

President Bush Takes Action To Prevent Wasteful Earmarks

Announces Executive Order, Pledges Veto

Too many earmarks, too little accountability. Earmarks are provisions often snuck into legislation not subject to legislative or public scrutiny and that often lead to wasteful Federal spending. Earmarks have tripled in number over the last decade and have increased spending by billions of dollars. Most earmarks are not even included in legislative text and are not subject to an up or down vote of Congress.

Earmark reform will help eliminate wasteful spending. Taxpayer dollars should be spent wisely or not at all. That's why it's necessary for the number and cost of earmarks be reduced, that their origin and purposes be transparent, and that they be included in the text of the bills voted upon by the Congress and presented to the President.

On Tuesday, President Bush will issue an Executive Order directing Federal agencies to ignore any future earmark that is not voted on and included in a law approved by Congress. This will effectively end the common practice of concealing earmarks in so-called report language instead of placing them in the actual text of the bill. This means earmarks will be subject to votes, which will better expose them to the light of day and help constrain excessive and unjustified spending.

- **The Executive Order will** provide that with regard to all future appropriations laws and other legislation enacted into law, executive agencies will not commit, obligate, or expend funds on the basis of earmarks from any non-statutory source, including requests included in congressional committee reports or other congressional documents, or communications from or on behalf of Members of Congress, or any other non-statutory source, except when required by law, or when an agency itself decides that a project or other transaction has merit under statutory criteria or other merit-based decision-making.
- **The Supreme Court says report language is not legally binding.** The U.S. Supreme Court has made clear that committee reports and other legislative history materials do not bind executive agencies.
 - In 1993 the Supreme Court stated that, ". . . a fundamental principle of appropriations law is that where 'Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on' the agency." *Lincoln v. Vigil*, 508 U.S. 182, 192 (1993)
 - The Supreme Court reiterated in 2005 that "language contained in Committee Reports is not legally binding". *Cherokee Nation v. Leavitt*, 543 U.S. 631 ",646" (2005).

The President in the State of the Union will pledge to veto any appropriations bill Congress sends him that does not cut the number and cost of earmarks in half. Last year, President Bush asked Congress to voluntarily cut the number and cost of earmarks in half and to refrain from slipping earmarks into committee reports that never come to a vote in Congress. Unfortunately, neither goal was met – the FY08 appropriations bills passed by Congress contained more than 11,700 earmarks totaling almost \$17 billion. If the Executive Order does not induce Congress to be accountable and get excessive earmarks under control, this veto warning will help ensure real discipline against excess and waste.