King & Spalding
Client Alert

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Infrastructure Bill Paves the Way for New Energy Investments and Technology

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In November 2021, "[t]he United States House of Representatives passed the Infrastructure Investment and Jobs Act, a once-in-generation bipartisan infrastructure bill that will create millions of jobs, turn the climate crisis into an opportunity, and put us on a path to win the economic competition for the 21st Century." The White House Briefing Room, *Statement by President Joe Biden on the House Passage of the Bipartisan Infrastructure Investment and Jobs Act* (Nov. 6, 2021). The Infrastructure Investment and Jobs Act, also called the Bipartisan Infrastructure Bill, ("Infrastructure Bill") allocates $550 billion to projects across the country, ranging from new stormwater projects to ensuring universal access to high-speed internet. Pub. L. No. 117-58 (2021). Of particular interest will be the distribution of over $62 billion allocated directly to the Department of Energy ("DOE"). The bill directs investment towards specific areas, many of which are focused on facilitating the energy transition in furtherance of the Biden administration's pledge to fight climate change.

CARBON CAPTURE, UTILIZATION, STORAGE, AND TRANSPORTATION

The Infrastructure Bill allocates more than $10 billion to fund research on carbon capture, direct air capture, carbon utilization, and industrial emission reduction. DOE Fact Sheet, *supra*; *see also* Infrastructure Bill, § 40301-04 (outlining programs). Significantly, the Carbon Dioxide Transportation Infrastructure Finance and Innovation program will provide eligible projects either federal credit instruments or a grant. Priority will be given to projects that: (a) consist of large-capacity, common carrier infrastructure; (b) have demonstrated demand for use of the infrastructure by associated projects that capture carbon dioxide from anthropogenic sources or ambient air; (c) enable geographical diversity in associated projects that capture carbon dioxide from anthropogenic sources or ambient air, with the goal of supporting projects in all major carbon dioxide-emitting regions of the United States; and (d) are sited within, or

adjacent to, existing pipeline or other linear infrastructure corridors, in a manner that minimizes environmental disturbance and other siting concerns.

The bill also allocates $3.5 billion to four regional direct air capture hubs, which must have the capacity to sequester and utilize at least 1 million tons of carbon dioxide per year. The bill allocates another $2.5 billion to validating and testing the large-scale commercialization of carbon dioxide storage. The bill also appropriates $3.47 billion to find large-scale pilot projects in carbon capture. King & Spalding previously wrote about these programs prior to the Infrastructure Bill's passage. *See* Client Alert, Bipartisan Senate Infrastructure Bill Promotes Carbon Capture, Utilization, and Sequestration (Aug. 27, 2021).

HYDROGEN

Under the Infrastructure Bill, DOE will distribute $8 billion to support the development of clean hydrogen hubs across the country. This will further the production, processing, delivery, storage, and end-use of clean hydrogen. DOE Fact Sheet, *supra*; *see also* Infrastructure Bill, §§ 40313, 40314. Notably, Congress has directed DOE to act quickly and solicit proposals for these hubs within 180 days of the bill passing, or on May 14, 2022. Infrastructure Bill, § 40313.

The Infrastructure Bill also directs $1 billion to the Clean Hydrogen Electrolysis Program, which is intended to support the demonstration, commercialization, and deployment of electrolyzer systems, in order to decrease the cost of clean hydrogen production from electrolyzers. Infrastructure Bill, § 40314.

The Infrastructure Bill also directs $700 million towards upgrading hydrogen facilities with the goal of improving dam safety, increasing efficiency, reducing environmental impacts, and maintaining generators that produce emission-free electricity. DOE Fact Sheet, *supra*.

ELECTRIC VEHICLES (EVS)

The Infrastructure Bill designates $7.5 billion to build electric charging stations for EVs. Infrastructure Bill, §§ 11101(b)(1)(C), 11401. The new charging stations will support President Biden's goal of having all new car sales be for EVs by 2030 with a nationwide network of 500,000 EV chargers. DOE will administer these funds along with the Department of Transportation.

