Federal Appropriations: Understanding Government Funding and its impact on Transportation Programs

SPEAKER:

Webinar



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Presented by:

Transportation Equity Caucus







An Intro to Appropriations

An Overview of the Appropriations Process

The Game Plan

What We'll Be Talking About Today

- Why is appropriations engagement important?
- What does the appropriations process look like (in theory and in practice)?
- What are the key terms that I should know?
- What do appropriations bills and amendments look like?
- What are the key inflection points in the process, and when do they occur?

Why Appropriation s Engagement is Important

Why Should You Care About The Appropriations Process?

- It guarantees that your priorities—some of which you fought to have enshrined in law—are funded such that they can be carried out.
- It enables you to combat policies and programs that you don't like, by ensuring that they are underfunded/defunded.
- Appropriations bills are **"must-pass" pieces of legislation**—and they typically carry more than simple funding provisions. **Policy priorities** often are included, as well!

Why Learning to Draft Appropriation s Language is Important

How Can Appropriations Drafting Skills Be Applied?

- You can suggest base text or report language to legislative staff for general appropriations bills before they are marked up in subcommittees, draft amendments for committee markups and/or floor consideration, and craft successful procedural arguments to support (or even oppose) amendments.
- You can **become a resource** to staffers, who will look to you not just for your subject matter expertise, but also for your parliamentary assistance.

The Appropriations Process

An Overview

The Appropriation s Life Cycle

In A Perfect World...

- The President submits their budget.
 - This budget is **non-binding** and recommends spending levels for programs across the Executive Branch.
 - The statutory deadline for this submission is the **first Monday in February**, but there is no real enforcement mechanism for this timeframe.

The Appropriation s Life Cycle

In A Perfect World...

- Congress adopts a budget.
 - Using the President's budget as a guide (at least, in theory), the Congress sets its own spending levels, and the House and Senate appropriations committees then split those spending targets up among their various subcommittees.
 - These spending levels are **not law**, but they are **enforceable via parliamentary rules** in each chamber.
 - The theoretical deadline for adoption of the concurrent resolution on the budget is **April 15**, but there is no real enforcement mechanism for this timeframe, either.

The Appropriation s Life Cycle

In A Perfect World...

• The subcommittee stage.

- Following a series of legislative hearings, each Appropriations subcommittee **drafts base text** for its piece of the overall 12-general appropriation bill package.
- Subcommittee **markups** of those base texts are then held.
- Historically, the House would initiate this process and the Senate subcommittees would not Act until receipt of the House versions of the general appropriations bills. Today, however, the House and Senate subcommittees often act simultaneously—resulting in dueling sets of general appropriations bills.

In A Perfect World...

• The full committee stage.

- The full Appropriations Committees then **mark up** each of the 12 subcommittee products and report them.
- The reports associated with each of the bills often include important **guidance** as to how monies in the bills should be spent.

In A Perfect World...

- Floor consideration.
 - For much of the past decade in the House, floor consideration has been governed by the Rules Committee and has often included a robust amendatory process.
 - In the modern-day Senate, floor consideration typically consists of an "amendment in the nature of a substitute" that represents the Senate's version of the pending appropriations bill, as reported its Appropriations Committee. An amendatory process for that text pursuant to a "time agreement" typically is held.
 - Both chambers have rules against including new legislative directions in appropriations bill amendments and prohibiting spending over Congress's self-imposed caps.

In A Perfect World...

• Resolving differences between the houses.

- Differing appropriations texts between the two houses can then be resolved via:
 - One house **accepting** the other's version of the text.
 - A series of **amendments** pinged back and forth **between the** two **houses**.
 - A conference.

In The Real World...

• This is where things get really complicated...

- Though the traditional appropriations process occasionally is successful, often the Congress resorts to kicking the proverbial can down the road on funding the government. This kicking of the can usually takes the form of a **continuing resolution**.
- Continuing resolutions maintain government funding at its present level—which is a bad outcome, because it locks in place obsolete assumptions, and leaves new priorities entirely unfunded.

In The Real World...

