Key Energy Provisions in Biden Administration $1.2 Trillion Infrastructure Investment and Jobs Act

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On November 15, 2021, President Biden signed into law the $1.2 trillion Infrastructure Investment and Jobs Act. The Act earlier passed both Houses on a bipartisan basis. In conjunction with its passage, President Biden issued an Executive Order outlining the Administration’s priorities for dispersing monies from the infrastructure law, and establishing a task force that will coordinate the law’s implementation among federal agencies and state, local, and tribal governments. The task force will be jointly headed by former New Orleans Mayor Mitch Landrieu and Brian Deese, Director of the President’s National Economic Council, and will include the heads of the Office of Management and Budget, the Domestic Policy
Council, the White House Climate Policy Office, and Cabinet members from the affected federal agencies, including the Departments of Transportation, Interior, Energy, and the Environmental Protection Agency (EPA).

The law represents the first part of the Administration’s two-pronged plan for federal investment in U.S. infrastructure. The second part, a proposed $1.85 trillion social spending and climate change package, referred to as the Build Back Better bill, contains many of the more closely-watched tax and other sought-after incentives for the renewable energy industry, including extensions or increases in energy tax credits for solar, wind, geothermal, waste, fuel cell, and energy storage technologies. A vote on the Build Back Better legislation is reportedly expected later this month, and will likely pass without Republican support.

The Infrastructure Investment and Jobs Act provides new federal spending for the improvement of road and bridges, ports and airports, drinking water, broadband access, the electrical transmission grid and for the national buildout of electric charging stations to accelerate the transition to electric vehicles. The law allocates funding for the electrification of school buses and transit buses, to ease supply chain bottlenecks and to harden the nation’s electric transmission grid against wildfires and other severe events. The law also establishes programs to encourage energy efficiency, the domestic sourcing and manufacturing of battery storage, solar panels, windmills, and other clean energy technologies.

Funding under the Infrastructure Act will be made in the forms of grants, loans, credit support, the highway trust fund, direct funding of federal agency programs, and matching grant programs. Funding to states will, in some cases, be determined through a competitive bid process and, in others, through predetermined funding formulas based on factors such as population size or location of federal highways or other earmarked infrastructure. Competitive awards will also prioritize high-needs areas, which may include disadvantaged, transit-dependent, rural, or other communities. In all cases, funding will prioritize the Act’s Made in America requirements and the creation of good paying union jobs.

**SUMMARY OF KEY ENERGY PROVISIONS OF THE INFRASTRUCTURE AND JOBS ACT**

**TRANSMISSION GRID INFRASTRUCTURE BUILDOUT**

The law allocates $65 billion to upgrade the electric transmission grid infrastructure to improve system reliability and resiliency, and to facilitate the expansion of renewables and clean energy. Funding will be in the form of grants to eligible entities, including states and Indian tribes, to harden the transmission grid to reduce risks caused by wildfires, hurricanes, and other disruptive events, and to build out thousands of miles of new transmission lines. Money will fund programs to support the development of new technologies for weatherization, fire-resistance and prevention systems, monitoring and control technologies, undergrounding of electrical equipment, relocation or reconductoring of power lines, and for interconnection of distributed energy resources, including microgrids and battery storage.
Additional funding is earmarked for new Strengthening Mobility and Revolutionizing Transportation (SMART) grants ($3 billion) to be used for demonstration projects that advance smart community technologies. Additional grant funding is available for grid reliability and resiliency projects, including investments in monitoring and control technologies ($5 billion). Another $2.5 billion is available under the Transmission Facilitation Program in the form of Department of Energy (DOE) loans to eligible entities, including through public-private partnerships, for construction of new or enhanced projects on eligible transmission lines, particularly those that incorporate grid-enhancing technologies.

Private entities, public utilities, and governmental entities serving as local electric grid operators, electric storage operators, electric generators, transmission owners or operators, distribution providers, or fuel suppliers are eligible to apply for the program. The DOE will make competitive awards to carry out a variety of eligible activities to reduce the likelihood and consequence of impacts to the electric grid due to extreme events, and the ability to connect renewable and clean energy resources with customer load.

**RENEWABLE ENERGY PROJECTS**

The law seeks to facilitate the development of clean energy projects on current or former mining lands. The Act provides $500 million for five clean energy demonstration projects that use technologies such as solar, microgrids, geothermal, direct air capture, storage, and advanced nuclear. The DOE, in consultation with the Departments of Interior, EPA, and Labor Department, will solicit proposals for clean project funding. To be eligible, projects must propose the use of a commercially viable technology at a current or former mine site that provides a net impact in reducing greenhouse gas emissions and providing new job creation and economic development. Projects proposed for economically distressed areas, or areas with dislocated workers previously employed in the fossil fuel industry, will be prioritized.

**BATTERY STORAGE**

The law earmarks $6 billion in funding for battery storage over five years, including $3 billion in grants for processing and refining raw products into constituent materials employed in advanced battery manufacturing, and $3 billion in grants to bring portions of the battery supply chain, particularly manufacturing and recycling, to the U.S. through research, development, and demonstration projects.

Funding for the battery storage programs will be made available through competitive grant application programs administered by the DOE.

**ELECTRIC VEHICLE INFRASTRUCTURE NATIONAL BUILDOUT**

The law authorizes $7.5 billion over five years to build out a national electric vehicle (EV) charging infrastructure to accelerate adoption of EVs and reduce air emissions. Grant funding for other alternative fueling infrastructure is also available, including for hydrogen, propane, and natural gas vehicles. The law establishes a new competitive grant program to support building a network of
500,000 EV chargers along highway corridors and within communities. The law also makes electric and alternative fuel vehicle charging eligible for funding through existing Surface Transportation Block Grant Programs (STBGP), and allows for the purchase of zero-emission vehicles in the Congestion Mitigation and Air Quality Improvement Programs.

