

MEMORANDUM



DATE: April 8, 2009
TO: Interested Parties
FROM: William E. Hamilton
RE: Transportation-Related Programs within the 2009 Federal Stimulus Package –
The American Recovery and Reinvestment Act of 2009

Summary

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA). The ARRA represented a combination of domestic spending programs and tax cuts intended to stimulate economic growth. Title XII of the ARRA provides funding for transportation infrastructure programs. Specifically, the ARRA provides funding for existing highway, transit, rail passenger, and aeronautics programs – funding in addition to amounts which had already been appropriated by the federal government for these programs. The funds authorized in the ARRA are not subject to obligation limitation.

For some programs, such as the highway program, funds are distributed to states by formula and Michigan's apportioned share is known. Other programs, such as aeronautics and rail passenger programs, are discretionary, competitive grant programs; Michigan's share of these non-formula programs is dependent on which projects are submitted and approved for funding.

Most of the additional funding under the ARRA is either provided to the state of Michigan directly, or passed through the state to local units of government. As a result, in accordance with Article IX, Section 17 of the 1963 Constitution ("No money shall be paid out of the state treasury except in pursuance of appropriations made by law."), most of the funds will have to be appropriated through a supplemental appropriation bill. *Urbanized area formula* transit grants are an exception; they are distributed by the federal government directly to urban transit agencies and do not have to be appropriated by the state.

Amount Available to Michigan – Total transportation infrastructure funding available to the state under ARRA formula-driven programs is **\$873,005,000**.

On March 3, 2009, the State Budget Office requested a supplement appropriation for ARRA transportation infrastructure funds *apportioned* to Michigan by formula, specifically for highway infrastructure, and *Nonurbanized area formula* ["Rural"] transit grants, including related rural intercity bus program funds. The request totaled **\$873.0 million**. The supplemental appropriation bill, HB 4582, was subsequently enacted into law 2009 PA 9, effective March 31, 2009.

The supplemental appropriation represents only federal transportation funds *apportioned* to the state by *formula*. The supplemental appropriates by line item the amount known to be apportioned to Michigan at the time the bill was enacted. It also appropriates though boilerplate (Section 301) additional ARRA funds which may be available to the state through redistribution of unobligated funds from other states. The State Budget Office has indicated that it will make a separate supplemental request for ARRA transportation *discretionary* grant programs at a later date, once Michigan's grant awards are known.

Federal Requirements – Because the ARRA provides additional funding for existing programs, projects have to meet current federal program requirements, including planning, environmental clearance, and inclusion in a Metropolitan Planning Organization (MPO) Transportation Improvement Program (TIP), or the State Transportation Improvement Program (STIP). As with the current federal-aid highway program, highway projects will have to be on the federal-aid highway system to be eligible for funding.

The balance of this memo provides additional detail on the various program elements.

Highway Programs

The ARRA appropriates \$27.5 billion for highway infrastructure. After various set-asides, \$26.66 billion would be *apportioned* to states – half in the same proportion as 2008 obligation limitation, and half in proportion to 2009 federal Surface Transportation Program (STP) funding.

On March 2, 2009, the Federal Highway Administration announced the state apportionments. The announcement was within 21 days of the bill's enactment as required by the ARRA.

Michigan's apportioned share was **\$847.2 million**.

Obligation Deadlines – The state is required to *obligate* 50 percent of the funds within 120 days of federal apportionment, with the remaining funds obligated within one year of the apportionment date – effectively by March 2, 2010. Funds not obligated by these deadlines are subject to reapportionment to other states. [The 120 day deadline does not apply to the 30% funds suballocated by population to MPOs as described below. The 30% funds are still subject to one-year obligation deadline.]

The term "obligate" means that the funds are obligated for a specific eligible project. Funds are obligated prior to bid letting, contract award, and construction.

The ARRA provides for funds to remain "available for obligation" through September 30, 2010. While the funds are available over two fiscal years (2009 and 2010), the funds are not allocated over the two year fiscal period; all the funds can be obligated in 2009 if the Michigan Department of Transportation and local road agencies can get projects under contract quickly enough. The Department has indicated that it intends to meet obligation deadlines and will seek to capture funds reapportioned from other states.

State Suballocation – The ARRA suballocates funds within the state in part on a programmatic basis and in part on a population (geographic) basis:

- 3% set aside for Enhancement Program **\$25.4 million**
- 30% allocated to areas within a state based on population (under MPOs)..... **\$254.2 million**
- 67% which may be used for any eligible project anywhere in state..... **\$567.6 million**

In addition to the federal ARRA requirements, state law (Public Act 51 of 1951) requires that an average of 25% of most federal program funds be allocated to programs administered by local jurisdictions. The division of ARRA highway funds between state trunkline programs and local agency programs, based on the Act 51 requirements, is reflected in supplemental appropriation bill HB 4582 as follows:

- State trunkline road and bridge construction programs **\$635.4 million**
- Local road agency road and bridge construction programs **\$211.8 million**

The state suballocation of Michigan's ARRA highway funds will reflect both federal programmatic/population requirements and state jurisdictional requirements. **See charts at the end of this memo.**

Project Eligibility – Because the ARRA provides additional funding for existing federal-aid programs, projects have to meet current federal program requirements, including planning, environmental clearance, and inclusion in a Metropolitan Planning Organization (MPO) Transportation Improvement Program (TIP), or the State Transportation Improvement Program (STIP). The eligibility and process requirements are established in 23 USC.

