

Public Works and Economic Development Improvements Act of 2010
Statement of Purpose and Need
and
Section-by-Section Analysis

The Public Works and Economic Development Improvements Act of 2010 proposes to extend the authorization for appropriations under the Public Works and Economic Development Act (PWEDA or the Act) through fiscal year 2015. Under current law, the authorization for the Economic Development Administration (EDA) expired September 30, 2008. In addition, the legislative proposal would make a number of changes to enhance the Act's reach to address the need for innovation-led economic development, to increase grantee flexibility, and to make a number of administrative improvements.

▪ **Collaborative Regional Innovation Strategies.**

Research has shown that the most effective way to create sustainable economic growth in the Nation's distressed regions is to foster innovation.¹ As President Obama said on August 5, 2009, in his *Remarks on the National Economy in Wakarusa, Indiana*,

Now, history should be our guide. The United States led the world's economies in the 20th century because we led the world in innovation. Today, the competition is keener, the challenge is tougher, and that's why innovation is more important than ever. That's the key to good, new jobs in the 21st century. That's how we will ensure a high quality of life for this generation and future generations. With these investments, we're planting the seeds of progress for our country and good-paying, private sector jobs for the American people.

The President's Budget request for EDA for fiscal year 2011 continues the support begun in the 2010 Budget to build on EDA's work in fostering collaborative cluster-based regional innovation. While PWEDA currently provides wide latitude to make innovation-related investments, in light of the importance of innovation to global competitiveness, EDA recommends recognizing its importance in its programmatic authorities by:

- Adding appropriate text to the findings and declarations in section 2 of the Act to note that sustainable economic growth depends on regional innovation strategies which target investments in essential infrastructure that fosters innovation, entrepreneurship and competition in the global marketplace. EDA also proposes adding similar text to section 101, which directs the Secretary to establish economic development partnerships with appropriate entities.

¹ See Sallet, Paisley, and Masterman, *The Geography of Innovation*, September, 2009, available at: <http://www.scienceprogress.org/2009/09/the-geography-of-innovation/>. See also, Mills, Reynolds, & Reamer, *Clusters And Competitiveness: A New Federal Role For Stimulating Regional Economies*, Brookings, April 2008 (available at: http://www.brookings.edu/~media/Files/rc/reports/2008/04_competitiveness_reamer/Clusters%20Report.pdf).

- Specifying that planning grants under section 203 must support a planning process that looks at ways to foster innovation and entrepreneurship and regional collaboration.
 - Authorizing an increase in the size of planning grants to encourage planning on a broader regional scale.
 - Revising the technical assistance authority under section 207 to note expressly that the Secretary may conduct studies evaluating regional innovation clusters.
- **Broadening the Public Works and Other Program Authorities to Address Essential Infrastructure Needs of the 21st Century.**

Recent research has confirmed that EDA's investments in business incubators and science and research parks show the highest correlation with job growth.² Accordingly, EDA recommends enhancing its program authorities for these kinds of investments, both relating to construction of these facilities, and to the provision of technical assistance and financial support to help them thrive. These amendments include:

- Broadening permitted uses of public works funds under section 201 of the Act to support soft infrastructure to ensure sustainability of existing and new business incubators and science parks and other innovation-related facilities. Under current law, communities find that EDA's Economic Adjustment program offers the most flexibility, in that grants can be used not only to support infrastructure development, but also for related technical assistance and revolving loan funds. Enhancing the public works authority in this manner would not change the fundamental nature of the program: it would still remain predominantly a construction program. But it would give communities more flexibility in connection with this program which traditionally has received the largest annual appropriations. It would also alleviate the pressure on the relatively scarce funding for economic adjustment.³
- Adding a new section 208 to the Act to provide express program authority to support both the development of plans for science and research parks and the financing for their construction.

