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Publication Date

2009-11-01

University of California Transportation Center
UCTC Dissertation No. 166

**Planners and the Pork Barrel: Metropolitan Engagement in and
Resistance to Congressional Transportation Earmarking**

Gian-Claudia Sciarra
University of California, Berkeley
2009

Planners and the Pork Barrel:
Metropolitan Engagement in and Resistance to
Congressional Transportation Earmarking

by

Gian-Claudia Sciara

B.A. (Columbia University) 1993
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A dissertation submitted in partial satisfaction of the
requirements for the degree of
Doctor of Philosophy
in
City and Regional Planning
in the
Graduate Division
of the
University of California, Berkeley

Committee in Charge:

Professor Emeritus Martin Wachs, Chair
Professor Karen Christensen
Professor Robin Einhorn
Professor John Ellwood

Fall 2009

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Metropolitan Engagement in and Resistance to
Congressional Transportation Earmarking

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by Gian-Claudia Sciara

Abstract

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Doctor of Philosophy in City and Regional Planning

University of California, Berkeley

Professor Emeritus Martin Wachs, Chair

Since passage of the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA), U.S. transportation policy has gradually strengthened metropolitan authority over federal transportation investments. Federal law requires metropolitan planning organizations (MPOs)—composed of local elected officials, transportation agency leaders, and public stakeholders—to plan and program federally funded improvements in urban regions. Yet members of the U.S. Congress have increasingly used funding bills to “earmark” funds to specific transportation projects. Derogatively called pork barreling, the practice can transfer discretion over transportation finance from metropolitan officials to members of Congress, who may hand-pick projects for funding whether or not they reflect regional transportation needs or priorities articulated in their MPOs’ long range plans (LRPs) or transportation improvement programs (TIPs).

This dissertation maps how Congressional earmarking of federal funds interacts with the metropolitan transportation planning process for programming federal investments. It examines what happens to metropolitan planning and the MPOs

responsible for that process when Congress earmarks projects. The study draws on 90 original interviews of representatives of metropolitan, state, and federal transportation organizations; national groups and policy organizations; Congressional committee staff; and other transportation experts. The study also reviews transportation authorization and appropriation bills, government reports, industry and policy newsletters, as well as statistical data about earmarks from government agencies and public interest organizations. Finally, to evaluate two different MPOs' experiences with earmarking, the dissertation presents cases studies of the Dallas-Fort Worth and New York MPOs.

This study shows that planning relevant information can come quite close to the selection process for earmarks. It also documents the organizational routines and strategies, many rooted in ISTEA provisions like fiscal constraint, that MPOs and state transportation departments have established to influence earmarks beforehand or to manage earmarks *post hoc* when they threaten to disrupt regional commitments. Despite these measures, Congressional earmarking often overrides the very planning processes that Congress itself requires of metropolitan areas and states seeking federal transportation funds. By redistributing federal transportation dollars and unsettling planning expectations, earmarking undercuts MPOs and their institutionalization in metropolitan areas precisely when federal policy may further expand MPOs' responsibilities.

Acknowledgments

Standard guides advise students beginning a dissertation to prepare for a lonely and isolating endeavor. My experience with this research has been different, thanks to the generosity and support from study participants, faculty, colleagues, family, and friends. I could never have completed this project were it not for the many intellectual, financial, and personal contributions made by others to my research.

First and foremost, this research would have been impossible without the scores of transportation professionals, Congressional staff, policymakers, agency leaders, elected officials, and administrators who gave their time, expertise, and insights to this project. My interviews and conversations with these highly knowledgeable people form the backbone of this project. Study participants took serious interest in my research and made themselves available, tirelessly and with good will and cheer. They taught me an enormous amount about the Congressional process and transportation earmarking, federal and state transportation finance, metropolitan and state planning, and the many organizations and institutions involved in these arenas. Many interviewees agreed to be listed at the end of this document; others requested to remain anonymous. All of these individuals share a stake in the results of this work. While some may disagree with the choices I made in my research and analysis, it is my sincere hope that they find fair consideration of the information and insights they shared with me in the past few years.

Generous financial support from several institutions made my doctoral studies and this work in their culmination possible. My studies, research, and writing were assisted tremendously by the U.S. Department of Transportation Eisenhower Graduate Transportation Fellowship. The University of California Transportation Center

generously awarded me a Dissertation Fellowship for this project, as well as a Graduate Student Fellowship to support preliminary studies. Additional financial support came through the Graduate Block Grant from Berkeley's Department of City and Regional Planning; the University of California Dean's Normative Time Fellowship; the Helene M. Overly Memorial Scholarship of the Women's Transportation Seminar (Bay Area Chapter); and a Doctoral Travel Grant from the University of California, Berkeley, Graduate Division.

By granting me library access as an alumna, Columbia University made the resources of its Butler and Avery libraries available to me as I completed this work in New York. Butler Library was the oasis of quiet and calm where I could research and write. The University of California, Berkeley, Institute of Transportation Studies lent logistical and technical assistance to this project.

Two esteemed colleagues, Idalina Baptista and Anuradha Mukherji, read drafts of the dissertation as I produced it and provided much encouragement. Our regular discussions provided fresh perspectives on my evidence and helped me to give my findings coherent written expression. Posthumously, I acknowledge Kaye Bock, in the Department of City and Regional Planning, whose sound advice enabled me to start this work on the right foot.

A top-notch dissertation committee has remained highly engaged in this work throughout. Professor Karen Christensen nurtured this project from the start. Her thoughtful input along the way consistently shed light on connections I had overlooked. Exchanges with Professor Robin Einhorn helped me to appreciate the evidence before me and to see the forest for the trees. I value the unique energy she brought to this

undertaking. Professor John Ellwood joined this project with enthusiasm. I thank him for pointing me toward resources and insights from related fields of essential relevance to this subject.

Above all, I wish to thank my adviser Professor Martin Wachs, an exceptional mentor and teacher to me from my first days in Berkeley. This work, and I as its author, have benefited enormously from his contributions. As the manuscript's earliest and closest reader, his feedback was instrumental as I chose next steps for the research and developed draft chapters. He responded to my questions with alacrity, freely sharing his breadth of knowledge and contacts. His suggestions at various moments to reevaluate evidence always strengthened my assessments without suggesting where they should land. Further, his encouragement of what seemed small increments of progress repeatedly restored my faith that I would complete the project. His concern for my wellbeing and that of my family brought a dimension to this process that few students experience, and I take his grace and humanity in life as an example.

In spite of the solid counsel I received throughout this process, I am responsible for the content of this work. Any omissions, errors, and shortcomings are my own. In finalizing this manuscript, I have reviewed the many choices I made concerning this project and believe the judgment I have exercised along the way was sound.

Many supportive friends provided all manner of assistance to this effort. Special gratitude is due Anne Moss. Her steady friendship to me, Kevin, and our daughter Violet, and her boundless encouragement for this project provided much light along the way. Sweet Charlotte was a true companion during this endeavor and passed away just as it was completed.

My sisters Carla and Camilla, and their husbands Lester Hilbert and Brian Levine, supported me throughout this process. Camilla and Brian helped on more occasions than I can count; I offer them my deep thanks. Though long deceased, my parents would be pleased to see this dissertation. I am indebted to my mother, Sylvana, who instilled an early passion for learning and my father, Charles, who encouraged me to pursue my dreams, even those with which he happened to disagree.

Finally, there is no one who is more deserving of my deepest appreciation and humblest gratitude than my husband Kevin. With love and good humor, he lent his patience and support to a project that expanded beyond original estimations and consumed more of our common life than either of us imagined. Additionally, during the course of this project, we welcomed Violet into the world, who has brought endless good cheer into our home. I am deeply conscious of the many sacrifices this undertaking has demanded of my dearest ones. Thank you, Kevin and Violet. I cannot imagine having reached this point without you.

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Chapter 1: The Earmarking Conundrum

*You can tell the difference between a good earmark and a bad earmark.
A bad earmark is kind of like pornography. It's hard to define
in regular terms, but you know what it is.¹*

U.S. Rep. John Mica (R-Fla.)

In September 2007, the county commissioners and local mayors of Florida's Lee County together voted to reject \$10 million in federal funds earmarked for a new interchange on I-75. Allegedly gifted by Alaska Congressman Don Young to the region in 2005, when Congress reauthorized federal transportation funding, the earmark was designated specifically for an interstate connection at Coconut Road. Yet, the region's transportation planning body, or Metropolitan Planning Organization (MPO), comprised of local officials, had voted twice against linking Coconut Road to the interstate. Environmentally sensitive adjacent wetlands would make for a complicated project, and competing transportation needs, like the widening of I-75 itself, were more pressing.

The unexpected millions earmarked in the SAFTEA-LU authorization nonetheless created pressure to advance the Coconut Road interchange, at minimum with initial planning studies. In the months after the earmark was announced, that pressure snowballed as the MPO in Lee County deliberated whether to accept the funds for the controversial project. Ultimately, local officials on the MPO voted in 2007 to send back to Washington the \$10 million for the project that one local newspaper dubbed the "Interchange to Nowhere." Less than a year later, the U.S. House and Senate would vote to begin a federal investigation of Representative Young's role in Congressional influence peddling: it had been alleged that Young manipulated the authorization bill

¹ Quoted in National Association of Regional Councils, "Water Infrastructure: 'The Sleeper Issue of the Decade,'" *NARC Washington, D.C. Update*, <http://narc.org/news/194/292.html> (accessed October 30, 2008).

illegally to insert language earmarking funds for the interchange in order to repay a Lee County land developer who had contributed to a local fundraiser for the Congressman.

The Coconut Road earmark and how its dubious pedigree thrust a little known type of public body called an “MPO” into the spotlight provide a useful story for launching this dissertation. This study examines the relationship between the Congressional practice of earmarking federal transportation funds and the practice of metropolitan planning for transportation in the U.S. When the \$10 million was designated for the Coconut Road interchange, the project was listed nowhere in either the region’s federally required capital program, called the “TIP,”² or its long range plan. The earmark illustrates how Congressional earmarks for projects may circumvent federally required processes for transportation planning and programming; how Congressional earmarking practices can derail plans, confuse transportation budgets, and create bureaucratic entanglements for the MPOs responsible for these processes in urban areas, unraveling federal transportation policy for a whole set of urban actors; and how, in spite of their limited authority, MPOs sometimes respond in surprisingly strong fashion to the conundrum that earmarking presents to them.

1.1. A Congressional Practice and its Challenges for Planning

Earmarking is the process whereby members of Congress designate federal funds for discrete purposes by inserting special language into federal authorization and appropriation acts or accompanying Congressional reports and statements. Such earmarks direct federal funds to specific places for discrete projects that may involve physical construction or improvement of a transportation facility or related structure;

² Transportation Improvement Program.

capital acquisition for transportation services or facilities, such as a bus or rail-car purchase; or research or planning studies or analyses that would examine such projects. Earmarks direct how, where, or by whom certain funds may be spent. They may range from designations of \$100,000 for modest streetscape improvements to upwards of \$100 million for mega-projects costing billions.

Earmarking is a longstanding Congressional behavior, and for centuries critics have decried earmarked projects as wasteful. However, the sharply expanding scale of this practice is something new. Over the last 15 years, the extent of earmarking in federal transportation spending has expanded markedly. Earmarks in the multi-year authorization bills that establish federal transportation spending levels grew from 10 in 1982 to over 500 in 1991 to more than 6,000 in the 2005 authorization, called SAFTEA-LU.³ Expressed in constant 2006 dollars, the value of authorization earmarks swelled from less than \$1 billion in 1982, to over \$12 billion in 1991, to almost \$30 billion in 2005. Annual appropriation earmarking has grown as well. **(See Figures 1a. and 1b.)** Earmarking has also expanded in scope, as Congress has earmarked an increasing number of federal transportation programs over time.

³ Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

Figure 1a. Increasing Scale of Earmarking: Authorizations

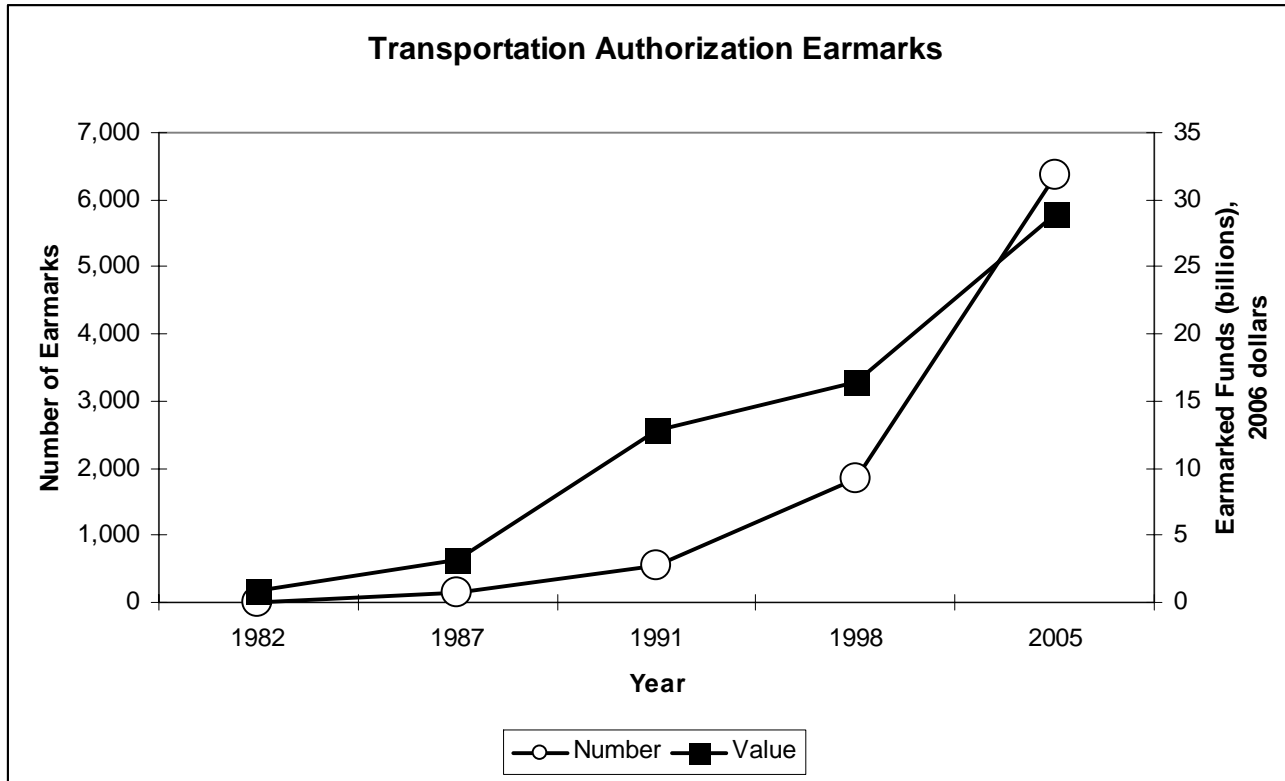
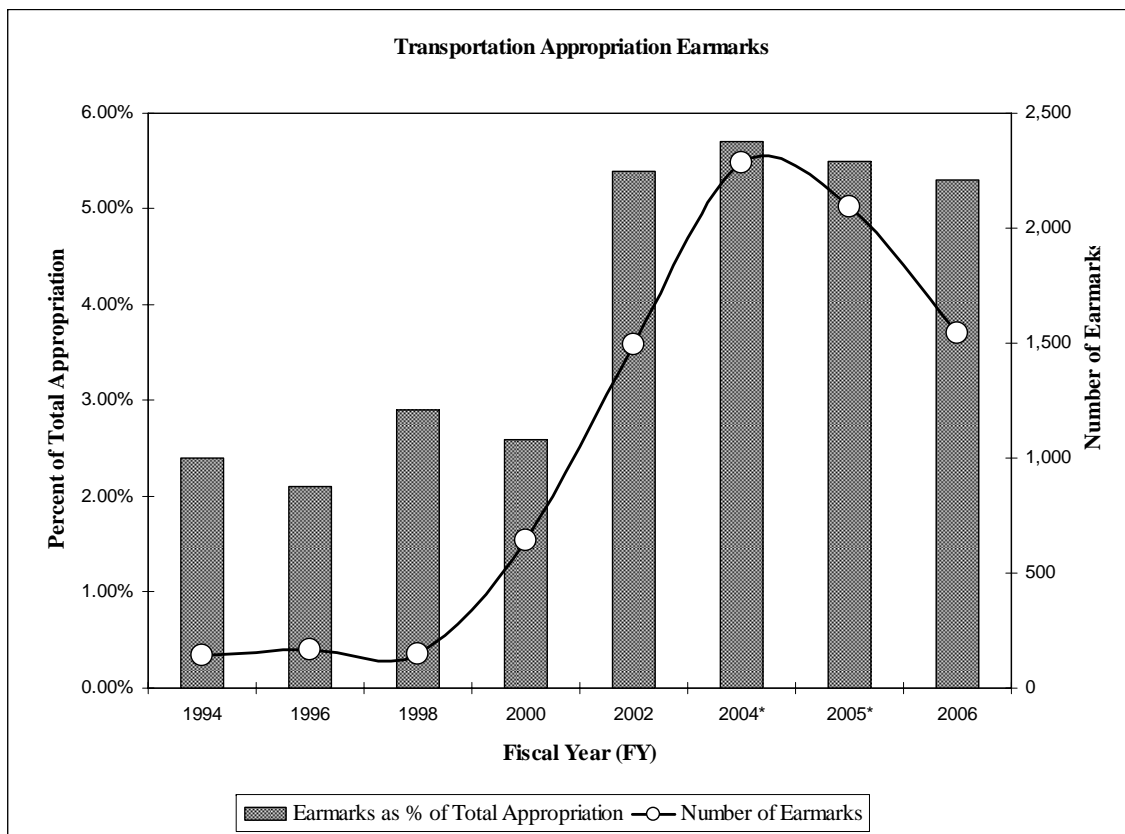


Figure 1b. Increasing Scale of Earmarking: Appropriations⁴



⁴ In FY2003, the Coast Guard and Transportation Security Administration were transferred from the DOT to the newly-created Department of Homeland Security. Thus, the FY2004 and FY2005 figures are not directly comparable to those of previous years.

Because they narrowly dictate the terms of federal expenditure, earmarks eliminate much discretion that local elected officials and transportation agency leaders otherwise exercise over how to spend federal funds in metropolitan areas and what such investments should accomplish. Earmarks create inevitable tension between the acts of Congress and the transportation planning and programming decisions of local leaders in metropolitan areas. They establish a clear conundrum for metropolitan transportation planning and the organizations and elected officials responsible for it.

On one hand, federal law requires a specific process for planning transportation investments in metropolitan areas and programming federal dollars to fund them. The MPO process is designed to involve local elected officials, agency leaders, and the public in such decisions, making them more transparent. Without earmarks, in order to tap federal transportation funds, local government and agency leaders, participating in the MPO, must vote on and approve investments outlined in a near term capital program, or Transportation Improvement Program (TIP), and in a more general long range plan (LRP). This process encourages, albeit imperfectly, competitive, technically informed, and openly deliberated goal setting and project selection.

Without earmarks, federal transportation funds are available for metropolitan areas and states to spend on near- and long-term transportation priorities that they identify. These federal funds are made available through transportation authorization and appropriation laws, passed in the U.S. Congress. Multi-year authorization laws⁵ define federal transportation policy and eligible uses of federal funds, such as bridge maintenance or bus replacement, and they set federal spending ceilings and specify the criteria and formulae by which federal grants are to be distributed among states, regions,

⁵ For example, ISTEA, TEA-21, and SAFTEA-LU are pronounced “ice tea,” “tea 21,” and “safety loo.”

and transportation agencies. Annual appropriation bills in turn make those authorized funds available to state and metropolitan agencies, allowing them to enter into contracts to spend, or obligate, the money.⁶

With earmarks, on the other hand, members of Congress may hand-pick transportation projects for funding that do or do not reflect metropolitan planning priorities. Earmarks may circumvent and even undermine the metropolitan processes. Virtually no safeguards exist within Congressional practice to ensure that a member's decision to earmark funds for specific projects are informed by metropolitan capital programs (i.e. TIPs); by long range plans (LRPs); by consultation with local elected officials or the public; or by analysis of a project's technical merits. Members of Congress may use earmarks just as easily to fund valued transportation projects as to distribute favors among key constituencies or political intimates, or even to trade with other representatives for votes on other unrelated issues.⁷ Further, earmarking practices are themselves largely opaque, a fact well illustrated by the absolute confusion among Lee County government officials over where the earmark for the Coconut Road interchange actually originated.

This apparent disconnect between earmarking and planning processes has not been addressed by scholars. In fact, most scholarly interest in earmarking comes from the political science community. Some studies address earmarking within a broader

⁶ A subtle but important expansion is that the appropriation itself does not create specific obligation authority for a transportation department. Instead, after Congress has appropriated funds, the implementing entity must seek Federal Highway Administration approval for the project agreement, plan specifications, and cost estimate. This approval creates the obligation of federal highway funds, which can remain in place until the bidding process and contractor selection are complete.

⁷ A U.S. House rule passed in 2008 prohibits members from using earmarks as leverage in this fashion, although it is unclear whether alleged violations would be discernible. See Sandy Streeter, *Earmark Reform: Comparison of New House and Senate Procedural Rules*, Congressional Research Report (Washington, D.C.: Congressional Research Service, 2008), 11.

focus on the federal budgeting process;⁸ others seek to understand through earmarks the larger motives behind Congressional behavior;⁹ and others examine norms of distribution in federal spending bills, positing various logics under which Congress distributes such benefits as earmarks.¹⁰ Several works in the planning field discuss earmarking specifically in transportation, with regard either to evidence of a waning or unclear federal role in transportation,¹¹ or to earmarks' effects on specific federal activities like transportation research¹² or funding for low income workers' transportation.¹³ Yet, no research has sought to assess whether earmarking and planning processes work together or at cross purposes, or—in either case—under what circumstances, or how metropolitan organizations charged explicitly with planning and programming funds for transportation investments behave in an environment of increased earmarking.

To understand what earmarking means for metropolitan areas, metropolitan transportation systems, and the planning and decisionmaking institutions and processes

⁸ Aaron Wildavsky, *The Politics of the Budgetary Process* (Boston: Little, Brown, 1964); Richard F. Fenno, Jr., *The Power of the Purse: Appropriations Politics in Congress* (Boston: Little, Brown, 1966); and Aaron Wildavsky and Naomi Caiden, *The New Politics of the Budgetary Process*, 5th ed. (New York: Pearson Education, 2004).

⁹ David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974); John W. Ellwood and Eric M. Patashnik, "In Praise of Pork," *The Public Interest* 110 (Winter 1993): 19-33; Douglas R. Arnold, *The Logic of Congressional Action* (New Haven, CT: Yale University Press, 1990); and Diana Evans, *Greasing the Wheels: Using Pork Barrel Projects to Build Majority Coalitions in Congress* (Cambridge: Cambridge University Press, 2004).

¹⁰ John A. Ferejohn, *Pork Barrel Politics: River and Harbors Legislation, 1947-1968* (Stanford, CA: Stanford University Press, 1974); William A. Niskanen, Jr., *Bureaucracy and Representative Government*, (Chicago: Adeline Atherton, 1971); James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962); David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974); Kenneth A. Shepsle and Barry R. Weingast, "Political Preferences for the Pork Barrel," *American Journal of Political Science* 25, no. 1 (1981): 96-111; Diana Evans, *Greasing the Wheels: Using Pork Barrel Projects to Build Majority Coalitions in Congress* (Cambridge: Cambridge University Press, 2004).

¹¹ David E. Luberoff, "The Triumph of Pork over Purpose," *Blueprint: Ideas for a New Century* (September/October 2001): 31-34.

¹² Ann Brach and Martin Wachs, "Earmarking in the U.S. Department of Transportation Research Programs," *Transportation Research. Part A: Policy and Practice* 39, no. 6 (2005): 501-21.

¹³ Evelyn Blumenberg and Lisa Schweitzer, "Devolution and Transport Policy for the Working Poor: The Case of the U.S. Job Access and Reverse Commute Program," *Planning Theory and Practice* 7, no. 1 (2006): 7-25.

that support them, we must understand the interaction between these Congressional and metropolitan processes. For example, are metropolitan planning organizations (MPOs) involved in earmarking? If so, how? Earmarking can enable MPO members to secure funds for projects independently from the MPO process. Does earmarking thus alter an MPO's ability to build consensus on transportation investments in urban regions? How do earmarks change the expectations and behaviors of MPO players? Where metropolitan transportation projects benefit from earmarks, do those projects align with established MPO plans and spending priorities? Alternatively, to what extent if at all do members of Congress consult with metropolitan planning organizations and their members when choosing earmark candidates? How planners interpret and respond to the practice of Congressional earmarking depends on answers to these questions, addressed in this study.

1.2. Whither MPOs?

This dissertation begins with the premise that it is in the interest of metropolitan regions and their transportation systems to be served by robust MPOs. That is, the local elected officials and transportation agencies which comprise the MPO board use that regional body as a serious forum for deliberating and establishing regional transportation goals, plans and priorities. Yet, largely because MPOs are advisory bodies without the powers of formal government, many do not live up to this ideal. As one lobbyist commented in this study,

My general experience with most MPOs is that they are extremely weak. Few MPOs play a very strong role in regional planning. Most of them become a rubber stamp on whatever deals that members have negotiated separately. I see few MPOs playing as strong a role as envisioned in the statute....There are more places where it's not working.

Further, many interview respondents consulted for this dissertation observed that MPOs seldom play a central role in seeking earmarks for the metropolitan region.

The tropes that MPOs are rubber stamps and merely staple together parochial plans of their members are familiar, but they are not reason enough to discount these bodies as important objects of inquiry. Few MPOs operate so simplistically, particularly in large regions. Further, the trend in federal policy, extending back to the early 1970s and intensified after the landmark transportation law ISTEA¹⁴ in 1991, has been to bolster the role of local officials and transportation agencies in metropolitan areas by expanding MPOs' roles. For instance, ISTEA and successor laws have established a new pattern in transportation finance, by allowing MPOs in large urban areas more direct control over certain federal funds than they had previously.¹⁵ Further, ISTEA era fiscal constraint requirements, the cost of implementing projects listed an MPO's near-term capital plan, or "Transportation Improvement Program" (TIPs), must align with anticipated funding, making MPO commitments to desired projects more rigorous.

Current indicators suggest that Federal transportation policy will continue in this direction, asking more rather than less of MPOs in the future. Thus, the need to understand how MPOs operate in the present, particularly in the face of a phenomenon as potentially challenging to these planning bodies as Congressional earmarking, becomes more urgent. Transportation provisions of the American Recovery and Reinvestment Act of 2009, passed recently to stimulate the U.S. economy,¹⁶ distribute funds in a way that enables MPOs to directly program a much larger share of highway funding than has

¹⁴ Intermodal Surface Transportation Efficiency Act.

¹⁵ Gian-Claudia Sciara and Martin Wachs, "Metropolitan Transportation Funding: Prospects, Progress, and Practical Considerations," *Public Works Management and Policy* 12, no. 1 (2007): 378-94.

¹⁶ *American Economic Recovery and Reinvestment Act*, 111th Congress, 1st sess., *Congressional Record* (January 6, 2009): Title XII, 92-93.

historically been the case with federal highway fund apportionments. The act makes a full 50-percent of its \$27.5 billion highway stimulus available through the metropolitan-friendly Surface Transportation Program (STP), and suballocates 50 percent of that—nearly \$7 billion, or 25 percent of total highway stimulus—directly to large MPOs as the so-called STP “urban share.”¹⁷ In contrast, the STP urban share represented only 6 percent of all highway apportionments from 1998 to 2003.¹⁸

Further, several proposals circulating in mid-2009 for the transportation authorization law due this year would increase the responsibilities carried out by MPOs.¹⁹ An outline for the law drafted by House Transportation and Infrastructure Committee leadership makes the STP program one of the four major Federal funding categories retained under a dramatically streamlined federal program, suggesting MPOs’ discretion would grow as more funds are distributed through that program. The proposal also provides \$50 billion (over 10 percent of total funding) for major metropolitan areas under a new Metropolitan Mobility and Access program, in which MPOs could play a significant role drafting plans for investment.²⁰ This proposal is the first formal thrust of

¹⁷ In areas with populations over 200,000, the STP “urban share” or metropolitan suballocation is programmed by MPOs with state approval.

¹⁸ Robert Puentes and Linda Bailey, “Improving Metropolitan Decision Making in Transportation: Greater Funding and Devolution for Greater Accountability,” *Transportation Reform Series* (Washington, D.C.: The Brookings Institution, 2003). See Figure 1, p. 5.

¹⁹ House of Representatives Committee on Transportation and Infrastructure, “*The Surface Transportation Authorization Act of 2009: A Blueprint for Investment and Reform, Executive Summary, 2009*,” report presented by James L. Obestar, et al.

²⁰ Other prominent federal authorization proposals encourage significant metropolitan funds that would bypass the states. These include *Transportation for Tomorrow* (Washington, D.C.: National Surface Transportation Policy and Revenue Study Commission, 2007), Vol. I; *Paying Our Way: A New Framework for Transportation Finance* (Washington, D.C.: National Surface Transportation Infrastructure Financing Commission, 2009); and National Transportation Policy Project, *Performance Driven: A New Vision for Transportation Policy, Executive Summary* (Washington, D.C.: Bipartisan Policy Center, 2009), 5.

the authorization process, but it strongly emphasizes the transportation problems of metropolitan regions, putting MPOs in the spotlight.

Thus, while it is important to acknowledge that MPOs—including some consulted for this research—often fall short of what federal law envisions for them, they remain an important institutional form for transportation in metropolitan areas. They are the only organizational structure in place that marries the planning process with a deliberative political forum, and that is obliged to make the process transparent. MPOs also bring different modal interests together, increasing opportunities for coordination among transit providers, highway and road departments. They also represent multiple geographic jurisdictions, blend governments and bureaucracies, and in essence, are more broadly constituted than any single transportation entity, whether agency, special district, or town, or county government. The earmarking behavior of MPOs provides a window on how these organizations and their members operate, their planning practices, and what might produce more robust MPOs in the future.

1.3. The Evidence, in Brief

The evidence in this dissertation suggests that Congressional earmarking upsets and undermines more commonly than supports the decisions and decisionmaking intuitions of metropolitan regions. Although the dissertation uncovers some surprises about how Congressional earmarking can sometimes serve planning ends, it predominantly shows that earmarking, when used to supplant established metropolitan processes for allocating federal transportation resources, diminishes MPOs precisely at a time when federal law would increase their responsibilities. Earmarking holds obvious appeal for project proponents who are dissatisfied, impatient with, or ignorant of that

metropolitan process, as a way to secure funds for the project in spite of it. Further, for members of Congress, earmarks provide a way to claim credit for transportation improvements that may appeal to a wide variety of constituents.

While some earmarking detractors dwell exclusively on the troubles associated with earmarks, it is important to highlight the surprises that emerge in this dissertation about earmarking and about the interaction between earmarking and planning. Such surprises provide limited cause for optimism, but they do provide a fuller picture of how earmarking works and of the ways in which transportation planning and implementing organizations work to improve the outcomes that earmarks deliver.

The study looks deep into the Congressional pork barrel to analyze the process for designating federal transportation funds. In doing so, it discredits the absoluteness of popular notions that the earmarking process is an utter black box, shrouded in secrecy and overrun with corrupt lobbyists. Instead, this study shows that legitimate public organizations responsible for transportation do in fact participate in the earmarking process, including MPOs, their member governments, and particularly state DOTs. Communication between members of Congress and planning organizations can bring relevant planning information—such as the status of a candidate project in the TIP—into the earmarking process. Further, dissertation evidence indicates that, as Congressional earmarking has increased in scale and scope in recent decades, the Congressional process itself has also grown more formalized and, in part, more transparent. When preparing drafts of spending bills, Congressional committees circulate earmark request forms to members. Compelled by the need to complete the forms, members of Congress may turn to state DOTs or, less typically, to MPOs, to secure planning details about the projects

they propose for earmarks. Congress' use of these forms and other routines to process earmark requests has made local governments and transportation agencies within MPOs increasingly aware of the earmarking cycle, its rules, and procedures. And while it still is more common for MPOs to remain on earmarking's sideline, they are more likely than they were two decades ago to participate in the process.

The dissertation presents some evidence that, where planning organizations and members of Congress work effectively together, they may create earmarks that serve as what I call "plork," a planning-pork hybrid. Plork projects can harmonize a Congress member's credit claiming ambitions with regional needs outlined in established plans and capital programs. But such projects may still represent investments that are not urgent priorities.

If problematic earmarks have an upside, the dissertation reveals it is because they can provoke improvements to regional planning, by mobilizing regional organizations and state agencies to bolster their processes and commitments. Earmarking has catalyzed MPO members in some places to adopt practices and policies that better protect their planning decisions when earmarks threaten to derail regional planning and programming commitments. Additionally, where an MPO's member agencies and local government have traditionally acted atomistically, the study uncovers some hopeful signs that the specter of large, unwanted earmarks may spur regional dialogue.

These bright spots aside, I contend that earmarking is more deleterious to than supportive of metropolitan transportation planning. Although some MPOs adopt planning-supportive practices in the face of earmarking, such responses appear to be in the minority. Palpable disincentives discourage MPOs from proactively engaging in the

earmarking process and from refusing earmarks after the fact, even earmarks for unsought or problematic projects. Further, where members of an MPO are active in earmarking, they may engage more typically on behalf of parochial wants, rather than as a group for regionally desired projects. And, even where the MPO may coordinate effectively to influence earmarks, perverse incentives may still lead the MPO to accommodate projects that represent questionable investments of federal dollars.

For MPOs that actively encourage earmarks that support projects from the regional TIP or high priorities from the long range plan, there are no guarantees that Congress will abide by their wishes. Once passed in law, earmarks that are inconsistent with planned capital investments and not in the TIP can derail plans and create bureaucratic entanglements and financial fissures for the agencies and governments that will execute the projects. Earmarked projects funded “below-the-line,” at the expense of funds anticipated and committed for other projects, are particularly detrimental. Such earmarks can produce tremendous inefficiencies, among them the duplication of effort by the federally funded metropolitan planning process and by the earmarking process that effectively nullifies the former’s results. Further, earmarks must be retrofitted into the planning process, *post hoc*, if the funds are to be spent, and this can require significant supplemental effort. Thus, Congressional earmarking creates a truly ironic suite of problems: its proponents commonly defend earmarking by suggesting that it reduces bureaucracy, reclaiming important decisions from the hands of nameless, faceless civil servants and returning important choices to the hands of responsive U.S. elected representatives. However, earmarks in fact increase red tape.

This dissertation also challenges conventional wisdom about transportation earmarking finance by documenting that transportation earmarks typically do not add to federal transportation spending, but rather redistribute resources already made available. This news may please federal budget hawks, but it is terrible news for transportation agencies whose resources are diminished because earmarks have reshuffled federal funds. Even more troubling, the highly oblique budgetary maneuvers used to create earmarks obscure such serious reshufflings, hiding earmarks' financial consequences from all but the most astute experts in federal transportation finance. Such redistributive consequences can upend the expectations around which regional and state transportation plans and capital programs are built. In the face of such turbulence in their TIPs, MPOs and their members may have to reshuffle projects and priorities, recalibrating the TIP, to restore the integrity of original geopolitical agreements embodied in the existing TIP.

Finally, the institutional consequences of earmarks, while less visible, are perhaps more serious, especially as they erode metropolitan institutions precisely when prevailing winds in federal policy suggest MPOs may be asked to do more. It is fundamentally irrational that Congress should stipulate the metropolitan planning process in law and then allow members of Congress to summarily ignore that process when selecting projects for earmarks. If metropolitan planning processes are not functioning to the satisfaction of local constituencies in specific places, as earmarking defenders argue, the constructive feedback and correctives should come through the metropolitan planning process, by votes to reject long range plans or TIPs, or by pressure on state and local governments to reconstitute an unresponsive MPO. The use of earmarks to secure federal funds for projects by bypassing the metropolitan process both undermines this process

and its institutionalization in an urban region, and deprives it of feedback needed to improve it.

1.4. A Drive Down Coconut Road

Although subsequent chapters depart for other metropolitan regions in the U.S. in search of for evidence, I introduce the dissertation with a drive down Coconut Road. The Coconut Road earmark and the dilemma it created for the Lee County MPO illustrate many of the concerns addressed in this dissertation and also help to convey my findings.

Given the aims of this dissertation, the story of Coconut Road hinges on a single important detail: At the time that Congress designated \$10 million for the Coconut interchange,²¹ the project existed neither in the region's approved long range transportation plan (LRP) nor its near term capital program, or TIP. Like all federal transportation funds, Congressional earmarks can be used for projects only if those projects are listed in required state and metropolitan plans. Lee County's long range plans, which discuss the year 2020 and 2030 vision for regional transportation, featured an *overpass* joining Coconut Road on the west of I-75 to another road to the east, but not a full highway interchange. As this research emphasizes, earmarks for projects that are not included in metropolitan TIPs or long range plans are most problematic.

As echoed by many respondents in this research, earmarks are often of an unknown pedigree. In early August 2005, shortly after Congress approved the long awaited transportation reauthorization bill, SAFTEA-LU, Florida congressman Connie Mack issued a celebratory press release. On top of the \$81.1 million earmarked for I-75's expansion in Southwest Florida, Mack announced that an additional \$10 million for

²¹ A U.S. Department of Justice investigation undertaken into the matter in 2009 may show that Rep. Don Young or congressional staff under his direction inserted the text earmarking the \$10 million specifically for the Coconut interchange.

the corridor had been found “buried in a different section of the bill.”²² Typically, Senators and House members readily advertise funds won for their states and districts, but Senator Mel Martinez had not mentioned the \$10 million when he announced the other I-75 earmarks a week earlier. Neither did Mack claim credit for the \$10 million. “At the end of the day, this thing got stuck in there unbeknownst to us and having nothing to do with us, other than it is our district,” a Mack spokesperson later told the *New York Times*.²³ A Lee County MPO board member said, “It just came out of the sky.”²⁴

When Congress earmarks funds for projects outside of regional plans and capital programs, MPOs are left to manage the earmark *post hoc*. No local officials acknowledged requesting the funds to build the Coconut Road interchange, and it was not in approved regional plans. Still, the sudden availability of funds opened contentious debate on the project, and pressure to use the money came from many directions. The business community, realtor groups, a local university, and some area residents supported the project, on one hand. The Bonita Springs Chamber of Commerce called on the MPO “to support this interchange and encourage Representative Mack to go back to Washington and bring back the rest of the bacon to pay for this study.” To reject the funds would “be short-sighted,” the Chamber maintained.²⁵ The city of Bonita Springs argued the interchange would provide needed traffic relief on a main Bonita thoroughfare. Interchange detractors, including local residents and environmentalists, argued on the other hand that the project should be stopped, leaving Coconut Road

²² Larry Wheeler, “Mack Finds \$10 Million for I-75,” *News-Press*, August 11, 2005; Office of Congressman Connie Mack, *Mack, Diaz-Balart: Additional \$10 Million Approved for I-75 Expansion; Total Funding Now Stands at \$91.1 Million*, news release, August 10, 2005, <http://mack.house.gov> (accessed November 12, 2007).

²³ David D. Kirkpatrick, “Alaskan Gets Campaign Cash; Florida Road Gets U.S. Funds,” *New York Times*, June 7, 2007.

²⁴ Phil Davis, “Florida Road Leads to Alaska Congressman,” *Associated Press*, June 16, 2007.

²⁵ Lee County, Minutes of Meetings of Metropolitan Planning Organization, Meeting of March, 2006.

disconnected from the interstate. A new interchange would attract development to adjacent sensitive wetlands east of I-75 and bring more traffic to nearby neighborhoods.

Earmarks like Coconut Road can also leave fissures in a region's financial plan. The \$10 million could pay for a project study, but it would never suffice to actually build the Coconut Road interchange. If feasibility studies favored the project, would the money for its construction come at the expense of other needed projects? Nonetheless, the Coconut Road earmark represented "above-the-line" funds that would come in addition to rather than at the expense of federal highway funds anticipated by the state. If the MPO did not amend its long range plan and short-range TIP to accommodate the project *post hoc*, Lee County would lose the \$10 million. One MPO member suggested as an administrative remedy seeking to retain the funds but apply them to a different project, like *widening* I-75. However, Congressmen Young and Mack explicitly told the MPO that earmark could not be used flexibly.²⁶ Faced with this choice, some interests in the region were reluctant to let go of the money. A representative of the Southwest Florida Transportation Initiative (SWFTI), a private group composed largely of bankers, real estate developers, builders and other businesses that lobby for transportation investment in the region,²⁷ spoke before the MPO:

SWFTI goes three or four times each year to the legislature to beg for money into Washington walking the halls of Congress talking about the university, airport, and the poor conditions of the interstate. We received...one of the top earmarks in the country...Why are we fighting this?...There are cities and counties that would beg for the \$10 million. Let's see what the study says.

²⁶ Ibid., *Meeting Minutes*, March 2006. Also, Section 1934 of SAFTEA-LU which designates the earmark explicitly states that the funds cannot be applied to other projects. Ultimately, however, this is precisely what happened after the earmark was amended in a 2008 technical corrections bill.

²⁷ Larry Hannan, "SWFTI Helps Raise \$1 Billion for Roads," *SWFTI News*, Southwest Florida Transportation Initiative, June 16, 2004, http://www.swfti.org/news_detail.php?id=13.

These issues were discussed at the table over and over as the MPO considered whether to accept the money.

MPOs operate in a larger political environment that can make it difficult to refuse earmarked funds, even if a project is low priority or clearly unwanted. In the Coconut Road case, refusing the earmark would be an affront to Congress, particularly Chairman Young, and could cause political problems for getting future funds, as highlighted by a local transportation commissioner: “The next time we try to get funding from Congress....we will have to apologize before we can go forward and ask for more money. We want to do this from a position of strength...Let’s do the study and see if it makes sense.”²⁸

In the two years following news of the earmark, the Coconut Road interchange appeared on the MPO’s meeting agenda several times. In September 2005, shortly after the \$10 million earmark was announced, the MPO board rejected the funds by voting eight to three against including the project in the regional long range transportation plan. Three months later, the MPO again refused to amend its long range plan.²⁹ After significant efforts by proponents of the study, the MPO considered the project again in March 2006. This time, with Florida Department of Transportation (FDOT) assurances that the MPO would retain control of the study, direct the study scope to reflect concerns over developing wetlands, and limit the diversion of funds from other needed projects, the board voted 11 to 4 to accept the project in the long range plan.³⁰ Yet, once the *New York Times* reported that the earmarked funds were likely political payoff from Don

²⁸ Lee County, Minutes of Meetings of Metropolitan Planning Organization, Meeting of March, 2006.

²⁹ *Naples Daily News*, "Coconut Road," December 15, 2005.

³⁰ Lee County, Minutes of Meetings of Metropolitan Planning Organization, Meeting of March, 2006.

Young to a local developer, a connection some members had suggested from the beginning, the board again reversed course and squashed the project for good.³¹

There is more one could say about Coconut Road, how it earned the nickname “The Interchange to Nowhere,”³² and how the earmark became grist for the mill in calls for a House ethics investigation.³³ But the story outlines conveyed here amply illustrate the questions that motivate this study. Ultimately, the MPO’s resistance coupled with scrutiny of the seeming illicit manipulation of the bill that included it led to the earmark’s reversal. The SAFTEA-LU Technical Corrections Act of 2008 amended the original earmark language to make the \$10 million available for the widening of I-75 in Lee and Collier Counties, rather than for the unwanted I-75/Coconut Road interchange.³⁴

1.5. Dissertation Guide

1.5.1. Chapters

This study is organized into nine chapters. Chapter one introduces the dissertation research, defining both earmarking and planning, and tracing earmarking’s increase in federal transportation authorization and appropriation bills. It makes the case that the relationship between Congressional earmarking and metropolitan planning is important, as these are competing processes for allocating federal funds, but little studied.

Chapter 2 provides historical perspective on the practice of transportation planning in U.S. metropolitan areas and on the organizations involved in it. It shows how metropolitan planning organizations (MPOs) are comparatively new organizations in

³¹ Charlie Whitehead, "Coconut Road Earmark Rejected Again, after Heavy Debate at MPO," *Bonita Daily News*, September 28, 2007.

³² *Sarasota Herald-Tribune*, "Interchange to Nowhere; Fort Meyers Controversy Shows an Earmark Process out of Control," June 17, 2007.

³³ *New York Times*, "The Mystery of the Coconut Interchange," October 7, 2007; *Anchorage Daily News*, "Coconut Road," September 29, 2007.

³⁴ Lee County, Minutes of Meetings of Metropolitan Planning Organization, Meeting of June 20, 2008.

transportation, and how they represent an accretion over the twentieth century of professional ideologies, legislative action, political struggles, and conflicting decision-making styles. The institutionalization of metropolitan level transportation planning, through MPOs, has been highly incremental and strongly influenced by federal law that has gradually enhanced the metropolitan position.

Chapters 3 and 4 peer inside the pork barrel to analyze how earmarking works both within the Congressional process and as a series of financial mechanisms employed by Congress. Importantly, these chapters suggest that the process by which Congress creates earmarks has grown more formal as earmarking has increased and now includes the collection of planning-relevant information about projects; still, the process remains opaque in important ways. The chapters reveal that Congressional strategies for creating earmarks and paying for them evolve over time, as Congress responds to its own perception of its discretion, and to internal and external environments, such as authorizer-appropriator struggles, or federal agency efforts to thwart earmarks. Chapter 3 distinguishes earmarks based on whether Congress links them to existing funding programs directly, as with programmatic earmarks, or not at all, as *ad hoc* or stand alone earmarks. Chapter 4 dissects the primary budgetary maneuvers which Congress uses to fund earmarks, revealing that earmarks do far more to redistribute existing transportation resources than to add to transportation spending and that by reshuffling federal transportation funds, they can disrupt the near- and long-term planning and programming efforts of metropolitan and state transportation agencies.

Chapters 5 and 6 together describe and analyze organizational practices in metropolitan areas surrounding earmarking. Chapter 5 explores practices employed by

metropolitan planning organizations (MPOs), state departments of transportation (DOTs), and local governments to enter into the earmarking game before a bill is passed. In brief, the chapter finds on one hand that opportunities for MPOs to engage in earmarking have increased and become more visible. Because the earmarking process is itself more open, earmarking may be seen as a legitimate route to getting projects. On the other hand, the predominant patterns of and organizational relationships in earmarking seem more likely to undercut metropolitan planning, either directly by inviting project requests that are not regional priorities or indirectly by negating the MPO as a regional decisionmaking forum. Chapter 6 explores the challenges earmarking can pose for MPOs and state DOTs when Congress designates projects outside regional and state priorities as reflected in TIPs and LRPs. For challenging earmarks, MPOs can minimize disruption to existing programs *post hoc* by employing defensive policies. Such responses have legal tooth; they are rooted in federal requirements that TIPs be fiscally constrained and related to long-term plans. Still, few metropolitan or state organizations have the wherewithal to play hardball with Congress members or local project supporters to thwart unwanted earmarks.

Chapters 7 and 8 present case studies of two metropolitan planning organizations (MPOs), serving the Dallas-Fort Worth region of Texas and the New York metropolitan area, to explore in detail how Congressional earmarking and metropolitan planning and decisionmaking processes interact, and how planning practices have evolved in an environment of increased Congressional earmarking. The Dallas-Fort Worth MPO is known actively to coordinate earmarking activity in its region, while the latter is known to be largely uninvolved in earmarking. Chapter 7 reveals the institutional factors that

have helped the DFW MPO establish itself as a well-used passive consultant on Congressional earmarks. At the same time, it is not clear that the MPO's seemingly successful strategies for influencing earmarks beforehand and for earmark management *post hoc* actually lead to better planning of transportation investments. Earmarks for the I-30 Trinity River Bridge illustrate this point. Chapter 8 traces how, for seeking or managing transportation earmarks for New York area projects, as with for transportation decisionmaking in general, the MPO has been a largely irrelevant forum. Agencies, local governments, and other stakeholders have typically not worked across jurisdictional or agency boundaries to pursue or respond to earmarks. However, earmarking's rapid increase, along with a hefty \$100 million earmark in SAFTEA-LU for a theretofore low priority project, have spurred members of the New York MPO to reconsider the potential in general for strengthened regional decisionmaking and in earmarking in particular for regional action in the Congressional earmarking process.

Finally, Chapter 9 concludes the dissertation with overarching observations, including a reappraisal of ISTEA based on the study findings, and with suggestions for future research.

1.5.2. Methods

Methodologically, this dissertation draws in large part on original interview data collected by the author, with approval from and in accordance with the protocols of the Committee for the Protection of Human Subjects of the University of California, Berkeley, the university's institutional review board. I completed a total of ninety qualitative interviews, representing over 80 interview hours, for this study. In addition to collecting and analyzing the interview data, the study also reviewed federal transportation

authorization and appropriation legislation, government reports, transportation industry and policy newsletters, as well as earmark data provided by government agencies and outside organizations.

Chapters 3 through 6 draw on interviews and document research conducted in the study's first phase, which sought to understand how earmarking in general works and MPOs' role in it. During Phase One, I collected 55 semi-structured interviews with representatives of metropolitan, state, and federal transportation organizations, national groups and policy organizations active in transportation, Congressional committee staff, and other transportation experts. All participants were asked to describe observations about and experiences with federal earmarks over their tenure at their current organization, and at previous organizations if relevant. In particular, respondents were asked whether and how their current organization works with earmarks, and what interactions they observed between the processes for earmarking federal transportation funds and for planning and prioritizing metropolitan transportation investments. Follow-up questions were tailored to respondents, probing their particular expertise.

Respondents were identified using emergent sampling, or identifying interview respondents during the course of the research, and snowballing,³⁵ whereby interview respondents themselves were asked to suggest candidate participants in the study. When the data collected in these interviews reached the point of redundancy, suggesting I had sketched the universe of existing practice, I ceased interviewing people for Phase I.

Of 55 separate interview sessions, most interviews were of a single respondent. Two sessions included two respondents, typically when the primary respondent wished to

³⁵ Norman Y. Denzin and Yvonna Lincoln, *Handbook of Qualitative Research*, 2nd ed. (Thousand Oaks, CA: Sage, 2000).

include a staff member. In total, 44 individual respondents participated, and several were interviewed twice. The primary, current affiliations of respondents are summarized below. (See Table 1.1.) Because it was not uncommon to interview people with two or three decades of experience at their current or affiliated organizations, many respondents reflected on experiences with a secondary organizational affiliation in a different category. For example, a congressional staffer later became a lobbyist, and a DOT administrator later joined a national policy group. I conducted one third of the interviews in person and the remainder by telephone. Discussions typically lasted from 50 to 75 minutes, and in total 56 hours of interview material were collected in Phase I. Most respondents permitted me to audiotape the interview, and I completed all interview transcriptions and notes myself.

Table 1.1. Organizational Affiliations of Interview Respondents

<i>Organizational Affiliation</i>	Number of Respondents
Metropolitan Planning Organizations (MPOs)	9
U.S. Department of Transportation (FTA, FHWA, OIG) ³⁶	9
D.C. Based Policy Groups and Associations	9
State Departments of Transportation	6
Congressional Staff (Committees, Research Services)	6
Transportation Consultants & Lobbyists	5
Total	44³⁷

The value in these interviews is the rich picture they provide of earmarking practices employed by different organizations. The analysis of this material takes some inspiration from Schattschneider’s study of such institutions in lawmaking as rules,

³⁶ Federal Transit Administration (FTA), Federal Highway Administration (FHWA), and the Office of the Inspector General (OIG) are units within the U.S. DOT.

³⁷ Multiple interviews were conducted with several respondents, making for 55 interview sessions in total.

procedures, and conventions and of their influence on policy outcomes.³⁸ It uses the concept of “action channels,” developed by organizational theorist Allison, to focus attention on regularized means of taking action within the earmarking process, the major players in that process, and their points of entry into it.³⁹ It uses direct quotes from interview respondents to describe in their own words the practices used to influence earmarks, the action channels available to them, and the deliberations that underlie different levels of earmarking engagement. The interview data cannot be used to infer precisely how frequently or under what circumstances any one approach is used. Instead, they demarcate the universe of earmarking practices by its perimeters, giving shape to behavior heretofore unexplored.

Phase I also relies on primary data of earmarks, systematic study of transportation funding bills and legislative reports, academic and government reports on earmarking, and other secondary sources. This is particularly true of Chapters 3 and 4, the outlines of which were guided by interviews but which required extensive examination of funding bills and supporting documents.

Phase II of the dissertation research design included richly descriptive case studies highlighting specific MPOs’ experiences with earmarking. The case approach was used to illuminate in-depth how different MPOs and their members have experienced earmarking and why MPOs may develop different earmarking practices. Yin recommends use of the case study when a “how or why question is being asked about a

³⁸ Eric Elmer Schattschneider, *Politics, Pressures and the Tariff: A Study of Free Private Enterprise in Pressure Politics, as Shown in the 1929-1930 Revision of the Tariff* (New York: Prentice-Hall, 1935).

³⁹ Graham T. Allison, *Essence of Decision: Explaining the Cuban Missile Crisis* (Boston: Little, Brown, 1971).

contemporary set of events, over which the investigator has little or no control,⁴⁰ a set of conditions that describes this inquiry.

I picked two cases representing MPOs in large and complex metropolitan regions, that had roughly equivalent opportunities to secure earmarks through well positioned Congressional representatives, but that were known to behave differently with regard to earmarking. To do so, I consulted three categories of information: 1) reputational data from peer and expert organizations about MPOs' relative engagement in earmarking; 2) information about MPO size, and 3) data assessing representation on key Congressional committees by members of the region's delegation.

Phase I interview data from representatives of MPOs and related organizations were used to identify two types of candidate MPOs: those known actively to coordinate regional requests for earmarks, and those known to be uninvolved in earmarking. On one hand, the Dallas-Fort Worth MPO was recognized by peer organizations and experts in metropolitan transportation planning as an MPO that successfully coordinates a regional approach to federal transportation earmarks. Case study evidence presented in Chapter 7 expands this picture, showing that the MPO in fact plays a more consultative role in earmark seeking, encouraging MPO members and Congress members to seek earmarks favorable for the region. Interview respondents frequently cited New York, on the other hand, as a region where the MPO played no coordinative role, and where individual member agencies and governments acted more independently. The second case confirms this picture too, but it also shows how, in the first few years of the 21st century, MPO

⁴⁰ Robert K. Yin, *Case Study Research: Design and Methods*. Vol. 5, *Applied Social Science Research Series* (Thousand Oaks, CA: Sage, 2003), 9.

leadership has worked to reinvigorate the MPO broadly as a forum for regional planning and specifically for coordinating action with regard to earmarks.

Both MPOs serve regions of at least 1 million. The majority of the U.S. urbanized population lives in such metropolitan areas. Transportation earmarks directed toward these regions have potential to impact the mobility of significantly more people than in smaller regions. Additionally, MPOs in larger regions have had more opportunity than smaller region MPOs to develop their transportation decisionmaking capacity, potentially making interactions between earmarking and those decision-making practices more visible in larger regions than smaller ones. This is so because the 1991 federal transportation law, ISTEA, gave MPOs in urban areas of at least 200,000 more discretion over federal funds than MPOs in smaller regions. Finally, size is a good proxy for regional complexity where we can observe whether or how the MPO is able to aggregate interests via earmarking.

To ask what role a specific MPO plays in earmarking, one must consider what opportunities the MPO and its members have to do so. States and the Congressional districts within them have greater opportunities to seek earmarks when their Senators and House members sit on key committees. Both cases selected are metropolitan regions in *states* that over the last 10 years have had fairly good Congressional representation on the key House and Senate committees for transportation authorizations and appropriations. Drawing on the *Almanac of American Politics*,⁴¹ I applied a scoring system, described in detail in Appendix 7-A, to evaluate the strength of a *state's* Congressional delegation as represented on the committees of interest. The score is intended as a simple proxy for a

⁴¹ *Almanac of American Politics*, Washington, D. C.: National Journal Group, 2006, 2004, 2002, 2000, 1998, <http://nationaljournal.com/pubs/almanac/> (accessed October 1, 2007).

state's expected ability to receive earmarks, given the committee positions occupied by its delegation. The score treats a state's delegation – its house members and two senators – as a resource available to all regions in the state. While this approach admittedly oversimplifies how delegations work,⁴² the score suffices to distinguish states with lower delegation resource levels from those with more.

The cases consult primary and secondary sources, including such planning documents as Long Range Plans (LRPs), also called Regional Transportation Plans (RTPs), and Transportation Improvement Plans (TIPs); Federal certification reviews completed by the U.S. DOT; local news coverage; and region-specific earmark data, where available from the MPOs or other sources.

Interviews were conducted with members of the MPO staff and board; federal, state, and local transportation agency representatives; as well as members of Congress.⁴³ All respondents were asked a common set of key questions. Semi-structured interviews allowed respondents to speak most fully on their areas of expertise and on matters to which they were closest. Interviewees were identified through emergent sampling, as the field investigation was underway. Although respondents were asked to identify further participants, I also sought out participants who would identify themselves as outside the planning process, who had no formal connection to the MPO, or who had been critical of the MPO in the past.

⁴² House members are more likely to use political capital for benefits to their own district rather than elsewhere in the state. However, within a state's delegation, members may trade favors to get things each wants, treating as a statewide resource the political capital derived from individual members' committee assignments. Further, the scoring does not account for the fact that more populous states have larger delegations. Nor does it reflect other factors enhancing a delegation's strength for securing earmarks, such as members who chair other powerful committees, serve in party leadership, have seniority, or face tough re-election races.

⁴³ Interviews with members of Congress were the most difficult for me to secure. Several Congress members from each metropolitan area were invited to participate in the study, but only one member in each area agreed to be interviewed.

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Chapter 2: Metropolitan Planning in Institutional Perspective

[Like r]egional councils, [MPOs] resemble more the advisory and intergovernmental 'twilight-zone agencies' than they do governmental organizations, per se.⁴⁴

Metropolitan planning organizations (MPOs) and the transportation plans and decisions they craft are central to this study of Congressional transportation earmarking. Drawing on the metropolitan planning literature, this chapter explores the institutional environment in which MPOs and metropolitan transportation planning are embedded. In its first half, the chapter traces the ideological, epistemological, legislative, and political underpinnings of metropolitan planning from the early twentieth century to the present. In its second half, it introduces the organizations and institutions involved—the public agencies, administrative units, and political actors that are the agents of metropolitan transportation planning. The chapter discusses the values and world-views of MPOs and their member organizations, factors that, I later contend, influence their behavior vis-à-vis earmarking.

The chapter develops four key observations about MPOs and the institutional environment in which they operate. First, metropolitan planning and MPOs have historically faced inherent structural limits; the U.S.' three-tiered government vests authority at federal, state and local levels, but leaves regions in a twilight zone.⁴⁵ Planning practice is thus caught between regional visions and the limited institutional mechanisms available for their pursuit. Providing transportation in metropolitan areas

⁴⁴ Robert W. Gage, "Sector Alignments for Regional Councils: Implications for Intergovernmental Relations in the 1990s," *American Review of Public Administration* 22, no. 3 (1992): 207-25.

⁴⁵ Edward C. Banfield and Morton Grodzins, *Government and Housing in Metropolitan Areas* (New York: McGraw-Hill, 1958); Advisory Commission on Intergovernmental Relations, *Multistate Regionalism* (Washington, D.C., 1972).

has long been recognized as a regional-scale task, and regional theories recognize regions as the desired units for problem-solving. However, there has been little agreement regarding the *basis* by which to identify regions and the preferred *mechanism* for action in the regional interest.⁴⁶

Second, metropolitan planning's legislative history shows how MPOs have evolved in an interdependent and negotiated external environment, involving state DOTs, governors and legislatures; federal transportation and environmental agencies; metropolitan elected officials; local governments; and civic groups. Successive laws (Highway Acts of 1962 and 1973, and later surface transportation laws ISTEA in 1991, TEA-21 in 1998 and SAFETEA-LU 2005) have produced the MPO process in place today, allocating and reallocating authority among state and metropolitan interests, and increasingly specifying the structure and function of MPOs. Metropolitan interests have relied on legislation to formalize state-urban coordination in transportation planning, reflecting the failure of states and metropolitan regions to reach acceptable agreements on federal transportation expenditures in urban areas, and the ongoing challenge of building working partnerships in complex political arenas.

Third, recent studies emphasize measures in ISTEA and successor laws to enhance MPO decision authority, but scholars debate their impact. Some suggest MPOs are still troubled by ambiguous legal authority and by competition from states and

⁴⁶ Edward C. Banfield and Morton Grodzins, *Government and Housing in Metropolitan Areas* (New York: McGraw-Hill, 1958); Advisory Commission on Intergovernmental Relations, *Multistate Regionalism* (Washington, D.C., 1972); Robert Fishman, "The Death and Life of American Regional Planning," and Margaret Weir, "Coalition Building for Regionalism," *Coalition Building for Regionalism, Reflections on Regionalism*, ed. Bruce Katz (Washington, D.C.: The Brookings Institution, 2000).

counties over spending decisions,⁴⁷ and that MPOs directly program only a small proportion of transportation funds,⁴⁸ even though state programming decisions must, in theory, accommodate MPO plans.

Finally, conflicting views on appropriate decisionmaking modes also characterize the field. On the one hand, metropolitan transportation planning is strongly influenced by Enlightenment rationality.⁴⁹ Early efforts to manage traffic emphasized such empirical approaches as traffic counting; systems analysis; and inventorying highways and road conditions.⁵⁰ This paradigm suggests that, armed with adequate data and analyses, engineers and planners can formulate proper solutions. It retains traction today; metropolitan transportation plans typically identify goals and needs and evaluate alternatives' costs and benefits.⁵¹ On the other hand, critics counter that transportation investments are guided not by rational wisdom or by full public participation, but by raw political maneuvering.⁵² Others conclude that *a priori* rationality is a fiction and is

⁴⁷ Todd Goldman and Elizabeth Deakin, "Regionalism through Partnerships? Metropolitan Planning since ISTEA," *Berkeley Planning Journal* 14 (2000): 46-75; Paul G. Lewis and Mary Sprague, *Federal Transportation Policy and the Role of Metropolitan Planning Organizations in California* (San Francisco, CA: Public Policy Institute of California, 1997); Bruce McDowell, *Improving Regional Transportation Decisions: MPOs and Certification* (Washington, D.C.: The Brookings Institution, 1999); Bruce McDowell, *MPO Capacity: Improving the Capacity of Metropolitan Planning Organizations to Help Implement National Transportation Policies* (Washington, D.C.: U.S. Advisory Commission on Intergovernmental Relations, 1995).

⁴⁸ Robert Puentes and Linda Bailey, "Increasing Funding and Accountability for Metropolitan Transportation Decisions," *Taking the High Road: A Metropolitan Agenda for Transportation Reform*, ed. Bruce Katz and Robert Puentes (Washington, D.C.: The Brookings Institution Press, 2005), 139-68.

⁴⁹ Martin Wachs, "Planning, Organizations and Decision-Making: A Research Agenda," *Transportation Research A* 19A, no. 5/6 (1985): 521-31.

⁵⁰ Edward Weiner, *Urban Transportation Planning in the United States*, 5th ed. (Washington, D.C.: U.S. Department of Transportation, 1997).

⁵¹ Kristina E. Younger and David G. Murray, "Developing a Method of Multimodal Priority Setting for Transportation Projects in the San Francisco Bay Area in Response to Opportunities in ISTEA," *Transportation Research Record*, no. 1429 (1994): 1-6.

⁵² Edward C. Banfield, *Political Influence: A New Theory of Urban Politics* (New York: The Free Press, 1961); Robert Caro, *The Power Broker: Robert Moses and the Fall of New York* (New York: Knopf, 1974); David E. Luberoff, David E., "The Triumph of Pork over Purpose," *Blueprint: Ideas for a New Century*, (September/October 2001): 31-34.

instead defined by power;⁵³ that politically motivated promoters portray technical analyses of project costs and benefits more favorably than is realistic;⁵⁴ and that bad decisions result from cognitive limits, or how the mind “perceives, simplifies, and acts on complex phenomena.”⁵⁵ Further still, Innes and Gruber find different models of action (i.e. technical/bureaucratic, political influence, social movement, and collaborative) at work simultaneously in the MPO arena, producing distrust and conflict among MPO actors.⁵⁶

2.1. Metropolitan Transportation: The Institutional Environment

Taking cues from organization and institutional theory, this section describes key elements of the institutional environment in which metropolitan transportation planning is embedded. Organization theory enhances our understanding of organizational environments by naming and conceptualizing the elements of organizational worlds. As Scott notes, “it is not very helpful simply to regard the external environment of an organization simply as ‘everything else.’ We need ideas as to...how to identify and assess their relevant features.”⁵⁷ Here, I identify as the relevant features of metropolitan transportation planning its ideological, legal, political, and epistemological underpinnings.

⁵³ Bent Flyvbjerg, *Rationality and Power: Democracy in Practice* (Chicago: University of Chicago Press, 1998).

⁵⁴ Bent Flyvbjerg, Mette K. Skamris Holm, and Soren L. Buhl, "Underestimating Costs in Public Works Projects: Error or Lie?" *Journal of the American Planning Association* 68, no. 3 (2002): 279-95; Bent Flyvbjerg, Bent, Mette K. Skamris Holm, and Soren L. Buhl, "How (in)Accurate Are Demand Forecasts in Public Works Projects? The Case of Transportation," *Journal of the American Planning Association* 71, no. 2 (2005): 131-46.

⁵⁵ Jonathan Richmond, "The Mythical Conception of Rail Transit in Los Angeles," *Journal of Architectural and Planning Research* 15, no. 4 (1998): 294-320.

⁵⁶ Judith Innes and Judith Gruber, "Planning Styles in Conflict: The Metropolitan Transportation Commission," *Journal of the American Planning Association* 71, no. 2 (2005): 177-88.

⁵⁷ W. Richard Scott, *Organizations: Rational, Natural and Open Systems*. 5th ed. (Upper Saddle River, NJ: Prentice Hall, 2003), 125.

2.1.1. Regional Ideology and the Search for Vehicles to Realize It

The provision of transportation in metropolitan areas has long been recognized as an explicitly regional-scale task, distinguishing it from transportation activities in smaller urban and rural areas. Problems and solutions relevant to metropolitan-level planning are often too large to be addressed successfully by a single local government or agency, and they are too remote from the state-level to be addressed by state agencies.

Regionalism, defined here as any framework that explicitly identifies the region as an appropriate unit or scale for planning or organizational action, is implicit in the practice of metropolitan transportation planning. While regional theories commonly recognize the region as the desired unit for problem-solving, the *basis* upon which regions are identified and the *mechanism* preferred for action in the regional interest have been interpreted variously over time. Tables 2.1 and 2.2 summarize some of these distinctions.⁵⁸ This section discusses regionalism’s evolution during the twentieth century as a frame for problem definition and organizational action.

Table 2.1. Bases of Regionalism

	Basis for Distinguishing a Region	Example
Geographic Regionalism	Homogenous natural characteristics or shared resources make the region an appropriate planning unit.	River basin commissions (e.g. Colorado River Basin Compact, 1929); Air basin districts.
Economic Regionalism	Regions are either a specialized node in a larger economy or a functionally integrated economic unit.	Silicon Valley; Southeastern textile industry; Tennessee Valley Authority.
Social Regionalism	The region shares cultural identity, like mindedness, or political or social objectives.	Early-American sectionalism; Southern regionalism in early 20 th c.; Pacific Northwest political culture.

⁵⁸ Edward C. Banfield and Morton Grodzins, *Government and Housing in Metropolitan Areas* (New York: McGraw-Hill, 1958); Advisory Commission on Intergovernmental Relations, "Multistate Regionalism" (Washington, D.C., 1972); Robert Fishman, "The Death and Life of American Regional Planning" and Margaret Weir, "Coalition Building for Regionalism," *Reflections on Regionalism*, ed. Bruce Katz (Washington, D.C.: The Brookings Institution, 2000).

Table 2.2. Governance Mechanisms for Regionalism

	Approach	Application
Administrative Regionalism	Administrative regions are a tool of decentralization for federal administrations.	Federal agencies with multistate regional offices (e.g. FTA).
Procedural Regionalism	Federal requirements for intergovernmental cooperation.	The 3-C process in metropolitan transportation planning.
Functional / Sectoral Regionalism	An entity for formal government action is created and organized around a single purpose or service.	Special districts; special authorities; e.g. Delaware Basin (1960s); Appalachian Regional Development Commission (1965).
Political / Structural Regionalism (“Metropolitanism”)	Formal government consolidation to achieve metropolitan- / regional-scaled government jurisdiction with purview over multiple functions and services.	Territorial annexations by cities; City-county consolidations; Elected regional governments.
Informal/ Collaborative Regionalism; “New Regionalism”	Regional interests are pursued not through top-down, unitary or formal government but via informal, collaborative efforts of government agencies, the private sector, citizens groups and NGOs.	Water resources collaboratives; Collaborative regional initiatives.

As an ideological frame for planning and governance, regionalism has defined the field for organizational action in metropolitan transportation planning. Theorists Dutton and Dukerich argue that “organizational context affects patterns of change through its effect on how issues are interpreted” and that “inconsistency between various conditions in an organization and its context...precipitates action.”⁵⁹ This dynamic is visible in the history of metropolitan transportation planning and its agents, particularly in the persistent incongruence between regional visions and the institutional mechanisms available for their pursuit. Repeatedly, metropolitan transportation planning has encountered the structural limits of the U.S.’ three-tiered government, which vests authority at federal, state and local levels, but leaves regions in a twilight zone.⁶⁰

⁵⁹ Jane E. Dutton and Janet M. Dukerich, "Keeping an Eye on the Mirror: Image and Identity in Organizational Adaptation," *Academy of Management Journal* 34, no. 3 (1991): 517-54, 550.

⁶⁰ Edward C. Banfield and Morton Grodzins, *Government and Housing in Metropolitan Areas* (New York: McGraw-Hill, 1958); Advisory Commission on Intergovernmental Relations, *Multistate Regionalism* (Washington, D.C., 1972).

As cities expanded in population and in size in the late nineteenth and early twentieth centuries, urban planners asserted the need for a regional approach to such metropolitan-level problems as overcrowding, sanitation, traffic congestion, water management, and goods movement. Scotsman Patrick Geddes and his followers in the U.S. – Lewis Mumford, Clarence Stein, Benton MacKaye, Stuart Chase and others – articulated a new vision: the antidote to urban ills lay not in city-centered solutions but in deliberate planning for the wider region. Informed by a comprehensive regional survey, planning could achieve “ ‘the more panoramic view of a definite geographic region,...as lies beneath us upon a mountain holiday.’”⁶¹ Geddes’ disciples formed the Regional Planning Association of America (RPAA) in 1923. Through it, they advocated for regional surveys in key areas like the Tennessee Valley basin, for garden-city style regional plans to weave city and hinterland into one harmonious unit, and for economic and social interventions to remedy inefficiency, congestion and deterioration in industrial cities.

As regionalist visions emerged, professional planners and engineers infused with enthusiasm for “systems thinking” sought to develop the organizations that could support them.⁶² The search for metropolitan-scale institutions matched efforts by Progressive Era political reformers, or goo-goos, early in the century to break the influence of central city political machines and to limit harmful city-suburb economic competition. For goo-goos⁶³, formal city-suburb annexations and territorial mergers – in other words, the

⁶¹ Peter Geoffrey Hall, *Cities of Tomorrow: An Intellectual History of Urban Planning and Design in the Twentieth Century* (Oxford: Blackwell, 1996), 140.

⁶² Keith D. Revell, *Building Gotham: Civic Culture and Public Policy in New York City, 1898-1938* (Baltimore: Johns Hopkins University Press, 2003).

⁶³ From the term “good government.”

structural expansion of urban government jurisdictions – were the means to crack machine corruption. Boston, Baltimore, St. Louis and Denver all reflected such efforts.

Regionalist visions for transportation frequently anticipated a metropolitan environment knit together by ‘motor ways,’ a concept visible in early metropolitan freeway plans of 1920s and 1930s and in the platform of the RPAA. Regionalists also aspired to more seamless passenger and freight networks.⁶⁴ *Metropolitanism*, a sub-species of regionalism, emphasized downtown as the regional centerpiece; rail networks linking region to core; preservation of outer green belts and open space; and active metropolitan elites, vested in regional competitiveness. In the metropolitanist vision, exemplified by Daniel Burnham's *Plan for Chicago* (1909) and *The Regional Plan of New York and Its Environs* (1928)⁶⁵, city and suburb would be more complementary than integrated, and consolidated metropolitan government would play a strong, top down role.⁶⁶

Progressive Era regionalists did create institutions for more integrated planning and government, but the resulting organizations were less far reaching than they had envisioned. Revell documents progress in the development of a regional transportation system for New York; new institutions such as the Port Authority and the Board of Estimate lessened parochialism, centralized decisionmaking, and achieved modest improvements, respectively, in goods movement and in development of the subway

⁶⁴Peter Geoffrey Hall, *Cities of Tomorrow: An Intellectual History of Urban Planning and Design in the Twentieth Century* (Oxford: Blackwell, 1996); Keith D. Revell, *Building Gotham: Civic Culture and Public Policy in New York City, 1898-1938* (Baltimore: Johns Hopkins University Press, 2003).

⁶⁵ *The Regional Plan of New York and Its Environs* was produced by the Regional Plan Association, a business group, not Mumford's idealistic RPAA. Mumford criticized the plan as doing more to preserve the city-centered status quo than to create a socially and economically integrated region.

⁶⁶ Peter Geoffrey Hall, *Cities of Tomorrow: An Intellectual History of Urban Planning and Design in the Twentieth Century* (Oxford: Blackwell, 1996); Robert Fishman, "The Death and Life of American Regional Planning" and Margaret Weir, "Coalition Building for Regionalism," *Reflections on Regionalism*, ed. Bruce Katz (Washington, D.C.: The Brookings Institution, 2000).

system. Nonetheless, hindered by borough autonomy, competition, and fear of the power redistribution implied by centralized planning proposals, these institutions fell short of the mark planners intended for them.⁶⁷

During the Depression and World War II, *ad hoc* commissions and associations composed largely of downtown business and civic elites became the carriers of regional and metropolitan visions. Groups like the Regional Plan Association (RPA) in New York, and the Metropolitan Housing and Planning Council founded in 1934 in Chicago produced bold physical plans, but lacked financial means to implement them. Regionalist visions also found expression in New Deal proposals for regional economic development commissions and in institutions like the Tennessee Valley Authority and Works Progress Administration; these federal initiatives bolstered regional thinking and research, but many proposals went unrealized. Also, the New Deal era resulted in few metropolitan-level governments or institutions for urban transportation planning.

In the postwar period, rapid suburbanization, deindustrialization in the Rust Belt, and the growing chasm in economic and social profiles between central city and suburb provoked renewed regional visions in urban planning.⁶⁸ While planners reasserted the need for formal metropolitan reorganization, postwar government consolidations were few in number. Instead, postwar suburban communities deliberately resisted municipal annexation and sought to establish independent political control, assisted by new state laws that prohibited 1920s-style city-suburb annexations.

⁶⁷ Keith D. Revell, *Building Gotham: Civic Culture and Public Policy in New York City, 1898-1938* (Baltimore: Johns Hopkins University Press, 2003).

⁶⁸ Robert Fishman, "The Death and Life of American Regional Planning," *Reflections on Regionalism*, ed. Bruce Katz (Washington, D.C.: The Brookings Institution, 2000).

Then and now, the structural regionalism proposed in the 1950s and 1960s was considered naive by some. Banfield and Grodzins observed the discrepancy between prolific research and discussion of metropolitan reorganization at the time and the limited action to advance integration schemes. Calls for metropolitan integration, they argued, rested on the single dimension of economical and effective administration and ignored such metropolitan political realities as city-suburban cleavages around class and race.⁶⁹ These realities were concealed by what historian Kenneth Jackson calls the 'gentleman's agreement' of the United States: "the shared willingness to ignore or to attribute to natural causes the misdistribution of wealth among local governmental jurisdictions."⁷⁰

Transportation, however, was one sector where regionalism was encouraged with formal, albeit nascent, institutional capacity. Federal funds (from the Department of Housing and Urban Development and the Bureau of Public Roads) along with money from state and urban county and city governments supported the first transportation studies in the 1950s, such as the Chicago Area Transportation Study (CATS) launched in 1956, the Twin Cities Area Transportation Study in 1958, and the Penn Jersey Transportation Study in 1959.⁷¹ *Ad hoc* in arrangement and not directly connected to any unit of government, these regional transportation studies involved state and local governments and transportation and public works agencies. While several of the urban transportation studies of the late 1950s resulted in proposals for massive highway systems that were received negatively by local residents, transportation studies in the 1960s

⁶⁹ Edward C. Banfield and Morton Grodzins, *Government and Housing in Metropolitan Areas* (New York: McGraw-Hill, 1958), 49.

⁷⁰ Kenneth T. Jackson, "Gentleman's Agreement in Metropolitan America," *Reflections on Regionalism*, ed. Bruce Katz (Washington, D.C.: The Brookings Institution, 2000), 212.

⁷¹ David E. Boyce, Norman D. Day, and Chris McDonald, *Metropolitan Plan Making: An Analysis of Experience with the Preparation and Evaluation of Alternative Land Use and Transportation Plans, Monograph Series* (Philadelphia: Regional Science Research Institute, 1970).

adopted a more comprehensive approach that considered alternative scenarios of metropolitan land development and paid more attention to transit.⁷²

Motivations for a more comprehensive regional approach varied. For Wilfred Owen, regionalism was rational; a unified and effective transportation system required coordinated administrative machinery. “The continuing outward expansion of the city beyond its original municipal limits and the consequent growth of the area to be supplied with transportation services have made a regional approach increasingly necessary,” Owen observed.⁷³ For others, regionalism was a politically expedient way to increase access to federal urban transportation dollars. In any case, transportation studies represented one of the first formal commitments to regional institutions in transportation planning, and they offered a template for metropolitan planning organizations which would develop later.

In contrast to the 1960s and 1970s, the 1980s were a time when the federal government withdrew support for metropolitan planning in general.⁷⁴ Yet, regionalism in transportation was nurtured by specific pieces of federal legislation, discussed later, and since then it has continued to fare better than attempts to achieve metropolitan-level general purpose government.⁷⁵ On the whole, however, the ideology of regionalism assumed a new cast in the late twentieth century, emphasizing informal, cooperative and

⁷² David E. Boyce, Norman D. Day, and Chris McDonald, *Metropolitan Plan Making: An Analysis of Experience with the Preparation and Evaluation of Alternative Land Use and Transportation Plans, Monograph Series* (Philadelphia: Regional Science Research Institute, 1970), 20; Edward Weiner, *Urban Transportation Planning in the United States*, 5th ed. (Washington, D.C.: U.S. Department of Transportation, 1997), 30.

⁷³ Wilfred Owen, *The Metropolitan Transportation Problem*, rev. ed. (Washington, D.C.: The Brookings Institution, 1966), 170.

⁷⁴ Bruce McDowell, "The Metropolitan Planning Organization Role in the 1980s," *Journal of Advanced Transportation* 18, no. 2 (1984): 125-33.

⁷⁵ Margaret Weir, "Coalition Building for Regionalism," *Reflections on Regionalism*, ed. Bruce Katz (Washington, D.C.: The Brookings Institution, 2000).

incremental *governance* approaches to metropolitan scale problems rather than formal or hierarchical metropolitan-scale *government* structures.⁷⁶ This approach, dubbed the “new regionalism,” reflects a more cautious, conservative view of government’s role in and capacity for solving urban problems.

Urban and regional planners who espouse new regionalist solutions seldom frame it this way, but new regionalism resembles the new public management (NPM) perspective that has gained prominence in political science since in the 1980s. Advocates of the NPM emphasize diminishing faith in the performance and effectiveness of formal government and support the injection of market principles into public management, including decentralized decisionmaking and flexible government.⁷⁷ New regionalism in metropolitan transportation planning is evident in the increasing popularity of local option sales taxes and in the birth of regional mobility authorities as *ad hoc*, often *sub-regional* mechanisms for financing transportation projects outside the framework of established regional planning bodies. As one researcher has observed, the focus on collaborative, incremental and *ad hoc* “intergovernmental relationships marks a shift away from using regional agencies to address interjurisdictional challenges.”⁷⁸ In some respects, the pursuit of earmarks by a region’s transportation players could be of a piece with this approach.

⁷⁶ Donald Phares, *Metropolitan Governance without Metropolitan Government?* (Hants, UK: Ashgate, 2004).

⁷⁷ Robert Behn, *Rethinking Democratic Accountability* (Washington, D.C.: Brookings Institution Press, 2001).

⁷⁸ Bruce Schaller, "The Changing Face of Intergovernmental Relations," *Building Effective Relationships between Central Cities and Regional, State and Federal Agencies* (Washington, D.C.: National Cooperative Highway Research Program, 2001), 7.

2.1.2. Legal Roots of Metropolitan Transportation Planning

The law and legal processes are recognized across organization theory as an important component of the organizational environment.⁷⁹ To rationalists organizations' rule-bound internal structures follow Weberian notions of modernity. Organizations reflect the progression of rationality in society, and their internal rules and procedures, particularly in large and long-standing bureaucracies, reflect the broad, historic transformation of authority from personalistic or charismatic grounds to impersonal rational-legal ones. To open systems or behaviorist theorists, law is an external constraint in the organizational environment; they study how organizations respond to legal requirements and how organizations use the law in authority struggles. New institutional theories consider how law constitutes organizational identities and, in turn, how organizations shape the law through the procedures they adopt to satisfy its requirements.⁸⁰

The legislative history of metropolitan transportation planning shows how laws yielded the process which metropolitan planning organizations, or MPOs, are now expected to deliver. Today, federal transportation law requires that urban areas with populations over 50,000 have state-designated metropolitan planning organizations (MPOs) to coordinate transportation planning and spending for the regions. The MPO is usually governed by an appointed board, many members of which hold elected office in counties or cities in the metropolitan region. To receive federal transportation dollars, the MPO must submit a fiscally constrained short-range Transportation Improvement Plan, or TIP, that identifies all regional projects to be supported by federal money. It indicates

⁷⁹ Jane E. Dutton and Janet M. Dukerich, "Keeping an Eye on the Mirror: Image and Identity in Organizational Adaptation," *Academy of Management Journal* 34, no. 3 (1991): 517-54.

⁸⁰ L.B. Edelman, C. Uggen, and H.S. Erlanger, "The Endogeneity of Legal Regulation: Grievance Procedures as Rational Myth," *American Journal of Sociology* 105, no. 2 (1999): 406-54.

which agency (e.g. state or city transportation department, or transit operator) will sponsor the project and which moneys will pay for it. Federal law requires that the TIP, as well as the long-range plan (LRP) that is its inspiration, be developed cooperatively by state DOTs, local agencies and governments, and public stakeholders, and the MPO is expected to be the seat of coordination. Yet historically metropolitan transportation planning has not been a cooperative processes with the MPO at its center of gravity, and in practice today it seldom bears strong resemblance to this ideal.