- Eventually, a compromise "omnibus" appropriations package is negotiated behind closed doors and brought to the House and Senate floors for an up-or-down vote.
- In this process, many hard-fought priorities (especially funding priorities) are cast aside in the interest of funding the government. BUT...

In The Real World...

- Even so, appropriations engagement is important!
- Many priorities captured in the various appropriations committee reports are incorporated into the final omnibus by reference.
- The hard work done to achieve important funding and policy goals can be **leveraged in future fiscal years**.
- Even in a long-term CR world, such CRs **seldom** are enacted **unadorned**. They often include some of the (less-controversial) **priorities** contained in the general appropriations bills that preceded them.

In The Real World...

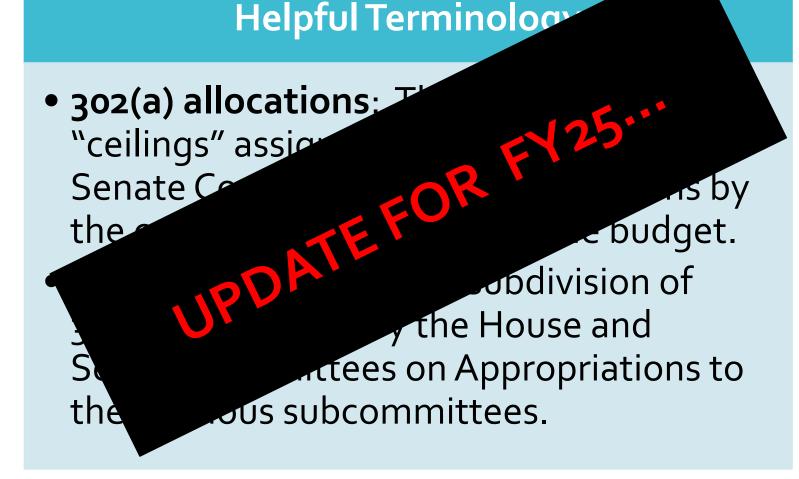
- Thus, even in a world of dysfunctional governance, engaging in the appropriations process from the start is **vital**.
- That's why we're here today!

Key Appropriations Terms

Learning the Lingo

Helpful Terminology

- 302(a) allocations: The spending "ceilings" assigned to the House and Senate Committees on Appropriations by the concurrent resolution on the budget.
- 302(b) allocations: The subdivision of 302(a) allocations by the House and Senate Committees on Appropriations to their various subcommittees.



A Note on FY25: Spending Caps

The "Fiscal Responsibility Act"

- For FY25, **spending caps** imposed by 2023's so-called "Fiscal Responsibility Act" will severely inhibit nondefense discretionary funding totals.
- This means lower 302(a)s and 302(b)s than is needed for the bills that we care about.

I.FRA Discretionary Limits on Budget Authority for FY2024 and FY20 In Billions of Nominal Dollars					
Fiscal Year	Defense Discretionary	Nondefense Discretionary	Total		
FY2023 (enacted)	\$858.36	\$743.89	\$1,602.25		
FY2024	\$886.35	\$703.65	\$1,590.00		
FY2025	\$895.21	\$710.69	\$1,605.90		

A Note on FY25: Spending Caps

Why Did This Happen?

- The legislative imperative to suspend the <u>debt</u> <u>ceiling</u> was successfully tied to **spending**.
- This latest suspension of the debt ceiling ends on **January 1, 2025**. The prospect of spending caps beyond FY25 is real. In short, this is a policy battle that will be fought again!

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Helpful Terminology (cntd.)

• The Appropriations Subcommittees: The 12 subunits of the House and Senate Appropriations Committees, each of which is charged with writing the base text for a general appropriations bill each fiscal year within their subject matter area. The 12 Subcommittees are...

The 12 Appropriations Subcommittees

Each subcommittee chair is colloquially referred to as a "cardinal." The chairs and ranking members of the House and Senate full Appropriations Committees are referred to collectively as the "four corners."

