

ENERGY LAW ALERT

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In Energy Sector, Opportunities Abound



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Whether referred to in the context of “energy independence,” “climate change,” or “economic stimulus,” energy, with its related issues and opportunities, is clearly the buzzword for the years ahead. President Obama has made his objectives in the field of energy clear and is now backing these plans up with real incentives.

These create opportunities for research, development, commercialization and, eventually, meaningful benefits to the consumer.

Understanding the legislation can provide the research and business community with insights on where to focus resources and efforts.

Recent legislative and administrative actions have created a cornucopia of opportunities. These opportunities are available to generators of energy, businesses and consumers. Most are in the form of tax credits, but others afford direct funding opportunities, particularly if related to the capability of the transmission grid or research and development of new technologies. Some provide the means to shift tax credits from entities that may not directly benefit from those credits to others that would benefit substantially.

Encouraging Production of Alternative Energy Sources

The world is rapidly recognizing the need to develop alternative methods for meeting energy demands. To foster development of meaningful systems capable of generating power on a commercial scale, the energy production tax credit is being extended and enhanced. The greatest potential beneficiary is the solar industry, where the tax credit will equal 30% of the cost of installation and the extension will be through 2016, with no cap on the amount of the tax credit.

Other areas of production are eligible for similar benefits, although on a reduced basis. These include wind turbines generating low or less kilowatts, geothermal heat pumps, micro turbines, fuel cells and combined heat and power systems. Credits that are available vary but are geared more for consumers than large energy producers. In all,



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these benefits will primarily assist manufacturers and smaller installation companies who deal directly with end users.

Stimulus Package Encourages Utilization of Alternative Energy Sources

The energy provisions of the new stimulus package signed by President Obama provide a variety of potential benefits. The amounts allocated are estimated to total \$90 billion, of which \$70 billion is directed toward green energy projects and \$20 billion for tax incentive programs. Approximately \$15 billion supports energy efficiency programs to be undertaken on government-owned properties. The amounts are allocated to federal agency budgets and states. How these funds will be deployed is in the discretion of each governmental agency receiving allocations. Another \$11 billion is allocated to improvements to the transmission system. Again, the allocation will be left to transportation departments at the federal and state level, which have control of their budgets. The principal beneficiaries of these allocations are manufacturers of energy efficient and clean technologies and the construction workers who will derive jobs from installation activities. Serious questions have been raised about the effect and immediacy of the benefits created, but long-term energy industry benefits seem evident, whether at the government, business or consumer level.

New York State Initiatives

The federal government is not alone in recognizing the overall economic benefits to investing in alternative energy initiatives. In New York, State Comptroller Thomas DiNapoli has established a Green Strategic Investment Program, with a commitment to provide up to \$500 million over three years from the State's Common Retirement Fund for companies focused on renewable energy and clean technologies. During

2008, four companies (mostly committed to biofuel production) were able to secure financing. These amounts will be supplemented with funds from the stimulus package, including approximately \$126 million to NYSERDA, \$31 million for energy efficiency programs and a sizeable allocation (as yet an undetermined amount) for modernization of schools.

Implementation

The latest stimulus package, as with the 2008 stimulus package, does not set forth clear guidelines on implementation. Most of the energy programs for which allocations have been made will be implemented at the government agency level, both federal and state, depending upon which budget line item is sought to be implemented. Many must be used for "shovel ready" projects – those ready to go within 45 days of the law being effective. Tax credits will, of course, be available to those making eligible investment in renewable energy projects. As with the TARP benefits, the devil will be in the details and only time will tell when, and to what extent, the vast majority of the budget allocations will find their way into the economy.

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