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## House's Clean Economy Jobs and Innovation Act Would Create Opportunities and Impose Restrictions on Different Segments of the Energy and Infrastructure Sectors

09 October 2020

On September 24, 2020, the U.S. House of Representatives passed the [Clean Economy Jobs and Innovation Act](#), H.R. 4447 ("CEJIA" or the "Bill") by a vote of 220-185, largely on party lines. The Bill would authorize new research and development initiatives at the Department of Energy ("DOE") and new funding for electric vehicle infrastructure, electric grid modernization, energy efficiency programs and environmental justice programs.

The CEJIA is the House's response to a Senate energy bill – the American Energy Innovation Act ("AEIA") (discussed in a prior [Alert](#)) – and also focuses on funding many of the same research and development programs and initiatives, though with some key differences noted below. Senator Lisa Murkowski (R-AK), chairman of the Senate Energy and Natural Resources Committee, is seeking Senate floor consideration for the AEIA with the hope of conferencing the bill with the CEJIA and resolving differences between the two.

### Key Provisions in the CEJIA

Below is a summary of the CEJIA provisions that have the strongest potential to impact the energy and infrastructure sectors.

**New Energy Efficiency Standards and Funding for Energy Efficiency Programs**

Title I of the Bill sets new energy efficiency standards for buildings and provides funding for schools, homes, municipal buildings and manufacturing facilities to improve efficiency and deploy energy-efficient technologies. Title I also authorizes grants to local communities to improve energy efficiency, including \$5 billion in rebates for home retrofits, and increases funding for certain energy efficiency programs, providing almost \$1.7 billion for the Weatherization Assistance Program and \$17.5 billion for the Energy Efficiency and Conservation Block Grant Program.

### **New Energy Storage System Programs and Funding for Renewable Energy Research and Development**

Title II of the Bill authorizes more than \$4 billion for research, development, demonstration and commercial application (RDD&CA) to advance renewable energy technologies, including solar, wind, geothermal and water power (both marine energy and hydropower). Title II also: establishes new RDD&CA programs to accelerate the development of energy storage systems; provides \$25 million for grants to deploy energy storage and microgrids in rural communities and \$1 billion for solar installations in low-income communities; and promotes additional renewable energy development on public lands.

### **Investment in Carbon Capture, Utilization and Storage Research and Development**

Title III of the Bill provides funding for carbon capture, utilization and storage RDD&CA, including approximately \$1.7 billion for carbon capture and about \$2.6 billion for carbon storage. Title III also establishes a methane leak detection and mitigation RDD&CA program to promote technologies and methods to reduce emissions. This program would include developing cooperative agreements to provide technical assistance and promoting demonstration and adoption of methane emissions-reduction technologies in the private sector. This Title also establishes a \$1.25 billion grant program to offset the incremental rate increases paid by low-income households resulting from the implementation of state-approved improvements to natural gas distribution systems.

### **Policy Shift in Fossil Energy Research and Development**

Title III contains provisions that would amend the fossil energy RDD&CA programs under the Energy Policy Act of 2005. Specifically, Section 961 of the Energy Policy Act of 2005 states that fossil energy RDD&CA programs must take into account, among other things, decreasing the cost of all fossil energy production, generation and delivery. Title III would require fossil energy RDD&CA to instead focus on decreasing the cost of emissions control technologies for fossil energy production, generation

and delivery. This Title also adds new considerations such as lowering greenhouse gas emissions for all fossil fuel production, generation, delivery and utilization to the maximum extent possible and preventing, monitoring and mitigating the unintended leaking of methane, carbon dioxide or other fossil fuel-related greenhouse gas emissions. Title III prioritizes technologies and strategies that have the potential to meet emissions reductions goals set forth in the Paris Climate Accord.

### **Eminent Domain Reform Regarding Interstate Natural Gas Pipelines**

Title III would amend Section 7(h) of the Natural Gas Act, which currently grants the right of eminent domain to the holder of a certificate of public convenience and necessity (“CPCN”), issued by the Federal Energy Regulatory Commission (“FERC”), for an interstate natural gas pipeline. Historically, holders of such CPCNs could commence – and commonly have commenced – eminent domain proceedings immediately upon receipt of the CPCN from FERC, even though FERC’s orders typically could not be appealed for months or years afterwards. As covered in a [related blog post](#), that practice has led to significant legal challenges in recent years, including one case that is the subject of a pending petition for writ of certiorari in the Supreme Court. Under the CEJIA, the holder of such a CPCN would not be permitted to exercise the right of eminent domain until after all federal and state permits have been received and all environmental conditions have been satisfied. Further, the holder’s right of eminent domain would be suspended if the holder requests a material amendment to the CPCN or if any of the holder’s federal or state permits are vacated or remanded. Title III would also prohibit the holder of a CPCN from exercising eminent domain if the facility covered by the CPCN is attached to any facility for which an order is required under Section 3 of the Natural Gas Act, which would implicate pipeline facilities serving liquefied natural gas terminals under FERC’s jurisdiction.

### **Modernizing the Electric Grid and Enhancing Cybersecurity**

Title V of the Bill includes funding and other measures to modernize the electric grid, such as programs to improve resilience and reliability, enhance cybersecurity, protect critical infrastructure and supply chains, and improve transmission planning. Title V also promotes grid-related RDD&CA projects, including through \$3.5 billion in grants for projects that harden the grid against the projected effects of climate change and improve resilience and security.

