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Enacting President Biden's Infrastructure Bill: Opportunities in The Infrastructure Investment and Jobs Act - Jones Day

The Situation: On November 15, 2021, President Biden signed into law a long-awaited \$1.2 trillion bipartisan infrastructure bill, The Infrastructure Investment and Jobs Act ("IIJA").

The Result: The IIJA will transform the United States' failing infrastructure system with several clean energy initiatives focused on transportation, technology, and updated water systems. The funds will be distributed through a series of grant programs by the Treasury Department, presenting new funding opportunities for companies engaged in the infrastructure sector.

Looking Ahead: As soon as December 2021, dedicated highway funds will become available through private-public partnerships. However, funds for mass transit, railways, and buses will not be announced until Congress's anticipated Spending Bill for the fiscal year. Businesses engaging with physical infrastructure have many opportunities for funding available through the IIJA that will continue to be allocated over coming months.

The Road Towards Better Infrastructure

On November 15 2021, President Biden signed into the law the long-awaited Bipartisan Infrastructure Framework, The Infrastructure Investment and Jobs Act ("IIJA").

This \$1.2 trillion plan will revitalize America's deteriorating infrastructure system, which leaders on both sides of the aisle have long acknowledged as a key issue. The IIJA only provides funding for physical infrastructure, unlike President Biden's previous proposals, which involved heavy investment in what he deemed "human infrastructure," including childcare, healthcare, and community programs. This bipartisan framework focuses on transportation, technology, and waterways. Businesses in the infrastructure and energy fields will have new opportunities through bonds and public-private partnerships provided by the plan.

This Commentary will review the principal sections of President Biden's agreement and potential opportunities for businesses in infrastructure, energy, and technology.

Transportation Improvements

President Biden's new agreement amounts to \$550 billion in new infrastructure spending, with \$312 billion going towards transportation. The transportation budget will invest \$110 billion in roads and bridges, \$66 billion in passenger and freight rails, and \$49 billion in public transit. Fifteen billion in funds is allocated for electric vehicle infrastructure, including 500,000 electric vehicle chargers nationwide, far less than previous drafts' allocations.

The spending package also includes \$89.9 billion to modernize public transit over the next five years, with \$39 billion to improve accessibility for the elderly and people with disabilities, and \$7.5

billion to replace transit vehicles, such as buses and ferries, with zero-emission vehicles. Significant amounts of these funds will go to major city transit systems, like New York City's, based on federal funding formulas. The package will also invest \$16 billion for major projects that are too large or complex for traditional funding programs, \$11 billion in transportation safety programs, and \$5 billion for street repair, particularly to protect cyclists and pedestrians.

The IIJA goes beyond just cars and roads and allocates significant funds to alternative means of transport. The spending package invests \$22 billion for Amtrak, \$24 billion in grants for Northeast Corridor modernization, \$12 billion for grants for intercity rail service, including high-speed rail, \$5 billion for rail improvement and safety grants, and \$3 billion for grade crossing safety improvements. The goal of these investments is to provide a reliable alternative to flying and driving. Ports will receive \$17 billion and airports will receive \$25 billion to repair existing issues, reduce congestion, and to develop systems that require lower emissions.

Technological Improvements

The plan also provides \$191 billion to upgrade "other" infrastructure. The spending package includes \$65 billion to update and expand the power grid, to expand reliance on renewable energy, to conduct R&D on advanced electricity transmission technologies, and to implement smart electricity grids. Some of these funds will also be dedicated to research for advanced nuclear, carbon capture, and clean hydrogen projects. The spending package includes \$65 billion for broadband deployment to create universal access to high-speed internet, to require providers to show families cheaper internet service options, and to subsidize access to internet service for low-income households.

Waterway Improvements

The IIJA also provides over \$50 billion to improve water infrastructure in the West and national grid systems susceptible to cyberattacks, as well as \$55 billion to replace lead service lines and national lead pipes that currently carry drinking water throughout the United States. The package includes \$21 billion to remove pollution from soil and groundwater and to clean polluted areas in the United States, including Superfund and brownfield sites, abandoned mine lands, and orphaned gas wells.

Funding

Unlike President Biden's originally-announced plan, entitled "The American Jobs Plan," this bipartisan plan does not include an increased corporate tax rate as a source of funding. Instead, the plan is funded from increased IRS enforcement of pre-existing due taxes, redirection of unused unemployment and other COVID relief funds, state and local investment, and strategic petroleum reserve sales. Most interestingly for the private sector, lawmakers expect to fund \$100 billion from public-private partnerships and direct-pay municipal bonds. This will create new opportunities for businesses interested in construction or electricity.

While the President's original plan detailed a series of tax credits in clean energy investments, a ten-year extension of the federal production tax credit, and an extension of the investment tax credit, the passed bill does not contain such allocations. However, as spending terms are not yet completed by the Senate, business are advised to stay informed as to whether such credits and extensions are added to further updates.

Looking Ahead

It is still somewhat uncertain as to the role that public-private partnerships ("P3s") will play with

respect to infrastructure initiatives. The IIJA does, however, recognize the role of private investment in facilitating and implementing P3s and in several instances directs programs to consider P3s. The mere increase in available funds and additional projects that should follow will likely create more opportunities for P3s. The companion human infrastructure bill, the Build Back Better Plan, is still yet to be passed. While Build Back Better proposes increased taxes as a significant source of funding, there is question as to whether the bill can be passed without bipartisan support. Businesses should stay informed as to the status of Build Back Better and whether it will impact any of the new opportunities provided in the IIJA. Additionally, as the Senate releases more spending information, businesses are advised to keep note as to what new tax credits or grants become available in the transportation and clean energy spaces.

Four Key Takeaways

1. Transportation: The IIJA provides \$550 billion in new transportation infrastructure funds. While significant portions are allocated to roads, bridges and tunnels, alternative transportation will also receive significant funding including railways, ferries, and airports.
2. Technology: The plan also includes \$191 billion to upgrade for “other” infrastructure that is non-transportation based. This includes \$65 billion for universal internet access.
3. Water: The bill allocates \$55 billion towards improvements to water infrastructure systems, \$50 billion to protect against cyber-attacks, droughts, floods, and wildfires, and \$21 billion to remove pollution from ground soil.
4. Opportunities: The bill will provide new opportunities for businesses through bonds and public-private partnerships allocated by the Department of Transportation. Businesses are also well-advised to watch as the Senate continues to release new spending information, which may include new benefits such as tax credits and exemptions.

Jones Day

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November 23 2021

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