Updates
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How the Infrastructure Investment and Jobs Act and Build Back Better Bill Would Advance the Offshore Wind Sector

The $1.2 trillion Infrastructure Investment and Jobs Act, which President Biden signed into law today, and the proposed $1.75 trillion Build Back Better Act (H.R. 5376) each set aside historic investments in clean energy. The Infrastructure Act allocates $47 billion toward climate-related funding and makes important changes to federal permitting processes, while the proposed Build Back Better Act earmarks $550 billion to similar ends. This update focuses on the significant measures advanced by these two pieces of legislation for the domestic offshore wind sector.

Infrastructure Act

The Infrastructure Act allocates significant funding to rebuilding the country's aging infrastructure and funding climate resilience initiatives. The Act's funding of clean energy transmission projects and vesting of "backstop" transmission siting authority in the Federal Energy Regulatory Commission (FERC) have important implications for offshore wind.

Electric Transmission Funding and Programs

While the Act provides funding for a wide range of "core" infrastructure projects affecting different industries, electric transmission infrastructure investment is a significant area of focus. In addition to setting aside billions for investment in transmission projects and grid resilience, the Act contains some innovative ideas for addressing thorny issues bedeviling development of massive clean energy generation projects like offshore wind.

For example, the "Transmission Facilitation Program" would establish a $2.5 billion revolving loan fund and give the U.S. Department of Energy (DOE) the authority to (1) act as an anchor tenant on the kind of large, high-voltage transmission projects required to connect offshore wind facilities to the existing power grid; (2) make loans to eligible facility developers; and (3) participate directly in the development of eligible facilities. This program could help address the chicken-and-egg problem of who invests first: the transmission developer before it knows whether renewable energy expected to use the line will actually materialize, or the renewable energy developer who needs that transmission to deliver its clean energy to market. Relatedly, and building on its recently published *Atlantic Offshore Wind Transmission Literature Review and Gaps Analysis*, DOE has launched a two-year study of transmission options to support offshore wind development on the Atlantic coast.

The legislation also establishes a $6 billion cost-share program to support grid reliability research and development and a $5 billion grant program for utilities, states, and tribes to bolster the grid and improve climate resiliency.

FERC "Backstop" Transmission Siting Authority

The Infrastructure Act also expands FERC's backstop transmission siting authority to cover situations where a state commission has denied a certificate rather than simply failed to act. Although FERC already has backstop authority, a 2009 federal appellate ruling held that FERC lacked the authority to overturn a state's rejection of power lines planned in DOE sanctioned corridors. Thus, if a state rejected an application for transmission build-out, there was nothing FERC could do. The Infrastructure Act addresses this loophole by clarifying FERC's backstop siting authority and allowing FERC to overrule state objections. This authority could facilitate offshore wind facilities that connect to the grid through regional or interregional transmission lines to serve different markets, or which need transmission to ensure grid reliability once new interconnections are made.

Federal Permitting Improvement

Section 70801 of the Infrastructure Act amends Title 41 of the Fixing America's Surface Transportation Act (FAST-41), which reduces environmental review and permit decision-making timelines for infrastructure projects, including offshore wind, while improving outcomes for communities and the environment. The amendments codify some aspects of the Trump administration's "One Federal Decision" policy, allow tribal projects to use FAST-41's streamlined environmental review and permitting procedures, and place an increased emphasis on timing and transparency.

Most notably, Section 70801 makes FAST-41 and the Federal Permitting Improvement Steering Council, which facilitates the more coordinated Federal agency review and decision-making process, permanent by removing an original seven-year "sunset" limitation. The amendments also establish interim deadlines for agency actions and require agencies to disclose more project information on the Permitting Dashboard, an online database, which tracks the status of federal environmental reviews and authorizations for covered projects. This has important implications for the offshore wind industry as all offshore projects currently under review by the Bureau of Energy Management (BOEM) have opted into the FAST-41 process and are being tracked on the dashboard. Our prior update provides a detailed analysis of these amendments, which were approved without change in the Infrastructure Act.

