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# It’s Time to Fix Eleventh-Hour Earmarking in the State Budget

## In a Nutshell

- Good budgeting means finding the best use for scarce financial resources. An deliberative and open budget process helps move us closer to that standard.
- A Research Council review suggests that about 65 percent of the over \$1.3 billion in sponsored earmarks in the Fiscal Year 2024 “omnibus” budget bill were “eleventh-hour earmarks” that appeared only in the final bill – not in the Executive Budget or in the House- or Senate-passed budget bills.
- The legislature should move to improve “front-end” transparency and vetting by providing upfront details on sponsored earmarks and by respecting legislative rules that should prohibit these eleventh-hour earmarks.

When the legislature completed its work on the state budget in June, attention was appropriately focused on a significant element of that budget: the prevalence of sponsored earmarked funds allocated to specific entities at the behest of individual lawmakers; what many would refer to as “pork”. One Capitol area media entity published a spreadsheet identifying over \$2 billion in such earmarks (and in some cases, the legislators sponsoring those allocations).

We documented earlier this year that Fiscal Year 2024 would be a unique budget cycle. When the Governor released her budget in February, revenue projections showed the state enjoyed a \$2.5 billion revenue surplus in its discretionary General Fund revenues – in other words, there was lots of room to permanently grow the budget. Further, the state retained over \$9 billion in reserves in its two major revenue funds – a huge amount of money in the bank to potentially support one-time spending.

So perhaps it’s not surprising then to see a budget that is heavy on earmarks that allow legislators to show they can “bring home the bacon”. Still, the growth in earmarks raises legitimate public concerns. Good budgeting is inherently about finding the best uses for scarce financial resources. A fully deliberative and open budgeting process involves budget bills being vetted by an appropriations subcommittee and then a full appropriations committee in both legislative chambers. WItin such a process, budget proposals are discussed and vetted in public hearings. Decisions can be shaped by public testimony from stakeholder groups, policy experts, and the general public. This process helps to move us closer to meeting that standard.

Earmarks are not, on their face, a bad thing. As some have said, “one man’s earmark is another man’s job”. And if public funds are allocated to address a significant public need by allocating funds to an entity well-equipped to address that need, that can be a good thing.

Too often, though, earmarks enter the budget outside of that deliberative process. That is particularly true for what we’ll call “eleventh-hour” earmarks that were not part of either chamber’s budget proposal but instead appear for the first before a final budget vote. These earmarks receive virtually no real vetting, meaning there’s no “good budgeting” evaluation of how the public need being addressed in these proposals stacks up against other public needs. An eleventh-hour earmark that funds a public infrastructure improvement in City

A, for instance, may bring very real public benefits, but why are those a higher priority than similar projects in City B or Township C or County D?

Certainly, earmarks are not a new thing. They have been a regular part of state budgets for almost a decade as state revenues began to grow again after a decade of stagnation. However, the recent boom in state revenues has added to their size. The Fiscal Year 2023 budget enacted last year contained over \$1 billion in similar earmarks. Subsequent media reports highlighted that some of those earmarks went to campaign donors and other politically-connected persons. While their role in budget deal-making may not go away anytime soon, there are reforms that the legislature should adopt to make the process better.

## **New Transparency Language Keeps Us Waiting**

Cognizant of the criticisms of last year's spending earmarks, the legislature added new "transparency language" to key budgets with high concentrations of these earmarks. The language (see this example) effectively sets up a process through which state departments will gather and eventually publish background information on each specific earmarked project they administer. A department would enter a grant agreement with the recipient only when sufficient information is received to validate the project. A public report would be issued by the end of Fiscal Year 2024 (September 2024) that includes the following information on each earmark:

- The name and location of the recipient organization
- A description of the public purpose for which funds are expended
- The status of funds expended to date
- The identity of the "sponsor" of the earmark (either a legislator or the department itself)

The language also provides guidelines and timelines on the distribution of funding to grant recipients and contains a clawback provision allowing the state to recoup funding if it's misused or is not expended by the recipient.

