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MONITORING AND ANALYZING DEVELOPMENTS IN FEDERAL TRANSPORTATION AND PUBLIC WORKS POLICY

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Legislative Schedules
Week of April 8, 2002

House

Wednesday and Thursday — Meets at 10 a.m. for legislative business — H.R. 3991, taxpayer protection (under suspension of the rules) and H.R. 3925, Digital Tech Corps, and H.R. ___, pension security (both subject to rules) — no votes past 6 p.m. Thursday.

Senate

The Senate will convene today at 9:15 a.m. and resume consideration of S. 517, the energy bill. At 9:45 a.m. there will be a cloture vote on Feinstein amendment #2989, regulatory oversight over energy trading markets. Continued consideration of the energy bill is expected throughout the week.

Inside This Issue

In-Depth Analysis: Earmarked Highway Projects

Their History, Their Nature and Their Role In Highway Legislation

Third in a series of articles looking ahead to various elements of TEA-21 reauthorization next year. This article examines the nature and history of earmarked highway projects in highway authorization bills and compares them to highway earmarks in annual DOT appropriations bills. Tables and charts containing data on earmarked projects may be found on pages 10-12.

As Congress prepares to reauthorize the Federal-aid highway program next year, the attentions of most Members of Congress will not be focused on the fine points of program streamlining or congestion mitigation. They will be focused on getting the needs of their constituents met through earmarked highway projects, such as the 1,883 such projects found in the 1998 TEA-21 legislation at a cost of $9.6 billion.

The prime beneficiaries of these projects are, not surprisingly, the legislators who write the bills — the members of the highway authorizing committees (House Transportation and Infrastructure and Senate Environment and Public Works). The 75 members of the T&I panel (which drives the train on projects) managed to lay claim to over 29 percent of the earmarks in TEA-21, making that panel a $2.6 billion business.

Members unwilling to wait for TEA-21 reauthorization to be completed might seek a project from the House and Senate Appropriations Committee in the annual Department of Transportation spending bill. Last year that bill contained 612 earmarked highway projects costing $1.53 billion — 86 percent of the prorated amount of TEA-21 project funding set to be spent that year. Together, the FY 2002 project earmarks (authorized and appropriated) totaled 10 percent of the total obligation level for high-

> ***"…it shall not be in order for any bill providing general legislation in relation to roads to contain any provision for any specific road, nor for any bill in relation to a specific road to embrace a provision in relation to any other specific road."***
>
> ***—a House rule in effect from 1913 to 1999 and often ignored.***

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Senate EPW Schedules RABA Restoration Markup (Maybe)

RABA

The Senate Committee on Environment and Public Works has scheduled a 10 a.m. meeting tomorrow to approve legislation (S. 1917) attempting to restore at least $4.4 billion in funding to the Federal-aid highway program.

But both the amount of funding that the panel would vote on and the number of votes in favor of the bill are in question, and consideration of the legislation might be postponed.

The bill, otherwise known as the Highway Funding Restoration Act, was introduced on February 7 by panel chairman James Jeffords (I-VT) and the eighteen other members of the EPW Committee. Identical legislation was introduced in the House by the Transportation and Infrastructure Com-

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RABA Markup...

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mittee. Both bills attempt to establish the level of FY 2003 highway obligations at $27.746 billion, the level authorized by TEA-21, thereby eliminating the downward reduction of $4.369 billion contained in the President's budget and brought about by lower-than-expected estimates of Highway Trust Fund receipts.

The budget resolution recently approved by the Senate Budget Committee and pending on the Senate floor assumed an obligation level of $28.9 billion — $5.7 billion above the President's level and $1.3 billion more than the level contained in S. 1917.

The debate in the Budget Committee was rancorous and the spending plan was approved by a party-line vote (for reasons having little to do with highways), so the Senate budget is seen as a partisan plan.

And while Jeffords, the Democrats and some Republicans on the EPW panel want to revise S. 1917 to reflect the Budget Committee's number, EPW ranking Republican Bob Smith (R-NH) was quoted in today's *CongressDaily A.M.* as wanting to stick with the level currently in the bill ($4.369 above the request) in the interest of staying consistent with the principles established in TEA-21.

While Jeffords probably has the votes to approve a larger version of the bill in committee, doing so without Smith and others might destroy the image of bipartisanship that highway advocates have tried hard to achieve on this issue. Without Smith's support, Jeffords might postpone consideration of the bill until a later date.

There is no sign of the House Transportation and Infrastructure Committee moving to approve its companion legislation (H.R. 3694) anytime soon. The House's budget resolution contained a leadership-backed assumption of a $4.369 billion fix, and the leadership of the House Appropriations Committee recently introduced similar legislation conceding that figure.

T&I might have been delaying a markup of its bill in hopes that the Senate would first pass a bill with a higher number, giving the House panel an opening to perhaps revise its funding total upwards as well.

Were Congress to adopt a conference report on a final 2003 budget resolution, that might settle the matter, but all indications are that the Senate budget plan might not be able to pass that chamber, and even if it does, the obstacles to reconciling it with a vastly different House plan in such a partisan atmosphere are considerable.

In the absence of a final budget agreement, the final spending levels for highways will have to be settled informally by agreement and ratified in the DOT appropriations bill.

Bush Gives Recess Appointments To Shane, Frankel

President Bush on March 29 bypassed a months-long standoff by giving recess appointments to two men for high-level policy positions at the U.S. Department of Transportation.

Jeffrey Shane, the new Associate Deputy Secretary, and Emil Frankel, the new Under Secretary for Transportation Policy, now have temporary authority to fulfill their duties until the end of 2003. Their jobs not become permanent (well, as permanent as appointed political jobs get) until the Senate confirms their nominations.

Their nominations had been held up for the last three months by Sen. Joe Biden (D-DE), who was seeking to leverage the White House into forcing the anonymous Republican Senators who are holding up Biden's Amtrak security bill (S. 1550) to drop their objections and allow the bill to come up for a vote.

The Administration, of course, responded by blocking a small research grant to a researcher at the University of Delaware before bypassing the confirmation process after the Easter recess began.

Some Senator, perhaps Biden, also blocked a DOT plan to reorganize DOT management and restructure Shane's job from Associate Deputy Secretary to Under Secretary for Policy and to have Frankel and Read Van de Water report to Shane. An item in the omnibus FY 2002 appropriations bill prohibits DOT from making the change this year.

There is no word as to the fate of the Amtrak security bill or the identity of the anonymous Senators who have placed "holds" on the bill, nor is there word of what steps Biden may take next.

In belated confirmation news, the Senate on March 21 by unanimous consent confirmed Vice Admiral Thomas H. Collins to be Commandant of the U.S. Coast Guard.

FHWA Postpones Grant Solicitations For FY 2003 Allocated Programs

Normally at about this time of year the Federal Highway Administration invites interested parties to apply for project funding under the "allocated programs" of highway funds given out at the discretion of FHWA and DOT.

However, since the DOT appropriations bills for the last few years have earmarked almost all of the funding in the allocated highway programs, leaving nothing left to allocate, FHWA announced on March 28 that it will not bother to solicit applications for FY 2003 funding programs until after the appropriations bill is enacted this fall so that FHWA can determine if there is any money left over.

The affected programs are: bridge, corridor/border, ferries, interstate maintenance, covered bridges, public lands, TCSP and value pricing.

Highway Earmarks...

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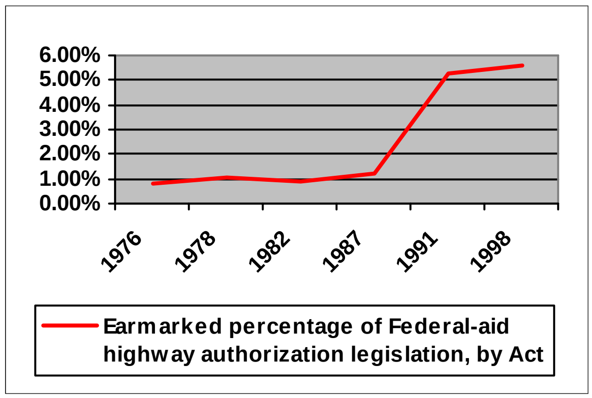
way programs that year.

