The Inflation Reduction Act Bolsters Efforts at the Federal Level to Tackle Climate Change and Promote Clean Energy Solutions

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On August 16, 2022, President Joe Biden signed the Inflation Reduction Act (the Act) into law, calling it "one of the most significant laws in our history." The United States House of Representatives passed the Act on August 12 along party lines. This vote followed the Senate's August 7 passage of the bill, also along party lines, with Vice President Kamala Harris casting the tiebreaking vote. In addition to $369 billion in energy security and climate investments, the bill also includes $64 billion to expand Affordable Care Act subsidies for two years and various tax measures, including a corporate alternative minimum tax of 15% and $80 billion to increase enforcement efforts at the Internal Revenue Service (IRS).

The vast majority of the $369 billion allocated for energy security and climate investments in the Act comes in the form of tax credits. The biggest portion of these is for clean energy tax credits ($161 billion). Some of these are modifications or extensions through 2024 of existing tax credits, such as electricity production from renewable resources. In particular, the current Section 45 production tax credit would be enhanced for renewable electricity production projects using domestic steel and other components. The Act also includes significant tax credits for carbon capture and sequestration (CCS) and clean energy production. The Act extends and increases the tax credit under Section 45Q of the IRS code for CCS, creates a new tax credit under Section 45V for the production of clean hydrogen (up to $0.60 per kg, depending on the GHG emissions associated with production), and creates a new tax credit under Section 45U for production of zero-emission nuclear power. The Act also establishes a new technology-neutral tax credit under Section 45Y for facilities producing electricity with net-zero-GHG emissions, placed in service after December 2024.

The Act further allocates substantial funding for clean energy manufacturing tax credits. This includes the manufacture of both clean energy equipment (e.g., the production of domestic manufacture of solar panels, wind turbines, batteries, and critical mineral processing equipment) as well as for the construction of clean technology manufacturing facilities.

Regarding air and greenhouse gas emissions, the Act appropriates funding to support EPA regulatory programs targeting hydrofluorocarbons (HFCs), as well as reductions of other greenhouse gases (GHGs) under Section 115 of the Clean Air Act (CAA) (relating to international air pollution). The Act would also create the "Greenhouse Gas Reduction Fund" to provide grants to states, local agencies, and tribal authorities for deployment of zero-emission technologies. In addition, the Act appropriates funding for numerous grant programs administered by EPA, including, among others, air toxics fenceline air monitoring, and expanding criteria pollutant monitoring networks. These programs could eventually have significant impacts on the stringency of regulation under the CAA potentially through revisions to National Ambient Air Quality Standards or National Emission Standards for Hazardous Air Pollutants through residual risk and technology reviews.

The Act further appropriates nearly $1 billion to EPA for facilitating regulatory programs associated with methane emissions monitoring and reducing methane emissions from petroleum and natural gas systems. In addition, the Act establishes a

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fee on excess waste methane emissions over a defined threshold based on the amount of natural gas or oil set to sail from a facility. The fee is assessed at a $900 per ton rate, applicable to many industries, including oil and gas production, gas processing and compression, underground natural gas storage, and onshore gas gathering and transmission. This fee increases by $300 in subsequent years.

Clean vehicle funding includes $1 billion to the EPA to award grants and rebates for medium and heavy-duty vehicles with zero-emission vehicles and $60 million in funding to EPA for grants, rebates, and loans to reduce diesel emissions in low-income and disadvantaged communities. The Act also provides $2 billion to retool existing auto manufacturing facilities to manufacture clean vehicles.

A focus area of the Act is environmental justice. The Act appropriates nearly $3 billion in block grants to community-based nonprofit organizations in disadvantaged communities for various climate-based projects, including but not limited to investing in low- and zero-emission technologies, community-based air pollution monitoring, and mitigating risks from climate change. In addition, the Act makes further tax credits available for qualifying electricity generating projects placed in environmental justice communities. The Act's expansion of criteria pollutant monitoring networks is also designed to focus on low income and disadvantaged communities.

The Act also reinstates a Superfund tax on certain crude oil received at U.S. refineries and imported petroleum products, amending the tax from 9.7% to 16.4%, and indexing the tax for inflation.

The Act is the latest in a series of developments at the federal level that both enhance and curtail climate change efforts. The passage of the Act comes in the wake of the Supreme Court's June 30th ruling in *West Virginia v. EPA*, which held that the EPA did not have authority to impose a regulatory scheme that requires shifting power generation from coal to natural gas and renewable or other zero-emitting sources. The Court's ruling held that Congress would have needed to grant this authority specifically to an agency. Here, Congress is taking a more direct approach at climate action and renewables at the legislative level with tax credits, direct funding, and other incentives for clean energy.

The Act also joins the SEC's March 2022 proposed rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors, which includes a new subpart to Regulation S-K of the SEC's regulations (17 C.F.R. Part 229) that would require a registrant to disclose climate-related risk information in its registration statements and periodic reports. 87 *Fed. Reg.* 21334. These disclosures would include material effects of climate-related risk on the company, the company's process for identifying and managing climate-related risk, information regarding publicly set climate-related targets or goals, and the company's greenhouse gas emissions. *Id.* While the stated purpose of the proposed rule is to provide standardized and material information regarding climate risks to investors, in practice, the proposed rule will incentivize greenhouse gas emissions reductions. The SEC's proposed rule and the Act both highlight the emerging trend towards an approach to climate change outside of the confines of EPA regulation, where such efforts have historically been undertaken. This approach is consistent with President Biden's "Whole-of-Government Approach" to the climate crisis espoused in the first days of his presidency in Executive Order 14008 Tackling the Climate Crisis at Home and Abroad. 86 *Fed. Reg.* 7619.

While the Act is a significant step towards funding climate change and clean energy efforts at the federal level, the long-term implications of this legislation are still unclear. The programs authorized and funded by this legislation will be developed by the various federal agencies over the coming years, and Babst Calland will continue to monitor these developments. Please contact Jim Curry at (202) 853-3461 or jcurry@babstcalland.com, Gina Falaschi at (202) 853-3483 or gfalaschi@babstcalland.com, Sean McGovern at (412) 394-5439 or smcgovern@babstcalland.com, or Varun Shekhar at (202) 975-1390 or vshekhar@babstcalland.com if you have any questions or need assistance.