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Biden signs landmark bill with climate implications

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On August 16, 2022, President Joe Biden signed the Inflation Reduction Act (the Act) into law, which is expected to have a significant impact on climate, tax and health care policy in the United States. The result of intense negotiations among Democrats including Sen. Joe Manchin, D-W.Va., and Senate Majority Leader Chuck Schumer, D-N.Y., the Act sets a goal of reducing carbon emissions in the U.S. by 40% by 2030 and includes parts of the Build Back Better Act (BBBA).

In a three-part series of articles, we provide an outline of the Act's major provisions, which are designed to spur clean energy, implement a 15% minimum tax on corporations and lower prescription drug prices. To achieve its aim, the Act contains an array of grants, loans and tax credits for consumers and businesses — provisions that would affect industries ranging from automaking to utilities and energy.

A provision to modify the treatment of carried interests was removed during negotiations with Sen. Kyrsten Sinema, D-Ariz., a moderate and key vote, and was replaced by a 1% excise tax on stock buybacks by U.S. public corporations.

The bill was introduced as the most significant investment in climate change in U.S. history, and it has an ambitious aim: to cut carbon emissions by 40% by 2030.

Senate Democrats, who passed the measure through the budget reconciliation process on August 7, 2022, have said provisions in the Act will raise enough in revenue to balance out the new investments and reduce deficits over the next decade. Vice President Kamala Harris provided the tie-breaking vote to pass the bill following a marathon overnight session during which Republicans introduced a flurry of amendment votes. The House of Representatives passed the Act on August 12, 2022.

The key provisions outlined in this alert are related to energy transition/greenhouse gas emissions reduction. The bill includes significant investments in clean energy. They include tax credits and other incentives for investments in renewable and other innovative energy technologies that avoid or reduce greenhouse gases, for consumers to make their homes more energy efficient and for the purchase of vehicles with lower emissions.

The Act authorizes the U.S. Department of Energy to provide more than $5.8 billion in grants, rebates, direct loans and cooperative agreements ... to install advanced industrial technology designed to accelerate the reduction of greenhouse gas emissions to net zero.

The bill also includes incentives to establish more manufacturing, mining and processing facilities in the United States that produce clean energy inputs, components and finished products.

Given the complexity and magnitude of the proposed measures, please consult your Skadden contact for more information.

Transition to clean energy

The bill was introduced as the most significant investment in climate change in U.S. history, and it has an ambitious aim: to cut carbon emissions by 40% by 2030. The Act includes sizable investments in clean energy and to reduce greenhouse gas emissions, as well as to support the domestic production of advanced technology vehicles and the transition to zero-emissions vehicles.

Innovative clean energy loan guarantees

The Act appropriates $40 billion for loan guarantees to eligible U.S. projects employing new or improved technology under Section 1703 of the Energy Policy Act of 2005. In addition, $3 billion is set aside to cover the credit subsidy cost of such loan guarantees. The bill also amends the statute governing the Title XVII loan guarantee program to permit the Department of Energy (DOE) to guarantee loans originated by commercial banks and other nonfederal lenders to Section 1703-eligible projects.

Energy infrastructure reinvestment financing

The Act amends the Energy Policy Act to establish a new DOE loan guarantee program for projects to (i) retool, repower, repurpose or replace energy infrastructure that has ceased operations or (ii) enable operating energy infrastructure to avoid, reduce, utilize, or sequester air pollutants or anthropogenic emissions of greenhouse gases. The Act appropriates $5 billion for activities under the new program and authorizes loan guarantees covering a total principal amount of up to $250 billion.

Offshore wind

In addition to general support for renewable energy, the Act promotes the development of offshore wind. It lifts the Trump-era moratorium on offshore wind leases on the outer continental shelf of Southeastern coastal states, and it provides funding to coordinate and facilitate action by regulatory authorities involved in offshore wind siting and permitting activities.

The bill includes funding to implement climate-friendly agriculture practices, grants to support forests and coastal habitats, and tax credits and grants for biofuels and biofuel infrastructure.

The Act also extends the reach of the Outer Continental Shelf Lands Act (OCSLA) to overseas territories (Puerto Rico, Guam, American Samoa, U.S. Virgin Islands and Northern Mariana Islands) to permit exploration of offshore wind opportunities.