Legislators and observers who have come along in the last decade would naturally assume that the situation has always been thus. In fact, it has not — heavy earmarking of highway projects in highway bills and DOT appropriations bills is a fairly recent development. This article defines earmarked highway projects, discusses the forces at play in their creation, and outlines the history of projects both authorized and appropriated.

What is an earmarked highway project? An earmarked highway project is identifiable in federal legislation because it contains two things: a specific location identifier (a place name or a road name, or other specific identifying criteria) and either funding made available for that project alone (usually a specific amount, but occasionally "such sums as may be necessary"), or a mandate requiring the Department of Transportation to carry out the project. For purposes of this study, we are looking at only the highway projects contained in federal highway authorization bills and annual appropriations bills and are excluding all mass transit, as well as the FHWA-administrated ITS and maglev programs. Also, when looking at highway authorizations, the summary tables in this article only count the projects whose funding amount is given in contract authority from the Highway Trust Fund (a.k.a. "real money"), as opposed to a simple authorization for later appropriations from the general fund (which we will deal with when looking at the highway earmarks from the Appropriations Committees).

Earmarked highway projects come in all shapes and sizes, from mega-projects like the Woodrow Wilson Bridge replacement ($675 million in contract authority from the authorizers in TEA-21 and $600 million in additional general fund appropriations in FY 2001) and the Big Dig in Boston, Massachusetts (which was funded by bumping up the state's formula apportionment without any direct Federal line-item saying "Central Artery Project"), to much smaller concerns, such as when former House Transportation and Infrastructure Chairman Bud Shuster (R-PA) in included a provision in the1991 ISTEA law ordering that two stoplights in Chambersburg, Pennsylvania add exclusive pedestrian phases for 30 minutes every morning and for an hour every afternoon.

Sometimes definitional questions arise. A case in point: from FY 1982 to FY 1992, there existed a program called "Interstate transfer grants" by which the federal government could reimburse cities and states for the Interstate highway construction funds that they forswore when they decided to substitute other projects for portions of the original Interstate plan that turned out to be unfeasible. While the program was supposed to be up to the discretion of DOT under criteria established in the 1982 highway bill, the Reagan Administration requested, and the appropriators gave, earmarks for the grants by city or state names and with massive dollar amounts that totaled just over $2 billion over that period. While many states and cities might possibly have received similar amounts through the application process had the program not been earmarked (indeed, the appropriators usually approved the requests unchanged), the way in which the grants were listed in the appropriations conference reports might meet the above definition of "earmarked highway project." But then again, so would minute changes to the old Interstate cost estimates and the highway apportionment formulas made to benefit specific states. In the interests of consistency, the Interstate transfer grants are not included in the appropriated earmark tables.



One more thing: from a federal perspective, the job of a highway project is to spend money. The powerful highway construction lobby would ideally prefer to have no earmarked projects and to apportion those funds to state DOTs. However, as long as Congress takes steps to ensure that all the project money actually gets spent on construction, they are usually willing to look the other way.

During the preparation of TEA-21, the T&I panel started an application process for projects. Members who wanted projects were invited to fill out a fourteen-point application form describing the project and listing its vital data. Some might have assumed that the committee's purpose in gathering the data was to evaluate each individual project on its merits, its costs and benefits, and to judge if it was worthy of federal funding. This was not so.

The committee's purpose in gathering the project data was twofold: to identify potential problem projects and prevent them from blowing up in the committee's face (protecting the panel and the requesting Member) and to weed out projects that were not far along enough in the planning stages to spend their allotted funds within the bill's time-frame (protecting the highway contractors).

Institutional forces at work. The process of earmarking highway projects can be seen as a struggle

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between varying sets of institutional forces, which are outlined below.

State DOTs versus Members of Congress. Legislators seek to earmark highway projects in their states or districts in response to local pressures – constituents who clamor for new or expanded roads to aid development or decrease congestion. But the constituent pressure can only exist because the state Department of Transportation is unwilling or unable to undertake the project itself within a timeframe that would satisfy the locals. If a Member of Congress is successful in getting an earmarked highway project, the problem gets finessed by giving the state DOT "free money" that can only be used for the specified project. While the projects in TEA-21, for example, did not normally force the state DOT to undertake the project, each earmark provided a few million dollars that could be made available to the state only to pay for up to 80 percent of the cost of the specified project. This normally skews the cost-benefit analysis for the project drastically in favor of its construction, and the state DOT usually complies.

The federal share of the cost of earmarked highway projects has varied over the years and has been as low as 50 percent and as high as 100 percent. But despite high federal shares that give state DOTs more "bang for the buck" when they go ahead with an earmarked project, some projects wind up not getting built anyway. After a period of time, what remains of the contract authority for that project usually gets rescinded and spent on other projects.

The Administration versus Congress. Institutionally, the executive branch dislikes Congressional earmarking. Common complaints are that earmarking is "arbitrary," "inefficient," and "wasteful." White House after White House has sent Statements of Administration Policy complaining about earmarks and clamoring for a line-item veto to smite them. They usually feel that decisions about where to allocate highway resources can best be made by USDOT (in the case of allocated programs) or by state DOTs (in the case of apportioned funds).

Congress, not surprisingly, takes little heed of those objections, although Republicans are more inclined to at least give lip service to support the anti-earmarking view. During the crafting of TEA-21 in 1998, Shuster famously noted that "angels in heaven" don't make the decisions as to what projects to fund, human beings do, and that Members of Congress are in at least as good a position to determine the highway needs in their own states and districts as is the Administration.

In the version of TEA-21 that passed the House, Shuster and his committee backed up the argument by terming the $9.32 billion in earmarks "legislative branch discretionary" and lumping their funding in with the $6.91 billion in "executive branch discretionary" allocated programs. However, by the time the TEA-21 conference was over, the earmarks had grown slightly and the executive branch discretionary programs had been winnowed away to the point that the comparison was no longer useful, so the earmarks simply became "high priority projects."

Sometimes, earmarking can be a reactive response by Congress to what it perceives as transgressions by the executive branch. For example, in the immediate aftermath of TEA-21, the appropriators began earmarking the allocated programs because, in part, the Republican Congress felt that the way in which the Clinton Administration funded projects in those programs gave disproportionate benefit to Democratic states. This was especially true of the corridor development/border infrastructure program.

Urban vs. rural. Legislators from rural areas tend to be more interested in highways than do those whose constituents are packed into a few square miles, with good reason. The advent of dedicated funding for mass transit over the last 20 years has drawn these urban legislators into the surface transportation debate. While many of these legislators advocate transit's receipt of a greater share of federal resources, that will be analyzed in a later article. However, some of these legislators forswear any highway earmarks that their seniority or committee membership might have entitled them to in exchange for greater consideration in transit earmarking. It is also worth pointing out that Representatives from such urban areas tend to be heavily Democratic, which makes a difference in slicing up the highway pie between the parties.

House vs. Senate. Earmarking in highway authorization bills has always been the House's game much more so than the Senate's. There are two reasons for this. First, and this is important enough to merit boldface type, **in the Senate, the formula *is* the project.** Why would a Senator waste his time chasing after $5 million here and $10 million there when he could direct his energies towards a greater return for his state in the apportionment formulas which could mean hundreds of millions of dollars? Senators are elected statewide and are conditioned to think in terms of statewide benefit, which makes the fight over formula return much bigger in that chamber.

And after all that fighting over the state-by-state share of the highway formula, Senators from states that always feel shafted by the formula (and who usually fight the hardest) have even more reason to hate earmarks, which disproportionately go to legislators on the authorizing committees (whose states usually benefit from the formula) and which make their state's share of the pie look even smaller.

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Also, some (but by no means all) Senators feel uncomfortable having to choose between funding programs in different areas of their states. During the TEA-21 conference, after the decision had been made to give the Senate 25 percent of the high priority project funds, the Environment and Public Works Committee staff asked Senators' offices for project requests. Some merely had placeholders written into the law next to their dollar amounts that said "statewide priority projects," leaving the decisions up to the state DOT.

