



## House Passes Blueprint for \$500 Billion Investment in Renewables, “Resilience,” Grid

This morning, the House passed H.R. 5376,<sup>i</sup> the Build Back Better Act (the “BBB Act”), by a vote of 220-213. If it clears the Senate and is signed into law, the BBB Act would represent one of the largest investments in U.S. history under the banner of “climate resilience, clean energy, and environmental justice.” The bill includes over \$500 billion in climate policy funding—largely focused on incentivizing renewable energy, reducing traditional energy sources, and encouraging industry to reduce carbon emissions.

The long road the legislation will have to travel through the Senate reconciliation process is well known.<sup>ii</sup> Less well known is exactly what is in the bill. For the benefit of our readers, Marten Law and Quinn Emanuel Urquhart & Sullivan, LLP have teamed up to provide this summary of the major environmental provisions in the BBB Act. These provisions will most significantly impact our clients in the energy and financial sectors. If enacted, this legislation will affect billions of dollars of business over the next decade.

For clarity, we have bundled the BBB Act provisions by the House Committee with jurisdiction over that section of the bill.

### Committee on Natural Resources: Offshore Wind Leasing, Phasing Out Traditional Energy Sources, and Building Climate Resilience

The Committee on Natural Resources adopted provisions that would expand offshore wind development, increase the cost of traditional energy sources, and allocate funds for projects framed as building “resilience” of public lands and wildlife habitats.

The U.S. Department of the Interior has already announced leasing opportunities off the Atlantic, Pacific, and Gulf coasts. The BBB Act would direct Interior to hold offshore wind lease sales in federal waters in the Eastern Gulf of Mexico, the Atlantic coast off North Carolina, South Carolina, Georgia, and Florida, and the territorial waters around American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. These lease sales are intended to raise significant revenues to fund other portions of the bill and to achieve the Biden Administration’s plan to site 30GW of offshore wind power by 2030.

The BBB Act would ban new offshore oil and gas leasing along the Atlantic and Pacific coasts and in the Eastern Gulf of Mexico. The Act would also repeal the provision of the 2017 Tax Act (P.L. 115-97)

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that opened the Arctic National Wildlife Refuge to oil and gas leasing, cancel all leases sold within the Refuge, and return the payments and royalties made for those leases. The BBB Act would increase the onshore royalty rates for new oil, gas, and coal leases, as well as the offshore royalty rates for all new oil and gas leases. It would eliminate noncompetitive oil and gas leasing on public lands. It would also establish several new fees, including: a severance fee on oil, gas, and coal production; a new annual fee on idle wells on public lands; and a fee for the operation of offshore pipelines based on length of pipeline.

The Act would also allocate significant funding for “environmental justice” initiatives. It would give \$65 million to the Council on Environmental Quality (“CEQ”) to collect data on the impact of a changing climate on “environmental justice communities.” It provides specific funds for water projects, canal repair, and to create pilot projects for solar panels over repaired canals. The Act also includes funding for national park “climate resiliency” and to fund the national park deferred maintenance backlog. It provides funding to map and restore wildlife corridors. It also provides funds for Endangered Species Act recovery plans, including particular funding to implement recovery plans for island plants, pollinators, freshwater mussels, and desert fish. The BBB Act funds Pacific salmon and steelhead habitat resilience and recovery programs. And finally, the Act provides \$250 million to address general wildlife habitat resilience and control invasive species.

## **Committee on Agriculture: Forestry, Rural Renewable Energy, and Conservation**

A major portion of the BBB Act would direct resources through the Committee on Agriculture. Funds dedicated to climate-change agenda in Agriculture are targeted at three areas in particular: forestry, rural renewable energy development, and conservation. These investments would bolster existing programs in several areas which have received increased attention in recent years—such as combatting wildfires and rural decline.

The BBB Act would allocate roughly \$27 billion to forest management improvements, a substantial investment to combat the wildfires which plagued the American West this past summer and several years prior. At least \$14 billion of forest funding would go towards “hazardous fuels reduction”—providing opportunities for private entities to partner with the Forest Service to build healthier forests through timber sales and stewardship contracts. Approximately \$6 billion would also be put towards risk reduction and restoration on non-federal lands. These incentives should spur forestry managers to implement more forestry practices increasing carbon sequestration on private land. The nearly \$7 billion remaining would be invested in federal forest management and enhancement of forestry practices for underserved populations.

Appropriations towards rural energy development would also be significant—roughly \$18 billion. The big-ticket item from this portion of the Act is the nearly \$10 billion which would be allocated to electric cooperatives to, among other things, purchase renewable energy, deploy renewable energy systems, and terminate facilities operating on nonrenewable energy. Another nearly \$4 billion would be directed towards biofuel infrastructure upgrades and loans for electricity storage projects in rural areas. These investments are intended to spur development of renewable infrastructure upgrades and encourage energy producers to invest in rural areas.

The investments in conservation programs would also be substantial, totaling at least \$23 billion. The vast majority of the \$23 billion would be directed toward various Department of Agriculture conservation programs: \$9 billion to the Environmental Quality Incentives Program, \$3.75 billion to the Conservation Stewardship Program, \$1.7 billion to the Agricultural Conservation Easement Program, and \$7.5 billion to the Regional Conservation Partnership Program. Each of these programs provides financial and/or assistance to agricultural producers and forest managers to incentivize conservation. Funding would

also be available for “soil conservation assistance” to eligible agricultural producers who establish cover crops for soil health. Producers and non-operating landowners would receive up to \$25 and \$5 per acre for up to 1,000 acres, respectively.

