

Insights: Alert

\$1.2 Trillion Infrastructure Act – Three Transformative Energy Programs

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Last Friday the \$1.2 trillion bipartisan Infrastructure Investment and Jobs Act (“Infrastructure Act”), which passed the Senate on August 10, 2021, was passed in the House. President Biden is expected to sign the Infrastructure Act into law in the coming days.

The Infrastructure Act provides funding for private and public sector initiatives related to energy, transportation, water, manufacturing, technology, and environmental infrastructure. Our Legal Alert highlighting key programs in the Infrastructure Act can be found here: [Key Programs From Landmark Infrastructure Act](#).

The Infrastructure Act provides over \$65 billion in total for “power and grid” initiatives. Below are three of the most impactful energy programs in the Infrastructure Act.

- **\$5 Billion – Section 40101: Preventing Outages and Enhancing the Resilience of the Electric Grid**
 - As the title suggests, Section 40101 of the Infrastructure Act is focused on preventing outages and enhancing electric grid resilience. It establishes a program to provide \$5 billion in grants to eligible entities, States, and Indian Tribes to carry out activities that “(A) are supplemental to existing hardening efforts of the eligible entity planned for any given year; and (B)(i) reduce the risk of any power lines owned or operated by the eligible entity causing a wildfire; or (B)(ii) increase the ability of the eligible entity to reduce the likelihood and consequences of disruptive events.”
 - “Eligible entities” are defined as: (A) an electric grid operator; (B) an electricity storage operator; (C) an electricity generator; (D) a transmission owner or operator; (E) a distribution provider; (F) a fuel supplier; and (G) any other relevant entity, as determined by the Secretary of Energy.
 - It is important to note that, per the statutory language, “not less than 30 percent of the amounts made available to eligible entities under the program are made available to eligible entities that sell not more than 4,000,000 megawatt hours of electricity per year.”
- **\$5 Billion – Section 40103: Electric Grid Reliability and Resilience Research, Development, and Demonstration**
 - In addition to the \$5 billion discussed above, Section 40103 of the Infrastructure Act allocates \$5 billion to establish a competitive grant program that supports research and development related to electric grid resilience and reliability. More specifically, the purpose of the program is for eligible

entities to “coordinate and collaborate with electric sector owners and operators— (A) to demonstrate innovative approaches to transmission, storage, and distribution infrastructure to harden and enhance resilience and reliability; and (B) to demonstrate new approaches to enhance regional grid resilience, implemented through States by public and rural electric cooperative entities on a cost-shared basis.”

- Eligible entities include: (i) a State; (ii) a combination of 2 or more States; (iii) an Indian Tribe; (iv) a unit of local government; and (v) a public utility commission.

- **\$3 Billion – Section 40107: Deployment of Technologies to Enhance Grid Flexibility**

- Rather than establishing a new program, section 40107 of the Infrastructure Act modifies and allocates additional funding to the existing Smart Grid Investment Grant (SGIG) program. The SGIG program, which was established by the Energy Independence and Security Act (EISA) of 2007, provides up to 50% of the eligible costs for qualifying electricity provider system upgrade projects selected on a competitive basis. Section 40107 modifies the SGIG program by broadening what constitutes a qualifying investment, with a focus on technology and extreme weather, and providing an additional \$3 billion in program funding.

Once the Infrastructure Act is signed into law, Federal agencies will be tasked with shaping and administering a substantial number of programs related to the Act. For many of the programs, agencies will develop specific eligibility requirements, funding procedures, and compliance and reporting standards. In order to facilitate these processes, federal agencies may seek public comment and input on the administration of these programs. Continuing to monitor these developments is essential for businesses, nonprofits, local governments, and Tribal governments seeking to utilize these programs.

If you have any questions concerning programs in the Infrastructure Act, including questions related to program administration, eligibility, rulemaking, or compliance, please do not hesitate to reach out to Kilpatrick Townsend's Government and Regulatory practice contacts John Loving at jloving@kilpatricktownsend.com or Stephen Anstey at sanstey@kilpatricktownsend.com.

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