remained unobligated as of January 31, 1997, when ISTEA expired. In effect, and as the GAO discovered from its review of the 1987 highway bill, state and local officials deemed these projects to be of such marginal value that they did not justify the spending of state financial resources to meet the law's 20 percent local funding requirement.

So little spending of the earmarked money during those five years may also be due to the slapdash procedures used by Congress to determine what projects to include as earmarks. Both the haste and the absence of careful thought that often characterize legislative development frequently lead to faulty cost estimates and budget allocations. In contrast to projects and priorities determined by the states through comprehensive review and analysis, as well as consultation with local officials, many congressional earmarks tend to arise in the few weeks or months leading up to a bill's enactment as votes are sought to ensure passage. As a result, each project's financial needs and related cost estimates tend to be roughly estimated and, consequently, sometimes incorrect.

Many such cost estimates probably are understated deliberately to ensure that each project's cost will fit within overall spending totals. As an indica-

4. *Performance Audit: Department of Transportation, Pursuant to Act 1981–35*, Legislative Budget and Finance Committee, June 1996, p. 187; emphasis added.
5. J. F. Hornbeck, "Highway Demonstration Projects: Background and Economic Policy Issues," Congressional Research Service *CRS Report to Congress*, No. 94–572E, July 15, 1994; see especially the Summary.
6. U.S. General Accounting Office, *Highway Demonstration Projects: Improved Selection and Funding Controls Are Needed*, RCED–91–146, May 1991.

tion of just how far off the mark such earmark cost estimates have been, the GAO's analysis of the 1987 demonstration projects found that the spending authorization included in the highway bill covered only 37 percent of the cost needed to complete 51 of the 66 earmarks. Specifically, the GAO found that the authorized federal funds, combined with the required state match, yielded $700 million in available funds, but the states estimated this to be about $1.2 billion short of what was needed to complete the 51 projects.[7] As a result, with many earmarked projects requiring the commitment of public funds in excess of the amount included in the original legislation, states have an additional incentive to ignore congressionally mandated, low-priority projects.

More Conflicts with States. Whether the same fate awaits the 1,850 earmarks included in TEA 21 will not be known until the legislation expires at the end of 2003, but conflicting interpretations over legislative language in H.R. 2400 suggest that the value of these earmarks could be greatly diminished even for those states and communities that want to go forward with the projects.

Recognizing that such earmarks diminish the value of federal spending for the states by forcing unwanted projects on communities, Senator John McCain (R–AZ), a leading congressional critic of pork,[8] introduced legislation during consideration of TEA 21 that would have required the cost of all earmarks to be deducted from a state's formula allocation of highway trust fund money rather than taken as additional money from another state's share.

Senator McCain's language did not make it into the final bill. However, other language in the bill designed to ensure that "donor" states[9] receive a fairer share of trust fund spending was interpreted by some states—including perennial donor state Florida—as requiring communities that receive the earmarks to give up a dollar of their unrestricted formula allocation for every dollar for "high priority" projects they receive from TEA 21. Under this interpretation, if a transportation district was authorized to receive $10 million in federal highway money from a state's highway allocation formula but also was authorized by TEA 21 to spend $1 million on one of its 1,850 earmarks, the state would be entitled to reduce that district's formula allocation to $9 million. This would limit total district transportation spending to no more than the $10 million authorized by the state's allocation formula. As a result of this interpretation, communities that elect to go forward with their earmarked projects would do so at the explicit expense of other local transportation projects in their district which they otherwise might have undertaken.

Because the TEA 21 language on earmarks is more ambiguous than that of the previous highway bill,[10] Florida's interpretation would have had the effect of ensuring that an even smaller proportion of the funds so earmarked in TEA 21 actually would be used for "high priority" projects. But the interpretation would have struck a severe blow to the implementation of many of the 1,850 earmarks included in TEA 21.

For both sides, the stakes in the dispute were exceptionally high, and both sides gave it their full attention. House Transportation Committee Chairman Bud Shuster (R–PA), the chief architect of TEA 21, wrote to the governor of Florida and asserted that TEA 21's language in no way permits the state to deduct "high priority" spending from a

7. *Ibid.*, p. 6.

8. Senator McCain has added extensive information on congressional pork to his congressional office Web site at *http://www.senate.gov/~mccain*.