Because of these factors, the Senate showed up at the TEA-21 and ISTEA conferences (as well as at the abortive NHS conference in 1994) with earmark-free bills, while the House bills were heavily earmarked. Even before that, in the 1986-87 conference, the Senate earmarks were funded out of existing state apportionments (avoiding a formula fight) while the House earmarks were new money (with a 100 percent federal share). One has to look back as far as 1982 to find a highway bill where both chambers earmarked approximately equally.

On the appropriations side, the situation has often been reversed. The long-standing Congressional rules prohibiting unauthorized projects in appropriations bills (House rule XXI and Senate rule XVI) have never been taken as seriously in the Senate as they are in the House, in part because all Senate appropriators also serve on authorizing committees and also because the Senate's lack of a germaneness requirement for amendments has created a culture where Senators feel obligated to attach all of their priorities to any must-pass legislation.

Authorizers versus appropriators. The fact that the highway authorizing committees can control their own budget authority out of the Highway Trust Fund has always irked the appropriators, who label it "back-door spending" that impedes their role as the guardians of the purse of the nation. And, in fairness, having to provide annual liquidating cash for somebody else's obligations does make the appropriators' lives more difficult.

The appropriators sensed this early on. In 1955, the chairman of the House Appropriations Committee, Rep. Clarence Cannon (D-MO), moved to take the progenitor bill that later became the 1956 Interstate Act away from the Public Works Committee and instead refer it to Appropriations. The House voted, 131-87, to leave the jurisdiction with Public Works. (*Deschler's Precedents*, Ch. 17 § 46.15).

Ideally, the relationship of authorizer to appropriator is supposed to be a symbiotic one, with authorization laws establishing policies and spending limits and the appropriators funding programs annually up to those limits as they see fit. But since that symbiosis does not exist in the highway program (because the authorizers control their own budget authority), the two groups of legislators often engage in "tit for tat" behavior. One example: the Highway Trust Fund was originally intended to be the exclusive preserve of the authorizing committees. But after President Lyndon Johnson created the unified federal budget and eliminated the off-budget status of trust funds, the appropriators began to control outlays from the HTF by the use of an annual obligation limitation. (Explanatory note: for you auto racing fans out there, the obligation limitation is the restrictor plate on highway spending: it limits how much spending can go through the system at any one time).

The authorizers responded to the obligation limitation by placing certain programs outside the control of the obligation limitation, like the old Lloyd Bentsen minimum allocation, emergency relief funding, and (oh yes) demonstration projects. Up until TEA-21, earmarked projects from highway bills were exempt from the annual obligation limitation. The TEA-21 projects were placed under the limitation but the limitation was to be distributed in a special way benefiting the projects.

This was the subject of a turf war in the immediate aftermath of TEA-21, which had contained a new House rule designed to prevent any reductions in the obligation limitations set forth in TEA-21 for highways for the six years of its duration and which was designed to be read to protect the projects from being altered. But the appropriators had the last word, including language in the omnibus spending bill at year's end which said that "any obligation limitation [for TEA-21 high priority projects] shall be assumed to be administered on the basis of sound program management practices that are consistent with past practices of the administering agency permitting States to decide High Priority Project funding priorities within state program allocations," weakening the authorizers' stand.

Member vs. Member. Sometimes the individual legislators involved can make a difference in how earmarks are being processed. Page 12 contains a table listing the names of the chairmen and ranking minority members on the committees and subcommittees of jurisdiction over highway earmarks in the House and Senate going back to 1977. Compare it with the funding charts on pages 10-11 and note that stability in a position usually equals strength. Legislators who have been in their jobs for an extended period of time tend to get more comfortable with the programs under their jurisdiction. But a fresh face can also play a role: Rep. Bob Roe (D-NJ) chaired the House Public Works Committee during the writing of ISTEA because the Democratic Caucus had ousted aging chairman Glenn Anderson (D-CA) for not being active enough. With that backing, Roe was able to write a bill that greatly expand highway earmarking in the authorization bill, but the appropriators at that

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time, who had been in their positions for years longer, were able to bypass the authorizers with earmarks of their own.

History of earmarked projects in highway authorization bills. While it does seem like the extensive earmarking of projects in highway bills has been going on forever, that is not the case, as the table on page 10 shows. The following is a chronology of the Federal-aid highway authorization bills in the Interstate era and what earmarking took place in them.

1956-1962. The Federal-Aid Highway Act of 1956, which established the modern highway program, contained no earmarked projects, nor did the subsequent 1959 and 1961 reauthorizations. The first post-1956 project authorizations were in 1962 in, of all places, Latin America -- $850,000 for the Rama Road in Nicaragua and $32 million for the Inter-American Highway through several Latin nations. However, these were only authorizations for later appropriations from the general fund, not "real money" (contract authority from the Highway Trust Fund) and do not count as authorization earmarks. The authorizing committees have always felt freer authorizing the disbursal of funds from a pot of money controlled by someone else other than themselves.

1964-1968. The 1964 and 1966 bills were also project-free. The 1968 bill began a practice of directing DOT to carry out specific projects in the Washington D.C. region, an area of special federal responsibility. Four projects in the District including the notorious and never-build Three Sisters Bridge were authorized (without dollar amounts) in the 1968 bill, as was the Fort Washington Parkway in Prince Georges County, Maryland.

1970. The 1970 highway bill revisited Latin America (with a $100 million general fund authorization for the Darien Gap Highway in Panama) and the D.C. area (with $65 million in real money for the Baltimore-Washington Parkway). It also contained the first post-1956 project in the district of a member of the authorizing committee -- $3.761 million for a bridge across the Ohio River over a dam, one end of which was in the district of Rep. Gene Snyder (R-KY), a Public Works member. The 1970 bill also established a $100 million fund for unspecified "demonstration projects" (possibly the first use of the word) for "economic growth center development" with a 95 percent federal cost share (the standard at the time for non-Interstate projects was 70 percent).

1973. The 1973 highway authorization expanded some previous earmarking trends and started some new ones. The economic development demonstration program was reauthorized with $225 million (but all occurrences of the word "demonstration" in the program's authorizing law were repealed). A large multi-state project (a special area of federal responsibility) called the Great River Road spanning ten states along the length of the Mississippi River was authorized with $65 million in real money and another $20 million in authorizations. Congress directed FHWA to study ten potential new highway corridors in ten specific places and authorized three projects without specific dollar amounts in Kentucky, New Hampshire and West Virginia. But the real innovation in the 1973 bill was a new program authorizing federal construction of specific railroad grade crossings – eleven specific projects in six states, with $60 million in real money and $30 million in general fund authorizations (2/3 – 1/3). The appropriators would later expand and extend this program. And, even though the House Public Works Committee would not gain jurisdiction over mass transit for another two years, someone got $10 million for high-speed bus service to Dulles Airport.

1976. The 1976 bill continued funding economic development highways, the Great River Road, and the grade crossing program (adding four new projects and $84 million in additional funds on the 2/3 – 1/3 ratio). New programs without specific earmarks were established to fund projects for highway crossings and "traffic control signalization" demonstrations. This bill also contained the first "mystery designator" – a project description meant to only apply to a single location but which does not say so. In this instance, it was a $25 million project to demonstrate low lead time between project conception and completion.

1978. In addition to $240 million in additional contract authority for the railroad crossing program, the 1978 highway bill gave $50 million to a project in the district of House authorizer Don Clausen (R-CA) and contained $60 million for four other mystery designator projects. Another $18 million in new funds was provided for two previously authorized projects.

1982. The big action in the 1982 bill was a sharp increase in highway spending to go along with a hike in the gas tax (and to make up for the establishment of the Mass Transit Account). In 1982, many of the smaller highway programs that had been funded out of the general fund were switched to the Highway Trust Fund. The 1982 bill contained the first list of project the way they look today – grouped together in a section of the bill with specific dollar earmarks. Section 131 of the 1982 bill had ten of them totaling $388.5 million. The biggest was $72 million for Shuster, for what later became the Bud Shuster Byway, but Rep. Glenn Anderson (D-CA) got $58 million, Snyder got $52 million, Sen. Robert Stafford (R-VT) got $50 million, and six other legislators split the rest. The bill also kicked in another $130 million for the railroad crossing program.

