

# STATE OF ALASKA

## DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES OFFICE OF THE COMMISSIONER

**SARAH PALIN, GOVERNOR**

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March 2, 2009

The Honorable Lyman Hoffman  
Co-Chair, Senate Finance Committee  
State Capitol, Room 516  
Juneau, AK 99811

The Honorable Bert Stedman  
Co-Chair, Senate Finance Committee  
State Capitol, Room 518  
Juneau, AK 99811

Dear Senator Hoffman and Senator Stedman:

The following are responses to questions asked during the Department of Transportation and Public Facilities (DOT&PF) presentation before Senate Finance on February 12, 2009.

Enclosure #1 contains excerpts from HR 1, The American Recovery and Reinvestment Act (ARRA). The Governor is required to certify that the state will maintain its efforts with regard to state funding for the types of projects funded by this act and that the funds will be used to create jobs and promote economic growth. Additionally the "chief executive" must certify the infrastructure investment has received the full review and vetting required by law and assures this is an appropriate investment of taxpayer dollars. Senator Thomas asked questions about how well local area unemployment rates capture local economic conditions, and the use of unemployment rates in determining economically distressed areas. Brynn Keith at the Department of Labor and Work Force Development provided the following information.

### **Local Area Unemployment Rates**

As key indicators of local economic conditions, local area unemployment rates (which are never seasonally adjusted) reflect not only the normal seasonal patterns that tend to be repeated year after year, but also the hiring (and layoff) patterns of local firms as reflected in the employment status of local residents. Unemployment rate estimates are used by Federal and state agencies to determine the eligibility of an area for benefits, to determine the distribution of funds, for planning and budgetary purposes and to determine the need for local employment and training services and programs.

*"Providing for the safe movement of people and goods and the delivery of state services."*

Unemployment rates are imperfect estimates of labor underutilization and are subject to both sampling and non-sampling error. Additionally, the official definition of unemployment (determined by the US Bureau of Labor Statistics) excludes anyone who has not made an active attempt to find work in the preceding four week period; rural residents may not meet the official definition of unemployed because they have not conducted an active job search. Yet, even though the unemployment rates for rural Alaska may be understated, the level shifts over time should capture the changes in local economic conditions.

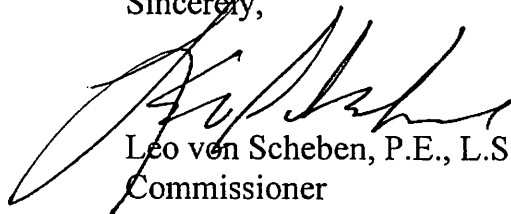
**Denali Commission Distressed Communities**

Under a contractual agreement with the Denali Commission, DOLWD's Research and Analysis Section annually produces a list of distressed communities. Multiple criteria are used to determine the designation; proxy data are used to determine average income and labor market attachment. Given the detailed level of geography under consideration, official unemployment rates are not used in the calculation.

Senator Elton asked about the Indian Reservation Roads (IRR) Program in relation to the economic stimulus bill. Enclosure #2 provides information about Indian Reservations Roads and ARRA. The DOT&PF does not administer this program.

Frank Richards, Deputy Commissioner for Highways and Public Facilities, can be contacted at 465-3906 for additional information. Additional information on ARRA and transportation issues can be found at <http://www.fhwa.dot.gov/economicrecovery/index.htm>

Sincerely,



Leo von Scheben, P.E., L.S., M.B.A.  
Commissioner

**Enclosures (2)**

cc: Frank Richards, Deputy Commissioner for Highways & Public Facilities  
Jeff Ottesen, Director, Division of Program Development  
Mary Siroky, Legislative Liaison  
Nancy Slagle, Administrative Services Director

## **Attachment # 1**

### **General Provision - Department of Transportation**

**SEC. 1201. (a) MAINTENANCE OF EFFORT.**-Not later than 30 days after the date of enactment of this Act, for each amount that is distributed to a State or agency thereof from an appropriation in this Act for a covered program, the Governor of the State shall certify to the Secretary of Transportation that the State will maintain its effort with regard to State funding for the types of projects that are funded by the appropriation. As part of this certification, the Governor shall submit to the Secretary of Transportation a statement identifying the amount of funds the State planned to expend from State sources as of the date of enactment of this Act during the period beginning on the date of enactment of this Act through September 30, 2010, for the types of projects that are funded by the appropriation.

**(b) FAILURE To MAINTAIN EFFORT.**-If a State is unable to maintain the level of effort certified pursuant to subsection (a), the State will be prohibited by the Secretary of Transportation from receiving additional limitation pursuant to the redistribution of the limitation on obligations for Federal-aid highway and highway safety construction programs that occurs after August 1 for fiscal year 2011.

