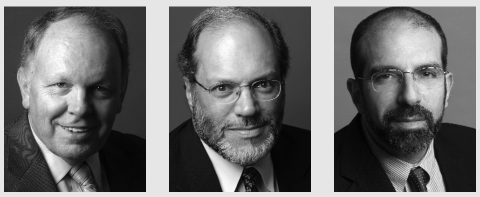
THE FEDERAL STIMULUS PACKAGE:
Simmering but ready to boil



Barry Hawkins, Tim Hollister & Kent Nevins
Shipman & Goodwin LLP

One might say that the $787 billion stimulus package known as the American Recovery and Reinvestment Act, gives new meaning to the term "information overload." The details are unending; even the shortest summaries coming out of Senator Dodd's office and private consulting groups are in the 40-to-80 page range.

But make sense of it we must, or at least the federal government is demanding that the money flow quickly—a relative term, of course—and recipients, custodians, overseers, and beneficiaries must promptly identify the programs that apply to them and figure out what the money may be used for, how to get it, and how quickly it needs to be spent.

This article provides a brief overview of what we in Connecticut know and do not know, as of mid-March, about the portions of the bill affecting public infrastructure, public works, energy, and education.

Things we know

- The federal Act itself states the categories and programs to which money is allocated, the total appropriation, and basic criteria, prohibitions, and time frames for expenditures.
- While this Act is most commonly referred to as a stimulus bill, the majority of funds will go to states for "stabilization," that is, dealing with deficits and preserving existing services and jobs.
- Some funds are block allocations to states, with state or local governments tasked with further distribution in accordance with the bill's criteria (Community Development Block Grants to municipalities, for example); some allocations are to federal agencies that are now or will soon be conducting a competitive application process; and some money will flow directly from a federal agency to local or regional entities, such as boards of education, with specific directions for spending.
- In some cases, allocations are to states based on population, while those involving a competitive process are based on qualification criteria, such as job creation or economic multiplier impacts.
- In Connecticut, for infrastructure, construction, and public works, Governor Rell has assembled a "shovel-ready assessment" working group with representatives from the General Assembly's four caucuses, the Connecticut Conference of Municipalities, the Council of Small Towns, the Construction and Industry Association, the Departments of Transportation, Public Works, Environmental Protection, and Labor, the Office of Policy and Management, and the State Office of Workforce Competitiveness. This group's charge is to prioritize a vast list of "shovel-ready projects"—which of course first requires consideration of what that phrase means.
- It appears that at least a few state agencies are hurriedly moving funds to qualify for stimulus package allocations—either de-funding projects previously funded to take advantage of new money, or moving funds from one project to another to make them shovel-ready.
- Several Connecticut agencies, such as the Department of Environmental Protection, have formed internal working groups to facilitate state use of stimulus money.
- In housing, the major funds are for homelessness prevention, tax credit programs, and lead hazard reduction. Education funding includes categorical grants serving disadvantaged students, and stabilization money that may be used for facility repair and modernization. Energy funds target weatherization of homes, green jobs, ENERGY STAR rebates, energy efficiency, tax credits and incentives for alternative energy, and electric grid improvement. Infrastructure money will go to highway and rail improvements and broadband technology.

SHIPMAN & GOODWIN LLP
COUNSELORS AT LAW

Problems and questions

At this time, some of the major concerns and questions are these:

- Will state agencies expedite their administrative and regulatory processes to expedite stimulus package expenditures? Will they compromise or waive existing requirements to do so?
- Some of the programs are poised to require or encourage spending that promotes "green jobs" that may not yet exist, or "green building" rating processes that have not yet occurred. Will stimulus spending stop or slow down or wait for development of labor skills or a third-party green building rating process?
- What about spending that is under the auspices of federal agencies whose leadership is not yet in place?
- To be shovel-ready, must a project or development also be "labor ready" and "finance ready"?
- If a project has been labeled shovel ready and submitted for funding, is there still an opportunity for project improvement, such as improved energy efficiency (substitution of renewables, photovoltaics, fuel cells, or performance-based contracting?)
- What mechanisms will the state and local governments, under mandates to spend and complete projects within a stated time frame, use to control quality? (How do we avoid another Interstate 84 storm drain debacle?)
- To what extent will competitive bidding processes be used or waived—or wired—while spending proceeds under a strict time frame?
- Will spending truly favor expenditures with economic multiplier and job creation impacts, or will politics dilute these goals?
- Will agencies allocating money or parties receiving money slide by legal requirements, using the "importance of the stimulus package" or the time frames for expenditure as justification?

The money pot is simmering. Will the heat be steady, or will it boil over and make a mess?