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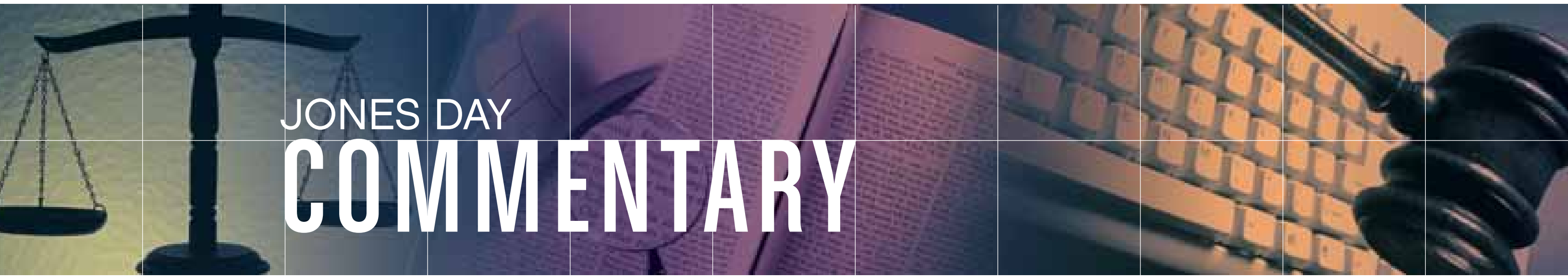

THE POTENTIAL UPSIDE OF THE ECONOMIC STIMULUS PLANS FOR THE INFRASTRUCTURE MARKET

Although the primary purpose of both the American Recovery and Reinvestment Act of 2009 (the "Act") and the United States Department of the Treasury's new Financial Stability Plan is to provide stimulus to the lagging economy as a whole, both plans promote the funding of construction activity and infrastructure development as part of the solution. The details of how these recovery programs will be implemented are still unclear, but both have the potential to revitalize the United States' construction and infrastructure markets.

The United States is in dire need of a substantial infusion of resources to modernize its existing infrastructure. A conservative estimate sets the country's infrastructure needs at $87 billion per year, while more aggressive estimates reach almost $150 billion per year. Over the long term, this means the country's infrastructure needs anywhere from $275 billion to $740 billion invested over the next five years in areas including: (i) the interstate highway system, 30 percent of which is estimated to require renovation and expansion; (ii) the railroad system, which needs considerable updates to ensure its continual viability as a transportation option; and (iii) the nation's health care system, which needs to significantly expand to address the impending medical needs of the aging United States population. A combination of public and private investments will be required to provide sufficient capital for these necessary infrastructure projects.

AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

On February 13, 2009, the United States Congress approved the American Recovery and Reinvestment Act of 2009, which dedicates substantial resources to the nation's infrastructure. The primary purpose of the Act is to rapidly revive the United States' economy, concentrating on programs that can be put into effect quickly and will have an immediate impact on employment and the credit markets. The total amount of funds available under the Act is $787 billion, of which approximately $120 billion is dedicated to infrastructure projects.

The Act requires that recipients of infrastructure investment funds give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the spending for activities that can be initiated not later than 120 days after passage of the Act.

The following are some of the key areas where funds will be available:

Energy. The Act provides $16.8 billion for energy efficiency and renewable energy, as well as an additional $4.5 billion for electricity delivery and energy reliability. These funds will, among other things, provide incentives for green-energy development, including solar and wind projects, and promote the modernization of the nation's electric grid. Energy projects are a growing sector of the infrastructure market and will serve an important role in its future.

Renewable Energy Tax Credits. The Act also creates tax incentives for renewable energy projects. Most notably, this includes a three-year extension of the production tax credit for electricity created from renewable energy sources such as wind, biomass, and thermal energy projects.

Federal Highway Administration. It has long been known that the nation's interstate highway system is in dire need of financial assistance to overcome dilapidated roads, insufficient resources, and the burdens imposed by expanding communities. To address these concerns and to infuse this sector with much-needed capital, the Act invests $27.5 billion in interstate highway infrastructure. These resources will go a long way in providing the funds necessary to renovate and construct new bridges, roads, and other public thoroughfares across the nation.

Federal Railroad and Transit Administration. Outside of a few large cities whose residents rely heavily on rail and mass transit systems, there is often little focus on this aspect of infrastructure development. In an attempt to improve public transportation and increase its availability, the Act grants: (i) $1.5 billion in discretionary grants, which are available to all surface transportation systems; (ii) $8 billion for the development of intercity high-speed rail service; (iii) $6.9 billion in grants for public transit capital assistance; (iv) $750 million for investment in fixed guideway mass transportation; and (v) $1.3 billion to repair, rehabilitate, and upgrade Amtrak railroad assets. As a result of these initiatives, communities across the country will be able to begin rehabilitating and expanding their rail and public transportation systems.

