

# Akerman Practice Update

FEDERAL POLICY

March 2009

## Transportation and The Stimulus

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On February 17, 2009, President Obama signed into law the economic stimulus package recently passed by Congress, known as the American Recovery and Renewal Act of 2009 ("ARRA"). This law provides over \$62 billion for federal transportation and infrastructure programs, including over \$48.1 billion for US Transportation Department ("USDOT"), \$4.6 billion for the Army Corps of Engineers, \$2.7 billion for the Homeland Security Department, and \$7.2 billion for the Environmental Protection Agency. The stimulus money is in addition to the funds already given to these programs in their annual budgets. The federal government will be spending a record setting amount on the Nation's infrastructure in the coming year – a pattern that is likely to continue over the next five to ten years.

This major investment – and the significant changes pending in federal transportation policy to promote environmental awareness and sustainable development – will have significant impacts on all state, local and tribal governments; private developers and construction firms; trucking and shipping companies; the public finance industry; and a host of industries depended on cost-effective and efficient transportation ranging for automobile dealers to major travel and hospitality corporations.

### US Transportation Department

The \$48.1 billion for USDOT is primarily directed to "shovel ready" projects – meaning those poised for construction or for continued construction when funds are made available. When combined with USDOT's annual appropriations for this fiscal year, the Department will be budgeted to spend over \$119.6 billion for all federal transportation projects.

- **New Major Project Grants Program**

ARRA creates a new \$1.5 billion discretionary grant program run by the Secretary of Transportation for large-scale transportation projects that can include highways, bridges,

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mass transit, passenger or freight rail, port infrastructure, or multi-modal initiatives. The grants are 100% federally funded with no state or local funding match required. Grants must be for a minimum of \$20 million (a level that can be waived by the Secretary) and a maximum of \$300 million. No single state may be allowed to receive more than \$300 million under the program. USDOT may use up to \$200 million to provide loans and loan guarantees under the existing federal innovative finance program, known as "TIFIA."

USDOT has 90 days to issue grant rules, grant applications must be submitted in 180 days, and grant winners will have until September 30, 2011 to obligate the money (meaning contractually commit the funds).

### **Federal Highway Programs**

Under ARRA, the Federal Highway Administration ("FHWA") is receiving \$27.5 billion for highway projects – and none of these funds require a state or local match so projects will be 100% federal funded. From this total, the bill provides \$840 million for roads on federal lands and for certain small grant programs, such as \$310 million for Indian reservation roads, \$170 million for National Park roads, \$20 million for highway job training program, \$150 million for roads in Puerto Rico, and \$60 million for Ferry Boats and Ferry Terminals.

The remaining \$26.66 billion will be given to the states under existing highway funding formulas with the funds to be received at the state level by March 10, 2009. At the state level, the funds then must be split into three pots.

- **State DOT's**

The state departments of transportation will make the decisions on how to use 67% percent of the funds they receive and it can be used for any road repair or construction, passenger or freight rail, or port project. The states are required to obligate at least 50% of these funds within 120 days or the money will be returned to the federal government, and then resent to other states. The remaining half of the funds must be obligated within one year or be returned. The states must spend 45% of this money consistent with existing transportation laws that require states to spend some of their federal funds on projects in smaller towns and rural counties.

- **Metropolitan Planning Organizations ("MPO")**

Under federal transportation law, larger cities and their surrounding suburban counties can form regional transportation authorities known as MPO's. Federal law requires that a fixed percentage of the transportation funds sent to each state must be handed over to the MPO's to direct and award. ARRA requires that 30% of the highway funds sent to the states be given to MPO control. The MPO will then have one year to obligate the money or it too must be returned to the federal government.