In the big picture, having this language is an improvement over not having this language. Earmarks are not a new thing, and the state has never published a report in the past that clearly identified recipients and sponsors of earmarked funds.

However, it is also clear that any transparency that the language provides comes at the very "back end" of the process. The required report doesn't need to be published until September 30, 2024 – a full 15 months after legislators voted to approve the budget bills. Further, the guidelines on the funding distributions and clawback authority are effectively already part of state law. In that sense, the language just clarifies that departments are going to follow that law.

What would truly improve the process is more "front-end" transparency.

## **The Prevalence of Eleventh-Hour Earmarks**

As noted, "front-end" transparency is particularly missing when earmarks are added to the budget in literally the final hours of budget deliberations, and a Research Council review shows these "eleventh-hour" earmarks made up a large majority of the overall earmarking in this year's budget.

We specifically examined General Fund-financed earmarks contained in House Bill 4437, the "omnibus" budget bill covering state departments along with the legislature and judiciary. Using budget boilerplate language and legislative fiscal agency analyses, we flagged new funding added to the budget that was directed to specific entities – whether they were local units of government, institutions of higher education, non-profit organizations, or private business entities. We then examined whether those earmarks were included in either the Executive Budget proposal, or in a budget approved by either legislative chamber.

This is not a perfect definition of earmarks. Political players can theoretically have undue influence behind the scenes on decisions even when a contract is competitively bid or a competitive grant is awarded. This analysis won't capture these "under the radar" earmarks. Instead, the focus is on what we can observe: those direct earmarked funds appropriated to specific entities.

The table below reviews our findings by listing the dollar amount of all earmarks found in each departmental budget along with the portion of that amount that represents "eleventh-hour earmarks" that had not been part of previous budget proposals.

### General Fund Earmarks in Fiscal Year 2024 Omnibus Budget

	Total Earmarks	11th Hour Earmarks	
Agriculture & Rural Development	\$6,100,000	\$6,000,000	
Corrections	\$4,050,000	\$400,000	
Education	\$11,475,000	\$0	
Environment, Great Lakes & Energy	\$12,885,200	\$11,785,200	<b>Source: Research Council review of HB 4437 and associated analyses from House Fiscal Agency and Senate Fiscal Agency</b>
General Government	\$33,500,000	\$22,000,000	
Health & Human Services	\$189,850,000	\$0	
Judiciary	\$700,000	\$700,000	
Labor & Economic Opportunity	\$943,280,000	\$760,580,000	
Natural Resources	\$5,700,000	\$5,200,000	
State Police	\$1,500,000	\$0	
Transportation	\$157,200,000	\$74,700,000	
<b>Total</b>	<b>\$1,366,240,200</b>	<b>\$881,365,200</b>	

The table makes clear that eleventh-hour earmarks represented a significant majority of all earmarks. Almost 65 percent of the General Fund budget earmarks were not part of budget plans proposed by the Governor or approved by the House and Senate following their individual budget deliberations. However, there is a path available to bring back a more deliberative process.

### When "Everything" is a Matter of Difference

The Michigan Constitution specifically recognizes the importance of full and open deliberations in lawmaking and imposes requirements designed to ensure those deliberations can happen. For instance, Article IV, Section 26 requires each chamber of the legislature to possess a bill for at least 5 days before it is passed – better ensuring that both legislators and the public have an opportunity to understand legislation before it's called to a vote of the full chamber. Similarly, Article IV, Section 30 requires a two-thirds supermajority for bills that make appropriations for local or private purposes – clearly a recognition of the potential of earmarks that fail to serve a true public purpose.

Further, the legislature's own rules are designed to prevent eleventh-hour special earmarks and other last-minute budget additions. Joint Rule 8 outlines the powers of conference committee members and specifically limits deliberations about proposed legislation to "matters of difference between the two houses". The key segment of that rule reads:

**The conference committee shall not consider any matters other than the matters of difference between the two houses.**

For all bills making appropriations, adoption of a substitute by either house shall not open identical provisions contained in the other house-passed version of the bill as a matter of difference; nor shall the adoption of a substitute by either house open provisions not contained in either house version of the bill as a matter of difference...