Federal laws have established this process over time and in doing so have shaped not only the formal practice of metropolitan transportation planning but also the claims to legitimacy available to participating organizations and their inter-organizational dynamics. Specifically, federal law has allocated and reallocated authority among state and metropolitan interests over time. Two prominent institutional dynamics in metropolitan transportation planning originate in federal legislation. First, the relationship between the state DOT and MPOs can be fraught with tension, as these organizations compete for the power to allocate transportation dollars. This tension is visible in the legal history. Second, federal legislation has established a tradition of robust state-level transportation organizations. State DOTs are typically stronger institutions than MPOs; they possess more staff, larger budgets, and greater technical capacities than their metropolitan planning counterparts. Federal transportation legislation is one source of this imbalance; it began supporting state DOTs earlier on and, over time, has directed more resources to state DOTs than to metropolitan planning organizations. Created later than state DOTs, MPOs have had to play catch-up with the

states. The following paragraphs trace how the practice and dynamics of metropolitan transportation planning have evolved in the law.

2.1.2.1. Early 20th Century: State Organizations Construct and Plan

The earliest laws defining federal involvement in improving U.S. roads established the federalist tradition in U.S. highway transportation. Following this tradition, states own the roads and decide where to place them, but construct them to federal standards and, in part, using federal funds.⁸¹ Additionally, state-level highway departments⁸² have the foremost role in planning, design, funding, and execution of road projects. With the Federal Aid Road Act signed by Woodrow Wilson in 1916, the U.S. government began actively to encourage and finance state-initiated road improvements. In 1925, federal law designated a nationwide system of ‘primary roads’ intended to end the isolation of rural areas, and committed the federal government to matching half the cost of state investments in this system.⁸³ These early laws required each state to have a highway department in order to be eligible for federal funds, a condition that has remained in place.

In need of organizations eligible to receive federal dollars and equipped to construct and improve roads, states established highway departments or commissions. The 1934 Federal Aid Highway Act allowed federal money to be used not simply for road construction but also for state-level transportation *planning*.

Congress authorized that 1.5 percent of the amount apportioned to the any state annually for construction could be used for surveys, plans engineering and

⁸¹Paul G. Lewis, *Shaping Suburbia: How Political Institutions Organize Urban Development* (Pittsburgh, PA: University of Pittsburgh Press, 1996); Madeleine S. Bloom and Nancy Bennett, "U.S. Highway Financing: Historical Perspective and National Priorities," *TR News* (1998).

⁸² Now called Transportation Departments.

⁸³ This pertains to major facilities. Local governments own, operate, and maintain urban streets and county rural roads.

economic analyses for future highway construction projects. The act created the cooperative arrangement between the U.S. Bureau of Public Roads (now the U.S. Federal Highway Administration) and the state highway departments, known as the statewide highway planning surveys. By 1940, all states were participating in this program.⁸⁴

Federal funds for metropolitan-level transportation planning or for mass transit, however, would not materialize for another thirty years.

Urban interests saw a pattern of inequity in the federal transportation finance system and in states' highway spending practices. The federal government sent the bulk of federal transportation dollars to state highway departments, and the states spent those dollars mostly in rural areas. Yet, urban areas – not rural ones – faced severe congestion problems due to the automobile's rapid adoption in the 1920s. Still, it was not until the 1944 Federal-Aid Highway Act that federal dollars could be used on urban extensions to the largely rural Federal-Aid primary system and to state-designated secondary-highway systems. This law was a first step in redressing the imbalance in expenditure between rural and urban areas. However, it left control over federal dollars in the hands of state highway departments and did nothing to enhance metropolitan-level transportation planning capacity.

2.1.2.2. *Mid-Century: Transportation Studies Precede MPOs*

After hefty lobbying by urban interests,⁸⁵ the early 1960s marked a turning point: federal law began to institutionalize metropolitan transportation planning. The 1961 Housing Act was the first legislation to make federal money available explicitly for *urban* transportation surveys; these urban surveys were meant to resemble state-level

⁸⁴ Edward Weiner, *Urban Transportation Planning in the United States*, 5th ed. (Washington, D.C.: U.S. Department of Transportation, 1997), 8.

⁸⁵ Ibid.; National Committee on Urban Transportation, *Better Transportation for Your City* (Chicago: Public Administration Service, 1958).

ones supported by federal dollars since the early 1930s. Second, the Federal Aid Highway Act of 1962 conditioned the expenditure of transportation funds in urban areas on a continuing, cooperative and comprehensive planning process that involved state *and* local communities. Section 134 of the Act defined the “3-C process” for “Transportation Planning in Certain Urban Areas”; this process is still required today.

It is declared to be in the national interest to encourage and promote the development of transportation systems, embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States...in the development of long-range highway plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. After July 1, 1965, the Secretary shall not approve...any program for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing comprehensive transportation planning process carried on cooperatively by States and local communities in conformance with the objectives stated in this section.

The two laws changed the institutional context for transportation planning in urban areas. Whereas earlier housing legislation had established regional planning bodies and councils of government to encourage area-wide approaches to urban growth, resources explicitly for *metropolitan-level transportation* planning had heretofore been absent. Thus, these laws transferred some power from state highway departments to urban communities. Most significantly, the 1962 law noted the absence of formal entities for metropolitan transportation planning and required their creation:

Because qualified planning agencies to mount such a [cooperative, continuing, and comprehensive] transportation planning effort were lacking in many urban areas, the BPR [Bureau of Public Roads] required the creation of planning agencies or organizational arrangements that would be capable of carrying out the required planning process.⁸⁶

⁸⁶ Edward Weiner, *Urban Transportation Planning in the United States*, 5th ed. (Washington, D.C.: U.S. Department of Transportation, 1997), 38.

Motivated by the dollars at stake, substantially increased by the 1956 Interstate Program, and by mounting strains surrounding urban revolts against state-sponsored freeways,⁸⁷ states and urban interests quickly established planning organizations to meet the 3-C requirements. According to Weiner, 224 existing urban areas fell under this 1962 Act, and by the July 1965 deadline all had established an urban transportation planning process.⁸⁸ Tapping funds from the Housing and Home Finance Agency (HHFA) and the BPR, metropolitan areas tasked *ad hoc* Transportation Studies, existing Councils of Government or Regional Planning Commissions, or other quasi-official regional bodies with executing the new 3-C process.⁸⁹

Additionally, the National Committee on Urban Transportation (NCUT), via their seminal guidebook *Better Transportation for Your City* (1958), diffused a specific, highly rational model for metropolitan transportation planning. The committee comprised leading urban officials who recognized that without *urban* transportation surveys, metro areas were handicapped in state and federal funding allocations. They promoted “a practical system of fact collection and transportation planning adaptable to communities of all sizes.”⁹⁰ Their guidebook disseminated to elected officials and agency leaders the urban “Transportation Study” as pioneered in places like San Diego, Detroit and Chicago in the 1950s.

⁸⁷ Alan Lupo, Frank Colcord, and Edmund P. Fowler, *Rites of Way: The Politics of Transportation in Boston and the U.S. City* (Boston: Little, Brown, 1971).

⁸⁸ Edward Weiner, *Urban Transportation Planning in the United States*, 5th ed. (Washington, D.C.: U.S. Department of Transportation, 1997), 42; E. H. Holmes, “The State-of-the-Art in Urban Transportation Planning, or How We Got Here,” *Transportation* I, no. 4 (1973): 379-401.

⁸⁹ Mark Solof, “The History of MPOs,” *NJTPA Quarterly*, (Newark, NJ: North Jersey Transportation Planning Authority, 1996-1997).

⁹⁰ National Committee on Urban Transportation, *Better Transportation for Your City* (Chicago, IL: Public Administration Service, 1958), 2.

Although the 1962 Act was a turning point in the evolution of regional transportation planning, its effect was not as far reaching as urban interests had hoped. First, only very limited Federal highway planning funds could be used to support transit study. When federal assistance for transit did materialize with the 1964 Urban Mass Transportation Act, it was far less generous than Federal aid to highways. Thus, so-called “comprehensive” planning by default meant “full coverage of the familiar technical elements of urban traffic analysis and forecasting needed for highway network development.”⁹¹ Further, enforcement of the 3-C provisions fell to the federal Bureau of Public Roads, which traditionally enjoyed a close relationship with state highway departments.⁹² Also, federal project funds flowed to the states. Thus, state DOTs continued to dominate urban highway decision-making, particularly in smaller urban areas where regional transportation planning bodies typically were weak.⁹³ To the chagrin of anti-highway urban interests, metropolitan planning agencies played a minor advisory role through the 1960s and early 1970s.

2.1.2.3. Late 20th Century: MPOs Are Formalized and Slowly Bolstered

The 1973 Highway Act changed this somewhat. It provided funds for and required states officially to designate “Metropolitan Planning Organizations” (MPOs) for urban areas exceeding 50,000 residents. Pressured by urban and environmental coalitions dissatisfied with state-directed urban freeway building, federal officials passed the 1973 law to create the “legal mandate and financing...to transform the hodgepodge of regional

⁹¹ Thomas A. Morehouse, “The 1962 Highway Act: A Study in Artful Interpretation,” *Journal of the American Institute of Planners* 35, no. 3 (1969): 164.

⁹² *Ibid.*, 161.

⁹³ Mark Solof, “The History of MPOs,” (Newark, NJ: North Jersey Transportation Planning Authority, 1996-1997).

bodies across the country into effective, multimodal planning agencies.”⁹⁴ Previously, the state was required only to consult and cooperate with metropolitan area governments when considering state-directed projects in urban areas. But the 1973 law and the 1975 regulations operationalizing it specified that MPOs must include “principal elected officials” in the region and that MPOs themselves compile and approve a transportation funding plan, known as the TIP.

At least in theory, the U.S. government had shifted some transportation power from state to metropolitan players and from the technical experts directing urban transportation studies to local elected officials. The move reflected competing views of transportation planning: Was it an enterprise for expert technical staff or for politicians? And, should it be oriented toward transit planning, favored by urban interests, or highway planning, traditionally performed by the state? It also exposed the state–metropolitan power struggle. Many state and county officials complained bitterly of MPOs’ new status, calling them “a federally-imposed level of regional government that impinges on the lawful authority of local and state governments.”⁹⁵ As anticipated by Christensen’s work on intergovernmental systems, moves to bolster metropolitan institutions were viewed as a strain on the federal system.⁹⁶ Today, MPOs continue to be characterized by ambiguous legal authority and competition from state and county governments over spending decisions.⁹⁷

⁹⁴ *Ibid.*, 21.

⁹⁵ *Ibid.*, 24.

⁹⁶ Karen Stromme Christensen, *Cities and Complexity: Making Intergovernmental Decisions* (Thousand Oaks, CA: Sage, 1999).

⁹⁷ Todd Goldman and Elizabeth Deakin, "Regionalism through Partnerships? Metropolitan Planning since ISTEA," *Berkeley Planning Journal* 14 (2000): 46-75; Bruce McDowell, "Improving Regional Transportation Decisions: MPOs and Certification" (Washington, D.C.: The Brookings Institution, 1999).

During the 1980s, many MPOs assumed entrepreneurial roles to support their operations in the face of federal funding cuts. As new public management theory gained traction in the 1980s and challenged government's role,⁹⁸ federal funds and requirements that had strengthened metropolitan planning were scaled back. The federal Housing and Urban Development planning program, Section 701, which had since 1954 supported the work of regional-councils, and thus regional council-style MPOs, was terminated. Additionally, MPO planning funds were diluted when the 1980 census brought 70 new MPO designations, but when no equivalent increase in federal support materialized. Bill-paying strategies adopted by MPOs during this era include fee-for-service work (e.g., data services or plan preparation) undertaken for local governments, membership fees, staff sharing, and joint purchasing with other government units.⁹⁹ Some MPO practices from this period continue today, and MPO dependence on external support remains a salient theme.

Additionally, federal funding and requirements that had formerly strengthened regional planning were scaled back during the 1980s. For example, federal transit planning Section 9 funds that had been directed through the MPO process now went straight to transit operators, bypassing MPOs. Also, MPOs were no longer required to be areawide or to have formalized agreements defining participants' roles in the metropolitan planning process; these changes contributed to pressures for MPOs to decentralize or subregionalize, a force that remains potent today and could affect how MPO-directed transportation revenue sources are crafted.

⁹⁸ Robert Behn, *Rethinking Democratic Accountability* (Washington, D.C.: Brookings Institution Press, 2001).

⁹⁹ Bruce McDowell, "The Metropolitan Planning Organization Role in the 1980s," *Journal of Advanced Transportation* 18, no. 2 (1984): 125-33.

Federal legislation in the 1990s visibly increased MPOs' authority. The 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) required that MPOs' spending plans be *fiscally constrained*. This transformed MPO-produced plans and TIPS from wish-lists to more firm commitments to specific projects and also limited the ability of any MPO member, such as powerful state DOTs – and in theory, members of Congress -- to override regional priorities by advancing projects not in the plan – via earmarks, for example. Thus, MPO plans carried more weight. Additionally, in large urban areas with populations above 200,000, ISTEA gave MPOs direct programming authority over metropolitan Surface Transportation Program (STP) funds. Previously, spending decisions regarding the STP were to be reached *by the state in cooperation with the MPO*, meaning the MPO had to approve them. However, ISTEA put MPOs in the driver's seat by requiring state DOTs to suballocate the metropolitan portion of STP directly to MPOs. (As we will see later, this makes earmarking of STP dollars a delicate subject for MPOs.) ISTEA also created a new category of federal funding, the Congestion Mitigation and Air Quality (CMAQ) program, explicitly for use in metropolitan areas with current or recent problems meeting national air quality standards. Still, relative to highway apportionments as a whole, the proportion of transportation funds controlled by MPOs is quite small. For example, of all highway apportionments from 1998 to 2002, MPO controlled funds stood at just under 6 percent.¹⁰⁰

Legislation following ISTEA has further enhanced MPOs' position. Enacted in 1998, TEA-21 (Transportation Equity and Efficiency Act for the 21st Century), prohibited state DOTs, as the designated accounting recipient of federal transportation

¹⁰⁰ Robert Puentes and Linda Bailey, "Improving Metropolitan Decision Making in Transportation: Greater Funding and Devolution for Greater Accountability," *Transportation Reform Series* (Washington, D.C.: The Brookings Institution, 2003).

funds, from withholding from MPOs the portions of STP that MPOs are eligible to spend. This provision challenged the practice of some DOTs' which hoarded in state accounts moneys to which MPOs were entitled, and thereby disrupted MPOs' cash flow and ability to finance projects. Additionally, by maintaining these ISTEA and TEA-21 provisions, 2005 transportation legislation SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users) reinforced MPOs' standing.

Substantively, the practice of regional transportation planning has been shaped by the planning factors required by ISTEA and subsequent laws for consideration in the metropolitan planning process. Subsequent authorization law—TEA-21 (1998)—simplified ISTEA's 15 factors, and SAFTEA-LU (2005) maintained that approach, with new emphasis on transportation security and consistency of transportation investments with local and state growth plans (See Tables 2.3 and 2.4.)

Table 2.3. ISTEA's 15 Metropolitan Transportation Planning Factors (1991-1998)		
<u>Mobility & Access</u>	<u>System Performance & Preservation</u>	<u>Environment & Quality of Life</u>
▪ relationships between federal- and non-federal aid projects	▪ transportation management needs	▪ social, economic, environmental effects
▪ international border crossings	▪ preservation of rights-of way	▪ energy conservation
▪ urban-rural road connectivity	▪ preservation of facilities	▪ land-use planning
▪ enhanced freight movement	▪ congestion	▪ transportation enhancement
▪ enhanced transit service	▪ life-cycle costs	▪ transit security

Table 2.4.
TEA-21 (1998-2003) and SAFTEA-LU Planning Factors (2005-2009)
<ul style="list-style-type: none"> ▪ economic vitality ▪ safety ▪ security* ▪ accessibility and mobility ▪ quality of life and environment, consistency with plans for growth* ▪ system integration and connectivity ▪ system management and operation ▪ system preservation

*All factors except those noted with an asterisk were included in TEA-21.

2.1.3. Power Struggles: State-Metro and Technical-Political Tensions

The 1960s were a turning point for metropolitan transportation planning; for the first time, federal legislation articulated the need for metropolitan-level transportation planning. Yet, the laws stipulating the 3-C process in metropolitan areas did not arise from a legislative black box. Instead, they emerged in the specific political context of the late-1950s and 1960s, described by the power struggle between urban and state interests, between transit and highway oriented planning, and by conflicting views of transportation decisionmaking. This section discusses the politics of metropolitan transportation in this period as an important environmental element in the formation of metropolitan-level transportation planning capacity.

Theorist Arthur Stinchcombe argues that the historical moment at which organizations of a new class are founded has lasting effects on those organizations, and that the birth of organizations of a new type or structure is best understood in the broader context of existing social structures. The material resources and social opportunities available at a given moment influence what kinds of organizations are formed and how

those organizations will function. Yet his theory of organizational imprinting suggests more than bland historical determinism. Stinchcombe also recognizes that all new organizations represent an attempt to gain power. “[M]ost people,” he observes, “are little motivated to start organizations if they anticipate the benefits will be appropriated by others whom they do not love.” Further, “...organizations...are social units which can be ranked relative to one another by wealth, power and prestige, and...they control substantial resources with which they engage in political competition.”¹⁰¹

Stinchcombe’s insight applies to the development of metropolitan-level planning capacity and its institutions; enmeshed in their development is a story of political struggle, revealed most vividly in the freeway revolts of the late 1950s and early 1960s. As cities witnessed devastating impacts of state-directed urban freeway projects financed by the Interstate Program, metropolitan residents, community groups, academics, and elected officials challenged the power imbalance and the technical assumptions that had enabled state highway agencies to command projects sharply at odds with urban interests.

Boston’s opposition to state plans for a Southwest Expressway illustrates the political context in which demands for legal change arose. As Lupo, Colcord and Fowler told the story,

During the last decade, the rapid encroachment of highways on valued urban land and through many proud and old communities has brought into focus the inadequacies of early assumptions about the character, politics, and processes of urban America. Most emphatic, however, has been the demonstration by highway planners that their definition of the public interest was often arbitrary and in some cases irresponsible.¹⁰²

¹⁰¹ Arthur L. Stinchcombe, "Social Structure and Organizations," *Handbook of Organizations*, ed. James W. March (Chicago: Rand McNally, 1965), 147, 144.

¹⁰² Alan Lupo, Frank Colcord, and Edmund P. Fowler, *Rites of Way: The Politics of Transportation in Boston and the U.S. City* (Boston: Little, Brown, 1971) 3.

Freeway revolts in other U.S. cities¹⁰³ and state-urban battles over transit funding¹⁰⁴ highlighted similar conflicts. Thus, this era brought into high relief the disconnect between state directed highway planning and city and metropolitan interests more affiliated with transit, creating momentum for federal requirements that would go beyond the state-dominated “3-C process” to amplify metropolitan power in decisionmaking.

This period also illuminated the conflict between traditional perceptions of transportation decisionmaking as a technical and administrative enterprise and demands that decisionmaking be brought into the political sphere. A major theme in the Boston story was that decisionmaking on transportation issues was pushed from the isolated realm of such single-purpose, turf-guarding bureaucratic agencies as the state Department of Public Works and the Massachusetts Bay Transportation Authority, run by political appointees, professional administrators and technicians, to a more comprehensive model that would include elected officials, multiple agencies and citizens’ groups.¹⁰⁵ Reflecting this shift, the 1972 Highway Act that required that MPOs to include elected officials. Conflicts surrounding rational-technical versus political modes of decisionmaking¹⁰⁶ and regarding state dominance in the metropolitan arena¹⁰⁷ remain salient themes in metropolitan transportation today, confirming Stinchcombe’s hunch about organizational imprinting.

¹⁰³ Tom Lewis, *Divided Highways: Building the Interstate Highways, Transforming American Life* (Harmondsworth, Middlesex, UK: Penguin, 1999); Alan A. Altshuler and David E. Luberoff, *Mega-Projects: The Changing Politics of Urban Public Investment* (Washington, D.C.: The Brookings Institution, 2003); Helen Leavitt, *Superhighway - Super Hoax* (Garden City, NY: Doubleday, 1970).

¹⁰⁴ Edward C. Banfield, *Political Influence: A New Theory of Urban Politics* (New York: The Free Press, 1961).

¹⁰⁵ Alan Lupo, Frank Colcord, and Edmund P. Fowler, *Rites of Way: The Politics of Transportation in Boston and the U.S. City* (Boston: Little, Brown, 1971), 159.

¹⁰⁶ Judith Innes and Judith Gruber, "Planning Styles in Conflict: The Metropolitan Transportation Commission," *Journal of the American Planning Association* 71, no. 2 (2005): 177-88.

¹⁰⁷ Bruce McDowell, "Improving Regional Transportation Decisions: MPOs and Certification" (Washington, D.C.: The Brookings Institution, 1999).

2.1.4. Epistemology: Empiricism and Political Pragmatism

In addition regionalist ideologies, state-metro political struggles, and a legal trajectory gradually enhancement the metropolitan position, the institutional environment of metropolitan transportation planning has also been strongly influenced by both the epistemological tradition of Enlightenment rationality, and recognized limitations of rational-technical problem solving.¹⁰⁸

The earliest municipal-level efforts to manage traffic emphasized such rational, empirical approaches as traffic counting, classifying and inventorying highways, studying highway capacity and pavement conditions, estimating costs, and systems planning. These same approaches were adopted when transportation challenges were tackled at the regional scale, and they retain traction today. According to this paradigm, armed with adequate data and analyses, engineers and planners can formulate proper solutions.

As transportation planning practice matured in the 1950s, supported by new mathematical models of traffic flow and travel behavior and by mainframe computers, the highly rational four-step transportation model assumed its dominant position among the country's first deliberately metropolitan-scale transportation studies. These regional transportation studies of the 1950s – especially the Detroit Metropolitan Area Traffic Study, begun in 1953; the Chicago Area Transportation Study (CATS), begun in 1956; and the Pittsburgh Area Transportation Study, begun in 1958 – all helped to make the four-step model standard in transportation planning. With institutional and financial support from the federal Bureau of Public Roads, the model quickly diffused to and was

¹⁰⁸ Martin Wachs, "Planning, Organizations and Decision-Making: A Research Agenda," *Transportation Research A* 19A, no. 5/6 (1985): 521-31.

employed by other regional transportation studies. One of the earliest newsletters of the Los Angeles Regional Transportation Study (LARTS) describes the method:

Four basic steps are followed in preparing the...travel studies: (1) Predicting the data inputs to be used. (2) Defining the future street and highway network. (3) Defining the zones to be used for trip origins and destinations. (4) Arriving at an estimate through utilization of the zones, and data in the LARTS traffic model.¹⁰⁹

In addition to a professional allegiance to empirical methods of problem solving, the regional transportation studies of the 1950s and 1960s – after which some but not all metropolitan planning organizations (MPOs) were modeled – also maintained a deep concern for the legitimacy of public decisions resulting from their efforts. Broad participation in the study and competent rigorous analysis were the two necessary ingredients, as indicated in a report from the Puget Sound Regional Transportation Study.

Full and complete participation in the Study planning process is desired, not only by local technical staff members, but also by the public and elected officials. Only this way can we be assured that the Study's work properly reflects accepted and desirable goals, and has an understanding and assurance of acceptance and implementation. Moreover, such acceptance and full implementation obviously require that all work of the Study have the full confidence of all concerned. This can only be assured if the Study is factually based, comprehensive in scope, and includes study of all possible alternative possibilities so that a proper choice can be made for all governmental agencies having responsibilities in the region.¹¹⁰

This represents an idealized version of the metropolitan transportation planning process. Critics of transportation planning and its agents in metropolitan areas have long challenged the view that metropolitan transportation investments are guided by empirical, rational wisdom alone or at all, or that decisions are made with full public participation, acceptance and confidence. Some have spotlighted raw political maneuvering in

¹⁰⁹ "The Los Angeles Regional Transportation Study (LARTS) Letter." vol. I (Los Angeles. CA: Transportation Association of Southern California, 1966).

¹¹⁰ Puget Sound Regional Transportation Study, *Progress Report and Newsletter* (1963-1967).

transportation decision-making.¹¹¹ Others suggest that *a priori* rationality in transportation decisionmaking is a fiction and is instead defined by power,¹¹² and that technical calculations of project costs and benefits are often severely, and perhaps intentionally, flawed.¹¹³

Richmond discredits rationality even further; he theorizes that bad decisionmaking results not always simply from bad analysis or the “pushing and showing of ‘politics’”, but rather is due to the way the analytical mind “perceives, simplifies, and acts on complex phenomena.”¹¹⁴ Decisionmakers overlook complex ‘rational’ analyses and rely instead on favored symbolic and metaphorical logics with stronger, simpler, more emotional appeal. Despite these shortcomings, the rational-technical framework retains epistemological prominence in metropolitan transportation planning today; plans typically identify transportation goals and needs and evaluate alternatives according to their costs and benefits.¹¹⁵

2.2. *Organizational Actors*

Metropolitan transportation planning is an intergovernmental enterprise requiring interaction among a host of organizational actors. These include metropolitan planning organizations; federal, state, and local transportation departments; transit providers; state

¹¹¹ Edward C. Banfield, *Political Influence: A New Theory of Urban Politics* (New York: The Free Press, 1961); Robert Caro, *The Power Broker: Robert Moses and the Fall of New York* (New York: Knopf, 1974); David E. Luberoff, "The Triumph of Pork over Purpose," *Blueprint: Ideas for a New Century* (September/October 2001): 31-34.

¹¹² Bent Flyvbjerg, *Rationality and Power: Democracy in Practice* (Chicago: University of Chicago Press, 1998).

¹¹³ Ibid.; Bent Flyvbjerg, Mette K. Skamris Holm, and Soren L. Buhl, "How (in)Accurate Are Demand Forecasts in Public Works Projects? The Case of Transportation," *Journal of the American Planning Association* 71, no. 2 (2005): 131-46.

¹¹⁴ Jonathan Richmond, *Transport of Delight: The Mythical Conception of Rail Transit in Los Angeles* (Akron, OH: University of Akron Press, 2005), 1.

¹¹⁵ Kristina E. Younger and David G. Murray, "Developing a Method of Multimodal Priority Setting for Transportation Projects in the San Francisco Bay Area in Response to Opportunities in ISTEA," *Transportation Research Record*, no. 1429 (1994): 1-6.

and local governments and executives; interest groups; and civic and community organizations. The institutional environment of metropolitan transportation planning is shaped by these actors and the relationships among them. Christensen's research on complicated intergovernmental systems suggests that intergovernmental systems in such urban policy arenas as transportation are not only the context of planning, but also the *medium* for planning:

The intergovernmental system shapes the content and direction of planning by framing how goals are formulated, what gets paid attention to and what does not get paid attention to, how technologies are developed, which technologies are developed or not, what gets acted on and not acted on, what falls through the cracks, and how policies, plans, and programs change.¹¹⁶

The following section introduces the discrete organizational actors in metropolitan transportation, including state DOTs, MPOs, and federal agencies. It surveys their different histories, goals, and operating environments, variables that organization theory suggests can explain organizational behavior in general and, as Christensen suggests, whether and how earmarking is acted upon.

2.2.1. State Departments of Transportation (DOTs)

State DOTs are among the oldest transportation organizations involved in metropolitan planning. Their roots extend to the first state highway bureaus of the early twentieth century, formed to build and improve roads, and to receive and spend federal funds for doing so. These bureaus would pursue the public interest by meeting the growing demand for private automobility. As the chief agents of road and highway construction in U.S. history, state DOTs are purveyors of the ideals and values associated

¹¹⁶ Karen Stromme Christensen, *Cities and Complexity: Making Intergovernmental Decisions* (Thousand Oaks, CA: Sage, 1999), 4.

with the automobile: speed, progress, freedom of movement, and conquest of the land.¹¹⁷ Efficiency, the chief value promoted by scientific management theorists, has also been a chief performance indicator among state transportation departments. In a history of the Kansas DOT, for example, a senior official attributed the department's ability to command public respect to "one simple reason: it gets its job done on time and on budget."¹¹⁸

State DOTs initially focused on road construction to connect rural communities, and for several reasons they have continued to be associated with a rural bias in spending and construction patterns. First, as organizations initially tasked to end rural isolation, they have continued to emphasize interregional roads. Second, as creatures of state authority, DOTs face state legislative pressure to locate highway investments in officials' districts. Although this has changed as urban areas have absorbed the overwhelming majority of the U.S.' population, in many states rural interests or 'cornstalk brigades' have historically dominated the legislature.¹¹⁹ Third, rural pressure has in some states yielded allocation formulae that distribute transportation dollars by center-line miles or county land area, proxies for transportation need that favor rural areas. Because cities have more lane miles and more people but fewer center-line miles and square miles of land than rural areas, those formulae favor rural areas. (In contrast, VMT- or population-based measures would favor metropolitan areas.) Roadway usage, however, is

¹¹⁷ Tom Lewis, *Divided Highways: Building the Interstate Highways, Transforming American Life* (Harmondsworth, Middlesex, UK: Penguin, 1999).

¹¹⁸ Eugene R. Russell and William J. Brondell, *Milestones: A History of the Kansas Department of Transportation* (Kansas Department of Transportation, 2001), I-1.

¹¹⁹ Martin Wachs and Jennifer Dill, "Regionalism in Transportation and Air Quality: History, Interpretation, and Insights for Regional Governance," *Governance and Opportunity in Metropolitan America*, ed. Alan A. Altshuler, William Morrill, Harold Wolman and Faith Mitchell (Washington, D.C.: National Academy Press, 1999), 296-323; Edward W. Hill, Billie K. Geyer, and Robert Puentes, "Slanted Pavement: How Ohio's Highway Spending Shortchanges Cities and Suburbs" (Washington, D.C.: Center on Urban and Metropolitan Policy, The Brookings Institution, 2003).

concentrated in urban areas, and urban roads face greater use, wear and tear.¹²⁰ Finally, as urban areas have matured, highway construction in built-up environments has become increasingly costly, disruptive, and unpopular.¹²¹ Robert Moses observed decades ago that, “When you operate in an overbuilt metropolis, you have to hack your way through with a meat ax.”¹²² This fact has made it more attractive to site highway projects in rural areas.

The technologies employed by DOTs have continued to be roadway oriented; bread and butter DOT projects include the construction and reconstruction of bypasses, interchanges, corridor improvements and missing links in the system. Suggesting their focus on road construction for automobility, many state DOTs were called highway departments until the 1960s. At that time, calls for the provision of mobility in ways viewed as more balanced than then current approaches caused many departments to repackage themselves more universally as transportation departments.

In the early 21st century, state DOTs face a gradually changing environment. Unable to build new infrastructure in mature environments, DOTs must increasingly find ways to maximize existing capacity. The application of intelligent transportation systems technologies such as loop detectors, traffic monitoring systems and electronic tolling systems is increasing, improving real-time management of facilities, traffic incidents, and congestion. The program responsibilities of DOTs are also widening in many places, expanding the task and technology repertoire of many DOTs. Meanwhile, DOTs are also

¹²⁰ Eugene R. Russell and William J. Brondell, *Milestones: A History of the Kansas Department of Transportation* (Kansas Department of Transportation, 2001).

¹²¹ Alan A. Altshuler and David E. Luberoff, *Mega-Projects: The Changing Politics of Urban Public Investment* (Washington, D.C.: The Brookings Institution, 2003).

¹²² Robert Caro, *The Power Broker: Robert Moses and the Fall of New York* (New York: Knopf, 1974), 849.

facing greater financial instability, as federal and state gas tax rates have failed to keep up with inflation and are no longer a secure long-term funding source.¹²³ Some observe in general that “state DOTs are being transformed from primarily public works agencies (focused on the planning, design, construction, and maintenance of highways) to multimodal transportation departments (addressing the mobility needs of their states),” but this change is hardly universal and is advancing slowly.¹²⁴

State-level highway design and construction programs have long been viewed as a source of economic development, job growth, and potential private gain. Since the early days of road building, state DOTs have controlled what many elected officials, community interests, and private firms consider a valuable resource: the ability to locate projects and to select contractors. Chronicling the development of the U.S. highway system, Lewis describes how early 20th century road projects, often shoddy in construction, were “regarded as simply an easy and benign way to spread a little extra money about the state.”¹²⁵ At mid-century, the Interstate Program so amplified federal funds for road projects that incentives for economical highway contracts were few. The late senator Daniel Patrick Moynihan argued that the Interstate Program was so well funded that one did not need to do anything illegal to make money: “The coffers were open!”¹²⁶ Though some claim its extent is exaggerated, evidence suggests a tradition of cronyism and kickbacks in the assignment of construction contracts. Today, that specter

¹²³ Stephen C. Lockwood, "Systems Management and Operations in the 21st Century," *Transportation Quarterly* 56, no. 3 (2002): 41-54.

¹²⁴ Stephen C. Lockwood, *Factors Affecting the Future of State DOTs as Institutions* (Washington, D.C.: National Cooperative Highway Research Program, Transportation Research Board, National Research Council, 2000).

¹²⁵ Tom Lewis, *Divided Highways: Building the Interstate Highways, Transforming American Life* (Harmondsworth, Middlesex, UK: Penguin, 1999), 9.

¹²⁶ *Ibid.*, 168.

remains, illustrated by New Jersey's recent effort to prohibit firms that make political contributions from bidding on state highway contracts.

Overall, however, state DOTs face many competing pressures when selecting projects and assigning contracts. Political impulses along with engineering criteria (e.g. vehicle volumes, accident rates, pavement conditions, structural deficiencies, and cost efficiency) and environmental pressures that favor transit over road investments all are at play.

The organizational culture of DOTs has been influenced more by civil engineering than by any other profession. The work of DOTs has long required the application of technical expertise to concrete tasks like designing, building and maintaining roads and bridges. The need for planning professionals in state DOTs has increased in the late twentieth century, due largely to National Environmental Policy Act (NEPA) and ISTEA-era requirements, community demands for context-sensitive roadway design, and the growing emphasis on transportation system management and operation over traditional construction.¹²⁷

Indeed, one state DOT planner interviewed for this dissertation described how the agency had recently abandoned its exclusively optimization-based system for prioritizing projects and opened up project selection to allow for politics.

As part of the local consultation process we are using the projects that come out of our priority system as a starting point to meet with the locals and their ideas as to what projects they think are important on the state highway system...We're not touching their local projects – their city and county road projects – that would still happen in the same way. But for those major projects on the highway system, we're asking them, "What are your thoughts? Are there other projects we're

¹²⁷ Stephen C. Lockwood, "Systems Management and Operations in the 21st Century," *Transportation Quarterly* 56, no. 3 (2002): 41-54; Stephen C. Lockwood, *Factors Affecting the Future of State DOTs as Institutions* (Washington, D.C.: National Cooperative Highway Research Program, Transportation Research Board, National Research Council, 2000).

missing here?” And so that’s made us a little nervous in the department, because we’re opening up a process that had been seen as very fair and quantifiable and reproducible and we’re making it more subjective now.

However, it is unlikely that engineering values, norms, and culture in state DOTs will be soon replaced by those of planning, a profession which privileges public involvement, preservation of natural and built environments, and social justice alongside technical standards. Discussing the tenure of Adriana Gianturco as Director of Caltrans during the 1970s, for example, Lewis and Sprague commented that “as a planner, an environmentalist, and a woman [Gianturco] represented a triple shock to the engineer dominated organizational culture of the California Department of Transportation.”¹²⁸

2.2.2. Public Transit Operators

The organizational profile of transit operators differs significantly from that of state DOTs. First, most transit operators began as private companies, some of which existed in the days of the horsecar and horse-drawn omnibus; it was not until the mid-1960s, however, that many cities assumed ownership of urban mass transportation operations, making them public organizations. A combination of poor investment choices, flagging operator finances, and declining ridership as consumers adopted the automobile led to the near abandonment of transit services in many cities by the 1950s and 1960s.¹²⁹ Consequently, transit operators were viewed at this time as weak relative to the state highway agencies, and as lacking the “financial means” and “administrative

¹²⁸ Paul G. Lewis and Mary Sprague, *Federal Transportation Policy and the Role of Metropolitan Planning Organizations in California* (San Francisco, CA: Public Policy Institute of California, 1997), 19.

¹²⁹ David Jones, *Urban Transit Policy: An Economic and Political History* (Englewood Cliffs, NJ: Prentice-Hall, 1985); Scott Bottles, *Los Angeles and the Automobile: The Making of the Modern City* (Berkeley: University of California Press, 1987).

processes” deemed necessary to undertake large-scale transportation construction projects.¹³⁰

In 1964, however, the Urban Mass Transportation Act (UMTA) provided federal funds for municipal acquisition and improvement of failing private transit services, enabling their conversion to public ownership. As this shift occurred, transit boards became the legal governing bodies of public transit operators. The UMTA accommodated a range of approaches to board composition and characteristics; board members may be elected, appointed, or selected by a mix of mechanisms. Current research suggests that transit board composition, diversity and effectiveness are key issues in transit governance.¹³¹

Second, unlike the traditional construction orientation of state DOTs, transit agencies exist first and foremost as service *operators* and the predominant technology they employ is fixed route bus service. At their peak in the 1910s, ‘20s, and ‘30s, urban transit served the entire spectrum of passenger trips, including the workday commute as well as weekend leisure excursions. Over time, however, the customer base of many transit operators has narrowed to peak hour commuters during the morning and evening rush and to transit dependent persons in off-peak periods. In contrast, ever increasing auto ownership rates suggest that state DOTs can claim to serve a broader and larger clientele.

¹³⁰ Thomas A. Morehouse, "The 1962 Highway Act: A Study in Artful Interpretation," *Journal of the American Institute of Planners* 35, no. 3 (1969): 160-68, 165.

¹³¹ Simon & Simon Research and Associates Inc., et al., *TCRP Report 85: Public Transit Board Governance Guidebook* (Washington, D.C.: Transit Cooperative Research Program, Transportation Research Board, The National Academies, 2002); AECOM Consult Inc. et al., *The Public Transportation Board Effectiveness Study*. Transit Cooperative Research Program, Transportation Research Board, The National Academies, September, 2002, http://trb.org/publications/tcrp/tcrp_webdoc_24.pdf; AECOM Consult Inc. et al., *TCRP Report 104: Public Transportation Board Effectiveness: A Self-Assessment Handbook* (Washington, D.C.: Transit Cooperative Research Program, Transportation Research Board, The National Academies, 2004).

Third, many historical elements of transit providers' operating environment contribute to what some have called the "structural obsolescence" of the sector. These elements include flat fare structures that hinder cost-recovery from long-distance riders, public expectations of universal service provision without regard to cost, outmoded work rules for transit labor,¹³² and undifferentiated services.¹³³ Jones has argued that transit operators' historical legacy has both impaired earning power and led to cost inflation. A separate study suggests that federal labor requirements and operators' own collective bargaining agreements do not *directly* prohibit operators from contracting out for more cost efficient operations but that the threat of labor-related problems *indirectly* discourages the practice.¹³⁴ The same report indicates that labor protections only modestly impact labor costs and minimally impact decisions to adopt new technologies, such as computer dispatching and scheduling.

Finally, in metropolitan regions served by multiple public operators, the issues of service and fare coordination come to the fore. In such regions, transit operators comprise their own 'organizational subfield' or intergovernmental sub-system. Often, relationships among operators are characterized by competition and absent coordination, and scholars disagree as to whether formal mechanisms, such as regional transit authorities like those in Germany or Canada,¹³⁵ or informal mechanisms, such as ad hoc transit operator groups, will better resolve regional operator coordination issues.¹³⁶

¹³² David Jones, *Urban Transit Policy: An Economic and Political History* (Englewood Cliffs, N J: Prentice-Hall, 1985).

¹³³ Robert Cervero, "Informal Transit: Learning from the Developing World," *Access*, no. 18 (2001): 15-22.

¹³⁴ Government Accountability Office, *Transit Labor Arrangements: Most Transit Agencies Report Impacts are Minimal* (Washington, D.C., 2001).

¹³⁵ John Pucher and Stefan Kurth, "Verkehrsverbund: The Success of Regional Public Transport in Germany, Austria and Switzerland," *Transport Policy* 2, no. 4 (1996): 279-91.

¹³⁶ Donald Chisholm, *Coordination without Hierarchy* (Berkeley: University of California Press, 1989).

While state DOTs played a visible if sometimes antagonistic role during the development of metropolitan authority in transportation planning, transit operators were mostly absent from legislative discussions and actions defining regional transportation planning processes. Wachs and Dill suggest that state-level interests took little notice of transit, as mass transportation operators existed in cities and were an urban concern.¹³⁷ Instead, urban interests pursued direct federal intervention, yielding the Urban Mass Transportation Act. In metropolitan planning organizations, most operators have played a limited role. Many operators do not actively participate in the MPO process, even though ISTEA provisions require that federal capital grants for transit be directed through the MPO and be included in the TIP, rather than be distributed directly to operators. Transit operators often lack voting membership on the MPO board, and because they receive formula funds directly from the Federal Transit Administration, they may see few incentives to compete for additional money in the MPO process, via flexing highway dollars, for instance.¹³⁸ Larger, more influential operators, such as the Bay Area Rapid Transit (BART) in the San Francisco Bay region or the Metropolitan Transportation Authority (MTA) in the New York metro region, may be more likely to be strategic MPO participants and to promote the use of flexible funds for transit investments.

2.2.3. Metropolitan Planning Organizations (MPOs)

Unlike state DOTs or transit operators, most Metropolitan Planning Organizations (MPOs) have no direct involvement in owning, building, managing or operating portions

¹³⁷ Martin Wachs and Jennifer Dill, "Regionalism in Transportation and Air Quality: History, Interpretation, and Insights for Regional Governance," *Governance and Opportunity in Metropolitan America*, ed. Alan A. Altshuler, William Morrill, Harold Wolman and Faith Mitchell (Washington, D.C.: National Academy Press, 1999), 296-323.

¹³⁸ Julie Hoover, Bruce D. McDowell, and Gian-Claudia Sciara, *Transit at the Table: A Guide to Participation in Metropolitan Decisionmaking* (Washington, D.C.: Federal Transit Administration, 2004).

of the urban transportation system. Rather, MPOs are decisionmaking bodies. Their voting boards are composed primarily of elected officials (e.g. mayors and county executives) who represent the jurisdictions belonging to the MPO. These decisionmakers are supported by the MPO's technical staff, and it is their job to formulate regional transportation plans and program funds following federal laws and regulations.

The history of many MPOs, discussed earlier, is located in the first urban area transportation studies, such as the Chicago Area Transportation Study. Additionally, although MPOs are formally designated by and receive authority from state governments, they owe their existence and jurisdictional responsibilities to successive federal transportation laws passed since the early 1960s. As an 'organizational field,' MPOs are markedly heterogeneous. (See Table 2.5.)

Table 2.5. Sources of Variation among MPOs

Attributes of the Region Served

- population size
- population growth
- land area
- air quality status
- congestion levels
- central city region / multi-centered region
- regional economic profile & growth
- fast growth / slow growth / no growth / decline
- transportation system state-of-repair

Attributes of the MPO

- single- or multi-county
- single-, bi- or multi-state
- board membership
- voting structure
- staff size / capacity
- MPO-state relationship(s)
- MPO-county relationship(s)
- institutional setting (hosted or free-standing)

They vary widely by the size of the population served; the authority accorded to them, which depends on their size and air quality status¹³⁹; their membership and voting structures; and the size, capabilities, and technical competencies of their staffs. MPOs

¹³⁹ Only MPOs serving populations over 200,000 may program metropolitan STP funds directly. CMAQ funds may be spent only in metropolitan areas that do not currently meet or have only recently met federal air quality standards.

also vary by the institutional arrangements in which they are grounded: MPOs may be stand-alone entities; hosted by cities, counties, or state transportation departments; or situated within regional councils of governments. Over time, the proportion of MPOs in DOT-host arrangements has decreased while free-standing MPOs have increased. (See Table 2.6.) As a group, MPOs may be less able to lobby for increased authority or more clear responsibilities precisely because they are so diverse.

Table 2.6. Institutional Arrangements of MPOs						
provided by:	MPO staff					
	1972¹	1976¹	1980¹	1983¹	1993¹	2004²
City, County / Joint	17.4%		17.1%	25.3%	28%	26%
<i>City</i>					14%	15%
<i>County</i>					14%	11%
Regional Council	37.2%	82.3%	58.9%	54.6%	48%	30%
State DOT	42.2%	5.6%	3.1%	4.3%	2%	1%
MPO (independent)	3.2%	12.1%	20.9%	15.8%	22%	28%
Other						14%
<i>Total MPOs</i>	218	249	258	328	339	380
¹ McDowell, <i>MPO Capacity</i> , 1995. ² AMPO, <i>Institutional Survey</i> , 2004. (n=80)						

As some of the preceding legislative history has evidenced, MPOs have faced several recurring challenges. These include minimal financial support for metropolitan planning activities; shifting federal regulations that have diminished then bolstered the MPO role, as happened during the 1980s and the 1990s respectively; ambivalence from transportation agencies, particularly state DOTs, regarding MPO authority; and local government resistance to MPOs' role in regional project selection.¹⁴⁰ Some question whether MPOs actually lead areawide transportation planning or whether "the federally

¹⁴⁰ Todd Goldman and Elizabeth Deakin, "Regionalism through Partnerships? Metropolitan Planning since ISTEA," *Berkeley Planning Journal* 14 (2000): 46-75; Bruce McDowell, *Improving Regional Transportation Decisions: MPOs and Certification* (Washington, D.C.: The Brookings Institution, 1999).

required transportation improvement program (TIP) prepared by the MPO basically confirms what is going on in the fragmented region.”¹⁴¹

An additional challenge to MPO authority is pressure to suballocate planning and programming funds directly to subregions or counties within the metropolitan area, transferring spending authority from the regional body to its individual local members. Thus, one significant struggle that MPOs encounter is how to balance parochial interests of voting members with the regional interest. Because MPOs board seats are reserved for elected officials from member jurisdictions, each official looks to pursue its own jurisdiction’s interests at the MPO table, following a traditional pluralist or bureaucratic politics model. Wachs and Dill speculate that regional transportation bodies may be better served by boards that are directly elected instead, as they are for Portland Metro. As currently structured, however, most MPO boards consist of representatives who are elected officials serving specific jurisdictions. Thus,

each representative to the regional body or commission is there to serve the interests of his or her home community, seeking to minimize the negative effects of region-wide regulations on the communities they represent, or to maximize the financial gains of the region-wide policies for their districts....[P]olicies that are adopted...rarely redistribute benefits from the haves to the have-nots.¹⁴²

The decisions reached may do more to balance competing geopolitical interests across the region than to maximize regional efficiency and mobility. In addition to local-regional tensions, conflict may exist within the MPO due to the different planning styles and assumptions at work among MPO members and technical and planning staff. Innes and

¹⁴¹ Bruce McDowell, "Regional Planning Today," *The Practice of State and Regional Planning*, ed. Frank S. So, Irving Hand and Bruce McDowell (Chicago: American Planning Association, 1986), 43; Judith Innes and Judith Gruber, "Planning Styles in Conflict: The Metropolitan Transportation Commission," *Journal of the American Planning Association* 71, no. 2 (2005): 177-88.

¹⁴² Martin Wachs and Jennifer Dill, "Regionalism in Transportation and Air Quality: History, Interpretation, and Insights for Regional Governance," *Governance and Opportunity in Metropolitan America*, ed. Alan A. Altshuler, William Morrill, Harold Wolman and Faith Mitchell (Washington, D.C.: National Academy Press, 1999), 321.

Gruber find four different models of action (i.e. technical/bureaucratic, political influence, social movement, and collaborative) at work simultaneously in the MPO arena, a fact that produces distrust and conflict among MPO actors.¹⁴³

2.2.4. Federal Agencies

Thus far, the federal role in metropolitan transportation planning has been discussed primarily with respect to federal laws that gave rise to MPOs in the 1960s and that, subsequently, have slowly increased MPO decision-making authority vis-à-vis state DOTs. Yet, the federal government has an active regulatory function in metropolitan transportation planning as well. The metropolitan planning process determines how to spend federal and state dollars in the urban region, and several conditions are attached to the federal dollars.

First, for any project that uses federal dollars and that that may significantly impact the environment, the 1969 National Environmental Policy Act (NEPA) requires that environmental consequences – ranging from air and water quality, wildlife, natural habitats, human economic and social environments, and historic resources to other dimensions – be documented and analyzed.

Second, in regions with significant air pollution, the metropolitan transportation planning process is constrained by federal laws concerning air quality. Under the Clean Air Act Amendments of 1970 and subsequent revisions, transportation plans developed and approved in the metropolitan planning process must conform to regional plans to attain federal air quality standards for a variety of regulated pollutants. Thus, metropolitan planning organizations in regions with sub-standard air quality are

¹⁴³ Judith Innes and Judith Gruber, "Planning Styles in Conflict: The Metropolitan Transportation Commission," *Journal of the American Planning Association* 71, no. 2 (2005): 177-88.

responsible for demonstrating, via emissions modeling, that their program of selected transportation investments will support and not undermine regional air quality improvement strategies.

Third, the metropolitan transportation planning process situated in the MPO is subject to federal certification. Every three years, MPOs are reviewed and ‘certified’ by a team of U.S. Department of Transportation representatives who assess compliance with such federal requirements as consideration of defined planning factors, fiscal constraint, environmental justice and public participation.

In sum, by comparing the federal legislation that establishes the federal regulatory position in the metropolitan transportation planning process versus that which designates decision-making authority to MPOs, one must conclude that federal agencies are far more prominent in their regulatory role.

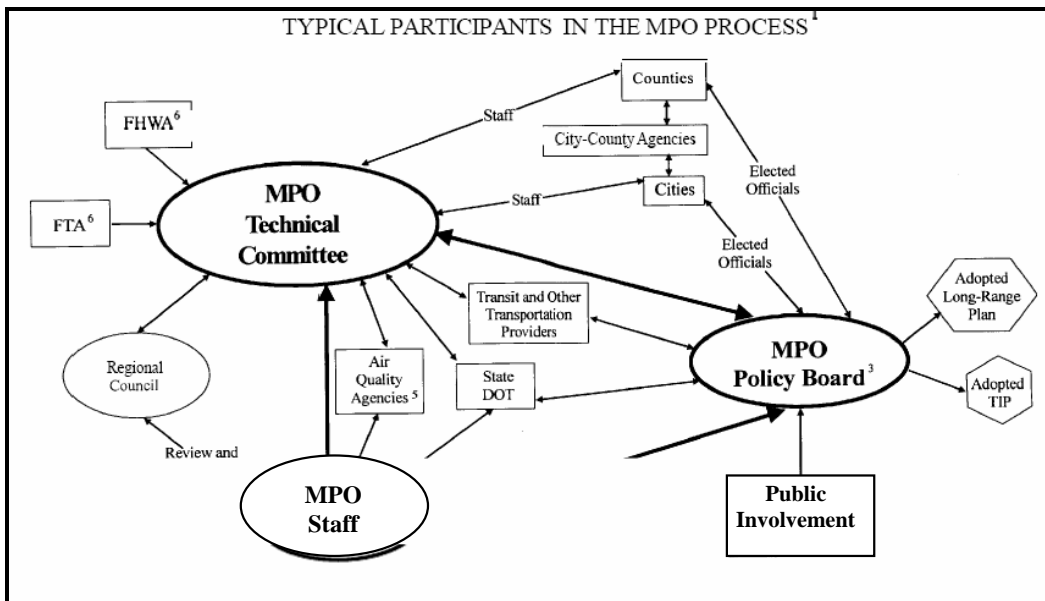
2.2.5. Other Players

An inventory and description of all actors involved in metropolitan transportation planning is beyond the scope of this work; McDowell’s diagram of linkages in metropolitan transportation planning provides a comprehensive glimpse of the process and actors. (See Figure 2.) In this section, only a few additional players are mentioned.

Elected officials in Congress shape conditions for metropolitan transportation planning and funding by passing transportation laws like ISTEA, TEA-21 and SAFETEA-LU. These representatives may also lobby for earmarked projects and provisions that favor metropolitan districts. At the state level, governors play a key role in MPO designation, redesignation, and boundary adjustments, and, although few have, state legislatures can vest MPOs with additional authorities, e.g. to provide services or to

raise revenue, for example. Interest groups at the national level influence federal funding and policy decisions that affect metropolitan areas; traditionally, most of these groups have been aligned modally, as transit or highway groups. At the metropolitan level, interest groups have evolved around the planning factors stipulated by ISTEA. (See Table 3.) These may represent bicycle and pedestrian interests, land use and smart growth coalitions, and also transit users, and they have typically called for better MPO and state DOT efforts to incorporate public participation in regional decisionmaking.

Figure 2.1.
(Source: McDowell 1995)



This chapter has provided an overview of MPOs' history and the conditions that influence and limit them. It shows how metropolitan planning organizations are comparatively new organizations in transportation that represent an accretion over the twentieth century of professional ideologies, legislative action, political struggles, and

conflicting decision-making styles. The institutionalization of metropolitan level transportation planning, through MPOs, has been incremental and strongly influenced by federal law that has slowly enhanced the metropolitan position. With this background in place, the next chapter unpacks the Congressional process that produces earmarked federal transportation funds and begins to analyze how those practices impact MPOs.

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Chapter 3: Peering Inside the Pork Barrel

*We are a separate branch of government, and since we've been a country, we have had the obligation as a Congress to help direct spending. We cannot let spending be done by a bunch of nameless, faceless bureaucrats buried in this town someplace to take care of the needs of the states.*¹⁴⁴

Sen. Harry Reid (D-Nev.)

The focus of this dissertation is the relationship between Congressional earmarking and metropolitan transportation planning as two parallel means of designating federal transportation funds to pay for urban transportation projects. As such, this study diverges from more traditional studies of earmarking because its focus is not earmarking as a Congressional behavior *per se*. Rather, this study examines how earmarking in transportation relates to transportation planning and decision-making in metropolitan areas. Still, to explore the interactions between earmarking and planning and how they shape the organizations responsible for those processes, it is first necessary to understand how earmarking works—and continually evolves—as a Congressional practice and to map the space for interaction between earmarking and transportation planning.

In this chapter, therefore, I peer directly inside the Congressional pork barrel to describe how Congress establishes earmarks for transportation projects and what such earmarks do. The processes and practices I describe pertain exclusively to earmarking within federal transportation spending bills. Congress earmarks funds across a wide swath of federal activity, including the defense, water infrastructure, and education sectors to name a few. The earmarking processes and practices discussed in this chapter may not reflect Congressional practices in other spending sectors. Although comparative

¹⁴⁴ David Lightman, "The Biggest Obstacle in Obama's Path: Congress (Who Else?)," *Knight Ridder Washington Bureau*, February 27, 2009.

study of Congressional earmarking practices and impacts in transportation and in other sectors of federal activity would be potentially instructive, such comparisons are beyond the scope of this study. Further, although the U.S. executive branch has its own mechanisms for earmarking federal transportation funds, this dissertation and the chapters that follow deal exclusively with Congressional earmarking.

As with the next three chapters, this chapter draws from 55 semi-structured interviews conducted during the first phase of this study to understand how earmarking works. Interview respondents included representatives of metropolitan, state, and federal transportation organizations; national groups and policy organizations active in transportation; Congressional committee staff; and other transportation experts. Participants were asked to describe observations about and experiences with federal earmarks over the course of their career. Respondents were asked whether and how their current organization works with earmarks, and what interactions they observed between the processes for earmarking federal transportation funds and for planning and prioritizing metropolitan transportation investments. Follow-up questions were tailored to respondents, probing their particular expertise.

These interviews provide a rich picture of earmarking approaches employed by different organizations. Each of the transportation experts interviewed has a partial view of how earmarking works, but collectively the interviews provide a fairly comprehensive picture of what is a complex and in some ways extremely opaque process. In addition to these interviews, this chapter also offers a close study of transportation bills and legislative reports, academic and government reports on earmarking, and other secondary sources that discuss Congressional earmarking in transportation.

This chapter sets the stage for later ones by explaining the nitty-gritty of earmarking. And it also yields three significant analytical by-products. First, it shows that not all earmarks are alike. Although popular media typically discuss earmarks *en masse*, as though one is the same as the next, earmarks differ from each other, with important consequences for the transportation organizations that must ultimately administer and implement them. Second, it highlights the trade-offs made when funds are reserved for projects through earmarks, revealing how earmarks create real and perceived winners and losers. These two byproducts are closely related, as the attributes that differentiate one earmark from another often influences the discretion of specific transportation actors involved in the project. To any player involved in securing, administering, or spending earmarked funds, the earmark features that matter most are those that impact that player's discretion over transportation dollars. Third, the chapter conveys that the Congressional practice of earmarking is a moving target. The mechanisms Congress uses to designate funds for specific projects are not static; they evolve over time, responding to Congress' own perception and use of its discretion, and to external forces, such as periodic federal agency efforts to thwart earmarks.

In the text that follows, I explain, first, how for the transportation agencies that receive them earmarks in authorization bills and appropriation bills have different advantages and disadvantages. While members of Congress may earmark in either types of bill, they do so where they have more influence. Second, when members designate earmarks, they may link them to existing funding programs directly, as programmatic earmarks, or not at all, as *ad hoc* or stand alone earmarks. Earmarks carved from existing discretionary programs diminish the role of U.S. DOT operating administrations

otherwise responsible for those programs; in some instances these federal agencies have in turn challenged such earmarks. Typically, Congress answers those and other challenges by evolving its earmarking practices to protect its own discretion to designate funds for special projects.

Third, I analyze how the specific ways in which Congress links special language to funding bills so as to create transportation earmarks can also protect Congressional discretion in the earmarking process. Congressional earmarks carry different levels of legal obligation for their recipients, depending on whether language that creates the earmark appears in the text of the statute itself, in the statement of the managers accompanying the statute's conference report, or in a hybrid of both. As this chapter will reveal, such seemingly esoteric differences greatly affect how the transportation planning and implementing agencies may ultimately develop earmarked projects.

In its final section, this chapter breaks down the Congressional process for earmarking into three overlapping and inherently political parts: first, individual members submit their earmark requests to the Congressional committee handling the bill; second, key members of that committee structure the scale and scope of earmarking that may take place in the bill; third, once informed of their earmark budget, individual members of Congress identify those projects that represent their highest priority for earmarked funds. By dissecting this process, two key observations come to the fore. First, Congressional practices for processing earmark requests have grown more formal over the last decade, evidenced by the introduction of earmark request forms and of electronic and web-based submission of earmark requests. This formalization makes the process somewhat more visible and creates more opportunity for planning interests to engage in it. Second,

Congressional committees do collect planning-relevant information about projects for which earmarked funds are requested, but this information enters minimally, if at all, into Congressional decisions over which projects to earmark.

3.1. Vehicles for Congressional Earmarks: Authorization and Appropriation Bills

Federal transportation authorization bills and appropriation bills are the two main legislative vehicles that Congress uses to create transportation earmarks. Through these two types of laws, Congress sets the federal transportation budget; representatives and senators attach earmarks to both types of bills.¹⁴⁵ Authorization acts traditionally set the parameters for federal transportation spending over a multi-year period, typically five or six years.¹⁴⁶ These acts articulate program goals and policies, authorize spending ceilings for different programs, and specify whether programs will operate by apportionment or allocation.¹⁴⁷ Annual appropriation bills¹⁴⁸ set the specific yearly funding amounts, or obligation limits, for the authorization period. Of the funds previously authorized by Congress in the multi-year authorization bill, the annual appropriation releases a portion of those funds up to a certain level called the obligation limit. Once an appropriations

¹⁴⁵ Congress also uses other bills to designate funds for transportation projects, such as supplemental appropriations bills, economic stimulus bills, or homeland security bills.

¹⁴⁶ Although Congress earlier funded transportation in annual bills, it shifted to the multi-year authorization in 1978 in order to facilitate longer-term planning by transportation agencies. State transportation departments and other transportation agencies plan for investments with typically extended time horizons; budgets that project several years in the future are needed to plan with more security. See Edward Weiner, *Urban Transportation Planning in the United States*, 5th ed. (Washington, D.C.: U.S. Department of Transportation, 1997); and Congressional Budget Office, "Highway Assistance Programs: A Historical Perspective" (Washington, D.C.: The Congress of the United States, 1978).

¹⁴⁷ Apportionment programs, known as formula programs, each distribute funds to state DOTs, MPOs, and transit operators following prescribed formulae, and recipient agencies then choose projects for funding. For allocated or discretionary programs, a federal agency like FHWA or FTA chooses among candidate projects submitted for funding consideration by state, metropolitan, and local agencies.

¹⁴⁸ Congress determines federal spending for agriculture, homeland security, energy and water development, and other sectors in 12 annual sector-specific appropriation bills. Appropriations for several sectors are often combined into a single omnibus bill, which can exceed 1,000 pages. These bills are viewed by some as popular vehicles for earmarks. For example, see Alex Daniels, "Earmarks Not Issue, Berry Says of Budget," *Arkansas Democrat-Gazette*, May 29, 2006.

bill is signed into law, the intended recipients of federal highway funds, like state transportation departments and MPOs, may take concrete steps to advance projects to be supported by those dollars.

Such steps include seeking Federal Highway Administration (FHWA) approval for the project agreement, plan specifications, and cost estimates. When FHWA signs off on these documents, it formally obligates federal funds to the project, allowing the project sponsor to contract with other parties. A state DOT for example may contract with a civil engineering firm to design a planned road reconstruction; this commits the DOT to spend the available funds.¹⁴⁹

The distinctions between authorization and appropriation earmarks matter most to members of Congress, to the state and local governments or public agencies that receive earmarks, and to lobbyists that may help such agencies to seek them. First, representatives and senators are keenly aware that their chances for earmarking in either bill partly depend on whether they belong to the authorizing committees responsible for authorization bills or the appropriation committees responsible for appropriation bills. The two committees themselves battle over which is actually entitled to earmark funds and how such earmarks are to be created. Informal practice in Congress traditionally awards greater access to earmarks in a specific sector to the House and Senate members who chair or serve on the committees that determine federal spending for that sector.¹⁵⁰

For earmarks in transportation authorization bills, members of the transportation

¹⁴⁹ Obligating and contracting to spend Federal highway funds are two separate steps. First, approval by FHWA of project documents creates the obligation of federal funds; second, the project is put out to bid and a contractor is selected. It is possible for a project never to go to contract, even though funds have been obligated for it. In such cases, the obligation authority remains available until it is used or expires.

¹⁵⁰ Joseph White, "Making Connections to the Appropriations Process," *The Interest Group Connection: Electioneering, Lobbying and Policymaking in Washington*, ed. Paul Herrnsen, Ronald G. Shaiko and Clyde Wilcox (Washington, D.C.: CQ Press, 2004); also, David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974).

authorizing committees—the House Transportation and Infrastructure Committee, the Senate Environment and Public Works Committees, and the Senate Committee on Banking, Housing, and Urban Affairs—and their subcommittees¹⁵¹ have greater access than do members not on those committees. For transportation appropriations earmarks, the same holds true for members of the House Appropriations Committee and Senate Appropriations Committees—and, often more so, their subcommittee members and chairs.¹⁵² Further, while the annual transportation appropriation provides more regular opportunities for members to request earmarks, interview respondents suggest that recent Congressional practices make appropriation earmarks less attainable for most members.

Authorizations are more egalitarian. All members of the House and Senate participate [in earmarking.] Authorizations happen less frequently, and interest [among earmark seekers] is generally higher than in appropriations. Appropriations are more political: it's really just the members of the committee and the leadership [who get earmarks.]

For the governments, public agencies, or private entities for whom earmarked funds are designated and who may seek such funds directly, authorization and appropriation earmarks operate on different timelines and terms. On one hand, authorization bills are passed infrequently, and they authorize funds for allocation in yearly installments for a five- or six-year period.¹⁵³ Also, although exceptions exist, funds earmarked in authorization are frequently made “available until expended,” which

¹⁵¹ Relevant authorizations subcommittees are the Subcommittee on Highways and Transit for the House; the Transportation and Infrastructure Subcommittee for the Senate EPW Committee; and the Housing, Transportation, and Community Development Subcommittee for the Senate Banking Committee.

¹⁵² Relevant appropriation subcommittees are, for the House, the Subcommittee on Transportation, Housing and Urban Development and, for the Senate, the Subcommittee on Transportation, Housing and Urban Development, and Related Agencies.

¹⁵³ For example, High Priority Projects (HPP) designated under Section 1601 of the 1998 TEA-21 authorization followed this allocation schedule for the 6-year authorization period: (FY 1999) 11 percent, (FY 2000) 15 percent, (FY 2001) 18 percent, (FY 2002) 18 percent, (FY 2003) 19 percent, (FY 2004) 19 percent, for a total of 100 percent over the authorization. A \$10 million earmark would be allocated in installments: (FY 1999) \$1.1 million, (FY 2000) \$1.5 million, (FY 2001) \$1.8 million, (FY 2002) \$1.8 million, (FY 2003) \$1.9 million, (FY 2004) \$1.9 million.

means funds remain available even if the project lags indefinitely.¹⁵⁴ The appropriations process, on the other hand, presents earmark-seekers a yearly opportunity to pursue earmarks; however, not only are the chances for securing an earmark generally slimmer, but federal law also typically requires that appropriation funds earmarked be obligated, or spent, that fiscal year.

Several transportation agency representatives interviewed for this study observed that the gradual allocation schedule of authorization earmarks makes them better suited for projects under development. Federal highway funds are made available only through reimbursement; that is, a project sponsor must use its own cash first to pay for project expenses and then seek federal reimbursement.¹⁵⁵ A highway agency may let the five or six annual installments of an authorization earmark accrue while it completes project studies, plans, and designs, and then advance the project once the earmark's full value is available or "in the bank." Agencies with well-developed projects ready for construction may be unable or unwilling to wait that long to seek full reimbursement and may consequently prefer an appropriation earmark.

Washington lobbyists who work with public agencies, local governments, or private firms to secure earmarks are also mindful of these distinctions between authorization and appropriation earmarks. Lobbyists often specialize in either authorization or appropriation matters, depending on where his or her relationships and expertise are better established.¹⁵⁶

¹⁵⁴ That Congress makes some earmarked funds "available until expended" is important for discussions of rescissions of unused earmarks, in Chapter 4.

¹⁵⁵ In contrast, federal transit funds are made available to public transit operators as up front grants.

¹⁵⁶ For a thorough examination of the evolution of the lobbying industry in Washington, D.C. and its role in regularizing earmarked appropriations for private and institutional recipients, see Robert G. Kaiser, *So Damn Much Money: The Triumph of Lobbying and the Corrosion of American Government* (New York: Knopf, 2009).

Earmarks for transportation are not restricted solely to the periodic transportation authorization or annual appropriation bills. Congress employs them in other types of bills, such as supplemental spending bills, economic stimulus bills, and other legislative vehicles. Depending on the legislative language designating the earmark in such legislation, funds for the earmarked project may come from the federal Highway Trust Fund or the U.S. General Fund. There is no simple way to identify all transportation earmarks that appear in non-transportation bills. One would have to search every bill passed for line items naming specific transportation projects, a task beyond the scope of this study.

3.2. Types of Congressional Earmarks: Ad hoc, Programmatic, and Stand Alone

Without earmarks, Congress would not identify specific projects for funding in authorization and appropriation bills. Authorization and appropriation bills provide funds for programs designed to achieve particular ends, such as rehabilitation of the Interstate System, bridge repair, or employment-directed mass transportation for low income workers. Without earmarks, funds for different federal programs flow to state transportation departments (DOTs), metropolitan planning organizations (MPOs), transit operators, or such federal agencies as the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA). These entities choose what projects to fund and then obligate, or spend, those funds.¹⁵⁷

¹⁵⁷ One exception may be those instances where Congress has authority or obligation to designate projects for federal lands or federal areas, such as the Capitol. In the TEA-21 authorization bill, for instance, Section 1214 designates projects for federal activities; such projects ostensibly enhance access to places of national interest, such as the Smithsonian Museum and the Kennedy Center, or to places of natural or scenic beauty.

With transportation earmarks, I find that Congress has directed funds for discrete projects in three main ways: by creating an *ad hoc* program specifically for earmarking, by earmarking established programs, and by inserting earmarks as stand alone items in a bill. Following this typology, I differentiate *ad hoc*, programmatic, and line item earmarks by how they relate to the established structure of transportation funding programs, and consequently, how they create organizational winners and losers. (In Chapter 4, I present a separate typology that distinguishes earmarks by the funding sources that fuel them.)

1. Congress may build an *ad hoc* program explicitly intended for earmarking. Often called demonstration programs or priority projects, these earmarks are collections of projects said to demonstrate a new technology or strategy for delivering transportation improvements or to fund projects with unusual significance for the national transportation system. The earliest earmarks were of this type, oriented toward economic development, roadway safety and railroad crossings.¹⁵⁸ The High Priority Projects in the TEA-21 authorization are one such example.¹⁵⁹ (See Exhibit 3.1.) The TEA-21 bill states that HPP funds are to support projects of national priority, and it was Congress—not a federal, state, or regional agency—that designated 1,850 such projects for funding. (See Exhibit 3.2.) Congress has employed *ad hoc* programs and project lists more commonly for authorization earmarking; however, appropriators have more recently designated

¹⁵⁸ The earliest of *ad hoc* demonstration earmarks were included in authorization bills of the late 1960s and early 1970s. See Congressional Budget Office, *Highway Assistance Programs: A Historical Perspective* (Washington, D.C.: The Congress of the United States, 1978).

¹⁵⁹ Other examples include demonstration projects authorized in STURAA (1987) under Section 149; ISTEA (1991) under Sec. 1103 “High Cost Bridge Projects”; Sec. 1104 “Congestion Relief Projects”; Sec. 1105 “High Priority Corridors on National Highway System”; Section 1106 “Rural and Urban Access Projects”; Section 1107 “Innovative Projects”; and Section 1108 “Priority Intermodal Projects”; and in SAFTEA-LU (2005) under Section 1702 “High Priority Projects” and Section 1301 “Projects of National and Regional Significance.”

similar *ad hoc* earmarks, naming them “Surface Transportation Projects” and “High Priority Projects,” with examples in transportation appropriation bills for fiscal years 2004, 2005, and 2006.

**Exhibit 3.1. *Ad hoc* Programs for Earmarking:
“High Priority Projects” Authorized in TEA-21¹⁶⁰**

SEC. 1601. HIGH PRIORITY PROJECTS PROGRAM.

(a) **IN GENERAL.**—Chapter 1 of title 23, United States Code, is amended by striking section 117 and inserting the following:

“§ 117. High priority projects program

“(a) **AUTHORIZATION OF HIGH PRIORITY PROJECTS.**—The Secretary is authorized to carry out high priority projects with funds made available to carry out the high priority projects program under this section. Of amounts made available to carry out this section, the Secretary, subject to subsection (b), shall make available to carry out each project described in section 1602 of the Transportation Equity Act for the 21st Century the amount listed for such project in such section. Any amounts made available to carry out such program that are not allocated for projects described in such section shall be available to the Secretary, subject to subsection (b), to carry out such other high priority projects as the Secretary determines appropriate.

**Exhibit 3.2. *Ad hoc* Earmarks:
Sample “High Priority Projects” Listed in TEA-21¹⁶¹**

PUBLIC LAW 105–178—JUNE 9, 1998			112 STAT. 257
No.	State	Project description	(Dollars in millions)
1.	Georgia	I-75 advanced transportation management system in Cobb County	1.275
2.	Ohio	Relocate Washington Street/SR 149 within Bellaire city limits in Belmont County ..	2
3.	Virginia	Commuter and freight rail congestion and mitigation project over Quantico Creek	7.5
4.	Michigan	Construct bike path between Mount Clemens and New Baltimore	3.75
5.	California	Extend I-10 HOV lanes, Los Angeles	2.205
6.	Utah	Reconstruct U.S. 89 and interchange at 200 North in Kaysville	5.25
7.	Ohio	Upgrade North Road between U.S. 422 and East Market Street, Trumbull County	1.2
8.	Tennessee	Alternative transportation systems, Rutherford	5.1
9.	New York	Improve Long Ridge Road from Pound Ridge Road to Connecticut State line	1.4
10.	New York	I-87 Noise Abatement Program	7.5

¹⁶⁰ *Transportation Equity Act for the 21st Century*, Public Law 105-178, *U.S. Statutes at Large* 255 (June 9, 1998).

¹⁶¹ *Ibid.*, *Statutes at Large* 257.

2. Congress may earmark within established discretionary programs, typically designed to achieve specific. Through earmarks, Congress directs the agency responsible for that program to spend funds on specific items, a practice that federal agencies often dislike. “When you earmark discretionary programs, you take away the executive branch’s ability to choose projects,” said one former FHWA administrator. Congress employs so-called programmatic earmarking in appropriation bills and authorization bills.

The Federal Transit Administration’s (FTA) Bus and Bus Facilities Discretionary Program and its Job Access Reverse Commute (JARC) Program have both been earmarked in this way. The Bus Discretionary program¹⁶² provides capital for periodic bus replacements, purchases, and related facilities that exceed a public transit provider’s ordinary capital budget. It assists transit agencies with occasional large capital costs, and FTA grant criteria preference projects that replace old and poorly functioning buses or bus facilities, that rank highly among regional transportation priorities, and that improve transit service.¹⁶³ Yet, Congress has earmarked the program since 1995, directing the money to special projects and leaving few funds to be awarded by FTA’s own competitive grant process.¹⁶⁴ The FTA Bus and Bus Facilities program webpage states that discretion over bus funding has shifted from FTA to Congress: “The Secretary has the discretion to allocate funds, although Congress fully earmarks all available funding.”¹⁶⁵

¹⁶² Established under Section 5309 of Title 49 in the U.S. Code.

¹⁶³ “Bus and Bus Facilities Discretionary Program Grants,” *Federal Register* 72:56, Section 5309 (March 23, 2007): 16967, <http://www.gpoaccess.gov/fr/index.html> (accessed January 2, 2008).

¹⁶⁴ Office of Inspector General, *Review of Congressional Earmarks within Department of Transportation Programs* (Washington, D.C.: U.S. Department of Transportation, 2007), 9.

¹⁶⁵ Federal Transit Administration, “Bus and Bus Facilities (5309, 5318.)” U.S. Department of Transportation, http://www.fta.dot.gov/funding/grants/grants_financing_3557.html (accessed January 2, 2008).

The Job Access Reverse Commute (JARC) program is another federal discretionary program that has been earmarked by Congress. Its history illustrates how earmarking can so diminish the federal role of administering a competitive program that Congress ultimately converts the program to formula distribution. Congress created JARC in the multi-year 1998 authorization bill TEA-21 to be a competitive program administered by FTA. Grants would be awarded to projects around the country that would most improve transportation for low-income individuals to and from work sites and employment related activities. The FTA invited transit operators, MPOs, and other eligible grantees to submit applications for competitive grants in fiscal year 1999. However, Congress began to earmark JARC funds in the FY 2000 appropriation and continued doing so through the FY 2003, the final authorization year for the TEA-21 bill. (See Exhibit 3.3.) In the 2005 multi-year reauthorization bill SAFTEA-LU, Congress converted JARC to a formula-based or apportionment program, shielding it from earmarks in the appropriations process.¹⁶⁶

¹⁶⁶ General Accounting Office, *Welfare Reform: Competitive Grant Selection Requirement for DOT's Job Access Program Was Not Followed* (Washington, D.C., 2001). See also Evelyn Blumenberg and Lisa Schweitzer, "Devolution and Transport Policy for the Working Poor: The Case of the U.S. Job Access and Reverse Commute Program," *Planning Theory and Practice* 7, no. 1 (2006): 7-25, especially pages 18-25.

**Exhibit 3.3. Programmatic Earmarks:
Sample JARC Earmarks (A-Na) in the FY 2000 Appropriation.¹⁶⁷**

JOB ACCESS AND REVERSE COMMUTE GRANTS	
<p>The conference agreement includes a total program level of \$75,000,000 for job access and reverse commute grants. Within this total, the conference agreement appropriates \$15,000,000 from the general fund. The conference agreement provides that the general fund appropriation shall be available until expended.</p> <p>The conference agreement provides for the following distribution of the recommended funding for job access and reverse commute grants as follows:</p>	
<i>Project</i>	<i>Conference</i>
Albuquerque access to jobs	\$1,000,000
Alliance for children and families, Alabama	1,000,000
Atlanta regional commission, Georgia	1,000,000
Central Kenai peninsula public transportation task force	500,000
Chicago-DuPage area, Illinois	100,000
Dallas, Texas	1,500,000
District of Columbia	1,250,000
DuPage County, Illinois	120,000
Gary, Indiana	1,000,000
Hillsborough area regional transit authority, Florida	500,000
Indianapolis, Indiana	1,000,000
Iowa public transit association	2,700,000
JOBLINKS	1,250,000
Kansas City, Kansas JOBLINKS	850,000
Kentucky human services transportation delivery system (including Hardin County, Owensboro, Barren River, central Kentucky community action agency, Audubon area community services organization, Kentucky River Foothills express, Blue Grass Ultra-transit services, Lexington-Fayette county area), Kentucky	2,500,000
Lafayette, Indiana	200,000
Los Angeles County Metropolitan Transit Authority, California	1,000,000
Loudoun County, Virginia	300,000
Lynchburg, Virginia	100,000
Mariba, Kentucky	125,000
Matanuska-Susitna borough, Alaska	300,000
Miami Dade Transit Authority, Florida	1,100,000
Mid-America regional council, Missouri	1,000,000
Minneapolis/St. Paul, Minnesota	1,500,000
National Welfare to Work Center at the University of Illinois, Illinois	1,000,000

Numerous discretionary programs administered by the Federal Highway Administration (FHWA) have also been earmarked in similar fashion, including the Federal Lands Highways Program, Ferry Boats and Ferry Terminal Facilities Program, Interstate Maintenance Discretionary Program, and the Bridge Discretionary Program.

Congress also creates programmatic earmarks via so called “set-asides” that reserve funds from programs otherwise intended for distribution by the U.S. Department of Transportation. In 2005, for instance, authorizers set aside \$100 million for nine

¹⁶⁷ U.S. House, *Making Appropriations for the Department of Transportation and Related Agencies for the Fiscal Year Ending September 30, 2000 and for Other Purposes*, 1999, H. Rep. 106-355, 112.

earmarks within the Highway Bridge Replacement and Rehabilitation program.¹⁶⁸ One of these earmarks reserved \$18.75 million for the bridge joining the Gravina Island to the community of Ketchikan in Alaska, the ill-famed “Bridge to Nowhere.” Appropriators also diminish the U.S. DOT’s discretion over bridge replacements, in this case the FHWA, by subsequently earmarking the funds in a fiscal year appropriation.

3. In addition to *ad hoc* and programmatic earmarks, Congress uses a third type of earmark to fund projects as specific, stand alone items in a bill. Such earmarks are difficult to spot in legislation and associated reports, as they are sprinkled seemingly at random within hundreds of pages of densely worded text and can refer obtusely to passages in the U.S. Code in a way that only experts in transportation funding law are likely to comprehend. For instance, Section 1212 of TEA-21, entitled “Miscellaneous,” includes an earmark for a welcome center in West Virginia. (See Exhibit 3.4.)

**Exhibit 3.4. Stand Alone Earmark:
Welcome Center Authorized in TEA-21**

(f) OHIO RIVER WELCOME CENTER.—

(1) IN GENERAL.—The Secretary shall make grants to establish a welcome center in Point Pleasant, West Virginia.

(2) ACCESS.—The center shall be accessible by motor vehicle, bicycle, pedestrian walkway, and river transportation.

(3) FACILITIES.—The center shall include a comfort station, picnic and sitting plaza, a small amphitheater, a deep river port, a marina, and a walking trail.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$412,900 for fiscal year 1999, \$1,362,500 for fiscal year 2000, and \$699,500 for fiscal year 2001.

(5) APPLICABILITY OF TITLE 23.—Funds authorized by this subsection shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of activities carried out using the funds shall be 50 percent and the funds shall remain available until expended.

The distinctions among earmarks established in these different ways matter most to members of Congress, federal grant seekers, and federal agencies. Congressional authorizing and appropriating committees use different strategies for earmarking,

¹⁶⁸ See SAFTEA-LU, Title 1, Sec. 1114. Highway bridge program, (e) Bridge Set-aside; or 23 USC Sec. 144 (g), as of 1/02/2006.

exercising discretion where they can, and each complains that earmarking by the other infringes upon their own discretion. When authorizers create a program, like JARC, that would distribute funds via a federally administered competitive process, they object if appropriators subsequently earmark the funds for a given fiscal year. Conversely, appropriators typically guard their right to release federal funds for obligation, and they dislike it when authorizers create *ad hoc* programs or set asides for earmarks that possess contract authority, and are not subject to the appropriations process.

How earmarks are established matters to federal and state agencies as well; when Congress earmarks funds, it removes those funds from the control of federal and state agencies, diminishing their discretion. Similarly, local agencies and governments that intend to or do apply for federal discretionary grants are displeased when a published grant solicitation process is disregarded, as the time and resources spent preparing applications are wasted. However, if such local entities are well-positioned to receive earmarks *vis-à-vis* their Congressional delegation, they may not object if competitive grant selection is circumvented.

3.3. *Attaching Legal Significance to Earmarks*

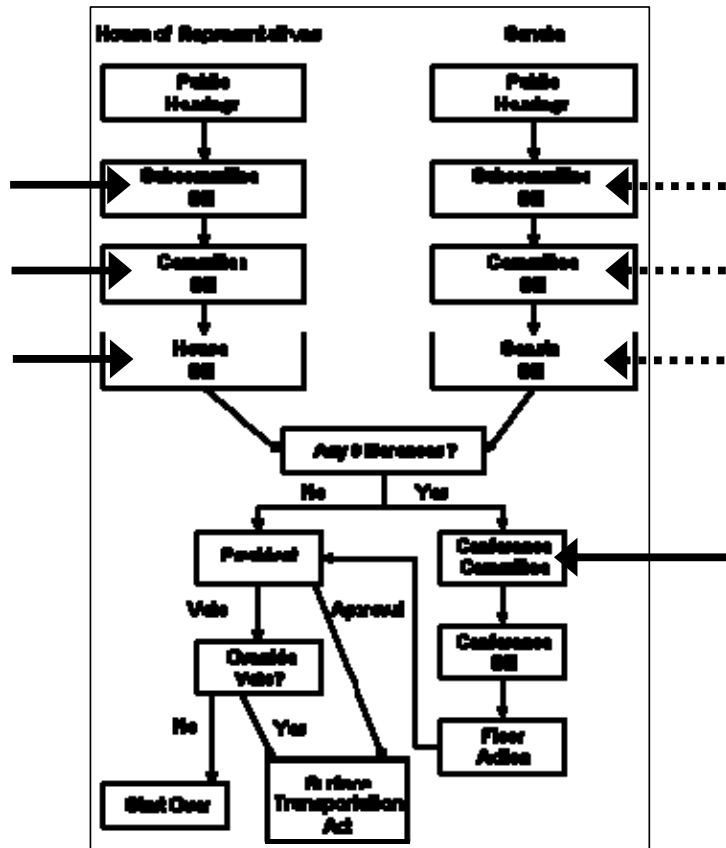
Members of Congress have attached earmarks to transportation legislation in three ways: via statutory language, nonstatutory language, or a more recent hybrid known as “incorporation by reference” that uses both. Statutory earmarks appear directly in the statute, in the text of the law itself, or the accompanying statutory report conference, which reflects the revised product resulting from final House-Senate negotiations. In either case the earmark language identifies the project and the funds for it. Non-statutory earmarks may appear in the “explanatory statement of managers” that accompanies a

conference report. The statement of managers is considered a document that clarifies Congress' legislative intent, but it is not law and not legally binding. Even so, the Comptroller General of the Government Accountability Office has ruled that federal agencies have a "practical obligation" to abide by such non-statutory earmarks.¹⁶⁹ A third way to attach earmarks to legislation combines an abbreviated reference to the earmark in the law itself, with project and funding details in the accompanying managers' statement. In this hybrid approach, also called "incorporation by reference," statutory language refers to the accompanying documents where earmark specifics appear.