As with the current federal-aid highway program, only certain types of roads and streets are eligible for federal aid. Roads and streets serving strictly local needs, such as subdivision streets or minor/local rural roads are not eligible for federal aid participation. In addition, federal-aid highway funds participate only in eligible capital construction or reconstruction costs, not in routine maintenance or acquisition of equipment.

The ARRA includes the additional requirements that priority be given to projects that can be completed within three years, and are within economically distressed areas as defined in federal law.

The ARRA provides for federal aid at 100% of eligible project cost; there would be no match requirement. Federal-aid highway programs typically require a 20% non-federal match.

Project Selection: State Trunkline Projects – The Michigan Department of Transportation released a list of 139 state trunkline "Stimulus Candidate Projects" with an estimated project cost of \$739.9 million. The list is posted on the Department's website. The total estimated cost is higher than the \$635.4 million in ARRA formula funding available for state trunkline projects; the Department included additional projects in anticipation of receiving funds redistributed from other states.

The Department indicated that one of the principal criteria for project selection was readiness. Given the relatively short deadlines of ARRA, many projects on the list had already completed the environmental clearance and preliminary engineering process. Other projects, such as Capital Preventive Maintenance projects, can be designed relatively quickly. The Department indicated that practical considerations, such as coordination with other state and local projects, guided project selection. In addition, the Department identified projects that would further its pavement management goals. A number of the Department's proposed ARRA projects had been listed on the Department's Draft 2009-2013 Five Year Transportation Program. ARRA funds would simply advance many 2010 projects into the 2009 construction season, or would provide funding for projects for which funding sources had not been previously identified.

The Department also released a list of projects for which they are seeking funding under ARRA discretionary programs. This list is also available on the Department's website.

Section 1c of 1951 PA 51 requires cities and villages to participate in the non-federal share of state trunkline construction projects within the city or village limits. For cities with a population greater than 50,000, the participation percentage is 12.5% of the non-federal share. As an example, for a \$60 million construction project, the applicable city share would normally be \$1.5 million (12.5% of the 20% non-federal share). By using federal ARRA funds on state trunkline projects within city limits, at 100% of project cost, cities and villages will be relieved of this cost burden.

Project Selection: Local Agency Projects – The selection of local agency projects will follow the same process that governs the current local federal-aid highway program. In urbanized areas the process is administered by MPOs. In non-urban areas, the process of project identification and selection is performed by "Rural Task Forces" within designated state regions. The Rural Task Forces are comprised of local units of government, including county road commissions, cities, villages, townships, and transit agencies.

The Michigan Department of Transportation identifies the amount available for local federal aid projects within each MPO or Rural Task Force area. This local federal aid "target" is based on the Act 51 allocation of 25% federal funds to local agency programs (\$211.8 million ARRA funds), and the programmatic and population distribution requirements of federal law. Working through the MPO or Rural Task Force process, local units of government identify and prioritize eligible projects within the spending target.

Both state and local projects must meet general federal eligibility and planning requirements, and the specific ARRA requirements.

Transit Programs

The ARRA appropriates \$6.9 billion in federal capital assistance to transit agencies, of which 80% or \$5.5 billion is distributed to agencies in urbanized areas by formula (46 USC 5307). The urbanized area funds are distributed directly to urban transit agencies. The ARRA would allocate 10%, approximately \$600 million, using rural area formula (49 USC 5311). Another 10% is distributed under 49 USC 5340, a program which recognizes fast growing/high density areas; Section 5340 funds are then redistributed to state Section 5307 and 5311 programs. These ARRA transit grants provide funds for capital needs such as buses, capital equipment, or facilities.

Michigan's share of formula transit funding under the ARRA is \$134.8 million, divided between the following programs:

- Urbanized formula funds **\$109.0 million**
- Rural formula funds (transit agencies) **\$21.9 million**
- Rural formula funds (intercity programs)..... **\$3.8 million**

The rural formula transit funds are included in supplemental appropriation bill, HB 4582. Because the urbanized area funds are distributed directly to transit agencies, they do not have to be appropriated at the state level.

The ARRA requires obligation of 50% of funds 180 days following notice of apportionment by the Federal Transit Administration, with the remaining funds obligated within one year of apportionment. Funds not obligated with these deadlines would be redistributed to other states. The ARRA also indicates that transit funds "remain available" until September 30, 2010. [Administrative and program management expenses, which the ARRA both allows and limits, are made available until September 30, 2012.]