## **Committee on Ways and Means: Tax Code Changes to Incentivize Renewable Energy**

The Committee on Ways and Means portion of the BBB Act would feature amendments to the Internal Revenue Code (IRC) that will be of interest to renewable energy developers and other climate-relevant sectors.

First, it would extend the Renewable Energy Production Tax credit, a per-kilowatt hour tax credit that wind, solar, and certain other qualifying renewable sources may claim based on the amount of electricity they produce, subject to certain wage and apprenticeship labor requirements. A part of IRC Section 45, the credit is set to expire for facilities that begin construction after December 31 of this year. The BBB Act would extend it through 2026 (for wind and other producers) or 2027 (for solar producers). In a nod to the role some see for nuclear in the future, the Act would also create a new production credit for qualifying zero-emission nuclear power facilities.

The BBB Act would also extend the Investment Tax Credit (ITC) of IRC Section 48, which allows developers of qualified renewable generation (including homeowners who install rooftop systems) or investors to claim as a percentage (26%) of the investment cost of the project. A popular program credited with fueling exponential growth of solar generation in the last decade, the ITC is currently slated to expire (after a gradual step down in its credit rate) for projects put into service after January 1, 2024. The BBB Act would extend the ITC for projects that begin construction by 2026 and are put into service by 2034, if certain wage and labor requirements are met. The Act would also expand the ITC to new renewable generation, energy storage, and “clean” technologies.

The Act would also add new climate-relevant activities to the ITC. Many have noted the need to modernize the nation’s electric transmission grid—to that point, the Act would allow the ITC to cover qualified electrical transmission projects, including new lines, replacements, and qualifying upgrades. To promote carbon sequestration efforts, the BBB Act would qualify direct-air capture projects, as well as “tailpipe” systems to capture carbon from electric generating facilities under the ITC. For these carbon capture projects, the amount of the credit is calculated as a dollar-per-ton of the volume of carbon the project sequesters.

The BBB Act would also establish new ITC tax benefits for solar and wind facilities to which the IRS designated an “allocation of environmental justice solar and wind capacity limitation.” Projects identified as having health, employment, or business/community-building benefits for low-income communities may be allocated a portion of a national total of 1.8GW of capacity to be given a 10% tax credit (and an additional 20% if certain other low-income benefit requirements are met).

## **Committee on Energy and Commerce: Investments in Low-Emissions Technology, Transmission, and Energy Efficiency**

The Committee on Energy and Commerce portion of the BBB Act consists almost exclusively of appropriations to the Department of Energy (DOE) for the purpose of funding grant programs, rebates, loans, and guarantees to fund state, nonprofit, and private activities to reduce carbon emissions by implementing low-emission technologies at a large scale. Three areas receive special attention in the Act:

(i) low-emissions technology in, among other things, transportation; (ii) transmission planning; and (iii) energy efficiency in buildings.

First, the Act would fund rebate and grant programs to promote low-emission technologies, with a focus on transportation. The bill funds \$2 billion in rebates to purchasers of low-emissions or electric vehicles, particularly purchasers in non-attainment areas under Section 107 of the Clean Air Act and its implementing regulations. The Act would similarly appropriate approximately \$2.6 billion in rebates for port facilities in non-attainment areas to fund low-emissions equipment at those facilities. In addition, it would provide \$3 billion in loans to domestic electric vehicle manufacturers. Finally, the BBB Act would fund a \$59 billion grant program to states, municipalities, tribal governments, and nonprofit groups to fund investments in low-emissions technology, including local funding for programs that will promote zero-emission vehicles.

Second, sizable funds would be set aside for transmission planning, with a focus on improved grid efficiency and connecting the grid to renewable generation. The Act would set aside \$2 billion for the DOE to fund its own transmission siting, and an additional \$840 million to states to facilitate their transmission planning. Both funds would be spent on transmission planning that will promote a more efficient, nationally integrated grid, and connect to renewable generation. Additionally, the Act would provide DOE with \$40 billion to guarantee loans for developers of renewable generation.

The final major priority under the Act would be funding for efficiency improvements in buildings, including retrofits to promote electrification and other efficiency measures. The Act would establish two rebate programs to promote residential efficiency: \$5.89 billion for retrofits focusing on energy efficiency and \$2.52 billion for electrification retrofits. An additional \$4 billion would be provided to fund industrial retrofits along similar lines. Finally, \$500 million would be provided to the states to fund retrofitting of state-owned buildings.

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## Key Contacts:

For more information on the Build Back Better Act, please contact Daniel Loud or Daniel Mach of Quinn Emanuel Urquhart & Sullivan, LLP, or James Pollack or Jack Ross of Marten Law LLP.

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<sup>i</sup> Bill text is available at <https://www.congress.gov/bill/117th-congress/house-bill/5376/text>.

<sup>ii</sup> The House bill will now be introduced in the Senate, where a number of Senators are expected to demand changes, virtually any amendment can obtain a floor vote (the so-called “vote-a-rama”) and survive a reconciliation process subject to rulings by the Senate parliamentarian. This process allows the bill to avoid the filibuster and clear the Senate with a simple majority. Even the most optimistic pundits do not expect the bill to be voted on before the end of the year.