"The federal government will be spending a record setting amount on the Nation's infrastructure in the coming year"

- **Enhancements**

The remaining 3% of federal highway funds sent to the states under the stimulus must be spent on transportation “enhancements.” The enhancement program provides money for community-based projects that expand bike and pedestrian travel and improve the transportation experience either culturally, historically, or environmentally. Eligible projects include the preservation of historic transportation structures, conversion of abandoned railway right-of-ways to trails, landscaping and billboard removal, and a range of environmental mitigation and roadside park projects.

### **Aviation Programs**

ARRA also provides money for aviation infrastructure provide through the Airport Improvement Program (“AIP”). The Federal Aviation Administration (“FAA”) has full discretion on how to give out these funds to eligible airports. ARRA waives the existing requirement that some AIP funds must be divided according to an apportionment formula among airports based upon an airports passenger volume. The bill requires that airports sign contracts or otherwise commit

at least 50% of grant funds within 120 days of being awarded a grant. FAA completed a survey of the Nation’s airports in the fall of 2008 and identified over \$3 billion in potentially eligible projects, so competition for grants will be significant.

Aviation security programs also received \$1 billion for bomb detection systems and new checkpoint technologies that will reduce congestion in airport terminals by speeding and improving the effectiveness of baggage and passenger screening. This money will be given out as grants by the US Transportation Security Administration(TSA). TSA has to prioritize the award of grants to projects with completed design plans that are ready for installation.

### **Federal Transit Programs**

Federal transit programs were a big winner in ARRA, receiving \$8.4 billion in additional funds – an 82% increase in mass transit funding. Once again, as with stimulus highway funds, the usual 20% state cost share is being waived so transit projects receiving money from ARRA can be 100% federally funded. The bill provides \$6.9 billion in transit capital grants that can pay for any fixed-guideway transit systems and buses. Before the money is distributed to the states and MPO’s under existing federal formulas, Federal Transit Administration (“FTA”) will hold back \$100 million to award to projects designed to reduce greenhouse gas emissions. Eighty percent of the remaining funds will go to the larger urban areas covered by MPO’s and will be awarded by them to local projects. An additional 10% of the overall funds will go through the “fast-growth, high-density states” program that is distributed to the states DOT’s for award. The final 10% will go to the states to award to non-urbanized areas. All funds distributed under the transit capital formula will remain available until September 30, 2010.

In addition to the money under the broad transit capital grants program, \$1.5 billion will be given out directly by the FTA to specific light rail and transit projects through competitive

“The Department of Transportation will be budgeted to spend over \$119.6 billion for all federal transportation projects”

grants. These “new starts” and “fixed guideways projects” usually require a 40% state match, which is now waived under ARRA so projects can be 100% federally funded. At least half of the funds received directly from FTA under ARRA must be under contract within 180 days of being apportioned to the states and MPO’s. All funds must be obligated within one year or face redistribution to other transit agencies.

ARRA also provides \$150 million for rail and transit security grants to be awarded by the US Department of Homeland Security directly to state and local rail and transit agencies.

### **Amtrak & Federal Rail Programs**

The biggest winners in the competition for ARRA infrastructure funds are certainly federal rail programs. They are set to receive \$9.3 billion – an approximately 900% increase in funds. ARRA gives \$1.3 billion for capital grants to Amtrak, as authorized by last year’s Amtrak reauthorization law. It requires that funds be awarded within 30 days of enactment and that all projects funded be completed within two years. At the urging of President Obama, the final agreement includes \$8 billion for the Federal Railroad Administration (FRA). The money will flow through the Capital Assistance for Intercity Passenger Rail Service program, which provides states with grants for intercity passenger rail service. ARRA once again requires that funds be obligated within 180 days, a particular challenge here given FRA’s small size itself and its potential inability to process all of the grant awards quickly. ARRA requires that FRA give a grant preference to high-speed rail projects, and will likely lead to a major expansion of the number of designated of federal recognized “high-speed rail corridors.”

