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A “First-Best” Path to Bringing Oversight and Transparency to Legislative Earmarking

In a Nutshell

- Legislatively-directed earmarks (a.k.a. “pork”) typically circumvent the open and deliberative budget process that is designed to better ensure that state revenue resources are allocated to the public programs and services of highest priority.
- However, a 2023 Research Council analysis demonstrated that roughly two-thirds of all General Fund earmarks in the Fiscal Year 2024 budget were added in the final budget bill, having received no previous daylight until the final budget vote.
- A House Resolution adopted last week represents a major step forward toward improved oversight and transparency, and Governor has signaled her endorsement of similar standards. However, a Research Council review would make one significant recommendation: put these protocols in state statute.

As the Michigan Legislature convened for its new 2025-26 session – one that will now involve split leadership between the Republican-controlled House and Democratic-controlled Senate – one of the earliest votes addressed proposed reforms to limit what had been a growing trend within the budget process: legislatively-directed budget earmarks, or what some might call “pork”.

As background, following the approval of the Fiscal Year 2024 state budget, the media appropriately called out the inclusion of over \$2 billion in earmarked appropriations allocated to specific entities (local governments, nonprofit entities, and even for-profit businesses) at the behest of individual lawmakers. The number and total dollar amount of these types of earmarks had exploded over the previous two budget cycles. That growth can be attributed to an unexpected boom in state revenues fueled by federal COVID stimulus dollars (e.g., tax rebates, Paycheck Protection Program, enhanced unemployment benefits) that boosted incomes even as employment levels fell.

Earmarking is not new. It has been a common element of state budgets for decades, but the growth in earmarking took an already bad budgeting practice and made it worse. A “good budget” is one that ensures that scarce state revenue resources are allocated to most critical and highest-need public purposes. This is, of course, a subjective criterion, but a deliberative budget process conducted by elected officials with input from stakeholders and the general public helps promote a budget that moves closer to that “good budget” standard. Most legislative earmarks circumvent much of that deliberative process.

But when we conducted a deeper dive into these Fiscal Year 2024 earmarked appropriations, what we found was even more troublesome; almost two-thirds of the total were what we called “eleventh hour” earmarks – meaning they were included in the final budget without ever having been previously vetted during budget hearings or included in any committee-approved budget bills along the way. These earmarks are particularly troublesome as a budget practice since it virtually assures that little or no evaluation or vetting of these funding allocations can take place, and that the earmarks remain completely shielded from public scrutiny until the

budget is passed.

At that time, we set out a roadmap for the legislature that would promote real front-end transparency if the legislature chooses to continue the practice of earmarking. Our suggested roadmap included two critical elements. First, restrictions should prevent the kind of “eleventh-hour” earmarks that have become too common. Any such earmarks should be included and vetted as part of the regular budget process. Second, clear information on the purpose, intended recipient, and sponsor of each individual earmarked appropriation should be provided well before lawmakers vote on the final budget.

Eighteen months later, it appears that lawmakers have taken heed of this advice. House Resolution (HR) 14, which was adopted by the House on January 29 on a unanimous 105-0 vote, establishes new transparency guidelines for these legislative earmarks. These provisions require online reporting that includes the amount allocated, the recipient of the funding, and the legislative sponsor prior to any vote in the House on a budget bill or conference report. The provisions also prohibit earmarks from providing public dollars to for-profit entities and require certification that no conflicts of interest exist between the recipient and the sponsoring legislator or the legislator’s staff or family.

Yesterday, Governor Whitmer signaled her approval of similar reporting requirements and restrictions by providing recommendations on legislative grant transparency within her Executive Budget documentation. Those recommendations are effectively drawn from current protocols used by Congress within the federal budgeting process. Like HR 14, they prohibit grants to for-profit entities and require grant information to be posted online prior to a final budget vote. Notably, they also include grants to be approved through the appropriations subcommittee process.

The good news here is that the House-adopted resolution and the Governor’s budget recommendation, if fully implemented and adhered to, would represent a major step forward in reigning in eleventh-hour earmarks and promote more thorough vetting and decision-making on all earmarks. Borrowing a little from each provides what the Research Council would consider a highly effective approach to ensuring a more effective budgeting process and greater transparency.

The only bad news is that both proposals put these otherwise-helpful provisions in the wrong place. To ensure true reform of this currently flawed process, any new restrictions belong in permanent state statute. Having reviewed both proposals, here are key recommendations that the Research Council would make to get the kind of “first-best” reform that is needed:

Define “earmarks” effectively and broadly

Here the House resolution provides an excellent model. The resolution defines “legislatively-directed spending item” as an appropriation to “a specific person, organization, unit of local government, project or activity in a unit of local government, other than through a formula-driven or competitive award process.” Prior transparency reforms have focused on “enhancement grants” which are typically a subset of all legislative earmarks in the budget. The House resolution moves beyond that narrow definition.

The definition also gets to the key problem with too many recent earmarks: they circumvent any real evaluation of whether state dollars are being used for the best possible purpose. For example, if the state wants to provide public funding for park improvements, a competitive grant process with established evaluation criteria helps to ensure the funding gets to the most appropriate places. Legislative earmarks clearly do not.

Require appropriation subcommittee review

The federal protocols referenced in the Governor’s recommendation include a requirement for review and approval by Congressional budget subcommittees. The same standard should be part of Michigan’s reforms. As they gain experience, members of Michigan’s appropriations subcommittees in both legislative chambers develop the greatest expertise over the programs and services administered by individual departments, as well as the public policy challenges those programs and services seek to address.

As such, they are best positioned to evaluate the degree to which any proposed earmark is consistent with the broader statewide goals these members help to formulate. That also means any reporting requirements would optimally be fulfilled prior to subcommittee votes on budget bills to ensure oversight by these subcommittee members.

Most importantly, put the requirements in statute

The Governor's proposal was tied to her budget presentation, but if her recommendation is simply added to budget language, those reforms do not become law until the budget is signed and enacted. Effectively, the transparency provisions would not have teeth until after the budget deliberations are over. The House proposal adds language to legislative rules, but history also teaches us that both chambers and both political parties have frequently skirted those rules in the past.

This is the critical flaw in both proposals. The best path to real transparency is adding this language to permanent state law. Adding language meeting these criteria to the state's Management and Budget Act would enshrine them permanently in state statute. That act already governs other key elements of the budget process (e.g., setting out a process for emergency Executive Order budget reductions, prescribing regular monthly state financial reporting). For any language governing budget earmarks to have real teeth, they need to be added to state law.

To its credit, the Michigan House has now taken a first step in establishing an effective oversight and transparency process to help place some guardrails on legislatively-directed earmarks. The Senate should follow suit and begin dialogue with the House on these protocols. As they do, they would be wise to consider a statutory-based solution that truly provides the teeth needed to ensure long-term compliance.

ABOUT THE AUTHOR

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