GRID INFRASTRUCTURE AND RESILIENCY

The Infrastructure Bill directs DOE to distribute $11 billion to states, tribes, and utilities to improve resilience of electric infrastructure in the face of both extreme weather and cybersecurity concerns. *Id.*

The Infrastructure Bill directs DOE to direct $2.5 billion towards a Transmission Facilitation Program to develop new national transmission lines for clean energy. *Id.*; *see also* Infrastructure Bill, § 40106(d)(2) (outlining transmission program goals).

The Infrastructure Bill directs $3 billion towards expanding the Smart Grid Investment Matching Grant Program, which will focus on flexibility in transmission and distribution of energy. Infrastructure Bill, § 40107(b) (discussing implementation of program).

LITHIUM BATTERIES

The Infrastructure Bill designates $3 billion for the development of a new Battery Material Processing Grant Program to be administered by the DOE's Office of Fossil Energy and Carbon Management. Infrastructure Bill, § 40207(b)(4). This program will aim to support new facility construction and demonstrations for processing batteries.

Similarly, the Infrastructure Bill designates $3 billion to the DOE's Office of Energy Efficiency and Renewable Energy for Battery Manufacturing and Recycling Grants, which will help with battery manufacturing and recycling. Infrastructure Bill, § 40207(c)(4).

The Infrastructure Bill also designates $140 million for the development of a rare earth demonstration facility and refinery. Infrastructure Bill, § 40207(e). To be managed by the DOE, this facility will help develop lithium-ion batteries for EVs, ensuring that United States manufacturers will have direct access to these materials.

NUCLEAR

The Infrastructure Bill designates $6 billion for distribution to the Civil Nuclear Credit program, with the goal of preventing the retirement of zero-carbon nuclear plants. Infrastructure Bill, § 40323(i); DOE Fact Sheet: The Bipartisan Infrastructure Deal Will Deliver For American Workers, Families and Usher in the Clean Energy Future (Nov. 9, 2021).

The Infrastructure Bill also designates $2.5 billion for DOE's Advanced Reactor Demonstration Program, which encourages research and development into advanced nuclear reactor technologies. Infrastructure Bill, § 41002(a).

These provisions signal that the Biden Administration may view advanced nuclear as a viable form of clean energy.

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For all of these programs under the Infrastructure bill, DOE and the other federal agencies with implementing authority will most likely issue guidance or regulations providing more detail about how companies can apply and qualify for funding opportunities. In so doing, the federal agencies may invite public comment, so interested stakeholders should monitor ongoing implementation efforts and take advantage of any opportunities to provide input to the regulatory agencies.

In terms of the how these programs will be administered, it is reasonable to expect that DOE (and other agencies) may look for guidance to the Title XVII loan guarantee program that covers a broad range of clean and renewable energy projects. *See* 42 USC §§ 16511, *et seq*. Prior to passage of the Infrastructure bill, that multi-billion program represented the largest single financial investment by the federal government in the commercialization of clean and renewable energy projects.

Nikesh Jindal was at DOE when the loan guarantee program was created and drafted the initial guidelines implementing it. In response to the renewed focus on the loan guarantee program under the current Administration, Nikesh and other colleagues at King & Spalding have been advising clients about how to navigate the process, including preparing applications, engaging third party stakeholders to support the projects, obtaining necessary permits and defending against any legal challenges to those permits, helping to structure the financing of the projects, and other related efforts to ensure successful procurement of the federal funding.

Marcella Burke served at the Environmental Protection Agency (EPA) as Deputy General Counsel. She also served at the Department of Interior (DOI) as Deputy Solicitor for Energy and Natural Resources, and Senior Counselor to the Assistant Secretary for Land and Minerals Management. In her roles at DOI, Marcella managed the litigation docket and rulemakings, including for carbon capture programs, on federal lands.

As the DOE and the other federal agencies begin implementation of the funding programs in the Infrastructure bill, King & Spalding will use that collective experience and expertise to help clients take advantage of the large funding opportunities.

ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,200 lawyers in 22 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

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