The 1982 bill was innovative in an-

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other way. Beyond the ten funded demonstration projects, it tried to coerce state DOTs into funding a longer list of priority routes (not listed in the bill but in a committee print from the Public Works and Transportation Committee). The law required the states to "give priority" to 43 routes in nineteen states and said that if the states funded the projects, the federal share would be 95 percent (100 percent if the project was on federal land), a significantly higher percentage than in normal Federal-aid projects.

1987. After the big expansion of 1982, the 1987 highway bill (enacted into law over President Reagan's veto) was a flat-line. Authorizations for highway programs stayed at the same level in each of the five years authorized by the bill. However, it was in 1987 that large numbers of demonstration projects were first authorized – 151 projects totaling $829 million. For the first time, the projects were not just authorizations, they were mandates (the law said "the Secretary shall carry out" the projects). The Senate had proposed funding them from existing state apportionments. The House proposed new funding with a 100 percent federal share. As a compromise, the federal share of the projects dropped to 60 percent, but states were allowed to transfer some of the funds that the states received in their other federal apportionments to pay their share. Twenty other projects were authorized but did not get earmarked funding.

1991. The 1991 ISTEA law represented the peak of Congressional sheepishness about highway projects. Not content to merely authorize projects, ISTEA put them in categories with names to describe their merits – "urban access projects," "innovative projects," "priority intermodal projects," "congestion relief projects," and others. There were 548 projects in all, funded with $6.226 billion in real money. This was the quantum leap year, when earmarking in highway bills went from a historical average that floated around one percent of the total highway contract authority to a new high of over five percent.

ISTEA also contained 34 miscellaneous project authorizations for general fund appropriations totaling over $970 million.

1994-1995. During the initial consideration of legislation designating the National Highway System in 1994, the House produced a bill with 283 earmarks that were paid for in an interesting way: some were paid for in "real money" contract authority (offset by $583 million in rescissions of unused contract authority from previous years), some were authorized for subsequent general fund appropriation, and some were mixed. The total general fund authorizations were capped at $900 million with no more than $300 million in a single year. The Senate passed a "clean" NHS bill 48 lines long, and the two chambers were unable to compromise before that Congress ended. By the next year, the Republicans had taken over, and a project-free NHS bill was enacted.

1998. With TEA-21 in 1998, the authorizers dispensed with all the pretense of previous years. Gone was the need to "demonstrate" new technologies or provide "rural access" or "congestion relief." Instead, there were only "high priority projects" – 1,850 of them at a total cost of $9.36 billion in real money (spread out over six fiscal years at a fixed rate). Sections 1212, 1214 and 1216 of TEA-21 also contained some (frankly ridiculous) miscellaneous goodies, 33 of which are classified as earmarks (costing another $239 million) and which were mostly for members of the conference committee and the party leadership.

When passing the bill through the House, the Transportation and Infrastructure Committee leaders had decided to set a ceiling on the cost of projects of five percent of the highway program. They then divided that sum 55%-45% between the Republican majority and the Democratic minority (the actual party division in the House at the time was 53%-47%). Both Shuster and Rep. Jim Oberstar (D-MN), the ranking Democrat, were free to allocate their project funds as they wished. Run-of-the-mill Republican members who had requested projects and who had not irritated the committee were allocated $15 million to spread around their districts. Rank-and-file members of T&I got $40 million, T&I subcommittee chairs got $60 million, and Shuster got quite a bit more than that. The Democrats spread their funding around in a slightly more seniority-based system.

Several House Republicans who had opposed higher highway funding, like Budget Chairman John Kasich (R-CA), or who had opposed project earmarks, like Rep. Lindsey Graham (R-SC), had no projects in the bill or in the conference report, but only those members and the T&I staff know if they actually requested projects or not.

Once reaching a House-Senate conference with a project-free Senate bill, the decision was made to give the Senate a quarter of the project funds and to reduce each Representative's allocation accordingly. The Senate Environment and Public Works Committee then made state-by-state allocations to Senators, who programmed their funds accordingly. *(Note: Senate projects are easy to find in the table in TEA-21 because most of them are in alphabetical order towards the end of the list (section 1602), while the House put its projects in random order to make it difficult to add up projects by Member).*

History of earmarked highway projects in appropriations bills. As with the highway bills, just because much earmarking takes place today does not mean it was always so. The appropriators have been

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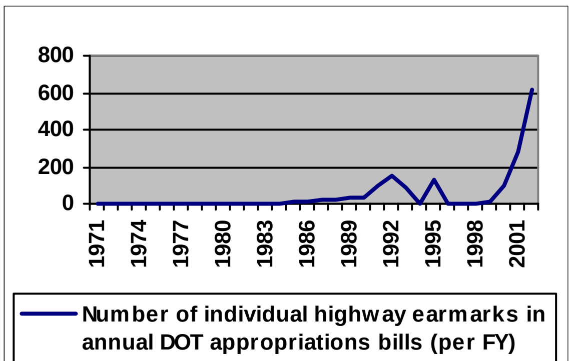
mostly reactive, not proactive, in this area. As the authorizers expanded the program, they gradually created niches that the appropriators could fill by earmarking. And the appropriators have also reacted to pressure from rank-and-file legislators to fund projects in the growing time period between highway authorization bills – what were two-year and three-year highway bills in the 1970s became four-year and five-year bills in the 1980s and six-year bills in the 1990s, with legislators elected immediately after the enactment of a highway bill left high and dry for multiple Congresses at a stretch.



Unlike authorized projects, appropriated earmarks are now usually found in the "joint statement of managers" accompanying the conference report on the bill – they are legislative history but do not have the *de jure* force of law. Appropriated earmarks in report language are given meaning by the long memory of the appropriators and the annual need for DOT to prostrate itself before them. The joint statement of managers is a fairly recent innovation – until after the Legislative Reorganization Act of 1970, they did not exist (House or Senate conferees could file their own separate statements but those could not be fairly considered to be the opinions of the whole conference). And there was no significant explanatory material in the joint statements until FY 1976.

Another important thing to understand about appropriated earmarks is that the appropriators have two alternative funding sources from which to appropriate funding: the Highway Trust Fund and the general fund of the Treasury. The general fund is useful because it is essentially limitless (the only real limit to the size of the general fund is the credit rating of the United States). Other budgetary pressures that constrict the availability of general fund revenues are either artificial constructs of the budget process (which are ignored as often as they are obeyed) or the typical pressures relating to resource allocation tradeoffs (guns vs. butter, highways vs. Coast Guard, etc.).

There are two restrictions on the ability of the appropriators to spend out of the Highway Trust Fund, one internal, one external. Internal rules in the House and Senate prohibit the use of HTF proceeds for any purposes not specifically authorized by a highway authorization law. In the past, this has been used to knock out projects that the appropriators tried to fund from the HTF that were not authorized by law. This restriction is also ignored as often as it is observed. A more meaningful restriction is the Byrd test (named for its author, Sen. Harry (D-VA), not Sen. Robert (D-WV)), which requires that unpaid commitments at the end of a fiscal year must be less than the sum of the current cash balance and the revenues anticipated to be earned in the following 24-month period. Failure to meet the Byrd test results in an automatic reduction in the highway funds apportioned to the states, so the appropriators have to try to avoid spending too much money from the Trust Fund. Authorizers like to push HTF spending to the edge of the Byrd test limit so as to leave little funding as possible available in the Fund to tempt the appropriators.

The 1970s. As the table on page 11 indicates, the 1970s were a period of infrequent highway earmarks in the annual DOT appropriations bills, and the few earmarks (always in the bill text, not in report language) were either for large items with some kind of unique Federal responsibility (the Darien Gap Highway in Panama, the Baltimore-Washington Parkway, the Overseas Highway to Key West, the Great River Road crossing ten states down the length of the Mississippi) or were railroad grade crossings (funded by a couple of different programs but usually authorized by law). In those days there were many smaller highway programs like public lands highways that were authorized for specific general fund appropriations, which they usually received.

The 1980s and early 1990s. Highway earmarking began to come into its own in the late 1980s. Aside from interstate transfer grants, there were almost no earmarks in FY 1981-1985 -- $5 to $35 million per year, mostly for railroad grade crossings and "access to recreational areas" (lake highways), with an occasional bridge thrown in. Earmarking for highways picked up in FY 1986 with $55 million in for the usual suspects plus four new projects, but things got bigger in FYs 1987-1988 (the years in which all thirteen regular appropriations bills were rolled into rolled into annual omnibus continuing resolutions). In FY 1988 there were at least fifteen HTF-funded multi-million-dollar highway projects in the CR in addition to the ongoing grade crossings.