The legal status carried by an earmark depends on when and where the earmark is attached to the bill during the legislative process, shown in Exhibit 3.5. The later an earmark is included in the bill, the less scrutiny it is likely to receive. Earmarks inserted during the House and Senate conference, a closed-door session where final agreements are reached, may appear in the conference report or managers' statement. Such earmarks are less visible and receive less scrutiny.

¹⁶⁹ Government Accountability Office, *Congressional Directives: Selected Agencies' Processes for Responding to Funding Instructions* (Washington, D.C., 2008), 10.

Exhibit 3.5. Earmarking Opportunities in the Transportation Authorization Process¹⁷⁰



¹⁷⁰ By convention, the Senate usually does not attach earmarks to a bill until it is in conference. Thus, earlier earmarking opportunities typically unused by Senators are indicated with a dashed arrow.

Seemingly arcane distinctions among the ways of attaching earmarks to bills are relevant to an inquiry into the relationship between planning and earmarking processes. The legal significance of an earmark can shift the balance of discretion between the Congress and agencies responsible for administering federal transportation programs. Ultimately, they also affect federal, state, local and metropolitan discretion over earmarked transportation projects. An earmark's legal status determines whether federal and other agencies have latitude to challenge or change it. Whether agencies exercise that latitude is a separate question. These legal distinctions also show how statutory earmarks are often more visible than those included in the managers' statement or incorporated in statute by reference.

Because earmarking language in the text of a statute itself is legally binding, Congress could use exclusively statutory earmarks to ensure its projects are funded regardless of federal agency challenges. Yet statutory earmarks have disadvantages. For project descriptions designated *in statute*, changes or adjustments can be accomplished only by legislative language. Members may want earmarks that have the legal weight of statute, but also have the flexibility of earmarks included in the manager's report, which may be amended without additional legislation. Statutory language also renders earmarks more visible, as they appear in the text of the law itself. Earmarks in the conference report or accompanying managers' statement, however, are less visible to persons reviewing the statute but not the supporting documents. These differences in visibility may become less prominent in light of the 2008 House and Senate rules requiring open

publication of all earmarks approved in legislation.¹⁷¹ Recently, Congress began using a hybrid approach to combine the benefits of both statutory and report earmarks.

Appropriations earmarking in the Job Access Reverse Commute (JARC) program illustrates how an earmark's legal status affects *de facto* and *de jure* the space a federal agency—and by extension, state, regional and local governments and transportation organizations—has to maneuver vis-à-vis Congress. In a 2001 report, the Government Accountability Office faulted the Federal Transit Administration (FTA) for bowing to non-statutory Congressional direction in selecting grant recipients for the Job Access Reverse Commute program. As the U.S. Department of Transportation (USDOT) operating administration responsible for federal transit programs, FTA was required by law to competitively score and rank all JARC grant applications. Yet, FTA made FY2000 and FY2001 awards to states, localities, and organizations solely based on Congressional direction in appropriation conference reports. The GAO emphatically noted that this practice not only decreased opportunities for potentially meritorious projects but also violated the law:

TEA-21 requires that Job Access grantees be selected on a competitive basis. FTA's allocation of Job Access funds on a non-competitive basis to entities designated in conference reports, or applicants selected by those entities, was not consistent with TEA-21....[T]he conference reports did not impose legally binding requirements and did not provide FTA with a legal basis to deviate from the requirements of TEA-21. Therefore, FTA's use of a noncompetitive process...was not authorized.¹⁷²

However, officials in both federal transit and highway agencies observed in interviews that they typically followed Congressional direction as written in earmarks, even non-

¹⁷¹ See Sandy Streever, *Earmark Reform: Comparison of New House and Senate Procedural Rules*, Congressional Research Report (Washington, D.C.: Congressional Research Service, 2008).

¹⁷² Government Accountability Office, *Welfare Reform: Competitive Grant Selection Requirement for DOT's Job Access Program Was Not Followed* (Washington, D.C., 2001), 4.

statutory earmarks, fearing subsequent retaliation from Congress. One former highway official said,

If it [the earmark] is in statutory language, it's law. FHWA has to abide by it. If it is in report language, it is advisory, but the department has historically been fairly deferential to Congress....Strictly speaking, we don't have to honor something in the report, but usually we did because we knew what the risk would be. Congress could retaliate. It could dock our research funding or travel funds to get back at us. Even report language that wasn't strictly mandated, we would try to abide by.

Interview responses also suggest that Congress has adjusted earmarking practices recently to meet two potential challenges from federal administrative agencies. Such adjustments have yielded the "incorporation by reference" or hybrid earmark. To administer federal transportation funds according to the laws governing those funds, federal agencies may challenge earmarks on two grounds. First, so called "eligibility" challenges arise when the project earmarked in statute or reports is ineligible for the federal funding program designated to pay for the earmark. For instance, the *Washington Letter on Transportation* reports that in the FY 2002 appropriation, as reported by U.S. DOT, officials blocked grant awards earmarked for 49 so-called "orphan projects" totaling \$227 million.

[T]he projects did not qualify for the categories in which they were funded. Examples...included two federal lands highway project earmarks, in Illinois and Pennsylvania, which unfortunately did not touch on any federal lands. Several bridge projects were refused funding by U.S. DOT because federal officials determined that the requested work did not need to be done, or in the case of a Massachusetts bridge, was for construction of bridge approaches, which is ineligible. DOT also blocked funding of some ferry projects.¹⁷³

Federal agencies may also challenge earmarks in a second way, when the project for which earmarked funds are ultimately liquidated diverges significantly from the project

¹⁷³ *Washington Letter on Transportation* 21, no. 219 (May 13, 2002), <http://www.washingtonletter.com> (accessed September 19, 2006).

description in the legislative or report language that originally earmarked it. This typically occurs when an earmarked project changes as it proceeds through planning and design stages. If the Congressional earmark descriptions are specific, a practice most interviewees disliked, the modified project may not align with the initial description, making it ineligible for the funds. Congress has found ways around such challenges in its earmarking practice.

On the highway side, when the FHWA adopted more stringent policy regarding eligibility and revisions for earmarked projects, Congress adopted the hybrid earmark. Early in the first decade of the new century, FHWA faced an increasing number of potentially ineligible or problematic earmarks. The agency articulated its policy: for statutory earmarks, the only solution would be to amend the original earmark language in statute, via a technical corrections bill or other legislative vehicle; for non-statutory earmarks, the agency would make necessary adjustments to the project only if the proper Congressional committees – not an individual member – submitted letters requesting it.

One FHWA official described the development:

[The policy] came about...because we began to get more and more of these phone calls, letters from Congress members, emails from their staff [about an earmark], saying, “Oh! We really meant *this*.” The policy is only applied to report language; in that case, then, the letter can override it, fix it, and clarify it. But not if the earmark is written in statute. So within the past 5 years, this policy was firmed up within FHWA, approved by the administrator and the Secretary. And that’s what we write back to a Congress member if they say, “I meant X, not Y.” Then, we say: “Our policy is...”

This process is not articulated in any formal FHWA guidance, but it is discussed in general terms in a 2008 GAO report¹⁷⁴ and was conveyed through interviews in this project. One state DOT official speculated federal agencies have handled earmarks with

¹⁷⁴ Government Accountability Office, *Congressional Directives: Selected Agencies' Processes for Responding to Funding Instructions* (Washington, D.C., 2008).

increasing scrutiny and decreasing flexibility due to highly publicized earmark-related scandals. The Randy Cunningham defense sector debacle and the Coconut Road earmark in Florida have linked earmarks with political corruption, and the Bridge to Nowhere has made them a symbol of epic federal waste. To avoid culpability, federal agencies have given earmarks less wiggle room.

They've stated as a policy position that they're going to look at these with more rigor...[T]here's been increased attention on the earmarking process at the federal level, not only in transportation but across the board. And I suspect any self-respecting federal agency would say, "Gee why do I want to get in the middle of this? I'll be black and white about this."

Using the hybrid earmark, Congress can avoid such challenges. This type of earmark is written in the statute, making the earmark legally binding. At the same time, however, the project description is located in report language, preserving administrative flexibility. As explained by a U.S. DOT official, the hybrid earmark "allows Congress to tell the administrative agencies what to change [with the earmark], rather than leaving the interpretation of whether the change is allowable up to [the federal agency]."

Additionally, the hybrid allows Congress to earmark discretionary funds irrespective of legal provisions that define allowable expenditures for those funds. When Congress designates hybrid earmarks in a discretionary program,

the committee report will say, for example, spend this money on the following ten bridges. [Because U.S. DOT has discretion over the Bridge discretionary program,] FHWA would say, "One project doesn't fit the program description." But now, the agency cannot say that: the [earmarked] projects are identified in statute.

One federal transit official described a similar Congressional strategy to shield projects from eligibility challenges. Congress has attached the phrase "notwithstanding any provision of law" to programmatic earmarks, ensuring that designated projects will

get the funds, independent of any legal eligibility requirements for specific programs.

Congress has used this approach to earmark FTA's Bus Program, intended for supporting bus purchases:

Congress has changed their approach over the years...[O]riginally they had to earmark it for something that was eligible under our program. Now they no longer do that. They put in this statement "Notwithstanding any other provision of law," which allows them to fund [almost anything]...[O]ne project I'm looking at right now is for pedestrian and traffic street improvements around Lincoln Center, to be funded with FTA discretionary money. Where's the transit link? It's not even going down [to the subway], not even the entrances into the station or anything like that. It's purely a pork barrel project...[T]hey found that transit, with its discretionary program, can be used for anything, whether it has a transit nexus or not.

The respondent quoted above suggested that Congress developed this approach after federal officials began to require that such earmarked projects include legitimate transit elements.

The reason they put in that "notwithstanding any other provision of law" is that, for a while, we as an agency took a hard stance. [For a hospital parking lot earmarked in the bus program], we wouldn't just fund that. We made them have a transit link to it: there had to be buses that stopped there – *something* that would at least give us some nexus.

By using deliberate wording and by positioning earmarking language strategically in bills, conference reports, or managers' statements, Congress has met challenges to its projects advanced by federal agencies.

3.4. *Dissecting the Disreputable Scramble*¹⁷⁵

In current practice, the projects included in an approved appropriation or authorization bill mark the end of a three-stage Congressional process to select projects

¹⁷⁵ The term is borrowed from U.S. President James K. Polk, as quoted in Robin L. Einhorn, *Property Rules: Political Economy in Chicago, 1833-1872* (Chicago: University of Chicago Press, 1991), 69. In his 1846 veto of omnibus legislation that would fund 46 separate river and harbor projects, Polk rejected the "disreputable scramble" for local projects that he believed would inevitably result from federal spending premised on the general welfare.

for earmarked funds. First, in a process that has become increasingly formalized and more visible, individual members assemble their own project requests and submit paperwork to the committee staff working on the bill in question. Until very recently, members' earmark requests have not been public. Second, Congressional committee leaders in charge of the bill define the global terms for earmarking in the legislation, and a set of specific decisions determine the budget ultimately available to individual members for earmarking. Third, individual members, once informed of their available earmarking budget, identify their highest priorities for projects receiving earmarks.

Aiming to show how earmarking works, this three-stage representation is a simplified version of a complicated process. Consequently, it warrants a few caveats. First, the process of a bill's passage is likely to be unique; it may repeat some steps, skip other steps, or involve extra steps or sub-steps. For example, as members assemble their project lists, constituent groups may visit them to lobby for certain projects, or members themselves may solicit candidate projects from constituents. And when committee leaders determine the scope for earmarking, unseen deliberations between chambers and committees are surely involved. Second, this simplified process suggests members of Congress as the sole protagonists. However, federal, state and local governments and transportation agencies, as well as business owners, private interests, and civic groups, along with the lobbyists, government affairs officers, and professional consultants who support them, *all* monitor the earmarking process and may work within it to seek funds for desired projects. Chapters 5 and 6 explore this complexity by discussing earmarking practices of MPOs and their members. Finally, the basic trajectory of a transportation earmark as captured by this study reflects the process as it existed in the late 1990s and

early 21st century. Because Congressional earmarking is a dynamic behavior, the process described here likely does not accurately reflect earmarking in earlier or future decades. For instance, as the majority of data for this study was being collected, both the House and Senate passed similar new rules requiring each body to disclose the name of an earmark's sponsor, as well as the earmark's purpose and intended beneficiaries.¹⁷⁶ Congressional practices will almost certainly evolve in response to these and future changes. For now, however, this three-stage model conveys a basic organizational framework for the earmarking process.

3.4.1. Paperwork: Earmark Requests Forms and Formalization

For the local and state transportation agencies, mayors and county officials, transit operators, private interests, non-profit groups, and members of Congress themselves, the process for designating earmarks begins at the ethereal moment when transportation interests begin talking more about the next bill than the current one. For example, in January 2002, the U.S. Congress convened public hearings to begin the process of drafting a new transportation authorization bill. With the current bill, TEA-21, set to expire on September 30, 2003, and with a new bill on the horizon, parties seeking authorization earmarks would already have been thinking about their projects. A more palpable herald of earmarking's first phase is the "Dear Colleague" letter circulated by the committee or subcommittee responsible for the bill; the letter announces the approaching appropriation or authorization and asks House or Senate colleagues for their desired projects. A project request form accompanies that notice.

¹⁷⁶ David Kirkpatrick, "In Reversal, Senate Endorses Plan on Disclosing Earmarks," *New York Times*, January 13, 2007; Kirkpatrick, "House Tightens Disclosure Rules for Pet Projects," *New York Times*, January 5, 2007.

The use of both a specialized form and computer technology to process earmark requests has served to formalize Congressional earmarking practice. The earmark request form also represents an opportunity for greater interaction between transportation planning agencies and Congressional offices, but is an underutilized means of weighing planning considerations in earmark selection.

For each desired project, members are asked complete the request form and submit it by the given deadline. Increasingly, Congressional committees collect the information electronically, through websites and shared computer files. Although House and Senate authorizing and appropriating committees each use their own project request forms, such forms tend to collect similar information about each project, including:

1. the names of the member or members sponsoring the project;
2. the agency or entity intended to receive the project funds;
3. a description of the project (its transportation mode, location, and termini);
4. the amount requested; and
5. the project's total cost.

Several questions address state and metropolitan transportation planning issues relevant to the candidate project. These include:

1. whether the project is in the current Long Range Plan (LRP);
2. whether it is in or expected to be added to the current Transportation Improvement Program (TIP);
3. the project's schedule;
4. the current status of any project work or environmental review; and
5. any potential environmental or financial obstacles for the project.

Blank samples of earmark request forms were obtained for this project. Exhibit 3.6 below presents the "Dear Colleague" letter circulated by the House Transportation and Infrastructure in advance of the TEA-21 reauthorization process and Exhibit 3.7, the accompanying project request form. Additional forms are included in Appendix A.

Exhibit 3.6a.: “Dear Colleague” Letter¹⁷⁷

January 10, 2003

**TEA 21 REAUTHORIZATION:
Member Requests for Highway and Transit
Projects**

Dear Colleague:

The Transportation Equity Act for the 21st Century (TEA 21) ushered in a new compact between motorists, and the user fees that they pay into the Highway Trust Fund, and the Federal government’s investment in our Nation’s highway and transit infrastructure. TEA 21 established funding guarantees and budgetary firewalls that protect these user fees from being spent on unrelated government programs and ensured that those dollars are invested back into the Nation’s surface transportation infrastructure. This investment moves people and freight more safely and efficiently, reduces traffic congestion, improves the environment, and increases economic productivity.

TEA 21 authorized more than \$218 billion for our Nation’s highway, transit, motor carrier, safety, and research programs and is set to expire on September 30, 2003. As the Committee on Transportation and Infrastructure prepares legislation to reauthorize these programs, we will identify specific projects that are of significant importance to the improvement of our Nation’s surface transportation infrastructure. We believe that you, as Members of the House of Representatives, are in the best position to help us identify the particular surface transportation needs of your Congressional District and to propose solutions to address those needs.

If you are interested in having the Committee consider specific surface transportation projects that would improve surface transportation in your District, please notify the Committee by following the instructions below.

1. Complete the attached questionnaire identifying your specific surface transportation needs. The Transportation and Infrastructure Committee has created a website, <http://ushrtrans.house.gov>. It will be up and ready in a few weeks to enable you to submit your request electronically. Due to limited space on the website, answers to each question are limited to 140 characters. You must answer all the questions or the computer program will not accept your form.

¹⁷⁷ U.S. House, Committee on Transportation and Infrastructure, *TEA-21 Reauthorization: Member Requests for Highway and Transit Projects*, January 10, 2003, http://www.house.gov/transportation_democrats/030110_TEA21Quest.htm (accessed September 26, 2006; since removed).

Exhibit 3.6b.: "Dear Colleague" Letter, *continued*

Page Two

2. Should you want to include a more lengthy response to a particular question(s), please elaborate in the hard copy that is to be submitted, as referenced below.
3. In addition to the electronic copy, please complete a hard copy of the questionnaire. Again, please respond to all the questions on the form. The hard copy can either be a printed-out version of the online form or a more detailed and comprehensive reply to the questionnaire.
4. The Committee requires a signed letter, on official letterhead, from the primary Member requesting the project. Each project must have a single primary sponsoring Member. A Member requesting numerous projects can write one letter requesting various projects. This letter should be attached to the hard copy of the completed questionnaire.
5. Project requests with more than one supporting Member must submit a letter signed by all Members who support the project on the sponsoring Member's letterhead.
6. Completed questionnaires and any supporting materials should be submitted to either the Majority or Democratic office of the Subcommittee on Highways and Transit, depending on the party of the primary Member requesting the project. Accordingly, please send the questionnaire and any additional materials to the Subcommittee on Highways and Transit, Majority office (B-370A Rayburn House Office Building) or Democratic office (B-375 Rayburn House Office Building), as appropriate.
7. To be considered by the Committee, each project request must include a completed electronic copy and hard copy.
8. All project requests must be submitted by close of business February 28, 2003.
9. Please check and re-check to make sure you have answered all the questions. If you have any questions regarding the questionnaire or this process, please call the Subcommittee staff (majority staff at ext. 56715 or Democratic staff at ext. 59989) or us.

With your thoughtful assistance in this process, we can ensure that the Committee includes specific projects of significant importance to our national transportation system and that our Nation's urgent surface transportation needs are met.

Sincerely,

Don Young
Chairman

James L. Oberstar
Ranking Democratic Member

Exhibit 3.7a.: Project Request Form¹⁷⁸

**TRANSPORTATION PROJECT EVALUATION CRITERIA,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT**

REMEMBER TO MAKE SURE YOU HAVE FILLED OUT THE ENTIRE QUESTIONNAIRE.

1. Name and Congressional District of the primary Member of Congress sponsoring the project.
2. Other Members supporting the project.
3. If the project is a highway project, identify the State or other qualified recipient responsible for carrying out the project.
4. If the project is a transit project, please identify the project sponsor (must be an eligible recipient of Federal transit funds).
5. Please categorize the project. (Check one)
Highway or bridge _____ Intermodal facility (passenger) _____
Transit rail new start _____ Intermodal facility (freight) _____
Bus, bus equipment, or bus facility _____ Bicycle and Pedestrian _____
Other (please identify) _____
6. Is the project eligible for the use of Federal-aid highway or transit funds under Title 23 or Title 49 of the United States Code?
7. If the project is a highway or bridge project, is it on the National Highway System?
8. Briefly describe the total project.
 - a. Is it part of a larger system of projects?
 - b. What is the total estimated cost of the project?
9. Please identify the specific segment for which project funding is being sought, including terminus points.

¹⁷⁸ Ibid.

Exhibit 3.7b.: Project Request Form, *continued*

10. What dollar amount are you requesting in the authorization for this project or segment of a project?
11. Project Schedule
 - a. What is the proposed schedule and status of work on the project?
 - b. What is the current stage of development of the project? (If the project is a transit new start, please specify whether the project is in alternative analysis, preliminary engineering, final design, has been issued a record of decision, under environmental review, or already has a current full funding grant agreement.)
 - c. Will the requested funding for the project be obligated within the next six years?
12. Project Plan
 - a. Is the project part of the State's long-range plan?
 - b. Is the project included in the metropolitan and/or State Transportation Improvement Program(s)?
13. Is the project considered by the State and/or regional transportation officials as critical to their needs? Please provide a letter of support from these officials, and if you cannot, explain why not.
14. Does the project have national or regional significance? Describe.
15. Has the proposed project encountered, or is it likely to encounter, any significant opposition or other obstacles based on environmental or other types of concerns? If yes, please describe.
16. Describe the economic, environmental, congestion mitigation, and safety benefits associated with completion of the project.
17. Has the project already received funding through the State's federal-aid highway or transit formula apportionments or from other Federal, State, local, or private funds? If yes, how much and from what source?
18. Has the project received funding in a previous authorization act?
19. If the project has received funding in a previous authorization act, please cite the act(s) and amount(s) authorized.
20. Has the project received funding in a previous appropriations act?
21. If the project has received funding in a previous appropriations act, please cite the act(s) and amount(s) appropriated.

Newspaper accounts first reference a 14-point project questionnaire introduced in the late 1990s, around the time of TEA-21, by Bud Shuster, Chair of the House authorizing committee.¹⁷⁹ Interviews with Congressional staffers and federal agency staff suggest the same.

The earmark request forms appear on one hand to bring planning information into the earmarking process, because they ask Congressional sponsors to enumerate project details and planning considerations such as a projects' status in the long range plans (LRPs) and capital program (TIPs). Also, the formal step of having to submit such information to bill drafting committees also compels members of Congress in some cases to consult with transportation agencies and planning organizations about project details, merit, and status.

On the other hand, there is little evidence that Congress weighs this information in earmark selection. The internal workings of the committees, their staff, and individual members in drafting transportation spending bills are not visible, making it hard to say definitively how they use the project information included in request forms. Yet, according to one respondent, the forms' "rigor" is limited.

...[T]here has been in recent years some more rigor put into the [earmarking] process. At least now the [Congressional] committees are passing around forms for members to fill out and so forth...That I would say is somewhat helpful, but I think they don't necessarily stick to that and there are exceptions.

Nor is it possible to know whether project information supplied by members on these forms is accurate; in fact, some interviewees have suggested otherwise.

What is certain, however, is that authorization and appropriation committees do not weigh candidate projects against each other or score project requests against specific

¹⁷⁹ Erica Niedowski, "House Transportation Panel Smells the Bacon," *The Hill*, March 12, 1997.

criteria. Although Congressional staff, lobbyists, and transportation observers interviewed for this study often reported that committees “vet” or “scrub” earmark requests, further probing about this practice revealed that staff typically does not review or rank all projects requests. Instead, they ask members to rank their own earmark priorities, and later match member priorities with earmark-available funding pots. Committee staff may scrutinize more closely those projects likely to appear in the final bill, but they seek primarily to ensure that such projects meet the minimum requirements for federal funding and have required federal matching funds.

Absent systematic vetting by Congressional committees, earmark request forms may serve transportation planning ends by encouraging, though not requiring, individual members or their staff to do due diligence on projects before seeking an earmark. One former House staffer said that the project request forms help individual members to identify good projects for earmarks: “Hopefully, it makes them eliminate the [baloney] before asking the committee for projects.” Having to document a project’s TIP status on the form may, said a Senate committee staffer, “control for the ‘twinkle in a mayor’s eye’ problem,” eliminating pet projects that a mayor wants but for which the state DOT will not provide matching dollars. Use of the form may also spur communication between Congress members and planners more familiar with the project. One DOT planner recalled,

We’ve had some cases where members come to us and say, “Would you help us fill out this form?” That’s another way we interface with them. They’ll say, “I’m going to earmark this thing, and [the committee] wants us to turn in this form. Will you help us fill it in?” We sometimes find ways to have them understand our opinion on the project at the same time. [*Laughter.*] But basically if someone asks for help, we’ll give them the help, whether it’s something we highly favor or something we favor less.

Members likely use the project information inconsistently; some members may seriously weigh a project's status in the regional plan to evaluate requests, and others not at all.

The increasing use of computer and internet technologies to process members' earmark requests is another indicator of formalization in Congressional earmarking practice. Congressional committee staff interviewed for this project report that, since approximately 2003 when Congress began seriously to contemplate reauthorization of the TEA-21 bill, members and their staffs have submitted project requests electronically on a web-based form via the House intranet. On the back end, project requests flow to two separate databases: one managed by Democrats, one by Republicans. No member can view another's requests, even if members serve the same urban region, and only the committee chair may view all requests. This suggests that members of Congress, even those representing the same metropolitan area, compete for earmarks more than they coordinate on them. For appropriations, Senators or their staff are asked to provide project details for their earmark requests by computer disk; committee staff transfer the data to a macro-spreadsheet to manage the requests.

Congressional staff familiar with these processes say technology has made earmarking's dramatic increase possible. Said one former staffer of widespread earmarking in the 2005 authorization:

That's not reflective of the amount of need, that's really about technology, the ability to marshal technology. With that, the government has become a lot more detail oriented. Just as doing a research paper on a computer makes that paper longer, more detailed, you're able to do more. It's about volume and amplification. Technology amplifies volume.

It is unlikely that technological determinism wholly explains earmarking's growth, but computers clearly enable committee staff to manage longer project lists and

more text when drafting bills. Said one respondent, Congressional staff used to catalogue requests alphabetically by member name on index cards before they had computers; that system would be unfeasible for SAFTEA-LU's 6,000-plus earmarks. Because it lacks normative or partisan content, technology is unusual among the explanations typically offered for growing earmarks. Those offered more frequently suggest that Congressional greed and corruption, a federal transportation policy void, or sheer need for infrastructure dollars underlie earmarking's growth.¹⁸⁰

3.4.2. Congressional Power: Cardinals and Other Big Dogs

During preparation and well after submission of their earmark requests, a remaining unknown for most members is the amount of funds they will ultimately be able to claim for earmarks. A series of decisions made by Congressional leadership determines the budget available to an individual member for earmarking. Transportation authorizing and appropriating committees make numerous decisions that define with increasing specificity how the federal transportation program operates. The broadest decisions determine total funding amounts, while the most detailed may determine the fate of specific projects or earmarks. Intermediate choices specify the terms and funding levels under which individual programs and agencies will operate. Through such choices, authorization or appropriation committee leaders define the scope, scale and distributional framework under which earmarking may occur in the legislation.

¹⁸⁰ David E. Luberoff, "The Triumph of Pork over Purpose," *Blueprint: Ideas for a New Century*, (September/October 2001): 31-34; Erich Zimmermann, *Bulldozed: How Taxpayers Get Leveled by Highway Pork*, Taxpayers for Common Sense, 2005, <http://www.taxpayer.net/Transportation/hr3database/bulldozed2.pdf> (accessed January 16, 2006).

For the annual transportation appropriation, for example, the subcommittee chairman—known as a cardinal¹⁸¹—and ranking minority member lay the ground rules for earmarking in the bill. Something similar occurs in the authorization, as the leaders define, first, how much money will be available for earmarks. Then, within that figure, they identify what programs, or accounts, will be available for earmarking. Next, they fix the split of earmarked funds between the majority and minority political parties. The majority typically claims the greater share, but the split may vary from year to year and between House and Senate chambers.¹⁸²

Subsequent decisions determine how much of earmarked funds go to members of the committee responsible for the bill versus other members. Subcommittee leaders and members traditionally secure more than others, as one headline reported about the FY 2002 appropriation: “*Big dogs* in Congress get the big bucks for transportation.”¹⁸³ For other members, the committee weighs seniority, leadership positions on other committees, and vulnerability in an upcoming election to determine a member’s allotment. That decision may also reflect partisan or personal issues such as “who’s been naughty or nice, who’s helped them, and who’s pissed the chairman off,” in the words of one respondent. For example, in the FY 2005 appropriation, many member projects of

¹⁸¹ The term “cardinals” is used to refer to the House and Senate members who chair the various Appropriations Committee subcommittees and who thereby occupy coveted positions of great influence over federal expenditure.

¹⁸² See Joseph White, “Making Connections to the Appropriations Process,” *The Interest Group Connection: Electioneering, Lobbying and Policymaking in Washington*, ed. Paul Herrnson, Ronald G. Shaiko and Clyde Wilcox (Washington, D.C.: CQ Press, 2004).

¹⁸³ Kevin Diaz, “Sabo Proudly Moves Millions for His District; ‘Big Dogs’ in Congress Get the Big Bucks for Transportation,” *Star Tribune*, December 14, 2001. For a more scholarly treatment of the distribution of earmarks or project spoils among members, see David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974), 89-90; and J. White, “Making Connections to the Appropriations Process,” *The Interest Group Connection: Electioneering, Lobbying and Policymaking in Washington*, ed. Paul Herrnson, Ronald G. Shaiko, Clyde Wilcox (Washington, D.C.: CQ Press, 1997).

“The Amtrak 21” were struck by then committee chair Ernest Istook.¹⁸⁴ The 21 Republican members had acted against Istook, a fellow Republican, by supporting greater funding for Amtrak than proposed by the President. After protest by the affected members and negative press, Istook apologized and restored funding for the projects.

As House and Senate Committees enter the joint conference to finalize the bill, committee staff informs members of their budget for earmarks. “The member may have requested 40 projects worth \$100 million, but the staff says, ‘We’ll give you \$10 million. How do you want that allocation spent by individual earmarks?’” explained one Washington observer. Next, the member must identify what projects to include in his or her \$10 million allotment.

Although I have presented these decisions in a linear sequence, they are unlikely to unfold so neatly. Instead, members of Congress may negotiate the scale, scope and distribution of earmarks simultaneously throughout a highly political legislative process. Still, I hope to suggest how these decisions structure the macro terms of earmarking within a bill and how specific earmarks reflect multiple, often nested constraints.

3.4.3. Member Priorities

In the final round, an individual member must decide which priority projects will benefit from his or her earmark budget. Potentially a very sensitive decision, this step is not a public one and thus difficult to observe. When a House or Senate member ranks the projects they wish to receive earmarks, they create winners and losers among their constituents. It is difficult to know how the projects a member initially requests compare

¹⁸⁴ See Dan Morgan, "Hastert to Seek Funds for Cut Road Projects; House Members Vent Anger at Istook," *Washington Post*, December 13, 2004; Lolita C. Baldor, "Simmons Gets Apology, Promise of Connecticut Highway Funds," *Associated Press State & Local Wire*, December 3, 2004; Hans Nichols, "Istook Derails Earmarks," *The Hill*, November 24, 2004.

with the ones he or she ultimately pushes. Silence on both scores shields the member from potentially embarrassing situations, such as having to tell a constituent that their project was low among his or her project priorities when push came to shove.

And while we cannot observe members making these final choices for their earmarked projects, we can reach conclusions about it. First, one reported trend is that many members try to spread their earmark allotment among many projects rather than concentrating the funds on a few. In doing so, members seek to maximize the number of requests funded, even if it means reducing the share for individual projects. This practice begs a chicken and egg question: Do earmarks encourage more requests, or do constituent requests bring more earmarks? While this study does not attempt to answer this question, observations shared by interviewees suggest that the average dollar amount of an earmark is decreasing.¹⁸⁵ Many interview respondents report that, due to this fact, an earmark seldom covers the project's full cost.

Second, given the diversity of Congressional motives and interests, members are likely to select candidate projects and pursue earmarks in their own ways, following individual values, tastes, or preferences.¹⁸⁶ In fact, a few members claim not to pursue earmarks at all.¹⁸⁷ Still, interview responses suggest the outlines of a possible universe of

¹⁸⁵ This observation is likely more accurate for transportation earmarks in appropriation bills than authorization bills. In the introduction to his chronicle of the Cassidy lobbying firm and appropriations lobbying in Washington, D.C., Kaiser suggests that the average size of appropriations earmarks in general had decreased significantly by the late 1990s, while competition for such earmarks had increased. See Robert G. Kaiser, Citizen K Street, *Washington Post* and *Washingtonpost.com*, April 8, 2007, <http://blog.washingtonpost.com/citizen-k-street/>.

¹⁸⁶ Joseph White, "Making Connections to the Appropriations Process," *The Interest Group Connection: Electioneering, Lobbying and Policymaking in Washington*, ed. Paul Herrnson, Ronald G. Shaiko and Clyde Wilcox (Washington, D.C.: CQ Press, 2004).

¹⁸⁷ It is not entirely possible to verify the claims of members who say they do not seek earmarks. The U.S. House has ruled only recently that it will make earmark request letters available for public inspection, and in some cases members likely transmit their requests verbally or even through another member. One respondent interviewed for this study recounted the story of an earmark that one powerful Congressman wanted but that was requested by another member of the state's delegation. The powerful Congressman

member approaches. Former Oregon Senator Mark Hatfield, for example, was known for insisting that transportation agencies in his region outline a set of commonly desired projects, rather than lobby him separately for parochial projects. In contrast, a transportation expert from the New York region, when told of Hatfield's approach, shot back emphatically, "That *definitely* hasn't happened *here*." Some members may be devoted to specific projects, as with New York Congressman Jerry Nadler's longstanding interest in a cross-Hudson freight tunnel. Others may respond to requests brought forward by community groups, agencies, and other district interests, as a matter of constituent service or casework.

Third, U.S. Senators and Representatives may differ in their earmarking behaviors. Congressional scholars in the rational-choice tradition suggest that members of Congress, driven primarily to win re-election, act in ways that explicitly benefit their district constituents.¹⁸⁸ This theory suggests that members of the U.S. House, more than the Senate, would prefer earmarks for narrowly defined projects within the physical space of their jurisdictions, rather than earmarks for larger scaled projects that would produce regional benefits. Earmarks in the *ad hoc* High Priority Projects (HPP) program in the 2005 authorization demonstrate this to some degree; following the statute, Senate-

feared appearing piggish by requesting too much. Further, Senator John McCain, a vocal critic of earmarking who railed against earmarks in the 2007 Presidential campaign, was once himself outed by Sen. Robert Byrd for requesting earmark. When McCain had sought but failed to kill an earmark-laden highway bill and promised to try again, Byrd in turn produced and read aloud on the Senate floor two letters sent by McCain years earlier requesting earmarks for Arizona highway projects. See David Espo, "Byrd Defends His Turf with Unflinching Determination," *Austin American-Statesman*, February 27, 1994.

¹⁸⁸ For the classic exposition of this theory, see David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974). Arnold's later expansion of Mayhew suggests that, absent definitive information about voter views, members of Congress may advance less parochial and more broadly serving legislation when they believe voter support for general interest policies will be forthcoming in the future. See Douglas R. Arnold, *The Logic of Congressional Action* (New Haven, CT: Yale University Press, 1990).

designated HPP earmarks¹⁸⁹ may be used interchangeably for projects in the same state, whereas House-designated HPP earmarks¹⁹⁰ must be spent on the specified project.¹⁹¹

Finally, it seems that if individual members do closely scrutinize projects or evaluate them using the project request forms, such review would occur at this stage, when a member must make his or her final project requests to Congressional committee staff as the bill is finalized.

A coda to this story is the closing drama of finalizing the bill. Several interviewees remarked that a bill's final passage is a messy process in which committee decisions are made quickly and mistakes occur. Committee staff and individual members operate under great time pressure to finalize the bill language, accompanying reports, and project lists, and things can and do go awry. Earmarks may be misdirected and mishandled in the process: Some projects that should be listed in the bill or report are not. Others that should not be, are. And some projects are earmarked incorrectly in one aspect or another. These errors produce the need for a technical corrections bill whereby the House and Senate sponsors of mishandled projects can add corrective language to clarify the earmarks.

3.5. Transparency and Congressional Earmarking

Aspects of Congressional earmarking practice have grown more formalized, and consequently more visible. For instance, Congressional committees have used project request forms as early as the late 1990s. However, details surrounding approved earmarks, proposed earmarks, and earmark requests themselves have remained scarce

¹⁸⁹ Senate projects are numbered 3,677 through 5,173 in Section 1702 of SAFTEA-LU.

¹⁹⁰ House projects are numbered 1 through 3,676 in Section 1702 of SAFTEA-LU.

¹⁹¹ Federal Highway Administration, *SAFTEA-LU High Priority Projects Program: Implementing Guidance*, U.S. Department of Transportation, October 31, 2006, <http://www.fhwa.dot.gov/programadmin/103106att.cfm> (accessed August 30, 2008).

until extremely recently. The House and Senate did not move to make earmarks in legislation more public until after 2005.

The names of Congressional sponsors of *approved* earmarks, i.e. earmarks appearing in finalized legislation, became publicly available for the first time only as of federal FY 2008.¹⁹² By mid-2009, in the 110th Congress, both the House and Senate began to require that any Congressional measure under consideration be accompanied by a list of all earmarks included in that measure or by a statement that the measure is earmark-free.¹⁹³ These self-imposed rules, aimed ostensibly at earmark transparency, make it possible to see earmarks included in draft legislation before it is passed, although there are ways around this.

Still, it remains difficult to see those earmark requests that members submit to a committee but that are not accepted into a proposed bill, conference report or statement of the managers. Although the House and Senate both require explicit public disclosure of earmarks included in legislation and accompanying reports and amendments under consideration, procedures for the disclosure of earmark requests are vague.¹⁹⁴ House rules now require the relevant committee make “open to public inspection” written statements submitted by a member for an earmark in a bill or accompanying report, but it

¹⁹² Office of Management and Budget, *Earmarks Database* [Interactive website], Executive Office of the President of the United States, 2007, <http://www.earmarks.omb.gov/> (accessed November 12, 2007).

¹⁹³ The Senate rule requires more explicitly that details about earmarks in a proposed bill be made publicly available on a website and in a searchable date format at least 48 hours prior to the scheduled vote on the bill. Both the House and Senate require that, for requested earmarks, certain information be provided: the sponsoring member; the name and address of the earmark recipient or the intended location of the earmarked activity; anticipated beneficiaries of the earmark; the earmark’s purpose; and a certification that the member has no financial stake in the earmark.

¹⁹⁴ Megan Suzanne Lynch, *Earmark Disclosure Rules in the House: Member and Committee Requirements*, Congressional Research Report (Washington, D.C.: Congressional Research Service, 2008); ---, *Earmark Disclosure Rules in the Senate: Member and Committee Requirements*, Congressional Research Report (Washington, D.C.: Congressional Research Service, 2008); Sandy Streeter, *Earmark Reform: Comparison of New House and Senate Procedural Rules*, Congressional Research Report (Washington, D.C.: Congressional Research Service, 2008).

is unclear how this is accomplished. Prior to these rules, earmark reform proponents argued that earmark requests should be public, but the Freedom of Information Act (FOIA) establishes no right of access to such Congressional records.¹⁹⁵

Without straightforward access to earmark requests, it is impossible to know how many requests are made for a given bill, by whom, or for what, or to know the ratio of earmarks requested to those granted. News accounts suggest that for FY 2008, the House Appropriations Committee received from 30,000 to 36,000 total requests *across all sectors*.¹⁹⁶ For FY 2007, requests to the House numbered over 21,000 and for FY 2006, over 34,000, again across all sectors.¹⁹⁷ It's impossible to know how many of those are for transportation earmarks. In the early stages of TEA-21 reauthorization in 2003, House Transportation and Infrastructure Committee Chair Don Young of Alaska reported that members had submitted over 5,300 project requests worth more than \$500 billion for the bill, and Young argued that these indicated need for increased highway and transit spending.¹⁹⁸ Authorization debates lasted two more years, and more requests were surely added in the interim. For the previous authorization in 1998, newspaper accounts suggest that members submitted between 1,300 and 1,500 project requests.¹⁹⁹

¹⁹⁵ The federal Freedom of Information Act does not apply to elected officials of the Federal Government, including U.S. senators and representatives. The scope of FOIA does not extend to Congress as it is assumed that "[v]irtually all official records of the Congress are available to the public" through the Congressional Record, published bills, committee reports, and hearings, and that "almost all activities of the Congress take place in public" in open and frequently televised sessions of the House and Senate. See U.S. House, Committee on Government Reform, *A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records*, September 20, 2005, <http://www.fas.org/sgp/foia/citizen.html> (accessed February 10, 2008).

¹⁹⁶ *New York Times*, "The Road to Somewhere," June 9, 2007; *Chicago Sun-Times*, "Keep Earmarks Where Public Can Eye Them," June 8, 2007.

¹⁹⁷ Alex Daniels, "Earmarks Not Issue, Berry Says of Budget," *Arkansas Democrat-Gazette*, May 29, 2006.

¹⁹⁸ Don Young, "Transportation Funding Both Vital and Attainable," *The Hill*, May, 14, 2003.

¹⁹⁹ Ben Pershing, "Want a Highway Project Next Year? The Road Starts Here," *Roll Call*, April 3, 2003; Susan Greene, "Bridge Would Bypass Dam," *Las Vegas Review-Journal*, April 24, 1997.

In sum, the formalization of some pieces of the earmark request process, via earmark request forms and enabling technologies, make the earmarking process more visible and also increase opportunities for interaction between Congressional offices and earmark seekers. However, earmark requests have become available for public inspection only recently and, at that, only for those who visit committee offices in person. These circumstances underscore the fact that key pieces of earmarking practice—including Congressional decisions over which accounts will be earmarked, members' allotments, and the ultimate selection of projects—still operate far from the public's view.

3.6. The Earmark Exception: Transit New Starts

A certain group of Congressional designations for fixed-guide way transit capital projects, called "New Starts," are commonly referred to as earmarks, but are in fact quite different from other Congressional earmarks, as defined in this study. The process for designating funds for New Starts projects differs significantly from the largely Congressional process detailed in the preceding sections, *Paperwork, Power, and Priorities*.

As established at the start of this dissertation, I define earmarks as funds designated in federal authorizations and appropriations acts for discrete place-based transportation projects that involve either physical construction or improvement of a transportation facility or related structure; capital acquisition for transportation services or facilities, such as a bus or rail-car purchase; or specific research or planning studies or analyses that would examine either type of project. Project specific earmarks are of interest because (a) they may increase or guarantee the chances of receiving federal funds

for the project, and (b) they specify the nature of the project, eliminating much federal, state, or metropolitan agency discretion regarding what the project will do. Earmarks shift the discretion over which projects to fund from the governments and public agencies to members of Congress.²⁰⁰

The Federal Transit Administration (FTA) program known as New Starts appears to be the largest source of transit earmarks, but these projects are very different from other earmarks discussed in this study. Through the New Starts process, FTA identifies the most meritorious New Starts candidates for funding based on project readiness, project justification, financial assessments and other factors. While individual New Starts projects must receive a Congressional designation of funds in order to use federal dollars, and while this Congressional action resembles an earmark, no New Starts project that would receive \$25 million or more is eligible for those Congressionally designated funds unless FTA successfully screens, vets and rates the project.²⁰¹

Given the centralized administrative and competitive process through which *most* New Starts projects must pass, I do not count New Starts funding designations as earmarks.²⁰² This is a modest simplification, because some New Starts projects—those for smaller dollar amounts—are in fact earmarked in the sense used in this study. That is, for projects that FTA has not rated highly or yet evaluated, members of Congress can

²⁰⁰ This is guided by the definition applied by the Congressional Research Service. See Congressional Research Service, Appropriations Team, memorandum, 26 January, 2006, *Earmarks in Appropriation Acts: FY1994, FY1998, FY2000, FY2002, FY2004, FY2005* (Washington, D.C.: Congressional Research Service), <http://www.fas.org/sgp/crs/misc/m012606.pdf> (accessed March 18, 2006).

²⁰¹ For projects that have FTA approval for a full-funding grant agreement (FFGA), Congress must still earmark the funds in an appropriation if the projects will draw on those funds. Federal Transit Administration, *New Starts Project Planning & Development*, Planning & Environment, U. S. Department of Transportation, http://www.fta.dot.gov/planning/planning_environment_5221.html (accessed June 25, 2009); see also Donald Emerson, "FTA New Starts," *Roads and Bridges*, April-May, 2002, <http://www.roadsbridges.com/FTA-New-Starts-article3044>.

²⁰² This is consistent with the approach used in Congressional Research Service studies of transportation earmarks.

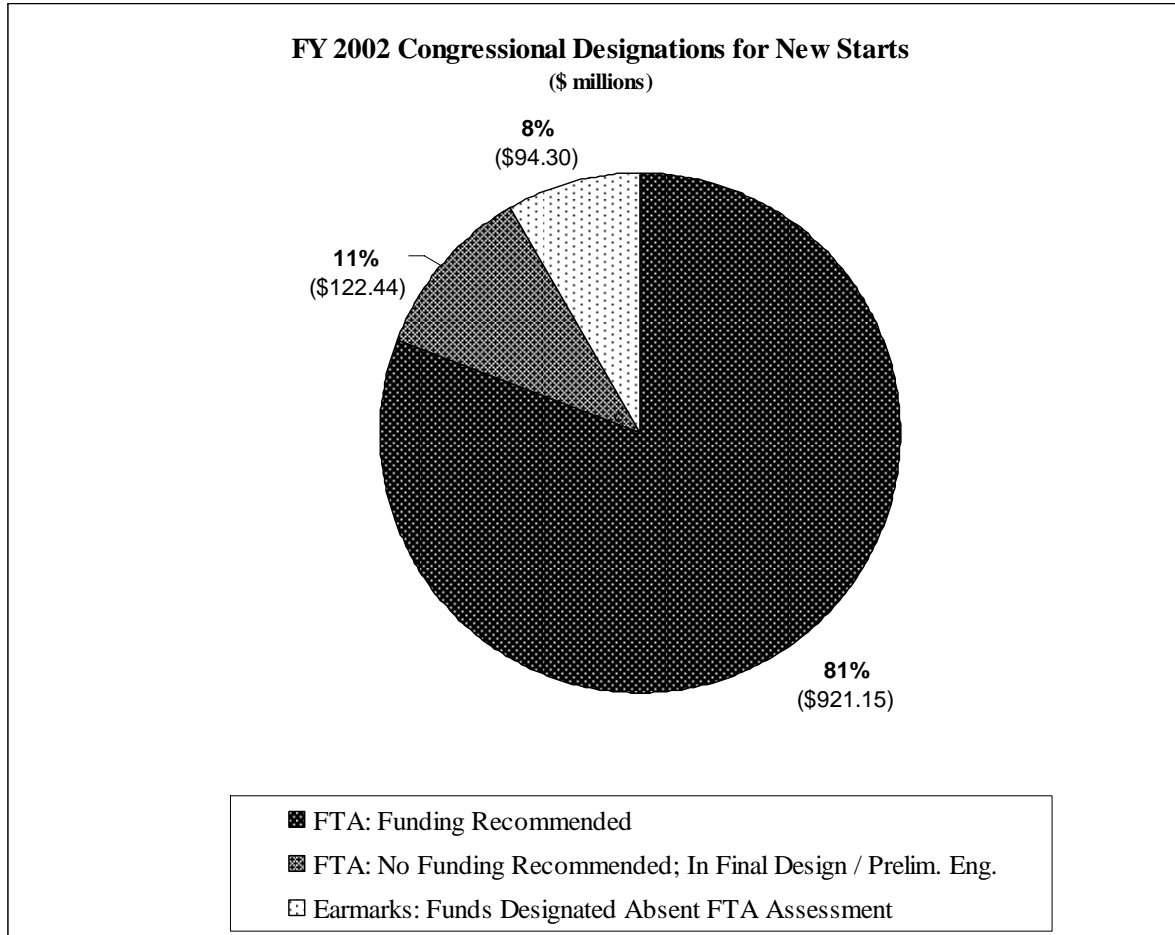
designate smaller amounts for these projects, commonly seen as seed money, through the New Starts program.

These distinctions are illustrated in Exhibit 3.8. Congress appropriated over \$1.1 billion for FTA capital grants for new rail-based transit systems in FY 2002; of that, Congress designated over 80 percent (\$921 million) for 29 projects that FTA had already recommended for funding. These projects received New Starts grants averaging \$31.8 million. However, Congress also awarded 8 percent of New Starts funds that year (\$94 million) for 25 projects that had not been reviewed by FTA; such project received much smaller grants, averaging \$3.7 million. These smaller grants are earmarks as defined in this dissertation. Eleven percent of the funds went to an intermediate group of projects that Congress had reviewed and that were in preliminary stages of development, but that the FTA had not identified as priorities for recommended funding that year. These, too, are earmarks in that Congress designated funds for the projects completely at its own discretion; however, it is possible that in some of these cases FTA would later recommend them for funding, and the FY 2002 earmark would give the project a head start.²⁰³

²⁰³ Author's analysis using earmark data from the FY 2002 appropriation and using Federal Transit Administration's "*Annual Report on New Starts, Proposed Allocations of Funds for Fiscal Year 2002*" (Washington, D.C.: Federal Transit Administration, 2001).

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Exhibit 3.8. Not All New Starts Awards are Earmarks



In summary, Chapter 3 focuses on how Congress creates earmarks for transportation projects in federal transportation funding legislation. It distinguishes earmarks in authorization bills from those in appropriation bills, and discusses how a member's chances for securing earmarks in one type of bill depends on his or her committee assignments, seniority in Congress, and other factors. Further, it reveals that local governments and public agencies that plan and implement transportation projects may prefer authorization earmarks for transportation investments with long project development timelines, and appropriation earmarks for projects that are "shovel-ready."

The chapter also traces the mechanics through which Congress attaches earmark language to transportation funding bills, producing statutory earmarks, non-statutory earmarks, and hybrid earmarks incorporated by reference, each carrying a different level of legal obligation for earmark recipients. These strategies are dynamic, and Congress has evolved its approach to legislating earmarks in response to various challenges mounted against earmarks. Finally, the chapter breaks down the earmarking process into three major—and overlapping—steps. First, the Congressional committee charged with shepherding a funding bill through Congress solicits members for earmark requests, and individual members respond with recommendations for project earmarks. Committees have increasingly employed earmark request forms to collect members' transportation project recommendations, as well as electronic communications to process these forms. Second, leadership of the relevant Congressional committees and subcommittees structure not only the macro terms for earmarking within a bill, but also the micro terms that ultimately establish an earmark budget for individual committee and other Congress members. Third, because original earmark requests typically outstrip these budgets,

members seeking earmarks indicate their highest priorities to the committee as the bill is finalized.

This picture of the Congressional earmarking process revealed here is vital for understanding the relationships between Congressional earmarking and metropolitan planning, this dissertation's core interest. We learn, for instance, that the process by which Congress members request earmarks from the relevant committees has become increasingly formalized and has evolved to include transportation planning information, such as an earmark candidate's status in regional plans and funding programs. Yet, there is no formal or uniform process to ensure that Congress members or their staffs use such information to vet earmark requests accordingly, and it is unclear that such vetting happens to any significant degree. Further, Congress has taken steps to make earmarks more transparent in the legislative process. However, significant pieces of Congressional earmarking practice operate invisibly, and original earmark requests themselves, while available for public viewing in theory, are not readily accessible.

Chapter 4 will expand this picture of the Congressional practice by showing how Congress has funded earmarks. Together, chapters 3 and 4 together set the stage for the study of MPOs' earmark-seeking practices in chapters 5; their *post hoc* responses to earmarks in chapter 6; and subsequently the case studies of MPOs in Dallas-Fort Worth and New York presented in Chapters 7 and 8.

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Chapter 4: The Earmark Shuffle: Following the Money

*[I]t wasn't money that was new. It was rearranging existing money.*²⁰⁴

As the transportation authorization bill SAFTEA-LU (“safety-loo”) neared passage in 2005, the dollar total for its 6,000 plus earmarks drew attention from watchdog groups and newspapers around the country. The Council for Citizens Against Government Waste, publisher of the annual volume *Porkbusters*, noted that “nearly 6,500 pork-barrel projects stuffed into the bill by members of Congress...total more than \$24 billion, or nearly 9 percent of the total spending.”²⁰⁵ A separate editorial called the bill a “porcine atrocity,”²⁰⁶ and a consortium of budget groups urged President George Bush not to sign it as it defied his administration’s calls for deficit reduction. But did the earmarks really cost that much, adding to federal transportation spending and to the deficit? If so, where did the \$24 billion come from? Without earmarks, would the bill really have cost 9 percent less? And was their price tag really the most objectionable feature of these earmarks?

This chapter results from my efforts to understand how Congress pays for transportation earmarks. It describes the major budgetary mechanisms that Congress has used in recent practice to fund transportation earmarks, and it shows that these mechanisms do far more to redistribute than to add to existing federal transportation expenditures. This finding deflates much of popular political discourse about earmarks,

²⁰⁴ Interview respondent.

²⁰⁵ Council for Citizens Against Government Waste, *CCAGW Urges President Bush to Veto Highway Bill: Watchdog Groups Expose Budget-Busting Gimmickry*, August 5, 2005, http://councilfor.cagw.org/site/News2?abbr=CCAGW_&page=NewsArticle&id=9178, (accessed March 7, 2008).

²⁰⁶ “Spendaholics R Us; Even King of Spin Can't Make GOP Look Good.” *The San Diego Union-Tribune*, October 6, 2005, sec. B. Editorial.

which has seized on the flawed notion that earmarks grossly bloat federal transportation spending.

At the same time, the chapter shows how transportation earmarking, while dollar neutral on the whole, in fact creates significant inefficiencies for local and state governments and agencies. Earmarking unsettles the expectations of and unravels the federal policies that structure how these actors plan for urban transportation systems, creating inefficiencies for them. Such impacts have received scant attention in discussion about earmarking of federal transportation funds.

While not a comprehensive inventory of every earmark-enabling maneuver available to or ever used by Congress, Section 4.2 of this chapter delineates the primary universe of budgetary mechanisms in operation in recent years, when Congress has dramatically expanded the scale and scope of transportation earmarking. In brief, Congress makes funds available for earmarks by:

- (1) reallocating discretionary money;
- (2) reserving a portion of formula funds otherwise distributed to states;
- (3) including earmarks in the scope of equity programs (below-the-line);
- (4) excluding earmarks from the scope of such programs (above-the-line);
- (5) redirecting surplus revenue (so-called RABA bonus);
- (6) rescinding previously granted budget authority; and
- (7) tapping U.S. general funds.

In all but two of these mechanisms, above-the-line and general fund earmarks, Congress uses dollars that it has already made or would make available for other transportation purposes in order either to designate those dollars for transportation earmarks directly or to offset the cost of earmarks indirectly. Just as Congress develops new ways of linking earmark language to funding legislation, shown in Chapter 3, it steadily pioneers ways to

fund earmarks, typically from existing Federal transportation funding sources, and typically through maneuvers that are oblique and difficult to trace.

In addition to highlighting the largely redistributive nature of Congressional earmarking practice in transportation, the chapter illuminates the real and troublesome consequences that earmarking creates for transportation and planning organizations. It shows how the redistributive mechanisms that support earmarking significantly unsettle the expectations around which metropolitan planning bodies and their members establish plans for transportation investment, creating significant inefficiencies in the process. It further shows how these dislocations unravel federal transportation policy that has mandated and defined the metropolitan transportation planning process and the explicitly metropolitan organizations responsible for delivering it.

The account of earmarking finance presented here draws from close examination of earmark provisions in recent transportation spending bills, interviews of experts in transportation finance and policy, and transportation policy newsletters produced by several D.C. based organizations. Among those consulted for their expertise in transportation finance were leaders of various transportation policy organizations, Congressional committee staff, lobbyists, and federal and state agency leaders.

4.1. Earmarks' Effects: Unsettled Expectations, Deflected Discretion

4.1.1. Earmarks Redistribute Funds and Discretion

Let us return to the question posed at the beginning of this chapter: Had Congress not earmarked projects in the 2005 SAFTEA-LU authorization bill or in the appropriation bills subsequent to it, what would have happened to the funds for those projects?

As the study of budget mechanisms behind earmarks will make clear in Section 4.2, evidence suggests that on the whole earmarking more commonly redistributes than adds to available funds within a single spending bill. In most instances, Congress does not create new spending authority, also called “contract authority” or “obligation authority,” for earmarks.²⁰⁷ Instead, it mostly redirects existing authority from other programs or portions of the federal transportation budget to a program that it earmarks. Thus, earmarks generally do not increase the total funding amounts in a transportation bill; without earmarks, most bills would authorize or appropriate the same level of funding.

And so, earmarks redistribute funds among programs and recipients, registering on one hand as largely dollar neutral to a bill on the whole. On the other hand, this redistribution—and how it is accomplished within the legislation—recasts winners and losers among state and local governments, transportation agencies, and other entities that rely on federal transportation funds. Earmarks upset the settled expectations about which parties might gain what benefits from specific programs without earmarks.

This finding contradicts the conventional wisdom about transportation earmarking in media reports, which portray earmarks as purely additive. Typical news coverage of these earmarks highlights the dollar amount earmarked, suggests that earmarks balloon the bill’s price tag, and further implies that such expenditures could be avoided if Congress were more disciplined.

This study shows that such suggestions are inaccurate. More significantly, such accounts also ignore the vast redistribution of transportation funds and discretion that

²⁰⁷ I find few instances where earmarks unambiguously add to total transportation spending. This may occur when earmarks are included in the scope of the Minimum Guarantee Program, as explained in Section 4.2.3, or when U.S. General Funds are made available for earmarks.

earmarks do accomplish. For planning, these redistributive impacts are problematic and inefficient. Earmarks reallocate federal funds and the discretion to spend among them different transportation players, thereby altering the assumptions under which state, metropolitan and local transportation agencies and governments operate to plan and execute transportation improvements. Earmarks unsettle the settled expectations these agencies have developed about their budgets and how they may use them, adding uncertainty and inefficiency to the planning process.

4.1.2. Uneven Impacts and Unsettled Expectations

Without earmarks, the structure of federal transportation funding itself creates winners and losers, via what programs are funded, to what level, and what interests benefit from those programs. That structure is a foundation for expectations about how much funding a state or local agency receives, and how much discretion they exercise over that funding. Earmarks unsettle those expectations, as Congress redirects funds on which other players may have established claims and designates those funds for earmarks. Earmarking that appears dollar neutral across an entire authorization or appropriation, can be simultaneously redistributive for federal, state, and local transportation players.

Features that define federal transportation funding, such as programs, funding formulae, and distributional equity provisions, nurture claims to and expectations about federal funding among different players. For instance, state DOTs have come to rely on a group of federal highway programs—known as the “core programs”—of which state transportation departments have been the traditional beneficiaries. Such expectations are

embedded in the institutional identities of federal, state, and local recipients of federal funds.

Earmarks *interact with* these institutionalized features of federal transportation finance to reshape who wins and loses. Earmarking maneuvers can shift funds from one federal program to another or from one federal agency to another; from one state to another; and—within the same state—from one region to another. The impacts on funding and decisionmaking that players experience from earmarks depends on their institutional position; the aphorism “Where you sit is where you stand” applies.

For example, earmarks supported by funds deducted from the core programs may reduce federal funds for one state transportation department but increase them for another. Or, earmarks that Congress carves from discretionary transportation programs—and within established funding limits for those programs—do not change the total amount spent, but they do shift discretion for those funds from federal agencies to Congress. Further, a specific state or transportation agency might benefit greatly from that discretionary earmarking, while another agency loses out.

Individual transportation interests benefit variously from the myriad features of federal transportation funding. Consequently, as Section 4.2. illustrates, the different budgetary maneuvers used to accommodate transportation earmarks create winners and losers among institutional players in transportation.

4.1.3. Oblique Maneuvers Elude Precise Accounting

While transportation earmarks clearly do more to redistribute than add to transportation spending, it is difficult and perhaps not possible to state the precise financial impact of earmarks on the total transportation budget or on individual players.

In part, this is so because Congress may enact earmarks that seem to add to transportation spending alongside other budget measures that cancel out the effects of those earmarks on spending. Further, it is difficult even to trace such maneuvers; in spending legislation, the budgetary mechanisms that support earmarks are often decoupled from the earmarks themselves. More so, the net financial impacts of earmarks are elusive due to inherent limitations to research of this nature and familiar to social scientists using the real world as a laboratory. To pose the counterfactual question: “How much would the bill have cost without earmarks?” suggests we can say with certainty how Congress would have behaved with respect to a given bill had it not employed earmarks. In some cases, where Congress has used earmarks to override an established feature of federal transportation spending, this is possible; in other cases, how Congress might have used those transportation funds without earmarking is a speculative matter.

4.2. The Budgetary Mechanics of Earmarking

The material that follows deciphers how Congress pays for earmarks. To do so, it examines how Congress makes budget authority available for earmarks. Budget authority is the legal authority to incur obligations, for instance by entering into contracts, that will require the outlay or spending of federal funds. Federal budget authority frees MPOs, state transportation departments, transit operators, and other entities slated to receive federal funds to make financial commitments that will later draw on those funds. Typically, an authorization bill identifies what funding will be available, and an appropriation act is required subsequently to actually grant budget authority, or “obligation authority.” However, some highway programs are vested with special kind of

budget authority, known as “contract authority,” through the authorization bill alone.²⁰⁸

Once federal and state agencies are granted budget or contract authority for anticipated transportation funds, they may take steps to obligate those funds, for example by seeking federal approval for project designs and cost estimates, and then by contracting with planning, engineering, design, or construction firms to provide desired services.

As I have emphasized, Congress does not create new budget authority for transportation earmarks in most instances. Instead it may redirect or reallocate budget authority that already exists, thereby avoiding an absolute increase in transportation spending, and use it to support earmarks directly or to offset their budgetary impact indirectly. While I do not exhaustively catalogue the budgetary techniques Congress has used to support earmarks, I suggest the primary set of budgetary mechanisms in operation in recent years, when the scale and scope of transportation earmarking have expanded significantly.

First, Congress may shift the budget authority to spend funds from one discretionary program to another program it has identified expressly for earmarking. Second, Congress may deduct a percentage “off the top” of funds authorized for other programs and appropriate those funds for earmarks. Third, Congress may include the budget authority for *ad hoc* earmarks in the scope of state-state equity program calculations, counting earmarks below-the-line. Fourth, it may do the opposite with above-the-line earmarks. Fifth, it may redirect to earmarks surplus funds, called

²⁰⁸ Congress typically makes budget authority, also called obligation authority, available by appropriating funds in annual appropriation bills. Because most highway funding comes from a dedicated Highway Trust Fund supported by federal motor fuel taxes and other user fees, Congress may also grant special budget authority or “contract authority” for transportation funds directly in an authorization bill. Highway Trust Fund dollars cannot be used for other federal discretionary spending, and “contract authority” programs funded from them do not require subsequent appropriation, allowing intended recipients to take steps to spend any funds once they are authorized.

“RABA” bonus, which would otherwise be apportioned among state transportation departments following statutory formulae. Sixth, using its power of rescission, Congress may clear budgetary headroom for earmarks by retracting from prior laws budget authority that has not yet been obligated. Using a final budgetary strategy to enable earmarks, Congress may earmark projects with funds that seem clearly to add to transportation spending, by making available budget authority for amounts that otherwise would not be available for transportation. This practice is mostly associated with so-called demonstration projects in the pre-ISTEA era. It is sometimes practiced in appropriations now, where General Fund moneys are made available to support earmarks.

4.2.1. Reallocating Discretionary Money

One way Congress finds funds for earmarks is by reallocating budget authority from discretionary programs to earmarked projects. Early in the transportation appropriations process, the committee and subcommittee chairs and ranking members of the minority party identify programs that will serve as funding pots for Congress to earmark. Typically, these are discretionary, or allocated, programs. Without earmarking, agencies within the U.S. DOT award funds for such programs at their discretion, typically following a competitive grant solicitation. With earmarking, Congress earmarks some or all of the funds previously authorized for such programs. It may also shift additional funds into the program from another source, increasing the dollar amounts available for members’ projects. Earmarking in the Transportation and Community and System Preservation (TCSP) Pilot Program as well as the Bus and Bus Facilities Program illustrates the strategy.

Congress established the TCSP program in the 1998 authorization (TEA-21) as an allocated program. States, MPOs, and local governments would submit candidate transportation projects, and the U.S. DOT would award TCSP grants based on merit, choosing projects that best served smart growth aims by improving transportation efficiency, reducing transportation-associated environmental impacts, and reducing the need for costly infrastructure investments.²⁰⁹ In subsequent appropriations, however, Congress increasingly earmarked the funds authorized for TCSP and ultimately shifted even more budget authority into the program for earmarking.

In FY 2000, Congress appropriated the \$25 million originally authorized for TCSP and moved into the program an additional \$10 million intended for Federal Highway Administration (FHWA) administrative expenses. Of the total \$35 million for TCSP, Congress earmarked \$21.7 million for 39 different projects designated in the appropriation conference report.²¹⁰ (See Exhibit 4.1.) In FY 2001, Congress again shifted FHWA administrative funds—this time, \$25 million worth—into the TCSP program, which when added to the initial \$25 million authorized that year, made \$50 million available for the program. Congress earmarked all of it. Through its merit based grant solicitation, the FHWA had received 298 applications from 46 States for projects

²⁰⁹ *Transportation Equity Act for the 21st Century*, Public Law 106-178, Sec. 1221; Office of Human Environment, Federal Highway Administration, "Transportation and Community and System Preservation Pilot Program" (Washington, D. C.: U.S. Government Printing Office, 2001). See also U.S. Department of Transportation, Office of Public Affairs, "U. S. Transportation Secretary Slater Announces \$47 Million in Grants to Help Make Communities More Livable," news release, October 27, 2000, <http://www.fhwa.dot.gov/pressroom/fhwa0065.htm> (accessed March 12, 2008).

²¹⁰ Office of Human Environment, Federal Highway Administration, "Transportation and Community and System Preservation Pilot Program Third-Year Report." (Washington, D.C.; U.S. Department of Transportation, 2001).

worth over \$196 million that year, but no funds remained for the agency to make discretionary awards.²¹¹

The TCSP example shows how Congress creates winners and losers by redistributing authorized funds to support earmarks. Although Congressional intent in this example is uncertain, interview data suggest it may have been a deliberate swipe at FHWA for some perceived executive agency misstep. Several federal transportation officials interviewed mentioned instances of Congressional retaliation after U.S. DOT agencies had challenged earmarks. In one case, an FHWA bureau refused to release funds for earmarked projects it judged ineligible; the following year, Congress reduced that bureau's administrative budget authority and redirected it to further earmarks. Officials described other punitive measures like requiring an agency to document its budget in excessive detail. Below, one official says the potential for possible retaliation leads executive agencies to defer to Congressional earmarks:

If [an earmark] is in report language, its advisory...Strictly speaking, we don't have to honor [it], but usually we did because we knew what the risk would be. Congress could retaliate. It could dock our research funding or travel funds.

²¹¹ Using a budgetary bonus called RABA, discussed below, Congress infused TCSP with even more funds for earmarking in FY 2002.

Exhibit 4.1. Shifting Funds from Agency Administration to TCSP Earmarks²¹²

TRANSPORTATION AND COMMUNITY AND SYSTEM PRESERVATION PROGRAM

The conference agreement provides a total of \$35,000,000 for the transportation and community and system preservation program, of which \$10,000,000 are derived from the administrative takedown. Within the funds available for the transportation and community and system preservation program, funds are to be available for the following projects and activities:

<i>Project</i>	<i>Conference</i>
Alabama Department of Transportation Statewide Dock Inventory Assessment	\$400,000
Albuquerque Downtown Transportation Management Program	600,000
Anchorage, Alaska Ship Creek redevelopment & port access planning	500,000
Arlington County, Virginia pedestrian, bicycle access and other transit improvements	500,000
Burlington, Vermont North Street revitalization project	400,000
City of New Haven, Connecticut trolley cars	250,000
City of Warwick, Rhode Island, Station Redevelopment Planning	300,000
Community and environmental transportation acceptability program of southern California	500,000
Concord, New Hampshire "20/20 Vision" small community planning guide	400,000
Denver, Colorado 16th Street Pedestrian Improvements	500,000
Desert Research Institute Air Quality Study	500,000
DuPage County, Illinois transportation alternatives development	750,000
Fairbanks, Alaska Riverwalk Centennial Bridge community connector project	1,000,000
Florence, Alabama pedestrian and other transportation improvements	1,000,000
Fort Worth, Texas corridor redevelopment and transit linkages	1,500,000
Green Bay, Wisconsin pedestrian improvements and livable communities projects	750,000
Houston, Texas Main Street corridor livable communities	500,000
Jackson, Mississippi Pearl River Airport Connector Study	1,000,000
Kalispell, Montana Bus Barn Facility	400,000
Knoxville, Tennessee electric transit project	500,000
Lufkin, Texas Small Town Livability Demonstration Project	400,000
Metrowest regional transportation study, Massachusetts	250,000
Monmouth County, New Jersey pedestrian improvements	300,000
Montclair New Jersey connection transit livable communities	250,000
Muncie, Indiana community connectors	250,000
New Rochelle, New York intermodal center	500,000
North Jersey transportation planning authority	800,000
Northwest Michigan transportation use initiative	125,000
Omaha, Nebraska "Back to the River" community project and pedestrian access	2,000,000
Pennsylvania Avenue traffic mitigation measures	500,000
Putnam County, West Virginia—Route 35 management plan	450,000
Raton, New Mexico historic rehabilitation project	600,000
Richmond, Virginia Main Street intermodal facility	1,750,000
River Market/College Station, Arkansas livable communities	750,000
San Francisco, California civic center plaza	1,075,000
South Amboy, New Jersey regional multimodal transportation initiative	250,000
State of Oregon TCSP Program	500,000
Utah-Colorado "Isolated Empire" Rail Connector Study	1,000,000
White Plains, New York TRANSCENTER pedestrian improvements	1,000,000

²¹² U.S. House, *Making Appropriations for the Department of Transportation and Related Agencies for the Fiscal Year Ending September 20, 2000 and for Other Purposes*, 1999, H. Rep. 106-355.

A second example of shifting money to fund earmarks occurs in the Federal Transit Administration's Bus and Bus Facilities Capital Investment Program, called the bus program. Congress amplified earmarking in the bus program by essentially voiding a second transit program, one that would promote clean fuel buses in large urban areas with substandard air quality. The 1998 authorization, TEA-21, created the Clean Fuels Formula Program and authorized for up to \$50 million per year from FY 1999 to FY 2003. The formula for distributing Clean Fuels money would direct two-thirds of the money to urban bus operators in areas over 1 million in population and the rest to operators in smaller areas. Further, the formula was weighted to benefit operators in places with poorer air quality and already providing more clean fuel buses.²¹³ Recipient bus operators could use the funds to buy or lease new buses powered by compressed natural gas, biodiesel, fuel cells, or other low emission fuel alternatives, or to retrofit old buses. These policy aims aside, Congressional appropriators made not a cent available for the program throughout the TEA-21 authorization period. Instead, the \$50 million allotted for Clean Fuels each year was shifted by Congress into the Bus discretionary program,²¹⁴ a popular program for earmarks since 1995.²¹⁵

The Clean Fuels example shows how Congress may drain budget authority slotted for one program and use it for earmarks in another. It also suggests several nuances of earmarking in transportation. First, Congressional authorizers and appropriators use earmarks strategically in an ongoing tug-of-war. In this case, appropriators flout

²¹³ For program details, see ISTEA Public Law 105-178, Section 3008; also "Clean Fuels Formula Grant Program; Final Rule," *Federal Register* 67, no. 112 (March 23, 2002): 40100-40106.

²¹⁴ *Washington Letter on Transportation* 20, no. 49 (December 3, 2001), <http://www.washingtonletter.com> (accessed September 19, 2006).

²¹⁵ See discussion of programmatic earmarks in Chapter 3, section 3.2; see also *Review of Congressional Earmarks within Department of Transportation Programs*, (Washington, D.C.: U.S. Department of Transportation, Office of Inspector General, 2007), 9.

authorizers, starving a program that authorizers created and feeding appropriators' earmarks instead. Congressional behavior *per se* is not the focus of this work, but it is worth noting how this example displays the tension between these two organizational units of Congress.

Second, the example shows how difficult it can be to follow the money in earmarking. Exhibit 4.2 includes the obscure appropriation language that executes the transfer of budget authority. For the text to have meaning, one must know which programs the section numbers denote. Further, once shifted, the funds are earmarked separately in the statement of the managers accompanying the conference report, without reference to this original diversion from the Clean Fuels program. Such oblique practices suggest that to discern earmarks and their financial consequences requires significant expertise and time. This observation is immediately relevant to current debates about transparency in earmarking.

Exhibit 4.2. Shifting Funds from One Program to Another for Earmarking²¹⁶

FORMULA GRANTS

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to carry out 49 U.S.C. 5307, 5308, 5310, 5311, 5327, and section 3038 of Public Law 105-178, \$718,400,000, to remain available until expended: *Provided*, That no more than \$3,592,000,000 of budget authority shall be available for these purposes: *Provided further*, That, notwithstanding any other provision of law, of the funds provided under this heading, \$5,000,000 shall be available for grants for the costs of planning, delivery, and temporary use of transit vehicles for special transportation needs and construction of temporary transportation facilities for the VIII Paralympiad for the Disabled, to be held in Salt Lake City, Utah: *Provided further*, That in allocating the funds designated in the preceding proviso, the Secretary shall make grants only to the Utah Department of Transportation, and such grants shall not be subject to any local share requirement or limitation on operating assistance under this Act or the Federal Transit Act

as amended: *Provided further*, That notwithstanding section 3008 of Public Law 105-178 and 49 U.S.C. 5309(m)(3)(C), \$50,000,000 of the funds to carry out 49 U.S.C. 5308 shall be transferred to and merged with funding provided for the replacement, rehabilitation, and purchase of buses and related equipment and the construction of bus-related facilities under "Federal Transit Administration, Capital investment grants".

Third, this case shows how shifting funds to fill earmarkable pots can subvert the policy and distributional intentions underlying established programs. Transferring Clean Fuels bus money to bus projects, albeit earmarked, in the Bus Program is not an egregious substantive diversion. Still, lost in the reshuffle are the Clean Fuel program's objectives: bolstering markets for less polluting bus technology and aiding regions with serious pollution. Such earmarks also have real redistributive consequences, though they create no net increase in appropriated budget authority and may therefore seem benign. Here, the intended recipients of Clean Fuels money, transit providers mostly in large

²¹⁶ *Department of Transportation and Related Agencies Appropriations Act, 2002*, Public Law 107-87, 107th Cong., (December 18, 2001), 849.

urban areas with poor air quality, would receive none of the funds unless of course they sought their own earmark.²¹⁷

4.2.2. Taking a Cut of Formula Funds

Congress funds earmarks in a second way by taking a cut of funds from the so-called core highway programs and using them for earmarks. In the parlance of federal highway finance, the core programs—also known as formula funds or apportionment programs—are the primary vehicles for delivering federal transportation dollars to the states. To fund earmarks, Congress has employed legislative language that reduces these programs across the board and uses that cut for earmarks.

The core program dollars are apportioned to recipients by known formula.²¹⁸ (Table 4.1. describes each program and the factors used to distribute its funds to states, and notes those programs especially available to metropolitan areas.) State transportation departments and MPOs, which receive federal funds through the DOTs, estimate in advance the share of core program funds they will receive in a given year. Further, they make planning and spending decisions based on these estimates. Earmarks that upset the

²¹⁷ Although this study focuses on earmarking by the U.S. Congress, it is appropriate to note that the executive branch also designates funding for specific projects. In FY 2008, it did so by redirecting bus discretionary funds to a new Federal Transit Administration (FTA) “Urban Partnership Program,” as outlined in the President’s FY 2008 budget proposal. The FTA would competitively award \$25 million to each of five communities to pursue new urban congestion strategies that emphasized private sector involvement. The Administration framed the move as a way to reprogram Congress’s “unspent earmarks” in the bus program and instead to “strategically focus...scarce discretionary dollars toward...congestion reduction.” Yet others interviewed for this project described the move as a simple “money grab.” For further detail, see: U. S. House, *Statement of the Honorable Jeffrey N. Shane, under Secretary for Policy, U.S. Department of Transportation, before the Subcommittee on Highways and Transit, Committee on Transportation and Infrastructure*, (Washington, D. C.: Federal Transit Administration, U.S. Department of Transportation, June 7, 2007) http://www.fta.dot.gov/news/news_events_7097.html (accessed November 29, 2008); Humberto Sanchez, “Transportation: DeFazio, FTA Chief Butt Heads over Congestion-Pricing Proposal,” *The Bond Buyer*, September 27, 2007; and Government Accountability Office, *Urban Partnership Agreements: Congestion Relief Holds Promise, Some Improvements Needed in Selection Process*, (Washington, D.C.: U. S. Government Printing Office, 2009).

²¹⁸ Again, apportionment programs are distributed based on formulae set in law. Discretionary programs, or allocated programs, are distributed largely at the discretion of federal agencies.

expected distribution of these funds also unsettle state and MPO expectations about the funds they will receive, as well as the plans based on those expectations.

Key federal transit funds are also distributed by formula, but mostly flow directly to the benefiting transit agencies. Historically, Congress has refrained from using transit formula funds for earmarks. As one U.S. DOT official observed,

Fortunately Congress has not taken to earmarking transit formula money, which is what they do on the highway side....I hope they never do.

The small scale of transit formula funding compared with the core highway programs may make these programs less attractive to Congress as targets for earmarking off the top.

Table 4.1: Core Highway Programs and Formulae Factors for Their Apportionment²¹⁹

PROGRAM	PURPOSE	METRO-ORIENTED	FACTORS USED IN APPORTIONMENT TO STATES
Interstate Maintenance (IM)	Maintenance activities on the 43,000-mile Interstate system.		<ul style="list-style-type: none"> • Interstate lane miles • Amount of driving (VMT) on Interstate • Highway Trust Fund contributions (commercial vehicles)
National Highway System (NHS)	Improvements on the 160,000-mile NHS system, including the Interstate and other roads and connections important to the nation's economy, defense, and mobility.		<ul style="list-style-type: none"> • Lane miles of principal arterials (not the Interstate) • Amount of driving (VMT) on principal arterials • Diesel fuel used on highways • State population
Surface Transportation Program (STP)	Flexible funding for States and localities for projects on Federal-aid highways, including NHS, bridges on public roads, transit capital projects, and bus facilities.	<input checked="" type="checkbox"/>	<ul style="list-style-type: none"> • Lane miles of Federal-aid highways • Amount of driving (VMT) on Federal-aid highways • Highway Trust Fund contributions (highway users)
Highway Bridge Replacement and Rehabilitation (HBRR)	Replacement or rehabilitation of deficient highway bridges on public roads.		<ul style="list-style-type: none"> • State share of total cost to repair/replace bridges
Congestion Mitigation and Air Quality Improvement Program (CMAQ)	Funds for State DOT, MPO, and transit agency projects that reduce transport-related air pollutants in areas now or formerly exceeding allowable levels.	<input checked="" type="checkbox"/>	<ul style="list-style-type: none"> • Population in areas with substandard air quality

²¹⁹ Federal Highway Administration, "Financing Federal-Aid Highways," Federal Highway Administration, Publication No. FHWA-PL-99-015, September 13, 1999, <http://www.fhwa.dot.gov/reports/fifahwy/> (accessed August 31, 2006).

The core federal highway programs are important to the states and to MPOs, though to a lesser extent. The programs deliver fairly stable and predictable annual sums of federal dollars over an authorization period, allowing states and MPOs to plan for future transportation improvements supported by federal funds. Formulae in authorization law determine state-by-state distributions from the core programs. The programs thus encourage states and MPOs to estimate the federal funds they may reasonably expect to receive. States prize the core programs not only for the dollars they deliver, but also for the discretion states exercise in spending them. Largely, states choose which projects will benefit from formula dollars, provided that chosen projects align with the purpose of specific programs and any related requirements. For example, a state may use its formula apportionment of National Highway System (NHS) funds for improvements only on roads that are part of the federally designated NHS.²²⁰

Two core programs in particular – the Surface Transportation Program (STP) and the Congestion Mitigation and Air Quality Improvement Program (CMAQ) – are prized by metropolitan area stakeholders, because MPOs typically choose how to spend them. Under Federal policy since ISTEA, large MPOs have the authority to program the metropolitan portion of STP funds received by the state. Further, because STP funds can be used flexibly for highway or transit investments, they are especially valuable in urban areas. Funds from the CMAQ program are reserved for use in metro areas with problems meeting national air quality standards, and many MPOs have a direct hand in their

²²⁰ The National Highway System is a roadway classification created, alongside the NHS funding category, in the 1991 transportation authorization ISTEA. Introduction of the NHS acknowledged that the Interstate Highway System conceived in the '50s and '60s was largely complete and that other *non-interstate* roadways under the purview of states and local governments had assumed growing importance and should be eligible for federal funds. The NHS program made federal dollars available to these heretofore ineligible roads, as well as to the interstate system itself.

expenditure. These MPO-controlled funds represent a small slice of highway apportionments, making their reduction by earmarking felt all the more acutely by MPOs.²²¹

Because their apportionment formulae are articulated in law, the formula programs are shielded from earmarks that Congress carves directly from discretionary programs like TCSP and Bus and Bus Facilities. Thus, when the core programs are enumerated with funding amounts in legislation, Congress cannot insert language that directly commandeers the funds for earmarks. Rather, Congress has *indirectly* used these funds for earmarks, first by deducting a percentage cut of specified formula program funds and then by using the sum gained to fund *ad hoc* earmarks. Such a deduction, called a takedown, causes states to receive fewer formula dollars than anticipated.

Exhibit 4.3. shows how earmarks in the FY 2005 Appropriation Act are indirectly funded by formula funds. Section 117 of the bill deducts 4.1 percent from the funds authorized for the core programs, and other formula programs, and redirects those funds to earmarks in the statement of the managers accompanying the conference report. The redirected funds support \$25 million of highway improvements within the Delta River Authority and \$1.2 billion of additional projects listed alphabetically over 14 pages and spanning from “A-B Street NW Corridor Connector, Auburn, Washington - \$1,000,000” to “Ygnacio Valley Road Pedestrian/Bike Improvements, California - \$800,000.”²²² Congress used this same maneuver in the FY 2006 appropriation, allowing up to a 2.75

²²¹ Puentes and Bailey show that from 1998 to 2002, CMAQ and metropolitan STP funds each represented only 5.8 percent of federal core highway program funding. See Robert Puentes and Linda Bailey, “Improving Metropolitan Decision Making in Transportation: Greater Funding and Devolution for Greater Accountability,” *Transportation Reform Series* (Washington, D.C.: The Brookings Institution, 2003), 5.

