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www.BlankRome.com February 2009 No. 4

Maritime Interests Reap New Benefits in Stimulus Bill

New Development

On February 17, 2009, President Barack Obama signed into law H.R. 1, the American Recovery and Reinvestment Act (ARRA), a $787 billion stimulus package that contains several provisions of interest to the maritime community.

Maritime had a seat at the table but only reaped relatively modest benefits from the overall package.

These are summarized below.

Summary

ARRA includes the following new maritime funding and tax credit provisions:

- $150 million in new port security grants;
- $1.5 billion for supplemental discretionary grants for a national surface transportation program, including funding for port infrastructure;
- $27.5 billion for highway infrastructure, including the authority for states to fund port infrastructure projects, with a set-aside of $60 million for ferry boat capital expenditures and funds for on-the-job training;
- $100 million in supplemental grants to assist small shipyards;
- $4.6 billion for the Army Corps of Engineers for waterway dredging, restoration, and maintenance projects;
- $4 billion for capitalization grants for Clean Water Act State Revolving Funds and $2 billion for capitalization grants for Safe Drinking Water Act State Revolving Funds;
- $300 million in new grants for EPA's Diesel Emission Reduction Act (DERA) Program, including funding for cleaner marine engines;
- $600 million for construction and repair of NOAA facilities, including ships; and
- Extension of the Renewable Energy Production Tax Credit through 2013 for electricity produced from qualified marine renewable facilities, including wind, tides, and ocean thermal currents.

Discussion

Following is a fuller description of some of the significant new grant funding sources.

Port Security Grants

The $150 million in new funding for port security grants will supplement the $388.6 million in FY 2009 port security grant funds that the Department of Homeland Security (DHS) announced just last month. (See www.fema.gov.) We assume that DHS will issue this new round of funding in a manner consistent with the last announcement, i.e., on a risk-based methodology with the largest 90 ports being deemed to be at the highest risk and therefore allocated the largest share of the funds. However, in the case of the new round of funding, the cost share requirements have been waived.

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Supplementary Discretionary Grants for Surface Transportation Including Ports

The final Conference agreement appropriated $1.5 billion in discretionary competitive grant funding for all transportation modes, including ports. This represents a compromise between the $5.5 billion in the Senate bill and no funding for this program in the House bill. Port interests fought to maintain this provision which will allow ports to compete for these funds at the Department of Transportation (DOT) and not have to compete within the states for scarce highway funds, as the next item reflects. However, within DOT, applicants will have to compete for these funds across the modes, and demonstrate that their projects will have a significant impact on the Nation, a metropolitan area or region. The Secretary of Transportation is directed to distribute these funds on an equitable geographic basis and one that represents a balance between urban and rural communities.

The Secretary must publish criteria for the grant funding within 90 days, require applications to be submitted within 180 days following the publication of the criteria, and announce successful projects within one year from the date of enactment of H.R.1 (or February 17, 2010). Each grant is to be funded between $20 million and $300 million and the Federal share can be up to 100 percent of the funding for the project.

Highway Infrastructure Investment Program; Ferry Boat Capital Expenditures

The Federal Highway Administration (FHWA) received $27.5 billion in new funds for highway infrastructure which is to be allocated to States on the standard formula for distributing highway funds. Accordingly, the States will determine the allocation of these funds within their respective states. States may choose to distribute the funds to ports for infrastructure projects but we anticipate competition to be stiff with the large numbers of pending highway projects. Priority is to be given to projects that can be completed within three years and are located in economically distressed areas.

Within the $27.5 billion, $60 million is set aside for capital expenditures for ferry boat systems (in accordance with the provisions of 23 U.S.C. 147). We expect this program to be modeled on the current ferry boat discretionary program administered by FHWA. (See www.fhwa.dot.gov/discretionary/fbdinfo.cfm.) The funds will be funneled through the states on a competitive basis for projects that can be completed within two years.

Small Shipyard Grants

ARRA provides $100 million in supplemental grants for small shipyards as defined in existing law. This represents ten times the amount previously appropriated for small shipyard grants. Under authorizing legislation for the Small Shipyard Grant Program (section 3508 of Pub. L.110-417), a small shipyard is defined as a shipyard facility in one geographic location that does not have more than 1,200 employees. These funds remain available until September 20, 2010, and are not to be commingled with any existing funds. This program will be administered by the Maritime Administration (MARAD). MARAD has existing regulations that apply to this program and we assume they will operate consistent with these regulations. (For a full description of the current program, please see *Maritime Administration Launches Grant Program to Assist Small Shipyards* Maritime Developments Advisory, January 2008 (No. 3) by Brian A. Bannon and Tara L. Leiter on our web site.)

Army Corps of Engineers (ACOE)

The stimulus bill appropriated $4.6 billion to the ACOE for waterway management and restoration projects that can meet the following criteria: be obligated and/or executed quickly; result in high, immediate employment; have little schedule risk; will be executed by contract or direct hire of temporary labor; and will complete a project or will provide a useful service that does not require additional funding. In addition, a supplemental appropriation of $375 million was appropriated for projects on the Mississippi River and its tributaries.

Environmental Protection Agency (EPA)

The new law appropriates $4 billion to the states for capitalization grants for Clean Water Act State Revolving Funds and $2 billion in capitalization grants for Safe Drinking Water Act Revolving Funds. Priority is to be given to projects on State priority lists that are ready to proceed to construction within 12 months from date of enactment. Not less than 20 percent of each Revolving Fund is to be available for projects to address green infrastructure, water and/or energy efficiency, innovative water quality improvements, decentralized wastewater treatment, storm water runoff mitigation, and water conservation. The bill also waives the usual 20% match requirement.

EPA was also appropriated $300 million for new grants under the Diesel Emission Reduction Act (DERA) Program that Congress created last year. The funds are to be used on projects that spur job creation, while achieving measur-

able reductions in diesel emissions. The new law also eliminates the match requirement for the $300 million. Under current EPA guidance, ports are eligible to administer these grants and the funds can be used to reduce emissions from marine engines. Announcements for funding will be made on the EPA web site in March. (www.epa.gov/cleandiesel.)

Marine Renewable Energy Production Tax Credit

The tax provisions of H.R. 1 include a wide range of new and extended tax credits which are beyond the scope of this advisory. However, the bill does include a two-year extension of the production tax credit (one cent per kilowatt-hour for 2008) for electricity produced from qualifying marine and hydrokinetic renewable energy facilities, that have a capacity rating of at least 150 kilowatts, and are placed in service after October 2, 2008, and before January 1, 2012. A qualified facility is a facility that produces energy from waves, tides, and currents in oceans, estuaries, and tidal areas as well as from differentials in ocean temperature (ocean thermal energy conversion). Depending on their location (on the Outer Continental Shelf or inland), these facilities are regulated, respectively, by Minerals Management Service or the Federal Energy Regulatory Commission.

Conclusions and Recommendations

Ports, small shipyards, ship owners and operators, and ferry boat operators, among others, stand to benefit from the new funding sources. However, competition will be stiff and it behooves all interested parties to read the law and applicable regulations closely and begin to put together their applications as quickly as possible. For those funds funneled to the states, applicants are encouraged to work with their state departments of transportation and other relevant state offices.

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