(1) Agriculture, Rural Development, Food & Drug Administration, & Related Agencies (Ag)

(2) Commerce, Justice, Science, & Related Agencies (CJS)

(3) Defense

(4) Energy & Water Development, & Related Agencies (Energy & Water)

(5) Financial Services & General Government (FSGG)

(6) Homeland Security (HomeSec)

(7) Interior, Environment, & Related Agencies (Interior)

(8) Labor, Health & Human Services, Education, & Related Agencies (Labor-H)

(9) Legislative Branch (Leg Branch)

(10) Military Construction, Veterans Affairs, & Related Agencies (MilCon)

(11) State, Foreign Operations, & Related Programs (SFOPS)

(12) Transportation, & Housing & Urban Development, & Related Agencies (THUD)

Some More Helpful Terminology (cntd.)

- General appropriations bills: The 12 large, standardized appropriations measures promulgated by the Appropriations Committee's subcommittees.
- Supplemental appropriations bills ("supps"): Essentially any appropriations bill that is *not* "general." Usually for a particular purpose (e.g., disaster response).
- Omnibus appropriations bills ("omnis"): Single bills that include the contents of more than one general appropriations measure (and, often, additional material). A collection of a small number of general appropriations bills wrapped into one also is sometimes referred to as a "minibus".

Helpful Terminology (cntd.)

 Continuing resolutions ("CRs"): Joint resolutions that continue government spending at its present level. These are often short in duration and are geared toward bridging a funding gap until the appropriations process can be completed in full. Sometimes, however, they are of longer duration and contain other legislative priorities (known as "anomalies").

Helpful Terminology (cntd.)

 Community project funding (a.k.a.) "earmarks"): Funds devoted to a private interest or locality with particularity (rather than through some impartial or formula-driven process). Barred for a period by protocol, they're back—with various new <u>limitations</u>—but they must be disclosed.

Helpful Terminology (cntd.)

- Mandatory spending: Appropriations that are enshrined in law such that they are not subject to the annual appropriations process (e.g., Social Security).
- Emergency funding: Appropriations that are exempt from budget enforcement limits (like the 302(a)–(b) allocations), per sec.
 251(b)(2)(A)–(D) of the Balanced Budget and Emergency Deficit Control Act.

Appropriations Base Text

How to Review an Appropriations Bill

The Rules Limiting the Coverage of Appropriation s Bills Clause 2(b) of House rule XXI provides:

"A provision changing existing law may not be reported in a general appropriation bill," a proscription which includes "a provision making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation[]...." The Rules Limiting the Coverage of Appropriation s Bills Clause 2 of Senate rule XVI provides:

"The Committee on Appropriations shall not report an appropriation bill containing amendments to such bill proposing new or general legislation " How This Rule Traditionally is (or is Not) Applied The proscription on legislation is largely **ignored when composing the base text** of general appropriations bills.

This is possible because appropriations bills' **base texts** typically are **insulated** from such points of order on this basis. BUT... How This Rule Traditionally is (or is Not) Applied The bar on new legislative direction is typically **adhered to** when it comes to the assessment of **amendments** for floor consideration.

This is because it is an essential **shield** against most **divisive policy riders**, which can complicate the passage of appropriations bills.

A Note on Style

You'll find that general appropriations bills are **formatted differently** from most bills.

General appropriations text has **no section numbers**, and the text is formatted into **freeform paragraphs**, which are composed of run-on sentences that set out a **"topline" account total**, usually followed by smaller allocations to a series of specified **subaccounts**. Common Approps Bill Text, Type 1: A Traditional Appropriation

These are the core provisions of appropriations bills.

Example:

For Department of Energy expenses necessary for carrying out the activities of technology transitions, \$19,470,000, to remain available until expended: *Provided*, That of such amount, \$8,375,000 shall be available until September 30, 2023, for program direction. Common Approps Bill Text, Type 2: A Limitation

These common provisions are geared toward restricting the way appropriated funds can be spent.

Example:

 None of the funds provided in this Act may be used for the Shasta Dam and Reservoir Enlargement Project. Common Approps Bill Text, Type 2: A Limitation

Note that these provisions often contain otherwiseproscribed legislative directions.