Health and Human Services. The Act also makes substantial contributions to the Department of Health and Human Services, including $2 billion to invest in the infrastructure necessary to allow for and promote the electronic exchange and use of health information. This initiative is intended to promote efficiencies within the health care system and, once implemented, reduce health care costs. The Act also earmarks $1.5 billion for the renovation and repair of health centers.

FINANCIAL STABILITY PLAN

Despite the influx of funding provided by the Act, public financing alone will not sufficiently address the capital needs of the United States. Without revitalizing the credit markets, the government cannot turn to the private sector to provide the much-needed funds, as the private sector is currently saddled with its own troubled assets that prevent it from investing fully in infrastructure. Prior to the collapse of the credit markets, some state and local governmental units were using the long-term leasing of infrastructure assets to the private sector as a way to raise funds to support additional infrastructure projects. For instance, through the long-term lease and concession agreement of the Indiana Toll Road, Indiana Governor Mitch Daniels obtained $3.8 billion to help fund his "Major Moves" program. The program was designed to provide funding for new infrastructure projects in Indiana over a 10-year period. Other governmental authorities such as the City of Chicago and the State of Texas have also used public–private partnerships as a means to construct new infrastructure projects or to raise funds to retire municipal debt and free up additional borrowing capacity.

The recent credit crisis has caused several proposed public–private partnerships to be pulled from the market. Among the casualties are the Miami Tunnel Project, a $1 billion project to construct a tunnel to the Port of Miami, and the long-term lease and concession of the Alligator Alley, an interstate toll road in Florida.

On February 10, 2009, the United States Secretary of the Treasury, Timothy Geithner, introduced the Financial Stability Plan, which was intended to provide insight on the federal government's plans to encourage private investment and increase the flow of credit in the market. In particular, Secretary Geithner described the formation of the Public–Private Investment Fund, which, in an effort to invigorate private markets, will initially provide $500 billion in government capital and government financing to help leverage private capital. The Public–Private Investment Fund is designed to encourage the private sector to make large-scale asset purchases and allow the private sector markets to determine, independent of the federal government, the price of troubled and illiquid assets. If the Public–Private Investment Fund proves successful, the government's contribution under this program may expand up to $1 trillion.

The Financial Stability Plan also seeks to address the freeze-up of secondary lending markets. The plan includes the Consumer and Business Lending Initiative that will make available up to $1 trillion to promote the bundling and selling of loans. This program builds off the Term Asset-Backed Securities Loan Facility ("TALF") announced in November 2008. The Consumer and Business Lending Initiative will expand TALF to include commercial mortgage-backed securities.

Though intended to be a comprehensive plan with respect to "toxic assets" and to encourage investments by private investors by limiting risk with a parallel infusion of federal money, the plan provided by Secretary Geithner remains lacking in details. If successful, the plan will provide additional liquidity in the credit markets and may provide sufficient resources for continued investment in infrastructure through public–private partnerships.

THE ROLE OF STATE AND LOCAL GOVERNMENT

State and local governments are primarily responsible for the nondefense public assets of the United States and, as a result, are significant benefactors under the Act. However, by no means does the Act satisfy all the infrastructure needs of state and local governments. Therefore, these entities have embarked on a variety of programs to spearhead necessary infrastructure projects including everything from customary bond financing and income tax incentives to increased gasoline taxes, state infrastructure banks, and public–private partnerships. For instance, this year alone:

- New Jersey has invested $2.8 billion in infrastructure projects, including construction of the Trans-Hudson Mass Transit Tunnel, widening of interstates, and repairing bridges.
- The City of Denver is accelerating many of the 200 Better Denver infrastructure projects approved in 2007.
- Oregon is considering the Jobs and Transportation Act of 2009, which would indefinitely raise $499 million per year for road projects.
- California voters approved tens of billions of dollars in funds to fund public works projects across the state ranging from construction of schools to a high-speed rail line.

Of course, state and local governments are facing their own financial challenges such as budget deficits, a shrinking tax base, and an ailing bond market. Still, state and local governments will be a source of funding for infrastructure projects, and the Act and the Financial Stability Plan are intended to provide some relief to these governmental units.

WHAT DOES IT MEAN?

Though many remain skeptical of the very premise of the Act, the Financial Stability Plan, and economic stimulus packages in general, it is yet to be seen how private investors and financial institutions will react in practice to these innovative measures by the federal government. It is clear, though, that these packages emphasize infrastructure development and have the potential to reinvigorate such developments going forward in the manner necessary to meet the needs of the United States.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.

Brian L. Sedlak
1.312.269.4334
brianlsedlak@jonesday.com

Susanna S. Fodor
1.212.326.3476
ssfodor@jonesday.com

Daniel D. McMillan
1.213.243.2582
ddmcmillan@jonesday.com