State and local government entities can apply directly to the Department of Transportation to carry out eligible projects. Fifty percent of total program funds will be distributed annually through community grants for the installation of EV and alternative fueling infrastructure on public roads, schools, and in other publicly accessible locations. Rural areas, low- and middle-income neighborhoods, and communities with either limited parking or a high number of multi-unit housing will be prioritized for awards. The federal cost share will be 80%, with an additional requirement that – as a condition of contracting with an eligible entity to carry out a project under this section – a private entity is responsible for the local match.

TRANSPORTATION

The law establishes the Clean School Buses Program, which provides $1 billion for the electrification of school buses. The program will be implemented through grants and rebates and administered by the EPA. Eligible recipients of grant funding include state or local governments, eligible contractors, nonprofit school transportation associations, Indian tribes, and entities that provide school bus service or purchase school buses for Bureau of Indian Affairs-funded schools.

CLEAN ENERGY TECHNOLOGY AND INNOVATION

The law directs the DOE to establish a competitive program to provide $5 billion in financial assistance over four years to demonstrate innovative approaches to transmission, storage, and distribution infrastructure to harden and enhance resilience and reliability, including enhancing regional grid resilience on a cost-shared basis. Eligible recipients include individual states or combinations of states, Indian tribes, local governments, and public utility commissions. Applicants will need to demonstrate how the financial assistance will be used, the expected beneficiaries, and, if the applicant is a combination of states, how the proposal will improve regional energy infrastructure.

ENERGY DEMONSTRATION PROJECTS

The law provides $355 million in grant funding for demonstration and pilot projects for energy storage, advanced reactors, carbon capture technologies, and direct air capture technologies. The pilot programs each will receive varying portions of the grant funding over a multiyear period.

ENERGY EFFICIENCY

The law funds a $500 million grant program over five years for efficiency building codes in public schools, and $120 million to boost energy efficiency in manufacturing and industrial facilities. Grants will be made available for public
schools to improve indoor air quality, make repairs or renovations that directly reduce energy costs, install alternative fueling infrastructure on school grounds for buses or the public, and to procure alternative fueled vehicles for bus fleets and other school-related operations. Local education agencies and public schools are eligible to apply to the DOE for competitive grants to carry out these activities.

A pilot program also will award grants to nonprofit organizations to upgrade their buildings with energy-efficient materials, including roof or lighting systems, windows and doors, heating, ventilation, and air conditioning systems that are cost effective and achieve energy savings.

The law also amends the Public Utility Regulatory Policies Act of 1978 to direct electric utilities to encourage its consumers to use demand-response and demand flexibility practices and reduce electricity consumption during periods of high demand. The amendments also direct state regulatory authorities to consider establishing rate mechanisms to allow electric utilities and non-regulated electric utilities to “timely recover the costs of promoting demand-response and demand flexibility practices.”

**NUCLEAR REACTORS**

The law provides $3 billion for funding advanced nuclear demonstration projects. The law also authorizes the DOE to implement a $6 billion credit program over five years to subsidize and thereby prevent certain existing nuclear facilities from closing prematurely due to economic factors. Plant owners and operators will need to submit a formal application to the program to demonstrate their need. Priority will be given to those nuclear facilities that use uranium that is produced in the U.S.

**CARBON CAPTURE DEMONSTRATION PROJECTS**

The Large-Scale Carbon Storage Commercialization program will provide $2.5 billion in funding for the development of new or expanded commercial large-scale carbon sequestration projects and related carbon dioxide transport infrastructure, including funding for the feasibility, site characterization, permitting, and construction phases of development. The funding will be made available through a DOE-administered application process. Projects creating substantial carbon dioxide storage capacity or that store carbon dioxide from multiple carbon capture facilities will be given priority. The law also provides $2 billion in grants for funding carbon capture demonstration projects.

**WATER POWER PROJECTS**

The law allocates $125 million for hydroelectric production incentives under the Energy Policy Act of 2005, and $553 million in incentive payments to owners and operators of hydroelectric facilities for capital improvements related to maintaining and enhancing grid resiliency, safety, and reduce environmental impacts. The law also allocates $10 million to establishing a demonstration program for pumped storage hydropower projects.
ASSISTANCE TO RURAL COMMUNITIES

The DOE will provide up to $1 billion in financial assistance over four years to rural or remote areas for: (i) improving cost-effectiveness of energy generation, transmission, or distribution systems; (ii) siting or upgrading transmission and distribution lines; (iii) reducing greenhouse gas emissions from energy generation by rural or remote areas; (iv) providing or modernizing electric generation facilities; (v) developing microgrids; and (vi) increasing energy efficiency.

IMPLEMENTATION AND OVERSIGHT TASK FORCE

In conjunction with the Infrastructure Investment and Jobs Act, President Biden signed an executive order establishing a panel to oversee the law. According to the White House, the executive order directs that the money in the Act be disbursed in alignment with administration priorities. These priorities include using U.S. suppliers, union jobs, and that the projects are designed to withstand the impacts of climate change. The task force is also charged with making sure projects comply with the Administration’s “Justice40” initiative, which calls for at least 40% of federal investments to flow to “disadvantaged communities.” The executive order asks the task force to coordinate with state, local and tribal governments and avoid waste.

The task force, and President Biden’s priorities for the law, will influence which projects receive priority funding and how the money is allocated – including for competitive grants where state and local governments bid for federal money for significant one-time programs.

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