9. A "donor state" is a state whose share of the federal fuel tax receipts paid into the highway trust fund exceeds the federal transportation spending it receives from the trust fund. In 1997, South Carolina received 67 cents for every tax dollar it paid into the trust fund.

10. In the 1991 ISTEA, the money for the earmarks was given explicitly in addition to money received through the normal formula allocation.

district's formula allocation. But Senate Environment and Public Works Committee Chairman John Chafee (R–RI), along with Highway Subcommittee Chairman John Warner (R–VA), wrote in support of Florida's interpretation, arguing that:

> Since Federal law requires that high priority projects are included in the distribution of Federal funds to states, it is not appropriate that the Federal government mandate a complete opposite approach and mandate that a state *exclude* these very same projects in a state's distribution formula.[11]

Unfortunately for congressional efforts to limit the spread of pork and enhance the ability of state and local officials to determine and meet their priorities, Secretary of Transportation Rodney Slater sided with the House in a December 22, 1998, letter to Florida's Department of Transportation. This could settle the matter in favor of earmarked pork if the Senate ultimately concedes to Secretary Slater's interpretation of TEA 21.

HOW TO LIMIT THE USE OF EARMARKS

Congress's propensity to earmark federal spending is rising at an alarming rate and, if allowed to continue, will soon account for a substantial share of federal discretionary spending. Although many Members of Congress have expressed concern about these trends, efforts to deter them have not been very successful. Moreover, even though there are several steps that Congress can take to discourage earmarks, it is not likely that such action will be taken until governors, mayors, and other state and local officials oppose the practice more aggressively than they have in the past. Given the recent increases in the use of earmarks, governors and mayors will find the trend increasingly hard to ignore.

What Congress and the President Can Do

Moral Suasion. Some Members of Congress commonly use a technique called moral suasion to induce their colleagues to show some measure of restraint and prudence in setting aside money for location-specific earmarks of questionable value. Although very recent attempts to use moral suasion have not stemmed the escalation in the use of earmarks, an earlier effort by senior members of the Appropriations Committee appears to have had some success in several appropriations accounts.

Such an effort occurred in 1993 when Representatives William H. Natcher (D–KY) and George E. Brown, Jr. (D–CA), then chairmen, respectively, of the House Appropriations Committee and House Science Committee, worked to reduce significantly the number of appropriated earmarks for academic institutions, which had risen from seven in 1980 to 499 in 1992. As a result of their efforts in writing the FY 1994 appropriations bills, earmarks in four appropriations bills were reduced by half between FY 1993 and FY 1994.[12]

Not surprisingly, cooperation among their colleagues was not universal: Ten projects that Brown succeeded in stripping from the FY 1993 Energy and Water Appropriations bill appeared several days later attached to the Defense Appropriations bill, which was passed before an effort could be mounted to strip them from the bill. Nonetheless, in looking at the trend in earmarks in the sample of appropriations bills included in Table 1, several (but not all) show evidence of some restraint in the use of earmarks over the 1990–1995 period for appropriations bills related to Agriculture, Interior, Military Construction, and Treasury. Regrettably, Table 1 also reveals that this selective restraint, at least in these accounts, appears to have evaporated by FY 1999.

Senator McCain attempted to reinstitute a similar effort through legislative initiatives and aggres-

11. Senator John Chafee and Senator John Warner, Letter to the Honorable Frank Wolf, Chairman, Appropriations Subcommittee on Transportation, October 16, 1998.

12. *Congressional Quarterly Almanac, 103rd Congress, 2nd Session, 1994*, Volume L (1995), p. 595.

sive moral suasion, but his well-organized and highly visible efforts appear not to have had much effect in slowing the growth of earmarks. Unlike his somewhat more successful Democrat predecessors, who held leadership positions within the Appropriations Committee, Senator McCain's lack of membership on that committee may limit the effectiveness of his opposition.

Legislative Remedies. Despite an inability to convince his colleagues through moral suasion, Senator McCain was not deterred from using the legislative process to discourage earmarks. When it became obvious during the congressional debate on TEA 21 in 1997 that the House version of the bill was collecting an unprecedented number of earmarks, McCain introduced legislation that would have required states and communities receiving special earmarks to "pay" for them out of their formula-based highway funding. Absent such legislation, less favored states end up paying for earmarks that privileged states receive.