² See U.S. Department of Commerce, Economic Development Administration, *Construction Grants Program Impact Assessment Report Volume I – Report on Investigation and Results*, September 30, 2008, pp. 66-67, prepared under an EDA grant by Grant Thornton, in partnership with ASR Analytics, available at: <http://www.eda.gov/PDF/EDAConsImpactStudyVolume1FINAL.pdf>

³ In fiscal year 2009, EDA received Economic Development Assistance funding requests totaling \$422,763,129. Year-to-date request for fiscal year 2010 funding (as of March 4, 2010) exceeds \$222,000,000.

- **Sustainable Economic Development.**

Since fiscal year 2008, EDA has received funding for the Global Climate Change Mitigation Incentive Fund to support projects that enhance environment quality. EDA believes that this program helps ensure that recipients of assistance focus on key environmental goals and should be a formal part of the organic statute. Accordingly, EDA proposes to broaden current section 218 of the Act regarding support for “brightfield” investments into a general statement regarding the need for environmentally sustainable economic development practices. This new authority will establish an overarching framework for EDA investments, focusing on economic development practices that enhance environmental quality by limiting the Nation’s dependence on non-renewable fuels, enhancing energy efficiency, curbing the emissions of greenhouse gases, and otherwise protecting natural systems. EDA also proposes amending the findings and declarations in section 2 of the Act to emphasize the need for sustainability.

- **Amendments Related to Increased Recipient Flexibility over Project Assets.**

During the last two decades, EDA has funded more than 4,700 construction projects, valued in excess of \$5.5 billion. In addition, EDA has funded 584 Revolving Loan Fund (RLF) projects during three decades of the RLF program. EDA retains fiduciary responsibilities regarding the project property supported by EDA investment assistance. For some of the older public works investments, the estimated useful life of the project is as much as 40 years. Revolving loan funds exist in theoretic perpetuity as long as borrowers repay the loans and the RLF operator makes new loans from the proceeds of those repayments.

EDA seeks to increase recipient flexibility, control and autonomy to deal with project assets in light of current economic development needs, while at the same time streamlining EDA’s management of the portfolio of approved projects. One way to deal with the RLF program is to give current operators an incentive to put a time limit on the perpetual nature of the RLF operations in a manner that is consistent with other financial assistance projects under the Act which have finite project periods. Another way to address property issues which arise from time-to-time in connection with EDA investments in projects involving construction activities is to increase a recipient’s flexibility to “buy-out” the Government’s beneficial interest in a grant-assisted project. The proposal provides the Secretary with explicit authority in connection with EDA’s construction project investments to establish a reasonable time period for the expected “economic development” life of investment assistance. EDA would be authorized to extinguish the reversionary Federal interest in project property at the end of the designated period, provided that a recipient maintains its effort to carry out the economic development purposes of the project to the end of that period. Under current requirements, if a recipient determines that a piece of property used in connection with EDA financial assistance could be better put to a different use in light of current community needs, the recipient must first repay EDA in full for the fair market value of the EDA investment. Full repayment is required even if there is only a small portion of time remaining on the original estimated useful life of the project (for example, two years

remaining on an estimated useful life of 20 years). This legislative proposal would increase recipient flexibility in such situations by allowing EDA to approve a recipient's request to convert the use of the project to a different purpose for the remaining two years of the estimated useful life, provided that such use is also consistent with the purposes of the Act. In the alternative, the proposal would allow the recipient to pay the "amortized" value of the remaining useful life to extinguish the remaining Federal interest. For example, if the estimated useful life of a structure is 20 years and a recipient seeks to extinguish the Federal interest in the property in year 15 to allow the property to be used in a way not consistent with the intent of the original investment, this new authority would enable EDA to value its interest in light of the age of its investment—if five years remain on a 20-year useful life, the "amortized" value of the EDA interest would be 25%. The proposal would authorize use of this authority only after 10 years of successful operation in order to ensure that project property is devoted to the job-creating purposes of the investment (EDA measures program performance at the third, sixth and ninth anniversary of a project).

