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PUBLIC WORKS EMPLOYMENT ACT OF 1976

P.L. 94-369
(Enacted July 22, 1976)

INTRODUCTION

This special issue of Washington Report describes in some detail the three titles of the public works/countercyclical bill that was enacted on July 22 through congressional veto override. After an explanation of each provision--public works, countercyclical and water pollution construction--there is a "Q and A" section on implementation issues to help city officials get ready for using the funds.

Since no regulations have been issued for any of the provisions, and since the federal agencies are reluctant to give guidance at this point, the "Q and A" sections are speculative in nature. As these guesses prove right or wrong, NLC will inform the membership immediately, and follow-up "Q and A's" will be issued regularly.

We need your help to identify other areas of concern. If you have questions, please give us a call at (202) 293-7380. Any staff member in NLC's Office of Federal Relations (OFR) will take your questions, attempt to find an answer, and provide that answer to you and to the entire membership.

OFR staff members assigned to deal with the federal agencies are Julie Bingham (EDA-public works), Tom Cooper (EPA-water pollution) and Tim Honey (Treasury-countercyclical).
Title I - Public Works

Title I authorizes $2.0 billion through September 30, 1977 in grants to state and local government for construction (including demolition and site preparation) renovation, repair, or other improvement of local public works projects. The Economic Development Administration (EDA) will administer this program. The categories of projects are:

1. Projects for which funding is authorized under other federal laws (e.g., waste water treatment plants), but which have not received federal assistance. Federal share: 100 percent of project costs.

2. Projects authorized under other federal laws, for which federal assistance is immediately available (e.g., through EPA in the case of waste water treatment plants), but which have not been started because of lack of funding for the non-federal share. Title I funds may be granted to cover the entire non-federal share.

3. Projects authorized under state or local law that require a state or local share. Title I funds may be granted to cover either the state or local share (not both) in cases where funds other than the state or local share are immediately available, and where construction has not been started.

4. Other public works projects. Federal share: 100 percent of project costs.

Comment: No one of these categories is emphasized in the Act over the others. In other words, the Congress intends that all public works projects meeting specified requirements, whether or not they are connected with current federal programs, are eligible for funding. Eligible projects include but are not limited to: municipal offices, court houses, libraries, schools, police and fire stations, recreation facilities, water and sewage treatment facilities, water and sewer lines, streets and roads (including curbs), sidewalks, lighting, recreational facilities, convention centers, civic centers, museums, and health, and education, and social service facilities. The only projects specifically excluded are ones involving work on natural water courses or canals.

Planning Funds

Grants are also available for the completion of plans, specifications and estimates (PS&E) for public works projects "where either architectural design or preliminary engineering or related planning has already begun" and where additional planning is needed before construction can begin.

The wording of the Act here suggests an application for planning funds separate from the construction grant itself. How EDA will administer this provision is not now known, but a likely inter-
pretation is the granting of funds to finish the PS&E, with a subsequent application for constructing or repairing the facility.

Eligibility Factors and Limitations

- No state may receive less than one-half percent or more than 12-1/2 percent of funds appropriated under the Act.

- States, cities, towns, parishes, or other political subdivisions of a state are eligible, together with Indian tribes. "Other political subdivisions" are defined as special districts such as school districts, and "regional authorities composed of local governments that are established or authorized by State law." Priority in funding is to go to projects of local governments--including "political subdivisions"--as opposed to the states.

- Seventy percent of the funds must go to states or local governments with unemployment levels over the national rate (7.5 percent currently) for the three most recent consecutive months for which unemployment data is available.

- The remaining funds: priority goes to states or localities with unemployment between 6-1/2 percent and the national rate.

- Priority will go to projects that can have labor on site within 90 days of project approval.

- "Pockets of unemployment" are eligible. In other words, a city with low city-wide unemployment but with a neighborhood of high unemployment can still receive funds, as long as the project benefits or provides employment for the unemployed of the neighborhood.

- No funds may be used to acquire interest in real property or for maintenance of projects constructed with funds provided under this law.

- Davis-Bacon Act is applicable to all grants under the title.

- Prohibits sex discrimination.

- Applicants "should" relate their requests to existing approved local or regional community development plans "to avoid harmful or costly inconsistencies or contradictions." Where feasible, requests should advance long-range plans.

(Over)
Federal Administration

- EDA must publish regulations for the program within 30 days of enactment, and must approve or disapprove each project application within 60 days of its submittal.