### **Subtitle A-Transparency and Oversight Requirements**

**1511. CERTIFICATIONS.** With respect to covered funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and shall be posted on a website and linked to the website established by section 1526. A State or local agency may not receive infrastructure investment funding from funds made available in this Act unless this certification is made and posted.

## **Additional Funding Distribution and Assurance of Appropriate Use of Funds**

SEC. 1607. (a) Certification By Governor.-Not later than 45 days after the date of enactment of this Act, for funds provided to any State or agency thereof, the Governor of the State shall certify that: (1) the State will request and use funds provided by this Act, and (2) the funds will be used to create jobs and promote economic growth.

(b) ACCEPTANCE BY STATE LEGISLATURE.-If funds' provided to any State in any division of this Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

(c) DISTRTBUTION.-After the adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

Attachment #2

**Indian Reservation Roads (IRR) Program  
Recovery Act Provisions  
02/09/09**

<p style="text-align: center;"><b>House (H.R. 1)</b></p> <p style="text-align: center;"><b>As passed by House of Representatives</b></p>	<p style="text-align: center;"><b>Senate (S. 1)</b></p> <p style="text-align: center;"><b>As reported by Appropriations Committee</b></p>
<ul style="list-style-type: none"> <li>• \$300 million</li> <li>• Seek to maximize job creation and economic benefit</li> <li>• Administered in accordance with Chapter 2 of Title 23.</li> <li>• Distributed to Tribes using FY 2008 distribution figures</li> <li>• No PM&amp;O/PRAE funding identified for DOI/BIA.</li> <li>• FHWA overall administration and oversight funded from other funds designated for FHWA</li> <li>• Priority to projects able to award in 90 days, included in STIP or TIP, completed in 3 years, and located in economically distressed areas</li> <li>• Any unobligated funds by 08/01/2010 go to States able to obligate amounts</li> <li>• Lake Tahoe MPO takedown will likely apply</li> <li>• Mandatory reporting requirements apply</li> </ul>	<ul style="list-style-type: none"> <li>• \$320 million</li> <li>• Seek to maximize job creation and economic benefit</li> <li>• Administered in accordance with Chapter 2 of Title 23.</li> <li>• No specific year identified for distribution</li> <li>• Up to 4% may be used by DOI/BIA for program management &amp; oversight and project related administrative expenses. Portion may be provided to FLH for oversight of FHWA Tribes</li> <li>• FHWA overall administration and oversight funded from other funds designated for FHWA</li> <li>• Priority to capital investments and to projects that can be completed within 2 years of enactment</li> <li>• 1 year after enactment, can redistribute unobligated funds within IRR Program</li> <li>• Lake Tahoe MPO takedown on FLHP does not apply</li> <li>• Mandatory reporting requirements apply</li> </ul>

## **Indian Reservation Roads (IRR) Program Q&As**

### **PLANNING**

#### **1. Is the Indian Reservation Roads Program included in the Economic Recovery Bill?**

**Answer 1:** The IRR Program is included in both H.R. 1 passed by the House of Representatives and in the current legislation under consideration by the Senate. Final inclusion and figures will not be known until the measure is passed by Congress and signed by the President.

#### **2. What should Tribes be doing to ensure their projects are "ready to go" as part of the Economic Recovery Program?**

**Answer 2:** In order for an IRR eligible project to advance using the recovery funds, the project must be included on an FHWA approved IRR Transportation Improvement Program (IRRTIP) or Statewide Transportation Improvement Program (STIP). Therefore, we strongly encourage Tribes to review their current approved IRRTIP and reach out either to their BIA Regional Office or FHWA/Federal Land's IRR Coordinator to begin work **as soon as possible** if an update is required in order to place a new project on the IRRTIP. Please note that transit related projects should be coordinated with the relevant transit operating agency as well. Tribes should begin public involvement and determine conformity and other planning process steps that are required for the proposed projects so as to have the projects ready as soon as possible after the proposed bill is signed. For purposes of fiscal constraint, it is reasonable to assume a doubling of the Tribe's FY08 tribal share allocation of IRR Program funds for FY09.

#### **3. Can economic recovery funds be used to replace IRR funds in the first year of the IRRTIP to allow that money to be used on other projects?**

**Answer 3:** Yes, provided that the project on which the funds are to be used has not yet been obligated. In addition, the recovery funds can be used for a project previously scheduled for FY09 IRR Program funding as long as those FY09 IRR Program funds are then used for another eligible transportation project/activities within FY09. Because we are in the final year of SAFETEA-LU, it is imperative that minimal IRR Program funds be left unobligated at the end of FY09.

#### **4. Can FHWA/BIA adopt "Emergency" rules with regard to environmental processing to save time?**

**Answer 4:** No, FHWA cannot adopt emergency procedures. The emergency action procedures referred to in 23 CFR 771.131 only apply to emergency circumstances addressed in the Council on Environmental Quality (CEQ) regulations 40 CFR 1506.11.