▪ **Other Administrative Amendments.**

The proposal also makes a number of technical amendments to improve administration of the Act. These include providing an express statutory basis in section 101 of the Act for the Excellence in Economic Development Assistance Awards Program. It also includes providing additional discretion to the Secretary to allow the waiver of the local match under section 204 to encourage recipients to address the need to provide incentives to attract manufacturing and information technology jobs from overseas. Other technical amendments clarify authorities relating to defense economic adjustment (section 209(c) and section 604(c)) and use of certain disaster funds (section 702).

Sectional Analysis

Section 1. Short Title. This section specifies that the Act may be cited as the "Public Works and Economic Development Improvements Act of 2010."

Section 2. Revisions to Findings and Declarations. This section revises the findings and declarations in section 2 of the Act to address –

- sustainable economic development practices (paragraphs (a)(1), (5) and (8) and (b)(4));
- problems caused by increasing international competition in the global marketplace (paragraph (a)(2));
- problems caused by defense facility closures and realignment and the extraordinary depletion of natural resources (paragraph (a)(2));
- problems caused by inefficient use of land and other resources (paragraph (a)(3)); and

- regional innovation strategies that build upon communities' unique competitive advantages to foster innovation and entrepreneurship (paragraphs (a)(4) and (b)(3)).

In addition, this section adds a new declaration to subsection (b) of section 2 to establish that the goal of EDA's research agenda should be to develop leading-edge economic development theoretic and practical guidance to help the Nation's distressed communities map their assets.

The proposal also amends the definition of "regional commissions" in section 3 of the Act to include the recently authorized Northern Border Regional Commission, the Southeast Crescent Regional Commission, and the Southwest Border Regional Commission.

Section 3. Economic Development Partnership Authority. This section amends section 101 of the Act to emphasize that EDA should work with its State and local governmental partners. It also amends section 102 to emphasize that EDA should cooperate with other partners, including the Department of Labor, to develop regional economic development strategies that sustain and promote innovation and entrepreneurship that is critical to economic competitiveness.

In addition, this section adds a new subsection (e) under section 101 to provide express authority for the conduct of EDA's Excellence in Economic Development Awards Program that recognizes innovative economic development strategies of national significance. Eligible nominees for the awards include nonprofit organizations, local, state, and regional governments, and universities and colleges. In addition, new subsection (e) of section 101 would enable EDA to use a *de minimis* amount (up to \$5,000) per fiscal year to purchase suitable memorabilia to commemorate the organizations' achievements.

Section 4. Additional Support for Enterprise Development Organizations within the Public Works Program. This section broadens the activities that can be supported under section 201 of the Act to encompass technical assistance, business development assistance and other forms of assistance. These changes enable the recipients of public works grants to address other pressing needs in addition to financing the design and construction of facilities. While EDA believes that these enhancements to the program authority are needed, we would also note that EDA will continue to maintain the construction focus to the program in the great majority of its investments. With this flexibility, EDA will be able to better assist in the development of enterprise development organizations which are proving to be a key catalyst in innovation-led economic development. EDA believes that innovation-led economic development enables a community to "grow its own" entrepreneurial activity, thereby creating new jobs, rather than potentially competing with sister communities to relocate jobs from another State. Research has shown the importance of the rapid growth experienced by the "gazelles" to overall job growth, and it is critical for EDA to find additional ways to support organizations that can help find and nurture their growth.

Section 5. Fostering Innovation and Collaboration in the Planning Partnership Program. This section amends section 203 of the Act, which supports the EDA Partnership Planning program. Subsection (a) of this section amends paragraph (b)(4) to emphasize the importance of imbedding innovation and entrepreneurship in EDA's Comprehensive Economic Development Strategy planning process. It also adds a new paragraph (5) to emphasize the importance of regional collaboration among local jurisdictions and organizations. Paragraph (d)(4) is amended to add additional consideration of sustainable development practices in connection with support of State-wide comprehensive planning processes.