- Unemployment data may originate at federal, state or local levels, although EDA must determine its accuracy. Federal assistance is authorized to help states and localities calculate their rates to assure validity. At the request of a local government applicant, unemployment in adjoining areas from which the labor force for the project may be drawn, must be taken into account.

Public Works Questions and Answers

Q. When is the earliest an application can be sent to EDA?

A. EDA has until late August to publish regulations and, presumably, applications could be received then, but the start of the application process will depend on when an appropriations bill is passed and when EDA publishes final regulations. EDA may not receive applications until an appropriations bill is passed, which may be in late August or perhaps even sometime in September. Also, the time schedule for publication of regulations does not leave time for proposed rules or for public review and comment on them. EDA might decide to propose rules in late August and create an additional period for public comment.

The White House could decide to delay the program as a matter of policy through vetoing the appropriations bill and/or trying to impound the money (recission or deferral). This would delay the availability of funds, although they would eventually go out. We doubt that the Administration will take this course, but it is a possibility.

Q. Will regulations be available for local officials to see prior to their publication in the Federal Register?

A. We don't know. The Feds have a very strict policy about not letting regulations out before all the internal reviews and before Office of Management and Budget approval. However, much pressure is being put on EDA to make its draft regulations available now. As soon as they are available, NLC will send them to all member cities and state municipal leagues. In the meantime, NLC staff will get as many answers on implementation from EDA as possible and pass on the information to cities.

Q. Will EDA adhere to the 60-day time limit on approving or disapproving applications?
A. The law requires the 60-day limit. But it is difficult to see how EDA will process the thousands of applications that may come in within a short time period. EDA may have to work out a pre-application process to screen projects initially, then let the 60-day clock start when a formal application is submitted. Or EDA might obligate funds in two or more stages, first funding planning grants, fast start-up projects (e.g., rehab), and construction in warm weather areas; and reserving funds for later obligation to the construction phase of earlier planning grantees and to construction in areas that won't be able to break ground until the spring of 1977. NLC is considering the various alternatives and will make recommendations to EDA based on the advice we expect to receive from cities.

Q. Will A-95 clearinghouse review be required?

A. The Law does not require this, and the time limits preclude formal use of the A-95 process, in our view. Exactly what, if any, regional clearances will be required is unknown. City officials should take the initiative with appropriate regional bodies on projects with regional significance in order to prepare for any eventuality.

Q. What role will EDA Regional Offices play in approving applications?

A. Probably a strong one. The expected number of applications will force EDA to decentralize the decision-making process, and use regional staff to screen applications and make recommendations for project approval to Washington. Unless EDA provides strong policy direction and/or training for its regional personnel—which NLC will recommend—regional staff priorities will be important (e.g., one EDA regional official said he would fund city halls but not courthouses).

City officials should "get to know" the EDA regional staff, remembering that no regulations have yet been issued and regional officials at this point will not go on the record. If they are inundated with phone calls, they are likely to go completely underground. We suggest that questions on policy be funneled through the state municipal leagues.

Q. Is maintenance on structures not constructed with the public works funds allowable?

A. The law only says that no maintenance on structures built with funds under this program will be allowed. "Repair, renovation and improvement" on existing structures are allowable, but it is not known yet where the line will be between repair and maintenance.

Q. Can a city sub-contract to a construction firm?

(Over)
A. Yes. One of the major purposes of the legislation is to provide work for unemployed members of the construction unions.

Q. Will EDA allocate target amounts to the EDA regions?
A. Probably. The law instructs EDA to give equal attention to various sections of the country, and regional allocation is the only sure way to accomplish this. These allocations will probably be based on relative unemployment and population.

Q. Will EDA make any arrangements to waive the 90-day on-site labor requirement, which looks like it may discriminate against areas of the country that will soon be into cold weather and unable to initiate construction?
A. We don't have an answer to this yet, but we think that other processes EDA may choose (e.g., staggering the application process or allocating funds by region) may solve the problem.

"Pockets of Unemployment"

Q. How will a "pocket of unemployment" be defined? Will cities eligible under this definition be treated on a par with cities with high overall unemployment?
A. We only can guess at this point on the definition. There will probably be no boundary limitations (no minimum size) for an eligible pocket. Under EDA's regular program, one of the following conditions must be met for a "special impact" area--or pocket--to qualify for funding: (1) a large concentration of low-income persons (including urban or rural special impact areas identified by the Office of Economic Opportunity (OEO) and areas certified by OEO as having a majority of families living in poverty); (2) rural areas with substantial outmigration (an outmigration rate of 25 percent from 1960-70 as certified by the Bureau of Census); (3) an unemployment rate of 8.5 percent during the most recent quarter for which data is available; or (4) an actual or threatened abrupt rise of unemployment due to the closing or curtailment of a major source of employment. We do not know if EDA will use the same criteria, but that is a likely possibility.