So, in short, if the House and Senate have agreed on a budget item in their respective bills, a conference committee can't change that item. Further, conferees cannot add brand new items to the budget unless those decisions are specifically tied to resolve matters of difference. The sole power of the conference committee is to resolve those differences between the two chambers. If the House appropriated \$100,000 for program A, and the Senate appropriated \$50,000, Rule 8 allows conferees to deliberate on the final amount. Importantly, eleventh-hour earmarks should be off-limits under the rule.

Current state budget practices, however, have created a workaround that essentially thwarts the intent of this rule. The process has generally worked like this: Budget subcommittees specializing on specific departments or budget areas (e.g. Transportation, Corrections, Higher Education) work to craft individual budget bills. This year, the House and Senate each passed 18 different budget bills.

At the end of that long process, all eighteen of those bills are stacked together to create two new mega budget bills – popularly referred to as the “omnibus” budget (covering state departments, the legislature, and judiciary) and the “school bus” (covering K-12 schools, universities, and community colleges) that become the final conference report budgets that go to each chamber for final votes. But before that happens, each chamber passes a “shell” vehicle bill so there is a bill meeting the constitutional 5-day rule requirement ready and waiting for the “stacked budgets”. For instance, House Bill 4437 – this year’s “omnibus” budget bill – passed the House on May 11 as a generic \$100 appropriation and passed the Senate on June 27 as a generic \$0 appropriation.

As such, as a final conference report for House Bill 4437 was prepared, everything became a matter of difference because there were no real appropriations in either chamber’s approved bill. Effectively, the process renders Joint Rule 8 to be meaningless for the final budget bills. The conference report can contain any and everything, including eleventh-hour earmarks.

## Budget Reforms Can Help Improve Openness

If the legislature and administration want to truly improve front-end transparency, then there are two simple steps that can help improve it.

Release a list of sponsors before voting. As noted, the new transparency requires a report identifying the sponsor of certain special earmarks, but that report is not due until September 2024 – roughly 15 months after the budget was enacted. This is not “transparency” and the delay is not needed. Special earmarks are put into the budget bill for a reason, and someone – whether it’s an appropriations chair, the state budget director, or other key lawmakers and administration officials – knows the sponsor of each one. This list should be compiled and made available before lawmakers hold a vote on the final budget.

Live by the rules again. Simple reforms to the budgeting process can restore the teeth of Joint Rule 8, and these reforms would not have to mean the end of “omnibus” budget bills. Instead of the “blank slate” process used currently, each chamber could simply approve the full omnibus budget containing its intended appropriations within whatever bill is ultimately used as the vehicle to approve the final budget. That would again fully define matters of agreement that are settled and matters of difference on which conferees are to deliberate. If the rule is properly observed, it would also prevent “eleventh-hour special earmarks” from being included in a final conference report. This would likely slow down the budget process to a degree because preparing huge omnibus bills takes time and there would be new “5-day rule” waits that aren’t currently an issue. But as the Michigan Constitution recognizes, time can be a good thing as well; and this budget was passed in June, not late September just days before the start of the new fiscal year as in prior years.

Earmarks have always been – and likely always will be – part of the state budget process. And this is not necessarily a bad thing. But an added dose of true “front-end” transparency could bring more light to the process and ensure that earmarks receive at least some vetting before they’re approved. And that would truly fulfill a worthwhile public purpose.

## ABOUT THE AUTHOR

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Bob is in his second stint with the Citizens Research Council, having worked for the organization from 2013 to 2015. He has spent most of his time in state government, having worked in the Office of Health and Human Services – State Budget Office and as Associate Director for the non-partisan Michigan House Fiscal Agency (HFA). He has extensive expertise and has provided non-partisan advice and analysis on state policy and budget matters in areas including corrections, human services, and transportation. Prior to joining HFA, he was a research assistant and project manager from 1994 to 1996 for Public Policy Associates, a Lansing-based policy research and consulting firm. He also served for two years within the Michigan Department of State working on department budget and financial issues.

Bob received his B.S. in Economics from Central Michigan University and his M.A. in Economics from Michigan State University.

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