Subsection (b) of this section adds new subsections (e) and (f) to section 203. New subsection (e) authorizes the Secretary to provide additional assistance to highly distressed regions that are eligible for a grant rate of 80 percent or higher. A new subsection (f) is added to authorize EDA to provide additional planning assistance to encourage planning collaboration on a broader regional scale. Some planning organizations may represent a fairly confined area, and this new authority will enable EDA to support efforts to increase the regional collaboration which today's economy demands. Many planning organizations, especially those representing the most distressed regions, are short on resources and do not have the ability to expand their efforts. Subsection (b) of section 6 adds a new paragraph (c)(3)(B) to section 204, which conforms to the changes to section 203 regarding increased assistance for planning organizations to support planning on a broader regional scale to build on competitive advantages available beyond the boundaries of a single district. This new authority would support a decision by two or more districts to combine and still enable them to receive more support than would otherwise be allocated to a single district.

Section 6. Non-Federal Matching Share Requirements. This section provides additional discretion regarding the required local share for EDA grant assistance. Subsection (a) of this section of the bill amends paragraph (b)(2) of section 204 of the Act to provide guidance to the Secretary regarding the determination of exhaustion of effective borrowing and taxing capacity. Section 204 allows EDA to waive the matching share when the Secretary determines a community has exhausted its effective borrowing or taxing capacity. Some communities are reluctant to request the relief because of the fear that an admission that it has exhausted that capacity could result in a lower bond rating, thereby increasing the cost of its economic development efforts. This new authority would enable the Secretary to look at information relating to direct tax revenue declines as a proxy for such exhaustion.

Section 7. Innovation in the Technical Assistance Program. This section amends section 207 of the Act to provide explicit authority for the Secretary to conduct studies related to regional innovation clusters and best practices in support of entrepreneurial infrastructures. This section also amends section 207 to provide explicit authority to support a peer exchange program which may be useful in promoting industry leading practices among Economic Development Districts.

Section 8. Science and Research Parks. Section 8 of the proposal adds a new section 208 to the Act (the previous section 208 was repealed in the 2004 Economic Development Administration Reauthorization Act). This new section 208 provides authority to support grants for plans for the construction of new science parks or renovation or expansion of existing science parks. In addition, it establishes new authority to guarantee up to 80 percent of loans for such purposes. Grants for plans could not exceed \$750,000 and would be awarded under a competitive process to ensure that only the most merit-worthy projects receive support. The proposal supports the authorization of up to \$7,500,000 for such purposes from amounts otherwise authorized under the Act.

EDA proposes to provide new loan guarantee authority to enable the agency to support a greater number of science and research parks than it could otherwise if it could only provide grant assistance. EDA is asking for authorization to support up to \$235,000,000 a year in guaranteed loans. The maximum cap for loan guarantees would be \$500,000,000. EDA believes that this level of funding will provide critical support to science and research parks by lowering the cost of financing and making some financing available that would otherwise be unavailable. Given the demands on the Federal budget, EDA believes such a program is a prudent use of scarce resources. Subsection (d) of new section 208 includes provisions designed to ensure the soundness of the Federal investment, and requires the Secretary to adopt a competitive process for the program to the extent he determines it is feasible. The new authority would terminate in fiscal year 2015.

Section 9. Economic Adjustment Program Improvements. Subsection (a) of section 9 of the proposal clarifies subsection (a) of the Economic Adjustment Program authority in section 209 to specify that assistance may be used to provide support for science and research parks, and to provide operating support for business incubators. With respect to operating support for business incubators, EDA would only offer such support sparingly, because EDA does not invest in projects that lack the ability to sustain themselves over time. Nonetheless, EDA believes that in some circumstances it could be useful to provide support for incubators that have a temporary need of such assistance but whose prospects for success are otherwise good.