Aeronautics Programs

The ARRA provides \$1.1 billion in funding for the Secretary of Transportation to make discretionary Grants in Aid for Airports. The ARRA requires that 50% of funds made available under the act be obligated within 120 days of enactment, with the remaining amounts obligated within one year of enactment. Since this is a discretionary grant program, we can not estimate Michigan's share at this time. Additional funds for Michigan will require state appropriation.

Rail Passenger Programs – The ARRA provides \$8 billion for capital high speed rail passenger programs – available through **September 30, 2012**. This is in addition to \$1.3 billion in direct capital support to AMTRAK. This appears to be a non-formula discretionary grant program some of which will be available for state programs. We can not estimate how much of this funding could come to Michigan at this time; the amount depends on what projects are eligible and approved.

Other Grant Programs – The ARRA also provides funding for the following non-formula programs:

- \$1.5 billion for discretionary surface transportation grants
- \$750 million for Fixed Guideway Modernization grants (light rail or bus rapid transit)
- \$750 million for Capital Investment/New Starts already in construction or final design phase

Michigan's share of these non-formula discretionary programs is dependent on which projects are submitted and approved for funding.

General Provisions – In addition to requirements of existing federal aid highway, transit, aeronautics, and rail programs, the ARRA contains general provisions, some specific to transportation programs, and some applicable to all programs in the ARRA.

Maintenance of Effort – Title XII of the ARRA, Section 1201, requires the Governor to certify that the state will maintain its efforts with regard to state funding for the types of transportation projects funded by the appropriation. It is our understanding that the Department can use stimulus funds to advance previously planned projects into the 2009 construction season from 2010 or 2011 (as shown on the Department's Five Year Transportation Program). This would be similar to the way the Department used bond funds to advance projects under the *Jobs Today* program.

Quick-Start – The ARRA indicates preference for quick-start activities – projects that can be initiated within 120 days of enactment and used to maximize job creation and economic benefit. The law sets a goal of having 50% or more of funded projects started not later than 120 days after enactment. (Title XVI, Section 1602)

Availability – Unless otherwise specified, funds remain available for obligation until September 30, 2010. (Title XVI, Section 1603)

Limitations – No funds made available to any state or local government may be used for casinos, gambling establishments, aquariums, zoos, golf courses or swimming pools. (Title XVI, Section 1604)

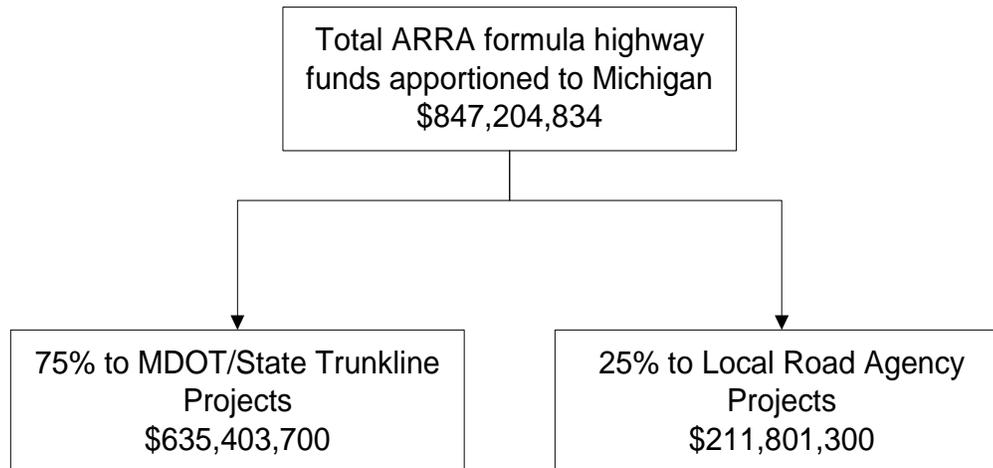
Buy American – Infrastructure projects involving construction, alteration, maintenance or repair of public buildings or public works must be accomplished using iron, steel and manufactured goods produced in the United States. The ARRA provides for certain exceptions. (Title XVI, Section 1605)

Prevailing Wage – The ARRA requires that laborers and mechanics employed by contractors and subcontractors on funded projects must be paid the prevailing wage. (Title XVI, Section 1606)

Certification – Governors must certify within 45 days of enactment intention to request and use funds provided in the ARRA. The State Legislature may certify the state's intention to use any funds not accepted for use by the Governor. (Title XVI, Section 1607)

Environment – The ARRA requires that environmental reviews required by the National Environmental Policy Act (NEPA) be completed expeditiously using the shortest applicable process. (Title XVI, Section 1609)

ARRA Formula Federal-Aid Highway Funds to Michigan State/Local Suballocation per 1951 PA 51 and House Bill 4582



ARRA Formula Federal-Aid Highway Funds to Michigan Suballocation by Program/Population within State/Local Suballocations