#### **5. What if FHWA or the States are challenged on the cumulative impacts of such a large investment package like this? Are we prepared to address this issue?**

**Answer 5:** The recovery package provides funding for delivering the "ready-to-go" projects. The package itself cannot be challenged under NEPA, as it will be an Act of Congress. Individual projects are subject to legal provisions and can be challenged like any other project that is outside of the recovery package. "Ready-to-go" may have been advanced through environmental processes already or do not require any major environmental review. For these reasons, they are unlikely to be challengeable solely because they are part of a large investment package.

**6. Are there any streamlining measures or waivers that can be granted when post-NEPA right-of-way acquisition has not been completed?**

**Answer 6:** Yes. The regulations at 23 CFR 635.309 allow for a fund authorization to be issued while the State DOT continues to acquire the necessary right-of-way post-NEPA. This can be applied to IRR Projects as well. In those cases where the right-of-way acquisition may not be finalized the bid documents should clearly specify those parcels that may not be available along with estimated dates for possession. BIA and Tribes should consider the actual construction start date to determine when the property will actually be needed. For those parcels that have occupants of residences, businesses, farms or non-profit organizations who have not moved from the right-of-way, the bid proposal must include provisions to protect them from disturbance or inconvenience.

**FUNDING**

**7. Will the economic recovery funds be 100% Federal share?**

**Answer 7:** We will not know the response to this question until the Congress acts. However, current legislation indicates that the funds will be up to 100% Federal share.

**8. Can Tribes use these funds for winter or other maintenance?**

**Answer 8:** Yes, in accordance with 25CFR170 and SAFETEA-LU, tribes may use up to 25% of the Recovery funds they receive for maintenance activities.

**9. If these are General Fund dollars, will Title 23 requirements apply?**

**Answer 9:** Unless the Economic Recovery bill specifies otherwise, the projects funded under the bill will be required to follow all normal Title 23 and IRR Program funding requirements.

**10. What will be the eligible activities for the Economic recovery funds?**

**Answer 10:** Unless the Economic Recovery bill specifies otherwise, the list of eligible activities will be the same as those for the IRR Program. These are shown in 25 CFR 170.

**11. What happens to Economic Recovery funds that have not been obligated by the due date?**

**Answer 11:** We will not know the response to this question until the legislation is signed by the President. However, both the House and Senate versions contain language depicting how and when the funds will be redistributed. The Senate version does include language that would allow the funds to be redistributed within the IRR Program to Tribes with remaining eligible and ready projects.

**12. Beyond advancing pure construction projects what other types of projects or operational considerations should Tribes be considering?**

**Answer 12:** There is an opportunity to include operational, safety, and/or maintenance projects. Maintenance is included because these funds will be administered per Chapter 2 of Title 23 and up to 25% of the funds that a Tribe receives can be used for maintenance purposes. Project examples include chip seal and dust suppression projects, traffic signal upgrades, traffic monitoring and weigh-in-motion equipment, dynamic message signs, road weather information systems, guardrail replacement, and traffic sign upgrades. Many operational investments require limited or no environmental review time, making them very attractive for quick deployment.

**13. How will economic recovery funds be distributed and redistributed?**

**Answer 13:** We will not know the answer to this until the Bill is signed by the President. At this time, the language included in both the House and Senate versions indicate that the funds will be administered in accordance with Chapter 2 of title 23. This means that the funds will be allocated by tribal share per the RNDP formula included in 25 CFR170. The House version indicates that FY08 numbers will be used. No specific year is referenced in the Senate version.

Exact procedures have not yet been developed for the redistribution of funds, but the Senate version specifically indicates that funds left unobligated 1 year after passage of the Act will be pulled back to FHWA and then redistributed to Tribes that have additional projects ready for award.

**Project Authorization and Contracting**

**14. What design elements or standards can be waived or streamlined?**

**Answer 14:** Unless the Economic Recovery bill specifies otherwise, the IRR projects funded under the bill will need to be developed and designed in accordance with 25 CFR170.

**Project Management and Oversight**

**15. Are there specific actions that the BIA and Tribes should be considering related to tracking these economic recovery/recovery funded projects in case of audit?**

**Answer 15:** In addition to the normal stewardship and oversight that is applied to the administration of projects, there will be very specific and detailed tracking requirements related to funding, projects, and employment on projects funded by the Economic recovery funds. The forms will be developed by FHWA/FLH for the IRR recovery funds and distributed to the Tribes and BIA after final passage of the legislation and determination of the required data and timeframes. It will be the responsibility of the Tribes and BIA to provide the required information to FHWA for inclusion in a report to Congress on these activities.