This section also clarifies that the Economic Adjustment program authority may be used for challenge grants and prizes that may be useful in helping identify and promote a broad range of promising economic development ideas and practices that may not otherwise attract attention. Use of such challenge grant and prize authority would be consistent with the guidance provided by the Office of Management and Budget on March 8, 2010 (M-10-11, *Guidance on the Use of Challenges and Prizes to Promote Open Government*).

Subsection (b) of this section provides a clarification regarding EDA's work in connection with Defense-related closures and realignments. Section 209 of the Act currently specifies that the economic adjustment authority is intended to help communities adjust to the economic consequences associated with defense base closures

and realignments. The proposal provides EDA with explicit authority to help communities respond to economic adjustment problems caused by “mission growth” in connection with expansion or relocation of defense facilities.

Subsection (c) of this section provides additional authority to EDA under section 209 of the Act to approve a recipient’s request to convert project assets held in connection with an RLF project to a different use when the recipient is unable to meet capital lending standards (EDA requires that at least 75% of the capital be loaned out at all times), and the Secretary determines that the recipient is unable to improve operations by either consolidating operations with another RLF or by changing the lending areas or borrowing criteria. The Secretary would also need to determine that the proposed re-use of project assets is otherwise eligible for funds, and is preferable in light of the recipient’s current economic development needs. For example, under paragraph (c)(1) of section 9, an RLF recipient would be able to allocate a portion of the proceeds of the RLF to another operator that will operate an RLF on a multi-region or national basis in support of sustainable economic development. Another such conversion could be accomplished under proposed paragraph (c)(3) of section 9 by either selling loan paper held by the RLF operator to a third party or by accumulating capital over time by retaining loan repayment proceeds as a set aside. In each case, the recipient would need to identify another use for the proceeds that is consistent with the purposes of the Act. Inasmuch as the assets being converted are already under the recipient’s control, the provision relating to distress criteria under section 301 would not apply. The Secretary would be authorized to establish such terms and conditions as necessary, including terms and conditions needed to ensure that any such proceeds are used in an expeditious manner.

Paragraph (c)(2) of section 9 of the proposal authorizes the Secretary to re-use proceeds realized from the termination of an RLF investment. Most of the RLFs were approved prior to fiscal year 2000, when EDA received funds on a single year basis. In the event that an RLF operator has been unable to comply with Federal requirements, or has decided to terminate operation, the operator must repay the *pro-rata* Federal share of any proceeds realized as part of the termination process. Under Federal appropriations law, such proceeds are returned to the Treasury. This new authority would enable EDA to re-use the proceeds to help the Nation’s distressed communities respond to structural decline and other matters resulting in a declining job base.

Subsection (d) of section 9 of the proposal amends section 601 of the Act to add a new paragraph (b)(2)(B), to expand the Secretary’s authority to release the residual Federal interest in property assisted under the Act. Current authority to release the Federal interest extends only to interest associated with real and personal property. The new authority would authorize the Secretary to release the Federal interest in RLF paper seven years after full disbursement of the grant proceeds (usually within 36 months of the grant award), provided the Secretary determines that the recipient has carried out the terms of the award in a satisfactory manner. The amendment also authorizes the Secretary to subject the release to such terms and conditions as the Secretary deems appropriate. This new authority will increase local autonomy with respect to RLFs and also relieve a portion of the administrative burden associated with the program.

Section 10. Sustainable Economic Development. This section of the proposal amends section 218 to convert it to a broader statement in support of environmentally sustainable economic development practices. Sustainable economic development practices need to be part of every investment under the Act, and this new provision recognizes sustainability is a part of the agency's core mission of economic development. This provision is consistent with the way in which the agency has implemented the Global Climate Change Mitigation Incentive Fund established pursuant to the Appropriations process in fiscal year 2008. Authorizations for the new section are consistent with the level of appropriations in fiscal year 2010 and the Budget request for fiscal year 2011.