²²² U.S. House, *Making Appropriations for Foreign Operations, Export Financing, and Related Programs for the Fiscal Year Ending September 30, 2005 and for Other Purposes*, 108th Cong., 2nd sess., 2004, Conference Report, H. Rep. 108-792, 1399-1412.

percent takedown from formula programs to fund about \$625 million in earmarks. In the bill's managers' statement is a 10-page catalog of earmarked Surface Transportation and Highway Priority Projects, to be funded by the takedown.

It is not at all readily apparent that Congress has funded these projects with budget authority deducted across the board from core programs; language affecting the takedown appears in the bill while language designating projects appears in the managers' statement accompanying the conference report. In fact, coverage of the FY 2005 bill in *The Washington Letter*, a D.C.-based transportation policy newsletter, noted that the bill contained the earmarks but failed to say how they were funded, even though this redistributive move would be of great interest to its subscribers, many of whom are state transportation departments.

Exhibit 4.3. Funds for Earmarks Deducted from Formula Programs (FY 2005)²²³

SEC. 117. Notwithstanding any other provision of law, whenever an allocation is made of the sums authorized to be appropriated for expenditure on the Federal lands highway program, and whenever an apportionment is made of the sums authorized to be appropriated for the surface transportation program, the congestion mitigation and air quality improvement program, the National Highway System, the Interstate maintenance program, the bridge program, the Appalachian development highway system, and the minimum guarantee program, the Secretary of Transportation shall deduct a sum in such amount not to exceed 4.1 percent of all sums so authorized: *Provided*, That of the amount so deducted in accordance with this section, \$25,000,000 shall be made available to make grants to support planning, highway corridor development, and highway construction projects in the area that comprises the Delta Regional Authority; and \$1,211,360,000 shall be made available for surface transportation projects as identified under this section in the statement of the managers accompanying this Act: *Provided further*, That notwithstanding any other provision of law and the preceding clauses of this provision, the Secretary of Transportation may use amounts made available by this section to make grants for any surface transportation project otherwise eligible for funding under title 23 or, title 49, United States Code: *Provided further*, That funds made available under this section, at the request of a State, shall be transferred by the Secretary to another Federal agency: *Provided further*, That the Federal share payable on account of any program, project, or activity carried out with funds made available under this section shall be 100 percent: *Provided further*, That the sum deducted in accordance with this section shall remain available until expended: *Provided further*, That all funds made available under this section shall be subject to any limitation on obligations for Federal-aid highways and highway safety construction programs set forth in this Act or any other Act: *Provided further*, That the obligation limitation made available for the programs, projects, and activities for which funds are made available under this section shall remain available until used and shall be in addition to the amount of any limitation imposed on obligations for Federal-aid highway and highway safety construction programs for future fiscal years.

Interview data indicate that many state DOTs decry formula fund takedowns and that such budgetary maneuvers are frequently not visible or fully comprehended until after a bill has passed. One state's Washington liaison recalled the state DOT's protest one year when it realized earmarks had been funded with core program dollars:

Staff on the Hill wrote the [bill] language that way, and it did not become apparent what it meant until later. [Our DOT] said, "Hey, this comes out of the formula funds!".... A whole lot of people got upset. Taking the earmarks from the formula funds hurts anyone with any level of states' rights feeling. If the money

²²³ U.S. Congress, *Consolidated Appropriations Act, 2005*, H. Rep. 4818, Public Law 108-447, (2004), 404-405.

comes from the formula, the state wants to be the one giving out the earmarks. I don't think there was a single state that was happy about it.

A representative of the American Association of State Highway and Transportation Officials put it this way: "Because of the money going to earmarks, the money going to states' core programs is going down as percentage [of the whole federal program]." Other state officials noted that earmarking enabled by the core program funds reduces flexibility.

Still, not all states lose out on the whole. Some may win if they gain more from such earmarks than they lose in the formula funds deducted to pay for them. Others may lose if they lose more in formula funds than they gain in formula-funded earmarks. Still others may break even, if funds deducted are more or less returned via earmarks.

For metropolitan regions, the distributional and institutional effects are less ambiguous when Congress redirects core program funds to earmarks. First, funds deducted from an MPO's expected share of urban-oriented STP and CMAQ programs are less likely to return to that region via an earmark, either in the same amount or at all. Congress may shift the deducted funds to earmarks in another state entirely, or from the metropolitan region to other areas in the same state. Second, earmark-driven STP and CMAQ deductions unravel metropolitan-oriented Federal transportation policy. Since the 1991 authorization law ISTEA, Congress has increased MPOs' decisionmaking responsibility over federal transportation funds, amplifying the voice of urban regions in infrastructure decisions. Yet, by reducing through earmarks the funds that local

governments and transportation agencies compete for at the MPO,²²⁴ Congress weakens the incentives for MPO members to participate in the forum, and weakens the MPO.²²⁵

This research shows that this earmark enabling budgetary practice has overt distributional consequences for state DOTs and MPOs, that it erodes their organizational discretion, and that it runs counter to other MPO-enhancing federal policy. However, it is important to observe that some Congressional supporters defend this earmarking maneuver as within the bounds of legitimate Congressional behavior.

To acknowledge that contested discretion is at stake here, I refrain from categorizing this practice as “earmarking formula funds,” although interview respondents aligned with MPOs and state DOTs used this phrase routinely. Further, in a 2007 *Business Week* interview, for example, the U.S. Transportation Secretary Mary Peters incorrectly, but perhaps strategically, suggested that *all* Congressional earmarks “come right off the top of these [state] programs.”²²⁶ Earmarking “divert[s] money away from the core programs,” she said, and earmarks had effectively “siphoned off money” from state transportation agencies.

Those who defend the Congressional right to earmark funds reject the phrase. Said one former Congressional staffer, “*earmarking of formula funds*” is not a reality, but a “point of view” or “a phrase that conveys state DOT bias...It’s a technically correct phrase, but it’s loaded to portray the state DOT side that they want the funds to

²²⁴ Regional Transportation Advisory Council, Minutes of Meetings of Boston Metropolitan Planning Organization, Meeting of September 13, 2006, http://www.bostonmpo.org/bostonmpo/involved/mpo_minutes/rtac0906.pdf (accessed March 14, 2008).

²²⁵ Julie Hoover, Bruce D. McDowell, and Gian-Claudia Sciara, *Transit at the Table: A Guide to Participation in Metropolitan Decisionmaking*, (Washington, D.C.: Federal Transit Administration, 2004).

²²⁶ Dawn Kopecki, and Peter Coy, “Infrastructure: Priorities Hit a Pothole,” *BusinessWeek* (August 20, 2007), http://www.businessweek.com/magazine/content/07_34/b4047049.htm (accessed March 14, 2008).

designate.” The phrase suggests that Congress earmarks formula programs directly, inappropriately overriding legal formulae to favor earmarked projects.

Such semantic arguments reveal a further wrinkle in this struggle for discretion. Apportionment formulae—as used to distribute the core program funds—appear to make revenue distribution an objective function of measurable criteria such as lane mileage, levels of highway usage, or population, thereby averting the “disreputable [Congressional] scramble” for funds that Larson notes plagued even the earliest decisions over U.S infrastructure.²²⁷ Still, formulae themselves are not free of political considerations.²²⁸ Core program formulae may preclude open battles for funding among states and other interests in the annual appropriation. However, such scrambles are merely shifted to federal authorization debates every five or six years, when representatives of state, regional, county, urban, and rural, interests fight for formulae changes that will increase their respective shares of federal dollars.

Thus, it is wrong to say that, by reserving formula funds for earmarks, Congress substitutes its political distribution for a more rational distribution dictated by core program formulae. Really, these formulae too are the product of political negotiation. However, they have been negotiated in a legislative process that, whatever its shortcomings, is more transparent than earmarking. Further, the formulae are settled in law, and transportation planning organizations like MPOs and their state and local partners use them to develop the funding envelopes for their long term planning and investment decisions. When earmarks unsettle these expectations, they do a clear

²²⁷ John Lauritz Larson, *Internal Improvement: National Public Works and the Promise of Popular Government in the Early United States*, (Chapel Hill: University of North Carolina Press, 2001).

²²⁸ Innes and Stoddard are insightful on this issue. Judith Innes and Susan Stoddard, *Formula Allocation as a Policy Tool: Politics and Measurement, Working Paper No. 480* (Berkeley: Institute of Urban and Regional Development, University of California, 1988).

disservice to MPOs and their members, and the role that Federal policy asks these organizations to play.

4.2.3. *Ad hoc* Earmarks Below-the-Line

A third way that Congress funds earmarks is to identify *ad hoc* groups of earmarked projects as below-the-line. Congress does so by specifying in transportation authorization legislation that certain earmarks will count toward states' designated minimum share of federal formula funds, as determined by equity funding provisions. Thus, the funds authorized for such earmarks *appear* to fit within the funding structure established in the bill, rather than to add to funding.

Whether earmarks count below- or above-the-line matters greatly to states. The distinction determines how Congress reconciles its earmarks with established minimum guarantee policies that define each state's share of federal highway formula funds. As this chapter has emphasized, states prize formula funds because they decide how to spend them. In general terms, the more formula funds a state receives, the more flexibility it has in spending federal dollars. Earmarked funding that is calculated into states' guaranteed share—i.e. earmarks that are below-the-line—may reduce that flexibility, in effect by cutting into a state's share of formula funds.

To understand these effects, one must understand the complex business of the donor-donee debate and how equity funding provisions operate. Individual states pay great attention to how the amount of federal highway dollars they *receive* compares with the amount of funds they *contribute* to the highway account of the federal Highway Trust

Fund.²²⁹ So-called donor states, like California, send more money to the Trust Fund than they receive. These tend to be states with large populations, significant metropolitan areas, or notable congestion problems, factors associated with high levels of driving, usually measured in vehicle miles traveled or VMT, high levels of motor fuel consumption, and consequently high levels of federal motor fuel tax revenue sent to the federal Highway Trust Fund. Other states are donee states. Donee states receive a greater amount of federal transportation funds than they contribute in the form of gas taxes and related fees; these tend to be smaller states with small populations, or large, sparsely populated states, like Alaska. While donor-donee status appears to be an objective calculation of whether a state generates more Trust Fund revenue than it receives, the classification is somewhat slippery and political.²³⁰

Since 1982, Congress has responded to these concerns by creating equity funding categories within the federal transportation program.²³¹ Such provisions have ensured that each state would receive a minimum percentage or minimum guarantee of federal dollars, and successive authorization laws have increased that percentage.²³² The base amount for calculating that percentage is called the scope of the minimum guarantee.

²²⁹ The HTF contains a Mass Transit subaccount. The donor-donee state debate refers to the distribution of the highway account only, though some have called for inclusion of the mass transit account in equity funding calculations.

²³⁰ Robert S. Kirk, *Federal Aid Highway Program: 'Donor-Donee' State Issues* (Washington, D.C.: Congressional Research Service, 2005). States have an interest in behaving as though such status is easy to determine and stable. This allows donor-donee concerns to loom large in almost any discussion of federal transportation funding.

²³¹ As the Interstate System neared completion in the early 1980s, individual states began to demand that they receive federal transportation dollars roughly in proportion to their state's contribution to the Highway Trust Fund, following return to source equity principles. Since then, so called donor-donee debates have played a prominent role in federal transportation authorization debates. See Lewison Lee Lem, "Dividing the Federal Pie," *Access* 10 (1997): 10-14; see also Robert S. Kirk, *Highway Program Equity Guarantee Issues* (Washington, D.C.: Congressional Research Service, 2005).

²³² In 1982, it was 85 percent, but ISTEA in 1991 raised the minimum guarantee to 90 percent. In 1998, TEA-21 lifted the percentage to 90.5, and under SAFTEA-LU, passed in 2005, states were guaranteed a minimum of 92 percent by the final year of the authorization period.

The so-called scope refers to the roster of programs that are included below-the-line in the calculation of a state's minimum guarantee share of highway funds. As the scope expands to add more funding categories—including earmarks—below-the-line, the dollar value of a state's guaranteed share increases. Donee states that receive more from the Trust Fund than they contribute benefit when the scope of equity funding is broadly defined. For donor states, however, the opposite is true.

Since such provisions were introduced in the early 1980s, the scope of the minimum guarantee or equity adjustment program has varied.²³³ Sometimes, earmarks have been included in the scope, sometimes not. And sometimes, some earmarks have counted below-the-line while others in the same bill count above-the-line. (See Table 4.2.)

²³³ Robert S. Kirk, *Highway Program Equity Guarantee Issues* (Washington, D.C.: Congressional Research Service, 2005).

Table 4.2. Do Earmarks Count in the Scope of Equity Funding Provisions?

Authorization Law	Equity Provision(s)	Specified Rate of Return²³⁴	Above-the-Line Earmarks (Earmarks outside Scope)	Below-the-Line Earmarks (Earmarks in Scope)
STURA PL 100-17 1987-1990	Minimum Allocation	85% ^(a)		Yes. Demonstration Projects, \$1.3 Billion. ²³⁵
ISTEA PL 102-240 1991-1998	Minimum Allocation (Sec. 1013)	90% ^(b)	Yes. All earmarks.	
TEA-21 PL 105-178 1998-2003	Minimum Guarantee (Sec. 1104)	90.5% ^(c)	Yes. Miscellaneous earmarks, \$1.2 billion.	Yes. High Priority Projects, \$9.4 billion. ²³⁶
SAFTEA-LU PL 109-59 2005-2009	Equity Bonus (Sec. 1104)	90.5% (in FY 2005) to 92% (in FY 2009) ^(c)	Yes. \$6.9 billion in total. ²³⁷	Yes. \$14.8 billion in total. ²³⁸

^(a) States' core programs apportionments *and most discretionary allocations* would total no less than 85 percent of their HTF highway contributions.

^(b) In addition to narrowing the scope of the rate of return and increasing its percentage, ISTEA added numerous other equity provisions.

^(c) Equity provisions in TEA-21 and SAFTEA-LU become too complex for tabular representation.

²³⁴ For more detail on specific laws, see *ibid.*

²³⁵ *Highway Demonstration Projects; Improved Selection and Funding Controls Are Needed* (Washington, D.C.: U.S. General Accounting Office, 1991), 7.

²³⁶ The TEA-21 breakdown is drawn from Legislative Services Group, "TW Analysis: 'Above-the-Line' Highway Earmarks," *Transportation Weekly* (January 17, 2006): 2.

²³⁷ In this above-the-line total are included earmarks in the following programs: Transportation Improvements, National Corridor Infrastructure Improvement Program, Projects of National and Regional Significance, Highway Bridge set asides, Nonmotorized Pilot Program, and other miscellaneous earmarks. See *ibid.*, 2.

²³⁸ This below-the-line total includes earmarks in High Priority Projects Program. See SAFTEA-LU, Section 1104; see also *ibid.*

Earmarks interact with federal equity funding policies to create an array of distributional effects. Above-the-line earmarks can alter the distribution of federal funds among states, making some winners and others losers. Less visibly, and perhaps more critically, above- or below-the-line earmarks can shape distributional effects at the substate level, among different regions in a single state, depending on how the states handle earmarks when they suballocate federal funds.

Below-the-line earmarks count toward a state's formula allotment, as defined under equity provisions. They reduce the state's discretion, because the earmarks dictate how funds so designated must be spent. Used alone, earmarks below-the-line *preserve* distributional equity among states, i.e. they do not distort the defined minimum guarantees. The scope of the minimum guarantee includes earmarks, and hence corrects for them, counting earmarks toward the slice of the federal formula pie that each state is supposed to get. Yet, below-line earmarks may skew the distribution of federal funds *within* states, among substate regions and districts. On one hand, if the state counts earmarks in the total federal funds it suballocates to districts, earmarks secured for hypothetical Region A count toward the usual sub-state share for that area. For districts that get earmarks, those funds do not add to what they would otherwise receive without earmarks. On the other hand, if the state first subtracts earmarked amounts from the federal funds it suballocates, the remaining federal pot for the state shrinks for the benefit of those substate districts that receive earmarks. Thus, substate districts that do not get earmarks lose out, potentially pitting urban areas against one another or rural districts against urban ones, and likely encouraging areas that did not win earmarks to seek them in the future.

Although below-the-line-earmarks appear not to add to federal transportation spending, under SAFETEA-LU they may in one specific way. The Federal minimum guarantee program is enabled by funds made available as needed to ameliorate donor-donee issues, irrespective of annual obligation limitations, or spending limits. As more earmarks count below the line, the amount of Minimum Guarantee funds needed to smooth inequities increases, adding more to federal transportation spending up to a limit of \$639 million.²³⁹

4.2.4. *Ad hoc* Earmarks Above-the-Line

Ad hoc earmarks that Congress identifies as above-the-line, and therefore not within the scope of equity provisions, *appear* to add to the federal transportation funds authorized and appropriated by Congress. This is so because they are designated outside the ordinary structure of federal transportation programs. Yet, this effect is unclear.

When Congress designates earmarks outside of the established structure of federal transportation funding²⁴⁰—as it does with such *ad hoc* authorization earmarks as the SAFTEA-LU Projects of National and Regional Significance—the earmarks appear additive. They are outside the framework of existing transportation spending, and

²³⁹ Federal Highway Administration, *Financing Federal-Aid Highways*, Publication No. FHWA-PL-07-017, March, 2007: 14, http://financecommission.dot.gov/Documents/Background%20Documents/financing_highways.pdf (accessed February 3, 2009).

²⁴⁰ Federal transportation dollars are made available to states and transportation agencies through various federal programs with specific programmatic objectives. First, Congressional authorizers set a spending ceiling for each program over a multi-year authorization period, and then appropriators make those funds available in annual installments via the appropriation. Funds are distributed among states or other recipients either by apportionment, or set formula, or by allocations made at the discretion of the U.S. Department of Transportation.

Congress has no placeholder for authorizing the funds were it not for the earmarks.

Budget watchdogs make this assumption, but there is no way of knowing.²⁴¹

For states, above-the-line earmarks come in addition to the guaranteed share of formula funds or apportionment funds that a state already anticipates receiving. But, because such earmarks reduce the scope of the Minimum Guarantee program, they decrease the take for all states. Hence, above-the-line earmarks can easily disrupt distributional equity agreements among states, in essence rescripting equity provisions. Within states that receive above-the-line earmarks, the distribution of Minimum Guarantee funds may proceed as usual, according to state suballocation policies. That is, the earmarks will only generate distributional discrepancies if the state deducts above-line-earmarks from its pot of federal funds before suballocating them to substate districts. In that case, districts that receive earmarks gain at the expense of those that do not.

4.2.5. Reshuffling Surplus Revenue: The RABA Bonus

Another way that Congress has created budget authority for earmarking is by using so called RABA bonus funds. This section explains how Revenue Aligned Budget Authority (RABA), a relatively new feature of federal highway finance, operates, and illustrates how Congress can reshuffle highway bonus funds from RABA to support earmarks, using the FY 2002 transportation appropriation as an example.²⁴² The discussion underscores several recurrent themes about earmarking in this study. Namely,

²⁴¹ Congress typically defends such *ad hoc* earmarks by explaining that the existing structure of federal transportation programs cannot accommodate such needed projects, perhaps because of their scale or scope. Thus, without the earmarks, Congress may have funded an existing formula or discretionary program more generously, and/or may have expanded eligibility criteria within existing programs to make them available for a wider array of projects.

²⁴² The President's budget has also reshuffled RABA bonus funds to accomplish its own ends. The administration's FY 2008 budget proposed to eliminate the expected RABA bonus, estimated at \$631 million, reportedly to lessen the Highway Trust Fund shortfall anticipated by FY 2009. See Author, "Title," *AASHTO Journal Weekly Transportation Report*, 107, no. 6 (February 9, 2007), <http://news.transportation.org/journal.aspx?JournalID=259&Year=2007> (accessed March 10, 2008).

RABA-based earmarks show that Congressional earmarking does not necessarily increase total transportation funding amounts; that earmarks and the budgetary maneuvers underpinning them create winners and losers in obscure ways; that Congressional dynamics can underlie earmarking; and that Congressional earmarking practices are dynamic and ever evolving.

To the menu of budgetary mechanisms that Congress may use to support earmarks, Revenue Aligned Budget Authority was added with the transportation authorization TEA-21. The 1998 law introduced RABA to require that any unanticipated receipts that accrue to the Federal Highway Trust Fund (HTF) in a given year be added as bonus money in the annual transportation appropriation, and be distributed among federal highway programs by formulae specified in law.²⁴³ Conversely, when Trust Fund receipts fall below projections, RABA requires that appropriators adjust current spending downward.²⁴⁴ Because RABA applies only to federal highway spending, Congressional reallocation of any bonus funds it delivers does not impact federal transit funding programs.²⁴⁵

The U.S. is unique among developed nations in that it does not use general funds for highway improvements. Instead, federal motor fuel taxes and other highway user fees deposited into a dedicated Highway Trust Fund are the principal source of federal

²⁴³ See Federal Highway Administration, "Appropriations," *Financing Federal-Aid Highways*, Pub. No. FHWA-PL-99-015, September 13, 1999, <http://www.fhwa.dot.gov/reports/fifahiwy/> (accessed August 31, 2006); Government Accountability Office, *Highway Trust Fund: Overview of Highway Trust Fund Financing* (Washington, D.C., 2002).

²⁴⁴ FY 2003 was a notable year because of the first time RABA deficit. Members of Congress escaped having to enact the severe reductions RABA would have required and instead changed the law to moderate the effect of such deficit years in the future.

²⁴⁵ Surface Transportation Policy Project, *Decoding Transportation Policy & Practice # 1; TEA-21 & RABA: Why Is There Less Money?* (Washington, D.C., 2002).

highway dollars.²⁴⁶ A small portion of these highway user-derived revenues flows into a Trust Fund sub-account, the Mass Transit Account, which along with U.S. general funds supports federal transit investment.

Before RABA, if Highway Trust Fund receipts in a given year exceeded transportation appropriations from it, the Trust Fund would run a surplus.²⁴⁷ And, prior to 1998, when the Trust Fund was considered “on-budget,” budgeteers used that surplus *on paper* to offset government spending in other sectors.²⁴⁸ At the same time it enacted RABA, Congress also took the Highway Trust Fund “off-budget,” by erecting a so-called firewall between the federal Highway Trust Fund and other sectors of federal spending. The firewall curtailed Congressional appropriators’ ability to apply a Trust Fund surplus to the total federal balance sheet, a strategy used previously to make the U.S. deficit appear smaller.²⁴⁹

Together, the Trust Fund firewall and RABA prevent highway dollars from being applied or diverted, to other *non-transportation* federal domestic spending or to offset the federal deficit. Instead, they encourage annual appropriation levels that align more closely with actual Trust Fund revenues. In combination, these two new TEA-21 features

²⁴⁶ For an insightful state level history of highway trust fund financing and user-pays philosophy, see Paul Sabin, *Crude Politics: The California Oil Market, 1900-1940* (Berkeley, CA: University of California Press, 2005).

²⁴⁷ Historically, the Trust Fund has tended to run a surplus. This is so primarily because planning, designing and implementing transportation projects is a slow and complex process, and thus the agencies and governments authorized to spend Trust Fund dollars are often unable to draw down those funds immediately. Some conditions, as when more fuel taxes than anticipated are collected in one year, typically from greater fuel consumption, may cause the surplus to swell.

²⁴⁸ Trust Fund dollars are collected from highway users via user fees, and are dedicated exclusively for expenditure on transportation. Thus, appropriators could not legally fund other sectors of federal spending, such as education, with Highway Trust Fund dollars. Surplus Trust Fund dollars would remain in the HTF and could be spent down only for transportation. But, because the Trust Fund was “on budget,” its surplus could be counted against federal spending overall.

²⁴⁹ Proponents of user-fee based highway funding criticized this practice as diversion. They contended that it motivated appropriators to keep annual transportation obligation authority artificially low, and they successfully pushed for a Trust Fund firewall in TEA-21 to end it.

prevented appropriators from holding annual transportation obligation authority low in order to count a resulting Trust Fund balance as savings to offset federal spending in other sectors. With their discretion shrunk by Congressional authorizing colleagues, irritated appropriators adapted; they exercised new discretion by earmarking transportation projects funded by RABA bonus.

Federal law requires that RABA bonus funds be distributed systematically among established highway programs,²⁵⁰ however Congress has frequently used bonus funds for earmarks. By law, RABA surplus in a given year must be divided into bonus sums for highway discretionary and highway formula programs, mirroring the overall split that year. Each discretionary and formula program receives a bonus slice that reflects its respective share of total discretionary or formula funds, and each state receives a formula bonus reflecting its state share of formula funds that year. In short, states that receive a large share of annual formula funds would anticipate a proportionally large share of RABA bonus. In appropriations, however, Congress can override the RABA distribution formulae and direct the bonus as it sees fit.

That is precisely what Congress did when it appropriated federal transportation funds for FY 2002. Exhibit 4.4. excerpts the appropriation language that Congress used to redirect RABA (Section 110) funds that year to earmarks. The bill language alone suggests the complexity of the FY 2002 RABA reshuffling.

²⁵⁰ RABA provisions are detailed in Section 110 of Title 23 of the United States Code.

Exhibit 4.4. FY 2002 Appropriation Bill Reshuffles RABA Bonus (Section 110)²⁵¹

Provided further, That, notwithstanding any other provision of law, funds authorized under section 110 of title 23, United States Code, for fiscal year 2002 shall be apportioned to the States in accordance with the distribution set forth in section 110(b)(4)(A) and (B) of title 23, United States Code, except that before such apportionments are made, \$35,565,651 shall be set aside for the program authorized under section 1101(a)(8)(A) of the Transportation Equity Act for the 21st Century, as amended, and section 204 of title 23, United States Code; \$31,815,091 shall be set aside for the program authorized under section 1101(a)(8)(B) of the Transportation Equity Act for the 21st Century, as amended, and section 204 of title 23, United States Code; \$21,339,391 shall be set aside for the program authorized under section 1101(a)(8)(C) of the Transportation Equity Act for the 21st Century, as amended, and section 204 of title 23, United States Code; \$2,586,593 shall be set aside for the program authorized under section 1101(a)(8)(D) of the Transportation Equity Act for the 21st Century, as amended, and section 204 of title 23, United States Code; \$25,579,000 shall be set aside for the program authorized under section 129(c) of title 23, United States Code, and section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991, as amended; \$352,256,000 shall be set aside for the programs authorized under sections 1118 and 1119 of the Transportation Equity Act for the 21st Century, as amended; \$3,348,128 shall be set aside for the program authorized under section 1101(a)(11) of the Transportation Equity Act for the 21st Century, as amended and section 162 of title 23, United States Code; \$76,025,000 shall be set aside for the program authorized under section 118(c) of title 23, United States Code; \$62,450,000 shall be set aside for the program authorized under section 144(g) of title 23, United States Code; \$251,092,600 shall be set aside for the program authorized under section 1221 of the Transportation Equity Act for the 21st Century, as amended; \$10,000,000 shall be set aside for the program authorized under section 502(e) of title 23, United States Code; \$56,300,000 shall be available for border infrastructure improvements; \$45,122,600 shall be available for allocation by the Secretary for public lands highways; and \$23,896,000 shall be set aside and transferred to the Federal Motor Carrier Safety Administration as authorized by section 102 of Public Law 106-159: *Provided further*, That, of the funds to be apportioned to each State under section 110 for fiscal year 2002, the Secretary shall ensure that such funds are apportioned for the programs authorized under sections 1101(a)(1), 1101(a)(2), 1101(a)(3), 1101(a)(4), and 1101(a)(5) of the Transportation Equity Act for the 21st Century, as amended, in the same ratio that each State is apportioned funds for such programs in fiscal year 2002 but for this section.

The FY 2002 RABA reshuffling, traced carefully here, shows in detail how Congress pays for earmarking. Preparing for the FY 2002 appropriation, the Federal Highway Administration announced in November 2001 that over \$4.5 billion in RABA bonus was expected for highway spending that year.²⁵² Tentative agency calculations

²⁵¹ *FY 2002 Appropriation Act*, Public Law 107-87 (December 18, 2001): 843-44.

²⁵² Federal Highway Administration, *Tentative Distribution of Revenue Aligned Budget Authority (RABA) Funds for Fiscal Year 2002*, U.S. Department of Transportation, December 27, 2001, <http://www.fhwa.dot.gov/legregs/directives/notices/n4510467.htm> (accessed March 18, 2008).

showed that, following the formulae for distributing RABA bonus, discretionary programs would gain over \$500 million and that states would see almost \$4 billion in formula bonus. Bonus dollars would infuse the formula programs, or core programs, that states prize. If finalized in appropriations, RABA bonuses would range from \$15.6 million for D.C. to \$356 million for California. The median state bonus was \$59 million, and the most populous and urbanized states would be among the top 12 gainers,²⁵³ each with bonuses of \$100 million or more, funds they could spend largely at their discretion.

By late December, however, FHWA canceled the announcement and issued a new one: appropriators had reshuffled the RABA bonus. Of the nearly \$4 billion bonus expected for formula programs, Congress cut roughly \$450 million (11 percent) and shifted the dollars to discretionary program earmarks, High Priority Project earmarks, and other stand alone earmarks, reportedly responding to 2,000 requests for such projects.²⁵⁴ It padded two discretionary programs, in particular, and earmarked them. The legal RABA distribution would have delivered an \$18.6 million bonus to the Borders and Corridors programs,²⁵⁵ but Congress inflated the bonus to over \$350 million, all earmarked.²⁵⁶ The Transportation and Community and Systems Preservation (TCSP) Pilot Program, authorized for only \$25 million that year, would receive over \$250 million, a tenfold increase, all of it earmarked.

²⁵³ California (1), Texas (2), New York (3), Florida (4), Illinois (8), Pennsylvania (5), Ohio (7), Michigan (9), Georgia (6), North Carolina (10), New Jersey (12), and Virginia (11). (States appear in descending order by share of U.S. urbanized population. Accompanying numbers rank states in descending order by the size the RABA formula bonus due them.)

²⁵⁴ *Washington Letter on Transportation*, 20, No. 51 (December 17, 2001),

<http://www.washingtonletter.com> (accessed September 19, 2006).

²⁵⁵ The National Corridor Planning and Development Program and the Coordinated Border Infrastructure Program, authorized respectively by Sections 1118 and 1119 of TEA-21.

²⁵⁶ Federal Highway Administration, *Distribution of Revenue Aligned Budget Authority Funds for Fiscal Year 2002*, U.S. Department of Transportation, December 27, 2001,

<http://www.fhwa.dot.gov/legisregs/directives/notices/n4510476.htm> (accessed March 18, 2008);

Washington Letter on Transportation 20, No. 49, (December 3, 2001), <http://www.washingtonletter.com> (accessed September 19, 2006).

The statement of the managers accompanying the appropriation conference report designates projects in numerous RABA-infused programs, but tracing the dollars is difficult.²⁵⁷ For example, the text indicates that “program funds” will be available for the listed Ferry Program earmarks, but not that those funds are diverted RABA bonus.

Transportation actors at all levels felt the RABA reshuffling. Although flush with bonus funds, the Federal Highway Administration’s merit-based TCSP program was devastated. The FY 2002 program, now worth \$276.1 million, was entirely earmarked in the appropriations conference report for 221 projects, again preventing FHWA from awarding funds to projects from any of the 227 applications received in its grant solicitation that year.²⁵⁸ For FY 2003, Congress again appropriated TCSP funds well in excess of the original authorization and earmarked the entire sum; FHWA cancelled its call for projects completely.²⁵⁹

States saw the highly anticipated bonuses for their core programs²⁶⁰ shrink, as Congress shifted 11 percent of RABA formula bonus to earmarks in discretionary programs. States with the biggest reductions in bonus funds are shown in Table 4.3. At first glance, all states seem to lose because each receives less formula bonus than the law would prescribe; however, some states likely won enough in RABA-fueled earmarks to offset or exceed the 11 percent reduction in its expected bonus. Congressional

²⁵⁷ U.S. Congress, *Making Appropriations for the Department of Transportation and Related Agencies for the Fiscal Year Ending September 30, 2002 and for Other Purposes, Conference Report*, H. Rpt. 107-308. (Washington, D.C., 2001), 82-91.

²⁵⁸ Federal Highway Administration, *Transportation and Community and System Preservation Projects*, October 11, 2007, <http://www.fhwa.dot.gov/tcsp/projects.html> (accessed December 14, 2007). See also respective year Appropriation Bills and Conference Reports.

²⁵⁹ Federal Highway Administration, *Solicitations Cancelled, Transportation and Community and System Preservation FY 2003*, October 27, 2005, <http://www.fhwa.dot.gov/tcsp/03cancel.htm> (accessed December 14, 2007).

²⁶⁰ Interstate Maintenance (IM), National Highway System (NHS), Bridge Replacement and Rehabilitation (BRR), Surface Transportation Program (STP), and Congestion Mitigation and Air Quality Improvement (CMAQ).

authorizers and state DOTs protested the “lost formula funds,” but few advertised their gains in RABA-fed earmarks.²⁶¹

Table 4.3. Largest State Reductions in RABA Formula Bonus (FY2002)²⁶²

State	Formula Fund Bonus: Expected vs. Received (\$ millions)		
	Bonus Prescribed by Law	Bonus Delivered by Congress	Reduction
CALIFORNIA	\$356.10	\$315.80	\$40.30
TEXAS	\$312.60	\$277.20	\$35.40
NEW YORK	\$197.00	\$174.70	\$22.30
FLORIDA	\$189.00	\$167.60	\$21.40
PENNSYLVANIA	\$188.00	\$166.80	\$21.30
GEORGIA	\$142.70	\$126.60	\$16.20
OHIO	\$135.80	\$120.40	\$15.40
ILLINOIS	\$130.50	\$115.70	\$14.80
MICHIGAN	\$127.40	\$113.00	\$14.40
NORTH CAROLINA	\$111.80	\$99.10	\$12.70
VIRGINIA	\$102.20	\$90.70	\$11.60
NEW JERSEY	\$101.30	\$89.90	\$11.50

Transit operators and metropolitan planning organizations also felt the reductions. While RABA ups and downs do not affect the Mass Transit Account funding directly,²⁶³ one organization noted that

the cutback in apportionments to the core highway programs touches the STP and CMAQ programs that allow transfers of funding to transit projects when the state chooses. The result of highway program reductions due to RABA setbacks means it will be that much harder for transit sponsors to tap transfer pots for their projects.²⁶⁴

²⁶¹ An interesting project for future research would analyze the Borders and Corridors Program and the Transportation and Community and Systems Preservation Pilot Program that year, along with demonstration projects, to see which states benefited.

²⁶² Calculations by author based on Federal Highway Administration, *Distribution of Revenue Aligned Budget Authority Funds for Fiscal Year 2002*, U.S. Department of Transportation, December 27, 2001, <http://www.fhwa.dot.gov/legisregs/directives/notices/n4510476.htm> (accessed March 18, 2002); and on Federal Highway Administration, *Tentative Distribution of Revenue Aligned Budget Authority (RABA) Funds for Fiscal Year 2002*, U.S. Department of Transportation, December 27, 2001, <http://www.fhwa.dot.gov/legisregs/directives/notices/n4510467.htm> (accessed March 18, 2008).

²⁶³ The TEA-21 RABA distribution does not direct surplus funds to federal transit spending programs and authorized transit funding level remain the same under RABA, even though receipts to the Mass Transit Account of the Trust Fund rise and fall.

²⁶⁴ *Washington Letter on Transportation*, 21, No. 3, (January 21, 2002), <http://www.washingtonletter.com> (accessed September 19, 2006).

Reduced apportionments of Surface Transportation Program (STP) and Congestion Mitigation and Air Quality (CMAQ) funds would also hurt MPOs, which rely on these more flexible spending categories to fund projects they choose.

It is important to observe that, even though Congress reduced bonus funds relative to the levels expected without earmarking, in absolute terms all states still got more formula dollars than they would have without RABA. One lobbyist interviewed for this study suggests that such circumstances give states less incentive to object to earmarks.

From 1999 to 2002, RABA increased [Highway Trust Fund] receipts. So, the appropriators would divert some of that money from the programs it was supposed to go to and give it to earmarks, but *no one lost money*.

Of course, the tables turn when Trust Fund revenues fall below projections, and RABA reduces annual obligation authority. Under a so-called negative-RABA scenario, a downward adjustment is required, begging the question, how do appropriators fund earmarks then? The same lobbyist explains that, without bonus funds to earmark, appropriators may turn to regular formula funds, using those to pay for earmarks yet without expanding the total FY appropriation.

In a deficit situation, where new dollars of discretionary money are scarce, appropriators are pressed...[When RABA decreased receipts], they would deduct 3 to 4 percent from all state formula apportionments...and earmark that. They could do that, and it wasn't money that was new. It was rearranging existing money.

Because Congressional authorizers drafted TEA-21 language specifying the RABA distribution, they vociferously objected when appropriators diverted FY 2002 RABA from authorizers' intended recipients.²⁶⁵ Appropriators shifted much the surplus

²⁶⁵ U.S. House, Committee on Transportation and Infrastructure, *Dear Colleague Letter to Members of Congress: Highway Funding Cuts in All 50 States Criticized by Bipartisan Leadership of Transportation*

to discretionary programs, where they subsequently designated projects for earmarks. Critics objected that appropriators' behavior amounted to "authorizing on appropriations," or effectively making transportation policy and overstepping their role. Some attribute the appropriators' reshuffling of RABA as retaliation against authorizers' Trust Fund firewall, which limited appropriators' discretion for adjusting spending levels of federal highway programs: Deprived of their authority to tamper with obligation ceilings for the trust fund programs, the appropriations committees have instead increased their detailed earmarking of grants under programs that were designed to provide money for DOT agencies to award to competitive grant applicants.²⁶⁶

The use of RABA bonus to fund earmarks makes vivid several overarching themes of this study. First, while Congressional behavior *per se* is not a focus here, the RABA example illustrates how Congressional dynamics—and institutional turf battles within the U.S. Congress—have contributed to earmarking's growth. Second, in this case Congress again earmarked projects in tandem with maneuvers that reshuffle rather than add to budget authority. Third, for transportation organizations, earmarking creates complex gains and losses, measured in dollars and discretion. Earmark-enabling mechanisms like RABA that do not add to the national transportation budget may nonetheless have redistributive impacts for state and local transportation planning and spending. These impacts are difficult to discern; who wins and loses is not readily apparent. Given the oblique and complex nature of such reshufflings, few members of Congress are likely to accurately understand earmarks' impacts for transportation

Committee, December 10, 2001, <http://www.house.gov/transportation/press/press2001/release158.html> (accessed August 28, 2006).

²⁶⁶ *Washington Letter on Transportation*, 20, No. 49, (December 3, 2001), <http://www.washingtonletter.com> (accessed September 19, 2006).

organizations in their district and state. Members may focus on securing specific earmarks but fail to see how those earmarks could reduce funds and discretion for the agencies serving their constituents. Finally, the use of Revenue Aligned Budget Authority, which did not exist prior to 1998, to fund earmarks reminds us that Congressional earmarking practices are not static or fixed; rather, Congress evolves these maneuvers to respond dynamically to opportunities and threats.

4.2.6. Recycling Budget Authority: Rescissions

Rescission is another budgetary maneuver that Congress uses to support the cost of earmarks, albeit more indirectly than other mechanisms covered thus far. Through rescissions, Congress cancels, or recaptures, budget authority (also called obligation authority or contract authority) for funding amounts already apportioned or allocated to states, but not yet obligated, or spent. The sum of so-called “unobligated balances” of federal transportation funds can be significant, and rescinding them can be an attractive way for Congress to offset other federal spending in general or for earmarks in particular, typically *ad hoc* earmarks.

Rescissions are complex, and their consequences for individual transportation players vary depending on the terms Congress crafts for them. Because they reach into the past, beyond the budget reference budget year, to claim funds for present use, rescissions add a temporal element to an already complex budget process. Further, Congress may rescind budget authority from specific sources, targeting budget authority in some programs while leaving it in tact elsewhere. This section explains some of this complexity and shows how Congress may authorize funds for earmarks while rescinding

other funds, indirectly offsetting or reducing the earmarks' cost. It shows how such maneuvers may create winners and losers and how different parties have responded.

Different motives may spur Congress to enact a rescission. It may seek to retract past budget authority, in and of itself, to lower the bill's cost or to bring it within ranges targeted by the President's budget request or House and Senate proposals. More commonly, however, it uses rescission to enable spending on new or different projects and programs without coming up with additional money. When used to offset the cost of earmarks, rescissions resemble other budget reshuffling strategies employed by Congress to support earmarks.

Rescissions can provide budget authority for earmarks without creating new spending authority that would increase the amount authorized or appropriated in a bill. Yet, the Congressional Budget Office reports that, in general, rescissions contribute only modestly to fiscal discipline in government spending, and that they may not reduce actual spending, or outlays.

When any new spending is proposed, its sponsors often claim that the new costs would be offset by rescission...Such rescission proposals may make new spending appear less costly, but they can be misleading. Frequently, the resulting outlay savings are not commensurate with the rescinded budget authority.²⁶⁷

Thus, rescissions have probably neutralized some, but not all, new budget authority for transportation earmarks.

Unlike other budgetary maneuvers used by Congress to support earmarks, rescissions seldom explicitly transfer rescinded highway or transit budget authority to designated projects. Where rescissions and earmarks are enacted together, it is not

²⁶⁷ Congressional Budget Office, *Statement of Dan L. Crippen, Director of the Congressional Budget Office, on Proposals to Change the Rescission Process, before the Subcommittee on Legislative and Budget Process, Committee on Rules, U.S. House of Representatives*, (Washington, D.C.: U.S. Government Printing Office, 1999): 7.

possible to state with certainty that Congress designed the rescission to pay for the earmarks. Even without the earmarks, Congress might still have enacted the rescission, perhaps in order to offset other non-earmark spending. In contrast, when Congress reallocates discretionary, formula, or RABA bonus funds to support earmarks, evidence of the counterfactual is present in the bill, albeit usually obscured. For those maneuvers, it is possible to trace in the legislative language how the funds would have been spent otherwise.

Congress may rescind budget authority specifically for highway programs, specifically for discretionary programs, or generally for all sectors of federal spending.²⁶⁸ Language enacting a rescission may be inserted into transportation authorization bills, transportation appropriation bills, consolidated or omnibus appropriation bills, or other spending legislation. Supplemental spending bills—enacted when Congress identifies the need to appropriate more money for the present fiscal year than it had initially—are popular vehicles for government-wide rescissions and have also rescinded federal

²⁶⁸ The U.S. president, too, may propose rescissions, but Congress must enact legislation to realize them and may also ignore such executive proposals. Similar to Congress, in theory the president may seek a rescission to reduce spending. In practice, however, rescissions typically offset other spending, including Administration earmarks, thereby reshaping spending priorities. For example, the President's FY 2009 budget proposal would rescind \$12.5 billion in unobligated highway fund rescissions, \$735 million of which were to be extracted from High Priority Projects earmarked by Congress in ISTEA (1991) and TEA-21 (1998). The proposal targeted for rescission those projects where funds obligated to date represented less than 10 percent of the amount authorized. The budget also would direct some rescinded funds to new administration initiatives like Metropolitan Area Congestion and Corridors of the Future, which some would call an earmark. For FY 2007, rescissions of \$1.3 billion from unobligated formula funds (also called apportionment balances) and of \$52 million from earmarked ISTEA Demonstration Projects were also proposed. Together, the rescissions would have recaptured \$175 million in budget authority, and they were to fund the administration's Congestion Initiative. See *AASHTO Journal Weekly Transportation Report*, 108, No. 6 (February 8, 2008), <http://news.transportation.org/journal.aspx?JournalID=309&Year=2008> (accessed March 10, 2008). See also *ibid.*, 107, no. 6 (February 9, 2007), <http://news.transportation.org/journal.aspx?JournalID=259&Year=2007> (accessed March 10, 2008). In general, presidential power to defer or rescind previously granted budget authority is bound by the Congressional Budget and Impoundment Control Act of 1974, designed to curtail and prevent use of executive authority to refuse to spend funds appropriated by the Congress. Efforts to enhance executive authority in this regard center largely on the presidential line item veto.

highway funding.²⁶⁹ As with other earmark enabling moves, the power to rescind highway contract authority is contested between authorizers and appropriators.²⁷⁰

Every year since FY 2002, Congress has used appropriation acts to rescind highway budget authority granted in previous laws.²⁷¹ Rescissions directed specifically at transit spending may be less common,²⁷² but federal transit programs have absorbed rescissions that retract federal discretionary spending and government-wide spending.²⁷³

Rescissions reduce the balance of funds for which transportation organizations have authority to obligate, or spend.²⁷⁴ Such unobligated balances are dollar amounts of federal budget authority previously granted to a state DOT, or region, but not yet obligated. A state or other entity may have been granted authority to obligate a sum of federal highway funds for a project, but those funds are not officially “obligated” until project agreements, plan specifications and cost estimates for the project are approved by

²⁶⁹ For example, an FY 2006 emergency defense supplemental spending bill to fund defense operations in Afghanistan and Iraq rescinded \$871 million of highway contract authority.

²⁷⁰ For example, when appropriators sought to rescind \$320 million in FY 2002 highway contract authority via a supplemental spending bill, authorizers called the provision a potentially troubling precedent. Leadership from the House Transportation and Infrastructure and Senate Environment and Public Works committees objected that rescission was “‘exclusively within the jurisdiction’ of the authorizing committees,” and that rescission of “‘contract authority from highway programs should not be a new, convenient tool for Congress to balance its budget.’” Yet the 2005 authorization SAFTEA-LU, which included over 6,000 earmarks, also provided for a \$8.54 billion rescission scheduled for FY 2009, a move that clearly helped authorizers to balance earmarks and authorized programs with spending levels targeted by the White House. See *AASHTO Journal Weekly Transportation Report*, 102, No. 25 (June 21, 2002), <http://news.transportation.org/journal.aspx?JournalID=146&Year=2002> (accessed March 10, 2008).

²⁷¹ *Budget System and Concepts, Fiscal Year 2006*, Office of Management and Budget, Executive Office of the President, (Washington, D.C.: U.S. Government Printing Office, 2006).

²⁷² The transportation authorization bill grants contract authority to specific highway programs *without requiring a subsequent appropriation*; thus, highway contract authority may be a more obvious target than transit spending for rescissions after the fact. Transit formula and discretionary programs, funded through the Mass Transit Account of the Highway Trust Fund and through the U.S. General Fund, are not vested with “contract authority” in the authorization bill. If Congress wishes to adjust transit spending levels downward, it can do so without enacting a rescission via the obligation limit in an appropriation bill.

²⁷³ For documentation of how federal transit funding programs have been affected by rescissions, see *APT Primer on Transit Funding, FY 2004 through FY 2009*, (Washington, D.C.: American Public Transportation Association, 2008), 30-31; and *TEA-21 Transit Funding Provisions: An APTA Primer*, (Washington, D.C.: American Public Transportation Association, 2005), 26-27.

²⁷⁴ The correct budgetary term here is obligated, but spent conveys almost the same meaning in lay terms. In budgetary terms, *spent* funds are measured as *outlays*. Funds may be obligated without yet being outlaid, or spent.

the Federal Highway Administration. Such FHWA approval creates the federal obligation. Once obligated, federal funds are very difficult to rescind, even if the state has not yet moved to spend the funds by contracting with a third-party or deploying its own staff.

In the 1970s, Congress began allowing states to accrue highway fund apportionments in excess of the actual amounts states could commit to spend, creating unobligated balances. Earlier law establishing the Highway Trust Fund had required that receipts and expenditures be balanced, but this new practice “gave states more flexibility to make choices [about how to employ available funds from]...various federal-aid categories” in a given year.²⁷⁵

The American Association of State Highway and Transportation Officials (AASHTO), which represents state DOTs, reports that rescissions of *apportioned* highway contract authority increased from roughly \$375 million in FY 2002 to \$4.3 billion in FY 2007 (see Figure 4.1.), and places the cumulative highway contract authority rescinded thus between 2002 and 2007 at \$13.3 billion.²⁷⁶ Citing ill effects on transportation planning and programming, AASHTO adopted a resolution in 2007 against rescissions of unobligated highway contract authority. Said AASHTO Director, John Horsely,

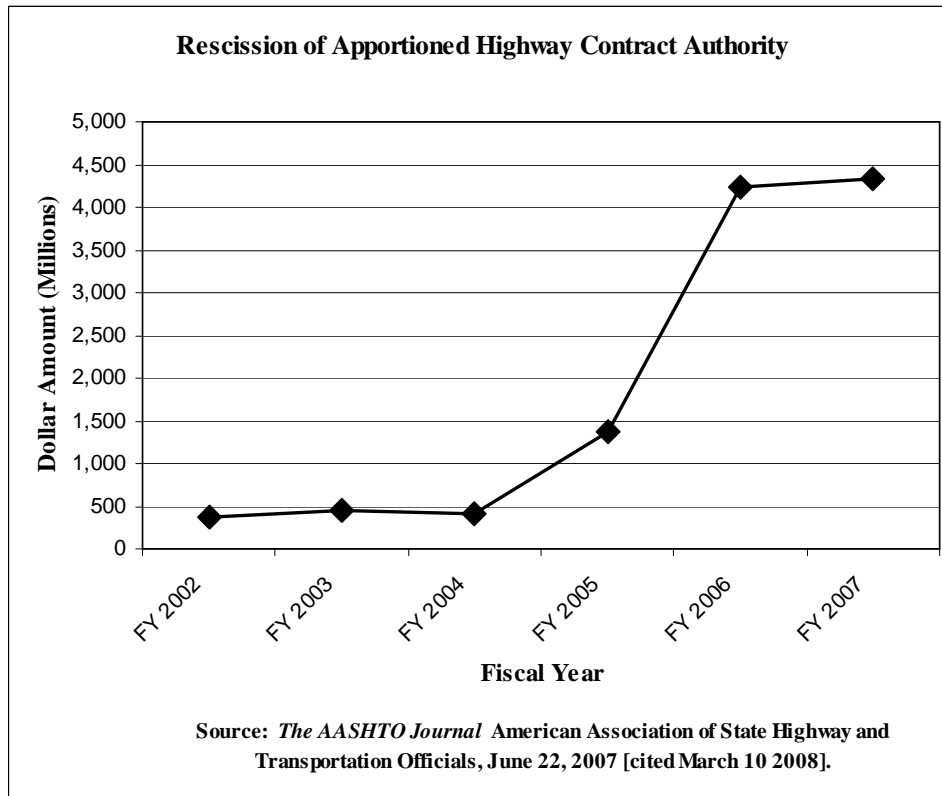
While Congress may see this unused contract authority as simply money up for grabs, in fact it represents a funding commitment on which states have based their planning and programs. It's bad policy for transportation.²⁷⁷

²⁷⁵ AASHTO *Journal Weekly Transportation Report*, 107, No. 39 (September 28, 2007), <http://news.transportation.org/journal.aspx?JournalID=292&Year=2007> (accessed March 10, 2008); see also Congressional Budget Office, *Highway Assistance Programs: A Historical Perspective*, (Washington, D.C.: U. S. Government Printing Office, 1978).

²⁷⁶ AASHTO *Journal Weekly Transportation Report*, , 107, No. 46 (November 16, 2007), <http://news.transportation.org/journal.aspx?JournalID=299&Year=2007> (accessed March 10, 2008).

²⁷⁷ AASHTO *Journal Weekly Transportation Report*, 107, No. 19 (May 11, 2007), <http://news.transportation.org/journal.aspx?JournalID=272&Year=2007> (accessed March 10, 2008).

Figure 4.1. Rescission of Highway Budget Authority (FY 2002 – FY 2007)



For transportation organizations, rescissions are problematic. Rescissions can undermine planning and project development activities that rely on stable, long-term funding commitments. They may lead a transportation department to cut programs and projects for which it has earnest plans, even if it has not yet made financial commitments to progress the work by engaging staff or external contractors. Though unobligated balances may be interpreted by some as evidence of states hoarding federal dollars, they may also legitimately represent the as yet unrealized intentions of transportation organizations to study, plan, design, construct or implement projects and programs.

Unobligated balances can result when project development moves more slowly than anticipated and the transportation agency or government behind the project cannot spend available resources while the project is stalled. Changes in a project's local circumstances, complexity in the environmental review, cost escalation, and other factors all can extend project development.

Because obligation limitations already cap the federal funds a state may obligate in a given year, the rescission of unobligated balances does not necessarily impact its available spending levels that year.²⁷⁸ However, it does reduce state flexibility to spend funds from different pots in that year and to advance projects based on current circumstances. One DOT official interviewed for this study explained:

[S]ome of those earmarks have ended up rescinding unobligated balances that just reduce your flexibility; they don't actually reduce your actual program dollars.

Further, the prospect of rescissions may encourage transportation organizations to obligate and spend federal funds quickly for unripe projects, lest those funds be rescinded and redirected toward earmarks.

Like most mechanisms Congress uses to support earmarks, rescissions are fundamentally redistributive. Rescissions allow Congress to fund new priorities and projects while camouflaging their associated costs; they reallocate funds across political, geographic, and programmatic units. Legislative language enacting a rescission may not explicitly link it with "new" budget authority for earmarks, but the maneuver is a clear blow to agencies that lose unobligated balances to rescission-enabled earmarks.

²⁷⁸ Appropriators impose so called "obligation limits" to prevent federal expenditures, or outlays, above a certain amount in a given year. Some contend that states want to and can spend down their unobligated balances, but cannot due to annual obligation limitations. See, for example, *AASHTO Journal Weekly Transportation Report*, 106 No. 24 (June 16, 2006), <http://news.transportation.org/journal.aspx?JournalID=227&Year=2006> (accessed March 10, 2008).

Given the significant reshuffling that comes with rescissions, it matters greatly to state and metropolitan transportation organizations what funds are rescinded and how, and which parties stand to benefit from rescission-fueled earmarks. Such details determine winners and losers in a rescission. States and MPOs both object to rescissions of core highway program dollars, or apportioned contract authority, but when faced with them, they have wrangled over how to apply such rescissions. *How* rescissions are extracted across these programs determines whether states or MPOs bear the greater brunt.²⁷⁹

Rescissions that target unused balances of formula funds or core program funds (also called apportionment programs) hit state transportation departments and MPOs. Apportionment funding from Interstate Maintenance (IM) and Bridge programs, for example, are spent at the state's discretion, and rescissions of these funds limit state flexibility. Rescissions of apportioned Congestion Mitigation and Air Quality (CMAQ) and Surface Transportation Funds (STP) funds can be felt acutely by metropolitan planning organizations, especially those serving large metropolitan areas.

On one hand, if Congress directs a state to rescind \$60 million in unobligated balances from its apportioned programs,²⁸⁰ the state typically prefers to choose how to

²⁷⁹ For transit programs, how rescissions are applied may also create distributional consequences, but this appears to have been a less contentious issue. For instance, in FY 2000, a consolidated appropriations act required a .38 percent government-wide rescission, but gave federal agencies discretion to apply the reduction as they saw fit. The Federal Transit Administration chose to extract the rescission largely from its capital investment grants, rather than from the formula funds which support transit system operations. Congress enacted a similar rescission in FY 2001, but required federal agencies to apply the rescission to all programs. The different approaches do not appear to have caused conflict among transit interests. See *TEA-21 Transit Funding Provisions: An APTA Primer*, (Washington, D.C.: American Public Transportation Association, 2005), 26-27.

²⁸⁰ The programs apportioned under Chapter 1 of Title 23, U.S.C. and typically affected by rescissions of apportionment authority are: (1) Interstate Maintenance, (2) National Highway System, (3) Bridge, (4) Surface Transportation Program, (5) Congestion Mitigation and Air Quality Improvement, (6) Recreational Trails, (7) Metropolitan Planning, (8) Equity Bonus, and (9) Transportation Enhancements. The first five

distribute that \$60 million cut among different funding categories. For rescissions to apportionment balances for FY 2002 through FY 2006, Congress gave states the discretion to apply the rescission to its formula program balances as they saw fit, softening the rescissions' blow to state flexibility.

On the other hand, metropolitan interests contend that, given flexibility in enacting rescissions, state transportation departments have unfairly concentrated reductions in the programs that matter most to urban and local communities or serve nonhighway transportation interests like transit users, pedestrians and bicyclists. These programs include CMAQ, Transportation Enhancements, and the "off-system" portion of the Bridge program. The Surface Transportation Policy Partnership, a D.C. based interest group instrumental in pushing for ISTEA's metropolitan-focused policy and funding reforms, suggests that state transportation departments fail to spend down unobligated balances in these urban-serving categories, and then use these balances to pay a disproportionate share of rescinded funds.²⁸¹

Analyzing state actions to comply with rescission orders in FY 2006, the group found that states used CMAQ and Transportation Enhancements reductions to account for almost 40 percent of all state rescissions.²⁸² By contrast, these two programs together

are known as the core programs and provide the bulk of federal formula dollars to states, though CMAQ provides a modest share compared to the other four.

²⁸¹ Surface Transportation Policy Partnership, *FHWA Order States to Rescind \$3.471 Billion: States Must Surrender Highway Program Funds by April 18*, March 29, 2007, http://www.transact.org/updates/Rescission_Update.doc (accessed March 10, 2008), and *Rescissions During FY '06 of CMAQ & Enhancements Funds*, March 29, 2007, <http://www.transact.org/km/FinalFY06CMAQandTERescissionsTable.doc> (accessed March 10, 2008).

²⁸² Other studies have suggested states are slow to spend available CMAQ budget authority. In 2002, the Association of Metropolitan Planning Organizations surveyed CMAQ-eligible MPOs and reported that one-third had difficulties securing state authorization for CMAQ projects and one-half waited at least a year before receiving CMAQ funds from the state. Also, federal data on CMAQ obligation rates suggest that states with the largest CMAQ apportionments, and hence those with the greatest air quality needs, may have more difficulty obligating the funds than do smaller states. See Association of Metropolitan Planning Organizations (AMPO), *AMPO Survey Results: Institutional Survey*, www.ampo.org/survey_results.html

represented only 7 percent of total apportionment funds made available to states that same fiscal year.²⁸³ This snapshot of FY 2006 suggests that, when asked to comply with rescissions (and indirectly to support earmarks), states have disproportionately surrendered newer funds perhaps seen as tangential to their traditional highway-serving mission.

This pattern was interrupted when a provision in the Energy Bill passed late in late 2007 required states to apply rescissions proportionally across all apportionment programs.²⁸⁴ Still, some states interpreted the new requirements as allowing them to apply rescission to yet another metropolitan funding pot, the metropolitan planning or “PL” funds. A protest letter submitted by the Association of MPOs, AMPO, to the Federal Highway Administration, suggested that:

The consequences of improper rescission of PL funds could be dire...[It] would result in unfunded federal and state mandates related to air quality, congestion management, transit planning, long range transportation planning, public involvement and other processes required...throughout the project development cycle...Rescission of PL funds will likely necessitate [MPO] layoffs and inability to continue critical planning tasks.²⁸⁵

Critics of the rescission decisions made by federal and state agencies have also cited “a lack of transparency and public participation...in the implementation of

(accessed March 3, 2005); and Federal Highway Administration, *The Congestion Mitigation and Air Quality Improvement Program: A Summary of Eighth-Year Activities* and *The Congestion Mitigation and Air Quality Improvement Program: A Summary of Ninth-Year Activities* (Washington, D.C.: U.S. Department of Transportation, 2002, 2004).

²⁸³ Of total FY 2006 formula apportionments to states, CMAQ funds were 5 percent and Enhancements, 2 percent. Author’s calculations, based on Table 1 of Federal Highway Administration, *Supplementary Tables—Apportionments Authorized for Fiscal Year (FY) 2006 Pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)*, FHWA Notice N 4510.604, U.S. Department of Transportation, April 12, 2006,

<http://www.fhwa.dot.gov/legisregs/directives/notices/n4510604.htm> (accessed December 10, 2008).

²⁸⁴ American Public Transportation Association, *Legislative Alert*, December 27, 2007, http://www.apta.com/government_affairs/washrep/2007dec27.cfm (accessed March 10, 2008).

²⁸⁵ DeLania Hardy, *Letter to Federal Highway Administrator James Ray Regarding Rescission of Metropolitan Transportation Planning Funds*, Association of Metropolitan Planning Organizations, August 5, 2008, http://www.ampo.org/assets/646_aug12eisaampo.pdf (accessed June 23, 2009).

congressionally mandated rescissions of unobligated highway program funds.” At the urging of the House authorizing committee leadership,²⁸⁶ the U.S. DOT has recently encouraged states to involve the public more in decisions about how to implement rescissions,²⁸⁷ but it can do little to ensure that this occurs.

One way that Congress could tailor its use of rescissions to support earmarking would be to rescind unobligated funding that was previously designated for earmarked projects that are now inactive or perhaps even complete. Rescissions of this sort could compel state DOTs to identify older earmarked projects where unused budget authority could be redirected without impacting current projects. The potential gains from such rescissions, however, are quite limited. The GAO estimated that, if rescinded in 2004, unspent balances for highway demonstration projects, called *ad hoc* earmarks here, that states identified as unneeded or complete would total only \$16.4 million.²⁸⁸

A more aggressive approach, as proposed in the President’s FY 2009 budget, would retract significantly more budget authority by targeting all *ad hoc* earmarks that after, a certain time, had not obligated at least 10 percent of available funds. Congress has typically made funds for *ad hoc* earmarks or demonstration projects available until expended. “It’s a ‘no year appropriation’ that never goes away,” explained one former federal DOT official. Thus, a state may leave that obligation authority untapped for an indefinite period if the earmarked project is a low priority or stalls intractably. In such

²⁸⁶ James L. Oberstar, James L., and Peter A. DeFazio, “Letter to the Honorable Richard Capka, Administrator of the Federal Highway Administration,” *AASHTO*, April 13, 2007, <http://downloads.transportation.org/JournalAttachment-2007-04-20-1.pdf> (accessed March 10, 2008).

²⁸⁷ See, for example, Federal Highway Administration, *Rescission of Federal-Aid Apportionments, FHWA Notice N 4510.673*, U.S. Department of Transportation, March 4, 2008, <http://www.fhwa.dot.gov/legsregs/directives/notices/n4510673.htm> (accessed December 10, 2008).

²⁸⁸ U.S. Government Accountability Office, *Unobligated Balances for Highway Demonstration Projects*, (Washington, D.C., 2004). GAO inventories of demonstration projects showed similarly modest amounts of unobligated balances in 2001 and 2002.

cases, rescissions could appropriately reclaim the unused obligation authority for use elsewhere, keeping the dollars from losing further purchasing power to inflation and cost escalation.²⁸⁹

4.2.7. Tapping the General Fund

Under the final earmark-enabling budgetary mechanism covered here, Congress has also used the U.S. General Fund, rather than the Highway Trust Fund, to fund transportation earmarks. Earmarks funded in this way are more clearly additive to federal transportation spending, but it is unclear whether they also increase total U.S. spending. Earmarks funded from the General Fund occurred more frequently in the 1970s and 1980s, to support demonstration projects.

More recently, general fund moneys have been used occasionally to enlarge the pot of a discretionary transportation program that Congress has used for earmarks. However, in the current environment earmarks have attracted significant negative attention, and transportation earmarks funded from the U.S. General Fund would draw far too much criticism from interests in other sectors competing for federal funds. This is an incentive for Congress members to fund transportation earmarks from transportation dollars.

In conclusion, the research presented in this chapter yields several important insights about earmarking finance. First, the elimination of earmarks from transportation spending bills would not necessarily reduce the funds available for federal transportation spending. Popular media accounts present transportation earmarks as excess government

²⁸⁹ Cost escalation is a compelling reason to rescind old earmarked budget authority or to limit the availability of budget authority for earmarks to a specified length of time. When budget authority remains “available until expended,” as Congress commonly designates for such *ad hoc* earmarks as demonstration and high priority projects, the purchasing power of such amounts diminishes if funds are left unspent for many years.

spending that, with discipline, Congress could eliminate; however, evidence suggest that earmarks do more to redistribute existing transportation funds than to add to them. When Congress would add transportation earmarks to a funding bill, its choices are not, for instance, passing either a \$40 billion bill without earmarks or a \$45 billion bill with earmarks. More realistically, Congress chooses between passing either a bill that distributes \$40 billion among *X*, *Y*, and *Z* established programs, without earmarks, or an earmarked bill with \$35 billion for programs *X*, *Y*, and *Z*, and \$5 billion bill for Congressional earmarks, in new program *Q*.

Second, the budgetary maneuvers through which Congress makes funds available for earmarks fall into two primary categories. On one hand, earmarking's redistributive nature is clear because the counterfactual is clear. Congress redirects funds previously designated by statute for other purposes, and uses those funds expressly for earmarks instead. Most mechanisms for funding earmarks fall into this category. Without earmarks, for example, RABA bonus funds would flow to the core highway programs. Or, without earmarks, the Clean Fuels Bus discretionary funds would support environmentally friendly bus purchases. On the other hand, sometimes when Congress makes funds available for earmarks, it is difficult to state definitively whether, without earmarks, those funds would have been spent or how. This is true for earmarks in above-the-line demonstration-style programs, as well as earmarks offset by rescissions.

Third, earmarks work unpredictably and often indiscernibly to create winners and losers among transportation actors. The local governments, regional transportation agencies, and state transportation departments that comprise an MPO can experience a single earmark differently. The earmark may have additive, deductive, or dollar neutral

impacts on different parties, depending on (a) the source of the earmarked funds, (b) the expectations and claims attached to those funds, and (c) the newly designated beneficiary of the funds, once earmarked. Because Congressional earmarking patterns are ever changing, and because any individual transportation stakeholder could benefit from an earmark under the right circumstances, few transportation constituencies have cohered to oppose the practice.

Fourth, because the moves Congress uses to reshuffle funds for earmarks are largely oblique, few transportation stakeholders can readily or accurately discern their impacts. The enactment in legislation of earmark-enabling budgetary maneuvers is often obscured in technical language and decoupled from earmarks themselves. Further, Congress may use several earmark-enabling mechanisms in one bill, making it difficult to assess the earmarks' net effects. Also, most budgetary mechanisms described in this chapter involve complex accounting adjustments, likely understood by only a small number of DOT transportation finance experts and budget insiders.

Finally, when it redistributes funds via earmarks, Congress not only reconfigures the missions, tasks and capacities of transportation agencies and organizations at all levels; it also unravels transportation policy, unsettling the expectations around which federal law requires state and regional transportation organizations to plan for and program federal investment in metropolitan transportation systems. Such interventions can undermine the policy goals of established programs and diminish the capacity of transportation agencies to develop and advance transportation initiatives. Additionally, this chapter has hinted that such maneuvers can create true inefficiencies for planning; Chapter 6 examines these and other earmark-generated complications.

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Chapter 5: On the Sidelines: MPOs and Earmark Seeking

*The worst thing you can do for a legislator is give them the Sophie's Choice to make.
It's best if you bring them the solution amongst all the parties.*

Earmarking allows Congress to hand-pick transportation projects to receive federal funds. Congress may designate earmarks to benefit projects without regard to metropolitan and state transportation planning decisions that otherwise govern which projects will benefit from federal transportation dollars and when. Thus, earmarks shift discretion over some federal dollars from metropolitan planning organizations (MPOs) and state transportation departments (DOTs) to Congress, altering the resource and decision environment for MPOs, DOTs, and other transportation agencies and local and state government actors.

Earmarking raises serious questions for metropolitan transportation planning: For instance, does the practice of earmarking erode or bolster MPOs' ability to aggregate diverse interests in urban regions? Do MPO member agencies, local governments, and state DOTs operate competitively or cooperatively when seeking to influence earmarks? Further, how has earmarking's rapid rise changed participants' expectations and rules of thumb for transportation planning in urban areas?

This chapter and the one that follows it together describe and analyze organizational practices in metropolitan areas surrounding earmarking. The present chapter explores practices employed by metropolitan planning organizations (MPOs), state departments of transportation (DOTs), and local governments to enter into the earmarking game *before* a bill is passed. I find that, where MPOs and state DOTs do seek to influence the selection of earmarks, they do so increasingly in order to work with members of Congress to secure earmarks that are "plork," rather than "pork." I use the

hybrid term “plork” to suggest an earmark that combines symbiotic motives of members of Congress, looking to claim credit, and the plannerly motives of local elected officials and transportation agency heads to advance needed projects rooted in established regional transportation goals and spending priorities.

Earmarking practice in this chapter is discussed, first, in terms of three earmark seeking behavioral modes for MPOs, state DOTs, and local governments: proactive, passive influence, and on-the-sidelines. Second, the chapter examines the considerations of MPOs, state DOTs, and local governments when opting whether to seek or influence earmarks, and it describes the formal and informal means by which they participate. Finally, for the organizations that do seek to wield influence in the earmarking process, the chapter discusses the factors that shape the specific project requests of an organization. In brief, the chapter finds on one hand that opportunities for MPOs to engage in earmarking have increased and become more visible. Because the earmarking process is itself more open, earmarking may be seen as a legitimate route to getting projects. On the other hand, the predominant patterns of and organizational relationships in earmarking seem more likely to undercut metropolitan planning, either directly by inviting project requests that are not regional priorities or indirectly by negating the MPO as a regional decisionmaking forum.

The chapter following this one examines these organizations’ responses to earmarks *after* they have been designated in law. This two-part exploration of pre- and post-earmark organizational practices aims to answer the above questions about the consequences of earmarking for metropolitan transportation planning and MPOs.

The two chapters rely on the 55 semi-structured interviews with representatives of metropolitan and state transportation agencies and organizations, national associations active in transportation policy, transit agencies, Congressional committee staff, and other D.C. based transportation experts and lobbyists. The analysis takes inspiration from Schattschneider's 1935 study of the Hawley-Smoot tariff bill, which sought to understand how institutions in lawmaking (i.e. rules, procedures, conventions) shape policy outcomes.²⁹⁰ It also applies the concept of "action channels," developed by organizational theorist Allison²⁹¹, to focus attention on regularized means of taking action within the earmarking process, the major players in that process, and their points of entry into it. I use direct quotes from interview respondents to describe in their own words the practices used to influence earmarks, the action channels available to them, and the deliberations that underlie different levels of earmarking engagement.

Overlap and repetition in interviewee responses suggest the three models of earmark seeking behavior delineated here and the factors that inform the adoption of these models and that shape specific earmark requests. The interview data cannot be used to infer precisely how frequently or under what circumstances any one approach is used. Instead, by outlining the range of earmarking practices, I give shape to behavior heretofore unexplored.

²⁹⁰ Eric Elmer Schattschneider, *Politics, Pressures and the Tariff: A Study of Free Private Enterprise in Pressure Politics, as Shown in the 1929-1930 Revision of the Tariff* (New York: Prentice-Hall, 1935).

²⁹¹ Graham T. Allison, *Essence of Decision: Explaining the Cuban Missile Crisis* (Boston: Little, Brown, 1971).

5.1. *Observations about MPOs and Earmark Seeking*

5.1.1. **Increasing Engagement in Earmarking**

The interview data presented in this chapter suggest it has become increasingly common for organizations of all kinds to seek influence in the earmarking process, whether through proactive or passive channels. Many respondents from state DOTs and MPOs report that they have become more proactive in seeking earmarks, in particular since the late 1990s as the TEA-21 reauthorization got underway. The rise of proactive engagement by local governments in earmarking was a salient theme among all categories of interview respondents.

This finding upends conventional wisdom about earmarking. At best, this wisdom suggests that earmarks represent “the most egregious example of politicized infrastructure spending” and “are not allocated according to need.”²⁹² At worst, it suggests that members of Congress, “blinded by greed,” earmark transportation projects for “almost anything and everything.”²⁹³ Yet, this study shows that members may not act blindly. The earmark development process is in fact filled with conversations between Congress and the organizations and local governments involved in metropolitan and state transportation planning, including DOTs, MPOs and local transportation agencies and governments. Given examples like Alaska’s Bridge to Nowhere and Florida’s Coconut Road, it is reasonable to conclude that some earmarks represent the confections of political egos or profiteering political insiders. But these may be an attention getting minority. It is inaccurate to say that Congressional earmarking actions are wholly divorced from potentially legitimate transportation needs. Instead, members of Congress

²⁹² James Krohe Jr., “Our Daunting to-Do List,” *Planning* 74, no. 9 (2008): 6-13.

²⁹³ Erich Zimmerman, “BULLDOZED: How Taxpayers Get Leveled by Highway Pork,” *Taxpayers for Common Sense*, 2005, <http://www.taxpayer.net/Transportation/hr3database/bulldozed2.pdf> (accessed January 16, 2006).

both ask for and are offered real input from different sources, including MPO member agencies, local governments, and staff, regarding the selection of transportation projects for earmarks, and some of these organizations report they recommend projects that reflect established regional (and state) planning priorities. Such input increases the chance, but does not guarantee, that earmarks will support “plork.”

While I observe that many, *but not all*, organizations involved in metropolitan planning increasingly engage in influencing earmarks, it is important to emphasize that even the most proactive organizational efforts to influence earmarking are still only attempts. Interview respondents report that their delegations sometimes elect requested projects, sometimes not. A federal observer described one DOT’s efforts to suggest desired projects to Congress prior to the 2005 authorization. It was, he said, “a recognition that [earmarking] happens and an attempt to influence what was...put into the bill for the state in earmarks. [But,] I don’t believe the delegation basically worked off the play list.” Those who watch Congress closely suggest a state’s delegation may follow DOT recommendations more closely when there is statewide agreement about transportation needs. One D.C. observer explained that when a state’s Congressional delegation is large and has diverse views about state transportation priorities, members are less likely to earmark projects requested by the state DOT.

MPOs and their members may increase their chances of influencing the selection of projects for earmarks by tailoring their requests to Congressional preferences. But what happens when many Congress members, with competing project preferences, represent a metropolitan region? This study indicates that it is uncommon for a delegation serving an urban area to ask constituents for a single list of regional priorities.

For MPOs then, increased involvement by transportation actors seeking earmarks can have different meanings. Where state DOTs and local governments operate on their own, bypassing the MPO, earmarks may be more disruptive to than supportive of regional goals and priorities. Yet, if local jurisdictions and state DOTs use the MPO as a forum for coordinating a regional ask, earmarking may indeed bolster that forum.

5.1.2. Formalizing Organizational Routines

As shown in Chapter 3, Congressional earmark request forms and enabling technologies have formalized the earmark seeking process, made it more visible, and also widened opportunities for earmark seekers to interact with Congressional offices regarding desired projects.

The evidence in this chapter suggests that earmark-seeking metropolitan organizations and transportation agencies have routinized their own efforts to seek earmarks. The MPOs and state DOTs that seek earmarks report using increasingly organized and deliberate processes for influencing earmarks, often emphasizing established priorities from regional plans and spending programs. One 36-year career DOT employee having a senior planning role recalled:

TEA-21 may have been one of the first [authorization bills] where we put together a list of projects, sent them with a letter from the [state transportation] secretary, and...when we go back to D.C. for our AASHTO briefings, the secretary would make the rounds and talk with the Congressional, and they would talk about some of those projects...[W]e started working with the delegation...to identify projects that we thought were important.

The DOT began “taking a more proactive approach with the projects” instead of “waiting until we saw the bill,” as it had previously.

In the mid-1990s and earlier, others recalled, requests for earmarks were made in an *ad hoc* fashion, for significantly fewer projects, and often by telephone.

[T]here used to be obviously a much more limited number of projects that would get earmarked. The [request] list would tend to be fairly short...I can't pin dates to specific numbers, but over time I have had a sense that the list has grown longer, the number of categories that we identify projects for has increased pretty significantly.

As Congress has formalized its own practices for soliciting member project requests, the number of organizations aware of the Congressional solicitation cycle and seeking to get involved has increased. Interview respondents from several MPOs described greater awareness of earmark-seeking by their state DOT or local governments, making them more savvy for future involvement in earmarking. Further, interaction between Congressional offices and transportation departments has increased, leading local agencies and governments that seek earmarks to expand the scale and organization of such efforts. Says one DOT administrator:

[T]he watershed event in terms of change in attitude about earmarks was leading up to TEA-21, when Congressman Schuster significantly expanded the number of earmarks that he was asking for from each of the Congressmen. And I remember the Congressional delegations becoming much more proactive in terms of working with us [the DOT] in trying to develop lists. They would be working with [our major cities] as well directly....[P]rior to that...[earmarking] had not been nearly as significant an issue in terms of the amount of effort that went into developing [candidate] lists, the amount of coordination that took place with Congressional offices, and even the process that we would go through as we tried to identify what projects we would like to have earmarked. After that, I started to see a very different attitude on the part of the Congressional offices and the amount of time and effort that we put into prepping the materials for the congressional delegation...[S]o the level of sophistication in what Congressional leadership was asking from each of their Congressional offices and therefore would be asking from us [the DOT], I think, increased.

Requests prior to this may have been more casual, requiring fewer organizational resources.

We're also spending a lot more staff time now just preparing all of the info for the annual submission that we make to the Congressional delegation.

A growing audience of transportation planning organizations is not only paying attention to the earmarking process, but also – as Chapter 6 will show – using the *post hoc* earmark management tools at their disposal to hold Congress accountable for projects. Thus, in some ways, the earmarking process has been growing more open and ripe for MPO engagement. Still, MPO participation in the process is not at all universal, and Congressional offices in many metropolitan regions seem more likely to receive *and seek* input on candidate projects from state DOTs and individual local jurisdictions than from regionwide MPOs.

5.1.3. Organizational Relationships Bypass MPOs

Evidence in this chapter indicates that participation in the earmarking process is increasing for local governments, state DOTs, transportation agencies, and MPOs, and that transportation organizations are developing more explicit routines for influencing Congressional choices for earmarks. Nonetheless, I find that the ability of most metropolitan planning organizations to advance regionally desired projects in the earmarking process is limited, and that MPOs on the whole are less likely than state DOTs and some local governments to actively engage in the earmarking process.

In the earmarking process, the vertical principal-agent relationship between earmark seeker and member of Congress is paramount; without action by a Congressional principal, there is no earmark. Consequently, horizontal interaction between MPOs and other metropolitan level transportation players, including state DOTs and local governments, receive little emphasis in the earmarking process.

For local governments or state DOTs proactively seeking earmarks, members of Congress are the obvious go-to persons for requests, and the MPO can be an afterthought

in the process. Below, an MPO director recalls his surprise to learn that the state DOT had a systematic, proactive routine for securing Bus Program earmarks, including for a transit operator in the MPO's region. Yet, the MPO knew nothing about it.

[In the e]arly '90s...we started to become cognizant of [the DOT's earmark requests.]...The [county] transit department [would call], saying, "...[W]e just got a notice that we got... \$1.1 million...and we have to put it on the TIP. Can you do that?" And I would say, "Well, what money is it?" And they would not have an idea either, and we would finally track it down...[We called]...our Congressman's office. We said, "Why did you do this? This is fine, we're happy, but where did the request come from? We didn't submit a request." And then they explained: [The state] DOT prepares a book of appropriations requests. Each Congressional representative receives a copy of the book and does what they wish with the project requests in their district...[So, t]he DOT transit division submits earmark requests to Congress directly without even talking...to the MPOs...[T]hey would look at the fleet profile of the transit operator to see when buses were due for replacement, look at the TIP, at the capital program...They had this process of submitting appropriations earmarks for transit projects directly to each of the Congressional representatives, and then all of the sudden there would be this money.

Interview data also suggest that county, city and town governments, large or small, frequently deal with Congressional representatives directly regarding earmark requests rather than coordinating first with the MPO—or state DOT or governor. Even in infrequent instances when members of Congress prefer a single list of regional requests, local entities may side step the MPO to pursue only their projects, reluctant to sacrifice their shot at securing funds.

Conversely, members of Congress and their staffs may privilege state DOTs and local governments over MPOs when considering earmarks. As one MPO official observed, members of Congress communicate more commonly with DOTs and local governments about earmarks than with MPOs, because they are less familiar with the MPO and regional planning.

[W]hen it comes time for [Congress to say,] "We need an earmark list," many of these Congressional staff call...the counties and say, "...We're putting together a

list, what are your priorities?" And they'll call [the state] DOT...They don't call the MPO...at least in [our state] they haven't. So these communications are happening and that could be a failure of the Congress and Congressional staff to truly understand the [MPO] process.

Also, Congressional offices may be more accustomed to dealing with state DOTs, the traditional bearers of the federal transportation program to the states, and with cities and towns, as their direct constituents.

I'm just not aware of [many MPO efforts to influence earmarks]...I think the tendency is that the states may play a bigger role – and funds flow to the states, and not to specific MPOs. It's even that way with STP funds for the MPO – they flow to states [and must be suballocated].

Given their role as historical recipients and administrators of federal transportation dollars, state DOTs may also possess more savvy than do MPOs about legislative cycles for transportation funding and points of entry into those cycles for earmarking.

Reflecting on 23-years at the DOT, one state transportation administrator recalled that

...every year...the [state] Secretary of Transportation has met with the Congressional delegation and talked about what priorities are in terms of project funding.

This practice is uncommon among MPOs, yet interview data suggest that states are more likely to have such organized routines for seeking and influencing earmarks.

When a state DOT or local jurisdiction unilaterally requests earmarked funds for metropolitan projects, even if the funds are welcome and needed, and even if the Congressional office has asked them to do so, the practice suggests to the MPO and its member jurisdictions that the regional planning process is unimportant, procedural window dressing. Further, it implies that regionally established spending plans and programs, or TIPs, can and should readily be amended for earmarks. Thus, while this work finds increasing opportunities for metropolitan planning concerns to make their way

into earmark selections, it also finds greater evidence suggesting that earmarking on the whole more commonly undercuts than reinforces metropolitan transportation planning practice.

5.2. Getting into the Game: Strategies for Influencing Earmarks

Earmarking, the designation by Congress of federal funds for specific projects, has become an increasingly institutionalized practice in the legislative process for federal transportation funding. Consequently, transportation planning organizations and operating agencies, state and local governments, and other interests that desire federal funds for specific projects, increasingly perceive the earmarking process as a potential route for securing those funds. The earmarking process operates separately from metropolitan and state planning processes that otherwise determine how federal transportation funds will be spent in metropolitan areas, making it is important to understand whether and how the interests of metropolitan regions find expression in this Congressionally directed process.

Metropolitan planning organizations (MPOs) and the municipalities, towns and local agencies that comprise them vary in whether and how they work to influence the choice of projects earmarked for federal transportation funds. As one long-standing transportation lobbyist observed,

MPOs play different roles [with regard to earmarking] and have different structures from one region to another...[Some MPOs] do actively pursue Congressional support on earmarking... In a lot of [places], the MPO doesn't engage at all in that effort—it's really not their role.