According to a GAO study of the fairness of the earmark process, earmarks in the 1987 highway bill caused 21 states to receive fewer highway funds than they would have received under the formula in order to "pay" for the extras received by 15 states.[13] Although the exact wording of Senator McCain's amendment did not become part of the highway bill as enacted, it did lead to other changes in the bill that most believed would achieve the same result. Following Secretary Slater's resolution of the House/Senate dispute over Florida's attempt to put this interpretation into effect, however, this effort at damage control also failed.

Congress's other major attempt to control pork-barrel spending occurred in 1995 when it enacted the line-item veto as part of the Contract With America. President Clinton used this new veto privilege (which took effect on January 1, 1997) to cancel $355 million in FY 1998 pork-barrel spending, much to the chagrin of many in Congress. Unfortunately, in mid-1998 the U.S. Supreme Court took this power away from the President when it ruled that the line-item veto is unconstitutional. In response, many in Congress promised to enact a version of the line-item veto that would not run afoul of the Court's ruling. Proposals included an enhanced rescission authority or a restoration of presidential impoundment powers, but nothing came of these promises, and the absence of any credible deterrent may be one reason why congressional pork and earmarks set new records in the most recent federal budget.

What Governors Can Do

With Congress apparently either unable or unwilling to impose meaningful restraint on its wasteful spending practices, the last best hope for slowing the growth of federal pork-barrel spending may very well lie with governors and local leaders. Because it is their communities that pay the price of congressional micromanagement, unwanted projects, misdirected resources, and diminished funds, the governors have every incentive to find ways to encourage Congress and the President to improve their performance beyond the narrow, parochial, pork-barrel interests that characterized the last federal budget.

Indeed, shortly after the federal budget fiasco in October 1998, the Republican governors at their annual conference made it quite clear that they expect better performance from Congress in the future. As one press account of the meeting read:

> There was nothing subtle about the message the governors wanted to deliver this week. It was that their congressional leaders had made a hash of the final weeks of the 105th Congress and the mid-term election, and it was now time to turn to the states for help.[14]

Such concerns, while escalating, have been brewing for years. The pork-barrel nature and regional inequities of past highway bills have encouraged several states to become better orga-

13. GAO, *Highway Demonstration Projects*, p. 7.

14. Dan Balz, "Governors See an Opportunity for Ascendancy Within GOP," *The Washington Post*, November 22, 1998, p. A12.

nized and aggressively seek a more equitable relationship with the federal government. The 1991 ISTEA, for example, perpetuated outdated highway funding formulas that penalized the fast-growing states and rewarded slow-growing states with more senior congressional representation.

Under ISTEA, for example, 22 states received less money from the highway trust fund than they paid into it in fuel tax revenues, while 28 states did better. Virginia, for example, received back only 83 percent of what it paid in, while South Carolina did worst of all, receiving just a 71 percent share of what it paid in fuel taxes. When congressionally mandated pork is deducted from these already diminished allocations, donor states and their citizens suffer even more.

In 1996, as a result of such inequitable federal transportation policies, more than 20 donor states joined in urging Congress to enact an alternative federal surface transportation approach called STEP 21. Although Congress promised that several of the key fairness elements of STEP 21 would be included in TEA 21, the Administration's resolution of the House/Senate dispute over how to account for the pork forced on Florida shows how ephemeral this promise was. As a result, the 20 states that put their support behind the more moderate approach of STEP 21 next time might be more likely to endorse the far more radical "turnback" plan of Senator Connie Mack (R–FL) and Representative John Kasich (R–OH), which would transfer virtually all federal surface transportation programs, and the tax authority that goes with them, back to the states.

CONCLUSION

As the 106th Congress gets underway, there will be no shortage of opportunities to show restraint and moderation in federal spending, earmarks, and congressional micromanagement. In addition to the 13 appropriations bills that will have to be enacted before the end of the fiscal year on September 30, 1999, there will be numerous infrastructure authorization bills (or amendments thereto) that will tempt the more overweening Members to interfere with state and local priorities.

The anticipated reauthorization of the Federal Aviation Administration will be the first main opportunity to show restraint, and the threat to reopen TEA 21 (and spend even more) will be a key test of Congress's willingness to honor the historic divisions of responsibility within the nation's federal system of governance.