### **Significant Funding for Electrifying the Transportation Sector**

Title VI of the Bill provides for investment in technology and infrastructure to electrify the transportation sector. Specifically, Title VI provides \$36 billion for transportation electrification, including through grants and rebates to deploy electric vehicles and related charging infrastructure, and \$2.5 billion for the Diesel Emissions Reduction Act (a law that provides funds to federal and state loan programs to either rebuild diesel-powered vehicle engines to more stringent emission standards or install emission reduction systems). This Title also updates the DOE's manufacturing conversion and advanced vehicle technologies grant programs to expand eligibility for certain low- and zero-emission vehicles and related technologies.

### **Investment in Advanced Nuclear Energy**

Title IV of the Bill invests in advanced nuclear energy RDD&CA, with an emphasis on project demonstration and scale-up, while Title VII increases funding for Advanced Research Projects Agency-Energy, including a path to double its funding (to \$875 million) by fiscal year 2025.

### **Phasing Out Hydrofluorocarbons**

Title IX of the Bill provides for the phasing out of hydrofluorocarbons ("HFCs"), which are industrial chemicals primarily used for cooling and refrigeration. Specifically, the Bill requires DOE to establish an allocation and trading program to phase down the production and consumption of HFCs by 85% over 15 years. Title IX also establishes new RDD&CA programs to accelerate the deployment of technologies that reduce emissions from the industrial sector.

### **Environmental Justice Initiatives**

Title XI of the Bill institutes certain environmental justice initiatives, including the creation of a National Environmental Justice Advisory Council and new environmental justice grant and training programs. This Title also requires federal agencies to integrate environmental justice into their missions and to prepare community impact reports when proposing actions that trigger an analysis under the National Environmental Policy Act of 1969 that have the potential to cause negative environmental or public health impacts on overburdened communities.

### **Establishment of a Clean Energy and Sustainability Accelerator**

Title XII of the Bill establishes a \$20 billion Clean Energy and Sustainability Accelerator to finance and mobilize private investment in low-carbon technologies and projects. This Title also establishes a clean energy workforce development

program, which would include grants to eligible businesses, and creates a new program to train workers for careers in offshore wind.

## Next Steps for the CEJIA and Energy Legislation

Momentum for energy legislation appears to be increasing with the House's passage of the CEJIA, but the current political climate likely will impede further action this year. While provisions of the CEJIA and AEIA share certain similarities, including the establishment of programs related to energy storage, grid modernization and carbon capture, utilization and storage, there are key differences that the House and Senate will need to resolve in conference. Most notably, the AEIA does not contain authorization for electric vehicle infrastructure or the environmental justice measures currently included in the CEJIA.

Moreover, the CEJIA and AEIA reflect a divide between the House and Senate with respect to the intersection of certain energy policy and emissions issues. For instance, the CEJIA includes provisions that establish a methane leak detection and mitigation RRD&CA program as well as a waste gas utilization RDD program. The AEIA, on the other hand, does not address methane leak detection and mitigation, but would establish a coal and natural gas technology program to ensure the continued use of coal and natural gas resources. Although those programs are not major elements of the two bills, they may symbolize a difficult-to-bridge gap between the House and Senate concerning the future of fossil fuels.

The Supreme Court nomination process and other priorities such as appropriations and a potential COVID-19 stimulus package (or separate COVID-19 bills) could stymie further action by the Senate on the AEIA, which has been stagnant since March 2020. Further, the White House issued a [Statement of Administration Policy](#) ("SAP") on September 21, 2020, explaining the Administration's opposition to the CEJIA. The SAP indicated that the President would be advised to veto the bill because it would undermine the administration's deregulatory agenda and move closer toward the commitments of the Paris Climate Accord from which the Trump administration has withdrawn the U.S. The SAP also calls into question the future of funding for RDD&CA programs that the administration views as unnecessary and likely to lead to failed projects.

The political hurdles and the need to come together on policy divisions between the House and Senate on the areas where the bills diverge suggests that any action on

these bills will be delayed at least until after the election, but more likely until next year.

## Key Takeaways

The energy and infrastructure sectors should continue to monitor the progress of the CEJIA and the AEIA. Below are some key considerations:

- The CEJIA expands on the relatively moderate approach taken by the Senate in the AEIA by incorporating elements that enjoy bipartisan support while also advancing efforts to spur clean energy development, address projected climate change impacts and prioritize environmental justice.
- Areas where the CEJIA and the AEIA diverge will need to be harmonized in conference, which is unlikely to happen before the end of this year in the current political environment.
- Should Senator Murkowski secure floor consideration of the AEIA, and conferencing of the two bills commences in the near future, it is possible that the bipartisan aspects of the bills may pass, presenting new opportunities and funding sources for the energy and infrastructure sectors.
- If control of the Senate shifts to the Democrats and Vice President Biden becomes President in 2021, we could see legislation with a more aggressive approach to clean energy and climate change than either of these bills next year.

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### **Practices**

- Transactional
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## **Suggested Reading**

- 03 November 2020 Speaking Engagement International Bar Association's Virtual Conference
- 22 October 2020 Kirkland Seminar ESG and PE – The Missing Pieces!
- 15 October 2020 Speaking Engagement U.S. Private Credit Forum

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