With 385 MPOs in the U.S.—not to mention 52 state transportation departments; nearly 40,000 county, municipal and town or township governments²⁹⁴; and 1,500 bus transit agencies²⁹⁵—this is unsurprising. Matching MPOs’ variety, the circumstances surrounding an earmark’s development also vary from project to project. “There is no one-path to an earmark,” remarked another interviewee, and any one organization may tailor its involvement in the earmarking process to fit individual circumstances.

Nonetheless, it is both possible and valuable to organize the diversity of earmarking practice among MPOs, state DOTs and local governments and transportation agencies. Drawing on interviews with representatives of these organizations about their transportation earmarking experiences, I find three distinct organizational approaches to influencing the Congressional process that yields transportation earmarks. First, organizations that have adopted a proactive model take deliberate steps to request Congressional earmarks. Second, in the passive influence model, some organizations avoid asking for earmarks directly, but they communicate their project preferences if approached first by members of Congress. Organizations best described by the third model remain largely uninvolved in the pursuit of earmarks. These models are the focus of this section, and they are detailed below.

²⁹⁴ U.S. Census Bureau, Governments Division, *Local Governments and Public School Systems by Type and State: 2007*, 2007 Census of Governments, March 5, 2008, <http://www.census.gov/govs/cog/GovOrgTab03ss.html> (accessed June 16, 2008). The 40,000 cited are general purpose governments, *excluding* special district governments and public school systems, which totaled slightly over 50,000 in the U.S. in 2007.

²⁹⁵ The majority of U.S. urban transit agencies provide bus service. When paratransit providers are included, there are roughly 6,000 transit agencies in the U.S. *2008 Public Transportation Fact Book*, (Washington, D.C.: American Public Transportation Association, 2008).

5.2.1. It Never Hurts to Ask: Proactive Model

The proactive approach to influencing earmarks boils down to asking a member of the U.S. House or Senate to earmark funds for one or more desired projects in an authorization or appropriation bill. Many interview respondents suggested that their own or related organizations followed this approach. Still, no organization can force the hand of Congress to designate funds for a given project or list of projects.

While this study does not survey the MPO population, respondents almost universally said that it is uncommon for MPOs actively to seek earmarks, while state DOTs seem to do so more frequently. Respondents attribute this to various institutional factors, that generally seem to diminish the real and perceived authority of MPOs vis-à-vis state DOTs and also MPOs' member governments, making earmarking's lines of influence or action channels favor the states and local governments over MPOs. These considerations are visible across all three models.

While my research suggests that MPOs pursue earmarks less commonly than their state or local counterparts, a handful of MPOs are well known for their organized efforts to steer the selection of earmarked projects. Though few in number, proactive MPOs have organized processes for developing a so-called earmarking "play list" of regionally desired projects which they submit to their Congressional representatives. One MPO member described the organization's efforts not only to develop such a list but also to have individual MPO members lobby Congress for the entire list.

All of the transit asks are in the [MPO] package, as well as all the regional other modes [including ports, highways, and streets]. They've all been a part of the package that's been supported by the entire region. And when we go back to D.C. with the region and meet with the congressional members, folks from the region present each others' requests....It's very, very unusual. We're probably unique in

the country that we have that kind of unity as a region. We all support each other's projects.

On the whole, such unified lobbying may be uncommon. It may be more common for lobbying to be fragmented among individual MPO members, with each asking members of Congress for their own projects on the play list. One respondent described two regions differing in this way:

[The MPO in A]...plays a very important role in coordinating regional funding requests...But [the MPO in B] even more so than [the MPO in A] actually...makes the requests as [the MPO]. And [the MPO in A]...helps coordinate a process that results in the individual *counties* making requests. Now, [the MPO in B] is a one-county MPO, which certainly helps. [The MPO in A] covers [many counties].

As a centralized government agency, a state DOT may be less likely to confront this issue. The same is true of single unit local governments.

Visits to Congress members may be part of an MPO's proactive organizational routine to seek earmarks. One state DOT planner observed that MPOs in his state, like the state DOT itself, approach Congress members directly to recommend projects.

[The MPOs] are buying tickets to Washington, D.C., too. They're making appointments with the members of Congress and going to their offices, and talking to them about their needs. It happens below the MPOs, that's for sure, and it certainly happens by the MPO.

One MPO director describes how, in order to pursue only a single earmark, he visited D.C.

This would be a county project, but I took the lead...I met with the Congressman and his chief of staff in Washington, briefed them on the project, determined their level of interest. It took two years. The first year they were not able to get us anything. But it was very enlightening.

Proactive state DOTs also report creating a play list for their Congressional representatives, and they describe different approaches to developing it. According to one state administrator, the department developed its earmark requests through internal

discussions among the transportation secretary's policy office and statewide modal agencies, including highways, ports, airports, and transit. The DOT also considered Congressional interests in specific projects.

[W]e'd go through and talk about the potential projects and which ones we wanted to have as part of that [list]....Now this doesn't all happen in a vacuum...Obviously Congressional staffs are inquiring about specific projects, so we have some of a sense of [their] priorities...as well.

Other accounts suggest that a state may develop its play list through

extensive outreach and statewide planning with counties and MPOs to assemble priorities for the entire state. They're using performance measures...for informed decisionmaking. They had a list of projects for [which] the state didn't have funding ...They packaged them up, gave it to the Congressional delegation, and said, "We know you'll be going to bat for the state, and we've gone through the outreach process to get needs...[H]ere's the play list we'd like you to consider."

In contrast, another MPO director suggests that his state's selection of earmark candidates is not based on technical, performance or planning criteria. "It's all politically driven," said the director. "All the decisions are politically driven decisions at our state DOT...[T]he Highway Commissioners and the Highway public relations people publish a list [of earmarks they want]." While this comment suggests another, more political, method for selecting earmark candidates, it is more significant for the sense it conveys of the MPO's own exclusion from the process.

The growth in proactive local government efforts to seek earmarks was a salient theme among almost all categories of people interviewed for this study. Some respondents suggested that members of Congress and their staffs increasingly communicate with local jurisdictions to solicit earmark requests. Others frequently observed that local jurisdictions – whether county, town, municipality, or village – have increasingly sought federal transportation earmarks in the last 10 to 15 years. One

lobbyist commented that “city governments have absolutely been pursuing transportation funding [via earmarks],...and some of them have been advancing projects that are not really regional, but still of priority to them.” Another state transportation administrator described how the largest city and county governments in his state had long been proactive, and that smaller local governments were now following suit.

Well, historically...as far as eight or ten years ago, two of our largest jurisdictions...had worked directly worked with their Congressional delegation at getting earmarks. I think that other local jurisdictions, as they started to see both X.— city and Y.— county getting money directly, wanted to do that themselves.

This and similar observations suggest that earmarking practices spread from larger government units to smaller and smaller government units in a process of institutional isomorphism,²⁹⁶ whereby an organization models its earmarking behavior on other organizations it views as successful.

In addition to city, town and village governments, other local entities have begun to seek earmarked funds for projects of interest. One MPO director observed that community improvement districts, self-taxing quasi-governments that have formed in the state’s exurban fringes, now submit project play lists to members of Congress. Another respondent said that, local groups seeking non-motorized transportation investments now generally seek earmarks.

Lots of bike and pedestrian advocate groups [are increasingly seeking earmarks.] I think...they don’t get the attention they want in the planning and prioritization process, and they’re forced to get [what they want through] other routes...[T]hey say, “Alright, we’re going to go outside the process.”

As earmarking itself has increased in scale, formality, and visibility, points of entry into the earmarking process have also increased, including for such local groups. It

²⁹⁶ Paul J. DiMaggio and Walter W. Powell, "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields," *American Sociological Review* 48, (April 1983): 147-60.

is unclear, however, that proactive engagement by civic groups and other non-governmental organizations is widespread. Evidence from case studies conducted separately from the interviews reported here suggests that these organizations may lack the staff and expertise to seek earmarks.

While interview responses suggest that local jurisdictions increasingly engage lobbyists to pursue federal funding for desired local projects, a lobbyist is no prerequisite for earmarking success. One respondent reported that most towns and villages in his state did not have a lobbyist: “They go straight to the delegation and say, ‘This is our project and here’s why it’s not on the STIP,’” the state capital program. Others reported that members of Congress encourage local governments in their districts to dispense with lobbyists and their fees and to approach the member directly instead.

A final noteworthy piece of earmarking practice among local governments is securing support for desired projects from the local business community, whether via the local chamber of commerce, a downtown business association, or a big name regional employer. A lobbyist who helps local governments to pursue both transit and highway earmarks summarizes the strategy:

It gets more important the bigger your request is: you need to demonstrate that you’ve got strong support across the board politically within key elements of the community. People look at the business community at large and labor as the first two places where you want to check off a box.

5.2.2. Don’t Ask, Do Tell: Passive Influence Model

In many instances, interview respondents drew a clear distinction between proactively seeking earmarks and using less direct means to communicate organizational preferences for projects. In this section, I explore the points of *passive* entry into the earmarking process that organizations may use and even cultivate to influence the process

indirectly. These include occasions where a Congressional office consults metropolitan or state transportation organizations for help with the earmark request forms required by Congressional committees, or for advice regarding technical and logistical details of specific projects, or even for project suggestions for earmarks.

While important for any organization wishing to influence earmarks, relationships with Congressional offices are especially essential for MPOs that rely on passive influence to steer a member's earmarking choices. Congressional staff may be unfamiliar with MPOs and the metropolitan planning process, and may consequently consult with more visible state DOTs or local entities about earmark candidates. Further, where MPOs do cultivate relationships of trust with Congressional staff, rapid staff turnover can be a greater hindrance to MPOs than to other transportation actors or local governments, which new staff may perceive more immediately as the member's audience for constituent service and credit claiming.

The passive influence approach to seeking earmarks amounts to: "Don't ask. But do tell." As one senior MPO staffer described, "We don't ask for earmarks, but we don't say no." Rather than proactively ask members of Congress for projects, passive influence organizations embrace opportunities for consultation in the earmarking process. The same MPO staffer explains what it wants of Congress:

"Why don't you give us a call and make sure that the money you request will benefit your district?" The goal for agencies like ours is to let us be used to advise [members of Congress] so that [the earmark] is a deliverable project...We say, "You may like this \$200,000 feel-good project in your district, but it won't work." Or, "If you want to do a really big project, let's look at a piece of it that is deliverable."

One DOT official outlined his organization's approach similarly. It does not ask for earmarks directly but instead consults with Congressional offices about earmarks when requested.

We do not solicit earmarks. We do not. Our operating practice is that, when members from [our state] want to work with us on earmarks, we suggest what earmarks could be, but we do not knock on somebody's door and say, "Hey, we'd like to have an earmark for X, Y, and Z." We just don't do that.

He characterized the approach as "fairly unique" among DOTs, supporting my contention that state DOTs are more likely to seek proactively to influence earmarks.

Some organizations that employ passive influence hesitate to describe their behavior as *seeking* earmarks. The DOT official quoted above adamantly rejected the suggestion that his organization would request earmarks, saying, "[W]e have been very careful not to solicit earmarks...because, frankly, given our druthers there wouldn't be earmarks." The contradiction inherent in such principled opposition to proactive earmark-seeking is not unique to passive influence organizations. Indeed, many proactive earmark-seeking organizations speak simultaneously against earmarking as well.

Various opportunities for wielding passive influence may present themselves to MPO members, via earmark request forms, technical consultations, personal relationships among staff, for instance. The advent of earmark request forms²⁹⁷ opened one point of entry into earmarking, explained the same DOT official quoted above.

We've had members come to us and say..., "I'm going to earmark this thing, and they [the Congressional committee preparing the bill] want us to turn in this form. Will you help us fill in this form?" We sometimes find ways to have them understand our opinion on the project at the same time [*laughter*] ...But basically

²⁹⁷ The use of earmark request forms by Congressional Committees to collect and process members' desired earmarks is discussed in detail in Chapter 3.

if someone asks for help we'll give them the help, whether it's something we highly favor or something we less favor.

Other technical and logistical issues surrounding an earmark request may compel a

Congressional office to contact MPO and DOT representatives. The member may ask,

Is this enough money? Is this title going to work?...And if it's not going to work, why not? Why does the state feel this way about this project? Why is it dragging its heels?

MPOs and state DOTs report using such interactions to steer earmark-ready members of Congress toward projects that align with regional plans and financial programs: "Is it in the plan? Is there money to match it? If the member wants to cut a ribbon in five or six years, will the project be ready?" The approach, say respondents, increases the chance, but does not guarantee, that projects earmarked by Congress are deliverable and valuable to the region.

In some instances, individual connections between agency and Congressional staffers can lead to desirable informal consultations. One state DOT planning official said a friendship with a Senator's staffer opened the door in the 2005 reauthorization for DOT to request projects beyond the state's traditionally Governor-vetted list.

[T]hrough my relationship with staff back there [in D.C., I knew] that...Senator X— wanted to know if there were other projects the state would be interested in...Just through [my]...relationship with that staff person, I was able to give them probably a half dozen projects that I recommended they consider. They did fund those, or most of them. That was [Senator X's] fraction that was earmarkable.

While any organization seeking to influence earmarks needs relationships with Congressional offices, cultivating such relationships of trust is essential for those relying on passive influence, and even more essential for MPOs.

Members don't just call me and say, "What do you think about this?" That only happens over time...The [MPO's] advice is made with considerable care. A huge

factor in making sure that happens is having a basis of trust with members and the members' staff ahead of time.

Another MPO director acknowledged that good advice is essential because Congress members put their reputations on the line when selecting projects.

Based on our relationship with Congressional staff,...they will give us a call and say, "We're getting requests for these earmarks. Is it on your plan? What do you think of the project?" They don't want to...[fund] a Bridge to Nowhere or So-and-So's Museum of Cockroaches and Transportation. They want to make sure that they're needed projects...We've been here long enough and we have a good reputation for [giving] unbiased technical analysis.

Sometimes, as described by this MPO director, working on one earmark can nurture agency-member relationships and lead to subsequent earmarks.

[A]s a consequence of my working with the Congressman's office on the [earlier transit terminal earmark..., w]e had developed a good relationship with...the local staff, the Washington chief of staff, and with the member himself. So in the early run up to SAFETEA, they actually came to *us*...[The Congressman] said, "I'm sure I can put something in this bill. What do you think is important?"...He did what we considered the best thing that a Congressman could do...He wasn't going to an individual MPO member or to the state DOT...and trying to fund a priority of theirs that was not an MPO priority.

The example also suggests that, MPOs, state DOTs, as well as local governments and other individual agencies may be in competition for a member's ear. Consequently, well established MPO-member relationships may help to advance metropolitan priorities when a state DOT or individual town or city favors different earmarks.

At the same time, they are difficult to establish and maintain, especially in the face of rapid staff turnover. One DOT official describes the challenge with respect to a powerful Senator's office:

[W]ith Senator Q.—, it was the most aloof relationship. His staff people seemed to be changing so I never got to deal with the same person very long...[W]hatever relationship you develop with somebody, after 3 or 6 months...they leave and you've got to start fresh. [The new staff] doesn't even know who to call.

Many interview respondents called attention to the lack of continuity among Congressional staff. Rapid turnover, often attributed to the job's low pay and high stress, may disadvantage MPOs particularly, as new staff unfamiliar with the metropolitan planning process may instead consult only with state DOTs or local entities for earmark candidates.

5.2.3. Earmarking as Spectator Sport: On-the-Sideline Model

On the spectrum of earmarking engagement, a shade further from passive influence organizations are those that are not involved at all. Interview data suggest that MPOs are more likely than most state DOTs and some local governments to be uninvolved. Thus, members of Congress are more likely to receive input, direct or indirect, on earmark candidates from state DOTs and local governments than from MPOs.

While concern about the legality of earmark-seeking compels some organizations to remain on the sideline, interview data indicate that interorganizational relationships in the larger institutional environment are what leave organizations unwilling or unable to mobilize influence in the earmarking process. In short, the horizontal relationships among an MPO, its member governments, state DOT, and community organizations and the vertical relationships between these actors and Congress determine what organizations mobilize influence for earmarks.

Most MPO representatives who described an inactive role in earmarking suggested that their organizations were bypassed by Congressional offices, sidestepped by local jurisdictions, or jurisdictionally too complex to coordinate earmark requests. One MPO planning director in a region comprised of 18 counties and nine Congressional

districts described how, prior to the SAFTEA-LU reauthorization, Congress members asked jurisdictions in their districts for earmark suggestions rather than contacting the MPO. The director suggested that the region's geographic complexity left the MPO unable to influence earmarks.

In '04 and '05...we'd hear from other people: "I got a call. They're asking for a list [of projects]." But we never coordinated that. [It might be easier for the MPO to coordinate earmark requests when there are] fewer jurisdictions in the MPO area...All nine of those Congressmen...and -women were seeking projects. They're going to go to their own constituents in their district, not necessarily an MPO that contains all...districts.

This MPO staffed an in-house Congressional liaison, its board chair had good Congressional relationships, and a former MPO board member even held a U.S. Senate seat. Still, strong countervailing factors put regional coordination on earmarks out of reach. First, local counties had a strong tradition of securing earmarks independently; second, the MPO encouraged that tradition by routinely accommodating those earmarks in its TIP; and third, key elected officials in the region seldom participated in person in MPO meetings, diminishing it as a forum for regional decisionmaking.

In another state, MPOs play no active role in earmarking due to the stronger position of county governments, according to a DOT official. County-state driven priorities dominate regional and state transportation plan development, and the same pattern plays out with Congressional earmarking.

[Our state] has a very strong county form of government with relatively few and relatively weak municipalities...The capital programming of projects largely results from the direct interaction between state DOT and the counties...[T]he MPO serves as a forum for making sure that you're looking at things from a regional perspective and that you have geographic balance, but the MPO *per se* doesn't try to drive the priority decisions. The priorities really are driven more by the counties dealing directly with the state.

Several MPO representatives say concerns about the legality of lobbying deter them from engaging in the earmarking process. One MPO director was clearly uncomfortable when asked to describe how he sought an earmark for an intermodal terminal:

I explained [the idea] to the [MPO] policy committee. We didn't call it an earmark. I didn't say, "I'm going to Washington to seek an earmark." I said, "FTA has a discretionary capital program, and I will be working with our congressman to obtain FTA discretionary funds for the project." Because we really didn't think of it as an earmark either. I mean, it *is* an earmark, but again it's FTA bus discretionary...[E]ven though the legislation says [the funds are] at the discretion of the Secretary, it's really at the discretion of Congress. So we...tell the policy committee, "If you want this project..., the first step is for you to make a commitment [to the project] on paper in the TIP. And the second step is for me, as the MPO director, with the support of county government to, you know I..."

Other responses suggest an MPO may choose to remain on earmarking's sidelines due more to absent regional consensus than to legal concerns. If an MPO's member jurisdictions cannot agree to support specific earmark requests, they are unlikely to support external or internal lobbying for the same. One MPO director stated that the MPO could not ask Congress for earmarks, because "...we're obviously using Federal funds and can't lobby for anything." Yet, pressed further, he suggested the MPO *would* suggest priorities to Congress if it had them:

We don't advocate any earmarks unless our board has taken a position that this is a high priority project. Typically our plan is not developed that way...All of these projects we hope to fund in the first 5 or 10 years of the plan. So theoretically, they all share the same priority for funding...We don't obviously lobby for earmarks as a region.

Uninvolved MPOs may suggest they cannot legally lobby for earmarks, but the prohibition is not so clear cut. MPOs receive Federal funds to support their staff and planning functions. Title 31 Section 1352 of the U.S. code prohibits Federal fund

recipients from using those funds to pay someone, such as a lobbyist, to influence any agency, Member of Congress, or Congressional staffer regarding the award of Federal contracts or grants. This law applies to an MPO's disposition of federal dollars; however, it does not amount to a total ban on lobbying by MPOs. Most MPOs receive additional funds from sources without such restrictions.²⁹⁸ Money provided by MPO members' assessments or dues, or regional, state, or local contributions may be used to lobby Congress for earmarks, using an in-house staff member devoted to governmental affairs or a professional lobbyist under contract. Second, individual MPO board members could advocate for Congressional earmarks on behalf of the region without violating the statute. MPOs do not compensate elected officials on their boards, nor are those officials MPO employees. If MPO members agree upon a regional package of projects, members could seek earmarks for those regional projects without violating the law.

Among state DOT respondents, some suggested a DOT will remain uninvolved, primarily when the Governor discourages involvement in earmarking. Yet, as a rule, interview data suggest that few state DOTs remain on the sidelines. If they do not proactively seek earmarks, they are likely to be called upon in some capacity by a member of Congress to weigh in on earmark candidates. Said one consultant who works closely with a state DOT, the DOT did not seek earmarks when the Governor discouraged it, but the DOT encouraged others, including MPOs, to do so in its stead.

The state has a love-hate relationship with earmarks. Some governors have been against it and dissuaded state DOT from doing it. The governor may have a policy against it, but the MPOs don't care and don't follow it...If the governor doesn't want it [a candidate project], [the DOT] may go to the cities and MPOs [to have them push for it].

²⁹⁸ Association of Metropolitan Planning Organizations, *AMPO Survey Results: Institutional Survey*, http://www.ampo.org/assets/55_institutionalsurveyresult.doc (accessed November 10, 2006).

One former DOT commissioner in another state noted that the DOT did not get involved in authorization earmarks but did pursue appropriation earmarks.

When I was at DOT, we did not pursue earmarks. We did not have an earmark in TEA-21 by decision of the Governor and the delegation. I think we were the only state that didn't.

The discussion leading to this policy was "very informal," said the official: "We don't think that's the way the program ought to be run." Further remarks show that the policy against seeking earmarks applied only to authorizations, where earmarks are often designated separately from existing programs. For appropriations earmarks in existing discretionary programs, the DOT sought them in order not to lose out on the funds.

We pursued earmarks through the appropriation that were in our capital program, [from things like the bus program.] It's a fine line [between seeking appropriation earmarks and *not seeking* authorization earmarks], and no one ever had any deep discussions about it, let me tell you. The idea was that in appropriations, the bus funds are being handed out, and you needed an earmark or you didn't get any [bus funds]. That's the only way you're going to get money.

Thus, pragmatics can intrude even when agency policy discourages participation in earmarking.

Local jurisdictions too remain on earmarking's sidelines. While trends indicate that local governments increasingly seek transportation earmarks and engage lobbyists to do so,²⁹⁹ this is not the whole picture. Some interviewees suggest that many localities remain uninvolved in earmarking because they lack knowledge of how transportation earmarking works or how to enter the process, either independently or in coordination with an MPO or other organization. One state DOT staffer observed that local governments that request earmarks are:

²⁹⁹ Bennett Roth, Dirk Vanderhart, and Matt Stiles, "Local Governments Turning to Lobbyists; Some Officials Call the Firms Key in Securing Federal Funds for Projects," *Houston Chronicle*, sec. B, March 7, 2006.

...the more sophisticated [cities and counties], the ones that understood or had staff that understood what was going on, what the stakes were, what the opportunities were. I think a lot of local officials in [our state] don't deal with earmarks because they don't understand the process...It's a bill that's 800 pages long and it's very complex. And unless they happen to have a hometown boy or girl that's gone off to Congress they may not have the same level of access, even...I get the sense...that a lot of them don't get involved in it because of lack of time and lack of understanding.

Similarly, local community organizations with an interest in transportation may lack organizational resources to engage in the earmarking process. The Phase I interviews reported on here did not include community groups, but evidence from the case studies suggests that smaller civic groups and advocacy organizations may lack sufficient staff, earmarking savvy, or relationships with local Congressional offices.

It is reasonable to expect that organizational size will correlate somewhat with an organization's level of involvement in seeking earmarks, i.e. that small local governments and MPOs, for example, are more likely than large cities to remain on the sidelines when it comes to seeking earmarks. Yet, as the experiences described in this chapter suggest, numerous organizational and environmental attributes influence earmarking involvement. Further, the respondents consulted, identified via emergent sampling, were not selected to represent the underlying and variously-sized populations of MPOs and other organizations, making any conclusions about the relationship between size and earmarking engagement tentative.

In sum, as Congress identifies the transportation projects to be earmarked for federal funds in an authorization or appropriation bill, MPOs, state DOTs and local governments may take different approaches to seek earmarks that match their own preferences, following either proactive, passive influence, or on-the-sideline models. Some proactively request earmarks from their member or delegation, by submitting a list

of desired projects. Others use indirect means to communicate preferences for earmarked projects, by waiting until Congressional offices ask them for project suggestions or for technical consultations on earmark proposals. Still others simply do not participate in seeking projects.

Although some are unusually proactive in seeking earmarks, MPOs seem in general more likely to adopt a passive influence approach or to remain inactive. Unless an MPO's member governments strongly agree on what projects to request, the MPO may be constrained from requesting earmarks. For MPOs that rely on passive engagement to influence earmarks, relationships with Congressional offices are paramount.

5.3. To Ask or Not to Ask

How do metropolitan state and local actors decide whether or not to seek a specific earmark designation by Congress? This section discusses the factors that drive this organizational decision, highlighting those that may make an organization more inclined to proactively seek earmarks for projects. These include the delegation's value as a means for seeking earmarks, as measured by their position and seniority in Congress, and the value of the earmark, measured by the funds it is expected to bring.

5.3.1. The Delegation as Action Channel

Congressional representatives who are well positioned to deliver earmarks were recognized by interview respondents as action channels, and having access to such a member makes organizations more inclined to engage in the process. Organizational theorist Graham Allison uses the term "action channel" to describe a regularized means of taking action on a specific issue. For that issue, action channels determine the major

players and their points of entry into the game. Respondents who considered seeking earmarks shared a common understanding of what makes a Senator or Congressperson valuable as an earmarking action channel: membership on the right committees, seniority on the committee or in the party, and leadership roles in the committee or the party. Said one D.C. lobbyist, with the exception of the FTA's New Starts program,³⁰⁰ the earmarking process is "really about the member and it's about – certainly, it's about the quality of the project – but it has more to do with where the Senator or Congressman sits and their ability to get something done."

Without access to a well positioned Congress member, an MPO, local government or state DOT may choose not to pursue earmarks. As the governmental liaison for one large MPO revealed, the MPO decided not to seek appropriations earmarks

...because [the region] does not have good representation on the appropriations committees – it's not a philosophical position. If we had people in positions of power, we'd lobby more. For now, it's in [the region's] interest to let programs operate as designed.

The spokesperson for another MPO that historically has sought earmarks attributed his region's participation to strong representation on relevant Congressional committees.

It's because we've had in the past a very powerful Congressional delegation. We had Senator *M.*— serving as the Chair of the Appropriations Committee and then ranking member when his party was out of power. So this region has benefited from his position there in terms of transportation...That process and tradition has continued in spite of the absence of Senator *M.*—.

Currently, that MPO focuses its earmarking efforts on the authorization process, as regional representation on appropriation committees is lacking.

³⁰⁰ The Federal Transit Administration's New Starts Program supports capital investment in new transit systems. Earmarks made within the program are mostly subject to merit-based review conducted by the FTA. For further discussion, see Chapter 3.

[W]e have three members of the authorizing committee from this region, one of them is among the top four members of T[ransportation] and I[nfrastructure]...When it comes to authorizing, they're very important to us in terms of naming projects. On the appropriations side, now, we're a little bit weak. We don't have an appropriator in this delegation....So that's been a little more difficult for us, and we rely pretty heavily on the six-year authorization cycle.

State DOTs on the whole seem more likely than MPOs to engage in earmarking, perhaps because they may appeal to the state's entire delegation. Yet, some state DOTs still calculate the value of their delegation when choosing whether to engage in earmarking.

One DOT's former commissioner said that earlier the DOT did not pursue earmarks because it lacked good representation on appropriate committees. Later, when political leadership changed, the state DOT changed its approach:

This is the first time that [our state] has had someone on the committees. I think [the DOT's earlier decision not to pursue earmarks] has also changed because the political line-up has changed. [Now that you have people on the right committees,] are you going to say, "No, we don't want any earmarks"? No, I don't think so.

Local governments also are aware when a delegation can help secure earmarks.

One DOT planning director comments that small communities in his sparsely populated state are aggressive in seeking earmarks given the position of the delegation.

I mean like this community of K—, that's a town of 1,000 people. There probably aren't many towns in America of a thousand population that are getting earmarks, except here ...[That's because] we're a small state in population, but we still have two members of the Senate. And, in the past, between Congressman D— and Senator T—, we had two very, very influential members in their committee assignments.

Localities without good representation may choose either not to seek earmarks independently or to do so in coordination with their MPO or state DOT.

5.3.2. Expected Benefits of Earmarks

In choosing whether to seek earmarks, some respondents from both MPOs and state DOTs suggest that they weigh the potential value of earmarks against the *expected value* of Federal funds without earmarks. This reinforces the discussion in Chapter 3 that organizational stances toward earmarking hinge largely on organizational expectations for federal funding levels.

On one hand, when earmarks come *in addition to* the amount that a metropolitan area or state expects to receive from the federal program, an MPO or DOT has greater incentive to pursue them. So called demonstration project earmarks, also known as high priority projects,³⁰¹ were additive and desirable in this way in the 1991 law ISTEA. One state official said its DOT first sought earmarks in the subsequent 1998 authorization in part because the state's own transportation funding had just expired. The DOT viewed additive Congressional earmarks, in the form of demonstration projects, as a way to replace waning state funds.

We were...at the end of the comprehensive highway [bond] program, which was the state 8-year program from 1990 to 1997...We didn't have a new highway bill for [our state], and so we saw TEA-21 actually as an opportunity perhaps to get some [Federal] funding for our state program, and part of that could be from earmarked type projects, demonstration type projects. And so we put together a list of projects for the Congressionals' consideration...and these were generally projects that were in addition to projects that were already in our program. They were projects that, within the DOT anyway, were thought of as important projects.

Thus, earmarks' potential benefits are also measured against financial forecasts from *non-federal* transportation funding sources. This raises a question regarding the substitution effects of earmarks: When they add to a state's expected federal take, do earmarks enable

³⁰¹ This type of earmark, which I also call an *ad hoc* earmark, is discussed in Chapter 3.

the state to fund projects it otherwise could not, or do they *substitute* for expenditures the state would otherwise make? While tangential to the present study, this issue would be fertile territory for inquiry by transportation economists.

On the other hand, when an MPO or state expects that earmarks will be funded by taking a percentage of total federal formula funds, with earmarks they may fare no better or worse financially. Said one MPO director:

There's also practical reasons [for not seeking earmarks from formula programs.] It's not like we went to church on this. Earmarks will benefit the party in power and the people on the appropriations committees. We don't have the representatives on the appropriations committee. So, we'll do better in the main if we let the programs operate as they're designed to.

For this MPO, in other words, if earmarks come off the top of formula programs and if the MPO lacks the Congressional action channels to get earmarks, earmarks will flow to other states and organizations, ultimately at the expense of this MPO's share.

Some organizations will pursue earmarks selectively, avoiding earmarks "taken off the top" of formula dollars, while seeking earmarks from discretionary programs. This approach may bring federal funds without taking away from the anticipated formula apportionment.³⁰² One senior MPO staffer said [that] members...seek earmarks in discretionary programs, but that,

We don't do that during the annual appropriations when money is coming off of the top of something – where it's not already been decided that it's going to be

³⁰² Although earmarks in discretionary programs appear *not* to come at the expense of formula funds, i.e. the core programs that include NHS, IM, Bridge, STP and CMAQ, it is unclear that this is always true. As described in Chapter 4, discretionary programs have in some instances been infused with extra funds to support earmarking, and those funds have come from the core programs. This occurs, for instance, when RABA bonus funds are used to bolster discretionary program account totals. It's unclear that MPOs or DOTs are aware or even can be aware of how these funding details are sorted out during the legislative process, as such details may be finalized at the last minute without much time for review. Even if the bills are finalized with some time for review, the language that specifies where funds come from is often opaque, making it hard for organizations without seriously attentive Congressional liaisons or lobbyists to know exactly how earmarks in a given program will affect an MPO's or DOT's expected take from other programs.

earmarked. That's taking down money that would support investment decisions that have already been decided, like from STP or CMAQ.

A final note about how state DOTs and MPOs calculate the expected benefit from earmarks is that, particularly as the average value of earmarks decreases, organizations will question whether it is worth the effort to get the earmark if lobbying resources can be directed to other issues for bigger returns. One state chose not to seek transportation earmarks, because they produce little bang for the state's lobbying buck. The state realized it could secure a much larger infusion of federal funds by concentrating lobbying on other federal programs.

The [state] doesn't ask for earmarks...[T]he Governor is not asking for earmarks in large part because it's not really worth it; it's more important [for this particular state] to focus on the relationship between the state government and the Federal government on the Medicaid program, which is the biggest single item in the state's budget and the biggest source of Federal money coming into the state...[W]e're very much more focused on policy issues and big picture funding issues for major programs there than we are hunting down half a million dollar and one million dollar earmarks.

In sum, MPOs and other organizations decide to ask for earmarks based the strength of their congressional delegation and the potential economic benefit.

5.4. *Designing the Ask*

Once an MPO, state DOT or local government chooses to seek earmarks, how do they decide what to ask for? Drawing on interview evidence, this section discusses the organizational considerations that underlie a so-called "ask," informing choices about what to request. A certain logic of appropriateness governs how and what MPOs and state DOTs ask of Congressional sponsors. Following this logic, these organizations work within the transportation earmarking system, as they understand it, to maximize their chances of securing a desired earmark and the discretion that earmark provides over

federal funds. An organization operationalizes the logic of appropriateness via its understanding of the rules of the earmarking game, made visible by earmarking precedent; knowledge of established plans and programs; and regard for Congressional preferences. Together, these provide a sophisticated understanding of the organization's room to maneuver to reinforce its own discretion as much as possible.

5.4.1. Following Precedent

The programmatic pattern that earmarking has taken in previous bills significantly informs the “ask” of metropolitan transportation actors. MPOs, transit operators, state DOTs, and local governments are cognizant of and tailor earmark requests toward the patterns in prior appropriation and authorization bills, deliberately requesting projects that are eligible for federal programs earmarked before and that reflect norms in terms of an earmark's dollar value or the total number of earmarks designated in the past.

Following the logic of appropriateness, obvious candidate funding sources are the discretionary highway and transit programs that Congress has earmarked previously.

One state DOT official described the organization's thinking:

We try to identify projects under each of the funding categories that we expect to have earmarks...[I]t's partly based on history, and it's also...we have federal policy staff that really tries to keep track of which programs we expect to be having earmarks. [If a program was earmarked heavily last year,] we assume it will be again.

Although federal law directs U.S. DOT to make most discretionary program awards based on a competitive process, the FHWA and FTA have frequently canceled their annual project solicitation and selection due to Congressional earmarks. Some MPOs, DOTs and other transportation agencies have interpreted this pattern to mean that

earmarks have replaced grant applications for awarding program funds. One senior MPO staffer comments:

When there's been a discretionary program, but the method [for distributing funds] was essentially earmarks, then that's when there was a consensus [MPO board] position [to seek earmarks], and we'll put something [a request] in.

Separately, a former state DOT official noted that the DOT sought earmarks within certain federal programs distributed only by earmarks, as “[t]hat’s the only way you’re going to get money.”

Transportation organizations may orient earmark requests toward specific programs also by selecting candidate projects that align with eligibility requirements for different programs and earmarks’ funding shelf-life, two constraints that govern use of an earmark. First, a project must be eligible for or fit appropriately within the scope of a program where Congress designates the earmark. Second, funds from different federal programs have different expiration dates; if an earmark in a certain program is not used before the funds expire, the earmark will lapse.

For example, one state DOT official recalled learning about eligibility when such issues plagued its early attempts to secure Discretionary Bridge earmarks. The Discretionary Bridge Program supports the replacement, rehabilitation or seismic retrofit of high-cost highway bridges, and eligibility criteria require, among other things, that a project have an estimated cost of over \$10 million.³⁰³ The projects for which this state sought earmarks were too small in scale to qualify for the funds.

[E]arly on, FHWA was pretty stringent in making sure that your project was actually eligible for the category (*laughs*) and that sort of changed over time

³⁰³ Federal Highway Administration, *Discretionary Bridge Program*, U.S. Department of Transportation, December 19, 2007, <http://www.fhwa.dot.gov/bridge/discret.htm> (accessed May 30, 2008).

too.³⁰⁴ You know, we don't have many bridges that are \$10 million in [our state]. We have lots of bridges. Because we're a relatively flat geography, and so we've got lots of rivers and streams going everywhere, and so consequently we have lots of bridges. We don't have many big river bridges.

The same official observed that expiration dates for appropriation earmarks lead the state to request earmarks for projects that are ready to go.

In order to get a project selected [for an earmark], you had to be able to obligate it in that same year. It was an appropriations process. FHWA was saying, "Here's an earmark. You got the money, You've got to obligate it this year or you're going to lose it." That's changed since then. But back then we were told we had to select projects that were ready to go, ready to obligate. And so what we tended to do back then was take projects out of our existing program. We would go to...our chief of project and program selection, and say, "Here are some categories that can probably be earmarked...Discretionary Bridge, Borders and Corridors."...Maybe a couple others. There was a Transportation Safety and Community Program. "So give us a list, but we got to be able to obligate them by the end of the following year." So we'd come up with a list of projects and we'd turn those in and we were successful in getting a number of projects.

Another state DOT official explained how expiration dates influence earmark requests:

One of the things that we've had to be particularly conscious of, especially for appropriations earmarks is, because – in many of the categories – you have to obligate the funds in the budget year, you really do have to be very careful looking at schedules. And having a fair degree of confidence that you will have a project ready to be obligated during the budget year.

Actors internalize these rules and request earmarks for projects that are already well developed and in the metropolitan TIP or state TIP.

A final way that actors align requests with earmarking precedent is through the number and size of requests. Some respondents said they observe certain norms in the number and dollar value of earmarks they pursued, reflecting the framework of

³⁰⁴ Regarding FHWA's strictness interpreting eligibility requirements, interview responses have been contradictory. Some suggest the federal agencies have grown more stringent in requiring that projects be eligible for the funding programs in which they are earmarked. Others suggest the agencies have interpreted eligibility requirements more flexibly. One thing is clear: Congressional earmarking has evolved in such a way as to make it harder for the agencies to reject projects via programmatic funding requirements by using bill language that exempts earmarked projects from other provisions of law.

Congressional practice. One MPO staffer describes how the MPO board has altered its requests to “make sense” in number and amount.

In the early years before people knew the game, we’d have a short list of five or six projects...As more parties out there became aware that earmarking was happening, well they wanted to be included, so our list became 10 or 15, 20 projects...And so most recently, we’ve felt, “Okay, we’ve added more and more priorities and been accommodating to more and more people. All we’re giving the delegation in that situation is a long wish list...And that we’re sort of doing the whole process and our members a disservice” So we’ve tried to crank it down so that the size of the request makes sense. If the typical earmark is \$1 or 2 million, it makes no sense to ask for \$50 or 60 million. It just doesn’t fit....So we’ve tried to discipline people to say, “Let’s ask for a dollar amount that makes sense for what they’re actually going to be doing and tie it to projects where that dollar amount has value and utility.” And if we expect five or six projects, then maybe ask for 10 or 12, but don’t ask for 20 or 30 projects.

Organizations likely formulate an ask that seems to balance modesty and greed.

Members of Congress may themselves to encourage earmark seekers to temper requests with what one observer called “the old typical sort of poor mouthing.” Members may try to reduce potential disappointment among constituents by dampening earmark-seekers’ expectations.

5.4.2. Pitching Projects in the Plan

In addition to respecting patterns in the size, number and programmatic contours of earmarks, metropolitan and state organizations frequently report that their earmark requests are chosen from established capital programs and long range plans.

Organizations request earmarks that will fill funding gaps on a project or substitute for other funding sources already committed to that project, moves that can increase the organization’s control over fiscal management.

The logic of this strategy is rooted in the function of metropolitan and state transportation improvement plans (TIPs and STIPs), as statements of near-term financial

commitment to the projects listed in those plans. Federal law requires that TIPs and STIPs be fiscally constrained, meaning that tangible funding sources are linked to each project and will be available for expenditure. The TIP cannot be a project wish list. Further, metropolitan TIPs, which must be approved by the local MPO and by the state, are folded into the state TIP. The metropolitan long range transportation plans (LRPs), are intended to be the seedbed for projects in the TIP, with the two documents shaping a project pipeline from planned project to programmed capital expenditure.

Below, one DOT official describes how it pitches earmarks for projects that reinforce existing priorities “in the program.”

[B]ased on our project production, and...on how our priorities and the priorities of MPOs and the local governments in [our state] mesh,...we have a very good understanding of where an earmark of \$1 million or \$2 million could do some good...Earmarks usually don't come in the \$20 million range or \$30 million range, so it's taking a look at how can we take a project that's moving forward and fill a gap to allow us to do a next phase...and keep it moving forward...Because the goal is, if we're getting an earmark, not to take money and divert it to a project that's not a priority but to keep it on a project that is a priority.

For MPOs and state DOTs, the advantages of securing earmarks for projects already in the TIP or STIP are twofold. First, from a planning perspective, the project is a recognized priority. Second, because the project is already included in a financially constrained program, the TIP, the earmark may free up funds already committed to that project for other uses.³⁰⁵ MPOs and states alike benefit from such earmarks, as they may now use the previously committed funds at their discretion. One DOT staffer described the effect of earmarks for projects within the state capital program or STIP:

....[I]t took money that had been taken out of the state program and supplemented new federal money into it. We were able to take state dollars and replace them

³⁰⁵ Some respondents suggested that funds freed up by earmarks were used to cover project cost escalation more commonly than additional projects.

[with federal dollars] and use them elsewhere... So it was helpful to the state. It helped us...stretch our money.

Others suggest that members of Congress decline to designate earmarks for projects already in the TIP. Because TIP projects are considered already paid for, members of Congress may feel “they’re not getting the political credit, so they don’t like those projects as much,” according to one state official. Instead, members may prefer to designate earmarks for projects not already programmed, allowing them to claim they made the project possible.

5.4.3. Observing Congressional Preferences

Congressional preferences are the final component of the logic of appropriateness that shapes an MPO or state DOT ask. Respondents from MPOs and state DOTs report that their understanding of Congressional preferences informs what they request. One member of Congress may prefer to receive a single list of desired projects from an MPO. (Most state DOTs already do this.) Another may prefer to deal with individual constituents. Some, but not all, MPOs and DOTs seem sensitive to the cues received from their delegation in this regard.

One MPO respondent said that members of Congress had directed the MPO to present a unified list of transit asks from the region. Previously, each transit provider had requested earmarks separately, requiring the delegation to choose winners and losers. In part, this push from the delegation prompted the MPO to create an umbrella group to coordinate transit among operators in the region.

[W] e’re working on [this umbrella agency] right now... And one of the reasons is so that they all are not going to Washington asking for individual earmarks, because what we’ve heard from Congress is, “We want to know what your number one priority is for transit.”

Congressional offices communicated this preference informally to the MPO's

Congressional liaison.

It would have been from [our liaison's] assessment from her communications, nothing in writing, that: "You guys need to get your act together in [this region] and have some priority in transit, because we're tired of having to entertain so-and-so and so-and-so and so-and-so...in our office, and everyone's asking for something different."

In this case, members of Congress have not made the same request for road and highway projects, however. The scale and structure of federal transit funding, with fewer dollars and fewer programs to support earmarks than with highway funds, may compel members to winnow transit earmark requests through regional coordination.

Still, earmark seeking organizations and governments may coordinate only if their Congressional delegation insists on it. An MPO director elsewhere reported that local governments have not complied with its delegation's request for a unified project list.

[The delegation has]... told us..., "Can you guys get together can you come up with a single list? It'd make our job a lot easier." But our guys aren't going to do it.

According to the director, local jurisdictions insist on seeking earmarks individually, fearing they would have to give up locally desired projects for agreed upon priorities.

[A regionally unified ask] wouldn't work because of the personalities of the elected officials involved. They simply would be unwilling to give up their interests to the common interest. And they're stout enough to make that happen.

Congress members are reluctant to risk angering local officials by insisting that earmark requests come from the regional plan. According to the MPO director, MPO staff have even less leverage to do so and remain on the sidelines.

If [Congress] would say and enforce, "If it's [the earmark request] not on your local plan, locally adopted plan, we're not paying any attention to it. You guys have got to come together with a common agenda and give us one set of priorities,

or we're not paying attention to any of it." If they would enforce that and thereby reinforce their federally mandated planning process, then it'd...open the door [for the MPO] to enforce local discipline. But they're not going to do that either because there's a potential political cost to that.

Some members of Congress spread their allotted earmark funds among many requests, to satisfy as many constituents as possible. The strategy, say many respondents, allows members to earmark more projects and disappoint fewer constituents. Yet, each earmark delivers relatively few dollars, creating a dilemma that one DOT official describes below:

[T]he most interesting challenge that we have out of the most recent batch of earmarks is that one member decided...to allocate his funds among communities in his district. And there were more than a dozen such communities that he elected to earmark...But each of those earmarks had \$200,000 assigned. And that was *before* the haircut.³⁰⁶ And after the haircut, they got to be \$160,000. And there [was a] fundamental question... "[W]hat are we gonna do for \$160,000 plus match?"

Interview responses in general, and by state DOTs in particular, suggest that some transportation organizations consequently formulate earmark requests that reflect members' need to spread funds among Congressional districts and constituents.

We also try to go through and identify projects by Congressional delegation so that we come up with as much of a geographic spread of projects as possible across our 8 Congressional delegations.

Yet, as several DOTs described, it can be difficult to suggest project requests that sufficiently distribute earmarks geographically and that also concentrate funds sufficiently to fund adequately a project or a reasonable project segment.

³⁰⁶ "Haircut"—also called a "lop off"—is a term used to describe the difference between the funding level authorized by congress and the amount subsequently appropriated. Because congressional authorizers name funding *ceilings* in a multi-year authorization bill and because congressional appropriators seldom appropriate the full amount in the annual appropriations that follow, a discrepancy or "haircut" results. Appropriators typically approve an obligation limit that is 85 percent of the amount authorized.

In sum, whether they do so proactively or after being solicited by delegation members, organizations that do request earmarks for specific projects shape their ask to reflect the funding programs they anticipate will be earmarked; the eligibility requirements and expiration dates of those programs; their own state or metropolitan capital programs, or TIPS; and the preferences of Congress members for credit claiming.

5.5 Summary

This chapter has explored the practices employed by metropolitan planning organizations (MPOs), state departments of transportation (DOTs), and local governments to influence the choice of Congressional earmarks, before a bill is passed. I show how, when deciding whether to seek earmarks, these actors estimate the potential value of Congressional designations and whether their representatives possess the political heft to deliver them. Decisions about whether to seek earmarks are intertwined with questions about how to do so. I describe three different models that MPOs and government actors employ for influencing earmarks: some proactively request specific projects; others await opportunities to consult passively on earmark candidates; and still others remain on-the-sidelines. When MPOs and state DOTs advance specific earmark candidates, I find they tailor their so-called asks to reflect earmarking patterns set in previous legislation; to reinforce their organizational priorities, reflected in established plans and programs; and to observe Congressional preferences where it seems necessary. I also find that parts of the earmarking process have grown more formal, not only for members of Congress and their staffs, but also for organizations that seek earmarks. The earmark seeking practices revealed here lead me to three conclusions about the interaction between Congressional earmarking and metropolitan planning: First,

opportunities to influence earmarks have increased. Organizations involved in metropolitan and state transportation planning largely report that their earmarking involvement has shifted either from some to more regular involvement, or from no involvement to some involvement. Second, the MPOs and state DOTs that do seek earmarks use increasingly organized and deliberate processes for influencing earmarks, often emphasizing established priorities from regional plans and spending programs. Still, DOTs are far more likely to do so than MPOs. Finally, the predominant patterns and organizational practices in earmarking are more likely to undercut than bolster metropolitan planning, either directly by advancing projects uninformed by regional priorities or indirectly by bypassing the MPO as a decisionmaking forum.

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Chapter 6: TIP Turbulence and Protecting Planning *post hoc*

*There are earmarks that don't necessarily come from any of us,
but come from the members themselves. And those are a pain in the drain.*

This chapter completes the two-part exploration of earmarking related organizational practices in metropolitan areas. While the previous chapter analyzes practices of metropolitan planning organizations (MPOs) and their members, such as local governments, transit operators, and state transportation departments, for *earmark-seeking*, this chapter examines their *responses to* earmarks *after* earmarks are designated in law. Together, the two chapters trace the perimeters of organizational behavior around earmarking and also contemplate the effects of earmarking for institutions and organizations in metropolitan transportation planning.

Through earmarks, Congress hand-picks transportation projects to receive federal funds. Thus, earmarking shifts discretion over some federal dollars from metropolitan planning organizations (MPOs), state transportation departments (DOTs), and federal agencies to Congress, increasing uncertainty in the transportation planning efforts of these entities. If Congress earmarked only those projects that MPOs and state DOTs had already committed to fund, Congressional choices would align harmoniously with regional or state choices. Under such circumstances, *post hoc* measures to manage earmarks would be unnecessary. In practice, however, Congress also designates funds for projects that do not appear in MPO or state DOT capital programs, known as transportation improvement programs, or TIPs. Further, some earmarks are not identified as desirable projects in their long-range plans (LRPs) either.

This chapter explores challenges earmarking can pose for MPOs and state DOTs when Congress designates projects outside regional and state priorities as reflected in TIPs and LRPs. And it examines how these organizations respond to those challenges. An understanding of these near term capital plans, or TIPs, and how they work is central to this inquiry because earmarked projects must appear in the regional or state TIP, as do all transportation projects that would benefit from federal highway or transit funds. Additionally, metropolitan and state transportation improvement plans (TIPs), and the long range plans (LRPs) that precede them, are perhaps the clearest expressions of regional and state transportation priorities. As this chapter shows, the TIP can provide leverage to MPOs and DOTs faced with unexpected earmarks, as MPO members and state DOTs must agree to include a non-TIP earmark in the TIP before the federal government will release the earmarked funds. As one U.S. DOT official described,

[A] key part of...[federal transportation funding] approval...is making sure... that the project is in the state or regional TIP and that the plans are in place to support it. We look at those things before we approve a grant. [T]he planners [must] sign off that the project is in the state TIP or I won't—I *can't* approve the grant.

In this chapter I first describe the purposes served by regional and state TIPs and LRPs. Second, I detail how and under what circumstances earmarks derail the planning priorities and fiscal commitments embodied therein, as well as muddle project administration. Third, I discuss the range of post-earmark management practices that MPOs and state DOTs use to leverage the TIP. These include adding an earmarked project to the TIP, refusing to add an earmarked project to the TIP, and other TIP-based responses such as putting conditions on TIP inclusion, budgeting conservatively, and recalibrating the TIP's distributional framework. I also sketch other strategies for dealing with earmarks *post hoc*, such as deducting their administrative costs or transferring them

to other agencies. Finally, I summarize the factors that regional and state organizations deliberate when choosing how to respond to earmarks.

This chapter draws from the same body of interviews analyzed in Chapter 5, with representatives of metropolitan and state transportation agencies and organizations, national associations active in transportation policy, transit agencies, Congressional committee staff, and other D.C.-based transportation experts and lobbyists. The interviews provide a rich picture of *post hoc* earmarking strategies employed by different organizations. However, the interview data cannot support precise inferences about how frequently or under what circumstances an organization will respond in a particular manner.

6.1. Local Power and Transportation Improvement Plans (TIPs)

Metropolitan and state TIPs³⁰⁷ are near-term capital programs for transportation. As expressions of regional and state investment priorities, TIPs—and the long range plans that precede them—are key points of interaction between metropolitan planning and Congressional earmarking. The TIP identifies the significant transportation projects to be executed within the next few years and the funding sources that will support those projects. Any transportation project that would benefit from federal highway or transit funds, including earmarked funds, must appear in the regional or state TIP. This signifies its passage through metropolitan and state planning processes. Earmarks for projects outside of the TIP can disrupt those project priorities and financial commitments, and such disruptions have motivated *post-hoc* resistance to respond to challenging earmarks.

³⁰⁷ Standard transportation jargon refers to the *metropolitan* program as the “TIP” and the *state* program as the “STIP.” Rather than use different acronyms, I call both TIPs, but use the qualifiers “metropolitan” and “state.”

With their different time horizons, transportation improvement programs (TIPs), and the long range plans (LRPs) on which they typically are based, represent different levels of financial commitment to specific projects or types of projects. In urban regions, the metropolitan planning organization (MPO)³⁰⁸ develops a TIP identifying such projects for the coming three years and must update it every other year. The list of priority projects included in the three-year TIP must be fiscally constrained. That is, the funds identified for TIP projects, whether from public or private resources, must be “reasonably expected to be available”³⁰⁹ within the three-year program time frame. As described by one U.S. DOT official in this study, “In the TIP..., [fiscal constraint means that] funds are available or committed [for the priority projects]. They *must* be in hand.” Under federal law, a TIP may contain a supplemental *fiscally unconstrained* portion, illustrating how the region might use additional funding should it become available within the 3-year period. Similar provisions apply to state-level TIPs.

An MPO’s long range transportation plan also identifies road and transit improvements that would provide integrated metropolitan transportation, but over the next 20 years. Typically, LRPs inform project commitments in the near term TIP, or capital program. Fiscal constraint is required of LRPs too, but with the longer time horizon, LRPs can interpret more flexibly than does the TIP what funds are “reasonably expected” to be available. As the federal official quoted above explains,

[Fiscal constraint] criteria for the long range plan are not as stringent as [for] the TIP. It must be money that’s reasonably expected to be available over 20 years...There is more latitude for *reasonably expected* in the [LRP]...It covers

³⁰⁸ Federal law required urbanized areas with populations of 50,000 or more to have an MPO.

³⁰⁹ U.S. Code Title 23, Chapter 1, Subchapter I, § 134 (g).

multiple [federal funding] authorizations, and people project [expected funds] two to three [funding] cycles out.

Fiscal constraint shapes the TIP and LRP by fixing the dollar amount of funds that a region or state may program. For instance, if a region anticipates \$750 million in federal transportation funds and \$1 billion in state, local and other funds over the next three years, its TIP can include projects that together would cost \$1.75 billion. The MPO or state could not include projects exceeding that budget in the fiscally constrained part of the TIP, but could list them among the TIP's so-called "illustrative projects."

Fiscal constraint requirements make estimates of funding or programming capacity—from anticipated federal, state, and other sources—key elements in metropolitan and state planning. To guide their federal funding estimates, states use the amounts set in multi-year authorization bills and the "minimum guarantee" provisions in those bills which indicate the minimum share of federal funds each state may expect to receive.³¹⁰ States and MPOs then match these estimates of "reasonably expected" dollars with specific projects in soon-to-be-implemented TIPs. Longer-term estimates, based on past trends and future economic forecasts, guide the budget for long range plans (LRPs).

When Congress earmarks projects not already in a region's TIP, it can overturn the region's expectations for how it will spend anticipated federal funds. Congressional earmarks can disrupt the funding estimates on which TIPs are based, increasing or decreasing the federal dollars an MPO or state anticipates receiving. When earmarks cause anticipated federal funds to shrink, the region or state must either eliminate some TIP projects or find new ways to pay for them. When earmarks increase the funds

³¹⁰ For further detail, see Federal Highway Administration and Federal Transit Administration, *The Transportation Planning Process: Key Issues*, U.S. Department of Transportation, 2007, http://www.planning.dot.gov/documents/BriefingBook/bbook_07.pdf, 23-26 (accessed August 24, 2008)

anticipated, the region or state may add the designated projects to the TIP but frequently must still find a way to pay the required matching dollars.

If earmarks funded only projects already included in MPO and state TIPs, earmarks and regional or state projects would align harmoniously, making what I term *post hoc* earmark management unnecessary. In practice, however, Congress often earmarks projects that neither MPOs nor DOTs have chosen for their TIPs. This chapter is specifically interested in such non-TIP earmarks. It details the reasons that may compel members of Congress to earmark projects outside the TIP, how those earmarks can derail regional and state transportation planning, finance, and administration; and how MPOs and DOTs respond to such disruptions.

6.2. *The Attraction of Earmarking outside the TIP*

Members of Congress may earmark projects outside regional or state TIPs for various reasons: to claim credit for seemingly populist projects; to advertise their own name thereby; or to direct funds to a place or project which they feel the existing planning process has neglected.

Though it may matter a lot to the MPOs and DOTs responsible for those plans, the status of a transportation project with respect to regional or state TIPs may seem unimportant to members of Congress. Congressional representatives may view earmarked transportation projects as attractive opportunities for credit claiming, whether or not they are in the TIP. Congressional theorist David Mayhew defines credit claiming as activity whereby members of Congress seek to “generate a belief...that [he or she] is personally responsible for causing the government...to do something...desirable.” He suggests the activity is so important to members of Congress “that much of congressional

life is a relentless search for opportunities to engage in it.”³¹¹ Because transportation investments generally benefit specific individuals, groups, or geographic constituencies, they can deliver the particularized governmental benefits that are especially good for credit claiming.

Earmarks for transportation projects may also be a safe form of Congressional advertising, described by Mayhew as an effort “to disseminate [a member’s] name among constituents in such a fashion as to create a favorable image but in messages having little or no issue content.”³¹² Because transportation improvements are frequently viewed as non-partisan, earmarks that fund them can advertise a Congressional sponsor among potential constituents. Said one transportation expert interviewed here,

There’s no such thing as a Republican or Democratic pothole....[I]t doesn’t matter what the ethnic or demographic make up of that community might be. Everybody’s got needs for infrastructure improvements.

It is doubtful that transportation investments are in fact divorced from partisan politics³¹³, but this conventional wisdom makes transportation earmarks desirable for helping members to build name recognition.

Finally, but most significantly, members may earmark non-TIP projects deliberately to steer funds to a project or place that members or their constituents feel the TIP or LRP neglects. Although local governments have a voice in the TIP development process, one respondent representing local governments argued that earmarks for non-

³¹¹ David R. Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974), 53.

³¹² *Ibid.*, 49.

³¹³ This same respondent described how earmarks were used in certain states to reward counties that voted for the Republican party’s gubernatorial candidate. Further, after one state’s newly elected Republican governor reportedly cut state funds in counties that failed to support him, congressional earmarks designated federal funds to restore those projects.

TIP projects are justified when TIPs and LRPs, or the planning processes that create them, neglect local needs:

[A] lot of local governments go after earmarks...I feel that occurs because...the states simply don't share federal aid highway funds adequately with local governments, so local governments are forced to go to the earmarking process to get additional federal aid funds. That's pretty simple, but that *is* what happens...[Also, there] is the question of whether local government officials are consulted in the planning process, to what degree are they consulted...[I]f they feel they are not being listened to, this is an end-around option to them. The planning process is not rational, not working, if certain people are excluded from the process.

Justifiable or not, such concerns may spur some members of Congress may earmark projects outside the TIP and LRP. Moreover, non-TIP projects that lack identified funding may appear to have more credit-claiming potential than do TIP projects for which funds are already identified and which will likely advance with or without an earmark.

Any of the reasons above may attract members of Congress to non-TIP projects as earmark candidates, even if an MPO or state DOT counsels the member against it. Still, interview data suggest that some members of Congress may see TIP projects as good earmark candidates for quick and uncomplicated Congressional credit claiming. Because TIP projects have typically advanced through preliminary planning and development, they can move forward once funds are available. Consequently, there is less risk that unforeseen environmental impacts or public opposition will arise and potentially delay or discredit a project, backfiring on the sponsoring member. One MPO director said that a local Congressman earmarked a state TIP project precisely for easy credit claiming.

[The state DOT] received two TEA-21 earmarks...for projects outside the metropolitan areas...Well, one was for a project that was already fully funded with NHS [National Highway System] funds, and it just made [DOT staff] go through the accounting stuff. This same Congressman who wanted to take credit for the

project...got them an \$8 million earmark for a \$33 million project that was already funded. And then he could say to the press, "I funded this project."

This respondent implies that the accounting machinations to swap funds for the earmark burdened the DOT, but other state DOT and MPO respondents say they encourage Congress members to earmark from the TIP and invite them to the ribbon cutting.

Whatever the reasons for earmarking non-TIP projects, it is likely that Congress members and their staffs are largely unaware of how earmarking projects outside the TIP can disrupt planning, finance and project administration for regional and state transportation agencies. I turn my attention to these complications now.

6.3. *Non-TIP Earmarks: Cracks in Planning's Pavement*

Earmarks disrupt transportation planning and decisionmaking because they shift power to allocate federal funds to specific projects from regional, state, and federal organizations to Congress. The significance of this shift would be moot if Congress earmarked only projects included in capital programs; however, Congress commonly earmarks non-TIP projects. Respondents in this study suggest that the number of earmarks for projects outside TIPs and long range plans is increasing. One state DOT official echoed the observations of many:

[E]armarking has gone less and less to what the state would like...[and more and more to] what the members of Congress want...and to what they're being asked to do by the voters who come to them.

Non-TIP earmarks can create turmoil that extends beyond the predictable objection that they encroach on the discretion of MPOs, state DOTs, and federal modal administrations like FTA and FHWA. I present such challenges in three categories: 1) planning derailments; 2) fiscal fissures; and 3) bureaucratic entanglements. The discussion

prepares us for subsequent presentation of MPOs' and DOTs' *post hoc* earmark management strategies, employed to address these challenges.

6.3.1. Planning Derailments

Earmarks that Congress designates for non-TIP projects can present different degrees of planning difficulty for MPOs and state DOTs. An earmark for a “real stinker” from the region’s or state’s perspective presents the most trouble, conflicting with or undermining investment priorities, or funding a project that bears little or no relation to perceived transportation needs. Other earmarks may be for transportation projects that are not obvious priorities, but that MPOs and state DOTs report they can live with.

Unless it is fully funded by the earmark, an earmarked project not included in regional or state TIP priorities can threaten to displace TIP projects identified as more urgent. In many cases, interview respondents suggested they sought to accommodate such earmarks, provided they are not “real stinkers,” antithetical to the regional vision, as one MPO director put it.

[I]deally, the earmarks are on the plan, but occasionally we’ve gotten an earmark for a project that wasn’t on the plan...And so far, we haven’t gotten a project that’s just been a real stinker. All of them have been good projects – they may not have been our top priority projects for funding, but there’s nothing wrong with the project, and so if there’s money there [in the earmark], it goes on the plan. You simply amend the plan and put the earmark on it.

Some non-TIP earmarks, however, may in fact undermine investments or derail strategies that the region or state *has* prioritized. For example, the project may threaten attempts to improve air quality. When a metropolitan area fails to meet federal air quality standards, federal law requires that transportation investments chosen for the region will not worsen air pollution. Non-TIP earmarks have not been vetted through the metropolitan planning process and may instead contribute to air pollution. In another

scenario, an earmarked project may indirectly undercut regional or state transportation goals. One MPO director described how an earmarked interchange reconstruction would compel the widening of connecting roads, even though the regional plan discourages increases in road capacity.

You've got one interchange where two interstates come together in a high growth area. It was designed as a relatively low volume rural interchange...Once you ...[redo the interchange], in order to make it work, ...you've got to widen the freeway and widening the freeway is the part that runs in conflict with our currently adopted plans.

Still other projects earmarked by Congress are *not* among the TIP priority projects but *do appear* in the TIP's list of "illustrative projects" or reflect the long range plan. The region identifies "illustrative projects" in the TIP that, like LRP projects, are worthwhile future investments, even though the current fiscally constrained program provides no funding for them. In such cases, an earmark could advance the project even though the region or state may have chosen to pursue other needs first.

6.3.2. Fissures in the Financial Program

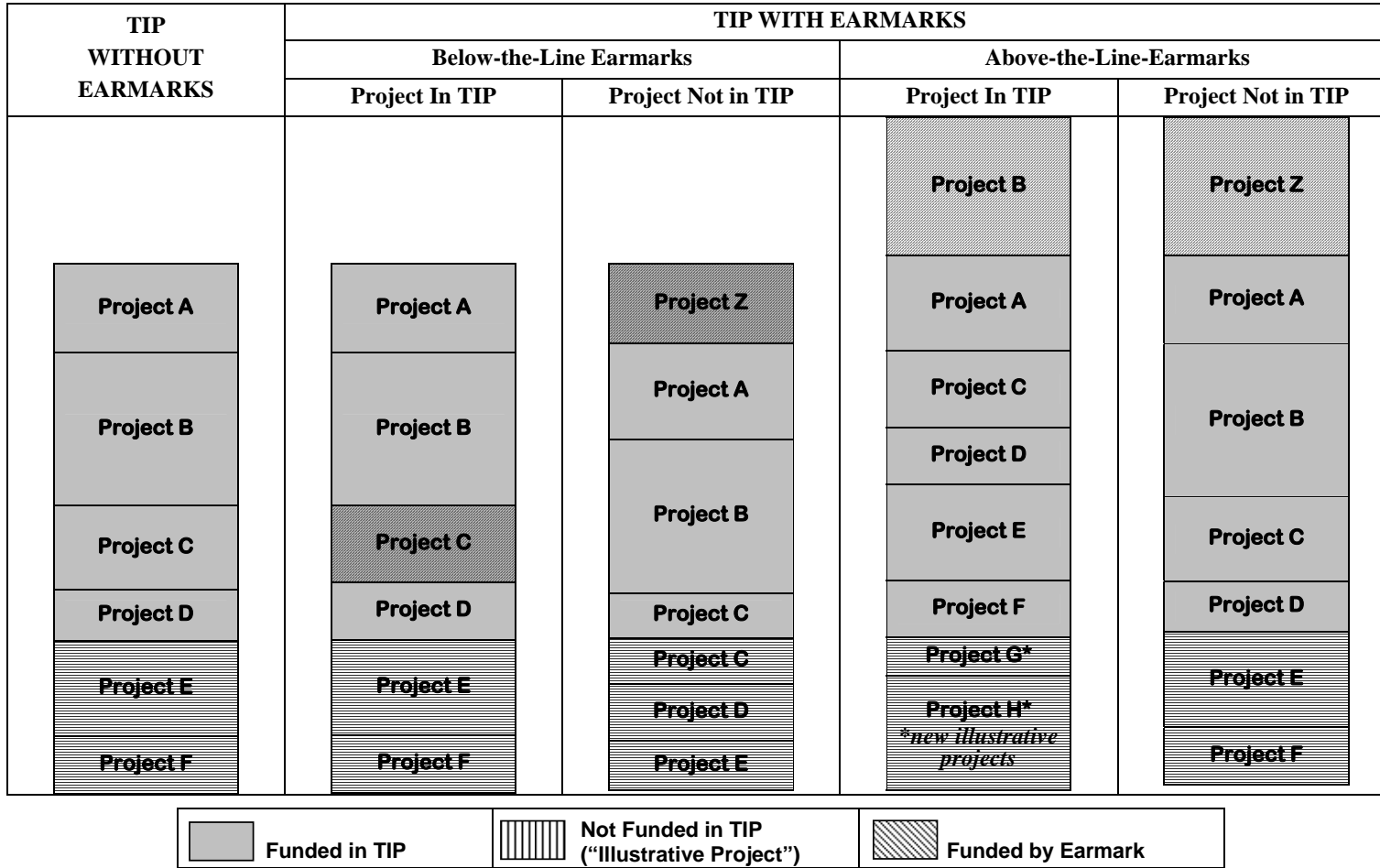
Non-TIP earmarks can also throw a wrench in the works of fiscal estimates and budgets that underpin a region's capital program and long range plan. The earmarked funds may come at the expense of federal dollars the region or state had anticipated receiving and already programmed for another investment. Additionally, the dollar amount earmarked by Congress may be insufficient to complete the project, or the earmark may require matching funds that the region or state did not anticipate and that are not readily available. In such cases, the region or state faces pressure to identify other funds it can use to advance the non-TIP project, perhaps by siphoning dollars from

existing TIP commitments and reshuffling capital priorities. Such reshuffling means that existing priorities may be delayed or cancelled to accommodate the earmark.

First, when non-TIP earmarks fall “below-the-line”—that is, they count toward a state’s legal share of federal formula funds under state-state equity provisions³¹⁴—they displace funds that the MPO or state has already committed to other projects. Interview data suggest that such disruptions are what most compel organizations to develop *post hoc* strategies to manage non-TIP earmarks. Most MPOs and state DOTs in this study objected to non-TIP earmarks particularly because they are below-the-line. Figure 6.1 below shows how earmarks can affect the region’s capital program differently, depending on whether the earmark counts below- or above-the-line, and on whether the project earmarked already was part of the capital program. After ISTEA, which counted all earmarks “above-the-line,” delivering federal funds in excess of anticipated amounts, such projects were considered “gravy” by MPOs and states. An above-the-line earmark can allow a project to advance *in addition to* rather than *at the expense of* projects already in the regional or state TIP, making the earmark more acceptable to transportation planning organizations, even if the designated project is not included in agency plans.

³¹⁴ Federal equity provisions, like the “Minimum Guarantee,” and the distinction between above-the-line and below-the-line earmarks are discussed at length in Chapter 4.

Figure 6.1. How Earmarks Affect Transportation Capital Programs (TIPs)



A second financial hurdle that MPOs and DOTs associate with earmarks is that earmarks seldom cover projects' full costs. This occurs either when the funds cover only a fraction of what it will cost to complete the project, when the earmark still requires matching dollars, or both. Said one DOT planning official,

[W]e get a lot of earmarks for projects where all they give is a down payment...That creates a lot of controversy, because the member of Congress expects us to fund the rest of that [project] with formula [funds]...and that then undermines the planning process...[I]t's a project that's...already subtracting from what we can do, and now if we finish it, it will subtract further.

Earmarks that are insufficient to pay for the project or an executable portion thereof function as a "camel's nose"³¹⁵ approach to the project. They place implicit pressure on regional and state organizations to find funds to finish the project, perhaps by postponing or canceling existing commitments. Similarly, an earmark may also require state or local matching funds that are not readily available. Respondents frequently cited this as a problem. If the recipient organization or government does not have the required matching funds, typically 20 percent of the project's cost, they may seek those funds from the region or state. If funds are budgeted tightly in the existing capital program, the region or state may delay an existing commitment in order to free up matching funds needed to advance the earmarked project.

Earmarks that upset financial plans in these ways disrupt not only the fiscal commitments in regional or state near-term transportation programs but also the distributional agreements underlying these programs. In essence, the TIP is an agreement

³¹⁵ Aaron Wildavsky used the term "camel's nose" to describe a congressional budgetary tactic, whereby legislators start a new program by inserting an insignificant sum into the budget and then argue later that additional funding is important for finishing the job. Robert Moses used a similar approach to build ambitious infrastructure projects in the New York metropolitan region. See Aaron Wildavsky and Naomi Caiden, *The New Politics of the Budgetary Process*, 5th ed. (New York: Pearson Education, 2004). Also, Robert Caro, *The Power Broker: Robert Moses and the Fall of New York* (New York: Knopf, 1974).

for allocating constrained resources across a metropolitan area or state, as well as among different project sponsors and among different types of transportation projects.³¹⁶

Earmarks can alter the TIP's distributional framework within regions and states by directing more funds to one area than called for in the TIP and by doing so at the expense of other areas. One transit official recounted how an earmark for one county's commuter rail project surprised other MPO members and upset regional expectations about which projects would fairly advance next. Because one county's project had jumped the queue, the other county expected support for *its* project to restore geopolitical equity.

[W]hen [the western county's] commuter rail came on board, there were some people on the eastern side of the region that felt it unfairly jumped the queue, and they still talk about that...I think there'll be an expectation with the next leg of the light rail system that gets built that now [the western county] will come forward for [the eastern county's light rail] and really help to do some heavy lifting. But that was really contentious.

Such concerns about distributional fairness, either across a metropolitan region or within a whole state, may motivate an MPO or state DOT to recalibrate its TIP after earmarks have been designated in order to approximate previous distributional agreements.

6.3.3. Bureaucratic Entanglements

In addition to planning and fiscal turmoil, earmarks may also require unusual administrative intervention, by regional, state or federal agencies, or by members of Congress themselves. This occurs either because the recipient of the designated funds is unschooled in the protocols for spending federal dollars, or because the legislative language designating the earmark requires adjustment. Various agencies may need to intervene in such circumstances in order to administer the earmarked funds and make the project happen. Because its defenders often portray earmarking as a Congressional parry

³¹⁶ Kristina Younger and Christopher O'Neil, "Making the Connection: The Transportation Improvement Program and the Long Range Plan," *Transportation Research Record* no. 1617 (1998): 118-21.

against unwieldy government bureaucracy, bureaucratic entanglements emerge as an ironic twist in this study. Rather than shrinking their role or hobbling them via diminished discretion, earmarks in fact created their own red tape, increasing the need for administrative attention by state and federal agencies in many scenarios recounted by interview respondents.

Without earmarks, federal transportation dollars flow through established highway and transit funding programs—via discretionary allocation or formula-based apportionment—largely to state and local transportation agencies and authorities, MPOs, or local governments with significant transportation responsibilities. Yet, with earmarks, Congress can direct funds to entities or organizations outside these traditional grantees, such as minor local governments, civic groups, community development agencies, and other entities. Study participants from organizations that traditionally receive and process federal transportation grants often refer to atypical recipients as “non-traditional grantees,” and report that they may lack experience with federal transportation grants, knowledge of the requirements for spending them, and sufficient personnel to tend to such requirements.³¹⁷

Atypical earmark recipients may require significant assistance from regional, state and federal transportation organizations to understand and to meet these requirements. As described by a state DOT official below, staff in established planning and transportation organizations must walk uninitiated recipients through the grant making

³¹⁷ For example, a two volume, 17 chapter New York State DOT manual details for municipalities and their consultants the procurement, contracting, accounting, environmental review, public notification and other procedures and activities required to ensure that federally funded projects are developed, designed and constructed following federal (and state) requirements. See New York State Department of Transportation, *Procedures for Locally Administered Federal Aid Projects*, 2004, <https://www.nysdot.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects>.

process and say that channeling earmarked transportation funds to them increases administrative workloads.

[For] many of the smaller jurisdictions – towns, non-profit groups – an earmark comes with all sorts of strings attached... It usually doesn't come with 100 percent of the funding, because of rescissions and obligation authority, [and] is not near the amount they need to do their project. It comes with all the strings of federal process, which most are not ready to deliver...The state [is responsible for] overseeing those, so we become the bad guy for administering the federal rules. And time after time after time we find local jurisdictions will struggle with this and then look for the state to step in and deliver [the project] for them. As more of these earmarks...[are for] non-transportation [projects], our interest in DOT is less and less in stepping in and doing that.

Defenders of such earmarks say they allow members of Congress to direct funds to new recipients, municipal and otherwise, enlarging the constituency for federal transportation dollars. Atypical recipients, some argue, are as entitled to federal funds as traditional agencies, and transportation bureaucracies should make those funds available; further, state DOTs and federal transit and highway agencies use the term “non-traditional grantees” to suggest that certain local governments, civic groups, and other players are rogue recipients of earmarks, bolstering their claims to federal funds. Said one observer,

[“Nontraditional grantees” fit] under the heading of “bureaucratic problems” that don't deserve a lot of attention. City governments are legitimate players in this field. They are building transportation projects; they are improving road systems that are theirs to work on...I think particularly the federal agencies ought to be able to accommodate that.

Yet, it far from certain that earmarks designated for nontraditional grantees truly broaden access to federal transportation funds to serve neglected cities, civil society, or local communities. Data presented in later case studies suggest that civic interests unable to secure transportation funds through the MPO process face similar difficulty winning

earmarks from their Congress member. Moreover, how members of Congress choose nontraditional recipients for earmarks is unknown.

In either case, such earmarks create significant red tape for transportation agencies that administer them, non-TIP earmarks designated for small local governments or civic groups clearly divert staff time and resources of agencies facing already tight budgets. Further, the earmark may support projects viewed by some as tangential to transportation needs. Some regional, state and federal transportation agencies increasingly view bureaucratic complications as an externality borne of earmarking, and as I report later, some have developed specific practices for recovering administrative costs.

A second kind of bureaucratic complication arises when the legislative language designating an earmark requires some adjustment. Earmarks are created when Congress inserts special language into bills or accompanying committee reports, and they carry legal significance, albeit to different degrees.³¹⁸ Thus, earmarked funds may be used legally only for the specific project activities and only at the physical location described in the bill or report. Yet, transportation projects often evolve in the months or years between a bill's passage and the moment when the earmark recipient would use the funds. If the original description no longer matches the project a grant recipient intends to execute, some administrative or legislative adjustment is needed.

In one such example, described by a state DOT official, a local university secured an earmark that the bill itself designated as funds to "Improve intersection at the corner of 5th and M.—Street;" however, the University and DOT chose later to fix another nearby

³¹⁸ Chapter 3 describes how statutory, non-statutory, and hybrid earmarks are legally binding to different degrees.

intersection instead. Because statutory language designated the earmark, the funds could be spent only at the specified location, unless the state obtained an earmark adjustment.

Rather than doing precisely what was outlined in the description, we want to do something a little different. Well, the feds say, “*No. If it says 5th and M.— Street, that’s not 6th and M.— Street.*” The remedy is one of two things, and increasingly the first one is not being invoked too much anymore. [First,]...an administrative process where the member who got the earmark would write to the [U.S. DOT] Secretary and say, “*Look, I got this earmark...based on a set of circumstances that existed at the time. There are changed circumstances now. It would be my intent as the member who got this earmark [that it] be used at this different location....*” Of recent, they have not [allowed that. They] have said, “*If it says 5th and M.— Street, and you say 6th and M.— Street, well, that’s not what the law says.*” So, then the [second] remedy becomes legislative language to change it.

Sometimes—typically for non-statutory earmarks—adjustments may be handled at the discretion of U.S. DOT leadership. But for earmarks in statutory language, changes may be possible only via a technical corrections bill or other legislative vehicle. In situation, MPOs or state DOTs may be called upon to facilitate the request for an earmark amendment to the federal agencies or congressional offices that must approve it. Respondents unanimously describe such adjustments as cumbersome, involving not only significant staff time but also an expenditure of political capital when the earmark’s original Congressional sponsor must support the adjustment. Experienced earmark seekers recommend that vague language be used to designate earmarks, so their recipients are not wedded to project activities or locations that may later become unworkable if the project changes.

No office within Congress or the U.S. DOT tracks how many earmarks require such amendments, whether approved by the U.S. DOT, by a Congressional committee, or by Congress itself in a new bill. One respondent, however, suggested that earmark adjustments within the federal highway program are sought for 20 to 80 projects per year.

These entanglements suggest that earmarks not only increase the need for bureaucratic intervention but also can be inherently inefficient vehicles for channeling federal funds. The challenges created by so-called non-traditional grantees also raise the issue of whether eligibility to receive federal transportation dollars should be restricted to such organizational actors as MPOs, state DOTs, or public transit providers, or be extended to local governments, civic groups and other organizations, unschooled in federal transportation grant protocols.

6.4. *Managing Earmarks post hoc: TIP-Based Resistance*

Thus far, this chapter has developed a picture of transportation improvement programs, or TIPs, and how they work; the planning, fiscal, and administrative problems that can arise for metropolitan and state organizations when Congress earmarks projects outside these capital programs; and the attractions that lead members of Congress nonetheless to do so. I now turn to the practices that some MPOs and DOTs use to manage disruptive earmarks after Congress has designated them. The present section covers earmark responses rooted in the TIP, and the following section, 6.5., addresses other practices independent of the TIP. A subsequent section, 6.6, lays out the factors, as reported by respondents, weighed by regional and state organizations choosing how to respond to an earmark.

Whereas earmark seeking MPOs and state DOTs must rely beforehand on persuasion to suggest that members of Congress designate funds for specific projects, *post hoc* earmark responses rooted in the TIP afford these organizations some legal tooth. Under U.S. law, all projects that would receive federal transportation funds, including earmarked funds, must appear in the appropriate regional and/or state capital programs,

or TIPs. Thus, if an earmarked project is not already in the TIP, its fate rests *de jure* with the regional and state organizations responsible for those plans.

Faced with a non-TIP earmark, MPOs and DOTs must choose to add the project to the TIP, thereby advancing it, or they must refuse to do so. These options stake out the two poles of *post hoc* earmark management. A third group of responses inhabits the intermediate terrain, where MPOs and DOTs accommodate Congressional earmarks in the TIP, but do so on their own terms. These three categories of responses are discussed below. While the interview data yielding this schematic of *post hoc* practices provide a rich understanding of organizational responses to earmarks, they cannot be used to infer with precision under what circumstances or how frequently certain organizations may respond in a particular fashion.

6.4.1. Accommodation

Interview evidence from this study suggests that it is more common for MPOs and state transportation departments to add non-TIP earmarks to their capital plans than overtly not to accommodate the projects, and many respondents report having added such projects to their TIPs. Nonetheless, regional and state agency representatives also express increasing reluctance to add such projects outright, as a routine matter.

Metropolitan and state actors once may have added earmarks to the TIP without much consternation when earmarks were fewer in number and typically counted above-the-line, but may have since grown more circumspect given dramatic increases in earmarking and the penalty they may carry against anticipated federal funds.³¹⁹ One MPO official, for example, reported that prior to the 2005 authorization the MPO would

³¹⁹ Fiscal constraint requirements introduced in 1991 likely also made it more difficult for regions and states to add earmarked new projects to their TIPs, unless an earmark was in fact fully funded.

add projects to the TIP if an MPO member asked it to, even before the bill designating it had passed. The MPO followed such assurances several times and added projects, but the earmarks for them failed to materialize.

[C]ounties would tell us, “Oh, we’re going to get an earmark. We need you to put this in the TIP.” [In] a couple of instances, we took the county’s or jurisdiction’s word that something was going to be an earmark, and then it wasn’t, so then we were stuck with having to pull it out of the plan or TIP.

This MPO later established as policy that it would not consider adding earmarked projects to the TIP until an earmark was finalized in law.

Other circumstances may compel a region or state to add projects to the TIP. Several respondents suggest that MPOs and DOTs may add a non-TIP project to the TIP even though it is unlikely ever to be completed. A variation on the camel’s nose approach, this response allows an MPO or DOT to accommodate the earmark while also knowing the project is beyond reach. The project can advance through planning and feasibility studies, as the MPO or DOT keeps it “bumping along,” but it is improbable.

Says one observer:

[W]hen a member of Congress [...earmarks] something, the state DOT wants to comply with that as best they can. Sometimes it just boils down to the view by the state DOT that [advancing the earmarked project is]...a cost of doing business: “We’re going to have to put money on this project that’s not going to happen or won’t happen any time soon, but we’ll put some more money into the next phase of study for it, and just sort of keep it bumping along.”

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Other regional and state organizations report that they respond to non-TIP earmarks on a case-by-case basis, assessing the project’s potential to disrupt TIP priorities and finances.

A project that disrupts the capital program minimally or not at all is more easily accommodated.

Still, no studies have examined how frequently MPOs or state DOTs amend their TIPs to accommodate Congressional earmarks or how they do so. Remarks by U.S. DOT officials suggest that evidence is scant. Said one,

[P]rojects that get grants have to be in long range plans [and the] TIPs. It's hard for me to say at this point how the MPOs are doing that...My impression is, we see a lot of people amending TIPs to add projects that get earmarks after the earmark has been gotten, but the relationship to...the planning process isn't always clear.

