



“American Recovery and Reinvestment Act of 2009” Transportation Provisions Overview

House Appropriations Committee Chairman Dave Obey (D-Wis.) released the details of the spending component of the House economic recovery package January 15. The measure includes \$550 billion worth of initiatives designed to promote economic activity and create or sustain jobs (the final bill will also include a series of tax cuts valued at \$275 billion). The House Appropriations Committee is expected to consider the investment proposal January 21 with House floor consideration planned for the following week.

A Senate proposal has not yet been released. While the Senate’s version is expected to be similar, there will undoubtedly be differences that require a reconciliation process between the two chambers. Congressional Democratic leaders have said they want the recovery package completed by mid-February, but it remains to be seen if that deadline will be met.

Below is an analysis of the measures transportation investment provisions and the requirements for utilization of the recovery package funds.

Federal-Aid Highways

Total Highway Investment

The measure would provide \$30 billion for highway and bridge construction activities. These funds would be additional to the anticipated \$41.2 billion level of investment for the core federal highway program in FY 2009. Of the \$30 billion, approximately \$800 million is dedicated for specific activities (such as, Indian reservation roads, administrative expenses, DBE bonding assistance, and the Puerto Rico and other territory’s highway programs). The remaining \$29.2 billion is distributed to states based on their share of the existing federal highway apportionment formula. There is no state matching requirement. The bill, however, proposes to divide these funds within each state by giving state departments of transportation control over 55 percent (a little over \$16 billion) of the resources and treating the remainder (roughly \$13 billion) as Surface Transportation Program (STP) funds.

Allocation Between States and MPOs

While the 55 percent directly under the control of state DOTs is fairly straight forward, the STP component warrants further explanation. It should be noted STP funds are the most flexible of all the highway categories and can be used for virtually anything from highway capacity to public transportation. The administration of this program requires a 10 percent automatic set-aside for the Transportation Enhancement Program. As such, \$1.3 billion of the recovery package’s highway funds will be used for enhancement activities (facilities and education for bicyclists and pedestrians, activities related to scenic or historic sites, landscaping and beautification, historic preservation, rehabilitation of historic transportation buildings,

preservation of abandoned railway corridors, outdoor advertising control and inventory, archaeological activities, environmental mitigation, and transportation museums).

The remaining \$11.8 billion in STP funds are required to be divided within the state between metropolitan planning organizations (62.5 percent or \$7.4 billion) and state departments of transportation (37.5 percent or \$4.4 billion). This is due to the STP requirements, not direction in the economic recovery package.

Use It or Lose It

The measure would require the highway funds to be apportioned to the states within seven days of the bill's enactment. The proposal is structured to ensure both a quick infusion of resources and that funds are available to sustain these activities over the next two years. Half of the funds (\$15 billion) must have contracts awarded within 120 days or they are returned to the federal government for redistribution to other states. With respect to the suballocated 45 percent, MPOs must award contracts for 50 percent of their funds within 90 days. If that deadline is not met, the funds would have to be returned to the state and the state must award contracts within 30 days or the funds would be redistributed to another state.

The remaining 50 percent of funds must be under contract by August 1, 2010, or face redistribution. The MPOs' remaining funds must be under contract by July 1, 2010, or be returned to the state department of transportation. The state would then have to award contracts for these returned funds by August 1, or the resources would be redistributed to another state.

Airport Improvement Program

The package would provide an additional \$3 billion for projects eligible for the federal Airport Improvement Program (AIP), which finances capital projects related to runways. The expected level of FY 2009 AIP investment is \$3.52 billion. As such, the recovery package would fund a major increase in airport construction activities. Like the highway program requirements, 50 percent of the AIP funds must be under contract within 120 days and the remaining funds must be under contract by the end of FY 2010.

Public Transportation

The recovery package would provide \$9 billion for the public transportation program. These resources are additive to the anticipated FY 2009 investment level of \$10.3 billion. The public transportation funds are divided as follows:

- \$6 billion for bus and equipment purchases
- \$2 billion to modernize existing transit systems
- \$1 billion for capital investment grants (commuter rail and light rail)

For all of categories of public transportation funds, 50 percent of the funds must be under contract within 120 days and the remainder can be spent up until September 30, 2010.

Rail

The package would provide \$1.1 billion for passenger rail improvements. Amtrak would receive \$800 million for capital and debt service activities. The measure prohibits the funds from being used to subsidize operating losses. The Secretary of Transportation would be allowed to make \$300 million in grants to the states for capital costs relating to the development of passenger rail infrastructure.

General Requirements

Maintenance of Effort

For the transportation sections of the recovery package, governors would be required to certify within 30 days of enactment that a state will maintain its effort regarding state funding for specified activities. The states would be required to submit a statement identifying the amount of funds the state had planned to invest on each covered activity from non-federal sources from the measure's date of enactment through FY 2010.

The state would also be required to submit reports within 30 days, 60 days, 120 days, 180 days, 1 year, and three years detailing how the new funds are spent and the results of the investment.

Accountability and Transparency

For all activities funded under the recovery package, federal, state, and local agencies are required to post the details about how funds are being utilized on a new web site "Recovery.gov." The agencies would be required to explain the project being undertaken with recovery package funds, why it is needed, its cost, and the name of an individual to contact with questions.

The measure also will establish a new Accountability and Transparency Board made up of several federal agency inspector generals and the newly created position of chief performance office. The board and its staff will monitor, audit and report on the expenditure of recovery package funds.

Relevant Tax Provisions

- Full repeal of the impending ARTBA-opposed three percent withholding requirement on federal, state, and local contractors currently scheduled for implement in 2011.
- Continuation of the 50 percent bonus depreciation for 2009, allowing businesses to deduct 50 percent of the cost of qualifying property, such as equipment, in addition to the regular depreciation allowance normally available.
- Increase to \$250,000 the amount small businesses can expense under Internal Revenue Code Section 179.