The amount of highway earmarks in the annual bills kept on growing. Over FYs 1991-1992, there were almost 250 appropriated highway projects, most unauthorized, totaling over $1.1 billion. During House consideration of the FY 1992 bill, Rep. Harris Fawell (R-IL) offered an amendment to strike all the earmarked projects (the amendment failed, 365-61). In the Senate, Sen. Bob Smith (R-NH) offered an

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Highway Earmarks...

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amendment to make the funding for the Senate earmarks be distributed to the states by the formulas set in the Senate-passed version of ISTEA (his amendment was killed by a 84-14 vote). Most of those projects were funded by the appropriators from the general fund, which authorizers regard as a venial sin (as opposed to the mortal sin of appropriating from the Highway Trust Fund). The appropriators would rectify this the next year, however, by taking $395 million from the Trust Fund in the FY 1993 bill to support 125 projects (again, mostly unauthorized).

The mid-1990s. The pendulum began to swing the other way when Rep. Norm Mineta (D-CA) took the chair of the House Public Works Committee in 1993. During House debate on the FY 1994 appropriations bill, Mineta knocked out nine unauthorized projects on points of order, and his vigilance (and that of his new Republican counterpart, Shuster) shrank the amount of the earmarked highway spending in that bill by 90 percent compared to the year before (with 100 percent of them from the general fund). By the time the House considered the next year's appropriations bill, the House had already acted on its 1994 NHS projects bill (see above) and Mineta and House subcommittee chairman Bob Carr (D-MI) agreed to let the appropriators fund highway projects authorized in the bill, as well as some allocated programs.

Frank Wolf takes over. With the start of the Republican Revolution in 1995, Rep. Frank Wolf (R-VA) was the new chairman of the House transportation appropriations subcommittee, and his rigid stance against highway projects (backed up by his full panel chairman and his leadership, and aided by the wishes of the authorizers for the appropriators to stay out of earmarking) ensured that the FY 1996-1998 DOT bills were project-free. The FY 1999 bill only earmarked $26.7 million in allocated Federal lands highway funds with no big uproar. The FY 2000 bill went further, earmarking $192.7 million (almost half of the available spending in the allocated programs, but no new funding out of the Trust Fund).

The next century. Calendar year 2000 was Wolf's last year as chairman due to term limits, and in an election year, the pressure was on to give projects to vulnerable incumbents. Also, the pressing need for more funding for the Woodrow Wilson Bridge was uniting the Virginia delegation. The conference report on the bill, rushed through the House late in the session, when appropriators have the most leverage, contained $1.64 billion from the Highway Trust Fund for 286 projects (most of it new and unauthorized and taken from unobligated Trust Fund balances, with about 20 percent from allocated programs) and $600 million in general fund appropriations for the Wilson Bridge. The next year, the dollar amount of the earmarks dropped slightly but the number of highway earmarks rose to 612.

This was extra spending was made possible by the diversion of RABA (the dividend from higher-than-expected Highway Trust Fund receipts) from apportioned programs to allocated programs in violation of TEA-21. The extent of the RABA diversion in the FY 2002 bill created an uproar in the highway community, with state DOTs and authorizers upset that the funds were being distributed in violation of the formula. This is not expected to be a problem in FY 2003, since there will be no positive RABA adjustment.

Conclusions. The poly-sci textbook definition of "politics" is "the allocation of scarce resources." Hence the uses of the word in situations like "office politics" (allocation of scarce promotions and benefits) as well as in the more traditional setting of a legislature deciding how to spend scarce tax dollars.

As long as the financial resources of the Highway Trust Fund remain finite and highway funding needs continue to grow, highway resource allocation will be troublesome. Here are areas where the problem of scarce resources will come into play in the next two years:

- *The size of the program.* Current estimates say that the next highway bill can support a highway program of about $30.1 billion per year without violating the Byrd test. Any program above that would have to entail general fund appropriations or a higher gas tax.
- *Projects' share of the pie.* The trend in the 1990s was to spend about 5-6 percent of authorized highway funding on earmarks. Increasing that percentage would make more members feel personally invested in ensuring the enactment of the bill (part of the point of earmarks in the first place) but would run the risk of alienating the states and the highway contractors.
- *Size of the state match.* Across America, state DOTs are in a state of financial crisis and are downsizing their highway programs. The next highway bill might have to raise the federal share of the earmarked projects above the current 80 percent in order to ensure their construction.
- *Whither the appropriators?* In the absence of excess RABA to earmark in this year's appropriations bill, where will the appropriators get funding to earmark for highway projects beyond the $400 million or so in USDOT-allocated funding? The appropriators will either have to reduce their earmarking levels this year or else find another way to fund the projects (and all such ways have large problems).

House T&I Chairman Don Young (R-AK) recently told *National Journal* that the next highway bill will contain earmarked projects and that won't shrink from determining who gets them and who doesn't. Keep watching.

HIGHWAY EARMARKS IN ACTS AUTHORIZING THE FEDERAL-AID HIGHWAY PROGRAM (HIGHWAY TRUST FUND ONLY)

(in nominal dollars, not adjusted for inflation)
(excludes transit, ITS, maglev, Big Dig and Wilson Bridge)

Highway Act	Number of Highway Earmarks	Total Dollar Amount of Earmarks	Average Size of Earmark
1956	0	$ -	n/a
1959	0	$ -	n/a
1961	0	$ -	n/a
1962	0	$ -	n/a
1964	0	$ -	n/a
1966	0	$ -	n/a
1968	6	no dollar amounts	n/a
1970	2	$ 68,761,000	$ 34,380,500
1973	12	$ 120,000,000	$ 10,000,000
1974	2	$ 162,200,000	$ 81,100,000
1976	5	$ 81,000,000	$ 16,200,000
1978	10	$ 368,000,000	$ 36,800,000
1982	10	$ 388,500,000	$ 38,850,000
1987	152	$ 831,807,000	$ 5,472,414
1991	548	$ 6,225,940,000	$ 11,361,204
1998	1883	$ 9,599,142,000	$ 5,097,792
Total	**2648**	**$ 17,845,350,000**	

NOTES ON METHODOLOGY

Each highway authorization act going back to the Federal-Aid Highway Act of 1956 was inspected for earmarks, which are herein defined as having to contain both a place identifier (place or road name or other locator) and either a specific dollar amount of contract authority from the Highway Trust Fund *or* a mandate that the project be carried out with a "such sums as may be necessary" HTF authorization.

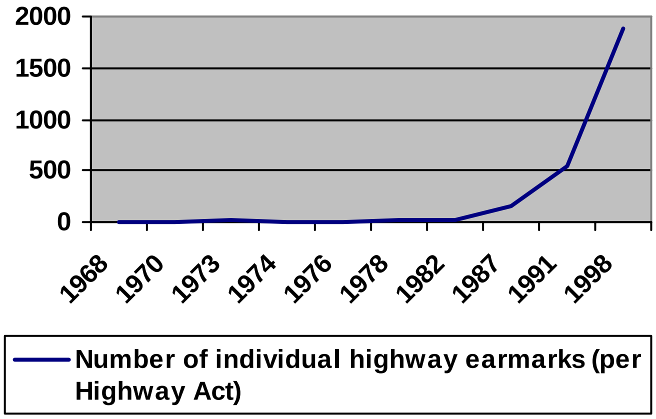
Excluded from the calculations are mass transit, ITS/IVHS, maglev (which shouldn't be under FHWA anyway), most studies, and the two mega-projects of the Big Dig (Central Artery Project, Massachusetts) and the Woodrow Wilson Bridge.

Also excluded are authorizations for subsequent appropriations from the general fund, which do not become "real money" until the appropriators come along later and fund them.

