

ENERGY AND ENVIRONMENTAL PROVISIONS OF THE STIMULUS BILL: FOLLOWING THE “GREEN”

The stimulus bill¹ signed into law by President Obama on February 17, 2009, contains many provisions related to energy and the environment. It has been reported that upwards of \$100 billion of the \$787 billion stimulus package² is intended to fund or encourage environmental and renewable energy projects, energy efficiency, and related infrastructure.³ The stimulus monies will be distributed primarily through existing federal and state agencies and programs. For those seeking a share of these funds, a key will be knowing which agencies control them and the procedures and timelines for funding requests and decisions. The following are some of the notable “green” provisions of the bill:

Appropriations Provisions

Department of Defense

- \$100 million for the Formerly Utilized Sites Remedial Action Program, to identify, evaluate, and clean up radioactive waste from former nuclear weapons development and production sites

Department of Energy

- \$3.2 billion for energy efficiency and conservation block grants, to be used for projects that increase energy efficiency in the transportation or building sector, reduce energy use, or reduce emissions from fossil fuel use
- \$5 billion for home weatherization assistance to low-income households
- \$3.1 billion for the State Energy Program, for measures such as promoting car pooling, mass transit, and establishing state procurement and building insulation standards, provided that the states commit to certain matters such as upgrading residential and commercial building code energy efficiency standards and efforts by the state public utility commission to align utility financial incentives with helping their customers use energy more efficiently
- \$2 billion for grants for the manufacturing of advanced batteries and components, including facility funding awards to manufacturers of advanced battery systems and vehicle batteries produced in the U.S.

¹ The American Recovery and Reinvestment Act of 2009.

² The Congressional Budget Office (“CBO”) estimates that the stimulus bill will increase federal budget deficits by \$185 billion over the remaining months of fiscal year 2009, by \$399 billion in 2010, by \$134 billion in 2011, and by \$787 billion over the 2009-2019 period. CBO’s Summary of the Estimated Cost of H.R. 1, dated February 13, 2009.

³ Washington Post, *Highlights of the \$787 billion stimulus plan* (Feb. 17, 2009).

- \$4.5 billion for electricity delivery and reliability activities to modernize the electric grid to include demand responsive equipment, i.e. for development of the so-called “smart grid”
- \$3.4 billion for fossil energy (coal, oil, and natural gas) research and development, including clean coal technologies, pollution control innovations for traditional power plants, stationary power fuel cells, and technologies to capture and permanently store greenhouse gases
- \$483 million for management and cleanup of sites used for civilian energy research and non-defense related activities
- \$390 million for the Uranium Enrichment Decontamination and Decommissioning Fund, to pay for the cleanup and decommissioning of Department of Energy’s (“DOE”) three uranium enrichment plants located in Tennessee, Kentucky, and Ohio
- \$6 billion made available under a new temporary Innovative Technology Loan Guarantee Program, to pay the cost of loan guarantees for certain innovative technology projects that commence construction before September 30, 2011, including renewable energy systems such as hydropower that can generate electricity or thermal energy, electric power transmission systems, and leading edge biofuel projects, with a limitation of \$500 million on the amount allocated to biofuel projects
- \$5.127 billion for cleanup of former nuclear defense sites

General Services Administration

- \$5.55 billion to the Federal Buildings Fund, \$5 billion of which is to be obligated by September 30, 2010, and not less than \$4.5 billion of which is to be available to convert U.S. General Services Administration (“GSA”) buildings to high-performance green buildings
- \$300 million to remain available until September 30, 2011, for the purchase of fuel efficient vehicles, including hybrid vehicles, electric vehicles, and commercially-available plug-in hybrid vehicles, for the federal fleet

Department of the Interior

- \$1.32 billion to the Bureau of Land Management, Fish and Wildlife Service, and National Park Service for projects including maintenance and restoration of facilities, property, and trails, remediation of abandoned mines and wells, capital improvement projects on national wildlife refuges and fish hatcheries, and habitat restoration projects

Environmental Protection Agency

- \$600 million for the Hazardous Substance Superfund, for cleanup of contaminated sites
- \$200 million for the Leaking Underground Storage Tank Program, for cleanup of petroleum contamination from leaking tanks