The Congress did not intend for massive amounts of public works funds to go to areas with low overall unemployment, despite the fact that the law makes these areas eligible for funding. EDA will limit funding for these areas in some way, either by making eligibility criteria very strict or by limiting the amount of funds that can be granted to these areas. One possibility is to preserve the 70
percent priority funds for governments with unemployment over the national rate, and take out of the remaining 30 percent some portion for pockets of unemployment applications. However it is done, competition for these "pocket" funds will be very stiff.

Q. What kind of "pocket" projects will EDA be looking for?

A. The law talks about projects that provide employment for the unemployed in the pocket, or projects that directly benefit the unemployed in the pocket. This suggests a labor intensive requirement for these kinds of projects that will not be required for other projects. Our assumption is that the "benefit" of the pocket's unemployed will have to be pretty direct in order for a project to get funding, such as the construction of a skills center in the pocket or a project that directly employs a significant number of the pocket's unemployed. Again, we are guessing--EDA has not indicated anything on this subject.

Unemployment Data and Eligibility Questions

Q. What procedure will EDA use to satisfy the requirement that 70 percent of all funds go to jurisdictions with unemployment over the national rate (7.5 percent)?

A. Conceivably, EDA might process and approve applications in this category before turning attention to applications from cities with lower unemployment. However, since the law clearly reserves 30 percent of the funds for areas with unemployment below 7.5 percent, EDA will probably review applications in both categories simultaneously. The further assumption can be made that the higher the unemployment in either category, the better likelihood of funding.

Q. On what quarter will EDA base unemployment rate determinations?

A. The law reads "the three most recent consecutive months". but we can safely add "for which unemployment data is available the second or third quarter after it is gathered. In other words, if a city applies for a grant in November of this year, the quarter used to determine the city's unemployment rate will be the first or second quarter of this year.

Q. What about unemployment rate determinations for the smaller local governments?

A. The feds gather unemployment data for CETA prime sponsor and program agent cities cooperatively with the states. Many states at the same time gather data for other localities, and it is expected that this state data will form the basis for certification by EDA. Although the law says that rates can be furnished by local governments, it is
unlikely that EDA will simply take a locality's word on what the individual city rate is. County data may be accepted as a basis for city applications, but if a state certifies an unemployment rate the city should be in good shape. City officials should be pressuring the state to provide such data.

Q. Can an applicant pull in unemployment rates in neighboring jurisdictions as the basis for funding consideration?

A. The law instructs EDA to "consider" the unemployment rates of adjoining areas if the applicant requests it and if labor will be drawn from those neighboring jurisdictions.

Q. Is general unemployment the only criteria EDA will look at to determine eligibility?

A. No. The law instructs EDA to consider the severity and duration of unemployment in the proposed project area; the income levels and extent of underemployment in the proposed project area; and the extent of unemployment or underemployment in the construction and construction-related industries in the proposed project area. The only criteria we are sure EDA will stress is the severity of unemployment. What emphasis will be put on the others is unknown.

Eligible Projects and Possible EDA Priorities

Q. What kind of public works projects will EDA give priority to?

A. The law, which makes virtually any public works project eligible for funding, instructs EDA to consider the following factors: (a) the extent to which the project will contribute to the reduction of employment; (b) the relation of the project to existing local community or regional development plans; (c) the ability of the applicant to have labor on-site within 90 days of project approval; and (d) whether the project will promote longer range plans and programs.

Given EDA's emphasis on longterm economic development in its regular program, we fully expect that projects having a long term ED focus will be favored, if not in the regulations, then informally by EDA personnel. Cities--particularly ones in the lower categories of unemployment--should strongly consider these kinds of projects over ones that would contribute little to the longterm economic base of the community.
There is some speculation in Washington that the Administration might attempt to impose a labor intensive requirement in this program (i.e., fund only those projects that employ the largest number of persons per dollar spent). The Congressional intent is so clearly in favor of major public works projects, employing highly skilled labor and having large price tags, that we see little need or room for EDA to emphasize labor intensity to the detriment of other projects. However, a city preparing for application should determine the labor intensity factor of various projects being considered so that this information can be given to EDA upon request.