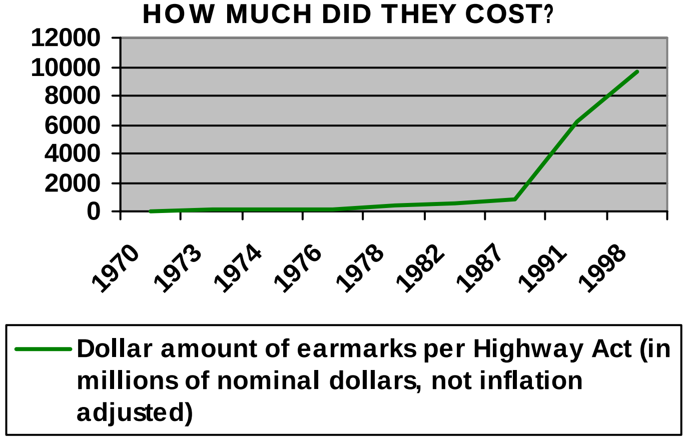
The highway authorization acts were as follows:

* Federal-Aid Highway Act of 1956 (70 Stat. 374)
* Federal-Aid Highway Act of 1959 (P.L. 86-342)
* Federal-Aid Highway Act of 1961 (P.L. 87-61)
* Federal-Aid Highway Act of 1962 (P.L. 87-866)
* Federal-Aid Highway Act of 1964 (P.L. 88-423)
* Federal-Aid Highway Act of 1966 (P.L. 89-574)
* Federal-Aid Highway Act of 1968 (P.L. 90-495)
* Federal-Aid Highway Act of 1970 (P.L. 91-605)
* Federal-Aid Highway Act of 1973 (P.L. 93-87)
* Federal-Aid Highway Amendments of 1974 (P.L. 93-643)
* Federal-Aid Highway Act of 1976 (P.L. 94-280)
* Surface Transportation Assistance Act of 1978 (P.L. 95-599)
* Surface Transportation Assistance Act of 1982 (P.L. 97-424)
* Surface Transportation and Uniform Relocation Assistance Act of 1987 (P.L. 100-17)
* Intermodal Surface Transportation Efficency Act of 1991 (P.L.102-240)
* Transportation Equity Act for the 21st Century (P.L. 105-178)

HOW MANY EARMARKS PER HIGHWAY BILL?

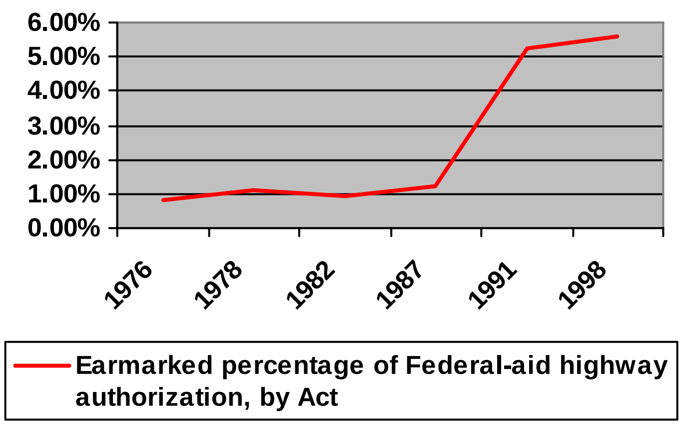


HOW MUCH DID THEY COST?



NOTE: While inflation has not been a big deal lately, it made a huge difference in the 1970s and early 1980s, so the above chart should be contrasted with the one below for balance.

HOW MUCH OF EACH BILL WAS EARMARKED?



NOTE: The above chart displays the total dollar amount of the earmarks from above left divided by the total amount of HTF contract authority available for Federal-aid highways for the periods covered by each Highway Act. *Source: OMB Public Budget Database.*

HIGHWAY EARMARKS IN THE ANNUAL DEPARTMENT OF TRANSPORTATION APPROPRIATIONS BILLS, FY 1971-2002

(in nominal dollars, not adjusted for inflation)

(excludes transit, ITS, maglev, Interstate transfer grants, and the Wilson Bridge)

Fiscal Year	Number of Highway Earmarks	Total Dollar Amount of Earmarks	Average Size of Earmark	Highway Trust Fund or General Fund?
1971	0	$ -	n/a	
1972	2	$ 17,500,000	$ 8,750,000	14% HTF/86% GF
1973	1	$ 15,000,000	$15,000,000	100% GF
1974	4	$ 8,000,000	$ 2,000,000	25% HTF/75% GF
1975	3	$ 26,600,000	$ 8,866,667	6% HTF/94% GF
1976	2	$ 5,400,000	$ 2,700,000	100% GF
1977	5	$ 39,200,000	$ 7,840,000	61% HTF/39% GF
1978	4	$ 25,750,000	$ 6,437,500	94% HTF/6% GF
1979	4	$ 116,100,000	$29,025,000	84% HTF/16% GF
1980	2	$ 4,500,000	$ 2,250,000	44% HTF/56% GF
1981	5	$ 24,525,000	$ 4,905,000	49% HTF/51% GF
1982	4	$ 19,000,000	$ 4,750,000	100% GF
1983	4	$ 8,800,000	$ 2,200,000	51% HTF/49% GF
1984	2	$ 6,800,000	$ 3,400,000	100% GF
1985	9	$ 35,700,000	$ 3,966,667	28% HTF/72% GF
1986	11	$ 61,650,000	$ 5,604,545	22% HTF/78% GF
1987	20	$ 66,802,971	$ 3,340,149	79% HTF/21% GF
1988	22	$ 179,974,000	$ 8,180,636	58% HTF/42% GF
1989	36	$ 135,440,000	$ 3,762,222	60% HTF/40% GF
1990	36	$ 224,877,734	$ 6,246,604	38% HTF/62% GF
1991	95	$ 465,595,000	$ 4,901,000	9% HTF/91% GF
1992	156	$ 716,974,000	$ 4,595,987	24% HTF/76% GF
1993	87	$ 412,060,000	$ 4,736,322	96% HTF/4% GF
1994	5	$ 41,462,000	$ 8,292,400	100% GF
1995	125	$ 352,055,000	$ 2,816,440	100% GF
1996	0	$ -	n/a	
1997	0	$ -	n/a	
1998	0	$ -	n/a	
1999	14	$ 26,700,000	$ 1,907,143	100% HTF
2000	96	$ 192,685,000	$ 2,007,135	100% HTF
2001	286	$1,642,200,000	$ 5,741,958	100% HTF
2002	612	$1,529,991,000	$ 2,499,985	91% HTF/9% GF
TOTAL	**1652**	**$6,401,341,705**		

NOTES ON METHODOLOGY

The above table was drawn from the slip laws of every annual DOT appropriations act since fiscal 1971 and from the joint statements of managers accompanying those conference reports. Highway earmarks that may have been funded in supplemental appropriations bills or omnibus continuing resolutions apart from the regular annual appropriations process are not included.

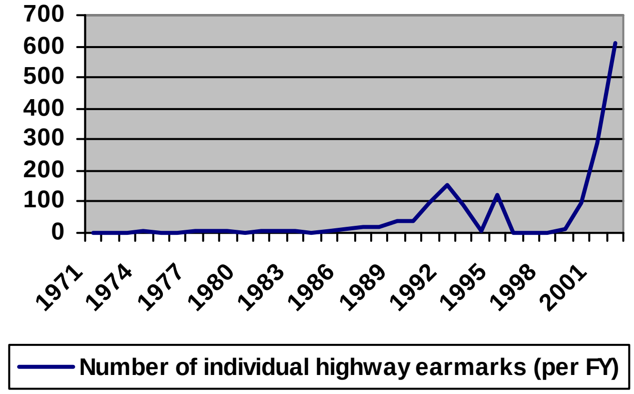
From FY 1982 to FY 1992, most annual DOT appropriations bills contained large sums of Interstate transfer grants which this study does not treat as earmarks, although some might argue that they are not. If one were to add Interstate transfer grants from the above table, the funding levels would be higher in the following amounts in these years:

FY 1982	$325 million	FY 1988	$176 million
FY 1984	$176 million	FY 1989	$175 million
FY 1985	$423 million	FY 1990	$170 million
FY 1986	$181 million	FY 1991	$145 million
FY 1987	$201 million	FY 1992	$52.5 million.