Example:

 Unless the Secretary of Energy notifies the Committees on Appropriations of both Houses of Congress at least 3 full business days in advance, none of the funds made available in this title may be used to make or modify a grant allocation or discretionary grant award totaling \$1,000,000 or more.

A Proscribed Legislative Directive

Common Approps Bill Text, Type 3: Non-Appropri ations Policy These are increasingly common in general appropriations measures.

Example:

 The Nuclear Regulatory Commission shall comply with the July 5, 2011, version of Chapter VI of its Internal Commission Procedures when responding to Congressional requests for information, consistent with Department of Justice guidance for all Federal agencies.

Amendments

A Limited, But Powerful, Tool

The Rules Limiting the Scope of Appropriation s Bill Amendments Clause 2(c) of House rule XXI provides:

"An amendment to a general appropriation bill shall not be in order if changing existing law," a proscription which includes "an amendment making the availability of funds contingent on the receipt or possession of information not required by existing law for the period of the appropriation." The Rules Limiting the Scope of Appropriation s Bill Amendments Clause 4 of Senate rule XVI provides:

"[N]o amendment offered . . . which proposes general legislation shall be received to any general appropriation bill[] " A Note on How This Proscription is Applied in Modern Times Historically, bills would be considered under an "open process" on the floor in both houses, enabling an indefinite number of amendments to be offered to a general appropriations bill. Points of order (most often targeting amendments containing proscribed legislation) would be made, and ruled upon by the chair, in real-time.

Today, the amendment process is tightly controlled in the **House** by the **Rules Committee** and in the **Senate** by **"time agreements**" reached by unanimous consent. Common Appropriation Amendment Type 1: A Transfer

In the House, transfers between accounts in an appropriations bill are enabled by clause 2(f) of rule XXI. In the **Senate** they are generally available.

- These amendments simply move money from one program to another.
- They are a great way to simultaneously signal approval for one program, while voicing disapproval for another.

Common Appropriation Amendment Type 1: A Transfer

In the House, transfers between accounts in an appropriations bill are enabled by clause 2(f) of rule XXI. In the **Senate** they are generally available.

- They're **not** a way to transfer funds to **new programs**, however. All you can do is shuttle money between existing accounts in the underlying bill.
- Thus, they can be **tough** to manage **politically**. You need to convince the appropriators (and, in the House, the Rules Committee) not only that one program is *under*funded—but also that another program is *over*funded.

Common Appropriation Amendment Type 1: A Transfer

Amendment to division B of Rules Committee Print 117–55 Offered by Ms. Spanberger of Virginia

Page 245, line 6, after the dollar amount, insert "(reduced by \$2,000,000)".

Page 270, line 12, after the dollar amount, insert "(increased by \$2,000,000)".

Common Appropriation Amendment Type 2: A Limitation

Amendments limiting the uses of funds in an appropriations bill are enabled by clause 2(d) of House rule XXI/clause 2 of Senate rule XVI.

- These amendments **prevent funds in the bill** from being used for **a particular purpose**.
- The prohibition on new legislative direction contained elsewhere in the rules still applies, however, so limitations may only be set out using terms defined in law, regulation, or agency guidance issued pursuant to law or regulation.

Common Appropriation Amendment Type 2: A Limitation

AMENDMENT TO H.R. 4281, AS REPORTED OFFERED BY MR. NEGUSE OF COLORADO

Page 193, after line 2, insert the following:

- 1 SEC. 493. None of the funds made available by this
- 2 Act may be used to issue rights-of-way or permits pursu-
- 3 ant under part 2800 of title 43, Code of Federal Regula-
- 4 tions, for the Uinta Basin Railway.

Common Appropriation Amendment Type 3: A New Appropriation

In certain, narrow circumstances, you can add a new appropriation to a general appropriations bill via amendment.

- You can add a new appropriation via amendment—but only when the new appropriation is already **specifically authorized in law**.
- Even then, you can only appropriate **up to the amount authorized**, and only if that authorization is **current**.
- As such, it is **rare** for an amendment of this type to pass muster.
- The **Senate** further requires the **referral** of floor amendments of this type to its Committee on Appropriations, and they are subject to a **point of order**.