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APPENDIX A
SELECTED EARMARKS, FISCAL YEAR 1999 BUDGET [15]

FY 1999 Agriculture Appropriations

Agricultural Research Service:

- $250,000 to Alternative Fish Feed, Aberdeen, ID
- $250,000 to Appalachian Fruit Research Station, Kearneysville, WV
- $1,100,000 to Aquaculture Research, AK
- $300,000 to Biological Control of Western Weeds, Albany, CA
- $250,000 to Cereal Crops Research, Madison, WI
- $250,000 to Cotton Ginning, Stoneville, MS
- $750,000 to Grasshopper Research, AK
- $300,000 to Honeybee Research (Varroa/Tracheal Mites), Baton Rouge, LA
- $250,000 to Lettuce Geneticist/Breeding, Salinas, CA
- $500,000 to Manure Handling and Disposal, Starkville, MS
- $1,100,000 to National Warmwater Aquaculture Center, Stoneville, MS
- $150,000 to Peach Varieties Research, Byron, GA
- $1,000,000 to Peanut Quality Research, Dawson, GA/Raleigh, NC
- $150,000 to Potato Breeder Position, Aberdeen, ID
- $1,400,000 to Rice Research, Stuttgart, AK
- $250,000 to Small Fruits Research, Poplarville, MS
- $500,000 to Subtropical Animal Research Station, Brooksville, FL
- $200,000 to Sugarbeet Research, Ft. Collins, CO
- $500,000 to U.S. Plant Stress and Water Conservation Lab, Lubbock, TX
- $200,000 to Vegetable Research, East Lansing, MI

Cooperative State Research, Education, and Extension Service

Research and Education Activities:

- An additional $2,500,000 for the Office of Cosmetics and Color
- $131,000 to Agricultural diversification, HI
- $250,000 to Milk safety, PA
- $300,000 to Wool research, TX, MT, WY
- $5,136,000 to Wood utilization research, OR, MS, NC, MN, ME, MI, ID, TN

FY 1999 Energy and Water Appropriations

- $419,000 for the Delaware Bay Coastline, DE, NJ
- $200,000 for Tampa Harbor, Alafia Channel, FL
- $322,000 for Barnegat Inlet to Little Egg Harbor Inlet, NJ
- $113,000 to Brigantine Inlet to Great Egg Harbor Inlet, NJ
- $200,000 to Great Egg Harbor Inlet to Townsend's Inlet, NJ
- $100,000 to Lower Cape May Meadows, Cape May Point, NJ
- $300,000 to Manasquan Inlet to Barnegat Inlet, NJ
- $750,000 to Raritan Bay to Sandy Hook Bay, NJ
- $250,000 to Townsend's Inlet to Cape May Inlet, NJ
- $700,000 to continue the feasibility phase of the Red River Navigation, AK
- $4,400,000 to Norco Bluffs, CA
- $6,000,000 to Panama City Beaches, FL
- $1,200,000 to Tybee Island, GA
- $700,000 to Indiana Shoreline Erosion, IN
- $4,000,000 to Indianapolis Central Waterfront, IN
- $750,000 to Ohio River Flood Protection, IN

15. Due to space limitations, it is impossible to include a comprehensive listing of all earmarks. In addition to existing earmarks in the appropriations bills, TEA–21 contains 49 pages of earmarked funding.

- $25,230,000 to Harlan/Clover Fork, Williamsburg, Pike County, Middlesboro, Martin County, and Town of Martin, elements of the Levisa and Tug Forks of the Big Sandy River and Upper Cumberland River project, KY
- $4,000,000 for Southern and Eastern KY
- $16,000,000 to Lake Pontchartrain and Vicinity (Hurricane Protection), LA
- $4,500,000 to Lake Pontchartrain (Jefferson Parish) Stormwater Discharge, LA
- $75,000,000 to Southeast LA
- $6,200,000 to Jackson County, MS
- $12,000,000 to Pascagoula Harbor, MS
- $3,000,000 to Passaic River Streambank Restoration, NJ
- $6,800,000 to Lackawanna River, Olyphant, PA
- $40,551,000 to Lackawanna River, Scranton, PA
- $39,000,000 to South Central Environment Improvement Program, PA
- $5,500,000 to Wallisville Lake, TX
- $18,000,000 to Virginia Beach, VA
- An additional $14,000,000 to American River Watershed, CA
- $9,000,000 to American River Watershed (Natomas), CA
- $340,000 to Crescent City Harbor, CA
- An additional $3,000,000 to Guadalupe River, CA
- An additional $2,400,000 to Humboldt Harbor and Bay, CA