Another federal agency official remarked,

I hate to generalize because I guess I only hear the bad stories...What I hear about [from MPOs] are earmarks for projects that just show up out of the blue—they appear unannounced in an appropriation, and there may be money associated with them or not. The MPOs are challenged with fitting [the earmarked project] into the planning and programming process, going back and retrofitting the LRP and TIP and getting it in there...[E]ven if it does come with full funding, it's a challenge.

Without knowing how MPOs and DOTs incorporate earmarks into extant TIPs, it is difficult to know whether earmark-driven changes to regional and state capital programs are made public in most cases, as the law requires. Federal transportation planning rules oblige MPOs and state DOTs to seek public input when developing—or later amending—their capital programs. While minor “administrative modifications” to a TIP do not require public review, more significant TIP “amendments” do.³²⁰

Additionally, an MPO or DOT that amends its TIP must demonstrate anew that the projects included meet fiscal constraint and conform to air quality standards.

Conceivably, an MPO or state DOT could mask significant additions to the TIP—and possibly the delay, reshuffling, or removal of other TIP projects—by treating them as

³²⁰ Federal Highway Administration and Federal Transit Administration, *The Transportation Planning Process: Key Issues*, U.S. Department of Transportation, 2007: 25, http://www.planning.dot.gov/documents/BriefingBook/bbook_07.pdf (accessed August 24, 2008).

“administrative modifications.” This would make significant revisions to the capital program largely invisible to the public.

6.4.2. Playing Hardball

By refusing to add them to the capital program, both MPOs and state DOTs may challenge Congressional earmarks that would disrupt or derail their plans and programs. One respondent described this response as “playing hardball.” While many interview respondents reported instances of earmark-driven *additions* to regional and state TIPs, few recounted cases where an MPO or DOT flatly refused to accommodate an earmark in this way.

Transportation organizations see a clear political cost in refusing an earmarked project. This action can foment conflict between the MPO and the member of Congress who earmarked the project, not to mention the local jurisdictions, civic groups, or other local and state elected officials who support it. Consequently, it is a response that few choose lightly.

For one MPO consulted here, its mere ability to reject non-TIP earmarks helped the MPO to curtail MPO members and outside organizations, such as local businesses and universities, from seeking earmarks independently from the MPO. Said the MPO director, “Occasionally, ...groups...have tried to go around the [MPO] process [to get an earmark], and we’ve taken steps to rein them in.” This MPO coordinates its own regional request for transportation earmarks, and it has threatened that it will not include the earmarks of rogue actors in the TIP. Here, the director describes its interactions with a local university:

The first year [the University requested earmarks], they did it outside our process. The next two years, they did it inside our process. At first, they didn’t even know

about our process...[The University] seeks lots of earmarks in lots of different fronts..., so they were accustomed to federal lobbying [...and...] grants...[I]t was natural for them...to seek earmarks [independently]. When they ventured into transportation, ...we raised the flag and said, “If you want transportation earmarks, you have to do it through us.” At first, they resisted that... [T]hey had never gotten their earmarks cleared by anybody else before, why would they have to get transportation earmarks cleared? Well, the fact is, if anybody gets an earmark, they don’t actually get the money unless we approve it: *that’s* the MPO connection. So we gently convinced them: “Well, you’re not going to get your earmark unless you come talk to us. So, you may as well talk to us from the outset.”

This MPO flexed its muscles judiciously to reinforce regional priorities and earmark requests. The MPO director says the University now participates in the regional transportation planning through its MPO board representative, and the MPO in turn has supported University-led requests for certain transportation improvements. The result seems mutually beneficial:

[T]hey learned that being part of our [MPO] program has been helpful. We’ve added weight to their request [for earmarks], and I suspect that they’ve gotten more money as a result...[Initially]...they thought that they might not fare very well [in the MPO]...and they were apprehensive of entering into a process [that] somebody else already controls.

It is the same factors that discourage metropolitan and state transportation organizations from playing hardball that instead encourage them to accommodate earmarks. Even when an earmarked project is not an explicit regional priority, MPOs or DOTs may try to make “lemonade from lemons,” in the words of one respondent, by accommodating the earmark while also placing constraints on the project. Approaches of this sort are covered next.

6.4.3. Responses in Between

If the spectrum of *post hoc* earmark management ranges from adding a non-TIP project to the TIP to refusing to do so, between these endpoints lie other earmark

responses employed by MPOs and state organizations. These intermediate practices show how MPOs and DOTs may negotiate the terms of a complicated earmark, making it more palatable rather than rejecting it outright or adding it as is. They also illustrate how the TIP affords regional and state transportation organizations leverage to manage earmarks and the uncertainty that often accompanies them.

6.4.3.1. Quids pro quo for TIP Inclusion

Some MPOs and state DOTs have begun to put specific conditions on non-TIP earmarked projects before those organizations will consider adding the project to the TIP. Examples of such stipulations include requiring that the earmark appear in signed legislation, that mandatory matching funds come from sources outside the TIP, and that the project's ultimate completion be financially feasible. Metropolitan planning organizations and state DOTs use these conditions to minimize earmark-related disruption to established priorities and capital programs. These practices illustrate a range of approaches to accommodating Congressional direction while also preserving some organizational discretion.

One MPO developed a policy that I call "show-me-the-earmark." A local jurisdiction or other organization seeking a Congressional earmark may pressure the MPO to add the project to the regional plan or TIP *before* the earmark materializes; to a member of Congress, a project included in these documents can appear to have regional support and therefore be a more attractive earmark candidate. The MPO referred to here once accommodated such requests without much ado:

[M]ost of these were small projects, so it was nothing that was going to impact the feasibility of, the purpose of our plan, our direction...[W]e just realized, we can't take the jurisdiction's word that [an earmark is] going to happen. We're trying to establish a lot more structure into our TIP adoption.

The MPO crafted its “show-me-the-earmark” policy after its more lax approach proved problematic. “We had to establish a policy,” said the MPO planning director. “We will not include any project in the TIP as an earmark until we actually see it on a list that Congress has already approved.”

On one hand, the policy may be seen as an obvious corrective to the MPO’s overly permissive accommodation of earmarks. On the other hand, it is significant because the MPO moved to strengthen its control over the TIP and to bolster the integrity of existing TIP commitments. The example also suggests that earmark-born challenges may prompt formalization of TIP development and adjustment. By no longer adding earmarks to its TIP simply at the request of a local official, the MPO shifted authority to amend the TIP from individual members to the MPO as a whole and also made its planning process more transparent.

A second condition that some MPOs and DOTs have placed on earmarks is that a project’s required match come from funds other than those already budgeted in the regional or state TIP. In 2003, an MPO consulted for this study introduced a formal protocol that stipulates that earmarked projects have either 100 percent federal funding or guaranteed matching funds from a local government or other agency before the MPO will add the project to its TIP. Another state DOT requires that local recipients provide matching dollars for any project that the state views as beyond its purview:

If it’s an earmark for a county transportation project or a town transportation project or a non-transportation project, we will not commit the matching funds.

The state official who described this policy further noted, however, that the DOT *would* in fact provide matching funds for an earmarked project on the state highway system, even if the DOT had not requested the earmark. In other words, the DOT will free

resources to match an earmark on the state-owned system, but it will not do so for other local projects it doesn't request. Thus, the state denies matching funds to—and thereby discourages—projects outside its own purview.

This policy reinforces the existing state capital program, but it could conceivably thwart earmarks for urban roadway projects not within the state system. Additionally, state policies restricting matching funds for earmarks could drive local governments to pursue their own funding alternatives to complete the earmark, for example, local option taxes. Future research could examine how counties and cities provide matching funds for earmarks and whether they leverage earmarks with self-help transportation funds.

A third condition reported by one DOT says that the state will not add an earmarked project to the TIP unless its future financing is sufficiently secure not to depend on more earmarks. Said one transportation official, the DOT currently faced about a dozen earmarks with shaky future finance: “[W]e’re now getting very stern with earmark recipients [e.g. local governments] that we’re not going to put it in the STIP unless you can show us a legitimate plan to design it and build it with funding that doesn’t rely on future earmarks.”³²¹ The practice may have driven one local community to take out a commercial bank loan in order to provide matching funds for an earmark.

³²¹ Interim federal guidance on fiscal constraint published by FHWA in 2005 advised states and MPOs how to treat earmarks when estimating transportation revenues. For metropolitan and state TIPs, FHWA allowed MPOs and state DOTs to count earmarks as available or committed funds only if they had already been awarded by USDOT (for discretionary earmarks) or authorized by Congress (for demonstration or high priority projects). For metropolitan LRPs, FHWA allowed MPOs to project the value of anticipated future earmarks in its funding estimates for fiscal constraint. (Fiscal constraint requirements do not apply to *state* LRPs.) Final rules for fiscal constraint, issued in 2007 and hampered by controversy, omitted explicit direction regarding earmarks. As of late 2008, no federal policy advised states or regions how to handle earmarks in funding estimates for required plans. See Federal Highway Administration, *Interim FHWA/FTA Guidance on Fiscal Constraint for STIPs, TIPs, and Metro Plans; Questions and Answers on Financial Plans/Fiscal Constraint for Transportation Plans and Programs*, U.S. Department of Transportation, June 30, 2005, <http://www.fhwa.dot.gov/planning/fcqa62805.htm> (accessed October 24, 2006). See also “Statewide Transportation Planning; Metropolitan Transportation Planning; Final Rule,”

Finally, in one region that has struggled to meet federal air quality standards, the MPO has stipulated that any earmarked project that could diminish regional air quality will be excluded from the capital plan until its impacts are reviewed through air quality analysis.

6.4.3.2. *Conservative Budgeting to Minimize Disruption*

Following another TIP-based strategy, one DOT reported that it had created a contingency fund of sorts in its capital programs, enabling the DOT to accommodate unexpected earmarks with matching funds if needed but without disrupting its TIP. The DOT used this approach for the 2005 authorization, after some disruptive earmarks in the 1990s. The practice allowed the DOT to maintain a fiscally constrained capital program, even when unexpected earmarks required additional funds. According to the DOT administrator, conservative budgeting allowed the organization to maintain some discretion in the face of unanticipated earmarks and has appeal as a standard practice.

What we have done [for the first time] with...SAFTEA-LU earmarks is set aside a portion of our future anticipated federal funds for...earmarks. With the growth in earmarking that has been taking place, this may be something we're going to need to start considering for future authorizations. Recognizing that each year...[the] appropriations process [... will yield unexpected...] earmarks that will go to projects that you don't necessarily have in your STIP or capital program..., you'd better make sure you have reserve money for these projects.

The DOT estimated it would receive roughly 87 percent of expected federal funds, so as not to over-program its capital budget. The result, said another transportation official, was that "We were in a pretty good position so that when the earmarks came out, we had sufficient flexibility in our program that we didn't have to adjust." Without this reserve, the state may have had to delay, scale back, or cancel

Federal Register 72, no. 30 (February 14, 2007): 7223-7286, <http://edocket.access.gpo.gov/2007/07-493.htm> (accessed November 22, 2008).

existing TIP projects, and thereby disappoint public expectations, in order to accommodate earmarks. The other alternatives—to ignore or refuse the earmark and potentially offend the Congressional sponsor—were unattractive, says the official:

[T]he last thing in the world any state DOT secretary or state highway administrator wants to do is get their Congressional delegation upset that they're not going forward with the project that [the delegation] got the earmarked funds for.

Although interviewees from only one state described this practice, it responds to a challenge described by many regional and state organizations. The use of conservative budgeting also illustrates how earmarking creates a push and pull for discretion over federal funds between transportation organizations and Congress. A DOT or MPO that sets aside contingency funds for earmarks could be seen on one hand as surrendering discretion to Congress, as the organization shrinks its own capital program to reserve funds for Congressional earmarks. On the other hand, the organization could also leverage such contingency funds to influence what projects the Congressional delegation earmarks. That is, an MPO or state could conceivably shrink its program by excluding the projects it will suggest as earmark candidates to Congress members. With budget dollars in reserve, the MPO or state is positioned to provide some needed funds, toward any required match or toward the project's total cost. Further, because the project is not included in the TIP, a Congress member may see it as an attractive opportunity to claim credit for securing funding for it. Still, MPOs or DOTs that hold funds aside in this fashion may draw criticism for hoarding federal funds.

6.4.3.3. *Recalibrating the TIP*

Some states and MPOs report that a third TIP-based response to earmarks is to reshuffle or recalibrate the capital programs *post hoc*, restoring the geopolitical distribution that existed prior to the earmarks. Because members of Congress may use earmarks to direct funds to specific places, typically the districts that elect them, earmarks can alter how federal funds are distributed within a state or region from how the TIP would distribute those funds. A TIP represents not only a series of priority transportation improvements for a region or state, but also distributional agreements among jurisdictions and interests within that region or state, and earmarks can disrupt those agreements.

If unexpected earmarks force the hand of an MPO or DOT to shift funds from prior project commitments to earmarked projects, the organization may later recalibrate the TIP or long range plan by reshuffling funds for different projects in their capital program. In one MPO, for example, unrequested earmarks together with steep cost inflation in the transportation industry caused the cost of its project commitments to exceed anticipated funds. To restore fiscal constraint in its plan, the MPO scaled back project commitments to match anticipated funds. The MPO official below suggests this was done with an eye toward geopolitical concerns:

We pared down our 2004 plan to meet financial constraint, given the reduction in federal funds and the funds we thought we'd have three years ago. This year, we went through three rounds for all 18 jurisdictions [determining] how to pare it down, and we're now finalizing it. We're making everybody unhappy at the same level...We had [to make tough decisions.] The jurisdictions aren't happy that projects are cut, but we've done it to greatest extent to be geographically equitable.

Separately, one state DOT described its policy for recalibrating its TIP *post hoc* to reflect county-won transportation earmarks. In the mid 1990s', M.— County began proactively and successfully requesting earmarks directly from its Congressional representatives rather than via the state, and the County has won significant earmarked funds for intelligent transportation system projects over the years. If a locality gets earmarked funds, it is the state DOT's informal policy to adjust the state TIP, reducing TIP commitments for that locality accordingly by the amount equivalent to its earmarks.

The DOT administrator recounted conveying the policy to M.— County:

I remember conversations in which we made it pretty clear to [M.— County] that if they were successful getting their earmarks it would probably mean less money for projects that [the state] would be able to do in their jurisdiction. So it became a matter of priorities....[F]ew of the earmarks actually involve new money, they're really...draw downs from the formula allocations. It becomes a zero sum game. If you have federal funds that [the DOT] would have otherwise been programming for a project in M.— county but instead get earmarked for their project, then that's less money available for the project [the DOT] would be doing.

Recalibrating the TIP, he explains, is a matter of maintaining so called "balance" or geopolitical equity:

The state DOT doesn't have formula allocations in terms of what goes to each individual jurisdiction, but we are very careful in trying to ensure we have geographic balance in our program.

The practice of *post hoc* TIP recalibration suggests that, while Congress may use earmarks to concentrate resources in a specific place or jurisdiction, the MPO or state DOT may later reshuffle its own TIP projects to restore the distributional framework that it had put in place previously. The latter example also shows that a locality might pursue earmarks conscious that it may lose TIP funding for another project as a consequence. Thus, the locality makes a trade-off: it may seek an earmark for one project while

preparing to sacrifice TIP funding for another. Only case-by-case analysis would suggest the circumstances that could make such a trade off attractive, but through such a trade-off, a locality may get funds for a project that the MPO or state was not keen to support.

Although it is not possible to say how widely used they are, these three *post hoc* approaches – placing conditions on TIP additions, budgeting conservatively to anticipate earmarks, and recalibrating the TIP – suggest that some MPOs and state DOTs have responded to non-TIP earmarks in ways that shield, not surrender, existing regional and state transportation plans and programs. Thus, in some cases earmarks have a surprising upside. By prompting MPOs and DOTs to define terms upon which they will accommodate challenging earmarks, such earmarks may in fact encourage MPOs and DOTs to exercise more vigorously discretion they already possess. Additionally, faced with such challenging earmarks, MPOs may be compelled to make their own policies and processes for TIP project selection more formal or explicit, and consequently more transparent. While this is an exciting institutional discovery, its significance is unlikely to overshadow the costs that earmarks exact from these regional planning bodies.

6.5. *Managing Earmarks post hoc: Other Practices*

Two additional strategies for responding to challenging earmarks are not rooted in the TIP. These include deducting administrative expenses from earmarks and transferring earmarks to other federal, state or local entities. Such practices are designed to limit the involvement, or the cost of involvement, in non-traditional projects for traditional entities, particularly federal and state transportation agencies, and they may consequently discourage non-traditional earmarks and earmark recipients in the future.

6.5.1. Deducting Administrative Costs

To minimize the costs of administering complicated earmarks, one state DOT reported it has begun to deduct from such earmarks funds for project administration. It is unclear how many agencies do this, but representatives across regional, state and federal agencies interviewed in this study emphasize that administering an earmark can be highly time consuming and costly, particularly when its recipient is a nontraditional grantee.

As the traditional recipients of federal transportation funds, state DOTs, MPOs, and local transit operators generally know the federal rules and have built project development routines around them. They are prepared for the federal reimbursement process, which requires that highway fund recipients pay project costs up front and be reimbursed later; for planning protocols to evaluate a project's potential environmental impacts; and for requirements governing contracts let with Federal funds, such as for open bidding or for Buy American procurement to favor domestically produced goods and services. Smaller local governments, non-profits, or other entities that win earmarks but lack this expertise may lean heavily on the federal and state agencies that administer the funds. These agencies also report burdens when an earmarked project is ineligible for the funds Congress has designated, or when bill or report language designating an earmarked project describes a project different from the one an implementing entity intends pursue.

As one state DOT official reported, “[W]e are starting to charge for services administered.” Using a percentage of earmarked funds to recoup administrative costs for steering earmarks through the federal process and for reviewing engineering standards on local projects is justified, says the official.

[W]e're actually writing into our agreements for administering these that we will be charging staff time...If we're going to sign off on engineering plans that say that they meet federal specifications, then we're going to have our bridge engineers review [the local government's] bridge plans to make sure that they're adequately designed to federal standards. That creates a lot of consternation among locals. "Why do we need to do that? It costs money." They're not prepared for that...and financially it's very challenging for them.

Such deductions, however, may breach Congressional intent to direct funds to project implementation. Further, because the practice reduces the funds a grantee receives, it may discourage non-traditional entities from seeking earmarks.

Recent reports suggest the practice, criticized as "earmark skimming," is employed widely by federal agencies to administer earmarks in sectors from agriculture to defense.³²² For highway earmarks in the High Priority Projects program, FHWA guidance prohibits federal agencies from using earmarked funds for administrative costs.³²³ It is unclear, however, whether U.S. DOT policy addresses administrative deductions from transportation earmarks in general.

6.5.2. Transferring Earmarks to Another Agency

Both state DOTs and federal highway and transit agencies may also seek to extricate themselves from earmark-generated red tape by transferring project oversight to another agency. Representatives of state DOTs and federal agencies reported using this approach particularly with projects viewed as beyond the organization's mission, jurisdiction, or priorities, or designated for nontraditional earmark recipients.

Interagency transfers allow federal or state transportation agencies to remove themselves from such projects and their potential complications. Still, to transfer an

³²² Ron Nixon, "Not All Earmarks Are Paid in Full, and a Senator Wants to Know Why," *New York Times*, May 20, 2008.

³²³ Federal Highway Administration, *SAFETEA-LU High Priority Projects Program: Implementing Guidance*, U.S. Department of Transportation, October 31, 2006, <http://www.fhwa.dot.gov/programadmin/103106att.cfm> (accessed August 30, 2008).

earmark is a “very very complex” and time consuming process, says one state DOT official.

Mostly the transfers [are from state DOT] to other federal agencies...: Federal Railroad, Maritime Administration, Federal Transit, Western Federal Lands Highway Division, Bureau of Indian Affairs....[W]e start the transfer process by saying we want *this* earmark for *this* year transferred to *this* other federal agency. That goes to the [FHWA] division office who forwards it to the national office who, several weeks to several months later, effects the transfer....[Transferring 10 to 15 projects in one state] may sound small, but when you realize how many meetings even *one* of those has caused, it’s a pretty significant impact.

According to one observer, agencies that transfer earmarks may simplify their own responsibilities while complicating things for local governments that receive earmarks.

FHWA is [often] successful in pushing city governments to go through their state DOT...so that it’s really the state DOT dealing with the federal government, and the state can then deal with the local governments, insulating the federal people from having to [do so.]...I’ve seen it be positive and...negative. [Sometimes] the state DOT and the FHWA are basically ganging up on the city and making it more difficult for them to achieve what they want to achieve [with the earmark] and making the process more complicated than it needs to be... [T]he whole process of federal highway spending is a very sort of closed process where certain people understand how to break the code, and FHWA would like to have the smallest number of clients out there as possible for the obvious reason that it’s so much easier. But the process is a little bit cumbersome, and it’s that way intentionally to discourage cities from pursuing direct funding [via earmarks].

Yet, U.S. DOT representatives report that they genuinely struggle with non-traditional grantees because federal agencies are structured to channel funds to a predictable set of organizational actors. The Federal Highway Administration typically passes funds to state transportation departments and has limited mechanisms for channeling earmarks to other recipients. The Federal Transit Administration’s organizational structure is better suited for working with municipalities and towns that secure earmarks. The D.C. based agency has nine administrative regions within the U.S., and these offices release grants to

a broader array of entities than does FHWA, including local transit agencies, state and local governments, human service organizations, and other entities.

For earmarks within the High Priority Project program that would normally be ineligible for regular federal-aid dollars, federal guidance in fact encourages transferring the funds to other federal agencies or subcontracting them to another state or local agency to handle. The text of this guidance not only states FHWA's recommendation but, with dry wit, also suggests its disdain for earmarks that divert funds for non-highway purposes.

If the project...is not a highway improvement, the State DOT should consider identifying another agency to administer the project...For example, a High Priority Project having a project description of 'Native American Cultural Center' does not appear to encompass highway eligible activities. Therefore, it could be transferred to another federal agency for administration.³²⁴

No federal agency tracks how frequently earmarks are transferred away from the federal, state or other entity that would typically administer the funds or project. This indicator, if produced in future research, could suggest the extent to which earmarks are used for purposes tangential to the funding that pays for them.

6.6. *Evaluating post hoc Options*

This chapter has shown that MPOs and state DOTs, and even federal agencies, employ different responses to challenging earmarks. For MPOs and state DOTs confronting earmarks *post hoc*, a foremost question is whether to add the project to the TIP. Here, I discuss how these organizations choose to respond. To begin, interview data indicate that they consider whether and to what extent an earmark will disrupt existing transportation improvement plans, typically by overturning planning priorities, project finance or administration, and efforts to improve air quality. Yet, even when

³²⁴ Federal Highway Administration, *SAFETEA-LU High Priority Projects Program: Implementing Guidance*, U.S. Department of Transportation, October 31, 2006, <http://www.fhwa.dot.gov/programadmin/103106att.cfm> (accessed August 30, 2008).

projects score unfavorably on these counts, pressure from Congressional sponsors and project supporters to accommodate them may prevail.

When considering whether to accommodate an earmarked project, an MPO or state DOT may assess any financial, planning, administrative, or air quality complications associated with the project. Financially, a non-TIP earmark is more easily incorporated into the TIP when the earmarked funds are “above-the-line” and do not substitute for federal funds for which the region or state has already budgeted; when the earmark’s dollar amount matches, or comes close to matching, the project’s total cost or the cost of an executable project segment; and when any federally required matching funds³²⁵ can be provided without impacting regional or state funds already programmed.

Applying planning judgment, a non-TIP earmark has better chances of being added to the TIP if it reflects regional transportation goals and priorities, as expressed in the unfunded list of illustrative TIP projects or in the long range plan. One MPO director described how the MPO moved a \$10 million intermodal center from its illustrative list of projects to its TIP once the project got a \$6 million earmark:

[The earmark] certainly makes it easier [to add the project to the TIP] because we don’t have to find as much money...[The project also now] has got political clout because of the earmark. Nobody wants to walk away from this project. Had it been a lower priority project,...where the Congressman picked one much further out [in the TIP] or a much lower priority, it certainly not would have ...[advanced to] next in line. An earmark would not make a low priority project rise to next in line.

³²⁵ Typically, federal transportation funds require a 20 percent match from non-federal, i.e., state or local, sources. An \$800,000 earmark for roadway improvements would require \$200,000 in state or local matching funds. Some earmarks, however, require no matching funds, and the project may proceed using the designated federal dollars alone. All federal transportation funds, however, are made available only as reimbursement. That is, state and local agencies must use their own dollars first to pay agency and contractor costs of a project and then seek federal reimbursement.

An MPO or state includes projects in its unfunded TIP or “illustrative projects” to note them as priority transportation improvements for which “reasonably expected” funding is currently unavailable in the fiscally constrained budget. In this example, an earmark for such a project supplied the political and financial push to advance the project into the funded TIP sooner than would have otherwise occurred.

What is at stake when assessing where an earmarked project stands in relation to regional priorities and plans as expressed in the TIP’s illustrative projects or its long range plans is not simply deference to regional desires. Typically, a direct relationship is evident between a project’s phase of development and its location in the hierarchy of planning documents: the TIP, the illustrative projects portion of the TIP, or the LRP. The projects that are most advanced in terms of preliminary planning, design, environmental review, or cost estimates will be found in the TIP. Less well developed projects are, at best, found in the LRP. At worst, such projects are far off the regional radar screen, not included in the LRP, and unlikely to have undergone much preliminary study. Attention to an earmark’s location in this hierarchy is thus not just plannerly. It is also ultimately practical: earmarked projects that have some wind beneath them in the planning process are more likely to move forward than projects that do not.

Bureaucratically, it is easier to accommodate a project earmarked for a traditional transportation agency or local government with experience handling federal grants. Further, for regions with air pollution problems, a non-TIP earmark is more palatable if it would improve, or at least not worsen, regional air quality. Metropolitan planning organizations are reluctant to add to the TIP projects that would jeopardize regional

efforts to meet federal air quality standards and, in turn, threaten the region's eligibility for federal transportation funds.

[E]ven if [an earmark] does come with full funding, it's a challenge...[M]aybe it's an area that's an air quality nonattainment or maintenance area they may have to do air quality analysis [of the project to] reestablish conformity. So, even amending the plan or the TIP may not be such a simple undertaking.

Even if an MPO or state DOT might prefer to reject an earmark that would create complications along financial, planning, administrative, or air quality lines, important factors militate against doing so. Just as federal agency respondents describe tacit pressure to accept Congressional earmarks, even if they must cancel discretionary grant solicitations, MPOs and state DOTs do perceive pressure to accommodate earmarked projects in the TIP. Their reasons for not playing hardball are several.

First, interview responses suggest that organizational norms speak against turning away federal money for the region or state, even if the project may disrupt existing spending programs and plans. To refuse "above-the-line" earmarked funds is to turn away funds that would supplement the existing program, coming on top like "gravy" in the words of one respondent. To refuse "below-the-line" earmarked funds is effectively to shrink the federal dollars that a region or state anticipates receiving in the TIP. One state DOT official expressed this reluctance to decline the federal dollars attached to an earmark. Despite DOT objections to the growing number of earmarks and earmarks that have "stretched the rules" of federal funding programs, it would ultimately try to accommodate them "because...I think most of us say, 'You know what: You still don't want to see the dollars lost.'"

Second, interview data suggest that regional and state transportation organizations are keenly aware of political pressure to satisfy earmark proponents by advancing the

project. Such pressure may come from local project supporters, as well as the Congressional sponsor. One MPO director, an appointed position, feared that his refusal of a municipality's roadway earmark could lead to his removal. The earmarked road project "didn't qualify technically to be on our regional arterial network..[and was] not a priority for us," said the director, but he supported its addition to the plan because he felt his job was at stake.

[B]ecause everybody works for somebody,...I'm not going to turn around to our [MPO] member and say, "I'm sorry your project is not important on a regional basis. We're turning down this free money that you got." That would be suicidal, and I'm not suicidal, yet. So, we amended our long range plan (LRP) and put it on there.

MPOs and DOTs perceive pressure to maintain good relations with members of Congress as well. Said another MPO director, constructive Congressional relationships may help an MPO to avert problematic earmarks in the first place.

[None] of us [MPOs] want to play this game any more than state DOTs do, but successful MPOs cultivate positive relationships with their elected Congressional delegation so that they *don't get stuck* with [earmarks for] blue sky projects or low priority projects.

Further comments from the same director suggest that political pressure to accommodate an earmark may be experienced unevenly by MPO members in a large region. If an earmark's sponsor represents only one corner of the region, county and city MPO members elsewhere may feel less obligated to advance the project. Also, it is possible that MPOs with large Congressional delegations may be more willing to refuse unwanted earmarks than those having one representative. With multiple Congressional action channels, MPOs with large delegations may be more willing to risk alienating a single sponsor.

[I]n large metropolitan areas with multiple Congress people and many people on the [MPO] board, some of them may care less about positive relationships with a

particular Congressman. In our case, [there is only one Congressman], and...the whole board acknowledges the value of a positive relationship with him.

Interview respondents say that, together, these factors—reluctance to decline federal funds and pressure to satisfy local and Congressional earmark proponents—make refusing an earmark an unpopular option. In fact, only one state official described a situation where the DOT moved to abandon an earmarked project. And, at that, the DOT refused only *later* earmarks for the project, after initial studies in response to an earlier earmark showed that the project’s high cost exceeded the state’s financial capacity.

Some years ago there was a small [\$5 million earmark]...And [the DOT] began feasibility studies and preliminary engineering studies...Meanwhile, another small earmark came in – a few hundred thousand dollars – and then another. We got far enough...to estimate that this project would cost \$250 million, and the Secretary at one point...said, ... “*Do we have a chance to build this thing? I mean, are we kidding ourselves here? Sure we can keep the ball in the air—we can use these earmarks and just kind of hobble along, but some day, the big money’s going to come due. What are we going to do then?*” ...[T]here was just no way, given our enormous needs for system preservation, that we were going to be able to afford that project in that region. So we took the unpopular stance of saying to the local project proponents: “*Look fellas, let’s quit kidding ourselves here.*” And to the members of Congress who had earmarked the funds...: “*We’re not going to move forward with this, so if you’re thinking of more earmarks, maybe you want to think about something else. And...you might even want to redirect your earmarks through some language changes.*” Well, that was...wildly unpopular on all fronts...So far, we’ve stuck to our guns.

6.7. Reflections on post hoc Earmark Practices

This chapter has explored the practices of metropolitan planning organizations (MPOs) and their members, including state transportation departments, for responding to earmarks *after* they are designated in law. It completes the portrait of organizational behavior around earmarking in metropolitan areas that began with the previous chapter on *earmark seeking* practices. What do these practices reveal about how earmarking operates for institutions and organizations in metropolitan transportation planning?

A primary interest of this dissertation is to assess whether earmarking erodes or bolsters the ability of metropolitan planning organizations to develop regional transportation priorities. While the evidence here is mixed, in the main it suggests that earmarking does more to undermine than to enhance regional decisionmaking.

On one hand, this exploration of *post hoc* responses to earmarks certainly suggests that earmarking can sometimes have surprising effects that bolster metropolitan planning. Some MPOs and states are moving *post hoc* to protect the planning and financial commitments embodied in established transportation programs, rather than allowing earmarks to derail those commitments. They put their own stamp on Congressional earmarks by placing stipulations on an earmark's inclusion in the TIP, by anticipating earmarks with conservative budgets, and by recalibrating regional programs when earmarks disrupt the geopolitical distribution underlying existing project commitments. While it may occur at the margins, such *post hoc* management activity suggests that some metropolitan and state agencies do not accept earmarks as a *fait accompli* but seek to control how earmarked projects will be advanced, to minimize the disruption that non-TIP earmarks may cause, and also to guard their own discretion over planning and project selection.

Earmarks are a cause for concern precisely because they represent project commitments made outside established regional and state planning processes. Yet, this chapter suggests that under some circumstances MPOs and DOTs can in fact bring planning constraints to bear on earmarks after they are designated. When attempting to do this, organizations must strike a delicate balance: accommodating earmarks in a way

that not only minimizes associated disruptions to regional transportation planning, finance, administration or air quality, but also satisfies Congressional sponsors.

The fact that most *post hoc* responses are rooted legally in the TIP suggests another surprising effect of earmarks on metropolitan planning: they accentuate the TIP and cast fiscal constraint requirements in high relief. Since ISTEA-era began in the early 1990s, metropolitan regions and states have had to craft fiscally constrained capital programs, called TIPs, in order to use federal transportation funds for projects. Metropolitan regions have to show that the expected costs of planned transportation investments align with expected revenues. As earmarks have increasingly threatened planning commitments in TIPs, MPOs and state DOTs have invoked their ability to exclude new projects from the TIP and to thereby deny even earmarked projects federal funds. By conditioning TIP inclusion *post hoc* on such stipulations as “show-me-the-earmark,” locally provided match dollars, or full project funding, MPOs and DOTs call attention to the TIP and heighten its profile as a definitive, fiscally constrained statement of project commitments. In doing so, they not only reinforce the MPO’s own authority and legitimacy for developing and maintaining these projects commitments, but also show that MPOs continue to cultivate the authority and discretion that ISTEA affords them, even two decades later.

Additionally, *post hoc* practices such as transferring earmarks to other agencies and deducting administrative costs on occasion may also bolster established planning processes. When earmark recipients and members of Congress experience earmark transfers and administrative deductions, these cumbersome experiences can be opportunities for organizational learning. Federal, state and regional entities that use

transfers and deductions not only reduce their own administrative troubles but also signal to other players what makes for acceptable earmarks in the future. Thus, an interesting dialectic emerges: the policies and practices developed *post hoc* by MPOs and state DOTs to respond to earmarks outside the TIP may in fact prompt new behaviors and practices by *earmark seekers* and their Congressional sponsors. Where they can, organizations move from defensive procedures designed to counter problematic earmarks to offensive policies designed to steer the choice of earmarks initially to reinforce existing planning.

On the other hand, it is an inescapable fact that, at the interface between transportation planning and earmarking, Congress enjoys the upper hand vis-à-vis regional planning organizations. Before earmarks are designated, MPOs rely on influencing their selection. Their ability to do so depends on the strength of their relations with Congress members, the position of those members in Congress, and a host of factors, many beyond a region's control. After earmarks are designated, MPOs assess whether those projects and the funds attached to them are a boon or a bombshell for the capital program.

For challenging earmarks, MPOs can minimize disruption to existing programs *post hoc* by employing defensive policies. Such responses have legal tooth; they are rooted in federal requirements that TIPs be fiscally constrained and related to long-term plans. Still, few metropolitan or state organizations have the wherewithal to play hardball with Congress members or local project supporters to thwart unwanted earmarks. The TIP provides regions and states with legal leverage for rejecting projects, but they are unlikely to do so. Institutional norms suggest it is unconventional to decline

federal dollars and speak against taking the political risk of offending a member of Congress. Hence, MPOs and DOTs may more commonly accommodate earmarks for projects outside of their plans and programs, though they may attach conditions to a project before doing so. Little of this suggests that earmarking bolsters metropolitan planning and decisionmaking. Consider the acquiescence to Congressional earmarks voiced by this state transportation official:

From our perspective at [the state DOT] we're not going to be able to change what Congress might do, but I imagine there will be conversations. And it'll depend on relationships...That's not something we can necessarily change. We can't direct what they're going to do, so the question is, "*How do we react?*"

Public involvement in regional planning decisions is another arena in which earmarking diminishes metropolitan planning and MPOs. Few respondents mentioned seeking public input when adjusting existing capital plans for earmarks, and the issue appears to be an elephant in the room. It is unclear how MPOs and state DOTs determine whether earmark-driven TIP adjustments are significant enough to involve the public, or if these organizations overlook public participation to accommodate earmarks more easily. Open and public consideration of earmark-driven adjustments could embarrass a Congressional sponsor if opposition arises, and MPOs and DOTs may therefore feel pressure to adjust TIPs internally, without initiating formal processes for TIP review and amendment. Further, internal TIP adjustments allow MPO members affected by an earmark—or by any project delays or cancellations required to accommodate it—to resolve differences quietly. There is little evidence suggesting that earmark-related capital plan adjustments are transparent. How they can be made more so is obvious terrain for further research.

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Chapter 7: Dallas Barbecue: Planning for Pork in DFW

We're going to any member of our delegation that lets us in the door. We inform them and staff of how the earmarking process works, how it ultimately plays out in Texas, and why earmarks chosen in the spur of the moment over a cup of coffee with the County Judge may not be in best interest of that member's area or the best use of the money.

This chapter and the one that follows use case studies of two metropolitan planning organizations (MPOs), serving the Dallas-Fort Worth region of Texas and the New York metropolitan area, to explore in detail how Congressional earmarking and metropolitan planning and decisionmaking processes interact, and how planning practices have evolved in an environment of increased Congressional earmarking.

These studies were guided by the theoretical proposition that earmarking would consistently serve to *diminish* MPO legitimacy, whether an MPO actively participated in earmark seeking for the region or not. The Dallas-Fort Worth and New York MPOs were selected with this proposition in mind. The former is known actively to coordinate earmarking activity in its region, while the latter is known to be largely uninvolved in earmarking. In such cases, I anticipated, earmarking would diminish the MPO as a regional forum and distort its process, albeit through different mechanisms. First, MPOs active in earmarking would, I suspected, strengthen action channels with mobilized constituencies in a clientelist fashion, and would direct more attention to well organized proponents of certain projects than to unorganized groups. Such a pattern could place the legitimacy of MPO actions in question. Second, where MPOs were uninvolved in earmarking, I anticipated that state DOTs, transit operators, and local governments would work directly with members of Congress, and not through the MPO, to secure funds for

projects. Reliance on extra-MPO channels would diminish MPOs' legitimacy, capacity, and authority for building consensus on regional investment plans and programs.

As the cases of Dallas-Fort Worth and New York will show, this hypothesis has proved incomplete. Both models of MPO behavior incorrectly assumed that earmarks were inherently desirable and that MPO member organizations would seek earmarks opportunistically, or accept them, even if for undesired projects. Yet, data collected in this study and presented in Chapters 2 through 6 deflate this assumption. This evidence shows that earmarks in fact create significant uncertainty for regional agencies and for local governments responsible for metropolitan transportation systems. An earmark is never a done deal simply because it appears in a bill, and the stroke of the Congressional pen alone does not make a project executable. In truth, earmarks produce considerable complexity and uncertainty for regional transportation planning: they frequently redistribute rather than add to anticipated transportation dollars for the region; they can disrupt or overtly conflict with regional planning goals and objectives; they often enlarge the bureaucratic entanglements involved in project delivery; and they can upset regional capital commitments and programs, disturbing delicate geopolitical agreements in the process.

While it is interesting to observe this complexity, complexity *per se* is not significant. The *uncertainty* that arises from it, however, is. Theorist Michael Crozier explains how uncertainty in the organizational environment enables power relationships:

[I]ndividuals or groups who control a source of uncertainty in a system of action where nearly everything is predictable, have at their disposal a significant amount of power over those whose situations are affected by this uncertainty.³²⁶

³²⁶ Michael Crozier, *The Bureaucratic Phenomenon*. (Chicago: University of Chicago Press, 1964), 193.

As made vivid in Chapters 3 and 4, earmarks create tremendous uncertainty for metropolitan planning organizations, for implementing agencies and transit providers, as well as for members of Congress themselves, by unsettling these players' settled expectations.

In demarcating the universe of MPO earmarking practices, Chapters 5 and 6 show how some MPOs harness this uncertainty to their benefit, using it as a source of leverage. Those MPOs that do may consolidate their own power *vis-à-vis* members of Congress or *vis-à-vis* individual members of the regional body through strategic responses to earmarking. While spending legislation is under development, MPOs may suggest earmark project candidates that are "ready to go," reducing risk to a member that his or her earmarks will not produce the desired credit-claiming occasions. Once earmarks are embodied in signed laws, MPOs may still manage those earmarks after the fact, using the TIP as a lever to influence whether the funds are spent quickly or not at all. Not all planning organizations, however, succeed in doing this.

The cases presented in this chapter and the next suggest why some MPOs achieve a certain response and others do not. The decisions to include case studies in this research and to select Dallas-Fort Worth and New York as cases are detailed more fully in the Chapter 1 discussion of research methods. These cases seek to understand how each MPO's larger institutional environment shapes its responses to growing earmarking from the mid-1990s and beyond. Although the practices of metropolitan planning organizations are the primary subject of analysis here, unpacking these planning practices yields insights into earmarking practices as well.

7.1. Silence to Strategy: The Evolution of DFW Earmarking Practice

Earmarked projects are not new to the Dallas-Fort Worth region, but they are fairly new to its MPO, the Regional Transportation Council (RTC). This section shows how the DFW MPO has evolved from a silent bystander with respect to the earmarking process pre-ISTEA to a highly engaged earmarking participant post-ISTEA. It also describes the specific practices that the MPO—and, before it, the state DOT—has employed to influence earmarks before and after they are finalized in law. Recent earmarking experiences in the DFW region suggest that the MPO has strategically positioned itself to consult on earmark requests while legislation is under consideration, and that it has taken cues from state DOT policy to accommodate earmarks after they are passed in law.

Certain institutional factors have helped the MPO to establish itself as a well-used passive consultant, and it is also aided in its efforts to accommodate earmarks *post hoc* by several attributes unusual for MPOs. These include (a) staff empowered to submit letters of support for earmark requests consistent with regional planning and to make adjustments to the capital program, or TIP; (b) control over additional funds, like metropolitan mobility funds and the region's own infrastructure bank; and (c) financial practices employed by MPO members that help to advance projects generally and earmarked projects in particular.

The level of the DFW MPO's earmarking engagement is unusual among MPOs, and the organization seems able to mobilize its members to advance earmarked projects once Congress designates the funds. Still, it is not clear that seemingly successful strategies for influencing earmarks beforehand and for earmark management *post hoc* actually lead to better planning of transportation investments. On the whole, these

practices may contribute to earmarks that work more with than against regional transportation planning. Yet, as earmarks for the Trinity River Bridge illustrate, earmarks that the MPO has influenced may serve as plork, satisfying MPO members with the outcome, but they do not guarantee that earmarked funds are in fact used more wisely as a result. The large dollar amounts earmarked toward the I-30 Trinity Bridge project suggest the question: without the earmarks, would the funds have been used for this project right now? Section 7.2 expands the case by analyzing the organizational and institutional factors that have facilitated the MPO's engagement in the earmarking process.

7.1.1. Pre-ISTEA

Case study evidence suggests that, prior to the early 1990s, the DFW MPO was neither a proactive participant in regional earmark seeking nor a “go-to” organization for earmark consultations. While the MPO remained on the sideline, the state DOT actively engaged in earmark seeking, typically encouraging “plork” earmarks, for projects within the limits of established plans.

Accounts from interviews, news reports and planning documents about early earmarking experiences in the DFW region suggest that through the early 1990s, it was the policy of the DFW MPO to remain on the sidelines of the earmarking process. One respondent noted,

[T]he policy of the agency was, “We’re silent on the issue of earmarking. It probably isn’t a great thing. Projects are identified by Congress, and it actually comes out of our allocation to the state. So all we’re doing is moving...[what was] at the time a state decision...[regarding the] programming of projects...to the Congressional arena.” The world of Texas is very different today.

As hinted at by this respondent, and others outside the case, MPOs had little definitive say in transportation spending decisions before ISTEA in 1991, and allocation decisions—including those related to earmarks—were viewed as the purview of the state.

At least as early as the late 1980s, during ISTEA's preparation, TxDOT worked more closely with Congress members to influence earmarks. *Washington Post* coverage of Texas' earmarks included in that bill indicates that TxDOT and the Congressional delegation worked together in the legislative process, producing what one TxDOT official called "a good bill" for the state.³²⁷ The 15 "high priority projects" earmarked for Texas were for projects on the state's priority lists. "They're not just something cooked up and put in the bill," said the official.³²⁸

Analysis of the projects designated for Fort Worth suggests they functioned as "plork," the hybrid term I have introduced for "planned pork," or Congressional earmarks for specific projects that do stem from established plans and priorities. Of the highway fund earmarks for Texas projects, four totaling \$77 million went to Fort Worth, reflecting the key assignment held by Fort Worth Congress member Pete Geren on the Public Works and Transportation committee.³²⁹ Three earmarks went to projects in corridors slated for improvements in the 1986 regional long-range plan,³³⁰ and the fourth delivered funds to the Fort Worth Intermodal Center, a downtown passenger hub that would connect Fort Worth buses with a planned Dallas-Fort Worth commuter line, now known

³²⁷ Don Phillips, "Taking Different Roads on Highway Bill; Priorities of Fort Worth, Dallas Congressmen Show How Money Flows in Hill Allocation Process," *Washington Post*, December 18, 1991, sec. A.

³²⁸ As a caveat, prior to federal requirements for *fiscally constrained* state and metropolitan transportation plans, such plans and the priorities included therein could be more comprehensive than later fiscally constrained plans. Consequently, it would be easier for states to show that Congressional earmarks designated before ISTEA were in fact aligned with existing plans.

³²⁹ Geren succeeded House speaker Jim Wright as representative for Fort Worth and secured a seat on the Public Works Committee in his first full term.

³³⁰ North Central Texas Council of Governments, "Mobility 2000, the Regional Transportation Plan for North Central Texas," (Arlington, TX, 1986).

as the Trinity River Express.³³¹ The *Post's* analysis of these earmarks suggests they are a shade different from “pork” unconnected to agency plans:

[F]ormer [U.S.] transportation secretary Samuel K. Skinner [who] once denounced [earmarks] as pork...likely would be happy with the way Texas distributed its special project money because the distribution of funds was coordinated with Texas officials.

These projects also illustrate how “plork” can be a low-risk earmarking strategy for Congressional sponsors. Funds earmarked for planned projects are more likely to be spent on improvements that reach fruition, delivering credit claiming opportunities sooner and with fewer complications than earmarks for unplanned projects. According to Federal accounting records, all of these funds have been allocated. (See Table 7.1.)

³³¹ Representative Martin Frost of Dallas focused on securing transit funds, and the bill contained \$160 million for the Dallas Area Rapid Transit agency’s South Oak Cliff light-rail line and \$5.7 million for the Dallas-Fort Worth commuter rail. It is unclear that these amounts qualify as earmarks as the term is used in this dissertation, because the funds may have been awarded through a competitive process administered by the Federal Transit Administration, as opposed to at the sheer direction of Congress.

Table 7.1. “Demonstration Project” Earmarks for Fort Worth, TX (ISTEA 1991)

ISTEA Section Designating Funds	Project Description	Amount Authorized (millions 1991)	Estimated Project Cost³³² (millions)	Earmark as % of Project Cost	Funds Allocated by FHWA³³³
1106(a)111	Parker and Tarrant Counties, Texas (SH199): Upgrade existing highway in Tarrant County to freeway standards and in Parker County to a 4-lane divided highway	\$32.7	\$204.0	16%	\$32.7
1107(b)115	Fort Worth: Overpass and frontage road at Fort Worth Hillwood/I-35 Interchange	\$12.4	\$8.0	155%	\$12.4
1107(b)101	Ft. Worth: I-35 Basswood Interchange	\$17.4	\$8.0	217%	\$17.4
1108(b)44	Ft. Worth: Ft. Worth Intermodal Center	\$13.0	\$25.0	52%	\$13.0
		\$75.5			\$75.5

³³² Source: FHWA data on High Priority Projects for internal use.

³³³ Source: FHWA data on High Priority Projects for internal use.

7.1.2. Post-ISTEA

Aided in part by the new authority conferred on MPOs, in part by the arrival of an ambitious leader, and in part by a host of institutional factors discussed in section 7.2., the Dallas-Fort Worth MPO has established itself post-ISTEA as an effective passive consultant in the earmarking process. By the 2005 authorization bill, the MPO had established an organizational routine for reviewing earmark requests sought by members of Congress or by towns, counties and agencies within the region, and supplying letters of support for projects it endorses. The region's Congressional delegation appears to seek the MPO's stamp of approval for many earmark candidates. Consequently, local governments and other earmark seekers pay attention to how the MPO views potential earmarks. Further, MPO influence in earmarking has been bolstered by a recent Texas DOT initiative known as "Earmark School," through which TxDOT officials systematically visit members of the state's Congressional delegation to instruct them on potentially positive and negative impacts of Congressional earmarks and to recommend desired DOT projects for earmarks. Together, these practices help to reduce the uncertainty that accompanies Congressional earmarking and the potential disruption that earmarks can create. After earmarks have been secured for specific desired projects in the region, members of the MPO seek to spend the funds quickly, and they frequently mix and match transportation dollars from various available sources to supplement earmarked funds where necessary.

For the Congressional earmarking process, the MPO has established a formal system for providing consultation on projects to stakeholders and other project backers. Earmark seekers in the region often wish to include letters of MPO support when

submitting the “earmark request forms”³³⁴ required increasingly by Congressional authorizing and appropriating committees. The MPO staff is empowered to issue such letters to Congress *without* a board vote when earmark requests are for projects within the regional plan or capital program, and the staff track requests for earmarks that the MPO reviews. The staff maintains a database identifying the project, whether the MPO issues a letter of support for that earmark request, whether the project is in the TIP or long range plan, and whether an earmark for the project is ultimately secured. (See Table 7.2.)

Table 7.2. Tracking Regional Earmark Requests

Earmark Request Data Tracked by the DFW MPO	
1. Facility	9. Earmark Amount Requested
2. Project Limits / Termini	10. Date Request Received
3. Project Description	11. Project is in Long Range Plan (Y/N)
4. County	12. Long Range Plan Reference
5. TxDOT District	13. Project is Capital Program/TIP (Y/N)
6. Congressional Member Name and District	14. Project Accounting ID (CSJ)
7. Requesting Agency	15. Date MPO Letter Sent to Congress
8. Total Project Cost	16. Earmarked Funding Provided (Y/N)

Although some members of Congress have secured earmarks without doing so, stakeholders report that most members consult the MPO when evaluating earmark requests. One Congress member, for example, instructs local governments in his district to approach him for earmarks only if the project already has MPO support.

When we have a request from a local government, they know I’ll pay attention to the MPO. So they’ll go to the MPO before coming to me. We talk to [the MPO] just to make sure what their opinions are...and see how [the request] compares to other more serious needs someplace...I feel a responsibility to the voters to be well educated on the project and see the real supporting evidence of need prior to making the request.

Despite evidence of this MPO-based review process, some skepticism is in order. It impossible to know how frequently members attempt requests without consulting the

³³⁴ Earmark request forms are discussed in detail in Chapter 3.

MPO. Although the U.S. House has ruled recently to make earmark requests it receives open to public inspection, these documents are not easily accessible.³³⁵ Moreover, it is impossible to know how, if at all, Congressional Committees and their staffs weigh MPO letters when choosing which earmarks will appear in the final bill. Still, it is plausible to think that, if most DFW-based earmark requests are accompanied by an MPO support letter, requests lacking such support would raise red flags among Congressional reviewers. The simple existence of this MPO routine for reviewing earmark requests signals members of Congress to consult the MPO even if that was not their original intention. Still, it is not clear how often the MPO turns down requests for such support letters.

Since the passage of SAFTEA-LU, these MPO-based practices have been further bolstered by a newly formalized state DOT effort to promote earmarks from regional and state capital programs, respectively the TIP and STIP. Unlike DFW, other Texas regions saw disruptive SAFTEA-LU earmarks, and state officials expressed frustration at failing to steer Congress members toward earmark candidates in the state transportation improvement program, or STIP. Rogue earmarks in the 2005 bill, including one for the so-called Bonilla Bypass,³³⁶ prompted TxDOT officials to create “Earmark School” in order to institutionalize efforts to influence Congressional earmarking. Under this initiative, staff from TxDOT’s governmental affairs office visit members of the Texas delegation individually. These TxDOT entrepreneurs educate members of Congress and

³³⁵ See Chapter 3.

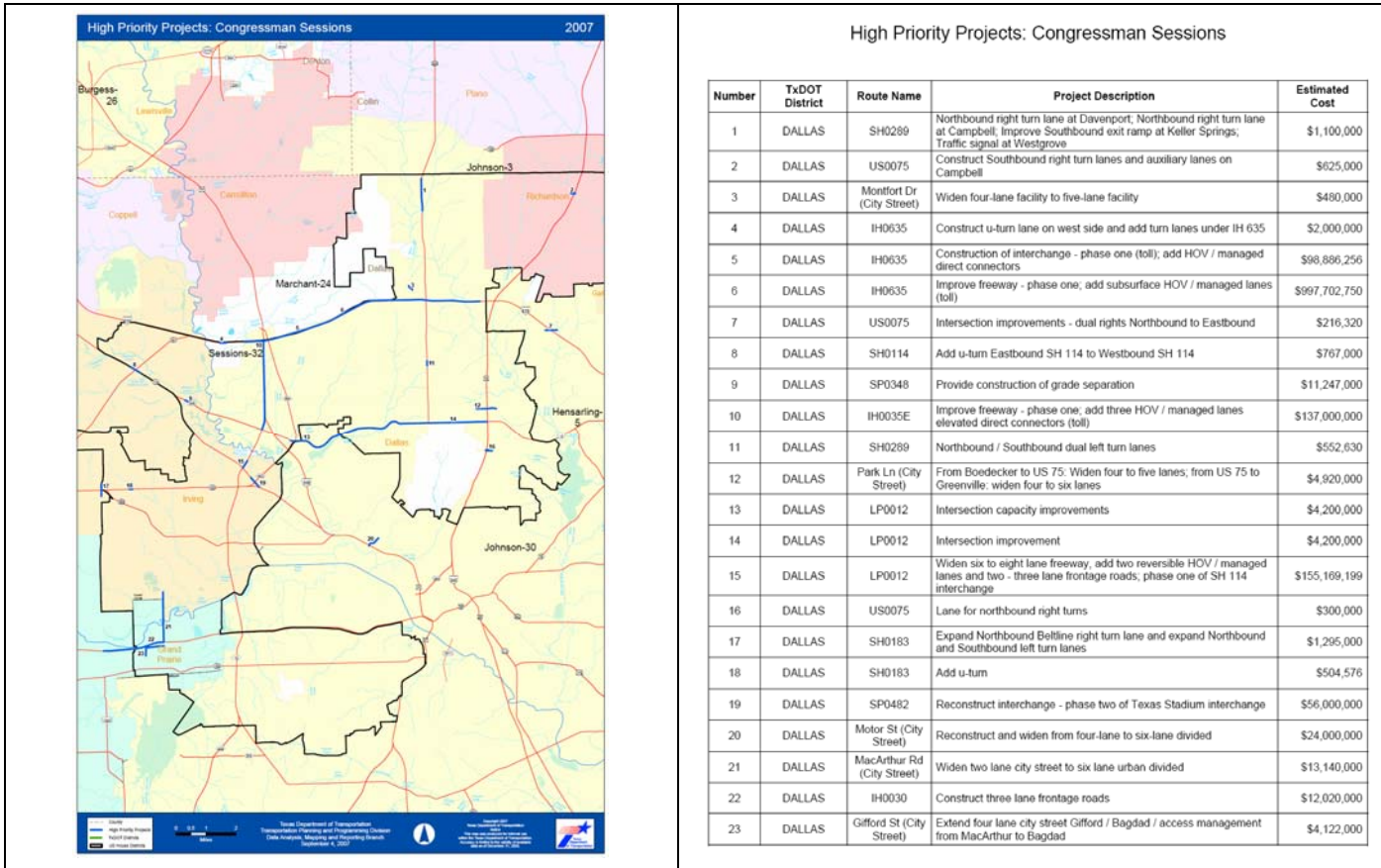
³³⁶ Named for U.S. Rep. Henry Bonilla, R-San Antonio. Bonilla earmarked \$1.2 million in SAFTEA-LU to relocate a road in West Texas at the behest of a private resort developer. Ultimately, the Texas DOT refused to provide matching funds for the project, and the earmark was redirected to other uses via legislative correction. See Guillermo X. Garcia, “The Candidates Point to Home Projects,” *San Antonio Express-News*, December 9, 2006, sec. A; Bennett Roth and Stewart Powell, “TXDOT Repairing Political Bridges,” *The Houston Chronicle*, May 25, 2008, sec. A.

their staffs about the deleterious impacts of non-STIP earmarks on state transportation funding, and they encourage Congress members to earmark the state's own desired projects. Said one TxDOT official involved in Earmark School,

We're going to any member of our delegation that lets us in the door. We inform them and staff of how the earmarking process works, how it ultimately plays out in Texas, and why earmarks chosen in the spur of the moment over a cup of coffee with the County Judge may not be in best interest of that member's area or the best use of the money... For those meetings, we develop a list of...good, viable...projects for earmarks in his or her region.

"Earmark School" evangelists use maps to highlight such projects in a Congress member's own district. "Everybody wants to see a map," said one DOT representative. For members of Congress, the maps visually underscore the local nature of candidate TIP and STIP projects. For DOT, they help to market projects that are identified needs but that, as earmark candidates, would also serve well as plork, allowing a Congressional sponsor to claim credit for specific place-based improvements.

Figure 7.1. Texas DOT Earmark School: Candidate Projects for Earmarks in Sample District



High Priority Projects: Congressman Sessions

Number	TxDOT District	Route Name	Project Description	Estimated Cost
1	DALLAS	SH0289	Northbound right turn lane at Davenport; Northbound right turn lane at Campbell; Improve Southbound exit ramp at Keller Springs; Traffic signal at Westgrove	\$1,100,000
2	DALLAS	US0075	Construct Southbound right turn lanes and auxiliary lanes on Campbell	\$625,000
3	DALLAS	Montfort Dr (City Street)	Widen four-lane facility to five-lane facility	\$480,000
4	DALLAS	IHD635	Construct u-turn lane on west side and add turn lanes under IH 635	\$2,000,000
5	DALLAS	IHD635	Construction of interchange - phase one (toll); add HOV / managed direct connectors	\$98,886,256
6	DALLAS	IHD635	Improve freeway - phase one; add subsurface HOV / managed lanes (toll)	\$997,702,750
7	DALLAS	US0075	Intersection improvements - dual rights Northbound to Eastbound	\$216,320
8	DALLAS	SH0114	Add u-turn Eastbound SH 114 to Westbound SH 114	\$767,000
9	DALLAS	SP0348	Provide construction of grade separation	\$11,247,000
10	DALLAS	IHD035E	Improve freeway - phase one; add three HOV / managed lanes elevated direct connectors (toll)	\$137,000,000
11	DALLAS	SH0289	Northbound / Southbound dual left turn lanes	\$552,630
12	DALLAS	Park Ln (City Street)	From Boedecker to US 75: Widen four to five lanes; from US 75 to Greenville: widen four to six lanes	\$4,920,000
13	DALLAS	LP0012	Intersection capacity improvements	\$4,200,000
14	DALLAS	LP0012	Intersection improvement	\$4,200,000
15	DALLAS	LP0012	Widen six to eight lane freeway; add two reversible HOV / managed lanes and two - three lane frontage roads; phase one of SH 114 interchange	\$155,169,199
16	DALLAS	US0075	Lane for northbound right turns	\$300,000
17	DALLAS	SH0163	Expand Northbound Beltline right turn lane and expand Northbound and Southbound left turn lanes	\$1,295,000
18	DALLAS	SH0163	Add u-turn	\$504,576
19	DALLAS	SP0482	Reconstruct interchange - phase two of Texas Stadium interchange	\$56,000,000
20	DALLAS	Motor St (City Street)	Reconstruct and widen from four-lane to six-lane divided	\$24,000,000
21	DALLAS	MacArthur Rd (City Street)	Widen two lane city street to six lane urban divided	\$13,140,000
22	DALLAS	IHD030	Construct three lane frontage roads	\$12,020,000
23	DALLAS	Gifford St (City Street)	Extend four lane city street Gifford / Bagdad / access management from MacArthur to Bagdad	\$4,122,000

“Earmark School” is noteworthy itself as a state-based earmarking practice, but it is especially significant because it reinforces metropolitan planning and the MPO role in Congressional earmarking. The Earmark School talking points that TxDOT staff deliver to members of Congress advise them to consult with their MPO first when considering candidate earmarks:

If you are ever unsure of a project, run it by your local officials who sit on the metropolitan planning organization, and they will be able to help you make an informed decision. Additionally, your TxDOT local district engineer will be able to suggest projects to you.³³⁷

This guidance promotes MPOs in Texas as the logical source of information about candidate projects, and it is an indicator of cooperative relationships between the state’s DOT and MPOs. While it was too soon in early 2009 to evaluate this initiative, state officials suggest that MPOs in Texas increasingly influence Congressional earmarks for the better, reducing uncertainty. Said one,

What I see especially in our metropolitan areas is a trend towards, fortunately, more thoughtful earmarks...[T]he word is out at the local planning level with the MPOs that...earmarks are not more money for the state. Really, if you get \$1 billion from the feds and you got all these earmarks for \$200 million, that means the state has \$800 million to build its priorities. A lot of [sometimes unfortunate] media attention has helped foster that...Congress members today [are more informed] on earmarks than...even 10 years ago, and they are increasingly aware of choosing the proper project and [of] understanding where a project is in the planning process.

Once earmarks are a *fait accompli*, members of the Dallas-Fort Worth MPO strive to advance those projects quickly, so earmarks are spent swiftly. The MPO is aided in this goal first and foremost *before* earmarks are secured, by the influence it exerts on the selection of candidate projects, and *after* the fact by its distinctive approach to financing regional transportation investments. Local and state governments and transportation

³³⁷ Earmark school talking points, received from TxDOT.

agencies report working together to amass sufficient funds from various sources to implement an entire package of improvements at once, for example across an entire corridor, rather than in separate phases over a longer time period. “Mix and match” funding and comprehensive project planning distinguish the approach. Within this framework, MPO members use earmarks instrumentally, as one funding source at their disposal for bringing a project or defined phase of a project “over the goal line,” by closing a funding gap. Member governments and agencies make their own funds available for projects when that contribution will be enhanced or “leveraged” by funds from other sources, including earmarks.

Staff at the MPO says different projects illustrate how earmarks complement the mix-and-match approach. The Cottonwood Trail, a four-mile bicycle and pedestrian path that would connect with two existing Dallas trails, was included in the region’s long range plan in 2005 but had not advanced to the capital program, or TIP, due to incomplete funds. Earmarks in SAFTEA-LU and later bills added \$2.25 million to the \$4.2 million already committed by the MPO and the City of Dallas (\$3.4 MPO and local, \$.8 local), closing the funding gap and enabling its addition to the TIP and ultimate construction.

Staff also indicates that MPO members have sought and received substantial earmark funds for two significant tollway projects in the region. These include the Trinity Parkway, a new roadway to include tolled express lanes and general purpose freeway lanes, connecting northeast Tarrant County, above Fort Worth near Alliance Airport, to the DFW International Airport, Dallas, and points east. Also, earmarks for \$32 million were secured for a \$240 million interchange reconstruction in Dallas (I-

635/I-35E). The interchange is part of larger corridor improvements and managed lane construction on a beltway serving north Dallas, projected to cost over \$1 billion in total. The projects are awaiting placement in the TIP once funding is complete.

Mix-and-match funding requires cooperation, as each actor contributes part of a project's cost from funds under their control; it has encouraged some localities to raise funds through bond initiatives to contribute to projects in the region. Moreover, interview respondents in DFW are more inclined to advance projects that are "most ready to go" in terms of preliminary studies and available funding than to argue over which jurisdiction's projects will be built first.

Recent developments in transportation finance in Texas and in the DFW region have made this approach more possible for the MPO, as the MPO controls a new pot of state transportation funds, called "Metropolitan Mobility Funds," as well as new regionally dedicated revenues from an innovative toll road concession. These funds, detailed further in Section 7.2.3., increase the MPO's ability to piece together project funding in general, and to harness earmarked funds in particular when designated for desired MPO investments. In interviews, MPO stakeholders describe the MPO practice of cobbling together funding for projects as routine and something the body does with skill. Said one member, "We're good at it....[We typically] have three to four funding sources [for one project.]...It takes a village to fund a transportation project." In contrast, many other MPOs and their members have less flexibility to supplement earmarked funds when the earmarked amount is insufficient or requires matching dollars.³³⁸

By most accounts, these practices in sum have meant that metropolitan transportation planning in the Dallas-Fort Worth (DFW) region experienced little

³³⁸ See Chapters 4 and 6 for further discussion.

disruption from SAFTEA-LU in 2005, in spite of intense earmarking of that bill by Congress. The authorization bill delivered 41 earmarks worth over \$205 million to the DFW region, and a remarkable 95 percent, or \$191 million, of the funds were for project requests that the MPO had reviewed and endorsed as earmark candidates during the legislative process.

Only six ‘rogue’ project requests not vetted by MPO staff successfully received earmarked funds. And while these earmark requests did not go through the MPO, the underlying projects were mostly consistent with long term regional plans and were later included in the capital program, or TIP.³³⁹ The most significant diversion from established plans resulted from one earmark for a small city in Johnson County, south of Fort Worth, which had previously sought funds to extend and widen a local thoroughfare. When the project was not awarded funds through the MPO’s regional call for projects, “the City worked directly with their Congressional delegate...and received [a] \$1.2 million earmark on the project,”³⁴⁰ according to MPO staff.

This examination of the Dallas-Fort Worth MPO’s earmarking experiences allows urban transportation planners and policy makers to appreciate the practices that the MPO has, with support from the state DOT, developed to reduce uncertainty and strengthen metropolitan planning in the face of earmarking’s overt challenges and potential disruptions. How and why have these MPO-reinforcing earmark practices developed? The answers are intertwined with the organizational history and trajectory of the DFW MPO, as discussed next.

³³⁹ Analysis by the author based on internal records provided by the North Central Texas Council of Governments.

³⁴⁰ By early 2009, the project was approved for preliminary engineering work and had secure matching funds from the City itself, but the project remained on hold in the capital program, awaiting environmental clearance.

At the same time, the instance of earmarks for the I-30 bridge replacement in downtown Dallas shows that even with active MPO involvement, Congressional earmarks may lead to less than optimal application of federal resources.

7.2. MPO Institutionalization Fosters Earmarking Engagement

By tracing the development of the Dallas-Fort Worth MPO from its emergence in the late 1960s through subsequent decades, this case analysis suggests that the organization has become institutionalized as a significant forum for and legitimate player in regional transportation planning and finance decisionmaking and as an authoritative actor in the Congressional earmarking process. The following discussion highlights the factors that have contributed to the MPOs institutionalization in this way, indirectly enabling it to assume a position of influence with respect to Congressional earmark choices. Through its internal structure, leadership, and decisionmaking mechanisms, the Dallas Fort-Worth MPO has cultivated a sense among regional stakeholders that its processes are legitimate. Also, advantageous external circumstances, namely MPO-favorable state policies, have added to the MPO's authority and its ability to maneuver in response to earmarks. Further, mounting pressures to resolve congestion and air quality problems linked to rapid growth in the late 20th century have created a sense of urgency for needed transportation funds in the DFW region and have compelled a disciplined process for dealing with earmarks.

7.2.1. Organizational History and the Urgency of Regional Needs

Inspired by the “transportation studies” created earlier in places like Chicago³⁴¹ and by the prospect of federal funds,³⁴² the North Central Texas Council of Governments (COG) began planning for regional transportation in the late 1960s and formed a transportation department in 1970. (See Table 7.3) The COG itself was formed in 1966 as a voluntary forum for local cities, counties, and public districts in a wider *state-designated* 16-county region to coordinate regional development initiatives in various sectors, including housing and economic development. As happened with similar *ad hoc* and COG-led transportation efforts, the transportation department within the North Central Texas COG evolved into the *federally* required MPO for Dallas-Fort Worth.

Federal law in the early 1970s mandated that U.S. metropolitan regions, working with their states, create MPOs of local elected officials to plan for regional transportation improvements. In Dallas-Fort Worth, as in other regions already served by a COG, the MPO was seated in the COG, even though the MPO’s 9-county service area, defined by the U.S. government, was smaller than the COG’s, defined by the state of Texas. (See Figure 7.2.) Since its creation, the Metropolitan Planning Organization (MPO) for the

³⁴¹ For more about the transportation studies of the late 1950s and 1960s, such as the Chicago Area Transportation Study, the Los Angeles Regional Transportation Study, and the Detroit Area Transportation Study, see David E. Boyce, Norman D. Day, and Chris McDonald, *Metropolitan Plan Making: An Analysis of Experience with the Preparation and Evaluation of Alternative Land Use and Transportation Plans, Monograph Series* (Philadelphia: Regional Science Research Institute, 1970).

³⁴² The 1961 Housing Act was the first legislation to make federal money available explicitly for urban transportation surveys; these urban surveys were meant to resemble state-level ones supported by federal dollars since the early 1930s. The Federal Aid Highway Act of 1962 conditioned the expenditure of transportation funds in urban areas on a continuing, cooperative and comprehensive planning process that involved state and local communities.

DFW region³⁴³ has retained this institutional home within the larger COG. The department's staff and director are the staff of the DFW MPO.

The MPO region falls within the COG region, but the two organizations are separate forums. Membership in the COG is open to any county, city, or special district that voluntarily joins and pays COG dues. In 2009, over 230 member governments including 16 counties, numerous cities, school districts, and special districts belonged to the COG; through a General Assembly, COG members elect a 13-seat policy board to govern the organization. In contrast, the 43-member MPO is its own policy board; its members also represent counties, cities, and transportation agencies and authorities, but only within the smaller MPO region. Rosters of the MPO's and the COG's boards in mid-2009 show that 5 individuals serve on both boards,³⁴⁴ but such overlap is coincidental and not structurally inherent.

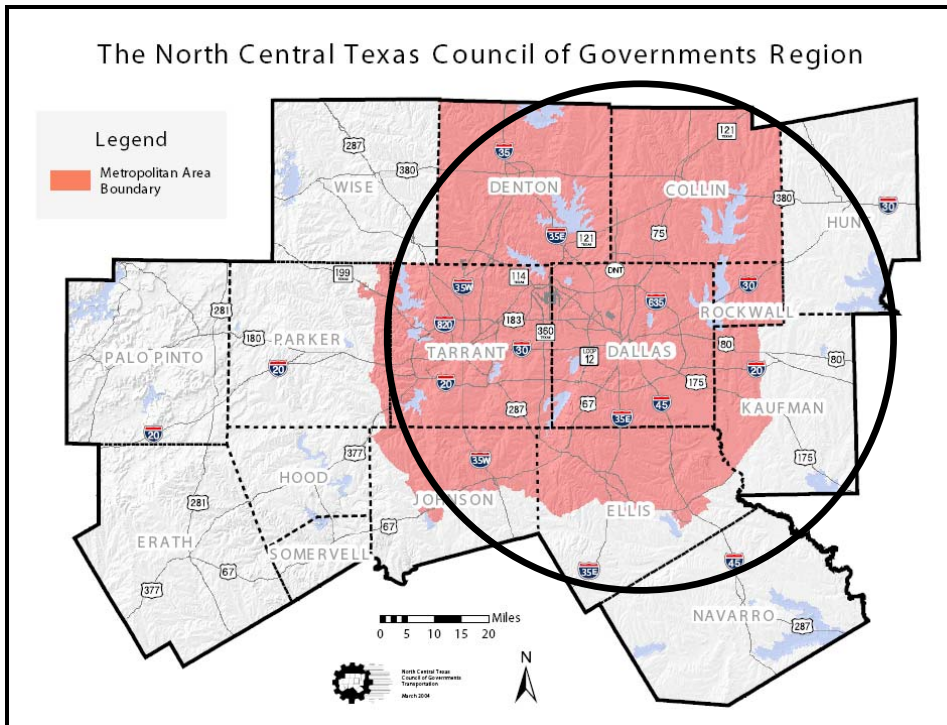
Table 7.3. History of the Dallas-Fort Worth MPO

1966	North Central Texas Council of Governments (COG) formed for regional development
1970	Transportation department established within COG
1972	Federal law requires MPOs in metropolitan regions
1974	MPO ("Regional Transportation Council") for DFW region is created within the COG
1991	MPO crafts first fiscally constrained long-range plan, <i>Mobility 2020</i>
1993	Denton and Lewisville urbanized areas added to MPO
1996	MPO initiates "Partners in Mobility"
2000	McKinney urbanized area added to MPO
2004	Texas policy expands MPOs decisionmaking over state transportation funds

³⁴³ The formal name of the Dallas-Fort Worth MPO is the Regional Transportation Council, or RTC, which is housed within the Council of Governments. To avoid confusion, I refer to the RTC in the text always as "the MPO" or the "DFW MPO."

³⁴⁴ *NCTCOG Executive Board*, North Central Texas Council of Governments, 2009, <http://www.nctcog.org/edo/board.asp> (accessed August 30, 2009); Regional Transportation Council, *Regional Mobility Initiatives*, North Central Texas Council of Governments, August 2007, <http://www.nctcog.org/trans/outreach/rmi/mpo082007.pdf> (accessed August 30, 2009), 11.

Figure 7.2. Dallas-Fort Worth MPO Boundaries in the Wider COG Region³⁴⁵



³⁴⁵ North Central Texas Council of Governments, *Mobility 2030 Executive Summary: The Metropolitan Transportation Plan for the Dallas-Fort Worth Region* (Arlington, TX, 2007), 2.

Planning for transportation improvements in the Dallas-Fort Worth region assumed increasing urgency in the later decades of the 20th century, as it became one of the fastest growing metropolitan regions in the U.S.³⁴⁶ Population in the MPO region grew from 3.3 million in the mid-1980s to just under 6 million by 2007, and spread outward from the anchor cities of Dallas and Fort Worth and their immediate suburbs to surrounding counties to the north, south, and east. By 2007, Dallas-Fort Worth was the fourth largest U.S. metropolitan region and the largest metropolitan region in Texas. The MPO's jurisdictional boundaries have been expanded twice since its formation, after the 1990 and 2000 U.S. Census, to add newly urbanized Denton-Lewisville and McKinney areas. (See Figure 7.3.)

Planning documents published by the MPO acknowledge that regional growth in this period “occurred too quickly,” leaving the MPO to play catch-up with regional congestion.³⁴⁷ Encouraged by a favorable business and tax climate, good weather, and ample available land for development, upward trends in employment mirrored population growth, and traffic congestion, once limited to northern Dallas County, became more pervasive during the decades of rapid expansion. Driving in the MPO region, measured in daily vehicle miles of travel, or VMT, roughly tripled from 1980 to 2007.³⁴⁸ By the mid-1990s, over 30 percent of the region's roadways were congested during the peak

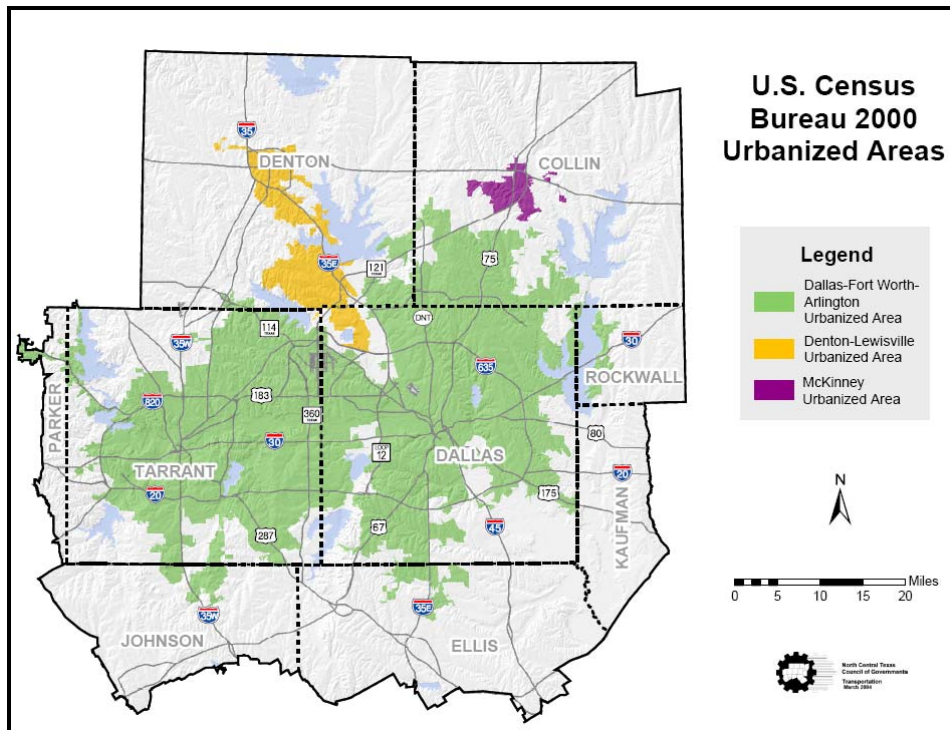
³⁴⁶ By the start of the 21st century, regional population had grown by roughly 1 million people per decade since 1960, and the rate of growth has since accelerated to 1 million people every 7 years. Regional population grew from 3.3 million in the mid-1980s to 4.5 million by the late 1990s and just under 6 million by 2007. Regional employment rose 25 percent to 1.8 million in the first half of the 1980s. By the late 1990s, it reached 2.7 million and by 2007, nearly 3.7 million.

³⁴⁷ Regional growth statistics presented in the previous paragraph and this paragraph are drawn from a series of Long Range Plans and Executive Summaries published by the DFW MPO, known as the Regional Transportation Council of the NCTCG. *Mobility 2000: The Regional Transportation Plan for North Central Texas* (1986); *Mobility 2010: The Regional Transportation Plan for North Central Texas*, (1990); *Mobility 2020: The Metropolitan Transportation Plan* (1996); *Mobility 2025: The Metropolitan Transportation Plan* (2005); *Mobility 2030* (2007); also (*Mobility 2025* (2004 update presentation).

³⁴⁸ Motor vehicles logged 56 million miles each day in 1980. By 1995, daily VMT in the region topped 102 million; VMT reached 125 million by 1999 and exceeded 150 million by 2007.

travel period, and roadway congestion was estimated to cost the region \$4.2 billion³⁴⁹ in 2007. Rapid growth had overwhelmed not only the transportation system but also the region's financial capacity to improve that system.³⁵⁰ Transportation goals have focused on preventing congestion from worsening, as the region has continued to add population and jobs. The region has also struggled with air pollution and in 2008 had yet to meet federal air quality standards for ozone.

Figure 7.3. Urbanized Areas Served by the Dallas-Fort Worth MPO³⁵¹



³⁴⁹ Expressed in 2006 dollars.

³⁵⁰ *Mobility 2000*, 1986.

³⁵¹ North Central Texas Council of Governments, *U.S. Census Bureau 2000 Urbanized Areas*, http://www.nctcog.org/trans/maps/urbanized_final.pdf (accessed January 30, 2009).

The urgency with which MPO members and staff understand regional needs for system improvements and for resources to finance them motivated the development of strategic and collaborative practices in regional transportation finance, and these practices have served as a foundation for the MPO's involvement in Congressional earmarking. In its planning documents and public communications, the MPO has consistently stressed sizable and critical gaps between available funds and needed investment. In the last decade, MPO members have moved aggressively to capture more of existing transportation resources for the DFW region and to identify new funding sources, particularly via toll projects and innovative roadway concession payments. It has become common practice for local governments and transportation agencies within the MPO to mix and match funds available to them individually in order to advance larger-scale projects. These practices have institutionalized the MPO as the decisionmaking forum for regional transportation and helped to position it to assume an active role in responding to the rise in earmarking.

7.2.2. The Internal Environment: Fosters Earmarking Engagement

7.2.2.1. Member Satisfaction with Decisionmaking

The Dallas-Fort Worth MPO is viewed as a legitimate decisionmaking body among local public officials and agency representatives in the region. Stakeholders consulted for this study and other studies view the MPO structure as fair and appropriate for meeting planning goals. Reviews by U.S. DOT commend the MPO for its inclusive policy board, which weights votes among its 43 members so that board seats reflect underlying jurisdictional populations. These attributes are clearly helpful to the DFW MPO as it maneuvers politically in the earmarking process.

The MPO's 43-member board brings together 36 city and county officials and seven transportation agency leaders to make transportation decisions for the region. Federal law requires MPOs in urbanized regions, but it does not dictate MPO board composition or voting policies, and these vary among MPOs. Research suggests that MPO boards often under represent central-city populations in favor of suburban jurisdictions, and that this imbalance may skew regional investment choices from transit toward highway projects.³⁵² Further, board representation by transit operators is uneven and sometimes actively discouraged.³⁵³ The Dallas-Fort Worth MPO, however, has avoided such representational dilemmas. Local officials exercise a board vote weighted to their per capita share of residents, and all area transit and transportation agencies are board members.³⁵⁴ Board membership was adjusted when the MPO service area expanded due to population growth, as with the addition of the Denton-Lewisville and McKinney urbanized areas.

While weighted voting can make minority participants captives to the majority, the absence of such criticisms in DFW suggests that weighted voting is perceived as fair among most MPO members. A majority (77 percent) of regional transportation stakeholders surveyed in a 2000 University of Denver study reported that "the institutional and [decisional] process structure in their MPO was meeting long-term

³⁵² A.C. Nelson, T.W. Sanchez, J.F. Wolf, and M.B. Farquhar, "Metropolitan Planning Organization Voting Structure and Transit Investment Bias: Preliminary Analysis with Social Equity Implications," *Transportation Research Record*, no. 1895 (2004): 1-7; Seth B. Benjamin, John Kincaid, and Bruce McDowell, "MPOs and Weighted Voting," *Intergovernmental Perspective* (Spring 1994): 31-35.

³⁵³ Julie Hoover, Bruce D. McDowell, and Gian-Claudia Sciara, *Transit at the Table: A Guide to Participation in Metropolitan Decisionmaking* (Washington, D.C.: Federal Transit Administration, 2004).

³⁵⁴ These include the Dallas Area Rapid Transit (DART) agency, the Fort Worth Transportation Authority ("The T"), the Denton County Transit Authority, the North Texas Tollway Authority, Dallas-Fort Worth International Airport, and the Texas' state Department of Transportation (TXDOT). See North Central Texas Council of Governments, *Regional Mobility Initiatives*. (Arlington, TX, August 2007).

transportation needs.”³⁵⁵ In the study, regional stakeholders reported more satisfaction with the MPO’s decision processes and institutional structure than was the case with comparable MPOs in the western United States.

Interviews for this work were collected by emergent sampling and did not include all MPO members, but the remarks of study respondents—including MPO members and outside observers—suggest that the board operates cooperatively. Interviewees report that MPO members participate actively in the forum and do not perceive power as overly concentrated in a single entity. Instead, respondents describe many individual, competing jurisdictions working to improve regional transportation. One observer reports,

In the DFW area, everybody knows who the MPO is, what it does, and their influence on transportation issues, problems, and solutions. The MPO there is a very, very significant and very powerful entity. That’s been built up over decades; it wasn’t always that way. Over the years, transportation planning and policy development at regional level has centered on the MPO versus individual cities. Even as big as Dallas is, the 500-pound gorilla in room, or even aggressive Collin County, one of fastest growing counties in Texas, which wield a significant amount of political power, [they don’t dominate the MPO.]...Among the main four counties—Dallas, Tarrant, Collin, and Denton—there’s a good balance of representation on the MPO, and because there are a lot of municipalities—a ton of jurisdictions—they’ve had to work together.

