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Contacts

Richmond Office
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
(804) 788-8200
(804) 788-8218 fax

Washington Office
1900 K Street NW
Washington, DC 20006
(202) 955-1500
(202) 778-2201 fax

Laura Ellen Jones
(804) 788-8746
ljones@hunton.com

Andrew R. Kintzinger
(202) 955-1837
akintzinger@hunton.com

Douglas E. Lamb
(804) 788-8513
dlamb@hunton.com

Timothy L. Jacobs
(202) 955-1669
(804) 788-8362
tjacobs@hunton.com

Farm Bill Enacted; House Passes Extenders Bill—President Threatens Veto

Farm Bill

On May 21, 2008, the House, by a vote of 316-108, overrode the President's veto of the "Food, Conservation, and Energy Act of 2008" (H.R. 2419, the "Farm Bill"). The following day, the Senate, by a vote of 82-13, also overrode the veto. Not all of the bill, however, became law. The version of the bill sent to the President was missing the international food and trade title. The tax title of the bill, however, was enacted into law.

Qualified Forestry Conservation Bonds

The Farm Bill would create a new category of tax credit bonds, Qualified Forestry Conservation Bonds ("QFCBs"). QFCBs are tax credit bonds issued by a state or a section 501(c)(3) organization for the acquisition (from an unrelated person) of forest and forest land that meets the following requirements: (1) some portion of the land is adjacent to US Forest Service land; (2) at least one-half of the land must be transferred to the US Forest Service at no net cost and not more than one-half of the land may remain with or be donated to a State; (3) all of the land must be subject to a habitat conservation plan for native fish approved by the US Fish and Wildlife Service; and (4) the land must be at least 40,000 acres. QFCBs have a total allocation of $500 million which must be allocated within 24 months as the Secretary deems appropriate. The Secretary must also solicit QFCB allocation applications within 90 days of the date of enactment.

QFCBs are similar to Clean Renewable Energy Bonds and other tax credit bonds. However, there are some distinct differences between the programs. For example, QFCB tax credits may be "stripped"—the ownership of the QFCB and the entitlement to the tax credit may be separated. In addition, QFCBs generally are subject to the arbitrage requirements. However, proceeds invested during the three-year spending period are not subject to the arbitrage restrictions. Additional details regarding QFCBs are available in the attached Conference Report excerpt.

Section 48A and 48B

The Farm Bill would also amend Sections 48A and 48B of the Code to direct the Treasury Secretary to modify the terms of a certification award and closing agreement when the modification: (1) is consistent with the objectives of such section; (2) is requested by the recipient of the award; and (3) involves moving the project site to improve the potential to capture and sequester carbon dioxide emissions, reduce costs of transporting feedstock, and serve a broader customer base. The Secretary must also consult with other relevant Federal agencies (e.g., the Department of Energy) when considering a modification. Such modification, however, is not required if the Secretary determines that the modification would result in an increase in the taxpayer's tax credit amount or would result in the project not being originally certified.

Extenders Bill

On May 21, 2008, the House, by a vote of 263-160, passed the "Renewable Energy and Job Creation Act of 2008" (the "Extenders Bill"). The energy tax credit provisions contained in the Extenders Bill were described in a previous alert. On the same day, the President issued a Statement of Administration Policy (the "SAP") that threatened a veto of the Extenders Bill in its current form due to its opposition to the revenue-raising provisions. The SAP states that the "administration supports the extension of the renewable energy production tax credit in the bill and believes that it can be improved" by "consolidating the [PTC] and other clean energy incentives into a single, expanded program with the following features: the incentive should be carbon weighted; technology-neutral; long lasting; and should take into account our Nation's energy security needs." The SAP, however, provides that the administration is "concerned about expensive and highly inefficient tax credit bonds for renewable energy production and conservation efforts." In addition, the administration strongly opposes the provision in the Extenders Bill that would make Davis-Bacon Act prevailing wage requirements applicable to Clean Renewable Energy Bond projects. The SAP notes that this provision also would result in a veto by the President.

CRS Report on Tax Credit Bonds

On April 28, 2008, the Congressional Research Service updated its report on Tax Credit Bonds. A copy of the report is attached here. The report generally describes the Qualified Zone Academy Bonds, Clean Renewable Energy Bonds and Gulf Tax Credit Bonds programs and includes a section evaluating an investment in tax credit bonds versus other bonds.