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The Stimulus Bill: What It Means for Cleantech Startups and their Investors

February 27, 2009

DLA Piper Overview

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The Firm

- More than 3,700 lawyers in 67 offices and 28 countries
 - The US practice includes approximately 1,500 lawyers
 - In Europe and Asia, the firm has approximately 2,200 lawyers
- The largest law firm in the world by number of lawyers and the only firm in the world with more than 1,500 lawyers on each side of the Atlantic

Our Experience

- We represent companies from startups to more than 140 of the top 250 companies in the Fortune 500
- Strong government affairs and government contracting practice in Washington DC
- According to Dow Jones Analyst, DLA Piper was number 3 law firm in venture transactions worldwide in 2006 and 2007 (no rankings yet for 2008)
- Over 500 venture transactions completed in 2008



Global Platform

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MDV: Funding Cleantech Entrepreneurs, Innovation

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- Josh Green, General Partner
- Firm founded in 1983; Investing ninth fund; \$2B under management
- 16 investing professionals; Four focused on Cleantech
- Early stage focus; apply hands-on company building
- Tech transfer expertise
- **Investment interest:**
 - Next Generation Solar
 - Energy Efficiency
 - Energy Storage
 - Feedstock



Presenter Information

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Gary Klein, DLA Piper, Washington DC. Gary has been practicing in the energy legislative and regulatory area for more than 30 years. He was Minority Counsel to the Senate Energy Subcommittee, drafting energy regulatory laws in the 70's, and currently represents companies in the solar, wind, smart grid and biodiesel sectors. Contact: gary.klein@dlapiper.com.

Steve Phillips, DLA Piper, Washington DC. Steve spent 10 years working in the Senate and advising a senator of legislative issues, including energy and environment matters. At DLA Piper, he advises clients on a wide range of issues, such as renewable energy, tax, trade, defense, and other issues of importance to the high-tech and venture industry. Contact: steve.phillips@dlapiper.com.

Mark Radcliffe, DLA Piper, Silicon Valley. Mark has been representing companies and investors in Silicon Valley for over 25 years. He currently works with over 40 startup companies. He is the Chair of the Solar Practice Group at DLA Piper. Contact: mark.radcliffe@dlapiper.com.

Josh Green, Mohr Davidow Ventures, Silicon Valley. Josh has more than 25 years of experience working with companies from startups to large public companies and has helped many management teams focus their energy on building value for the enterprise and its stakeholders.. His work was recognized when he was named to the Forbes Midas List. Contact: jgreen@mdv.com.



Energy: A National Priority

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- The Obama Administration tells us that ARRA will “revive the renewable energy industry and provide the capital over the next three years to eventually double domestic renewable energy capacity.”
- ARRA includes three types of incentives available to cleantech startups and their investors:
 - Loan Guarantees
 - Tax Incentives
 - Direct Grants
- Congress and the Administration have made it clear that they regard ARRA as the first of 3 major initiatives to transform the way we generate and use energy.
- Next on the agenda are (1) comprehensive energy legislation and (2) climate change regulations and legislation.

Summary of ARRA Provisions

- The American Recovery and Reinvestment Act of 2009 (ARRA) includes a number of incentives for energy projects, specifically **\$43 billion in expenditures** and **\$22 billion in tax incentives**.

Program	Stimulus (ARRA)
Innovative Technology Loan Guarantee Program	\$6 billion
Production Tax Credit Extension	\$13.1 billion
Expanded Investment Tax Credit	\$285 million
Grants in Lieu of Tax Credits	\$5 million
Modified Existing Energy Credit	\$2.3 billion
Energy Efficiency and Conservation Block Grants	\$3.2 billion
State Energy Program	\$3.1 billion
Energy Efficiency and Renewable Energy Research, Development, Demonstration, and Deployment	\$2.5 billion
Advanced Battery Manufacturing	\$2 billion
Electricity Delivery and Energy Reliability (Smart Grid)	\$4.5 billion
Fossil Energy Research and Development	\$3.4 billion

Temporary Loan Guarantee Program

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Temporary Loan Guarantee Program (\$6 billion)

- Provides funds for **costs of loan guarantees for rapid deployment of renewable energy and transmission technology projects**. Expands DOE's Loan Guarantee Program (established in 2005). To date, DOE has not disbursed any funding.
- Must begin construction before September 30, 2011. Eligible projects include:
 - (1) **Renewable energy systems**, including incremental hydropower, that generate electricity or thermal energy and facilities that manufacture related components;
 - (2) **Electric power transmission systems**, including upgrading and reconductoring projects; and
 - (3) **Leading edge biofuel projects** that will use technologies performing at the pilot or demonstration scale that the Secretary of Energy determines are likely to become commercial technologies and will produce transportation fuels that substantially reduce life-cycle greenhouse gas emissions.

Temporary Loan Guarantee Program

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- **Difference between 2007 Rule** (implementing 2005 authorizing legislation) **and ARRA:**
 - Under 2007 Rule (applicable to existing lending programs) borrowers required to pay significant credit subsidy to cover DOE's cost of issuing guarantee.
 - ARRA provides \$6 billion to cover "costs of the guarantee." This pays credit subsidy costs and **eliminates need for DOE to recover costs of its guarantees from recipients through imposition of credit subsidy.**
- Secretary Chu plans to dramatically speed up process and will award some loan guarantees using existing funds by late April or early May. Loan guarantees using stimulus money will be offered by **early summer.**
- Chu said he will require project developers to **secure private funding of 20 to 30 percent** and will streamline the process.