Q. What other factors will make a city competitive in the search for funding?

A. Our judgement, supported by a few EDA field officials, is that projects completely ready to go will have the best chance of funding. This means completion of all plans, specifications and estimates and the completion of environmental reviews and other regular clearances required by the state. It is even possible that EDA will refuse to accept applications not in this stage of readiness.

EDA might reduce this need for readiness through a two- or three-staged process of obligation that gives EDA more time to process applications and cities more time to finalize their project plans.

Other Questions

Q. Is bidding time on a project included in the 90-day construction start-up time schedule?

A. We believe that the nature of local bidding procedures will force EDA to be flexible about the 90-day start-up requirement. NLC will advocate such flexibility. But city officials should prepare for a tight process here.
Title II - Antirecessionary Grants

The title authorizes a program of emergency support grants to state and local governments to coordinate state and local budget related actions with federal economic recovery efforts. Funds are to be used to maintain basic services and not for the acquisition of supplies and materials or for construction unless this is necessary to maintain basic services.

Funds Authorized

For each of five quarters, beginning July 1, 1976, the title authorizes $125 million, plus $62.5 million for each one-half percentage point over six percent national unemployment. Based on the current unemployment rate (7.5 percent) an estimate for the total 5-quarter period is $1.25 billion (which is the maximum authorized). No funds would be authorized for any calendar quarter during which the national unemployment rate averaged under six percent or for any quarter in which the last month's unemployment rate was below six percent.

Allocation

One-third for states, two-thirds for general purpose local governments (that perform "substantial" governmental functions). In order to get funds, a state or local government must have both of the following conditions:

(a) An average unemployment rate of at least 4.5 percent for the quarter that ended three months before the quarter in which payment is to be made.

(b) An unemployment rate exceeding 4.5 percent for the last month of the quarter that ended three months before the quarter in which payment is to be made.

In other words, if a city expects a countercyclical payment during the third quarter of 1976, starting July 1 its average unemployment rate for the first quarter of 1976 must be at least 4.5 percent and its March unemployment rate must exceed 4.5 percent.

States: Formula based on excess unemployment rate (current unemployment rate minus 4-1/2 percent) and state revenue sharing payment for the year beginning July 1, 1975.

Local Governments: Local governments for which the Labor Department determines unemployment rates under Titles II or VI of CETA will get funds directly from Treasury under a formula based on local excess unemployment rate (rate minus 4-1/2 percent) and local revenue sharing payment for the year starting July 1, 1975.

All other (balance of state) local governments will receive funds by one of two methods:
(1) A balance of state allocation plan that is submitted by the state under Treasury rules; approved by the Treasury; consistent with the allocation formula for the larger (CETA) localities; developed in consultation with local officials in the state; and approved by the state legislature (or governor, if the legislature is not in session).

(2) Direct allocation by the Treasury under a formula based on (a) the individual jurisdiction's revenue sharing payment for the year beginning July 1, 1975, and (b) the balance of state average excess unemployment rate.

NOTE: The Secretary of Treasury does have the discretionary authority to accept and certify unemployment data from smaller units of government. In all likelihood this small area data would have to be collected by the state as part of its federal-state data collection effort. No allocations of less than $100 per quarter will be made per quarter.

Assurance Form Requirement for Eligibility

An assurance form will be required from each state or local government under rules developed by the Treasury Department. The form must include the following:

- Assurance that the funds will be used for the maintenance of public employment and basic service levels;
- Assurance that proper fiscal control and accounting procedures will be used for funds granted under this title;
- Assurance that "reasonable reports" will be provided to the Secretary of the Treasury containing such information as the Secretary may deem necessary. Such reports must be published in a newspaper of general circulation.
- Assurance that non-discrimination and Davis-Bacon requirements will be adhered to.
- Assurance that any tax increases or decreases and substantial reductions in public employment or services will be reported to the Treasury Department within six months.
- Assurance that the funds will be spent within six months.

Comment: Local officials should keep in mind that fluctuations in the total amount of funds and individual government entitlements are likely over the 5-quarter period as a result of changes in national, state and local unemployment rates. The $1.25 billion estimate, for example, is based on a national rate of at least 7 percent for the 5-quarter period beginning July 1, 1976. If the national rate falls below 7 percent, the total amount available for distribution per quarter will change from $250 million to $187.5 million.