Common Appropriation Amendment Type 3: A New Appropriation

Amendment to Division A of Rules Committee Print 117–55 Offered by Mr. Panetta of California

Page 40, line 9, after the dollar amount, insert "(reduced by \$2,000,000)".

Page 45, after line 7, insert the following (and redesignate the subsequent paragraphs accordingly):

(8) \$2,000,000 shall be for grants to eligible
entities to carry out activities to benefit pollinators
on roadsides and highway rights-of-way under sec tion 11528 of the Infrastructure Investment and
Jobs Act (23 U.S.C. 332);

Common Appropriation Amendment Type 4: A Strike

Amendments to **strike** targeted provisions are a great way to eliminate undesirable language in appropriations bills.

- Amendments that strike language from appropriations bills are essentially always in order.
- You can strike words, lines, and even entire sections that you don't like.
- Generally speaking, however, you can strike only **one provision per amendment**.

Common Appropriation Amendment Type 4: A Strike

AMENDMENT TO H.R. 4821, AS REPORTED OFFERED BY MS. CROCKETT OF TEXAS

Strike section 454.

Report Language

The Next-Best Thing to Bill Text

When the Appropriations Committees mark up general appropriations bills and report them for floor consideration, they also promulgate **committee reports** to expand upon the **legislative intent** behind the bills.

In doing so, they provide directives to the officials charged with spending the money doled out by their bills: (1) further **specifying particular programs** and projects for which that money should be spent; and (2) providing **further pseudo-legislative instructions** to those officials.

ENERGY EFFICIENCY AND RENEWABLE ENERGY

For Department of Energy expenses including the purchase, construction, and acquisition of plant and capital equipment, and other expenses necessary for energy efficiency and renewable energy activities in carrying out the purposes of the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), including the acquisition or condemnation of any real property or any facility or for plant or facility acquisition, construction, or expansion, \$3,799,000,000, to remain available until expended: *Provided*, That of such amount, \$245,000,000 shall be available until September 30, 2024, for program direction.

For example, above is a **sample account** from the Energy and Water bill. It confers nearly **\$3.8 billion topline** on the Department of Energy's Energy Efficiency and Renewable Energy ("EERE") program and includes a **\$245 million subaccount** for "program direction."

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In short, it appears to afford the EERE program a **great deal of leeway** in spending its ~\$3.8 billion topline. **BUT**...

ENERGY EFFICIENCY AND RENEWABLE ENERGY

* * *

The Committee recommends \$3,799,000,000 for Energy Efficiency and Renewable Energy. Within available funds, the Committee recommends \$245,000,000 for program direction.

The Committee recommends up to \$20,000,000 for the Technology-to-Market and Communities subprogram, formerly known as the Energy Transitions Initiative, to address high energy costs, reliability, and inadequate infrastructure challenges faced by island and remote communities. Within available funds, the Committee recommends no less than \$5,000,000 to support stakeholder engagement and capacity building through the regional project partner organizations in the Energy Transitions Initiative Partnership Project.

The Energy and Water bill's **committee report** also carries language like the above. As you can see, it **further subdivides** the program's \$3.8 billion.

ENERGY EFFICIENCY AND RENEWABLE ENERGY

* * *

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This example includes only **two** additional spending directives, but report provisions often contain many more.

Another form of report language of particular interest is a **standalone instruction**.

These are set out by subject matter and provide **affirmative policy instructions** to offices and programs.

ENERGY EFFICIENCY AND RENEWABLE ENERGY

* * *

Vehicle Technologies.—The Committee <u>recommends \$520,000,000 for Vehicle</u> <u>Technologies</u>. The Committee encourages the Department to prioritize projects in States where the transportation sector is responsible for a higher percentage of the State's total energy consumption and is the largest source of greenhouse gases.