Funding for NOAA Consultations and Permitting

Division J, Title II of the Infrastructure Act appropriates $20 million to the National Oceanic and Atmospheric Administration (NOAA) for consultations and permitting related to the Endangered Species Act, the Marine Mammal Protection Act, and Essential Fish Habitat, delivering needed resources for offshore wind assessment related to protected resources.

Build Back Better Act

The larger social safety net and climate change bill, known as the Build Back Better Act, could have an even more direct impact on the offshore wind sector. The bill, released in its current form on November 3, includes a suite of climate-related funding and policies that are expected to deliver one gigaton of greenhouse gas emissions reductions and set the United States on course to achieve its climate target of reducing greenhouse gas emissions 50% to 52% below the 2005 levels by 2030. The bill proposes funding supportive of offshore wind development, including $110 billion in incentives for clean energy technology, manufacturing, and supply chains, and $320 billion in clean energy tax credits. The bill would also require the U.S. Department of the Interior (Interior) to pursue offshore wind leasing in certain areas, including in U.S. territories where it had no prior jurisdiction.

These measures, summarized below, aim to advance the Biden administration's goal of deploying 30 gigawatts of offshore wind by 2030. The current bill text and a section-by-section summary of the legislation are available online, but are subject to change as the bill advances through Congress.

Offshore Wind Leasing on the Outer Continental Shelf

The bill removes the Trump administration's offshore wind moratoria (affecting an area from North Carolina to Florida)[1] by requiring Interior to grant leases on the Outer Continental Shelf, namely in the federal waters on the Eastern Gulf of Mexico and the Atlantic off the coast of North Carolina, South Carolina, Georgia, and Florida.[2] This requirement is not time-bound.

The bill also de facto amends the Outer Continental Shelf Lands Act by requiring Interior to hold offshore wind lease sales off of U.S. territories around American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.[3] Notably, the requirement is not time-bound, nor does it speak to the roles, prerogatives, expectations, or capabilities of the territorial governments. It is also silent as to revenue sharing. In effect, without substantive debate, the bill awards BOEM a monopoly over ocean wind in locations where Interior's role is not as well established or accepted as it is in the waters off the U.S. mainland.

Investments in Offshore Wind Transmission Planning

The bill appropriates $100 million through September 30, 2031, to DOE to conduct transmission planning, modeling, and analyses regarding interregional and offshore wind transmission projects and to convene relevant stakeholders to address the development of these transmission projects.[4]

The bill allocates $1.5 billion in federal grants and $500 million through September 30, 2030, for eligible entities to construct new or upgrade existing eligible transmission lines or interties. Eligible transmission lines are those that are capable of transmitting electricity (1) across any eligible intertie; (2) from an offshore wind generating facility; or (3) along a route, or in a corridor, determined by the Secretary of Energy to be necessary to meet interregional or national electricity transmission needs.[5]

Investments in Port Infrastructure

The bill appropriates $600 million to the Maritime Administration's Port Infrastructure Development Program to remain available until September 30, 2026, to support supply chain resilience, reduction in port congestion, and the development of offshore wind support infrastructure.[6]

Expansion of Eligible Technologies' Definition to include Maritime Vessels Under DOE's Advanced Technology Vehicle Manufacturing Loan Program

The bill also expands the definition of eligible technologies under the DOE's Advanced Technology Vehicle Manufacturing Loan Program to maritime vessels and appropriates $3 billion for loans.[7] This could spur investment in the U.S. shipbuilding industry and, in particular, domestically built, specialized offshore wind installation vessels that will be needed to construct the many offshore wind projects already proposed.

Funding to Interior for Efficient Permitting

The bill provides $100 million to Interior to remain available until September 30, 2031, for the development of "more efficient, accurate, and timely reviews for the planning, permitting, and approval processes for specified Interior agencies," including BOEM.[8]

Funding to NOAA for Efficient Permitting, Fisheries Management, and Research

It also provides $20 million to NOAA to remain available until September 30, 2026, for the development of "more efficient, accurate, and timely reviews for planning, permitting and approval processes."[9] The bill also provides $500,000,000 to remain available until September 30, 2026, for purposes of federal fisheries management, marine fisheries conservation, and marine mammal research, including fisheries and marine mammal stock assessments, marine fisheries data collection, surveys, scientific research, and management. Investment in each of these areas is important for NOAA's evaluation of offshore wind projects.