- \$4 billion for grants for the Clean Water State Revolving Funds, to help communities with water quality and wastewater infrastructure needs, and an additional \$2 billion for grants under the Safe Drinking Water Act for drinking water infrastructure needs, a portion of which is to be used for projects to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative technologies
- \$100 million for projects involving brownfields, *i.e.* properties the redevelopment or reuse of which is complicated by contamination issues
- \$300 million under the Diesel Emission Reduction Act, for grants and loans to state and local governments and non-governmental organizations for projects that reduce diesel emissions

Department of Agriculture

- \$500 million for Wildland Fire Management, \$50 million of which may be used for wood-to-energy grants to promote increased use of biomass

Department of Transportation

- \$8 billion to the Federal Railroad Administration, to be available through September 30, 2012, for grants to States with priority given to projects that support the development of intercity high-speed rail service
- \$1.3 billion to Amtrak, to be available through September 30, 2010, for the repair and upgrade of railroad assets and infrastructure
- \$6.9 billion to the Federal Transit Administration, to be available through September 30, 2010, \$100 million of which is for discretionary grants to public transit agencies for capital investments that will assist in reducing energy consumption and greenhouse gas emissions of public transportation systems

Department of Housing and Urban Development

- \$1 billion for the Public Housing Capital Fund, to be available until September 30, 2011, for priority investments, including investments that leverage private sector funding or financing for renovations and energy conservation retrofit investments
- \$250 million for grants or loans to owners of low-income housing properties for energy retrofitting and green investments in such properties
- \$100 million for the Lead Hazard Reduction Program, for grants for removal of lead-based paint in housing

Tax Provisions

- Extends the “placed in service” deadlines of the production tax credit (“PTC”) by three years for electricity producing wind facilities (through 2013) and electricity producing closed-loop and open-loop biomass, geothermal

or solar energy, landfill gas, trash (municipal solid waste), and hydropower facilities (through 2014), and by two years for marine and hydrokinetic renewable energy facilities (through 2014)

- Allows taxpayers to claim the investment tax credit (“ITC”) in lieu of the PTC for electricity producing wind facilities that are placed in service from 2009–2012, and for electricity producing closed-loop and open-loop biomass facilities, geothermal or solar energy facilities, landfill gas facilities, trash (municipal solid waste) facilities, hydropower facilities, marine and hydrokinetic renewable energy facilities that are placed in service from 2009-2013
- Increases the national new clean renewable energy bond limitation by \$1.6 billion, to finance electricity producing wind, closed-loop biomass, open-loop biomass, geothermal or solar, small irrigation, landfill gas, trash (municipal solid waste), hydropower, and marine and hydrokinetic renewable energy facilities
- Increases the national qualified energy conservation bond limitation by \$2.4 billion for bonds issued by state or local governments to finance programs to reduce energy consumption in publicly owned buildings, implement green community programs, develop alternate energy and green building technologies, reduce greenhouse gas emissions, and other conservation purposes
- Grants a tax credit of 30% of the cost of certain energy efficiency improvements installed by homeowners in 2009 and 2010, not to exceed \$1,500
- Increases the tax credit for persons that place alternative fuel vehicle refueling properties into service in 2009 and 2010 from 30% to 50% of the cost of the property, and increases the cap on the credit from \$30,000 to \$50,000, except that for hydrogen refueling facilities the credit remains at 30% and the cap is increased to \$200,000
- Provides a tax credit of up to \$7,500 for new plug-in hybrid electric vehicles
- Provides a tax credit of 10% of the cost of conversion of a motor vehicle to a plug-in hybrid electric vehicle
- Provides up to \$2.3 billion to fund a new 30% tax credit for investments in qualifying advanced energy facilities, including projects that establish or expand manufacturing facilities for the production of energy from the sun, wind, geothermal deposits, or other renewable resources, fuel cells or energy storage systems for use with electric or hydro-electric vehicles, electric grids for the transmission or storage of renewable energy, property designed to capture and sequester carbon dioxide emissions, property designed to refine or blend renewable fuels, qualified plug-in electric vehicles, and other advanced energy properties designed to reduce greenhouse gas emissions approved by the Treasury Department
- Authorizes grants (in lieu of tax credits) of up to 30% of facility costs to qualifying renewable energy facilities, including fuel cell, solar, wind, and geothermal facilities, that are placed in service in 2009 and 2010, or thereafter in some circumstances if construction begins in 2009 or 2010

For additional information on the “green” provisions of the stimulus bill or Jones Walker’s Green Law & Sustainability practice, click [here](#) or contact [Boyd A. Bryan](#) or another member of our Green Team.

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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