Poor regional air quality, say some respondents, has reinforced a regional perspective.

One MPO member describes the organization as

...extremely regional. People took their nametags off when they walked in and understood they were supposed to have regional discussions...They put their affiliation with any municipality on the back burner and looked at it from a truly regional basis...We’ve got ...about six or seven [members who]...are turf battlish. But the majority...have remained regionally minded...[They] call out [the ones pursuing turf battles], downplay the turf battle, and come back to the regional perspective...[We understand] from a regional standpoint what [project] needs to go first as we address our air quality and congestion concerns. We have to hit the

³⁵⁵ Paul Stephen Dempsey, Andrew Goetz, and Carl Larson, *Metropolitan Planning Organizations: An Assessment of the Transportation Planning Process*, Intermodal Transportation Institute, University of Denver, 2000, <http://www.du.edu/transportation/TransportationResearchProjects/MPOStudy.html> (accessed June 10, 2008).

heaviest congestion initially. So when the money's not coming to our side of the region but going to another side, we understand why.

Still, competition for funds among MPO members is real. The same respondent indicates that, as the MPO has gained more authority to program funds,³⁵⁶ single jurisdictions have worked more aggressively to secure funding for their own districts. The formation of several subregional "mobility coalitions" echoes these competitive impulses.³⁵⁷

Finally, it is possible that cooperative relationships that seem to exist among DFW MPO members are enhanced by the MPO's organizational home within the broader North Central Texas Council of Governments (COG). Local governments that belong to the MPO also participate in the larger COG, adopting regional strategies to address areas outside transportation, such as solid waste management and workforce development. Such practice may reinforce regional cooperation in transportation deliberations, and vice versa. Further, five current MPO board members also occupy elected seats on the wider COG's board. MPO members who serve in dual leadership roles may help to further this cooperation.

7.2.2.2. Leadership Cultivates MPO Cooperation and Role Expansion

Evidence collected in this case study suggests that MPO leadership in the post ISTEA-era has helped to expand the MPO's general engagement in transportation decisionmaking and finance and its involvement in earmarking in particular. The MPO has enjoyed stable leadership since its beginning as the COG's Transportation Department (only three individuals, all engineers, have served as Director of

³⁵⁶ The restructuring in 2004 of Texas transportation funding increased funding programmed by the MPO and is discussed later.

³⁵⁷ For instance, the Tarrant Regional Transportation Coalition and the Dallas Regional Mobility Coalition.

Transportation), and interviewees point in particular to the 1990 appointment of new Director, Michael Morris, right before ISTEA's passage, as important for the MPO.

Morris' tenure³⁵⁸ began just as the federal transportation law ISTEA dramatically enhanced MPOs' role and authority in transportation decisionmaking, and he remains the MPO director in 2009. Evidence suggests that Morris, promoted from within, has cultivated a collaborative orientation among MPO members and also expanded the DFW MPO's role in the identifying and directing funds for regional infrastructure improvements. By further institutionalizing the DFW MPO as a player in regional transportation planning and by expanding the role for all Texas MPOs in regional transportation planning and finance, Morris' pursuits have helped to position the DFW MPO to maneuver effectively within the Congressional earmarking process. The MPO's routine for submitting support letters for earmark candidates, for instance, was put in place during his tenure.

Interview data collected here and in other studies suggest that, by emphasizing the value of regionally oriented planning and programming, Morris has cultivated cooperative decisionmaking among MPO members.

Almost everyone we talked to in this MPO mentioned Morris by name and his leadership as an important factor in this very highly evaluated MPO. Morris was acknowledged for his ability to help [MPO] members set aside individual agendas and individual differences and concentrate on the long-term planning needs of the region. His leadership was seen as instrumental in helping relieve the divisiveness and narrowness of perspective that characterized the MPO [when assumed the Director role.]³⁵⁹

³⁵⁸ Federal Highway Administration and Federal Transit Administration, *Dallas-Fort Worth-Arlington, Denton-Lewisville, McKinney Metropolitan Planning Organization Transportation Management Area Certification Review Final Report* (Washington, D.C.: U.S. Department of Transportation, 2005).

³⁵⁹ Paul Stephen Dempsey, Andrew Goetz, and Carl Larson, *Metropolitan Planning Organizations: An Assessment of the Transportation Planning Process*, Vol. III, Section IV, Intermodal Transportation Institute, University of Denver, 2000: 13.

<http://www.du.edu/transportation/TransportationResearchProjects/MPOStudy.html> (accessed June 10, 2008).

Members report that Morris' approach "makes sense," suggesting the MPO and its actions have acquired legitimacy among regional stakeholders. Said one observer interviewed here,

He's had the ability to herd cats for many years in an area where you've got...political folks in the room. You've got the Dallsases and Fort Worths and the 200 to 300 pound gorillas running around, and Tarrant County has 41 cities, and you have 9 counties. Everybody wants to feel like they've got a say and are being considered. Michael has done a good job of spreading the limited funds,...explaining priority setting, and then...convincing folks that his efforts weren't based on pressure or one group or another, but really made sense. No one sits there and says, "Golly, Dallas is getting everything," or "Fort Worth is getting everything, and the dots aren't being connected." It's setting up a master plan that makes sense.

Morris has also fostered collaborative relationships among MPO members via external forums. In the early 1990s, Morris helped to establish the Dallas-Fort Worth Area Partners in Mobility, known as the Partnership, a transportation advocacy coalition comprised of local governments, individual businesses, business groups for economic development and regional mobility, chambers of commerce, and the MPO. The Partnership advocates largely at the state level for a greater share of transportation formula and discretionary funds for the DFW area,³⁶⁰ and it interacts mostly with state leaders. Nevertheless, the group's existence reinforces a regional identity among stakeholders and requires them to identify shared transportation priorities and to engage with state leaders. These practices would seem to support regionally-oriented earmarking, which the Partnership endorses for paying for regional transportation.³⁶¹

³⁶⁰ Each year, the group visits and lobbies the Texas Transportation Committee, the three-member appointed policy body that directs TXDOT, and the state legislature for North Texas transportation needs.

³⁶¹ Dallas-Fort Worth Area Partners in Mobility, *Meeting the Challenge of Funding Mobility Improvements: Tenth Annual Presentation of the Dallas-Fort Worth Metropolitan Area to the Texas Transportation Commission* (Arlington, TX: North Central Texas Council of Governments, 2004), 2.

Following Morris' lead, MPO members have also acted to consolidate new regional funding power within the MPO. First, by promoting the establishment of the MPO as a "financial RMA," or regional mobility authority, local officials in the region have moved to locate any new authority in transportation finance within the MPO rather than individual counties.³⁶² Under a 2001 Texas proposition, counties may form RMAs in order to raise transportation revenue and implement projects, typically toll-based road facilities.³⁶³ Although intended, in principle, to address regional transportation, RMAs are county-based and answerable to the state. RMAs manifest state policy to devolve ownership of and responsibility for state facilities to local areas, and they are empowered to finance, acquire, design, build, operate, maintain, and expand transportation projects. However, because only weak provisions require these new authorities to coordinate their actions with existing MPOs, RMAs could complicate or even undermine existing transportation planning in urban regions.³⁶⁴ Appreciating this potential and signaling their desire to privilege regional—not county—authority in transportation matters, the DFW MPO has opposed the formation of RMAs in its region and instead prefers to vest such finance capabilities in the MPO.

Similarly, the DFW MPO has also proposed that the federal authorization law expected in 2009 should allow urban regions with population exceeding 5 million to create *metropolitan* mobility authorities. Such authorities would be vehicles for raising regional transportation funds and for receiving federal funds directly, rather than through

³⁶² Federal Highway Administration and Federal Transit Administration, *Dallas-Fort Worth-Arlington, Denton-Lewisville, McKinney Metropolitan Planning Organization Transportation Management Area Certification Review Final Report*, Section 3 (Washington, D.C.: U.S. Department of Transportation, 2005), 3.

³⁶³ *Regional Mobility Authorities*, Texas Department of Transportation, 2004.

³⁶⁴ Gian-Claudia Sciara and Martin Wachs, "Metropolitan Transportation Funding: Prospects, Progress, and Practical Considerations," *Public Works Management and Policy* 12, no. 1 (2007): 378-94.

the state. This position has been adopted by the national Association of MPOs, or AMPO.³⁶⁵

7.2.2.3. Unusual MPO Discretion to Modify the TIP

During Morris tenure, the MPO's governing board approved a sophisticated Transportation Improvement Program (TIP) modification policy³⁶⁶ that gives the director authority to make certain changes to the TIP, the regional capital program, without a vote of the governing board. Although MPO staff sought this discretion in order to cope with construction cost escalation that accompanies project delays while the TIP awaits official revision,³⁶⁷ the policy also enhances MPO flexibility in dealing with earmarks. The extent to which the policy has been applied to accommodate earmarks is an important question for further study.

In 2005, the MPO board voted to allow the director to modify the capital program to reflect changes in a project's cost, scope, and year of expenditure when the magnitude of change falls beneath a defined threshold. Ordinarily, such changes would require board approval and could delay a project. By so empowering the MPO director, board members implicitly demonstrated their trust in Morris and his staff. Even more significantly, the board evidenced its own highly sophisticated understanding of the circumstances which could compel capital program changes and when such revisions could appropriately be delegated.

³⁶⁵ Association of Metropolitan Planning Organizations, *Position on 2009 Federal Surface Transportation Authorization*, July, 2008, http://www.ampo.org/assets/685_finalampopdfoverviewappro.pdf (accessed January 30, 2009).

³⁶⁶ North Central Texas Council of Governments, *Transportation Improvement Policy Modification Policy: Policies and Procedures to Streamline Project Delivery*, (Arlington, TX, 2005).

³⁶⁷ MPO representatives reported in late 2008 that one month of delay in the Dallas-Fort Worth region could increase a project's cost by two to three percent given rapid price escalation in construction inputs.

While the policy was not explicitly intended to enhance MPO flexibility in managing earmarks, MPO participants say it has proven useful in this regard. In fact, the 2005 federal review of the DFW MPO calls attention to this policy for the discretion it allows the MPO's Director with regard to project funding increases, TIP project additions, and reprioritization—all circumstances that can be brought about by earmarks. MPO representatives say such instances are infrequent; the region experiences few earmarking-related disruptions to its capital program, given its ability to influence the selection of projects that receive earmarks during the legislative process. Nonetheless, earmark-driven TIP modifications are difficult to discern under ordinary circumstances, and probably even more so when they may be made without a policy board vote. This makes such modifications important terrain for further study.

7.2.3. The External Environment: Smooths Earmark Management

Two features of the Dallas Fort-Worth MPO's external environment enhance the MPO's ability to accommodate earmarks *post hoc*. First, Texas' recently revamped system for allocating transportation funds extends programming authority over more of those funds to MPOs and also invites greater MPO participation in transportation funding decisions via a simplified allocation structure. Second, a newly erected regional transportation fund, akin to an infrastructure bank, provides another source of funds that the MPO may use to manage earmarks. For Texas MPOs, both innovations expand the role and authority in transportation funding decisions of Texas MPOs in general. But they do so particularly for the DFW region, given the MPO's director's prominent role in establishing these features, indirectly enhancing DFW's MPO profile when it comes to seeking and managing earmarks.

7.2.3.1. Restructured State Allocation System Favors Texas MPOs

Prompted by complaints about the state's overly complex transportation funding system, and by aims to devolve transportation funding responsibility from the state to local areas and to promote toll-based funding, the Texas governor moved in 2004 to revamp state system for distributing transportation funds.³⁶⁸ The overhauled system for allocating funds has significantly altered the external funding environment for Texas MPOs; put more funding decisions in the hands of the largest MPOs in Texas, including DFW,³⁶⁹ and made transportation funding more transparent and accessible to MPO members. In Dallas-Fort Worth, in particular, the changes enhance the MPO's practice of mixing-and-matching funding sources to manage earmarks,³⁷⁰ and to its profile as a prominent transportation player in the region.

First and foremost, the new system has deepened MPO involvement in spending decisions by allocating funds following by set formulae rather than by TxDOT-calculated individual project cost-effectiveness ratings. Previously, TxDOT distributed funds to individual projects across the state based on cost-effectiveness scores produced at DOT headquarters. Surveyed by Texas A&M University in 2001, most MPO respondents expressed skepticism about the equity of state's allocation process, and suggested their policy board members also questioned whether their region received its fair share of

³⁶⁸ Michael Behrens, *Allocations of State Transportation Resources, Testimony before the Senate Finance Committee and Senate Transportation and Homeland Security Committee*, (Austin, TX: Texas Department of Transportation, 2006.)

³⁶⁹ There are 25 MPOs in Texas, but the following eight largest Texas MPOs all serve regions with populations that exceed 200,000: Dallas Fort Worth, Houston, San Antonio, Austin, El Paso, McAllen, Beaumont, Corpus Christi. See Federal Highway Administration, Research and Innovative Technology Administration's Bureau of Transportation Statistics, *National Transportation Atlas Database (NTAD) 2006, Metropolitan Planning Organization* (Washington, D.C., 2006).

³⁷⁰ An earlier indication of the state's willingness to devolve some programming responsibility to the metropolitan level is the state Transportation Commission's suballocation of STP funds directly to large MPOs, even though under federal law the state could have programmed the funds itself.

funding.³⁷¹ Respondents interviewed here say the system produced lumpy allocations, delivering significant sums to certain places one year while shorting others. Further, some claimed that state-led allocation shorted urban regions, which typically generated a larger share of statewide fuel tax revenues than they received. Another study reported that Dallas-Fort Worth stakeholders felt the MPO could not adequately address rapidly changing transportation needs, in part due to inadequate resources.³⁷² Also, some complained that the system inappropriately centralized spending decisions in Austin, the state capital.

By formularizing the distribution of funds, Texas DOT has invited greater involvement by MPOs and their members in funding choices—and sources, by making year-to-year funding more predictable and by decentralizing decisionmaking. One interviewee describes this change in the context of recent DOT policy:

There's a movement in TxDOT to place more responsibility with the MPOs, especially the large ones. In large part, this is because 60 percent of our revenue for projects in the plan and TIP comes from local sources, like toll revenues and local bond issues. There has been a policy shift to push responsibility down to locals, motivated by recognition that revenues are decreasing while maintenance costs are increasing.

While the restructuring has yielded a sense among MPOs and Texas DOT districts that the allocation process is more equitable, it could lead to less cost effective projects.

³⁷¹ Texas A&M University System, *Survey on the Texas Department of Transportation Project Selection and Funds Distribution Process*, Transportation Planning & Programming Division, Texas Department of Transportation, June, 2001, <http://txdotutp.tamu.edu/reports/survey601.html> (accessed November 1, 2008).

³⁷² A study by the University of Denver suggests the region received transportation funding that compared favorably to its share of transportation need, measured by proxy with state population and vehicle miles traveled (VMT), but it did not report what share of state revenues DFW produced. See Paul Stephen Dempsey, Andrew Goetz, and Carl Larson, *Metropolitan Planning Organizations: An Assessment of the Transportation Planning Process* Intermodal Transportation Institute, University of Denver, 2000, <http://www.du.edu/transportation/TransportationResearchProjects/MPOStudy.html> (accessed June 10, 2008). The *Houston Chronicle* reported in 2002 that Houston received only 13 percent of statewide highway funds but was home to 21 percent of the state's population, while in earlier years it had received up to 25 percent of state funds. See John Williams, "Houston-Area Leaders Press for More Highway Funds," *Houston Chronicle*, August 19, 2002.

Second, the new structure makes more funds available to metropolitan regions. By creating two MPO area funding categories, one for larger and one for smaller metropolitan areas,³⁷³ it increases the funds over which metropolitan areas in Texas have a say. For larger regions, so-called “Metropolitan Mobility” funds are distributed by formula among Texas’ eight largest metropolitan planning *areas*.³⁷⁴ New funding categories targeted to metropolitan areas further institutionalize MPOs as players in regional funding decisions, which may enhance their position when Congressional earmarks are considered.

Third, the restructured funding system has simplified funding categories and made it easier for local and regional officials to understand what funds are available and how to apply them toward projects. Previously comprised of 34 separate funding categories, each with its own purpose, eligibility criteria, and project design requirements, the Texas system was known as confusing and cumbersome. Texas MPOs said that the process for determining distribution of funds was unclear and largely controlled by TxDOT. MPO staff were unsure what funds were available to them or how funds were shared among rural, urban and metropolitan areas in Texas, and such issues

³⁷³ Category 2 “Metropolitan Area Corridor Projects” funds, or so-called metropolitan Mobility funds, are reserved for metro areas with populations over 200,000 (known as Transportation Management Area, or TMA). Category 3 funds, “Urban Area Corridor Projects,” are reserved for urbanized areas with populations between 50,000 to 200,000 (non TMAs).

³⁷⁴ Metropolitan Mobility funds, however, do not flow directly to MPOs. Unlike federal CMAQ and STP funds which Texas MPOs program, Metropolitan Mobility funds are programmed by the MPO in consultation with state DOT. The state constitution requires that the Texas Transportation Commission select projects, but a memorandum of understanding between the MPO and the state indicates that the Commission will approve the MPOs’ recommendations. According to interviewees, the state has approved 100 percent of the DFW MPO’s requests. Said one TxDOT official, “We [decide Metropolitan Mobility Funds] jointly... [Metropolitan Mobility funding]...all...goes inside the MPO area. In my district, we say: ‘MPO you choose them. You choose priority projects using that money as well as [CMAQ] and [STP], and we’ll concur with you.’”

were even more difficult for MPO policy board members to grasp.³⁷⁵ One respondent observed that state “[f]unding and project priorities seem to change regularly.”

By streamlining transportation funds in 2004, Texas made it easier for MPO officials and staff to understand and participate in project funding decisions. The changes reduced the number of DOT funding pots from 34 to 12; grouped them into streams for design, construction, and maintenance of the state transportation facilities; and streamlined each category’s purpose, eligibility, and design requirements. In interviews conducted for this study, Texas DOT officials and DFW transportation stakeholders describe the new categories are more intuitive and more comprehensible. With greater literacy in state funding categories, MPO officials can better visualize the larger funding picture and participate in project funding discussions. This may also support the mix-and-match approach to funding earmarks described, whereby respondents describe creating a funding package for specific transportation improvements with different sources.

7.2.3.2. Regional Infrastructure Fund Put DFW MPO in Driver’s Seat

Because MPOs are planning bodies rather than units of government, they seldom have authority to raise revenue, as do local governments, for instance, via fuel or sales taxes or bonds.³⁷⁶ However, through a recent agreement among the Texas Transportation Commission, the North Texas Tollway Authority (NTTA), and the Texas DOT—an

³⁷⁵ Texas A&M University System, *Survey on the Texas Department of Transportation Project Selection and Funds Distribution Process*, Transportation Planning & Programming Division, Texas Department of Transportation, June 2001, <http://txdotutp.tamu.edu/reports/survey601.html> (accessed November 1, 2008).

³⁷⁶ A few creative exceptions are examined in Gian-Claudia Sciara and Martin Wachs, "Metropolitan Transportation Funding: Prospects, Progress, and Practical Considerations," *Public Works Management and Policy* 12, no. 1 (2007): 378-94.

agreement brokered by Morris—the DFW MPO may serve in a limited way as a public sector credit union, or infrastructure fund, for transportation investments.

The credit union came about through the controversial “121 Tollway” project, a tolled facility under development by the Tollway Authority on former State Highway 121 through Collin, Denton, and Dallas counties. The Tollway Authority, a state-empowered public authority that develops toll-funded road facilities in north Texas, paid TxDOT a \$3.2 billion concession fee to acquire and develop highway 121 as a tollroad. In a deal among the three agencies, the entire fee is reserved for use exclusively by the MPO for projects in the DFW region. The \$3.2 billion would be starter funds for an MPO-based credit union, creating a way for the region to generate revenues from its tollways and to ensure those revenues are invested *within* the region.³⁷⁷ Morris brokered this innovative role for the MPO with member support, and the dedicated funds have helped the region to continue building transportation projects in spite of state funding shortfalls.³⁷⁸

7.2.3.3. MPO Positions Itself as Expert Player

The DFW MPO played a large role in establishing both the new state funding allocation system and the DFW regional infrastructure credit union. The MPO’s director was a key participant in the restructuring of state funding, evidenced by a 2004 national service award³⁷⁹ and by credit given him by interviewees. In addition to enhancing

³⁷⁷ See North Central Texas Council of Governments, Minutes of Meetings of Executive Board, Meeting of February 28, 2008: 3, <http://www.nctcog.dst.tx.us/edo/docs/200802Minutes.pdf> (accessed January 30, 2009); North Central Texas Council of Governments, Minutes of Meetings of Regional Transportation Council, Meeting of August 9, 2007: 2-6, http://www.nctcog.org/trans/committees/rtc/2007/Sept/Ref.Itm_1.pdf (accessed January 30, 2009).

³⁷⁸ Rudolph Bush, "Official's Plan Means Loss of Road Funds May Not Take Toll on Dallas," *Dallas Morning News*, January 28, 2008.

³⁷⁹ In reshaping its funding allocation system, TxDOT sought involvement from local elected officials and MPOs, and several respondents interviewed credit Morris’ active involvement with the creation of the metropolitan-friendly funding categories and distribution formulae. For his central role in the planning behind these metropolitan oriented changes at TxDOT, Morris was awarded the 2004 National Association

Morris' own reputation, such involvement also boosted the profile of the DFW MPO. Further, the MPO's ability through Morris to broker with TxDOT and the NTTA for new regionally controlled funds from toll revenues has further institutionalized the MPO as a significant voice in transportation decisions. The MPO's involvement in these changes undoubtedly brings it additional credibility, and may enhance respect and trust for the organization among regional players and Congress members who would consult the MPO regarding potential earmarks.

In sum, the DFW MPO has become a more central regional player when it comes to project funding decisions among members. First, simplified and more predictable state allocation of transportation funding makes it easier for MPO members and staff to understand state and federal dollars and to apply them toward projects. Second, metropolitan mobility funds provide the MPO more funding discretion, enhancing the ability of MPO players to mix-and-match funding sources to advance earmarked project. Finally, in both instances, the DFW MPO has been a visible force for change, adding to perceptions of the MPO as a repository of transportation funding expertise and aiding its role as a passive consultant in earmarking matters.

7.4. Coda: A Signature Bridge to Somewhere

The DFW metropolitan planning organization appears well situated to reinforce metropolitan aims in the face of Congressional earmarking, a process that can fund transportation projects *without* considering such aims. Yet, while the organizational practices and institutional factors that place the DFW in this position are desirable, and

of Metropolitan Planning Organizations (AMPO) prize for outstanding individual leadership in metropolitan transportation planning. See Association of Metropolitan Planning Organizations, *AMPO Awards: 2004 Award Winners*, 2004, <http://www.ampo.org/content/index.php?pid=18> (accessed January 30, 2009).

perhaps even necessary, for supporting regional plans and priorities in the face of earmarking, they may be insufficient actually to ensure that Congressional transportation earmarks, considered normatively, represent the wisest federal investments.

The earmarks designated for the I-30 Trinity River Bridge in downtown Dallas illustrate how, even when the regional transportation planning body has positioned itself to evaluate and influence candidate earmarks, resulting earmarks can raise serious questions about the appropriate use of federal transportation dollars. The story of the I-30 Trinity River Bridge thus provides a coda to this case study.

The picture of the Dallas-Fort Worth MPO that emerges in this case study suggests it is a robust and well respected regional forum. Local governments and transportation agencies participation involves not only planning and prioritizing regional transportation improvements, but also working in concert to advance and implement them. The MPO's organizational environment—distinguished *internally* by a representative board structure, cooperative relationships, aggressive leadership, and discretion to modify the TIP and *externally* by an MPO-friendly state system for suballocating transportation dollars—has helped to make the MPO a prominent player in regional transportation decisionmaking and finance. Further, these organizational attributes facilitate the MPO's involvement in Congressional earmarking, in steering the choice of earmarks during the legislative process and in maneuvering *post hoc* to advance projects, with additional funds and TIP reshuffling if needed. MPO members and staff in fact seem satisfied with the organization's earmarking practices and experiences.

By many accounts, MPO members were pleased when Congress earmarked \$78 million in SAFTEA-LU toward two signature bridges over the Trinity River, with the

bulk of funds designated for an architectural cable-stay replacement of the I-30 bridge. The MPO endorsed the project as an earmark candidate during the legislative process. However, the need for bridge replacement—versus less expensive options for improvement—emerges as a contested issue in this study. Further, it appears that such large sums of federal earmarks for the bridge in fact facilitated a more costly design than might have been pursued otherwise.

7.4.1. A Signature Vision for the Trinity River

The Trinity River which runs through Dallas and its flood plain embankments have long been an object of redevelopment interest within the city. Like many southwestern rivers, the riverbed is dry most of the year but experiences heavy flows in the rainy season. It has experienced severe floods though the years; the most severe of these was shortly after the turn of the 20th century, and remains imprinted on the collective consciousness. The Trinity separates Dallas's well developed downtown and northern suburbs from what is described as the city's forgotten half.³⁸⁰ On the southern side of the Trinity, lower income neighborhoods such as South Dallas/Fair Park, Cadillac Heights, and Oak Cliff, and have been slow to experience the same economic boom as the northern half.

A package of projects, some of them controversial, proposed within the Trinity River Corridor Plan would extend the floodway with raised and rebuilt levees; a new tollway within the levees; develop portions of the riverbed and embankment into parkland with recreational lakes and amenities; and improve connections across the river, including replacement of bridges on I-30 and I-35. The plans are geared as much toward

³⁸⁰ Colleen McCain Nelson, "Our City's Best Hope: Dallas' Economic Future Rides on Reversing Decades of Neglect in Its Southern Half," *Dallas Morning News*, June 23, 2008.

economic redevelopment as infrastructure improvement. As the City of Dallas project website suggests, the package of projects will remake the city:

Our city's image will be defined by the wildlife, trails, parks, lakes, the Great Trinity Forest, a world-class equestrian and Audubon Environmental Interpretive Center and "signature" bridges. These amenities will stimulate new urban development such as . . . stunning waterfront condominiums, beautiful townhouses, office towers, and a variety of sidewalk cafes and shops.³⁸¹

One MPO representative interviewed here suggested that the organization supported the signature I-30 replacement, as it would draw employers and residents to the downtown area, ultimately helping to control congestion and air quality problems.

While the plans would boost the value of industrial land owned by Dallas realty interests along the river, they have also drawn resistance from community and environmental groups. In 2007, a referendum spearheaded by a Dallas city council member and environmentalists sought, but failed, to force TxDOT to scale back the tollway to an urban boulevard.

The enhancement of connections across the Trinity has been an important element of the project. Along with other bridge improvements, the visioning documents call for two new architecturally significant bridges that would remake Dallas' image in the way a distinctive skyscraper would imprint an urban skyline. The City has contracted with architect Santiago Calatrava to design "signature bridges" across the Trinity, one (the Woodall Rogers Extension) of which is already underway. Two additional signature bridges would replace the existing I-30 and I-35 bridges, and their combined cost was

³⁸¹ *About the Trinity Project*, City of Dallas Trinity River Corridor Project, http://www.trinityrivercorridor.com/html/trinity_project.html.

estimated in 2003 to be \$331.5 million.³⁸² The scale and price tag of the signature bridges—supported in large part by Congressional earmarks—has attracted some criticism.

The Trinity is spanned by two interstates: I-30 which connects Dallas and Fort Worth, and I-35E which runs north through Dallas and eventually joins I-35W to go north through Fort Worth. With both bridges on the Interstate System, the Congressional delegation, led mostly by Rep. Eddie Bernice Johnson of Dallas, who sits on the House Transportation and Infrastructure Committee and chairs its Water Resources and Environment subcommittee, sought federal funds for their reconstruction and rehabilitation as part of the larger Trinity redevelopment. Johnson has also helped secure federal funds for levee reconstruction in legislation supporting federal water projects.³⁸³

7.4.2. The I-30 Bridge

Data collected for this study suggest that as of mid-2009 over \$82 million in Congressional earmarks have been designated for the I-30 crossing. The 2005 transportation authorization bill, SAFTEA-LU, earmarked \$65.8 million in the High Priority Projects program for the I-30 bridge (see Table 7.4),³⁸⁴ and subsequent designations have added to that. As High Priority Projects, the SAFTEA-LU earmarks all count below-the-line, detracting from Texas' state share of federal highway funds as defined in SAFTEA-LU equity provisions.

³⁸² The Dallas Plan, Chan Krieger & Associates, The Trinity River Corridor Project Office, et. al., *A Balanced Vision Plan for the Trinity River Corridor*, Section III, "Implementation," City of Dallas, December, 2003: 73 http://www.trinityrivercorridor.com/html/vision_plan.html.

³⁸³ Neighboring Fort Worth has also secured earmarks to redevelop its Trinity River embankments (the Trinity River Vision project), largely through appropriation bills. Rep. Kay Granger of Fort Worth sits on the appropriations committee. Dan McGraw, "Troubled Waters: Trinity River Vision Opponents Want to Shut Off the Funding Faucet," *Fort Worth Weekly*, December 13, 2006, <http://archive.fweekly.com/content.asp?article=4454>.

³⁸⁴ An additional \$12 million were earmarked in SAFTEA-LU for the I-35 bridge, also in the HPP program.

Table 7.4. SAFTEA-LU Earmarks for I-30 Trinity River Bridge

SAFTEA-LU PROJECT #	PROJECT DESCRIPTION	CONGRESSIONAL DISTRICT NAME & NUMBER	EARMARK AMOUNT	TOTAL PROJECT COST	EARMARK AS % of TOTAL PROJECT COST	FUNDS NEEDED FROM OTHER SOURCES	PROPOSED/ ACTUAL LET DATE
1444	Reconstruct I-30 Trinity River bridge, Dallas (M Hunt Hill)	Eddie B. Johnson (30) Pete Sessions (32)	\$20,000,000	\$32,000,000	63%	\$12,000,000	March 2007
2262	Build I-30 Trinity River Bridge, Dallas, Texas (M Hunt Hill)	Eddie B Johnson (30) Pete Sessions (32)	\$800,000	\$32,000,000	3%	\$31,200,000	March 2007
3375	Reconstruct I-30 Trinity River bridge, Dallas (M Hunt Hill)	Eddie B. Johnson (30) Pete Sessions (32)	\$27,200,000	\$32,000,000	85%	\$4,800,000	March 2007
3376	Reconstruct I-30 Trinity River bridge, Dallas (M Hunt Hill)	Eddie B. Johnson (30) Pete Sessions (32)	\$800,000	\$32,000,000	3%	\$31,200,000	March 2007
4984	Replacement of the I-30 bridge over the Trinity River in Dallas (M Hunt Hill)	Eddie B. Johnson (30) Pete Sessions (32)	\$17,000,000	\$32,000,000	53%	\$15,000,000	March 2007
			\$65,800,000				

Proponents of the I-30 signature design suggest that private funds, not federal earmarks, will support the signature's cost, but it is unclear that price increments stemming from architectural elements have been or can be isolated. Thus far, the state DOT uses a single accounting code for the I-30 bridge.³⁸⁵ Moreover, the sums from private sources are dwarfed by the bridge's total cost, placed at over \$171 million in March 2009 estimates secured for this study. In contrast, a \$12 million gift from the Hunt Petroleum Company went to the entire Trinity River Corridor Project.³⁸⁶ Also, earlier fundraising yielded \$5 million from Dallas citizens and charitable foundations, but those were applied to the Woodall Rodgers Extension, a separate Calatrava-designed Trinity crossing already under construction.

In short, it seems clear that federal earmarks for the I-30 bridge make it affordable to replace the bridge on a grander scale than might otherwise be possible. One MPO member interviewed for this study suggests that the bridges could be rehabilitated instead, or replaced with simpler designs, at significantly lower cost.

However, proponents of the bridge say replacement is urgently needed and a matter of safety. City of Dallas reports about the larger Trinity redevelopment state that TxDOT identified the I-30 (and I-35) bridges as needing replacement in its statewide bridge inspection and appraisal program, known as BRINSAP, over 15 years ago.³⁸⁷ Other reports suggest, however, that is untrue.³⁸⁸ A three-foot pothole that appeared on the bridge's surface in Spring 2008 fueled claims that bridge replacement was urgent. Yet,

³⁸⁵ The control-section job number, or "CSJ," for the I-30 bridge is 1068-04-116.

³⁸⁶ In return, the Woodall Rodgers Extension was renamed to honor Margaret Hunt Hill, the Hunt matriarch.

³⁸⁷ Trinity River Corridor Project Consolidated Office, *Trinity Bridges*, City of Dallas,

http://www.trinityrivercorridor.org/html/trinity_bridges.html (accessed November 12, 2008).

³⁸⁸ Jim Schutze, "Dear Congress: Dallas Is Telling a Big, Fat Fib About the Trinity River Project," *Dallas Observer*, November 4, 2004.

interview responses gathered in this study suggest the bridge has had chronic pothole issues for over 20 years and that such problems stem from its thin concrete deck, not from structural deficiencies that put the bridge in danger of collapse. State DOT recommendations for I-30's improvement relate more functional limitations, i.e. to the bridges inability to accommodate 21st century traffic volumes.

The remarks of MPO members about this project suggest that sentiment toward the project and interpretations of need were at least somewhat mixed, with the City of Dallas clearly vested in a signature replacement. Yet, as it stands in mid-2009, the project is not a done deal yet. While commitments of local, regional, and state funding have added resources to the \$82 million in earmarks, the I-30 project is still short by \$41 million and has not yet been placed in the TIP. It is always possible that the project could be scaled back, but I find no evidence pointing in that direction. Instead, it is the policy of TxDOT and the DFW MPO to put completion of earmarked projects first, and the region is actively looking for ways to complete the project's funding package.

Given the competing interpretations of need for I-30, and given that most of its existing earmarks come below-the-line, potentially at the expense of other Texas projects, several questions are in order: How would the region choose to improve the I-30 bridge if federal earmarks worth \$82 million and covering nearly half its \$171 million cost were *not* available? Would the region pursue replacement or opt instead for rehabilitation? And, if it chose replacement, would it still have chosen a high-end suspension design? As one respondent noted in this study, "The amount that has been earmarked for the I-30 already is enough for standard bridge replacement."

I have argued in this dissertation that MPO involvement in the earmarking process and in *post hoc* earmark management can increase the chances that metropolitan transportation priorities will be reflected in the choice and later trajectory of Congressional transportation earmarks. This case presents evidence to temper such optimism. It shows how an MPO still may endorse and work to advance earmark candidates that are far away from financial feasibility; that will absorb significant federal and local resources from other projects, in the present or future; and that could represent projects that are inflated beyond what need would dictate under ordinary funding circumstances.

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Chapter 8: Pork for New York: The Metropolitan Motivator

Earmarks lately have either been for something big like the Cross Harbor Tunnel...or smaller projects that are upsetting the apple cart. Now, the fear [for Albany] would be, "What happens if...[Congress members] really get to earmarking a bigger project that the [state] legislative leadership doesn't agree with?"

8.1. Propelling Regionalism: The Pitfalls and Promise of Earmarks

Congressional earmarking for the New York metropolitan region both supports and upends the expectation articulated at the start of this dissertation. I originally assumed that weakly institutionalized metropolitan planning organizations (MPOs) would be easily compromised by increased Congressional earmarking. That is, where the existing intergovernmental process for identifying regional projects for federal investment was not robust, earmarks would, I suspected, erode it further. Individual MPO members and other regional stakeholders would secure federal dollars via earmarks, circumventing established planning processes. The New York MPO presents evidence in this direction to a point, but later suggests a different story. For seeking or managing transportation earmarks for New York area projects, as with for transportation decisionmaking in general, the MPO has been a largely irrelevant forum. Agencies, local governments, and other stakeholders have typically not worked across jurisdictional or agency boundaries to pursue or respond to earmarks. However, earmarking's rapid increase, along with a hefty \$100 million earmark in SAFTEA-LU for a theretofore lowly prioritized project, have spurred members of the New York MPO to reconsider the potential in general for strengthened regional decisionmaking and in earmarking in particular for regional action in the Congressional earmarking process.

As documented in this case study, local governments and transportation agencies have traditionally acted in isolation to seek and manage earmarks. The pattern echoes a

longstanding ambivalence within the MPO toward regional coordination on transportation investment decisions and a shared preference for autonomous action by local governments and agencies. In the words of one observer, the New York MPO—known formally as the New York Metropolitan Transportation Council, or NYMTC—has since its inception functioned more as a “loose confederation” of governments and agencies than as an overtly formal or authoritative regional transportation planning body. The single state MPO emerged in the early 1980s from the dissolution of a larger MPO serving the New York-New Jersey-Connecticut *tri*-state metro area. For most of its history, regional transportation planning practice has been more procedural than deliberative in nature. Internal and external forces have discouraged the institutionalization of more cognitive regionalism among the MPO’s member governments and agencies. These forces include a regional tradition of political pluralism; sizable transportation agencies accustomed to acting independently; and competition in the region between city and suburbs, and among economic centers and sub-centers, sometimes across state boundaries.

Yet, earmarks in the New York region have in fact prompted renewed discussion at the MPO table, heretofore a largely procedural and technical organization, focused on the production of federally required planning documents and analyses. With its members encouraged by new MPO leadership and by financial conditions perceived as urgent, increased earmarking has catalyzed more energetic engagement in regional planning. Seeking to maximize the earmarked funds they can secure together and to minimize the potential for earmarking-borne uncertainty and disruption of already fragile financial

balance sheets, regional players have reinvigorated metropolitan planning discussion and practice in their collective self-interest.

Local governments and transportation agencies in the region report that, although they may have had some success securing earmarks individually for desired projects, most have also collected sufficiently troublesome earmark experiences and view them as generally problematic. In the least troublesome instances, earmarks can be a nuisance. In the worst cases, earmarks threaten to derail the region's already precarious program for transportation funds, and to divert scarce funds away from projects viewed by some MPO members as already too long deferred.

The uncertainty presented by this latter possibility has prompted members of the New York MPO to reevaluate the potential for regional coordination vis-à-vis federal transportation funding. In spite of countervailing pressures, local governments and public agency leaders have begun in the early 21st century to reinvigorate metropolitan planning discussion and practice within the MPO. In a larger context of increasingly constrained transportation budgets and of undeniable—and seemingly unstoppable—growth in Congressional earmarking, some stakeholders have begun to reconsider the *laissez-faire* approach to earmarking traditionally shared by regional stakeholders. Most vocally, the suburban county executives have begun to question whether MPO members should continue mutually to ignore one another's earmarking practices. These officials are propelled in part by past experiences with Congressional earmarks, in part by hopes of securing more earmarked funds together, and in part by a desire to avoid large, unexpected earmarks that could dash the project ambitions of other players. Enthusiasm for this effort is uneven. MPO members that have traditionally enjoyed more financial

autonomy and control than the others have been reluctant. Nonetheless, local leaders within the MPO have for the first time in decades exhibited willingness to work more in concert than as unrelated competitors.

8.1.1. I Did It My Way: Planning for the Pork Barrel

Interview data and earmarks themselves suggest that earmark seeking in the New York region has been fragmented and often divorced from region-wide planning concerns, sometimes even from planning by individual agencies and local governments. While there have in fact been some efforts to co-ordinate earmark seeking at the city- and state-level, overall there has been no regionwide co-ordination *across* political or agency jurisdictions in the metropolitan area. Earmarks have yielded funds for projects deemed by individual transportation agencies to be of low priority or even unwanted, including \$15 million to purchase new ferry boats for a waterborne commuter service deemed by planners as unviable and several million designated for commuter rail and subway station upgrades not considered pressing. Further, one earmark designated \$100 million towards a new \$6 billion cross-Hudson rail tunnel that the MPO's regional plan had earlier suggested would both be expensive and encounter environmental obstacles.³⁸⁹ While such projects failed to align with immediate regional planning priorities, each had supporters who prevailed in the Congressional process.

Unlike the MPO in Dallas-Fort Worth, the New York MPO has traditionally played no central role in the pursuit of candidate projects.³⁹⁰ While several interview

³⁸⁹ *Mobility for the Millennium*, (New York: New York Metropolitan Transportation Council, 1999), 109-110.

³⁹⁰ As described in Chapter 7, Dallas-Fort Worth MPO board members and staff leaders have established the organization as a "go-to" for Congress members to request advice on earmarks. Additionally, MPO board members permit MPO staff to issue letters of support to Congress for earmark requests that are reflected in the regional plan.

respondents suggest this pattern may change with the 2009 authorization bill, neither MPO members nor MPO staff have sought to coordinate, track, or vet earmark requests across political jurisdictions and transportation agencies in the metropolitan region.

Instead, MPO-wide efforts to influence earmarks are modest, informal, and staff driven.

It's simply pointing out [to MPO members' staff] that it'd be a good idea [for them] to consider what's in the regional plan...when proposing ideas for earmarks...It's nothing formal...on letterhead saying, "Please do this." It's an informal discussion at the staff level...because... [MPO staff] can't lobby elected officials... [They] can't...It's the law.

As Congress has formalized the earmarking process somewhat by soliciting project requests via "Dear Colleague" letters and by requiring earmark seekers to submit project request forms to Congressional committees and their staffs,³⁹¹ MPO staff have more natural opportunities to provide MPO members such reminders. Before Congressional earmarking became "more systematic," said one respondent who has observed the New York MPO staff, "how earmarks happened was more mysterious and was never discussed." However, MPO staff are now "aware when elected officials are out there soliciting [and]...remind everybody."

MPO members have typically shared a hands-off attitude regarding each other's earmarking activities, and individual players have freely pursued their own earmarks. Interview data suggest that some county governments have understood earmarks as a way to fund or to accelerate large projects in their jurisdictions when funding directed through the MPO plans and programs is insufficient. Outer lying counties in the region describe growing more organized about earmark seeking. One official said his county was encouraged by its first earmarks in ISTEAs; it has sought earmarks ever since and has

³⁹¹ Formalization of the earmark solicitation process, visible in the development of TEA-21 in the late 1990s and again prior to SAFTEA-LU in 2005, is discussed in Chapter 3.

frequently succeeded, securing funds to improve the county airport and upgrade the county bus fleet, for example. Over time, the county has tailored its strategy to seek annual appropriation earmarks that deliver funds more immediately. Said the official, “We don’t really want to have to construct a road over 5 years [as with an authorization bill]. We’d rather have all the money in one year and be able to go to bid.” Further, where individual counties do coordinate across boundaries, they work with the state, as the counties look to the state for required matching funds for an earmark.

In turn, smaller towns and villages in the region have sought earmarks for projects that County officials deem problematic. Said one official, local mayors see earmarks as a way around planning requirements, unaware of the bureaucratic entanglements they can produce.³⁹²

[To get federal funds]...you have to go through all these steps and processes and procedures, and it’s very complex stuff. And that’s why earmarks are so attractive – because you don’t have to go through all that stuff...I don’t even know how it works now to tell you the truth.... Local officials don’t have the big deep bench of all these professional bureaucrats that know all these systems and procedures and processes.

For state agencies in the region, and to some extent for counties too, the Governor’s office has provided a formal channel for earmark requests since the early 1990s. Included in the state’s ask are projects administered by the New York State DOT’s three regional offices³⁹³ in the metro area and by the New York Metropolitan Transportation Authority, which is comprised of various agencies that operate the New York City bus and subway systems, commuter railroads serving the city, a suburban bus

³⁹² See Chapter 6, Section 6.3.3. discussion of “Bureaucratic Entanglements.”

³⁹³ Within the New York State Department of Transportation, Region 8 covers the Hudson Valley, Region 10 New York City, and Region 11 Long Island.

system, and the automobile bridges and tunnels connecting the city's five boroughs. One observer described the state-led effort:

[The Governor's] people...appointed...[a former] state senator...to be the Governor's reauthorization coordinator...[and he] was a locus for everybody's needs...It sent a message to local governments, transit agencies, and DOTs that, "We're going to go with a coordinated ask here. We're not going to go individually...[T]he Governor's going to say: 'This is what New York needs.' And so, convince us a little bit [about what you need]..." It was done again...for the SAFETA-LU reauthorization, and it kept everybody on the same page.

City agencies formulated a *citywide* ask for transportation earmarks for the first time for the 2005 authorization. According to the city's Transportation Commissioner, the effort to coordinate project requests broke from past earmarking experiences when

[Congress] members would have put in projects not having discussed them with the city, projects that were not our priority, projects that made no sense...This time, we visited every member of the delegation and went over our priorities, their priorities, to figure out how to mesh what they wanted to do with what we wanted to do.³⁹⁴

In spite of their respective attempts to coordinate earmark requests, both the city and state saw earmarks designated for projects outside their respective asks. For instance, only about half of 70 earmarks for New York City in the 2005 House Bill "were developed with guidance from the city's transportation, parks, planning or economic development agencies."³⁹⁵ Further, the region's largest earmark in the 2005 bill, \$100 million for a cross-Hudson rail tunnel, was designated *over* state objections to the project.

Community groups—representing low income neighborhoods, environmentalists, and bicycle and pedestrian advocates—also have joined the metropolitan earmark seeking fray, largely by approaching members of Congress directly. Such groups have typically sought earmarks for local projects like greenways and neighborhood improvements that

³⁹⁴ Sewell Chan, "If Federal Transit Bill Is a Smorgasbord, the City Is in Line," *New York Times*, March 13, 2005.

³⁹⁵ *Ibid.*

they say transportation agencies have refused to pursue. It is unclear how much such interests benefit from earmarks. On one hand, one interviewee said that earmarks provide them

...a check and a balance against the domination of the [planning and funding] process by some very large bureaucracies with a lot of technical ability...[These large agencies] have traditionally used [technical knowledge] to build walls around their programs and shield decisionmaking from the public... [In some cases, the agencies are]...so retrograde that the only way to fund those [bicycle and pedestrian] projects...was to go to your Congressperson and make a case.

On the other hand, other respondents and earmark data suggest that transportation agencies and local governments are far more active—and successful—than community groups in the earmarking process. Representatives of such groups say that their capacity for earmark seeking is uneven and that many are too small and overwhelmed with immediate community needs to pursue long term infrastructure improvements.³⁹⁶ Also, said one participant, community groups focusing on economic development in low income areas see earmarks for infrastructure—even parks and greenway projects—as rewarding the “white suburban operations” with design and construction contracts, instead of benefiting people in the communities “that have done advocacy to make it happen.” Others recognize that earmarks for bicycle, pedestrian, and similar projects are not “a steady source of funding for ongoing improvements, and often are not large enough to see projects through to completion.”³⁹⁷ Finally, some say they lack the necessary clout with members of Congress to seek earmarks. A representative of one group pushing for a local greenway said the group had been hampered by a poor

³⁹⁶ Efforts by groups in the South Bronx to decommission the Sheridan Expressway and convert it to an urban-style boulevard with parkland and housing are one exception. See *Who Needs I-895? Sustainable South Bronx*, <http://www.ssbx.org/sheridan.html#> (accessed May 25, 2009).

³⁹⁷ Tri-State Transportation Campaign, *Reform: The Road Not Taken, a Review of Projected Transportation Spending in Connecticut, 2007-2010*, (New York, 2007), 9, http://www.tstc.org/press/2007/CTspending_2007.pdf (accessed September 7, 2009).

relationship with the local Congressman. “Over the years, it’s really closed the door on what we can get done,” he said.

Larger civic groups like the Regional Plan Association (RPA) and the recently formed Empire State Transportation Alliance (ESTA), also seek to influence earmarks, shaping what significant transportation projects are advanced. Such organizations have greater financial resources and closer ties with elected officials and agency leaders than do smaller community groups in the region. Whereas the go-to for earmark endorsements in Dallas-Fort Worth is the MPO, case study evidence collected here suggests that some members of Congress turn to RPA for its stamp of approval. Said one respondent,

[RPA has] always had strong connections with the regional Congressional delegation...Former members [of Congress have served on the RPA...] board...So there are a set of strong relationships. [RPA’s] board is business and civic community leaders who are respected in the region, and it’s a point of view that’s listened to...[M]embers of Congress [will approach RPA] with their priorities, asking for support, and [conversely RPA]...will go to them looking for support [for projects recommended in RPA’s own regional plans] .

Additionally, RPA has sought earmarks that would advance its own planning goals for the region, by funding RPA-favored projects and long term studies; in certain instances, the organization benefits by assisting with such earmarked work as planning studies.

The earmark seeking practices employed by the range of regional stakeholders suggests that such efforts are typically made by individual actors without MPO coordination. Yet, such coordination has been absent due not only to limited MPO-wide activity, but also to individualistic behavior among the region’s Congressional delegation. Interview respondents indicate that Congressional representatives in the New York metro area have preferred to use earmarks to concentrate benefits in their typically small

districts. For instance, one transportation agency asked several delegation members collectively to support a package of improvements for the East River bridges linking Manhattan with Queens and Brooklyn. According to one insider, the agency tried “to herd those cats into some kind of coherence,” but “the projects weren’t seen as local enough or individual enough for members.” Similarly, when one Congress member designated earmarks for a citywide Safe Routes to School program, he made schools in his own district the beneficiaries rather than those identified by transportation planners. Some respondents suggest that parochial earmarks are inevitable because New York Congressional districts are too small to house a “large enough piece of transportation system...to do something big.” Members consequently seek micro-scaled credit claiming opportunities and avoid coordinating earmarks for larger improvements that spread across several Congressional districts.

In sum, interviews and news documents suggest that the other agencies and local governments that are members of the MPO have traditionally sought earmarks independently from one another, and that the MPO role in organizing such efforts has been minimal. As earmarks in federal transportation funding have increased, metropolitan area agencies and local governments have increased and formalized efforts to influence earmarks in the Congressional process. Still, where entities have coordinated amongst one another, they have done so more as units within New York City or State government rather than across political jurisdictions region-wide.

8.1.2. Earmark Accommodation *post hoc*

As in other urban regions examined in this dissertation, agencies and local governments in the New York area are reluctant to turn down earmarked funds when confronted with an earmark in a spending bill. Said one regional observer,

No...agency period is going to turn their back on an earmark. That would be very rare that they would out and out oppose an earmark...[T]hey may disagree with it, [but] they still have to respond to it, particularly if they know who the [Congressional] originator is.

One senior staff of a transportation agency suggests that the onus is on the earmark recipient not to disappoint a Congressional sponsor, even if the earmark was a surprise.

[The Congress members] put in an earmark there, and they don't ask me..., "Do I have a matching share?" These are not huge earmarks. Some of them you can deal with. What you try to do is make *lemonade* out of them. If you can make lemonade out of them, that's great. If you can't, you end up unfortunately alienating the member...I'm not going to talk about specifics...I have two of them I'm dealing with now. One I made lemonade out of, and one—I don't know what to do with it...[I]t's \$1 million for something that we didn't ask for. It won't go very far. What am I supposed to do with it?

Just as MPO members seldom decline earmarks, they also seem seldom to use their TIP veto power to do so. The MPO more frequently accommodates such projects in regional plans and capital programs. Nonetheless, some earmarked projects may not reach fruition for many years, as they wait for additional funds to become unavailable or for the project development, design and review process to ready them ready implementation.

By the accounts of most respondents, MPO members do use their control over the regional TIP as a lever with respect to earmarks. Other sources indicate that, with or without earmarks, MPO members have seldom threatened to veto the capital program, or TIP. In two of three instances within the last decade where an MPO member has

threatened to veto the TIP, the threat was used as leverage in political battles *extraneous to regional transportation planning*.³⁹⁸

The New York MPO board operates by consensus, meaning that a single dissenting member can veto the capital program. One respondent close to the board process suggested MPO members were either reluctant to vote against adding unwanted earmarked projects to the regional capital program, or TIP, or unaware that they could.

Legally, can an MPO...[reject an earmark]? It [the earmark] is *written* into the law – it's not a request. It's a command. I'm not sure that legally that can be done. I don't think an MPO can play hardball in that regard...I've never gotten the sense that [the MPO] members would say, "We're just not going to do this [project] because it [stinks]." Everyone feels that there's an obligation because it's in the law.

Amendments to the regional capital program or TIP have been made to accommodate earmarks seemingly without much ado. Respondents described such actions as being largely procedural; one explained that amendments are announced via public notice or public meeting, following the "vagaries of [MPO] operating procedure." Some board members and their staff also suggest that MPO members do not object to TIP adjustments made to accommodate earmarks in another member's turf, and that such accommodations have been made easily.

In part, it may be easier to accommodate earmarked projects in the TIP in the New York region than elsewhere because the New York MPO has failed to rigorously apply fiscal constraint to its capital program. Federal certification reviews have called the MPO to task for providing insufficient detail in its plans and programs about

³⁹⁸ In 2007, the Suffolk County Executive threatened a TIP veto as a strike against the New York legislature over a county sales tax issue. In 1997, New York City refused to include a desired Port Authority project in the TIP in order to exact higher lease payments from the Authority on city-owned airport land. In 1994, Westchester County withheld TIP approval upon condition that plans to add regional commuter rail track would undergo strict environmental review. See Tri-State Transportation Campaign, *Mobilizing the Region*, Nos. 129, 143, 564, and 565, <http://www.tstc.org/bulletin/>.

anticipated future funding sources and how the MPO had estimated their value. Further, the feds have suggested that the MPO inadequately documents its processes for reviewing projects and assessing priorities among potential projects, indicating instead only a project's stage of development or its status in environmental review process. As one review notes,

The phase of project development or environmental review need not be the only indicator of a project's priority in the region.³⁹⁹

Indeed, the capital program section that describes the MPO's "Project Selection & Prioritization" process requires less than half of a page.⁴⁰⁰ The absence of detail about project funding and prioritization give the MPO flexibility and latitude to advance projects as it sees fit, and this can be a bone of contention among stakeholders. One observer of the MPO laughed at the suggestion that the MPO fulfilled fiscal constraint requirements:

Their project list is everything anybody's ever suggested [*laughs*]. It's 50 times what you could possibly expect [to pay for], so it doesn't really help you in terms of prioritization...There are reasons [the MPO] don't do the prioritization...[I]t doesn't fulfill the function an MPO should... Everything is in [the plan], which means *nothing* is in there.

While the MPO may not fall as far short as this observer suggests, it does appear to maintain enough wiggle room in its capital program to adjust project priorities at its discretion, including earmark driven adjustments.

Just as the New York MPO plays no central role in influencing the selection of earmarked projects, MPO staff do not track earmarks or monitor their expenditure *post*

³⁹⁹ Federal Highway Administration and Federal Transit Administration, *New York Metropolitan Transportation Council Transportation Planning Certification Review* (Washington, D.C.: U.S. Department of Transportation, 2007), 5.

⁴⁰⁰ *New York Metropolitan Transportation Council Transportation Improvement Program (TIP), Draft* (New York: New York Metropolitan Transportation Council, 2007).

hoc. In general, MPO staff leave it to subregional committees and, more so, to individual agencies and governments to identify earmarks in funding bills and to claim the dollars. For member governments and agencies of the MPO, it is not a matter of collective interest when an earmark recipient fails to make the project happen. The New York case thus differs from Dallas-Fort Worth, where the MPO tracks earmarks as a measure of its own performance and where the MPO touts earmarks quickly added to the TIP—if not included in the TIP already—as an indicator of MPO efficiency and regional ability to husband federal resources.

Also unlike Dallas-Fort Worth, little evidence in the New York case suggests that local governments and agencies can maneuver collectively and quickly to use unexpected earmarks. Members of the Dallas-Fort Worth MPO region increasingly finance transportation projects through a crazy quilt of funding sources, and key among them is a regionally controlled Metropolitan Mobility Fund, for which no parallel exists in New York. Even if funds to complete an unexpected earmark are identified, such projects may inevitably take more time to progress in New York due to the complexity of planning, designing, and constructing projects in an older urban region where the physical fabric is already well developed.

Perhaps as a consequence, evidence suggests it may be more common for earmarked projects to get hung up in New York than in Dallas-Fort Worth, as the recipient projects may be unready for advancement, undesirable or complicated. Interview respondents readily suggested cases where years have passed before a project sponsor could tap the spending authority earmarked for a project.⁴⁰¹ For example,

⁴⁰¹ When an agency or local government does not spend money earmarked for a certain project, the “obligation authority” attached to that earmark remains available but unused, sometimes indefinitely.

through a local Congressman, supporters of a waterfront greenway in Brooklyn secured over \$14 million in earmarks toward the project in SAFTEA-LU; however, the project stalled for several years within the New York City DOT, until a newly appointed DOT Commissioner—an outspoken supporter of pedestrian, bicycle, and streetscape improvements—pushed it forward.⁴⁰² Another observer said that earmarks for unready projects are problematic, illustrated by 1991 earmarks for reconstructing the terminals serving the ferry journey from Staten Island to Lower Manhattan; the terminals were not completed until some 17 years later. Said one official,

[T]he positive nature of [earmarks] is that we have these two fabulous ferry terminals...But the other piece is how long it takes to get these projects through if they're not ready...[S]o much of the time...the projects that are earmarked are just simply not ready to go, and so you end up tying up a tremendous amount of federal money...[The recipient] has to defend the fact that [there are] huge unobligated balances, and it's as if [the recipient] wasn't a good manager...or doesn't need the money, in the worst case scenario.

Earmarks may be more likely to languish in New York because no central actor vets earmark candidates beforehand. In Dallas-Fort Worth, the MPO plays this role, suggesting to members of Congress whether projects are ready-to-go or will benefit from gap-filling earmarks. It is also the case that, when New York MPO members *individually* offer such advice to Congress members, it has gone unheeded.

8.1.3. Shifting Regional Practice: The Earmark that Broke the Camel's Back

Evidence collected in this study suggests that in the early years of the 21st century MPO members' *laissez faire* attitude toward one another's earmarks has begun to shift. One earmark in particular—the \$100 million secured in 2005 by Congressman Jerrold Nadler for a rail freight tunnel—seems to have served as a tipping point for MPO

⁴⁰² Gary Buiso, *Greenbacks Pave the Way for Brooklyn Greenway*, August 8, 2005, http://www.brooklyngreenway.org/sarticle_GreenbacksPave.htm.

members, pushing them toward coordination on earmarking efforts. This nascent shift in earmarking practice is also part of renewed attention to regional planning for New York in general that has been prompted by several factors, including concern among some suburban officials that prevailing atomistic planning did not serve their interests.

The \$100 million earmark for a project known as the Cross Harbor Rail Tunnel seems to have caused MPO members, already aware of earmarking's significant growth, to evaluate more critically what earmarks had been delivering to the region. The Cross Harbor Tunnel earmark, described by one observer as "the straw that broke the camel's back," was the biggest earmark ever designated for New York. Cost estimates of the proposed tunnel ran in the multi-billions of dollars, and it had not been identified as a high regional priority. The \$100 million earmarked for the project delivered a wake up call to local governments and agencies in the region as well as to the New York Governor.

This cross-Hudson mega-project would provide tunnel access for railroad freight from New Jersey and the mainland of the U.S., to New York City and Long Island. Currently, rail freight from New Jersey can reach New York City and Long Island only by a Hudson River rail crossing 100 miles north of the city or by a time-consuming cross-Hudson rail-float barge; most freight however, is offloaded onto trucks for the Hudson crossing, adding to already significant truck traffic in the New York region. While the significant cost (estimates in 2009 run at \$6 billion) and complexity of tunneling anew under the Hudson River have deterred most implementing agencies in the New York region from pursuing the Cross Harbor Tunnel, New York Congressman Jerrold Nadler has long been an energetic advocate for the project. A self-described transportation

policy aficionado and rail advocate, Nadler believes local and state agencies have not fairly assessed the project's potential benefits to the region. In the late 1990s, he secured a commitment from the New York City mayor to have the city's Economic Development Corporation undertake the first large study of the project, but community opposition to the proposed tunnel landing site and a change in mayoral leadership later brought the project study to a halt.

By earmarking \$100 million for the project in the 2005 federal authorization SAFTEA-LU, Nadler breathed life not only into the Cross Harbor Tunnel but also into regional discussion about earmarking. With neither current state nor city leadership supporting the project, and other members wondering whether the Tunnel would divert funds from their own projects,⁴⁰³ the earmark seems to have forced MPO members to rethink the *laissez faire* approach to earmarks in the region. If an earmark could deliver funds of that magnitude to a project no one wanted, what might be next?

[T]he county executives pushed the issue because they were not getting money, either through [the MPO] or through earmarks, for projects they wanted. The Nadler Tunnel may have been the straw that broke the camel's back in that it was seen as both not serving these counties, but also as not even [coming] from within the [MPO] process.

Perhaps it would be better to discipline earmarking—to establish some centralized process for earmark seeking—to ensure that such sizable designations would be for projects upon which everyone agreed.

Although the Cross Harbor Tunnel earmark was a dramatic catalyst for rethinking regional practice, a constellation of factors had in fact laid the groundwork for this shift.

First, agencies and local governments in the region had become increasingly aware of the

⁴⁰³ The current regional long range plan lists for consideration 37 separate, significant projects across the region, each which would require substantial funding. *2005-2030 Regional Transportation Plan* (New York: New York Metropolitan Transportation Council, 2005), 37-56.

widening gap between available transportation funds and infrastructure needs.

Preliminary discussions of the long term transportation plan for the years 2010-2030 infused MPO members and their staff with a looming awareness that the forecasted regional transportation funding would be largely absorbed by a handful of mega-projects already underway.⁴⁰⁴ The small amount remaining would not cover other needs for the 2030 planning horizon.⁴⁰⁵ Second, a new MPO leader appointed in 2005 had begun to encourage greater involvement in regional decisionmaking, bringing an end to the dormant MPO board that principals had scarcely attended in the past. The Director, hired atypically from outside the state DOT⁴⁰⁶, had begun to nurture a reinvigorated MPO forum by convening meetings and briefings more frequently and soliciting active involvement by principals. Third, some members report beginning to fear that the region as a whole was losing ground to other parts of the U.S. when it came to its share of federal transportation funds; as the power of the region's Congressional delegation dwindled relative to other expanding regions and states in future years, it would be more important to coordinate action regarding federal funding and to bring more federal dollars to the region.

As discussed later in this chapter, renewed interest in the MPO by board members and MPO leaders has been evident in the organization's planning activities, particularly

⁴⁰⁴ Interview respondents spoke of four "Foundation Projects" that MPO principals have committed to complete: the new Second Avenue subway on Manhattan's East Side; the East Side Access project linking the Long Island Railroad to Grand Central Terminal; access to the region's Core, a new passenger tunnel under the Hudson River; and the No. 7 subway extension from Times Square to Manhattan's far West Side.

⁴⁰⁵ *2005-2030 Regional Transportation Plan* (New York: New York Metropolitan Transportation Council, 2005), 76.

⁴⁰⁶ Previous MPO Directors had come largely from the ranks of the New York state transportation department and had fueled perceptions that the MPO was state run. Within the New York MPO, the New York State DOT identifies the list of potential candidates for the staff director position, and the MPO board members must vote for their choice.

in its recent crafting of a regional vision and identification of priority investments. As one observer described, the MPO principals recently

worked...to identify the first ever set of shared goals...Frankly they're pretty general, some would argue motherhood [and apple pie.]...Some would say, "Big Deal. Every other MPO in the country has done it." And that's true. But it is a big deal because it'd never been done here.

Interview respondents suggest that thinking about regional earmarking practice has also begun to change, and that there is some willingness to consider crafting a regional list of desired projects that all would pursue in common. How this new regional coordination will play out in earmarking practice is likely to be observable in the 2009 reauthorization process.

If MPO members will coordinate more on a regional ask, there is a long history to overcome. The longstanding absence of coordination among MPO members to pursue or manage earmarked funds would not surprise long-time observers of New York transportation politics. Traditionally, local and state officials and agency executives in the region have resisted suggestions that their individual plans and investment decisions be reviewed or approved by one another, and the New York MPO's own members have chosen not to institutionalize it as a forum for collective decisionmaking. As Section 8.2. examines, planning and decisionmaking at the MPO has been weakly institutionalized throughout the MPO's history, and this has contributed to the region's fragmented approach to earmarks.

8.2. A Freight Past: Weakly Institutionalized Metropolitan Planning

The history of the New York MPO, traced here, suggests that local governments and agencies in the New York region have traditionally greeted efforts to centralize

transportation decisionmaking in a regional body with ambivalence, each seeking instead to protect their own turf first. The region's first MPO, the Tri-State Regional Planning Commission, which included metropolitan counties in New York, New Jersey and Connecticut, and its demise shows how individual stakeholders saw little gain in regional coordination. Until quite recently, this has remained true as well for the New York-specific MPO, the New York Metropolitan Transportation Council, created in 1982 to serve New York City and its 5 surrounding suburban counties. However, increased earmarking seems to be contributing to a transformation of MPO member attitudes, as earmark-related uncertainty has nudged local governments and agencies toward a more deliberate regional decision-making process.

Interview data and historical accounts suggest that the principal members of the current New York MPO and its tri-state predecessor—i.e., the individual transportation agencies and the county and city governments on the MPO board—have tended to guard tightly their prerogative to direct transportation investments within their own borders or for the systems they operate.⁴⁰⁷ Consequently, the New York MPO has functioned more as a repository for the regional transportation data, growth forecasts, technical reports, and documents needed to maintain regional eligibility for federal transportation funding than for regional decisionmaking. In fact, some respondents used the term “perfunctory” to describe its role.

⁴⁰⁷ Robert E. Paaswell and Joseph Berechman, "Models and Realities: Choosing Transit Projects for New York City," *Policy Analysis of Transport Networks*, ed. Marina Van Geenhuizen, Aura Reggiani and Piet Rietveld (Hampshire, England: Ashgate Publishing Limited, 2007), 77. The authors observe that the combination of numerous powerful decisionmakers (e.g., the state governors and legislatures, New York mayor, Congressmen) and large, individual public agencies with “extraordinary powers and legislated areas of responsibility” (e.g., the MTA, DOT, PANYNJ) make it difficult to reach consensus on specific projects and leads each agent striving to “maintain their own uniqueness and mission.”

Considering this history, I contend that the New York MPO has been an organization but not an institution, following Selznick's distinction between the two. As an organization, the MPO has served as a technical instrument to keep the region in compliance with federal rules and so that regional players may receive federal transportation dollars. As such, the MPO has been an expendable forum; were it not for federal regulations requiring such a body, its members might have abandoned it long ago.

In the New York case, the largely *laissez faire* nature of MPO members' earmarking practices reflects the generally weak institutionalization of regional planning practice at the MPO. The history of this MPO and its members' ambivalence toward a regional decisionmaking forum suggest that specific institutional characteristics can lie beneath an MPO's specific response to earmarking. In this case, absent well institutionalized practices for regional decisionmaking, MPO members had—until recently— not considered coordinating to seek earmarked funding for transportation projects, nor have they developed protocols or strategies for handling earmarks after the fact. Yet, this history also suggests how specific challenges in the early 21st century— chief among them, increased earmarking—have in fact encouraged coordination along these lines. Faced with growing uncertainty through earmarking in particular and transportation funding in general, some MPO stakeholders have begun to discuss jointly identifying explicit regional planning goals and specific targeted investments. Paradoxically, these represent steps toward institutionalizing regional planning that MPO members have previously resisted taking, but that may enhance their ability to benefit collectively from earmarks.

8.2.1. Ambivalent Regionalism: The Tri-State Legacy (1956-1982)

The individualistic, fragmented nature of the region's earmark seeking practices reflects patterns of interorganizational behavior established early in the MPO's history. This history of the MPO's formation, dissolution, and re-formation show that these individualistic patterns have limited attempts at cross-agency and cross-government coordination and have repeatedly thwarted decisionmaking at the regional level.

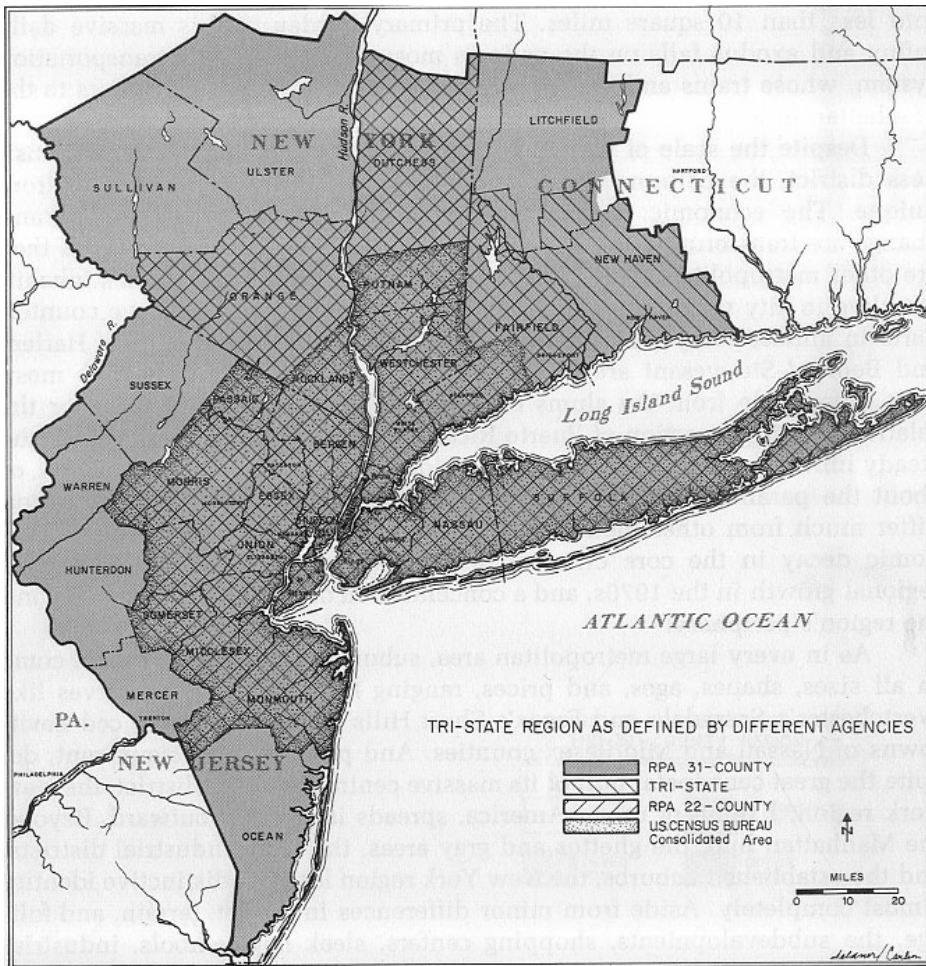
The New York MPO traces its history to the Tri-State Transportation Committee, formed in 1961, and to the Metropolitan Regional Council (MRC) before that, as the first steps taken by multiple local elected officials and state governments *together* to consider and to address regional transportation problems. Facing a widening crisis with the region's mass transit rail system, the governors of New York, New Jersey and Connecticut, formed Tri-State to study the region's transportation problems. Elected officials had years earlier created a similar tri-state forum, the Metropolitan Regional Council,⁴⁰⁸ to address other regionally scaled problems; however, because that forum

⁴⁰⁸ The Metropolitan Regional Council began in 1956 at the urging of New York City's Mayor Robert Wagner, who asked elected officials in the New York-New Jersey-Connecticut region to form a voluntary advisory group, or council of governments (COG), enabling local governments to communicate about and address the day's widely recognized common problems, transportation, housing, and teenage drinking chief among them. The Council was formalized as a permanent organization of 37 member communities and with a 9-member executive board, elected among officials in the general Council membership. Supported by staff of the New York City Administrator's office, the Council undertook important studies in its early years to evaluate parkland and housing needs and to profile water pollution in the region, but Council members could not agree how to solve such issues, and resisted making the Council anything more than an advisory body. Efforts to incorporate the Council through interlocal agreements approved by the New York, New Jersey and Connecticut state legislatures faltered for many years. The promise of federal planning funds available through the Housing and Urban Development Act of 1965, however, spurred local governments in the Council to incorporate as a non-profit in 1966. Even after incorporation, the Council was hampered by a vague purpose (for "association, consultation, and study"), and concern for home rule. Suburban county officials did not identify with the "urban problems" of New York City, and did not anticipate facing them one day themselves. The Council likely benefited from federal funds for such councils (Section 701 of Housing funds) through the early 1980s, when that funding was cancelled. Ultimately, as some reports suggest, the Council lacked clout and effectiveness, and died when state legislatures refused any longer to contribute financial resources to its activities. See Joan B. Aron, *The Quest for Regional Cooperation: A Study of the New York Metropolitan Regional Council* (Berkeley, CA: University of California Press, 1969). Also, Philip S. Gutis, "As Problems Grow, So Does the Push for Regional Government," *New York Times*, December 27, 1986.

had already faltered amidst disagreement over its formalization and authority, regional leaders formed a new entity in Tri-State when regional attention focused on transportation. In 1965, the governors' formalized Tri-State as the Tri-State Regional Planning *Commission*, established via a NY-NJ-CT-compact to plan for regional transportation, and soon thereafter it began to review federal grant requests from the region's localities.⁴⁰⁹

⁴⁰⁹ The Model Cities Act required that a clearinghouse organization would review and coordinate such requests across a metropolitan region.

Figure 8.1. The New York Metropolitan Region as Defined by Different Agencies⁴¹⁰



⁴¹⁰ Michael N. Danielson and Jameson W. Doig, *New York, the Politics of Urban Regional Development* (Berkeley, CA: University of California Press, 1982), 37.

When federal law began in the early 1970s to require the existence of MPOs for the receipt of federal transportation funds, the governors designated the Tri-State Commission as the region's MPO. While continuing to serve as the clearinghouse organization for Federal grant requests in housing, land use, and pollution control, the Tri-State Commission now would also to prepare transportation plans, studies, and investment programs; plan for air quality and airports; and oversee other agencies' technical studies.

Yet, early in its career as the region's MPO, the Commission had begun to attract criticism from both regional planning skeptics and advocates. The MPO members themselves rejected the premise that a multi-state body should make decisions about individual states' projects. Its appointed board commissioner failed to attend meetings or provide effective leadership, largely being

...persons too busy with other duties of higher priority, with too little staff support and time to act as directing board to lead the organization...They have not effectively controlled Tri-State's budget, work program, or performance levels.⁴¹¹

A task force that later reviewed the Commission concluded that its members had failed to take "maximum advantage of Tri-State to serve their needs and the needs of the region's people."⁴¹²

Operating in a leadership vacuum, MPO staff focused increasingly on meeting bureaucratic requirements and routine technical tasks, and critics said the organization failed to "perform imaginative forward-looking planning."⁴¹³ With growth of federal regulation in the 1970s, the organization increasingly involved itself in technical studies

⁴¹¹ Governors' Task Force on the Future of the Tri-State Regional Planning Commission, *New Directions for Regional Planning: The New York-New Jersey-Connecticut Metropolitan Area* (New York, 1981), 5.

⁴¹² Ibid.

⁴¹³ Ibid.

and contract administration for other agencies. Its focus on technical studies and data hastened its downfall, its government and agency members and affiliates viewed such products as oriented more toward Federal consumption than for their own planning efforts.

Other troubles dogged the MPO too, including city-suburb tensions and limp efforts to involve elected legislatures, local officials, business and community groups, and citizens in MPO activities. Outer lying jurisdictions, particularly Nassau and Suffolk counties on Long Island, felt the Commission shortchanged suburban concerns in favor of New York City. Moreover, they resented the Commission's incursion into land use issues when it suggested that suburban communities build low and moderate income housing. The Connecticut legislature, also dissatisfied with its Commission membership, voted in 1981 to reduce its financial support for Tri-State, causing its Director to observe that "regional planning is under tremendous fire."⁴¹⁴ Connecticut withdrew entirely from the organization a year later. Adding to the MPO's woes, federal funds for planning were cut in early 1980s, leaving Tri-State's budget \$1.3 million short.⁴¹⁵

While the task force appointed to consider the Commission's future contemplated abolishing it, doing so would have left local governments in the region without an MPO and thus ineligible to receive federal aid. Instead, the task force recommended forming a new, subregionally-oriented organization, to be explicitly modest in ambition and to emphasize strategic planning rather than shared decisionmaking.

Strategic regional planning involves analysis and public communication on issues that can affect future events and resources of the whole region...It does not mean

⁴¹⁴ Richard Levine and Carlyle C. Douglas, "The Region; a Regional Agency Becoming Less So," *New York Times*, May 17, 1981.

⁴¹⁵ James Barron, "Tri-State's Demise Leaves Gap in Planning," *New York Times*, September 5, 1982; and *New York Times*, "Effort Planned to Keep Connecticut on Panel," June 19, 1981.

making authoritative decisions on public budgets or capital programs. There is virtually no support for regional government. The Commission lacks political constituency; even if it were restructured with directly elected leadership, the opposition of existing governments together with the size, diversity, interstate dimensions and political pluralism of this region prevent centralized power from being feasible.⁴¹⁶

Hence, in the face of lagging support from state legislatures, the Tri-State Commission was ultimately disbanded. In its place, three separate MPOs were formed to serve, respectively, the New York, New Jersey, and the Connecticut portions of the region.⁴¹⁷

Table 8.1. Regional Transportation Planning in Metropolitan New York

1956	Metropolitan Regional Council convened by New York Mayor Wagner as a voluntary association of local governments to cooperate on common issues and problems.
1961	Tri-State Transportation Committee formed by NY, NJ and CT governors to study transportation problems, particularly mass transit rail system in crisis.
1965	Tri-State Transportation <i>Commission</i> is formed from the earlier "Committee." Under a new tri-state compact, it plans for regional transportation and considers land use issues.
1967	Tri-State Transportation Commission assumes some MRC function in reviewing federal grant requests.
1971	Tri-State Transportation Commission renamed Tri-State Regional Planning Commission. Compact is revised so that organization serves as the region's MPO and as clearinghouse to review federal aid requests.
1979	Tri-State leadership appoints Governors' Task Force to report on organization's future.
1981	Task Force recommends reorganizing the troubled MPO.
1982	A new MPO is formed for <i>only</i> the New York portion of the metropolitan region: the New York Metropolitan Transportation Council.
1996	Federal Reviewers Conditionally Certify New York MPO, pending corrective actions
2000	Federal Reviewers Conditionally Certify New York MPO, pending corrective actions
2001	MPO headquarters destroyed in 9/11 attack on the World Trade Center.
2005	New MPO Director appointed. First leader from outside the New York State DOT.
2007	Federal reviewers certify MPO, for the first time without required corrective actions.
2008	MPO Unveils "Our Vision," for steering growth in the region to 10 specific areas.
2009	MPO Annual Report "Shared Vision Shared Future" identifies regional projects.

⁴¹⁶ Governors' Task Force on the Future of the Tri-State Regional Planning Commission, *New Directions for Regional Planning: The New York-New Jersey-Connecticut Metropolitan Area* (New York, 1981). See also, "Task Force Urges End to Tri-State Planning Commission," *Bond Buyer*, December 15, 1981.

⁴¹⁷ The three MPOs are The New York Metropolitan Transportation Council Transportation (NYMTC), the Northern Jersey Transportation Planning Association (NJTPA), and the Southwest Regional Planning Association (SWRPA) in Connecticut.

8.2.2. Lethargic Legitimacy: The Single State MPO (since 1982)

In New York, the MPO was reconstituted in 1982 as the New York Metropolitan Transportation Council (NYMTC)⁴¹⁸—hereafter “the New York MPO”—serving New York City’s five boroughs; the Long Island counties of Nassau and Suffolk; and the lower Hudson Valley counties of Westchester, Rockland, and part of Putnam.⁴¹⁹ The MPO itself is organized following the New York City, Nassau-Suffolk, and Mid-Hudson subregions. (See Figure 8.2.) Over 13 million people live within the MPO region,⁴²⁰ and the transportation system that serves them is extensive: over 700 miles of commuter rail and rapid transit lines; nearly 23,000 miles of road, streets and highways; and several commercial ports and airports serving passenger and goods movement.

⁴¹⁸ Pronounced *nim-tik*.

⁴¹⁹ Although this study refers to this federally designated New York MPO-area as “the region,” there is no uniform agreement among planners on the boundaries of the metropolitan region; lines are drawn as a matter of practical necessity. The New York MPO area itself lives within a still larger urban region that spreads into New Jersey and Connecticut, but the MPO was bounded as such largely for administrative and political considerations. The Regional Plan Association identifies the region as the 22-county area branching outward from New York City and spreading over Long Island and parts of New York’s Hudson Valley, northern New Jersey, and southwestern Connecticut. The population of this tri-state region was close to 18 million in the 2000 Census.

⁴²⁰ Federal Highway Administration and Federal Transit Administration, *New York Metropolitan Transportation Council Transportation Planning Certification Review* (Washington, D.C.: U.S. Department of Transportation, 2007), 1.

Figure 8.2. Jurisdiction of the New York MPO and its Subregions⁴²¹



Since it was first carved from the larger, tri-state MPO in 1982, NYMTC has consisted of nine voting members, representing county governments and city and state transportation agencies. (See Table 8.2) Although it removed the challenges associated with multi-state organization, the 1982 restructuring did not lead to more substantive regional decisionmaking. Significant regional players like the Port Authority of New York and New Jersey—responsible for critical regional port, bridge and tunnel facilities, as well as cross Hudson passenger rail—and New Jersey Transit—serving the New Jersey commuter shed—were granted only advisory membership on the MPO. Other *ex officio* members without voting rights include the MPO serving northern New Jersey (the North Jersey Transportation Planning Authority), and state and federal environmental and

⁴²¹ *New York Metropolitan Transportation Council Transportation Improvement Program (TIP) for Federal Fiscal Years 2008-2012, Overview* (New York: New York Metropolitan Transportation Council, 2007), 7.

transportation agencies. As its short history shows, the New York MPO operated largely as a technical instrument for fulfilling federal planning requirements.

Table 8.2 Voting Members of the New York MPO
1. Nassau County (Long Island)
2. Suffolk County (Long Island)
3. Putnam County (Hudson Valley)
4. Rockland County (Hudson Valley)
5. Westchester County (Hudson Valley)
6. New York City Department of Transportation (representing NY City)
7. New York City Department of City Planning (representing NY City)
8. New York State Department of Transportation (representing NY State)
9. Metropolitan Transportation Authority (representing NY State)

Many of the issues that had vexed its tri-state predecessor continued to plague the New York MPO. For instance, the local governments and agencies that now formed the New York MPO still tended toward parochial action and single-unit decisionmaking and failed to provide effective leadership for the regional body. As one interviewee stated, a loosely defined organization is precisely what New York MPO members sought when they disbanded the earlier tri-state organization.

Any MPO depends on what the members make of it. [The San Francisco Bay Area's MPO] is a good example of a very formal organization in a large region. [New York's MPO] is on the opposite side of the spectrum as a loose confederation. Keep in mind that [the New York MPO] formed in the dissolution of a very formal organization...It's whatever the members want to make of it.