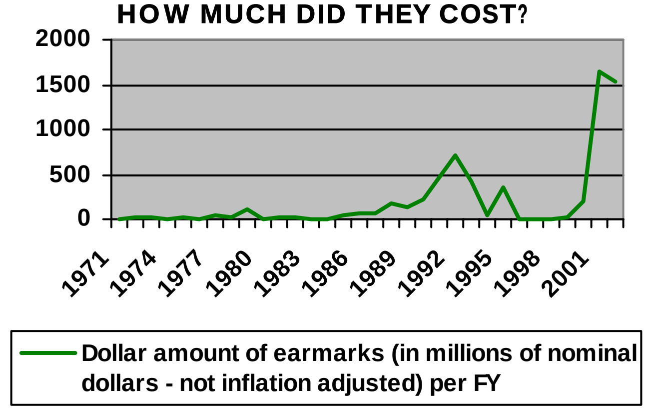
The above table also excludes the $600 million in general fund appropriations for the Woodrow Wilson Bridge in FY 2001.

FY 1976 data includes the Transition Quarter.

HOW MANY EARMARKS PER APPROPS BILL?

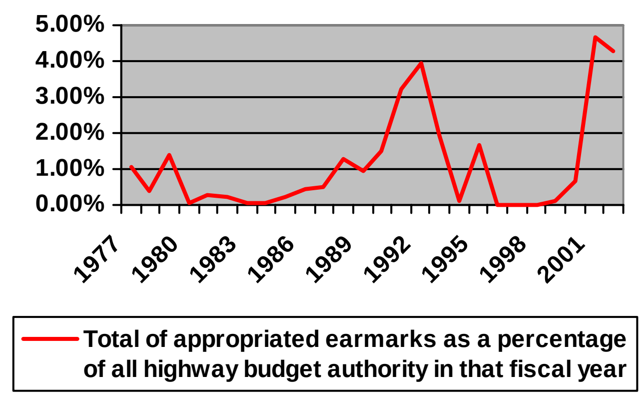


HOW MUCH DID THEY COST?



NOTE: While inflation has not been a big deal lately, it made a huge difference in the 1970s and early 1980s, so the above chart should be contrasted with the one below for balance.

HOW MUCH OF THE HIGHWAY PROGRAM DID THEY EARMARK EACH YEAR?



NOTE: the above chart displays the total dollar amount of the earmarks in each year from above left divided by the total amount of budget authority made available for all Federal highway programs (mandatory and discretionary, HTF and GF) in each fiscal year since 1977, the earliest in which OMB makes numbers available. *Source: OMB Public Budget Database.*

WHO WAS WHO IN HIGHWAYS IN THE HOUSE OF REPRESENTATIVES

	AUTHORIZING COMMITTEE (PWT/T&I)				APPROPRIATIONS SUBCOMMITTEE	
	FULL COMMITTEE		SUBCOMMITTEE			
Years	**Chair**	**Ranking**	**Chair**	**Ranking**	**Chair**	**Ranking**
77-78	Johnson (D-CA)	Harsha (R-OH)	Howard (D-NJ)	Shuster (R-PA)	McFall (D-CA)	Conte (R-MA)
79-80	Johnson (D-CA)	Harsha (R-OH)	Howard (D-NJ)	Shuster (R-PA)	Duncan (D-OR)	Conte (R-MA)
81-82	Howard (D-NJ)	Clausen (R-CA)	Anderson (D-CA)	Shuster (R-PA)	Benjamin (D-IL)	Coughlin (R-PA)
83-84	Howard (D-NJ)	Snyder (R-KY)	Anderson (D-CA)	Shuster (R-PA)	Lehman (D-FL)	Coughlin (R-PA)
85-86	Howard (D-NJ)	Snyder (R-KY)	Anderson (D-CA)	Shuster (R-PA)	Lehman (D-FL)	Coughlin (R-PA)
87-88	Howard/Anderson (D-CA)	Hammerschmidt (R-AR)	Anderson (D-CA)	Shuster (R-PA)	Lehman (D-FL)	Coughlin (R-PA)
89-90	Anderson (D-CA)	Hammerschmidt (R-AR)	Mineta (D-CA)	Shuster (R-PA)	Lehman (D-FL)	Coughlin (R-PA)
91-92	Roe (D-NJ)	Hammerschmidt (R-AR)	Mineta (D-CA)	Shuster (R-PA)	Lehman (D-FL)	Coughlin (R-PA)
93-94	Mineta (D-CA)	Shuster (R-PA)	Rahall (D-WV)	Petri (R-WI)	Carr (D-MI)	Wolf (R-VA)
95-96	Shuster (R-PA)	Mineta/Oberstar (D-MN)	Petri (R-WI)	Rahall (D-WV)	Wolf (R-VA)	Coleman (D-TX)
97-98	Shuster (R-PA)	Oberstar (D-MN)	Petri (R-WI)	Rahall (D-WV)	Wolf (R-VA)	Sabo (D-MN)
99-00	Shuster (R-PA)	Oberstar (D-MN)	Petri (R-WI)	Rahall (D-WV)	Wolf (R-VA)	Sabo (D-MN)
present	Young (R-AK)	Oberstar (D-MN)	Petri (R-WI)	Borski (D-PA)	Rogers (R-KY)	Sabo (D-MN)

WHO WAS WHO IN HIGHWAYS IN THE UNITED STATES SENATE

	AUTHORIZING COMMITTEE (PW/EPW)				APPROPRIATIONS SUBCOMMITTEE	
	FULL COMMITTEE		SUBCOMMITTEE			
Years	**Chair**	**Ranking**	**Chair**	**Ranking**	**Chair**	**Ranking**
77-78	Randolph (D-WV)	Stafford (R-VT)	Bentsen (D-TX)	Chafee (R-RI)	Bayh (D-IN)	Case (R-NJ)
79-80	Randolph (D-WV)	Stafford (R-VT)	Bentsen (D-TX)	Pressler (R-SD)	Bayh (D-IN)	McClure (R-ID)
81-82	Stafford (R-VT)	Randolph (D-WV)	Symms (R-ID)	Bentsen (D-TX)	Andrews (R-ND)	Chiles (D-FL)
83-84	Stafford (R-VT)	Randolph (D-WV)	Symms (R-ID)	Bentsen (D-TX)	Andrews (R-ND)	Chiles (D-FL)
85-86	Stafford (R-VT)	Bentsen (D-TX)	Symms (R-ID)	Burdick (D-ND)	Andrews (R-ND)	Chiles (D-FL)
87-88	Burdick (D-ND)	Stafford (R-VT)	Moynihan (D-NY)	Symms (R-ID)	Lautenberg (D-NJ)	D'Amato (R-NY)
89-90	Burdick (D-ND)	Chafee (R-RI)	Moynihan (D-NY)	Symms (R-ID)	Lautenberg (D-NJ)	D'Amato (R-NY)
91-92	Burdick (D-ND)	Chafee (R-RI)	Moynihan (D-NY)	Symms (R-ID)	Lautenberg (D-NJ)	D'Amato (R-NY)
93-94	Baucus (D-MY)	Chafee (R-RI)	Moynihan (D-NY)	Warner (R-VA)	Lautenberg (D-NJ)	D'Amato (R-NY)
95-96	Chafee (R-RI)	Baucus (D-MT)	Warner (R-VA)	Baucus (D-MT)	Hatfield (R-OR)	Lautenberg (D-NJ)
97-98	Chafee (R-RI)	Baucus (D-MT)	Warner (R-VA)	Baucus (D-MT)	Shelby (R-AL)	Lautenberg (D-NJ)
99-00	Chafee/Smith (R-NH)	Baucus (D-MT)	Voinovich (R-OH)	Baucus (D-MT)	Shelby (R-AL)	Lautenberg (D-NJ)
present	Jeffords (I-VT)	Smith (R-NH)	Reid (D-NV)	Inhofe (R-OK)	Murray (D-WA)	Shelby (R-AL)

BIOGRAPHICAL NOTE: for more information on any of the above, go to **http://bioguide.congress.gov**.

NOTE ON YEARS: The years referred to in the above tables are calendar years, not fiscal years.

NOTE ON COMMITTEE NAMES: the House authorizing committee was called Public Works and Transportation before 1995, when it was renamed Transportation and Infrastructure.