Extension and Modification of Investment Tax Credits and Production Tax Credits for Offshore Wind Facilities

The bill extends the current production tax credit (PTC)[10] and the investment tax credit (ITC)[11] through the end of 2026 for projects beginning construction before January 1, 2027. The ITC phasedown that applies to solar facilities does not apply to offshore wind facilities. For projects beginning construction in 2027 onward, the bill establishes a new regime, where tax credits are structured in two tiers, providing either a "base rate" or a "bonus rate." The new regime allows taxpayers the option to choose between an ITC worth up to 30% of the investment in the year the facility is placed in service or a PTC of up to 2.5 cents per kilowatt hour of electricity produced and sold in the 10-year period after the facility is placed in service.

- **Prevailing Wage Requirements.** Under the new credit structure, the bonus rate is five times the base rate and is applied to projects that meet prevailing wage and apprenticeship requirements. These requirements only apply to projects which begin construction 60 days after the Secretary of Treasury has published guidance with respect to these requirements. If these requirements are met, taxpayers are eligible for the full 2.5 cents per kilowatt hour PTC or the full 30% ITC; if not, the PTC rate would be the base 0.5 cents per kilowatt hour and the ITC rate would be 6%.
- **Direct Pay Provision Tied to Domestic Content Requirements.** The bill includes a 10-year direct pay provision, equal to 100% of the value of the PTC and ITC, which allows taxpayers to receive a direct payment instead of a tax credit. Taxpayers can claim 100% direct pay on all projects, regardless of meeting domestic content requirements, so long as construction begins before January 1, 2024. During this same period, projects that do meet domestic content requirements will receive a higher value PTC (2.7 cents per kilowatt hour rather than 2.5 cents) or ITC (40% rather than 30%).

Projects beginning construction on January 1, 2024, or later are subject to domestic content requirements. Projects that do not meet these domestic content requirements can still receive direct pay but at lower values that decline each year.

For offshore wind facilities, the adjusted percentage for the domestic content requirement is 20% for projects beginning construction before 2025, 27.5% for projects that begin construction in 2025, 35% for projects that begin construction in 2026, and 45% for projects that begin construction thereafter.

Advanced Manufacturing Production Credit for Wind Components

The bill provides an advanced manufacturing production credit for eligible energy components to help scale domestic supply chains for advanced energy technologies.[12] The credits are generally provided on a mass or watt capacity basis. The credit amount for wind energy components are 2 cents for blades, 5 cents for nacelles, and 3 cents for towers. The credit amount for offshore wind foundations is 2 cents for fixed platforms and 4 cents for floating platforms. The credit amount is increased by 10% if the final assembly of such components is at a facility in the United States that operates under a union-negotiated collective bargaining agreement. The credit phases out after December 31, 2026.

Conclusion

The Infrastructure Act and Build Back Better legislation each contain significant investment and policy changes aimed at facilitating development of critical clean energy infrastructure. While the provisions of the Build Back Better bill await a vote in the U.S. House—pending analysis of the bill's impact on budget deficit from the Congressional Budget Office—and will also face scrutiny in the Senate, the package represents concrete progress for the offshore wind industry in the United States.

Endnotes

[1] Administration of Donald J. Trump, Memorandum on Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition (September 8, 2020); Presidential Determination on the Withdrawal of Certain Areas of the United States outer Continental Shelf from Leasing Disposition (September 25, 2020).
[2] HR 5376, Section 71001. All sections hereinafter reference HR 5376 (updated November 3, 2021).
[3] Section 71002.
[4] Section 30454.
[5] Section 30451.
[6] Section 110013.
[7] Section 30442.
[8] Section 70601.
[9] Section 70206.
[10] Section 136101.
[11] Section 136102.
[12] Section 136504.

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