



Congressional Earmarks

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The distribution of Federal funds in virtually every aspect of government operations is a complex and complicated exercise in fiscal accountability. One aspect that has garnered more than its fair share of media exposure in the past few years is the way in which Federal funding for the highway program has been manipulated by Congress to provide money for dubious and special interest related projects. The poster child for this media attention was the special “earmark” funding that was set up for construction of the now infamous “bridge to nowhere” in Alaska.

CATEGORIES AND GOALS

In attempting a very basic explanation, Federal funding for highways is authorized by Congress in a series of highway bills that are enacted for a specific period of time. In recent years, these highway bills have been enacted for six-year time periods. At each six-year interval, Congress establishes the amount of funds to be distributed annually to each state over the length of the bill. The amount allocated per state is based on a complex formula that takes into account the various transportation-related features of that state. In distributing the annual funds, project categories are designated for which the money is to be used. These categories have been established by Congress to achieve certain transportation-related goals. Typically, the states and local governments that receive Federal funding are required to provide project matching funds, generally in the range of 20%.

The earmarking process that gained national media attention in 2008 is the method used by members of Congress to place supplements into the various highway bills. Once a funding figure is settled on for a highway bill, members of Congress may add additional language in the bill to target specific projects of interest. These are known as earmark projects, and the funding they receive is in addition to the formula funding that is ultimately contained in the general body of the highway bill. Depending on how aggressive the Congressional representatives want to be, a state may receive anywhere from a few earmark projects to dozens or even hundreds.

THE SAFETEA-LU

The current highway funding bill, known as Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), contained in excess of 5,500 earmark designation projects. The amount of money allocated to any project depends on what each Congress member submits, and the number of projects and funding amount is limited only by each person’s concerns over any unofficial Congressional guidelines and ground rules that happen to be in place at that particular time.

While most highway program earmarking occurs when the highway legislation is being enacted, members of Congress are not limited to this once every six year event. Since other highway funding bills must be enacted every year, this provides another

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opportunity for a small number of earmarks to be funded. When considering the granting of earmarks, members of Congress must place some balance between the appreciation of their constituents for providing extra project funding, against the possible charges that may be raised by their critics regarding the loading of funding legislation with “pork barrel” projects.

While the earmark process does bring extra project funding to a State Department of Transportation (DOT), there are aspects of this process that may cause considerable concern. These include:

1. The additional Federal funding requires an appropriate state or local government matching, and often times, the budget process has not included or anticipated these earmark projects. Trying to rearrange budgets and planning documents to accommodate these additional projects can necessitate considerable fiscal maneuvering at the state or local levels.
2. Quite often the earmark will include projects that have already been progressing without Federal funding. The addition of Federal funds may now require that some Federal requirements, such as environmental approvals, be obtained. It is not unusual for the state or local agency to be tasked with acquiring retroactive approvals.
3. Some earmarks may be for projects that have only a vague or tenuous relationship to a normally funded transportation project. Members of Congress may find that the highway legislation is their best available vehicle to fund a particular project and may insert it in the legislation regardless of how appropriate it might be to transportation. This forces the DOT to either oversee a project outside of its area of expertise or find a way to transfer the funds to another more appropriate oversight Agency.

CREATING A WIN-WIN

A practical illustration of this occurrence is where funding is earmarked to pay for the construction cost of a pedestrian bridge over a roadway on a college campus. By the time the earmark is actually funded in legislation, several years may have passed. The college has already constructed the bridge with its own funds and now expects reimbursement. In this situation, the Federal Highway Administration (FHWA) and State DOT may not be aware of the impending earmark and would be faced with obtaining retroactive environmental approvals, as well as determining whether the construction contracts had complied with Federal contracting guidelines, and if the pedestrian bridge was actually built in accordance with the appropriate design standards. Additionally, there must be assurances that the total cost of the pedestrian bridge was substantial enough to utilize all of the earmark funding. During this process, it may be necessary to bend a few rules to make the circumstances fit the situation. Since this funding was specifically established by a member of Congress, both the FHWA and State DOT would want to pursue every opportunity to create a win-win scenario.

The way the rules are currently written, members of Congress are free and able to manipulate the funding process by placing earmarks in the various types of highway funding legislation. Although very few would try to defend the earmarking process as a good government practice, it appears to be staying around for awhile. The current six-year SAFETEA-LU highway bill is due to expire on September 30, 2009, so Congress will need to enact a new funding bill. It will be interesting to see how all of the controversy that accompanied SAFETEA-LU will impact earmarking in this new legislation. ✪