FY 1999 Transportation Appropriations

Bus and Bus Facilities Project Designations:

- $3,000,000 for an intermodal center, Buffalo, NY
- $1,000,000 for an intermodal center, Burlington, VT
- $1,500,000 for bus replacements, Butte, MT
- $575,000 for bus facilities and buses, Cambria County, PA
- $200,000 for buses, Carroll County, NH
- $8,000,000 for buses, Central Puget Sound, WA
- $1,250,000 for buses, Centre Area, PA
- $300,000 for buses, Chambersberg, PA
- $1,000,000 for an intermodal center, Chambersberg, PA
- $900,000 for a multimodal center, Chelan, WA
- $3,500,000 for a bus transfer center, Chatham Area, GA
- $1,000,000 for a transportation center, Chester County, PA
- $200,000 for buses, City of East Chicago, IN
- $2,500,000 for a multimodal center, Clearwater, FL
- $2,615,000 for buses, Clark County, NV
- $625,000 for a bus maintenance facility, Cleveland, OH
- $1,100,000 for a bus replacement, Columbia, SC
- $750,000 for buses, Concord, NH
- $200,000 for vans, Contra Costa, CA
- $1,000,000 for buses and facilities, Corpus Christi, TX
- $500,000 for buses, Crawford, PA
- $1,250,000 for buses, Culver City, CA
- $2,750,000 for buses, Dallas, TX
- $625,000 for a maintenance facility, Davis, CA
- $625,000 for a multimodel center, Dayton, OH
- $2,500,000 for an intermodal center, Daytona, FL
- $500,000 for a transit authority, Deerfield Valley, VT
- $1,250,000 for an intermodal center, Denver, CO
- $500,000 for buses and a transit facility, Dothan, AL
- $1,000,000 for vehicles, Duluth, MN
- $521,000 for buses, Dutchess County, NY
- $100,000 to East Hampton, NY
- $500,000 for an intermodal center, Lake Tahoe, CA
- $1,250,000 for transit vehicles, Lakeland, FL
- $4,400,000 for buses, Lane County, OR
- $600,000 for bus technology improvements, Lansing, MI
- $300,000 for buses, Little Rock, AR
- $750,000 for a bus facility, Long Beach, NY

APPENDIX B
SOURCES, TABLE 1, RECENT GROWTH IN APPROPRIATIONS EARMARKS

FY 1985

- H.R. 5743, Conference Report 98-1071
- H.R. 5712, Conference Report 98-952
- H.R. 5653, Conference Report 98-866
- H.J. 648, Conference Report 98-1159
- H.R. 6028, Conference Report 98-1132
- H.J. 648, Conference Report 98-1159
- H.J. 648, Conference Report 98-1159
- H.R. 5798, Conference Report 98-993
- H.R. 5713, Conference Report 98-867

FY 1990

- H.R. 2883, Conference Report 101-361
- H.R. 2991, Conference Report 101-299
- H.R. 2696, Conference Report 101-235
- H.R. 2788, Conference Report 101-264
- H.R. 3012, Conference Report 101-307
- H.R. 3015, Conference Report 101-315
- H.R. 2989, Conference Report 101-276
- H.R. 2916, Conference Report 101-297

FY 1995

- H.R. 4554, Conference Report 103-734
- H.R. 4603, Conference Report 103-708
- H.R. 4506, Conference Report 103-672
- H.R. 4602, Conference Report 103-740
- H.R. 4606, Conference Report 103-733
- H.R. 4453, Conference Report 103-624
- H.R. 4556, Conference Report 103-752
- H.R. 4539, Conference Report 103-741
- H.R. 4624, Conference Report 103-715

FY 1998

- H.R. 2160, Conference Report 105-252
- H.R. 2267, Conference Report 105-405
- H.R. 2203, Conference Report 105-271
- H.R. 2107, Conference Report 105-337
- H.R. 2264, Conference Report 105-390
- H.R. 2016, Conference Report 105-247
- H.R. 2169, Conference Report 105-313
- H.R. 2378, Conference Report 105-284
- H.R. 2158, Conference Report 105-297

FY 1999

- H.R. 4328, Conference Report 105-825 (omnibus)
- H.R. 4060, Conference Report 105-749
- H.R. 4059, Conference Report 105-647
- H.R. 4194, Conference Report 105-769