Electric transmission

The Act appropriates funds to provide financing and technical support to accelerate construction of new electric transmission projects, including a $2 billion appropriation for direct loans to nonfederal borrowers for the construction or modification of electric transmission facilities that are designated as necessary in the national interest (available through September 30, 2030). Grants may also be made available for economic development activities for communities affected by the project.

Oil and gas

Numerous provisions of the Act would affect the oil and gas industry. Of note are increases to oil and gas royalty and rental rates, and to the minimum required bid in onshore lease auctions. The Act also requires four lease sales (by December 31, 2022) that were previously included in the 2017-22 Outer Continental Shelf Oil and Gas Leasing Program, and it implements timing and annual acreage minimums for onshore and offshore oil and gas lease sales as prerequisites for federal renewable leasing and right-of-way issuances.

Amendments to the Clean Air Act creating both subsidies and penalties would impact the oil and gas industry.

The Methane Emissions Reduction Program establishes a methane emissions and waste reduction incentive program for petroleum and natural gas systems:

- $850 million of funding for methane mitigation and monitoring, and for permanently shutting in and plugging wells on nonfederal land (available until September 30, 2028), and
- $700 million for methane mitigation at marginal conventional wells (available until September 30, 2028).

The amendments also establish a penalty for excess methane emissions from a wide range of equipment and facilities used in petroleum, natural gas and liquefied natural gas production, processing, transmission and storage. The Act establishes safe harbor exemptions from the penalties, including for regulatory delays and through compliance with state laws that provide for similar emissions reductions.

Investments in greenhouse gas emissions reductions

Advanced industrial technology at nonpower industrial or manufacturing facilities

The Act authorizes the DOE to provide more than $5.8 billion in grants, rebates, direct loans and cooperative agreements on a competitive basis for up to 50% of project costs to install advanced industrial technology designed to accelerate the reduction of greenhouse gas emissions to net zero (available through September 30, 2026). The funding applies for domestic, nonfederal, nonpower industrial or manufacturing facilities engaged in energy-intensive industrial processes, including in production processes for iron, steel, steel mill products, aluminum, cement, concrete, glass, pulp, paper, industrial ceramics and chemicals.

Consumer investments in clean technology

The bill provides incentives to help consumers buy energy-efficient and electric appliances, clean vehicles and solar panels for homes.

Specifically, the bill includes:

- $9 billion in consumer home energy rebate programs,
- 10 years of consumer tax credits to make homes more energy efficient,
- tax credits to buy electric vehicles, and
- a $1 billion grant program to make affordable housing more energy efficient.

Environmental justice

The bill includes over $60 billion in environmental justice initiatives to help disadvantaged communities, including:

- $3 billion in Neighborhood Access and Equity Grants to support equitable transportation planning and community engagement activities,
- $3 billion in block grants to address environmental health problems,
- $3 billion in grants for improving air quality near ports, and
- $1 billion for clean heavy-duty vehicles like buses and garbage trucks.

Greenhouse gas reduction fund

The bill amends the Clean Air Act to establish the Greenhouse Gas Reduction Fund with approximately $27 billion in funding for direct and indirect financial and technical assistance to deploy projects and technologies, including residential rooftop solutions, to reduce or avoid greenhouse gas emissions (available until September 30, 2024).

Agriculture

The bill includes funding to implement climate-friendly agriculture practices, grants to support forests and coastal habitats, and tax credits and grants for biofuels and biofuel infrastructure. It appears that this money will fund programs that provide financial and technical assistance to farmers and rangers to engage in smart agricultural practices, such as sequestering carbon, using cover crops, reducing water contamination, and protecting pollinators and native plants.

Domestic automotive manufacturing

The bill includes significant funding to support domestic advanced technology automotive manufacturing and procurement of zero-emissions vehicles:

- $3 billion to the DOE for the credit subsidy cost associated with direct loans for reequipping, expanding or establishing a manufacturing facility in the U.S. to produce — or for engineering integration performed in the U.S. of — advanced technology vehicles that emit low or zero greenhouse gases.
- $2 billion to provide grants of up to 50% of the cost for projects enabling the domestic production of efficient hybrid, plug-in electric hybrid, plug-in electric drive and hydrogen fuel cell electric vehicles (available through September 2031).
- $1 billion to fund the replacement of nonzero emissions vehicles with zero-emissions vehicles and related infrastructure (available until September 30, 2031).

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