(Over)
Cities should not expect to begin receiving countercyclical payments immediately. Although payments are authorized starting July 1, 1976, at least two hurdles must be overcome before funds can begin to flow:

Administration earlier this year opposed the authorization of any additional wastewater treatment construction grant funds for FY 77. However, EPA feels it will enable states to fund projects further down on their priority lists and thus may generate additional applications in the 33 states receiving monies under this title.

(a) the Congress must pass an appropriations bill, and

(b) the Treasury Department—probably the Office of Revenue Sharing—will have to gear up for administration of the program. Treasury has 90 days to develop regulations for the program.

Countercyclical Questions and Answers

Q. Within the Treasury Department, who will be responsible for administering the countercyclical assistance?

A. All indications are that the Office of Revenue Sharing will be given administrative responsibilities.

Q. When will the preliminary regulations be published?

A. Treasury is likely to use the entire 90 days authorized under the Act for preparation of the regulations.

Q. When will the first checks be mailed?

A. October. This payment would be for the first two quarters.

Q. How does a community become eligible for assistance?

A. Assuming that the unemployment criteria are met, a local government will be eligible for funds provided it returns to the Treasury Department an assurance form. This form is likely to be mailed to potential recipients in September.

Q. How many governments will be eligible?

A. The Treasury Department estimates that over 25,000 governments may be eligible.

Q. What unemployment data is collected by the federal government and can be used under this Act?

A. The Labor Department should be able to generate unemployment data for all local governments over 50,000. (CETA prime sponsors and program agents).
Q. Given the apparent lack of unemployment data for smaller governments, what should be done by smaller units to obtain an equitable allocation?

A. Such cities should immediately contact the Governor's Office to find out if the state collects unemployment data for local governments below 50,000. The Labor Department indicates that many states collect small area unemployment data, but that it is seldom sent to Washington. If the data exists two options are available:

(1) The state has the authority to develop its own formula. However, this alternative formula must be submitted to the Treasury Department by August 20. (This 30-day period may be extended if Treasury believes it has the discretionary authority to lengthen the time for development of alternative state formulas.)

(2) The state may forward its small area unemployment data to the Secretary of Labor for "certification." If certified, then this data would be used by the Treasury Department for the distribution of countercyclical assistance.

Q. If additional unemployment data is not generated for cities below 50,000, how will the allocations be made?

A. Cities below 50,000 will get funds based not on their own unemployment rates--however excessive--but rather on an average balance of state rate. The potential inequity in this situation is great. Once the state balance is established cities below 50,000 will receive an allocation proportional to their revenue sharing payments, regardless of their individual unemployment rates.
Title III - Additional Water Pollution Funds

An additional $700 million is added to wastewater treatment construction authorizations. Eligible states are those (see below) that would have received a greater allotment than they actually did had the so-called "Talmadge-Nunn" formula (based one-half on 1974 EPA needs survey and one-half on 1990 population) been used when EPA allotted $9 billion in construction funds in February, 1975.

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Water Pollution Questions and Answers

Q. Do the on-site labor, project completion, and other requirements apply to Title III?

A. No. This portion of the Public Works Employment Act bears almost no relationship to the intent of the rest of the law. The Public Works Employment Act was enacted as an antirecessionary measure. The Title III Water Pollution component—also known as the Talmadge-Nunn provision—was attached as a purely political maneuver to deal with what some states felt was an inequitable distribution of funds under the Water Pollution Control Act Amendments of 1972.

It is important for local officials to know that water pollution funds authorized under the Public Works Employment Act will have to be used in exactly the same administratively cumbersome fashion as those currently administered by the Environmental Protection Agency under the Water Pollution Control Act Amendments of 1972.

Q. When will the Title III money be allotted to the 33 recipient states?
A. The level of funding, as is the case with other titles in the law, will be dependent on forthcoming appropriations measures. EPA has indicated that it will make allotments to the states immediately after an appropriation becomes law. This money will remain available until expended.

Q. What will be the impact on localities of increasing the level of funding for wastewater construction grants?

A. Many Washington observers feel that this additional money will not be spent any more rapidly than the previous $18 billion authorization is currently being used. While many states are close to using up their previous allotment of water funds, very few are overloaded with adequately prepared local construction grant applications. It was for this reason that the Administration earlier this year opposed the authorization of any additional wastewater treatment construction grant funds for FY 77. However, EPA feels it will enable states to fund projects further down on their priority lists and thus may generate additional applications in the 33 states receiving monies under this title.