Since its formation, the New York MPO has focused on meeting minimum federal requirements for producing transportation plans and programs in the region. For many

years, even its performance in this dimension was mediocre, as assessed by successive federal auditors.⁴²²

Recalling the different tiers of legitimacy outlined by Suchman,⁴²³ I contend that the New York MPO has long operated with a minimum of technical and procedural legitimacy. Further, it has not possessed the cognitive legitimacy among its members and regional stakeholders that might be apparent through institutionalized practices making the MPO a natural forum for regional decisionmaking in the minds of MPO members or stakeholders. One longstanding local transportation agency planner suggested in an interview:

Process was what [the New York MPO] did. They need to make sure that region and transportation agencies in region remained eligible for federal funds. They had to do a model, long range plan, unified planning work program...[The] most important role that [the MPO]...had was to make sure that all federal transportation requirements were fulfilled to keep dollars flowing to the county.

Rather than institutionalizing regional transportation decisionmaking, the MPO has functioned more as an organization, or technical instrument, to fulfill planning requirements.

This section explores why, unlike its counterpart in Dallas-Fort Worth, the New York MPO has not commanded the necessary legitimacy necessary for a coordinated or collaborative effort to pursue or to manage earmarks *post hoc*. Drawing on original

⁴²² The New York MPO has performed poorly on most federal certification reviews conducted since ISTEA, though it showed considerable improvement in the 2007 review. See Federal Highway Administration and Federal Transit Administration, *Enhanced Planning Review of the New York City Metropolitan Area*, (Washington, D.C.: U.S. Department of Transportation, 1996); Federal Highway Administration and Federal Transit Administration, *New York Metropolitan Transportation Council 1999/2000 Federal Certification Review: Report on the Status of the NYMTC Process in Addressing Transportation Planning Regulations* (Washington, D.C.: U.S. Department of Transportation, 2000); Federal Highway Administration and Federal Transit Administration, *New York Metropolitan Transportation Council Transportation Planning Certification Review* (Washington, D.C.: U.S. Department of Transportation, 2007).

⁴²³ Mark C. Suchman, "Managing Legitimacy: Strategic and Institutional Approaches," *Academy of Management Review* 20, no. 3 (1995): 571-610.

interview data, federal performance audits, state and regional planning documents, and secondary sources, this case analysis suggests that specific factors have stymied a more robust institutionalization of regional practices at the MPO in general and have precluded coordinated practices vis-à-vis earmarking in particular. These factors include state dominance in MPO organizational structures and regional transportation finance; the MPO's own subregional orientation; the MPO board's consensus voting practice; and absentee MPO leadership.

8.2.2.1. The State as Institutional Alpha Dog

Unlike many MPOs that, more commonly, are housed within a council of governments, or are freestanding organizations, the New York MPO is hosted by the New York State Department of Transportation (DOT). Its staff are officially state employees, and the state maintains key influence in selecting the MPO's leadership. This close institutional tie allows the state to play a more dominant role in the MPO than might be the case otherwise. Interview data suggest that the state DOT and the Metropolitan Transportation Authority (MTA), both key MPO members, report to the state Governor and exert significant control over transportation investment choices in the region. This fact has made the MPO forum less relevant, and has preempted the development of coordinative and collaborative practices among the MPO members as a whole.

The state's powerful role is visible in the influence it extends over MPO staff and leadership. First, because MPO staff are state employees, state hiring freezes when in effect have extended to the MPO, hampering staff expansion and development of its technical capability. Staffing deficiencies have been a persistent theme of federal audits

of the New York MPO. Second, following MPO bylaws, the state DOT is responsible for choosing the candidates from whom MPO board members may select the MPO director,⁴²⁴ and the MPO Director has frequently been recruited from the ranks of the state DOT. Advocates for a more independent MPO say this affords the state DOT undue influence over MPO actions. When one former MPO director was appointed, one group complained that he was

...a career Albany State DOT employee who was hand picked to run the downstate show by [the] former Transportation Commissioner..., who spent most of his career as a State Senator from western New York.⁴²⁵

Third, the New York State DOT Commissioner also maintains a seat as permanent co-chair of the MPO board. As such, the DOT executive—and the Governor to whom the Commissioner reports—shapes the terms of consensus votes, by deciding which MPO members are the ‘affected parties’ able to vote on matters that come before the subregional committees and MPO board as a whole.⁴²⁶

These factors afford the state strong influence over MPO staff, leadership, and decisionmaking, and advocates of more independent regional planning have objected. Some have alleged that the MPO is the “Voice of the State Highway Department,” as leaders have frequently been drawn from the DOT ranks and MPO employees are beholden to the state:

Critics of the [New York MPO] have long charged that the agency is a creature of the...state Dept. of Transportation. The latter’s main job is maintaining and building highways, but...the New York metropolitan planning organization is supposed to be the forum that decides how best to use the region’s transportation

⁴²⁴ Federal Highway Administration and Federal Transit Administration, *Enhanced Planning Review of the New York City Metropolitan Area*. (Washington, D.C.: U.S. Department of Transportation, 1996), 9.

⁴²⁵ Tri-State Transportation Campaign, *Mobilizing the Region*, July 18, 1997, <http://www.tstc.org/bulletin/>.

⁴²⁶ Federal Highway Administration and Federal Transit Administration, *New York Metropolitan Transportation Council Transportation Planning Certification Review* (Washington, D.C.: U.S. Department of Transportation, 2007), 16.

resources across all transportation modes. New York State DOT pays the salaries of [the MPO's] staff and for some reason holds the position of "permanent chair" of [the MPO].⁴²⁷

Yet, one interviewee suggested such claims were inflated: "You can say that since the state hosts the staff that there's a special relationship between the state and the staff, but frankly [the staff] works for all the members."

8.2.2.2. The State Holds the Purse Strings

The structure of transportation finance in New York also reinforces a dominant role for the state in the New York metropolitan region. The MTA and the state DOT, two major state agencies on the MPO board, enjoy a stronger position vis-à-vis other MPO members because they rely appreciably on state-generated revenue sources to finance their transportation activities in the New York region.

Transportation investments in New York State in general are funded more heavily from state-generated revenues than federal or local sources. Across the state, taxes and fees imposed by local officials generate only a small slice—roughly 17 percent—of transportation funds used in the state.⁴²⁸ In the New York region, in particular, funding from state sources—including those revenues collected regionally for the state-controlled MTA—account for almost two-thirds of capital funds anticipated to be available over the 2005 to 2030 planning horizon. (See Figure 8.3.) Several interviewees attribute the state's dominant role within the MPO to this fact.

The [bulk] of...[the region's] transportation funding is raised by the governor and the state legislative leaders. Why would you turn control of that to the county executives [on the MPO] who aren't contributing funding? It's pretty blunt. [The MPO] is not a player because the people who are the principals on it aren't the decision makers.

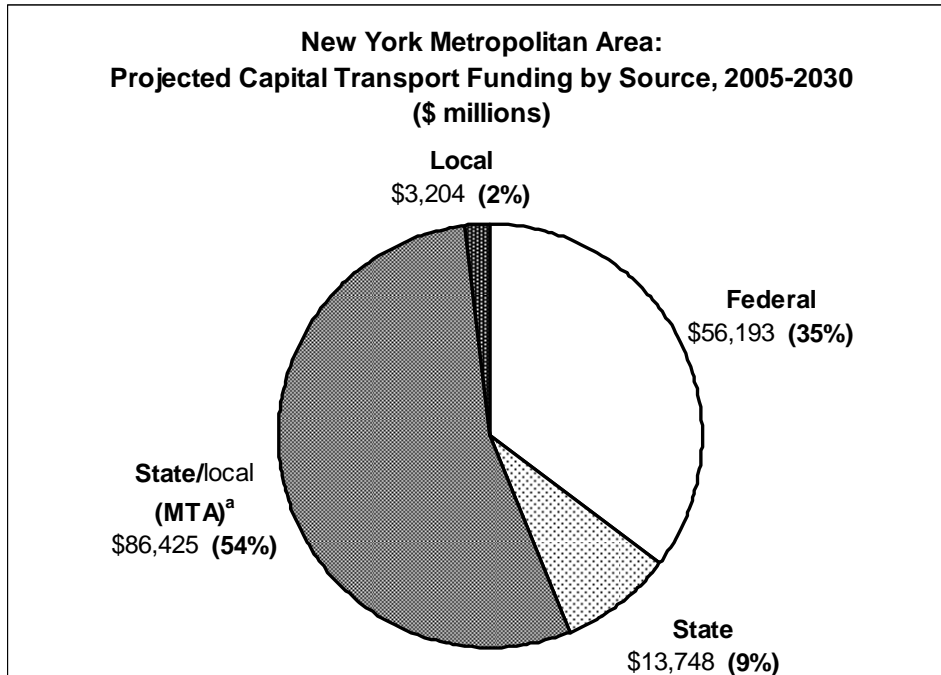
⁴²⁷ Tri-State Transportation Campaign, *Mobilizing the Region*, July 18, 1997, <http://www.tstc.org/bulletin/>.

⁴²⁸ New York State Department of Transportation, *Strategies for a New Age: New York State's Transportation Master Plan for 2030* (Albany, 2006), 81.

Further, efforts to reinvigorate the MPO as a decisionmaking forum may have to address this:

[The MPO] is not going to be, in New York State politics, the decisionmaker because it's not controlling the funding. It's not providing the funding....If the federal government all the sudden comes up with enough money to meet all our transportation needs,...[the state would] probably be happy to give the MPO process a little more control.

Figure 8.3. State Transportation Funding Dominates in the New York Region⁴²⁹



^a These funds represent *state*-levied taxes and fees collected in Downstate New York.

Second, while a large portion of transportation investment in the New York metropolitan region is financed via state-levied taxes and fees and state-issued bonds, these funds support specific state agencies—the MTA and the DOT regional offices—

⁴²⁹ 2005-2030 *Regional Transportation Plan* (New York: New York Metropolitan Transportation Council, 2005), 76.

directly.⁴³⁰ In contrast, the state DOT in Texas suballocates “Metropolitan Mobility Funds” to large metropolitan regions to be invested by MPOs. Yet the New York MPO has discretion only over those funds that federal law reserves for all large MPOs, namely the STP urban funds and CMAQ funds. With minimal funding over which they could exercise collective discretion, New York MPO members have little opportunity to develop interorganizational practices for jointly funding or fund-matching projects, including earmarked projects. Earlier regional plans have identified a regionally-raised, regionally-controlled and a regionally-accountable transportation funding mechanism as desirable, but have acknowledged that such a mechanism would require “unity at all levels of government to support the regional transportation system.”⁴³¹ To date, this unity has been elusive.

8.2.2.3. MPO Structure Emphasizes Subregionalism

In general, planning practice within the MPO is organized subregionally. For example, capital programming for the TIP is done for each of the New York City, Nassau-Suffolk, and Mid-Hudson sub-areas, and this has contributed to the MPO’s weak

⁴³⁰ New York State supports transportation funding with motor fuel taxes, motor vehicle fees, a Petroleum Business Tax (PBT), a variety of other taxes, and even some General Fund revenues. Revenues are deposited in two specific funds: the State Dedicated Highway and Bridge Trust Fund and the Mass Transportation Operating Assistance Fund. Additionally, state bonds approved in 2005 (for \$2.9 billion) add to available highway and transit funds, half of which was dedicated for MTA projects in the New York region. (Two major MTA expansion projects—the Second Avenue Subway and the East Side Access link—would each receive \$450 million from the bond initiative. These projects were authorized for significant federal funding in SAFTEA-LU, and the bond funds were viewed as critical for providing the required state/local match.) Whereas mass transit in the upstate region is supported by the state PBT and General Fund revenues, mass transportation downstate, provided overwhelmingly by the MTA, is supported by a larger basket of state-levied taxes and fees, including a ¼-cent sales tax collected in the MTA region. For more information, see *New York Times*, “Summary of Action in New York State Legislature’s 214th Session,” July 14, 1991; Kevin Sack, “Promises, Promises: Transit Funds in Peril,” *New York Times*, December 14, 1992; Sewell Chan, “Ballot Questions: Voters Approve Transit Bonds for \$2.9 Billion,” *New York Times*, November 9, 2005.

⁴³¹ *We Are a Region!* New York Metropolitan Transportation Council, December, 1995, <http://www.nymtc.org/files/REGION3.PDF>, 5.

coordinative and deliberative role vis-à-vis the wider metropolitan region. In particular, this subregional orientation, which parallels the state DOT's administrative divisions in the area,⁴³² has reinforced more individualistic than coordinated earmark seeking and management among MPO members.

Subregional committees in the New York MPO were inherited from the Tri-State Commission, which had formed smaller "Transportation Coordinating Committees" (TCCs) in the mid-1970s to more effectively deal with local issues, helping individual jurisdictions understand and meet federal requirements. The committees established in the New York portion of the region survive in the MPO today (the Mid-Hudson South committee; the Nassau/Suffolk committee serving suburban Long Island; and the New York City committee serving the five boroughs of New York), and they are fairly autonomous. As one interviewee described, the committees set their own investment priorities, and interact primarily to ensure that funds are distributed with geographical balance.

[T]he subregional forums are used to develop project lists for the [capital program, or] TIP from each subregion...[I]t's difficult for Suffolk County [on Long Island] to sit through a long discussion of what Putnam County [in the Hudson Valley] wants. It's just so far afield...[T]hese areas are pretty distinct. The Hudson Valley is different from New York City which is different from Long Island. [T]hese subregional forums [focus on] nitty gritty [project selection] details, but still the members have to come together as [the MPO] to adopt the TIP. So you're operating at 2 levels... If New York City chooses project X, I'm not sure what Rockland County would say about it unless it affected them. *But* the pots of money are all pretty competitive. So balancing out who uses what money is a key thing for bringing this all together.

On one hand, delegating planning practice to subregional committees may enable more efficient programming and also allow individual counties and cities in the MPO to

⁴³² DOT Region 10 covers New York City, DOT Region 11 Nassau and Suffolk Counties, and DOT Region 8 the Hudson Valley. Region 8 actually covers more counties in the Hudson Valley than are included in the MPO boundaries.

work toward federal requirements on a smaller scale. Also, overlapping subregional committee memberships allow transportation agencies, local governments, and their staffs to provide a conduit for coordination. On the other hand, the MPO's subregional committees have contributed to "an overall impression of organizational fragmentation."⁴³³ Federal reviews suggest that these subregional practices have undercut a wider regional view, particularly in light of the leadership vacuum on the MPO board.

[D]evelopment of separate [Long Range] Plan,... TIP, and [...planning work program] components by each of the [subregional] TCCs raises questions as to whether regional priorities developed at the [MPO] Council level have significant impact on the planning process at the TCC level.⁴³⁴

The MPO-wide perspective has taken a back seat to separate long term planning and capital programming practices of the subregional committees for their own sub-areas.

The suballocation of most federal and state funds to the DOT's parallel administrative regions also deemphasizes the MPO as a whole. Interview data suggest that the subregions are the geopolitical units across which the distribution of transportation funds in the region's capital program is informally balanced. Yet few MPO members seem fully to understand how the state suballocates federal and state funds across the region. Members may instead rely on past patterns. As one MPO member described the suballocation within the region:

There's nothing in writing. I think people look now over time: This is what I got this year, this is what I got this year, and so it goes on more of a historical allocation rather than a year to year divvying up of the pie.

⁴³³ Federal Highway Administration and Federal Transit Administration, *Enhanced Planning Review of the New York City Metropolitan Area* (Washington, D.C.: U.S. Department of Transportation, 1996), 34.

⁴³⁴ *Ibid.*, 24.

In cases where the state has failed to provide its own regional offices with funding projections, capital programming and planning for the region has been stymied,⁴³⁵ and the region-wide view further diminished.

8.2.2.4. Consensus Voting Hampers Deliberation

The use of consensus voting by the New York MPO board is another factor that has contributed to decisionmaking silos and plans that many describe as “stapled together.” Under the MPO’s consensus voting policy, actions taken by its central board or subregional committees require the unanimity of affected parties, as defined by the MPO board co-chairs case-by-case. Thus, each of the board’s nine voting members has veto power, when identified as a party of interest in an issue before the board.⁴³⁶

While consensus voting may operate differently and with different results elsewhere, in the New York MPO the policy encourages mutual disinterest among members more than cooperation. For instance, when asked about specific controversial earmarks, several MPO members suggested that, as they perceived it, the project in question did not affect them, and they offered no comment about it. Further, where controversial issues come to the board for a vote, the policy nudges deliberation behind closed doors, where the bargains that produce consensus may be struck outside of the public eye. Alternatively, the policy allows one party to thwart a decision widely supported by other members. Noting stakeholders’ frustration with this effect, the most

⁴³⁵ Tri-State Transportation Campaign, *Reform: The Road Not Taken, a Review of Projected Transportation Spending in Connecticut, 2007-2010*, 2007, <http://www.tstc.org/bulletin/19950901/mtr04904.htm>.

⁴³⁶ Federal Highway Administration and Federal Transit Administration, *Enhanced Planning Review of the New York City Metropolitan Area* (Washington, D.C.: U.S. Department of Transportation, 1996), 7.

recent Federal audit of the MPO recommended that it revisit the consensus voting policy.⁴³⁷

One interview respondent argued that consensus voting refutes claims that New York State and the Governor's office exert undue influence on the MPO:

[U]ltimately...the state can't run roughshod over the other members. It's a consensual process.... If they want to go along with one or two agencies all the time, then that's what they'll do. Increasingly the suburban counties have gotten a much more independent voice. In a consensual group, one party can't run roughshod. It's not accurate to say the state runs [the MPO]. It doesn't. All the members have an equal footing.

While consensus voting may offer MPO members equal footing on paper, it is likely difficult in practice for MPO members to challenge state dominance. One respondent observed that

I'm not sure it's *possible* for a regional [organization, for the MPO]...to have the political power to say to the Governor, "Your project is less important than his project."

The perception that the state pulls strings at the MPO weakens the MPO's legitimacy as a regional forum. Further, there are few incentives for MPO members *not* aligned with the state to develop planning and decisionmaking practices that would institutionalize the MPO as such.

8.2.2.5. Absentee Board Signals MPO Inconsequence

Whether resulting from state dominance or enabling it, the elected officials on the MPO board in New York have been largely absent, similar to the appointed leadership of the Tri-State Commission. The MPO board has met infrequently and delegated its responsibilities to professional staff until only recently, when—as discussed later in this

⁴³⁷ For discussion of the history of consensus voting among New York MPOs and of its pros and cons, see Federal Highway Administration and Federal Transit Administration, *New York Metropolitan Transportation Council Transportation Planning Certification Review* (Washington, D.C.: U.S. Department of Transportation, 2007), 16.

chapter—new MPO leadership began the mid-2000s actively to recruit greater board member participation. Federal reviewers concluded in 1996 and again in 2000 that “[I]ack of direct participation by elected officials” in the regional planning process had diminished the MPO’s role in transportation decisionmaking. Absenteeism had also contributed “...to the perception...that the [MPO] Council is ‘not where decisions are made’” and

...that until elected officials are directly involved, it will not be possible to build consensus for regional needs and priorities that will take precedent over subregional and implementing agency parochial interests.⁴³⁸

Local advocates for improved planning echoed that

Under federal transportation law (ISTEA), the MPO should serve as a forum for debate of competing investments and should promote public participation in policy making... [The New York MPO] will have a hard time demonstrating compliance...[It] is not functioning as an MPO. And its members—who seldom attend meetings—don’t seem to care.⁴³⁹

Roughly a decade later, one respondent interviewed in this study described the MPO as

...an agency where the principal [board] members...had been meeting only once a year and in my view in a rather perfunctory way. They would annually endorse the [planning work program], they’d have a meeting, and then get together a year later...[T]hat’s not really a functioning [MPO].

Over the years, an absentee board has diminished the MPO’s legitimacy as a decisionmaking forum and, in turn, has enabled more atomistic planning and decisionmaking practices. Under such circumstances, it is unsurprising to find that MPO

⁴³⁸ Federal Highway Administration and Federal Transit Administration, *Enhanced Planning Review of the New York City Metropolitan Area* (Washington, D.C.: U.S. Department of Transportation, 1996), 8; Federal Highway Administration and Federal Transit Administration, *New York Metropolitan Transportation Council 1999/2000 Federal Certification Review: Report on the Status of the NYMTC Process in Addressing Transportation Planning Regulations* (Washington, D.C.: U.S. Department of Transportation, 2000), 11

⁴³⁹ Tri-State Transportation Campaign, *Mobilizing the Region*, September 1, 1995, <http://www.tstc.org/bulletin/>.

members have largely developed their own internally focused earmarking practices during the same period.

In sum, specific organizational structures and practices institutionalized at the New York MPO have hampered regional deliberation and encouraged atomistic planning. These include a dominant state role in the MPO and in financing regional transportation investments; as well as the MPO's subregional orientation, consensus voting policy, and problems with absentee leadership. In this organizational environment, it is unsurprising that individual transportation agencies and governments on the MPO board have not developed a common set of practices for seeking or accommodating earmarks.

8.3. 21st Century Reinvention: From Rubber Stamp to Regional Player?

Although the organizational features and practices discussed above pose substantive challenges to robust institutionalization of the MPO, evidence collected in this study indicates that, with the encouragement of new leadership, the MPO has begun to enhance its role in regional transportation decisionmaking in the early years of the 21st century. Until recently, member governments and agencies have accepted the MPO more or less as an exclusively technical organization in place to conduct federal procedures and meet requirements, rather than as a forum for planning and prioritizing regional transportation investments. One respondent summarized,

NYMTC has always been a rubber stamp. You don't have a lot of discussion there. It's simple...They have the *pro forma* meetings, required under federal law. The decisions are made elsewhere.

Interview data, however, along with planning documents and secondary accounts, reveal that its members have been engaging in the MPO with new energy. Said one senior staff of an MPO member,

[The MPO's largely process oriented nature] has changed now. The principals—the county executives,...the federal agencies, the Port Authority—want something that is more substantive. They want [the MPO] to become more substantive. I think that's important, and it's very good.

It is unclear that all MPO members strongly desire such a transformation, or that changes in regional practice to date really represent more deliberative decisionmaking. Still, the MPO has taken steps to become what one respondent called a “real player” in regional decisions, a role he described as follows:

A player is more than just stapling agency plans and programs together. A player means that you bring something to the table, that [the MPO] could bring a regional perspective to the table that would...make the plan or program better than just stapling.

This new direction has been achieved by recruiting active board member participation in the MPO; creating new informal opportunities for board member interaction; and setting out basic but specific planning tasks for board members, such as identifying regional subcenters toward which regional growth would be steered and naming high priority projects for the region. Below, the remainder of this case study explores the nature of these changes, the motivations underlying them, and—most importantly—how Congressional earmarks have fit into these developments.

8.3.1. Self-Interest Motivates Collective Action

Overlapping responses from numerous interviewees suggest that the increase in Congressional earmarking, along with the pattern it has assumed in the New York region, have been partial catalysts in the MPO's reinvigoration. Representatives of

transportation agencies and local governments on the MPO board have observed the phenomenon in part with concern, in part with opportunism, and consistently in the context of shrinking funds for transportation. According to one observer, local governments' and agencies' earmarking experiences have caused them, particularly county officials, to rethink their *laissez faire* approach to the MPO and to earmarking.

The principals have never really participated in the MPO, but they have over the last three or four years...[W]hat got their attention...was what was happening in the earmarking process...[T]hey saw there was competition within the MPO for projects [and] that was hurting the MPO—that the congressional delegation was not behind a series of projects, [but] they were behind a bunch of projects. And so the County Executives [on the MPO board] were pretty forceful in...[pushing the MPO board] to articulate the top five or six priorities for the region. [The County Executives]...had the impression that the priorities of Congress were not [their] priorities,...[as with] the freight tunnel....I think the MPO members would say, "Well that didn't come out of our process." [Also,] County Executive Suozzi in Nassau County wasn't getting any funding for the Nassau Hub which was one of his priorities.

MPO participants interviewed for this study articulated a variety of self-interested reasons for desiring more explicit coordination with one another, with respect not only to earmarking but also more generally to planning regional investments. First, MPO members large and small suggest that greater coordination could minimize disruptive surprise earmarks. Second, suburban county officials who have begun to seek infrastructure projects more aggressively within the MPO suggest that agreement on regional priorities may improve their own chances for securing funds. Third, as MPO members observe the substantial gap between regional investment needs and estimated future transportation funds, they see some collective interest in cooperating to attract more federal dollars to the region as a whole.

To begin, for state interests—including the state DOT, the Governor, and the state legislature—the threat of surprise earmarks on the scale of the \$100 million designated

for the Cross Harbor Tunnel in SAFTEA-LU has contributed to the appeal of a reinvigorated MPO. Agreement by MPO members on project priorities, particularly for earmark seeking, could reduce earmarking surprises for state leaders in Albany and lessen the chance that future earmarks would derail the financial commitments of regional and state players to other projects.

When Congressman Nadler secured the earmark in 2005, neither the New York Governor nor the Port Authority of New York and New Jersey, perhaps the most logical agency sponsor, wanted the project.⁴⁴⁰ Although Nadler, supported by some environmental groups, had pushed the Governor and regional agencies for many years to consider the project, the tunnel failed to find a consistent champion beyond the Congressman. Its estimated \$6 billion price tag and the complexities associated with tunneling anew under the Hudson River cast a sufficient shadow on the project's implementation prospects.

The \$100 million earmark for the tunnel presented a tipping point for the state and other MPO members. The funds put momentum behind a project otherwise going nowhere, and thereby raised the specter of potential earmarks for other mega-projects that were not priorities of the state or other MPO members. Because earmarks seldom cover a project's full cost, the onus to provide the balance of funding often falls on the state. For small projects, respondents report that such issues are easily overcome; however, for larger earmarks, an uncomfortable situation could arise if the Governor or state legislature did not support the project or refused the earmark. As one observer noted,

⁴⁴⁰ Nadler later persuaded a new governor, elected in 2007, to support the project and to direct the Port Authority to take ownership of the Environmental Impact Study (EIS) for the project. An EIS had been started in the late 1990s by New York City under one mayoral administration, but during the next mayoralty the EIS was put on hold.

Earmarks lately have either been for something big like the Cross-Harbor Tunnel, which is a Port Authority project not an MTA project, or the Second Avenue Subway or East Side Access,⁴⁴¹ or smaller projects that are upsetting the apple cart...Now, the fear would be, “What happens if they really get to earmarking a bigger project that the legislative leadership doesn’t agree with?”

Such concerns would be exacerbated if surprise earmarks came “below the line,” counting against the state’s share of guaranteed formula funds.⁴⁴² If included within the scope of the Federal minimum guarantee or other equity programs, a sizable earmark could throw regional and state capital programs, or TIPs and STIPs, into turmoil.

While state leadership was reluctant to advance the Cross Harbor Tunnel project with environmental and planning studies, such concerns were overcome, with considerable advocacy by the Congressman himself. The project has an advantage in this regard because the \$100 million earmarked for it, along with all Projects of National and Regional Significance⁴⁴³ in SAFTEA-LU, counted above-the-line and did not decrease New York’s share of federal highway formula funds. This surely reduced state discomfort, particularly since—in a highly unconventional arrangement for federal highway funding—Nadler had pushed to make the Port Authority the designated recipient of the funds. Further, local and state officials seem to anticipate that Nadler will use his stature in Albany, as a former New York State legislator, and in Congress to build support and secure additional earmarks for the project. “Nadler can handle Albany,”

⁴⁴¹ Although this respondent refers to “earmarks” for the Second Avenue Subway and East Side Access projects in New York City, I do not consider the federally designated New Starts funds directed to these projects as such. Both projects are fixed-guideway transit capital projects that have been vetted and recommended for funding by the Federal Transit Administration. For further discussion of the anomalous nature of Congressional designations for these capital transit projects, see Chapter 3.

⁴⁴² This is the issue that made the earmarks for Alaska’s so-called Bridge to Nowhere so problematic. Of the hundreds of millions earmarked for the bridge, a large portion counted “below the line,” displacing formula funds which the DOT sought to use for other projects statewide. The distinction between above- and below-the-line earmarks is discussed more fully in Chapter 4.

⁴⁴³ For an insightful assessment of this earmarked program, see Government Accountability Office, *Surface Transportation: Clear Federal Role and Criteria-Based Selection Process Could Improve Three National and Regional Infrastructure Programs* (Washington, D.C., 2009).

concluded one observer. Nonetheless, from the state's perspective, renewed attention to regional planning and decisionmaking within the MPO may offer some insurance against earmarking surprises on the scale of the Cross Harbor.

Similarly, suburban counties within the New York MPO would like to stem earmark surprises, large or small. For county executives, a more explicit effort to define regional priorities could help them to discipline rogue earmarks within their own borders. County members of the MPO have been challenged by smaller towns and villages within their borders that seek earmarks for projects outside the county's plans. Said one county official:

Our problem...doesn't stem so much now from my [MPO] colleagues...It stems more from...[speaking] about my own county, the fact that some village or town will go to a Congress person and say, "I want," and get money from the bus fund to build a parking lot...And so not only does it absorb funds, but it puts a project in that may not be consistent with the plan. [Or, a] locality will ask for...money for a study to create an internal bus system. "*Hello!?* You know, we've got a [county] bus system. And if you want to create an internal bus system that's more specific in your town or village or city, then it really should come through us, so that we can put it in sync with what we're already doing."

In addition to wanting to discourage earmarks for what they consider rogue projects, County officials increasingly acknowledge their own ambitions to secure federal funds for infrastructure needs in their own jurisdictions. Within the MPO, the suburban counties—Nassau, Suffolk, Rockland, and Westchester—have also begun to demand that the MPO do more to fund their projects. Said one observer,

You've seen the dynamic shift a little bit in [the MPO]...Some of the players are finally saying [...to the] MTA, "We have a \$1 billion project that needs to be dealt with *too*." And how you fit that all together and then meld them and prioritize them is very difficult. Because there is no one who will deny that the health and well being of the MTA system is not a number one priority, but they still may have a pet project that they want to get put on the TIP.

In part, the maturation of the suburban landscape has also spurred outer lying counties to pay more attention to the MPO.⁴⁴⁴ Said one county official,

It's only recently that the counties surrounding [New York City] are....saying...., "Hey! We're part of the whole region. You have to be dealing with us."...[O]ur problems in the suburbs have grown more acute in terms of transportation needs...Whatever urban problems you find in New York City, you find in many of the suburbs, and we need to work with each other to solve the problems. And that was the motivation...My colleagues feel the same way—I deal with them all the time...[W]e work together, because we have similar needs.

Case study evidence also suggests that some MPO members believe their projects would fare better in securing federal funds, particularly earmarks, if those projects were endorsed MPO-wide. This concern seems more urgent for those MPO members, such as county executives, with less direct claims on transportation funds than for the MTA or state DOT. For county governments, their chances for funding significant projects could improve if the MPO as a whole—i.e. including heavyweight members like the state, city, and MTA—supported a basket of projects in which suburban improvements were included. One county executive described his own frustration that estimated transportation funds for the foreseeable future are all but spoken for.

NYMTC staff and other people at these meetings [would say], "We have all these projects we want to do, but we don't have enough money..." And *my* project wasn't even among those projects.

As another observed, "We're facing a situation where all the money in the pipeline—federal, state, and local—for next decade is already committed." The region's 2030 Long

⁴⁴⁴ In a bit of historical irony, the County Executive of Nassau, an inner ring New York suburb on Long Island, has been one of the instigators of renewed discussion at the MPO. Yet when Robert Wagner first proposed a regional council some fifty years earlier, the Nassau County Executive, then Holly Patterson, criticized the idea of any "junior United Nations" of metropolitan officials being formulated under some impressive name," and derided the proposed council as a "vanguard of utopia." In fact, Nassau and Suffolk presumed they were immune to urban concerns and resisted MRC's legal incorporation as a council of governments, fearing a super-government that would allow New York City to take over the region. See chapters 1 through 3. Joan B. Aron, *The Quest for Regional Cooperation: A Study of the New York Metropolitan Regional Council* (Berkeley, CA: University of California Press, 1969), 12, 40, 48.

Range Plan identifies \$147 billion in capital needs simply to maintain a state of good repair for the existing system and to advance the four “Foundation Projects” underway. The roughly \$10 billion remaining would not cover the cost of other mega-projects under consideration.⁴⁴⁵

Finally, MPO members share an overarching concern for the level of federal transportation funds received by the region as a whole. As one observer explained, suburban officials in particular have pushed for more MPO coordination, fearing that the state was not getting its share of federal transportation dollars and further that earmarks could further undercut the benefits of those funds in the region:

I'd say the real leaders on it were [the suburban officials]...[T]hrough the development of the 20 year [long range] plan, they saw the funding shortfall and recognized that in New York we've had a continued dwindling of our share of federal aid commensurate with the dwindling of our share of the congressional delegation⁴⁴⁶...And so if we're not growing the pot as fast as everybody else is, then we really have to worry about what the earmarks deliver.

The prevalent pattern of individualistic earmark seeking could, some suggested, cause the region to lose out. Alternatively, the region could secure more federal funds by seeking them in concert. Said one board member,

I've gotten earmarks too. I just think *we'd all get more* if we would all seek support for projects on a global level for each of us.

⁴⁴⁵ *2005-2030 Regional Transportation Plan* (New York: New York Metropolitan Transportation Council, 2005), 76; see also, *Annual Report: A Shared Vision for a Shared Future* (New York: New York Metropolitan Transportation Council, 2009), 19-22, which identifies a list of desirable regional investments, including replacement of the Tappan Zee Bridge—with added commuter rail—linking Westchester and Rockland Counties, estimated to cost \$16 billion, and transportation investments estimated at over \$8 billion for the redevelopment of Nassau Centre into a commercial, retail, and educational complex.

⁴⁴⁶ Other respondents suggested that the state's congressional influence has dwindled somewhat since the days when New York senators Daniel Patrick Moynihan and Alfonse D'Amato served alongside one another. During the 1990s, each served on and chaired different key Senate committees for transportation funding. See also Ian Urbina, "Transit Bill May Cost New York \$1 Billion in Federal Aid," *New York Times*, March 10, 2005.

Another board member, a County Executive, explained in similar terms the MPO's recent support for directing regional growth to 10 specific subcenters: the need to plan and work collectively was driven by "an economic reality."⁴⁴⁷

8.3.2. Regional Planning Redirected

Stated briefly, members of the New York MPO have begun in the beginning of the 21st century to work collectively, discussing a more specific vision for the region and its transportation system and deliberating how to prioritize and pay for it. Even more striking, MPO members have begun to raise the possibility of seeking earmarks as a group for agreed upon regional projects. Members of the MPO have been motivated to work collectively in part by shared concerns in general for the region's performance in securing federal funds and in particular for its ability to harness earmarking to its benefit. As local and state governments and transportation agencies focus their attention on the next transportation authorization bill, due in late 2009, they consider how to secure more federal funding and for what projects.

Several underlying changes in MPO practices suggest that regional discussion and planning has been reinvigorated. These changes are most visible among the elected officials and agency executives who sit on the MPO board.

First, whereas absenteeism within the board had historically plagued the MPO, case study evidence points to more frequent and more active board participation. The 2007 Federal certification review noted improved participation by MPO board members in both annual meetings and other MPO activities when compared with the 1996 and

⁴⁴⁷ Khurram Saeed, "Transit Council Identifies 10 Growth Areas," *Journal News*, March 14, 2008.

1999 reviews, and credits.⁴⁴⁸ It credits then current MPO co-chair, the Nassau County Executive, with initiating additional meetings and discussion opportunities for the board members – outside the annual public meeting – to discuss planning goals, growth areas, and regional transportation funding.⁴⁴⁹

New leadership has worked to facilitate regional discussion and decisionmaking within the MPO forum, advancing deliberation about how to direct growth in the New York region and where to make key transportation investments. The MPO Directors and recent co-chairs have helped to reinvigorate formal meeting attendance by principals and to organize new informal “briefing meetings” for principals only, as well as public forums and lectures on key transportation issues. One MPO member observed the change in his own participation:

[Previously,] I would send [my staff] to all the [MPO] meetings because the topics and the way they were presented bored the hell out of me. It was too intellectual. The planning process was too cumbersome. And, for my needs, we were okay; we were getting things done here...[M]y colleagues...didn't attend many of the meetings, either...[Then,] the discussion became less trans-speak, more...useful. I talked to a couple of my colleagues about going down to the next meeting...And I think over the last 4 years...[w]e've come a long way.

Another respondent described changes he's observed within the MPO:

It's like fresh air and sunshine down there. NYMTC used to be this big secret and [...the new Director] to his credit -- and he's had support from the last [two state] transportation commissioner[s] under...[two different governors] -- They've really opened up the process. They've been holding monthly public forums on important transportation issues, ...inviting public comment and public input,...their website is accessible for the first time. So, they really have gone to extraordinary lengths and they've been...listening and reaching out to...[civic groups], which was not

⁴⁴⁸ The U.S. DOT requires that the MPO process undergo certification review every three years. This requirement was waived for New York MPO in 2002, given the devastation experienced by the organization in the September 11, 2001 attacks on the World Trade Center. The MPO's offices were housed in the North Tower and three staff members did not survive. The MPO faced considerable challenges to simply reestablish itself after the attack.

⁴⁴⁹ Federal Highway Administration and Federal Transit Administration, *New York Metropolitan Transportation Council Transportation Planning Certification Review* (Washington, D.C.: U.S. Department of Transportation, 2007), 14.

always the case in the past. The level of public engagement has increased dramatically.

What has emerged from increased board member engagement is a reciprocal understanding and awareness among one another of each member's transportation needs and priorities. As one board member stated,

It makes sense for us all to participate together. At the very least, we're more educated about each other's projects than we used to be. I never knew what major projects for [the other members] were...that's not my life, not my world. *But I know it now.*

Second, board members have together announced new planning commitments (a) to funnel future growth into specific regional sub-centers and (b) to emphasize desirable transportation investments for the future. The MPO has used the release of its 2008 and 2009 annual reports at the annual MPO meetings to unveil these new pieces of a regional vision,⁴⁵⁰ and it is clear that MPO members acted strategically in doing so. Said one elected official on the MPO board, "By identifying our 10 desired growth areas, we can build the case for obtaining the resources to implement regional transportation investments."⁴⁵¹

The MPO members forged agreements on areas of the region where growth could be most sustainably absorbed and where strategic transportation investments would support such growth, representing a new step towards better linking regional land use planning and transportation planning. Still, funding for the projects is uncertain. As the MPO Director told a local news station, "We estimate that it will cost in the range of \$50 to \$60 billion to complete these investments. Here's the problem, we've only identified \$5

⁴⁵⁰ *Annual Report: Our Vision for a Growing Region* (New York: New York Metropolitan Transportation Council, 2008); *Annual Report: A Shared Vision for a Shared Future* (New York: New York Metropolitan Transportation Council, 2009).

⁴⁵¹ New York Metropolitan Transportation Council, "NYMTC Annual Meeting Was Big Success!" NYMTC-Notes 10, no. 20 (2008): 1-2.

billion in available funds."⁴⁵² Further, the most recent certification review notes that the MPO has not established a clear connection between regionally established goals and how it determines which potential major investment to study. Prioritization of projects remains unclear and there is still work to be done in weighing projects against one another rather than measuring a project's individual benefits and costs.

Finally, recent MPO reports communicate an explicit willingness among board members to advocate as a unit for funding for the region. The 2009 annual report describes the next authorization billed, anticipated in September 2009, as "an immediate opportunity:"

The expiration of SAFTEA-LU and development of successor legislation at the Federal level presents us with an opportunity to make the case for our vision and the needs we've identified in the context of national transportation policy. As the Principals of NYMTC, we have worked hard to reach agreement on a shared vision for our shared future, and we are ready to use the opportunity to make the case for our region's needs.⁴⁵³

And while this is an encouraging signal for regionally oriented planning in the New York metropolitan area, it's unclear how such intentions will be realized.

One test will be how the region performs in the upcoming authorization bill in 2009. MPO members express a mix of skepticism and optimism. On one hand, one MPO member suggested that local governments and agencies on the New York MPO will ultimately be reluctant to lobby for agreed upon projects rather than their own lists. Another suggested that regional lobbying for earmarks could be counterproductive if the group seeks earmarks for projects that do not fit within the federal transportation funding structure or if the region neglects longer-term structural program and policy strategies

⁴⁵² "Transit Planners Discuss Project Wish List," *NY1 News*, March 19, 2009.

⁴⁵³ *Annual Report: A Shared Vision for a Shared Future* (New York: New York Metropolitan Transportation Council, 2009), 30.

that could increase regional funding in favor of obtaining funds for its projects. On the other hand, other MPO members are more encouraging. Said one,

Now, what you have is a vision that all the principals can get together and anyone of them can articulate someone else's vision...And they can each tell you what the primary project is. And it helps in going to Wash and articulating what the real vision is, not what the plans says in terms of meeting a federal requirement."

Another noted that ...

I'm an optimist. I hope that before my life is over, we're able to pull that off...That's actually what [the MPO Director] is trying to do...I think we'll be able to have a playbook that everyone can sing to and play from, but it's just when it comes down to how much everyone is asking for all these different projects that the rub comes. So, stay tuned. I think that we're moving down toward that path and we'll see...how successful we've been at setting the framework that would allow not only ...discussion and prioritization...but also *agreement*: that this is our plan.

If MPO members and leadership persist, they may not only develop regionally oriented earmarking practices but also help to transform the MPO from an expendable and requirement-driven organization to a regional decisionmaking institution in the process.

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Chapter 9: Conclusion

The story of \$10 million earmarked for an unwanted Coconut Road highway interchange in Lee County, Florida, opened this dissertation. To reflect on the terrain covered since, it is appropriate to start by recalling where Coconut Road ended. As originally written, the earmark language for the Coconut Road interchange would fund a project that was a lemon in the eyes of the Lee County Metropolitan Planning Organization (MPO), but *not* one from which the MPO could or would make lemonade. For most local officials and agencies within the MPO, the desired solution was to repurpose the earmark legislatively; after several contentious years, Congress approved a 2008 technical corrections bill that did just that. The bill included a legislative adjustment that preserved the \$10 million earmarked for Lee County but that decoupled it from the unpopular interchange link to I-75 and that enabled its use for roadway improvements supported by the MPO.

This story neatly deflates a myth that defenders of Congressional earmarking seem to propagate: that earmarking allows responsive U.S. elected officials to make allocation decisions in place of nameless, faceless Washington bureaucrats. In defending his own transportation earmark for a local art museum's parking lot, one senator clearly avowed the myth. Earmarking, the senator claimed, was not only a Congressional right but also

...an opportunity to get away from what happens in Washington so very often: nameless, faceless, hired bureaucrats who make the decision about what a community needs, rather than elected officials who in consultation with the local communities are then able to establish those priorities.⁴⁵⁴

⁴⁵⁴ Sen. Ben Nelson (D-Neb.) quoted in: Thompson, Jake. "Parking Lot for Joslyn Becomes a Federal Case Oklahoma Senator Fails to Halt Funding Hagel, Nelson Split." *Omaha World-Herald*, October 21 2005.

Yet, as Coconut Road illustrates, and as transportation planning practitioners and scholars know, earmarks more commonly *take* discretion from local elected officials in metropolitan communities; they *do not* restore it.

The MPOs, or metropolitan planning organizations, that serve large urban regions in the U.S have been key protagonists in this dissertation. Composed of local elected officials, transportation agency leaders, and public stakeholders, MPOs steward regional transportation planning and decisionmaking in U.S. urban regions. If the bills that authorize and appropriate federal transportation dollars contained no Congressional earmarks, MPOs and their members—particularly state transportation departments—would choose how to allocate federal funds for transportation improvements in their regions. In the last 15 years, however, Congress has earmarked a growing proportion of federal transportation funds to specific projects that may or may not relate to metropolitan needs or priorities as MPOs articulate them.

This trend is troubling as it exposes an incongruous paradox in the system for distributing federal funds among states and urban regions: Congressional earmarking overrides the very planning processes that Congress itself requires of metropolitan areas and states that seek to use federal transportation funds. This same trend is troubling in particular because earmarking undercuts MPOs and their institutionalization in metropolitan areas at a time when federal policy is moving in a direction that would place more responsibility with MPOs, in far larger increments than ever before, as evidenced in the 2009 economic stimulus bill and transportation authorization bill drafts circulated soon after. The stimulus bill delivered an unprecedented share (50 percent) of its highway funds through the metropolitan-friendly Surface Transportation Program (STP),

and suballocated half of that directly to large MPOs. Further, proposals circulating for the transportation authorization bill due in 2009 would make STP one of four major funding categories in a significantly streamlined federal funding system, greatly enhancing the role of STP and of MPOs, which direct how to spend them.

By presenting and analyzing original data collected in scores of interviews—with representatives of MPOs, state DOTs, federal agencies, Congressional staff and Congress members, lobbyists, and other organizations active in transportation planning—and by examining many transportation spending bills, earmark data, and secondary sources, this study has revealed the mechanisms through which earmarking largely diminishes metropolitan planning. It shows how earmarks allow Congress to direct funds to projects irrespective of established planning goals and priorities; how, through oblique budgetary maneuvers, earmarks frequently redistribute rather than add to anticipated transportation dollars, altering the expected funding levels around which plans and capital programs have been crafted and reducing the funds over which MPOs and their members have discretion; and, consequently, how they can upset regional capital commitments, disturbing delicate geopolitical agreements in the process, as well as creating bureaucratic entanglements for project delivery.

If earmarking is to remain a phenomenon that significantly colors the transportation planning and funding environment for MPOs, why does the evidence in this dissertation matter? Only Congress can curtail its earmarking practices, and there is little evidence of serious Congressional intent to do so.

This research has mapped the interactions between the Congressional process for earmarking federal transportation funds for special projects on one hand and the

metropolitan transportation planning process for programming federal transportation investments, on the other hand. In starting this project, I recognized that such relationships were uncharted and worth understanding. Political scientists study earmarking to understand Congressional behavior and motives, and economists evaluate pork barrel investments for their economic efficiency, but Congressional designations, or earmarks, have attracted less attention among urban planning scholars. In delineating planning-earmarking interactions, I showed that planning relevant information can in fact come tantalizingly close to the selection process for earmarks, and that planning organizations have created strategies to influence this process for the better in some cases, or to manage earmarks *post hoc* when they threaten to disrupt regional commitments.

In charting the relationships between Congressional earmarking and metropolitan planning, this dissertation has delivered a few surprises *en route*. While earmarks appear in the eyes of some planners to be “the most egregious example of politicized infrastructure spending” and “not allocated according to need,”⁴⁵⁵ the study findings suggest that earmarking in fact can spur MPOs to solidify their regional priorities and to protect planning commitments born from them. Some MPOs have implemented organizational routines designed expressly to avert surprise or unwanted earmarks; such routines include working concertedly during a bill’s development to request desired projects, or managing less than desirable projects *post hoc* to minimize their disruption to approved plans.

Further, the study showed that eliminating transportation earmarks, itself unlikely, would in fact save little in federal transportation spending. Analysis of the Congressional

⁴⁵⁵ Krohe Jr., James. “Our Daunting to-Do List.” *Planning* 74, no. 9 (2008): 6-13.

funding mechanisms behind earmarks showed that earmarks do not add to federal transportation spending as many earmark critics suggest, although they do have significant redistributive effects obscured in legislative details and difficult for most recipients of federal transportation funds to discern.

Despite these surprises, the weight of evidence in the study confirmed suspicions that earmarking does more to disrupt the work of MPOs and to undermine MPOs as institutions than to support them. Earmarks erode the MPO process and the MPOs that shepherd it by reshuffling the funds available to them, designating projects for funding that may be unwanted, and by setting terms for earmarks that place the financial burden for project completion on the MPO and its members. Still, for MPOs and MPO members looking to engage in the earmarking process to preserve their discretion more effectively, possible approaches for doing so were described in the dissertation's evidence.

The contours of these findings also yielded broad insights about ISTEA's continued reverberations in metropolitan planning and about the threat that earmark-driven inefficiencies and policy incoherence pose to the future of energetic federal involvement in transportation. The evidence in this study also suggests directions for future research. I briefly revisit this evidence now.

Chapters 3 and 4 analyzed interactions between planning and Congressional earmarking processes from the Congressional side. Chapter 3 showed how Congress attaches earmark language to transportation funding bills and related Congressional committee reports and statements, to create earmarks binding to different degrees (i.e. statutory earmarks, non-statutory earmarks, and hybrid earmarks incorporated by reference.) The chapter also dissected the three-stage process that yields transportation

earmarks. First, the Congressional committees responsible for drafting the funding bill solicit earmark requests from members. Second, leadership of the key committees and subcommittees structure the macro- and micro-terms for earmarking within a bill, identifying programs that will host earmarks and establishing earmark budgets for individual committee members and other members. And third, as individual members' requests typically outstrip those budgets, members indicate their highest earmark priorities to the committee as the bill is finalized. Studying this process, I find that committees have increasingly circulated earmark request forms to members and processed the forms via electronic communications, making the earmarking cycle more visible to MPOs and their members. The forms ask members of Congress about the transportation projects for which they request funds, including such planning information as a projects' status in regional transportation plans and capital funding programs, or TIPs. Still no procedures ensure that Congress members or their staffs use this information to vet earmark requests. Further, although recent Congressional rules make earmark sponsors public, significant pieces of Congressional earmarking practice operate invisibly.

Chapter 4 inventoried the major budgetary mechanisms used by Congress in recent years to make funds available for earmarks. Most of these strategies redirect to earmarks dollars that Congress has already made or would make available for other transportation purposes, making transportation earmarks more commonly redistributive of than additive to federal transportation funds. To free transportation dollars for earmarks, Congress may reallocate discretionary money; reserve a portion of formula funds otherwise sent to states; include earmarks "below-the-line," in the scope of equity

programs; redirect surplus revenue, so-called RABA bonus; or rescind previously granted budget authority. Fiscal restraint advocates may be cheered to learn that transportation earmarks seldom add to federal spending. However, for MPOs and DOTs, Congress' budgetary maneuvers unsettle the very expectations around which these organizations are required to craft long range and near term transportation investment plans. By shifting funds, Congress subverts the policy and distributional intentions underlying established programs. For example, recall how Congress moved funds from clean fuel buses to other investments, or how FY 2002 RABA fueled earmarks diverted bonus highway formula funds from state and metropolitan transportation organizations legally entitled to them. Such reshufflings are oblique, making it unlikely that members of Congress understand earmarks' impacts for transportation organizations in their districts and states. Members may doggedly pursue specific earmarks without seeing how these may actually reduce funds and discretion for the agencies serving their constituents. Even for MPOs and state DOTs, such budgetary maneuvers are frequently not visible or comprehended until after a bill has passed.

Together, Chapters 5 and 6 revealed organizational practices in metropolitan areas surrounding earmarking. In Chapter 5, I showed how MPOs, state DOTs, and local governments may enter into the earmarking game *before* a bill is passed, by proactively requesting specific projects, awaiting opportunities to consult on earmark candidates, or by remaining on the sideline. Interview data suggested that MPOs are less likely than state DOTs to have organized routines for influencing earmarks. Also, Congressional offices may turn more routinely to state DOTs than to MPOs for counsel on earmark candidates; DOTs have been the traditional determinants of the federal transportation

program to the states, and frequently changing Congressional office staff may be less familiar with MPOs and regional planning. Nonetheless, transportation planning organizations in general reported that their earmarking involvement has become more routinized, or has shifted from no involvement to some, a fact I attributed to the increasing scale, formalization, and visibility of the Congressional earmarking cycle. I showed in this chapter that the earmarking process involves conversations between Congress and the organizations and local governments involved in metropolitan and state transportation planning. Such interaction increases the chances but does not guarantee that earmarks will support “plork,” the hybrid term I applied to Congressionally designated projects that reflect established regional (and state) planning priorities.

To complement Chapter 5, Chapter 6 outlined how MPOs respond to earmarks after they are finalized in law. It highlighted the particular turbulence that can result when a Congress member earmarks a project neither in the region’s TIP, the near-term capital transportation program, nor its long range plan (LRP), a phenomenon which informants reported is increasing. I showed how such earmarks can derail planning goals and distributional agreements; disrupt fiscal plans for project funding; and create bureaucratic entanglements that require special administrative and legislative intervention. For instance, because earmarked funds may replace federal dollars a region or state had anticipated and already programmed for other investments, and because earmarked dollars frequently require matching funds or are insufficient to complete the project, MPOs and DOTs face pressure to advance the non-TIP project, even if it means delaying or cancelling other projects to free the funds needed to do so. Practices used by MPOs and DOTs to manage non-TIP earmarks *post hoc* range from outright

accommodation to rejection of unplanned earmarks. Political considerations can make it appealing to accommodate earmarks but risky to play hardball. Most significantly, some MPOs and DOTs manage earmarks in ways that use the TIP as leverage. For example, when earmarks disrupt the agreed upon geopolitical distribution of federal funds in the region, some organizations recalibrate their TIPs to reflect this, smoothing out winners and losers. Or, some MPOs will not add an earmarked project to the TIP unless any necessary matching or supplemental funds come from outside the MPO.

Chapters 7 and 8 presented detailed case studies of the Dallas-Fort Worth and New York MPOs, chosen to reflect MPOs with roughly equivalent representation on key Congressional committees and similar access to earmarks, but with different institutional profiles and reputations for different earmarking behavior. The former is known actively to coordinate earmarking activity in its region, while the latter is known to be largely uninvolved in earmarking. Despite the different profiles of the Dallas-Fort Worth and New York MPOs, key earmark experiences in each were surprising.

This dissertation contends that MPO involvement in the earmarking process and in *post hoc* earmark management can increase chances that metropolitan transportation priorities will be reflected in earmarks. Much evidence in the DFW case suggested this MPO has often made earmarks work to its advantage; in this it has been aided by features of the internal and external organizational environment. These include a suballocation system in state transportation finance that gives large MPOs discretion over more funds than is typical. Also important is the MPO director's power, authorized by the MPO board, to amend the TIP under certain conditions and to submit letters to Congress supporting proposed earmarks that reflect the regional plan. Still, other evidence from

this case tempers optimism that earmarking and planning can be harmonized. Earmarks for the architecturally significant I-30 Trinity River Bridge show that, given the promise of above-the-line earmarks, an MPO still may endorse and work to advance earmark candidates that are far away from financial feasibility; that will absorb significant federal and local resources from other projects in the present or future; and that could represent projects inflated beyond what need would dictate under ordinary funding circumstances. Additionally, it is unclear how frequently the DFW MPO has amended the TIP to accommodate earmarks, or whether financial expediency has trumped regional transportation interest in such revisions.

— In New York, efforts by local governments and transportation agencies within the MPO to seek Congressional earmarks have traditionally been extremely fragmented. The MPO's traditionally weak role in the region is intertwined with its longstanding subregional orientation and with the overshadowing role played by New York State both on the MPO board via state-controlled member organizations and in regional transportation finance. Member agencies and governments within the MPO do not act in concert to influence earmark candidates; as one interview respondent described the region's traditional unwillingness to do so, "Everybody has their own opinions and lots of them." County governments seek earmarks for projects the MPO or state will not support, and towns and villages seek them for projects that counties refuse to fund. However, earmarking's rapid increase, along with a hefty \$100 million earmark in SAFTEA-LU for a theretofore low priority rail tunnel, have spurred members of the New York MPO to reconsider the potential in general for strengthened regional decisionmaking and in particular for collaborative regional action in the Congressional earmarking process.

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The body evidence and analysis produced in this dissertation have shined a light on several avenues for future research on the relationship between Congressional earmarking and metropolitan planning. These are discussed below.

One fruitful extension of this work would be to survey the 385 MPOs in the U.S. about their earmarking behaviors and experiences. This work has sketched the universe of practices that MPOs—and state DOTs—employ to influence and also manage earmarks. A follow-up survey could measure the extent to which MPOs use different practices and the degree to which MPOs understand earmarks' distributional impacts as well. Survey-based data could ascertain whether MPOs' organizational attributes, like their size or whether they are part of a Council of Governments, influence their level of engagement in earmarking and their propensity to employ MPO-bolstering practices when dealing with potential and confirmed earmarks. Knowledge about the linkages between organizational features and MPOs' behavior could inform future decisions about how to structure MPOs and how best to enhance their ability to fulfill the new responsibilities that current authorization proposals would place on them.

A similar survey project could query state DOTs not only about their own practices for seeking and managing earmarks but also about how they account for earmarks when suballocating federal funds within individual states. This dissertation revealed how earmarks redistribute federal funds. Among states, above-the-line earmarks can skew donor-donee agreements. Within states, earmarks can redistribute federal funds among subregions, for instance between urban and rural areas, or even among competing metropolitan regions. Such in-state effects—and thus who wins and who loses—depends

on how states account for earmarks when they distribute federal funds, yet little is known about states' approaches. As one local transportation agency planner remarked,

One thing I'm curious about is, when the state doles out money.... do they take into account that we're getting this such-and-such earmark? If the state loses money out of the core programs from an earmark, do they try to recoup that? It's kind of a black box how they do that.

An additional line of inquiry resulting from this dissertation could establish the frequency of non-TIP earmarks. Study participants report here that Congress has earmarked funds increasingly for projects that are outside of established plans and capital programs. Yet, to quantify non-TIP earmarks or the proportion of all transportation earmarks they represent⁴⁵⁶ is beyond the scope of this work; its focused is on illuminating the planning dynamics that non-TIP earmarks create. Yet, such statistics would be palpable indicators of earmarking's effects on metropolitan planning.

To answer this question would require a carefully constructed sampling strategy. The volume of earmarks in recent bills makes the effort required to enumerate such measures, even for a single appropriation bill, insurmountable for one researcher. In 1987, when so-called "demonstration projects" totaled only 152, one such analysis of highway authorization earmarks sampled and reviewed 66 individual projects. The study found that in "slightly over half the cases, the projects were not included in regional and state plans." Additionally, of those included in the TIPs, most "were listed without any identified federal or state funding sources."⁴⁵⁷ For recent earmark-laden bills, such project-by-project analysis would be daunting. A six-person U.S. DOT team studied whether earmarks had bypassed state planning and programming for only the FY 2006

⁴⁵⁶ Another potentially attractive statistic would be the percentage or number of earmarks for projects not identified in the long-range plans (LRPs) that inform the TIPs.

⁴⁵⁷ "Highway Demonstration Projects; Improved Selection and Funding Controls Are Needed." Washington, D.C.: U.S. General Accounting Office, 1991, p. 3.

appropriation,⁴⁵⁸ but it did not compare individual earmarks with state TIPs, nor did they consult individual state DOTs. Doing so would surely have required considerable resources. Instead, the study consulted national associations of state DOTs and MPOs⁴⁵⁹, as well as federal agency managers, and concluded from their reports that most earmarks are for projects that state DOTs do not want or view as having low priority. Future research that quantifies the frequency of non-TIP earmarks, perhaps by sampling representative bills and earmarks within them for individual review, would contribute significantly to our appreciation of the scale of non-TIP earmarking as well as whether it has trended upward or downward over time or in specific places. A separate but related question concerns earmark-driven TIP modifications. Most MPO respondents suggested that instances of amending the TIP, or capital program, to accommodate unexpected earmarks were infrequent; yet, TIP amendments are typically difficult for observers to discern when examining an MPO's TIP files. To quantify the extent of such amendments, whether they are made public as required, and their impacts on MPO members is of clear planning interest.

For transportation economists, an important question is whether Congressional earmarks create substitution effects in state transportation spending. When earmarks add to a state's expected federal take, do earmarks enable the state to fund a projects it otherwise could not, or do they *substitute* for expenditures the state would otherwise make? The answers might suggest whether without federal earmarks Dallas-Fort Worth

⁴⁵⁸ "Review of Congressional Earmarks within Department of Transportation Programs." Washington, D.C.: U.S. Department of Transportation, Office of Inspector General, 2007.

⁴⁵⁹ These are, respectively, the Association of State Highway and Transportation Officials (AASHTO) and the Association of Metropolitan Planning Organizations (AMPO).

would still pursue the signature Trinity River bridge by Santiago Calatrava on I-30, or if the region and state might find other ways to fund the project.

In closing, it is important to consider the wider implications of the findings presented in this dissertation. This work has revealed the legal, financial, and procedural interactions between Congressional earmarking and metropolitan and state planning. It also documented the organizational routines that MPOs have developed to engage in the Congressional process before earmarks are selected and to manage earmarks *post hoc* when necessary to protect established planning commitments. Further, it exposed the calculations that some MPOs make when choosing a course of action with respect to earmarking, and the organizational and institutional characteristics that can influence the options available to them.

Considered broadly, this study showed that in the best of cases earmarking can *compel* regionalism by threatening it. In this unexpected twist, the dissertation provided new evidence that MPOs are in fact exercising ISTEA-era provisions like fiscal constraint to bolster their position. Consequently, a reappraisal of ISTEA is in order. Existing assessments of ISTEA, written largely in the first decade after the 1991 law was passed, suggested that its contributions to a stronger metropolitan role were modest and that in some cases regional planning was not much changed.⁴⁶⁰ Yet, evidence in the dissertation suggested that, nearly two decades after its passage, ISTEA and its partial devolution of programming authority from states to MPOs has emboldened some MPOs

⁴⁶⁰ Todd Goldman and Elizabeth Deakin, "Regionalism through Partnerships? Metropolitan Planning since ISTEA," *Berkeley Planning Journal* 14 (2000): 46-75; Robert W. Gage, and Bruce D. McDowell, "ISTEA and the Role of MPOs in the New Transportation Environment: A Midterm Assessment." *Publius: The Journal of Federalism* 24, no. 3 (1995): 133-54; Martin Wachs and Jennifer Dill, "Regionalism in Transportation and Air Quality: History, Interpretation, and Insights for Regional Governance," *Governance and Opportunity in Metropolitan America*, ed. Alan A. Altshuler, William Morrill, Harold Wolman and Faith Mitchell (Washington, D.C.: National Academy Press, 1999), 296-323.

to expand their role in transportation decisionmaking generally, and to exert their authority vis-à-vis Congress and other local actors when it comes to earmarks. Further, fiscal constraints and air quality requirements are the levers used by some MPOs to demand that earmarked projects meet specific criteria if the MPO will advance them by adding them to the TIP. Whether articulated before or after earmarks are finalized in law, such demands reveal that some MPOs and their members are flexing their muscles in ways enabled by ISTEA.

While this is encouraging news for metropolitan planning, the dissertation revealed other dimensions of earmarking that are troubling. The study delineated the policy incoherence that results when Congressional earmarking and federally required planning compete as processes for determining how to invest federal transportation funds. It also showed how earmarking produces clear inefficiencies in the use of federal funds.

Defenders of earmarking argue, as did one former Congressional staffer, that Congress is expanding democracy and doing its job when it earmarks funds:

The Federal government has been designating funds since the Revolution. The Interstate System is just one giant designation of funding. Congress has a duty to do that. It's a constitutional issue, not just a political issue....Everything is an earmark. I dispute that there's an underlying distinction between designation and, say, programs....It's not as though without designating funds there would be the common good, unmolested by corruption, or no extorting from the common good. That's not true...The entire process is political. It's supposed to be....Members get elected, and it's the mayors, county commissioners, Burger King owners, farmers, etc. that have voted for them. It's their job to respond to their constituents....Congress *has to* designate money.

Such logic suggests that earmarking widens access to government. Yet rather than being more democratic, earmarking merely privileges one way of allocating federal transportation funds over the MPO way. Earmarks often override and undermine the

planning decisions that result from the MPO process—a process that Congress itself has mandated in successive transportation laws.

Moreover, by allowing interests to secure federal funds for urban transportation investments by circumventing MPOs, earmarking denies these important metropolitan bodies feedback that could prompt them to alter and improve their own practices to produce greater satisfaction with it. Following ISTEA-era policy goals, the federal government has invested significant effort into further institutionalizing MPOs as regional decisionmakers, manifested in the U.S. DOT's own Metropolitan Capacity Building Program as well as its triennial certification reviews of MPOs. When used in place of MPOs to express dissatisfaction with the metropolitan planning process, earmarks silence the voice for institutional enhancements that could improve MPOs.

Of even more immediate significance may be the toll the practice takes on public views of the government's ability to spend federal transportation dollars wisely and of the fundamental need for federal action in transportation. As one former U.S. transportation secretary observed,

The Bridge to Nowhere became such a symbol because there are no cost benefit criteria that can justify a project like that, there simply aren't. And the American people understand that....Until you establish credibility again in how these decisions are made, we've got a heckuva problem on our hands. It has eroded support in this country in the last few years particularly for spending substantial additional sums on transportation.⁴⁶¹

At a time when there is widespread agreement across the transportation sector about the dire need for added federal investment, this is a serious matter.

⁴⁶¹ Remarks of former U.S. Secretary of Transportation James H. Burnley, available in audio clips. See Lisa Ecola, *Transportation Challenges for the New Administration: Perspectives of Past DOT Secretaries*, Conference Proceedings RAND Corporation, January 29, 2009. Available from http://www.rand.org/pubs/conf_proceedings/CF257/#federal_role_in_transportation.

The authorization bill expected in 2009 presents Congress with an immediate opportunity to address these issues. This study revealed some similarities between information used in regional planning and data used in Congressional processes. Earmarks and planning are not always unrelated nor need they be antithetical to one another. The earmark request forms used by Congressional committees improve the likelihood that Congress may direct federal funds to projects that have high regional or state priority and that have already advanced through necessary planning and environmental review. This study also demonstrated that dialogue between Congressional offices and state transportation departments—and MPOs less commonly—may also serve this end. However, exchanges of information between the earmarking process and planning organizations do not guarantee that members of Congress will address metropolitan planning priorities in their earmarking choices.

Even if we expect that earmarks are likely to remain a fixture in the forthcoming reauthorization debate, members of Congress could much more self consciously develop earmarking practices that institutionalize, rather than undermine, the metropolitan planning processes and the MPOs that Congress itself has mandated. One such practice would be incorporation of the results of metropolitan planning in earmark selections, by considering as earmark candidates projects that already appear in the regional TIP or its list of illustrative projects, or those that have high priority in long range plans. Additionally, during the legislative process individual members of Congress could more routinely consult with MPOs about potential earmarks. Members could request that local governments and agencies which comprise the MPOs in their districts decide together which projects deserve most consideration in a “regional ask.” They could also work as a

delegation with other members serving districts in the urban region to advance a metropolitan-serving earmark agenda.

A further and potentially more challenging step for Congress would be to announce in advance how it intends to fund earmarks in a coming authorization or appropriations bill. Given the chance to assess how potential earmarks would impact their bottom lines and existing capital programs, MPOs and state DOTs could be better informed of the potential funding redistributions, planning complications, and bureaucratic entanglements that earmarks can create. Consequently, they may reconsider whether and how they plan to engage in earmark seeking for a given bill.

Realistically, any Congressional moves to reveal such sensitive information or to select earmarks that defer to metropolitan planning could only be voluntary. If they do not occur, MPOs and their members must be very well informed about what earmarks can and cannot accomplish for their regions, fully assess their promises and pitfalls, and approach them with equal measures of caution and coordination.

Appendices

A.1. Calculation of Committee Representation Score

I have created a scoring system to evaluate the strength of a state's Congressional delegation as represented on the key committees and subcommittees for transportation authorizations and appropriations. These are:

authorizations

House Transportation and Infrastructure Committee (full)
 Highways and Transit Subcommittee
Senate Environment and Public Works Committee (full)
 Transportation and Infrastructure Subcommittee

appropriations

House Appropriations Committee (full)
 Transportation Subcommittee
Senate Appropriations Committee (full)
 Transportation Subcommittee

For two year intervals from 1998 to 2006, data on membership of these committees is reviewed, using the *Almanac of American Politics*. For each interval, a separate House score and Senate score is tallied for each state, awarding 1 point for every delegation member that sits on the committees of interest. Additionally, the an additional point is added to the score if that member (a) serves as the committee or subcommittee chair, is the ranking minority member of the committee, or is a member of the majority party at the time.

A cumulative score was tallied for members every 2 years. Then, the score for each state over the 10 year period was summed. Scores were summed separately for House and for Senate first, the combined for a total score for each state. Scores were not separated for authorizations resources vs. appropriations resources, as the study is interested in earmarking in both processes.

After calculating the total state scores, all states were divided into three equal groups, based on the scores received: high, medium, and low scorers. MPOs from high and medium scoring states were considered as case study candidates.

A.2. Authorization Earmark Solicitation, 2005



U.S. House of Representatives Committee on Transportation and Infrastructure

Don Young
Chairman

Washington, DC 20515

James L. Oberstar
Ranking Democratic Member

January 10, 2005

Lloyd A. Jones, Chief of Staff
Elizabeth Megginson, Chief Counsel

TEA 21 REAUTHORIZATION: Member Requests for Highway and Transit Projects

David Heynsfeld, Democratic Chief of Staff

Dear Colleague:

The Transportation Equity Act for the 21st Century (TEA 21) ushered in a new compact between motorists, and the user fees they pay into the Highway Trust Fund, and the Federal government's investment in our Nation's highway and transit infrastructure. TEA 21 established funding guarantees and budgetary firewalls that protect these user fees from being spent on unrelated government programs and ensured those dollars are invested back into the Nation's surface transportation infrastructure. This investment moves people and freight more safely and efficiently, reduces traffic congestion, improves the environment, and increases economic productivity.

TEA 21 authorized funds for our Nation's highway, transit, motor carrier, safety, and research programs. The TEA 21 Extension Act expires on May 31, 2005. As the Committee on Transportation and Infrastructure prepares legislation to reauthorize these programs, we will identify specific projects that are of significant importance to the improvement of our Nation's surface transportation infrastructure. We believe that you, as Members of the House of Representatives, are in the best position to help us identify the particular surface transportation needs of your Congressional District and to propose solutions to address those needs.

This is a new call for transportation project requests and any information that was submitted in the 108th Congress must be resubmitted pursuant to the process outlined in this Dear Colleague. If you are interested in having the Committee consider specific surface transportation projects that would improve surface transportation in your District, please notify the Committee by following the instructions below.

1. Complete the attached questionnaire identifying your specific surface transportation needs. The Transportation and Infrastructure Committee has created a website, <http://ushtrans.house.gov>, to enable you to submit your requests electronically. The website will be available beginning on or about January 14. Due to limited space on the website, answers to each question are limited to 140 characters. You must **answer all the questions** or the computer program will not accept your form.
2. Should you want to include a more lengthy response to a particular question(s), please elaborate in the hard copy that is to be submitted, as referenced below.
3. In addition to the electronic copy, please complete a hard copy of the questionnaire. Again, please respond to **all the questions** on the form. The hard copy can either be a printed-out version of the online form or a more detailed and comprehensive reply to the questionnaire.
4. The Committee requires a signed letter, on official letterhead, from the primary Member requesting the project. **Each project must have a single primary sponsoring Member.** A Member requesting numerous projects can write one letter requesting various projects. This letter should be attached to the hard copy of the completed questionnaire.
5. Project requests with more than one supporting Member must submit a letter signed by all Members who support the project **on the primary sponsoring Member's letterhead.**
6. Completed questionnaires and any supporting materials should be submitted to either the Majority or Democratic office of the Subcommittee on Highways and Transit, depending on the party of the primary Member requesting the project. Accordingly, please send the questionnaire and any additional materials to the Subcommittee on Highways and Transit, Majority office (B-370A Rayburn House Office Building) or Democratic office (B-375 Rayburn House Office Building), as appropriate.
7. To be considered by the Committee, **each project request must include a completed electronic copy and hard copy.**
8. All project requests must be submitted by close of business **February 7, 2005.**
9. **Please check and re-check to make sure you have answered all the questions.** If you have any questions regarding the questionnaire or this process, please call the Subcommittee staff (Majority staff at ext. 56715 or Democratic staff at ext. 59989) or us.

With your thoughtful assistance in this process, we can ensure that the Committee includes specific projects of significant importance to our national transportation system and that our Nation's urgent surface transportation needs are met.

Sincerely,


DON YOUNG


JAMES L. OBERSTAR

A.3. Authorization Earmark Questionnaire, 2005

TRANSPORTATION PROJECT EVALUATION CRITERIA,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

REMEMBER TO MAKE SURE YOU HAVE FILLED OUT THE ENTIRE QUESTIONNAIRE.

1. Name and Congressional District of the primary Member of Congress sponsoring the project.
2. Other Members supporting the project.
3. If the project is a highway project, identify the State or other qualified recipient responsible for carrying out the project.
4. If the project is a transit project, please identify the project sponsor (must be an eligible recipient of Federal transit funds).
5. Please categorize the project. (Check one)
Highway or bridge _____ Intermodal facility (passenger) _____
Transit rail new start _____ Intermodal facility (freight) _____
Bus, bus equipment, or bus facility _____ Bicycle and Pedestrian _____
Other (please identify) _____
6. Is the project eligible for the use of Federal-aid highway or transit funds under Title 23 or Title 49 of the United States Code?
7. If the project is a highway or bridge project, is it on the National Highway System?
8. Briefly describe the total project.
 - a. Is it part of a larger system of projects and if so describe the larger system?
 - b. What is the total estimated cost of the project?
9. Please identify the specific segment for which project funding is being sought, including terminus points.
10. What dollar amount are you requesting in the authorization for this project or segment of a project?
11. Project Schedule
 - a. What is the proposed schedule and status of work on the project?
 - b. What is the current stage of development of the project? (If the project is a transit new start, please specify whether the project is in alternative analysis, preliminary engineering, final design, has been issued a record of decision, under environmental review, or already has a current full funding grant agreement)
 - c. Will the requested funding for the project be obligated within the next five or six years?
12. Project Plan
 - a. Is the project part of the State's long-range plan?
 - b. Is the project included in the metropolitan and/or State Transportation Improvement Program(s)?
13. Is the project considered by the State and/or regional transportation officials as critical to their needs? Please provide a letter of support from these officials, and if you cannot, explain why not.
14. Does the project have national or regional significance? Describe.
15. Has the proposed project encountered, or is it likely to encounter, any significant opposition or other obstacles based on environmental or other types of concerns? If yes, please describe.
16. Describe the economic, environmental, congestion mitigation, and safety benefits associated with completion of the project.
17. Has the project already received funding through the State's federal-aid highway or transit formula apportionments or from other Federal, State, local, or private funds? If yes, how much and from what source?
18. Has the project received funding in a previous authorization act?
19. If the project has received funding in a previous authorization act, please cite the act(s) and amount(s) authorized.
20. Has the project received funding in a previous appropriations act?
21. If the project has received funding in a previous appropriations act, please cite the act(s) and amount(s) appropriated.
22. If the Committee on Transportation and Infrastructure chose to fund this project, please provide a description of the project as you would like it to appear in the bill.

A.4. Authorization Earmark Solicitation, 2005



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

Don Young
Chairman

James L. Oberstar
Ranking Democratic Member

Lloyd A. Jones, Chief of Staff
Elizabeth Maggison, Chief Counsel

February 3, 2005

David Heynsfeld, Democratic Chief of Staff

TEA 21 REAUTHORIZATION:
Member Requests for Highway and Transit Projects

Dear Colleague:

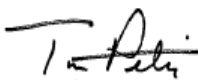
On January 10, 2005, the Committee on Transportation and Infrastructure began a new call for the submission of all Member-designated surface transportation project requests for consideration in the surface transportation reauthorization legislation.

The website for Member-designated surface transportation project submissions is currently available to accept your requests at <http://ushrtrans.house.gov>. **The deadline for final project submission is close of business on Monday, February 7, 2005.** At that time the website will no longer be accessible. All electronic project submissions must be completed, and all required hard copies of the questionnaires and request letters must be delivered to the respective Subcommittee on Highways, Transit and Pipelines, located in B-370A Rayburn House Office Building (Majority) or B-375 RHOB (Democratic) by this deadline.

If you have any questions regarding surface transportation project requests please call the Subcommittee on Highways, Transit and Pipelines staff (Majority staff ext. 56715 or Democratic staff ext. 59989).

Sincerely,


DON YOUNG
Chairman


THOMAS PETRI
Chairman
Subcommittee on
Highways, Transit,
and Pipelines


JAMES L. OBERSTAR
Ranking Democratic Member


PETER DEFAZIO
Ranking Democratic Member
Subcommittee on
Highways, Transit,
and Pipelines

A.5. Authorization Earmark Questionnaire, 2005

U.S. Senate

Committee on Banking, Housing and Urban Affairs

Project Request Questionnaire

1) State:

2) Name of Senator:

Name of staff member handling request:

Phone Number of staff member handling request:

3) Name of transit agency / project sponsor:

Contact information for agency:

4) Project name:

5) Brief description (for new starts projects, include mode, length, and termini):

6) Categorize as:

(a) Bus (buses [new or replacement], bus passenger facilities, intermodal facilities, bus-related ITS, bus maintenance facilities, bus related park and ride, other bus-related)

(b) New Start (bus rapid transit, commuter rail, light rail, heavy rail, ferry, other fixed guideway)

(c) Job Access and Reverse Commute

(d) Alternatives Analysis

(e) Research

(f) Other

7) Funding Request:

Federal Funding \$ %

Non-Federal Funding \$ %

Total Project Cost \$ 100%

8) For New Starts Projects:

(a) Current Status (Existing FFGA, Pending FFGA, Final Design, Preliminary Engineering, Alternatives Analysis, Major Investment Study):

(b) Status and Rating from FY 2006 New Starts Report:

(c) Planned or Actual Date of Entry into Final Design:

(d) Planned or Actual Date of Start of Construction:

(e) Planned or Actual Date of Revenue Service:

(f) What level of funding has the project received in any prior authorization act ? Please list the act and amount that the project was provided:

(g) What level of funding, if any, has the project received in any prior appropriations act(s) ?

Please cite act(s) and fiscal years:

(h) Please provide details on the source of the non-federal funds for the project. In addition, what conditions exist on the availability of those funds ? What alternate funds are available if committed funds cease to be available ?

(i) For current FFGA*s: Is the project on time and on budget ? If not, why and how are project delays or cost overruns being addressed ?

9) For all projects, what is the current status of the project in terms of planning and programming:

(a) Long Range Transportation Plan: Currently Included, Expected to Be Included in Update Scheduled for (give date), Other:

(b) Metropolitan Transportation Improvement Program: Currently Included, Expected to Be Included in Update Scheduled for (give date), Other:

(c) Statewide Transportation Improvement Program: Currently Included, Expected to Be Included in Update Scheduled for (give date), Other:

10) For all projects, what is the current status of the environmental process (Record of Decision Completed, FEIS underway, DEIS/EA underway, Categorical Exclusion Expected, Not in Environmental Process, Other):

Project requests must be submitted to the Senate Banking Committee (Attn: Sherry Little) not later than February 28, 2005

A.6. Appropriation Earmark Solicitation, 2006

Subcommittee on Transportation and Treasury, and Independent Agencies, House Committee on Appropriations

Subcommittee on Transportation and Treasury, and Independent Agencies - FY06 Funding Request Form

For each and every project that is requested within your Member's letter, please enter the corresponding information on the form below. Each request requires a completed form. Requests will **not** be considered unless they are documented in either an official member letter or testimony **and** electronically transmitted via the form below. All member requests are due no later than March 18, 2005. Please follow the numerical steps and enter applicable information relating to your project request. An "*" indicates a required field. Please contact the Appropriations Committee staff at x5-2718 with questions, problems, or concerns about this form.

Step 1: Member Information

- Member Name:
- Staff Point-of-Contact and direct phone number:
- Non-federal and/or Local Contact and Phone:
- Related members or co-signers:

Step 2: Project Information

- Agency:
- Request Type (project, program or language):
- Project Name:
- Account:
- Priority (1 is highest):
- Project Request Amount:
- Actual Recipient Name:
- Locality and State:
- Project Description:
- Local Share (dollar amount and percentage):
- Prior Year Funding

A.7. Research Participants

The following 45 interview respondents agreed to be listed in this report. Eleven respondents asked to remain anonymous, and I have requested their wishes. I consulted an additional 17 participants prior to the formal interviews, and they remain unnamed.

Fred Abousleman
Deputy Executive Director
National Association of Regional Councils

Linda Bailey
Federal Program Advisor
New York City Department of Transportation

Gerry Bogacz
Assistant Director, Planning Division
New York Metropolitan Transportation Council

Christopher P. Boylan
Deputy Executive Director, Corporate and Community Affairs
Metropolitan Transportation Authority

Joan Byron
Director, Sustainability and Environmental Justice Initiative
Pratt Center

Patricia Chemka
Director of Planning
Westchester County Department of Transportation

Olivia Clark
Executive Director of Governmental Affairs
Tri-Met

Cathy Connor
Manager of Government Affairs
Parsons Brinckerhoff

Andy Cotugno
Director of Planning
Portland Metro

Mortimer L. Downey
Chairman
PB Consult Inc.

Susie Dunn
Senior Principal Planner
Atlanta Regional Commission

Joel Ettinger
Director
New York Metropolitan Transportation Council

Robert Fogel
Senior Legislative Director
National Association of Counties

Steven Gayle
Executive Director
Binghamton Metropolitan Transportation Study

Timothy J. Gilchrist
Deputy Secretary for Economic Development and Infrastructure
New York State

Howard Glassman
Executive Director
Florida MPO Advisory Council

Charles Goodman
Director, Office of Systems Planning
Federal Transit Administration

Robert Gottheim
Chief of Staff
Office of Representative Jerrold Nadler

Bill Hale, P.E.
District Engineer
Texas Department of Transportation

Jane Hayse
Chief, Transportation Planning Division
Atlanta Regional Commission

Angela Hunt
Council Member
Dallas City Hall

Brigid Hynes-Cherin
Regional Administrator
Federal Transit Administration

Ashby Johnson
Deputy Director
Houston-Galveston Area Council

Eddie Bernice Johnson
Congresswoman
Texas, 30th Congressional District

Larry King
Deputy Secretary for Planning
Pennsylvania Department of Transportation

Jim McKenzie
Executive Director, Metroplan

Michael Morris
Director of Transportation
North Central Texas Council of Governments

Jerrold Nadler
Congressman
New York, 8th Congressional District

Tonia L. Norman
Strategic Policy and Performance Management
Texas Department of Transportation

Jon Orcutt
Senior Policy Advisor
New York City Department of Transportation

Jeff Ottesen
Division of Program Development
Alaska State Department of Transportation and Public Facilities

Neil J. Pedersen
Administrator
Maryland State Highway Administration

Janette Sadik-Khan
Commissioner
New York City Department of Transportation

Amadeo Saenz
Executive Director
Texas Department of Transportation

Lawrence Sally
Commissioner
Westchester County Department of Transportation

Philip Silva
Greenway Coordinator
Sustainable South Bronx

Doug Simmons
Deputy Administrator for Planning and Engineering
Maryland State Highway Administration

Dennis Slimmer
Assistant to Director of Planning and Development
Kansas Department of Transportation

Andrew Spano
County Executive
Westchester County, New York

Richard Steinmann
Special Assistant to the Federal Transit Administrator
Federal Transit Administration

Thomas Suozzi
County Executive
Nassau County, New York

T. Oscar Trevino, Jr., P.E.
Mayor
City of North Richland Hills, Texas

B. Glen Whitley
County Judge
Tarrant County, Texas

Amanda Wilson
Legislative Affairs
North Central Texas Council of Governments

Robert Yaro
President, Regional Plan Association