NOTE ON FULL COMMITTEE APPROPRIATORS: Although we couldn't fit them into the chart above, the roles of the Chairmen and Ranking Minority Members of the full House and Senate Appropriations Committees are also worth noting. While they rarely get involved in micromanaging the bills of the subcommittees and give the subcommittee chairmen ("cardinals) and ranking members a high degree of autonomy, they do set the tone for their entire committee. A few transitions that did indeed set the tone include:

- In 1981, Republicans took control of the Senate, President Reagan was widely feared on Capitol Hill, and at the same time Sen. William Proxmire (D-WI), who crusaded against wasteful government spending, became ranking minority member on Senate Appropriations. Were it not for the establishment of the interstate transfer grant program at that time, appropriated earmarks in FY 1982 and 1983 would have been almost zero. By the next Congress, Proxmire had left and Republicans had taken a beating in the 1982 elections, so earmarking arose anew.
- The accession of Sen. Robert Byrd (D-WV) to chair the Senate Appropriations Committee starting in 1989 was accompanied by increased earmarking of individual projects as the interstate transfer grant program began to die out. There may be a connection.
- When Rep. William Natcher (D-KY) replaced longtime House Appropriations Chairman Jamie Whitten (D-MS) after Whitten's stroke in mid-1992, Natcher's policy of not protecting unauthorized projects from points of order caused a drastic drop in project earmarking between FY 1993 and 1994. Natcher's death in March 1994 (coupled with a gentleman's agreement between Norm Mineta and Bob Carr) led earmarking to resume in the FY 1995 bill.

FROM THE *FEDERAL REGISTER*

Monday, March 25, 2002 — *Nothing of general applicability pertaining to transportation was published on this date.*

Tuesday, March 26, 2002 — The FHWA withdrew a proposed rule published December 28, 2000 to revise noise regulations relating to the noise insulation of private residences.

Wednesday, March 27, 2002 — The Coast Guard issued a final rule removing a which would have required the public to report collisions of recreational vessels involving two or more vessels, regardless of the amount of damage to property, effective immediately.

The Coast Guard withdrew its final rule published on February 27, 2002 requiring the wearing of personal flotation devices by certain children aboard recreational vessels, effective immediately.

The FRA terminated a proposed rulemaking proposing a speed limit on maintenance of way equipment.

Thursday, March 28, 2002 — The TSA reopened the comment period on the passenger security fee to allow comments on quarterly carrier reporting to be filed until April 30, 2002.

DOT extended the expiration date of its regulations on airline computer reservation systems from March 31, 2002 to March 31, 2003.

Friday, March 29, 2002 — The FHWA issued a final rule amending the regulations that concern the exclusion of devices from the measurement of vehicle length and width, effective April 29, 2002.

Monday, April 1, 2002 — *Nothing of general applicability pertaining to transportation was published on this date.*

Tuesday, April 2, 2002 — The FAA requested comments on potential security requirements for commuter aircraft flight decks. Comments are due May 25, 2002.

Wednesday, April 3, 2002 — The FTA issued a final rule revising its guidelines for state oversight of subway and light rail safety. The term and definition of "accident" is removed and replaced with the term and definition "major incident," effective July 2, 2002.

Thursday, April 4, 2002 — The FRA issued a final rule adding standards that address toilet and washing facilities for employees who work in locomotive cabs, effective June 3, 2002.

NHTSA published the corporate average fuel economy (CAFE) standard for light trucks for model year 2004.

Friday, April 5, 2002 — *Nothing of general applicability pertaining to transportation was published on this date.*

NEW AND NOTABLE ON THE INTERNET

The Bureau of Transportation Statistics has released its *Pocket Guide to Transportation 2002*. It is not yet available online, but paper copies may be ordered online at http://products.bts.gov/btsproducts/.

The Bureau of Transportation Statistics has released the March 2002 edition of *Transportation Indicators*. They may be found online at http://www.bts.gov/transtu/indicators/.

The General Accounting Office has released a report entitled *Commercial Aviation: Air Service Trends At Small Communities Since October 2000*. It may be found online at http://www.gao.gov/new.items/d02432.pdf.

DOT and the Defense Department announced that the 2001 Federal Radionavigation Plan pertaining to GPS and other navigation systems may be found online at http://www.navcen.uscg.gov/pubs/frp2001/.

TRANSPORTATION NOMINATIONS

PENDING IN COMMITTEE

Federal Maritime Commission — Steven R. Blust, to be a Commissioner for a term expiring June 30, 2006. *(Nomination transmitted March 14, 2002)*

PENDING BEFORE THE SENATE

Department of Transportation — Jeffrey Shane, to be Associate Deputy Secretary. *(Nomination reported December 19, 2001 — given a recess appointment by President Bush on March 29, 2002 but the permanent nomination is still pending on the Executive Calendar).*

Emil Frankel, to be Assistant Secretary for Transportation Policy. *(Nomination reported December 19, 2001 — given a recess appointment by President Bush on March 29, 2002 but the permanent nomination is still pending on the Executive Calendar).*

CONFIRMED BY THE SENATE

United States Coast Guard — Vice Admiral Thomas H. Collins, to be Commandant. *(Nomination confirmed March 21, 2002).*

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THIS WEEK IN COMMITTEE

Wednesday, April 10, 2002 — House Transportation and Infrastructure — Subcommittee on Water Resources and Environment — subcommittee hearing on proposals for a Water Resources Development Act of 2002 — *10:00 a.m., 2167 Rayburn.*

Senate Environment and Public Works — Subcommittee on Superfund, Toxics, Risk, and Waste Management — subcommittee hearing on the Superfund program — *10:00 a.m., SD-406 Dirksen.*

Thursday, April 11, 2002 — House Appropriations — Subcommittee on Transportation and Related Agencies — subcommittee hearing on the FY 2003 budget request for the National Transportation Safety Board — *10:00 a.m., 2358 Rayburn.*

House Transportation and Infrastructure — Subcommittee on Railroads — subcommittee hearing entitled, "Passenger Rail in America: What Should It Look Like?" — *10:00 a.m., 2167 Rayburn.*

Senate Environment and Public Works — full committee business meeting to mark pending calendar business, including S. 1917, Highway Funding Restoration Act — *10:00 a.m., SD-406 Dirksen.*

House Transportation and Infrastructure — Subcommittee on Aviation — subcommittee hearing on the adequacy of FAA oversight of passenger aircraft maintenance — *2:00 p.m., 2167 Rayburn.*

STATUS OF MAJOR TRANSPORTATION BILLS — 107th CONGRESS

BILL	HOUSE ACTION	SENATE ACTION	OUTCOME
FY 2003 Transportation Appropriations	Hearings began February 6	Hearings began February 7	
FY 2003 Energy and Water Development Appropriations	Hearings began February 27	Hearings began March 8	
RABA restoration for Federal-aid highway program	H.R. 3694 introduced 2/7/02 309 cosponsors as of 3/15/02	S. 1917 committee markup scheduled for 4/11/02	
Aviation competition	H.R. 142 introduced 1/3/01 by Representative Oberstar	S. 415 reported 12/18/01 S. Rept. 107-130	
Airline passenger rights	Numerous bills introduced but no committee action scheduled	S. 319 reported 4/16/01 S. Rept. 107-13	
Airport project streamlining/ airline scheduling coordination	H.R. 1407 reported 6/28/01 H. Rept. 107-77, parts I and II	S. 633 ordered reported 8/2/01 by Senate Commerce Committee	
Bonds/loans for high-speed rail infrastructure	H.R. 2950 introduced 9/25/01 by Reps. Young, Quinn	S. 1530 introduced 10/11/01 by Senator Hollings, 9 cosponsors	
Rail security and safety	No bills yet introduced.	S. 1550 reported 10/17/01 by Senate Commerce Committee	
Amtrak restructuring/reform/ reauthorization	No bills yet introduced	S 1991 introduced 3/6/02 by Sen. Hollings, 21 cosponsors	
Port & maritime security	H.R. 3983 ordered reported from House T&I Committee 3/20/02	S. 1214 passed Senate amended 12/20/01 by unanimous consent	
Coast Guard Authorization for fiscal year 2002	H.R. 3507 passed House 12/20/01 by voice vote	S. 951 reported 10/31/01 S. Rept. 107-89	