### **Federal Maritime Programs**

ARRA also provides a major investment in federal programs for ports and inland waterways. It jump-starts this effort by giving \$4.6 billion to the US Army Corps of Engineers for construction and operation and maintenance of the nation’s flood control and navigation infrastructure, as well as for environmental restoration projects. ARRA allows the Army Corps to use up to \$2 billion in funds to accelerate existing construction projects over the next two years. The Corps currently has an authorized construction backlog of \$61 billion, while annual funding has traditionally been for \$2 billion per year, so ARRA funds are intended to reduce the backlog and not serve as an invitation to add a large number of new projects. These projects include lock and dam improvements, dredging in navigable waterways and ports, and levees and flood control. The existing \$100 million annual cap on the use of federal funds per project, and state and local match requirements, are being waived.

The US Custom Service will be giving out a \$160 million for “non-intrusive inspection technology” to be deployed at sea ports. Non-intrusive inspection technology systems scan cargo containers and reduce the risk that containers can be used to smuggle weapons, contraband, or stowaways. The technology can also speed the process of containers at the US ports. ARRA also sets aside \$150 million from the US Department of Homeland security for grants to local port authorities to enhance security.

ARRA provides \$400 million to be given out as grants by the US Environmental Protection Agency for transportation electrical systems, primarily targeting seaports and truck stops. The projects include electrical systems that vessels and vehicles could use for power instead of running onboard generators or using diesel power. Many ports are struggling to comply with federal diesel emissions standards and these grants are designed to offer a possible solution.

Finally, Federal Maritime Administration will be giving an additional \$100 million in grants to small shipyards. The Coast Guard will be getting \$240 million to alter or removal obstructive bridges. As defined in ARRA, eligible bridge projects exist across the United States that are intended to improve efficiency of waterway transport and promote safety.

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## Proposed Budget For 2010

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“The 2010 budget proposals signal Obama’s positions on transportation policy”

On February 26, President Obama released his proposed budget for the 2010, the next fiscal year. Obama adds \$2 billion onto last year’s budget for transportation. This is in addition to the over \$48 billion provided under ARRA. It also begins to signal Obama’s positions on transportation policy in advance of Congress reauthorizing the federal aviation programs and federal highway & transit programs later this year.

- Rail – The President continues his push for high-speed rail by proposing another \$5 billion in funds on top of the \$8 billion in ARRA.
- Innovative Finance – Obama also fulfills a campaign promise by providing the first \$2 billion in seed money for a new program to support expanded use of innovative financing in transportation and infrastructure development. This new program will be in addition the existing “state infrastructure banks” and TIFIA programs.
- Aviation – Obama provides increased funds for the long-planned modernization of the US air traffic control system, and also proposes to replace \$7.2 billion in existing aviation excise taxes and replace them with an undefined “direct user charge.” Past proposals to reduce or replace excise taxes on fuel and tickets with other forms of user fees have been highly contentious within the aviation industry and with the public.

Akerman's Federal Policy Group specializes in working on critical transportation projects, including guiding our clients through the complex process of securing federal loans, contracts, grants and appropriations. We represent public agencies and private companies pursuing federal authorization of key infrastructure projects and advising them on every possible issue from design, financing, environmental review, full funding, grant compliance and project completion.

Based in our Washington DC Office at the foot of Capitol Hill, our bipartisan team of professionals include a former member of Congress who served on the House Transportation Committee, the top transportation policy advisor to the House Democratic Leadership, the communications director for the House Transportation Committee, the staff director of a Senate appropriations subcommittees, and counsel to a senior member of the Congressional Black Caucus. Our professionals have also served in the Executive Branch as Associate Administrator of both the National Highway Safety Administration and the Federal Aviation Administration, as well as senior counsel at USDOT.

If you or your clients have any questions concerning the transportation related services Akerman's Policy Group can offer, please contact Kyle Mulhall (kyle.mulhall@akerman.com) or Scott Brenner (scott.brenner@akerman.com) in Akerman's Washington Office (main telephone: 202- 393-6222).

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