Within available funds, the Committee recommends for a solicitation to further develop and demonstrate advanced wireless charging technologies, including charging coils, that reduce cost and improve performance of wireless power transfer and to demonstrate opportunity wireless vehicle charging in northern climates, in areas with high ratio of renewable energy deployment.

Here's an example under the Energy and Water report's EERE header. As you can see, some standalone instructions are accompanied by **funding directions or recommendations**...

FOSSIL ENERGY AND CARBON MANAGEMENT

* * *

University Training and Research.—The Committee supports the Department's efforts to offer undergraduate, graduate, and postgraduate students majoring in STEM disciplines the opportunity to learn about programs, policies, and research, development, demonstration, and deployment initiatives within the Office of Fossil Energy and Carbon Management. Further, the Committee supports the budget request increase and new control point for the University Training and Research [UTR], which comprises funding for University Coal Research [UCR], Historically Black Colleges and Universities [HBCUs] and other Minority Serving Institutions.

Ethane Study.—The Committee directs the Department to provide a status update and expected timeline for release on their congressionally requested report on ethane production and consumption trends no later than 30 days after the enactment of this act.

...while other standalone instructions **espouse policy** that is merely funding adjacent...

FOSSIL ENERGY AND CARBON MANAGEMENT

* * *

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Ethane Study.—<u>The Committee directs the Department to provide a status update and</u> expected timeline for release on their congressionally requested report on ethane production and consumption trends no later than 30 days after the enactment of this act.

...and still others set out **legislative instructions** completely unrelated to funding.

But wait... isn't committee report language typically **nonbinding**?

Yes. BUT...

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GENERAL PROVISIONS—DEPARTMENT OF THE INTERIOR

SEC. 201. . . . (d) Except as provided in subsections (a) and (b), the amounts made available in this title under the heading "Bureau of Reclamation—Water and Related Resources" shall be expended for the programs, projects, and activities specified in the "House Recommended" columns in the "Water and Related Resources" table included under the heading "Title II—Department of the Interior" in the report accompanying this

...report language, particularly those tied to funding directives, often is **incorporated** into the general appropriations bills' legislative text **by reference**.

And, even when it is not incorporated by reference, report language **often is treated as binding** by the officials charged with administering the funding doled out in general appropriations bills (absent a countervailing affirmative instruction).

Thus, because getting base text into a general appropriations bill can be an arduous, multiyear process, committee report language is a great alternative.

Practice Tip

Even securing report language can be challenging, however. Having an interested **member of Congress in your corner** puts you on your best footing.

To facilitate requests for such language, the Appropriations Committee has established a process whereby **individual members can submit requests** for funding or policy priorities in the annual appropriations bills.

Practice Tip

Getting a member (or multiple members) to **submit** such **a request** on your priority's behalf is **the best way** to get it before the appropriators.

Just note that there are annual **deadlines** for such requests! And member office deadlines for requests to make requests on your behalf vary from office to office, and shift from year to year.

What Happens When, and Why It Matters

The Model Timeframe, In General

- February-April: Member personal office deadlines.
- March-April: subcommittee deadlines for programmatic requests.
- Also March-April: community project funding (earmark) request deadlines.

The Model Timeframe, In General

- **April-May**: subcommittee and full committee bill markups.
 - Subcommittee and committee markups typically are a week apart.
- June-July: floor consideration occurs.
 - Floor consideration typically takes place a week after the full committee markup.

The Model Timeframe, In General

- September: the House and Senate resolve their differences, and the general appropriations bills become law.
 - This is often accomplished via the cobbling together of an **omnibus** package, or a **conference** between the Houses.
- The fiscal year expires at midnight on September 30, so if the general appropriations bills are not enacted by that time, a CR is needed to avoid a shutdown.

The Environmental Appropriations Coalition

- If you're a busy advocate, **it is hard to keep track of all of this**—particularly if the appropriations process is only part of your portfolio.
- That's why the Environmental Appropriations Coalition ("EAC") exists. It is here to help!
- It is a helpful convening space on all things enviro approps, and it hosts a yearly lecture series from me on the topics we covered today and more! Let me know if you want to get involved.

Thanks for Attending!

Questions?