Section 11. Comprehensive Economic Development Strategies Improvements. This section amends the requirements relating to the comprehensive economic development strategies (CEDS) requirements set out in section 302 of the Act. These minor technical amendments clarify that the CEDS must address economic development *opportunities* open to a community, as well as the economic development problems a community faces.

Section 12. District Designation Review. Section 12 of the proposal amends section 402 of the Act to provide explicit authority for the Secretary to review district designations periodically to evaluate if they are aligned in a manner to best meet current economic development and labor force needs. It also provides the Secretary with explicit authority to approve the combinations of districts upon request without reduction in the amount of funding allocated to the combined district.

Section 13. Administrative Expenses. This section amends section 604 of the Act that authorizes the Secretary to transfer funds to, or receive funds from, another agency. EDA regularly receives transferred funds in support of the Department of Defense's Office of Economic Adjustment. For administrative convenience in terms of accounting for such funds, the new authority would authorize EDA to use up to 3 percent of such funds for administration in connection with non-construction projects, and up to 5 percent for construction projects. These amounts are reasonable in light of the nature of the work to be performed and will simplify administration for both the transferring and receiving agencies.

Section 14. Enhanced Authority to Increase Local Flexibility with Respect to Maintenance of Effort. This section expands recipient flexibility with respect to project assets under EDA's construction programs under sections 201 and 209 of the Act by adding a new section 613 to the Act. Subsection (a) of new section 613 specifies that the purpose behind EDA's retention of a reversionary interest in project property is to ensure that the recipient maintains its effort for an appropriate period of time to carry out the project as intended in order to create the higher skill, higher wage jobs that EDA's investment assistance is designed to foster. At the conclusion of that period, EDA can then terminate its interest, and the recipient is then free to make use of the property in accord with its current needs.

Subsection 613(b) provides new flexibility for EDA to approve a recipient's request to extinguish the Federal reversionary interest by repaying EDA for its share of the project. This new flexibility would allow EDA to take into account the "age" of a project in determining the fair market value of the Federal share when a recipient wants to remove the Federal interest in order to use the project property for some other purpose (for example, conversion from bio-technology parks to general educational facilities). Under the terms of the new authority, the recipient would be required to repay the entire pro rata Federal share during the first ten years of the project, but thereafter, the Federal interest would be amortized in accord with the remaining estimated useful life of the project. This provision is an offshoot of authority provided to the Department of Housing and Urban Development under its supportive housing program in the McKinney-Vento Homeless Assistance Act (*see* section 423(c)(1), 42 U.S.C. § 11383(c)(1)).

Subsection 613(c) provides that the authority established under this section is in addition to any other authority the Secretary has under current law, and empowers the Secretary to attach such terms and conditions as appropriate in exercising that authority, including extending the period of Federal interest in the event a recipient fails to maintain its effort in connection with a project.

Subsection 613(d) clarifies that the new authority of this section also extends to projects previously assisted under the Act.

Section 15. Extension of Authorization of Appropriations. This section provides a five-year extension of the authorization for appropriations for the economic development assistance programs. The authorization for fiscal year 2010 is consistent with the appropriated amount and the authorization for fiscal year 2011 is consistent with the President's budget request. Authorization for fiscal years 2012-2015 is at the "such sums as may be necessary" level to provide flexibility to meet future needs. The authorization for salaries and expenses is treated in a similar manner.

Section 16. Prior Disaster Appropriation Funds. The final section of the proposal adds new authority regarding disaster funds. Under current law, a disaster appropriation is usually provided on a "no-year" basis; while this provides the agency with essential flexibility to meet the needs of disaster-affected communities, it can result in a burdensome accounting requirement to continue to account for small amounts of disaster funding long after the funds are provided. For example, after the conclusion the FY 2009 accounting period, EDA continued to report \$88.00 in funds remaining from the 2001 Emergency Supplemental Appropriation, and \$345,848.57 in funds remaining from appropriations relating to the 1994 Southern California earthquake. This technical amendment would enable EDA to merge those small amounts of funds with its regular appropriations.