Tax Incentives: An Overview

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Includes \$22 billion in energy incentives:

- Extension of **Production Tax Credit**
- Removes limitation on existing **Business Energy Credit**
- Expansion of **Investment Tax Credit**
- New **Grant in Lieu of Tax Credit**
- New Credit for Investment in **Advanced Energy Property**
- Extends **Bonus Depreciation (50%)** through 2010

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Production Tax Credit (PTC)

- Three-year extension of the **Production Tax Credit (PTC)**
- Ten-year credit period for all qualified sources

Facilities	New Placed in Service Date	Credit Amount (Cents/KWH)
Wind	Dec. 31, 2012	2.1
Closed-loop Biomass	Dec. 31, 2013	2.1
Open-loop Biomass	Dec. 31, 2013	1.0
Geothermal and Solar	Dec. 31, 2013	2.1
Municipal Solid Waste (<i>including Landfill Gas</i>)	Dec. 31, 2013	1.0
Qualified Hydropower	Dec. 31, 2013	1.0
Marine and Hydrokinetic	Dec. 31, 2013	1.0

Energy Credit

- Modifies **energy credit** for qualified property:
 - Solar energy property (30%)
 - Fuel cells power plant (30%)
 - Microturbines (10% or \$200/kw)
 - Geothermal heat pumps (10%)
 - Small wind—each up to 100kw (30%). **Eliminates \$4,000 cap**
 - Eliminates reduction in basis if financed by subsidized energy or private activity bonds
 - Credit may be carried forward for 20 years

Investment Tax Credit

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- 30% **Investment Tax Credit** for renewable energy property
- Include wind, biomass, geothermal, waste-to-energy, hydropower and marine qualified under PTC
- Irrevocable election in lieu of PTC
- Qualified property includes tangible property for which depreciation or amortization is allowable
- Placed in service dates are the same as PTC

Grants in Lieu of Tax Credits

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- Taxpayer may claim a grant by October 1, 2011 for property otherwise qualified under PTC or ITC
- Grants to be issued by Treasury within 60 days of facility placed in service
- Construction must begin by 2010 and property placed in service by date of applicable to PTC or Energy Credit
- 30% of basis of property qualifying for PTC or Energy Credit (10% for microturbines, geothermal heat pumps or combined heat and power property)
- Basis of property reduced by 50% of grant
- Recapture if disposed of within 5 years
- No PTC or ITC may be claimed
- Treasury to issue guidance



Qualifying Advanced Energy Project Credit

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- New 30% credit for investment in **Advanced Energy Property**
- Projects must be certified by Treasury/Energy: \$2.3 billion available
- Includes:
 - renewable energy (solar, wind, geothermal);
 - renewable electric grids;
 - capture and sequester CO₂;
 - refine or blend renewable fuels;
 - energy consideration technologies;
 - reduce GHG; and
 - emissions.
- Basis reduced by amount of credit
- Program to be established in 180 days

DOE Grant Programs: An Overview

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- **Energy Efficiency and Renewable Energy Programs**
 - Energy Efficiency and Conservation Block Grants (\$3.2 billion)
 - State Energy Program (\$3.1 billion)
 - Energy Efficiency and Renewable Energy Research, Development, Demonstration, Deployment (\$2.5 billion)
 - Advanced Battery Manufacturing (\$2 billion)
- **Other Department of Energy Programs**
 - Electricity Delivery & Energy Reliability (Smart Grid) (\$4.5 billion)
 - Fossil Energy Research and Development (\$3.4 billion)

Energy Efficiency & Conservation Block Grants (EECBG)

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Energy Efficiency & Conservation Block Grant (\$3.2 billion)

- Assists states, local governments and Indian tribes in implementing strategies to reduce fossil fuel emissions, reduce total energy use and improve energy efficiency.
- Activities eligible:
 - (1) residential and commercial building **energy audits**
 - (2) **financial incentives programs for energy efficiency improvements**
 - (3) **grants** to nonprofit organizations to perform **energy efficiency retrofits**
 - (4) **programs to conserve energy used in transportation**
 - (5) **building codes and inspections services to promote building energy efficiency**
 - (6) installing light-emitting diodes (**LEDs**)
 - (7) developing, implementing and installing on or in any **government building** onsite **renewable energy technology** that generates electricity from renewable sources
(includes: solar, wind, fuel cells and biomass)
- **Expect DOE to issue additional guidance in the coming months**

The State Energy Program

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State Energy Program (\$3.1 billion)

- Provides grants to states to address their energy priorities and program funding to adopt emerging renewable energy and energy efficiency technologies.
- SEP projects are managed by **state energy offices**, not by DOE directly.
- Example SEP projects:
 - Incentives in Illinois help facilitate the development of an E85 infrastructure and increase sales of E85 fuel to the public.
 - The Bright Schools Program helped K-12 school districts and private, nonprofit schools identify ways to reduce energy costs in buildings and facilities.
 - The Pennsylvania Codes Training Program informed local building code and regulatory officials about advanced energy conservation and high-performance green building technologies.

Energy Efficiency & Renewable Energy Research, Development, Demonstration and Deployment

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Energy Efficiency & Renewable Energy Research, Development, Demonstration, and Deployment (\$2.5 billion)

- \$2.5 billion includes:
 - \$800 million for projects related to **biomass**
 - \$400 million for **geothermal activities**
 - Remaining funds not allocated for a specific grant program.
Potential uses include:
 - research and demonstrations for renewable energy technologies (including water power and solar energy); and
 - energy efficiency demonstrations.

Advanced Battery Manufacturing

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New: Advanced Battery Manufacturing (\$2 billion)

- Grants for manufacturing of advanced batteries and components.
- Eligible grantees are manufacturers of advanced battery systems and vehicle batteries that are produced in the United States. Includes:
 - Advanced lithium ion batteries,
 - Hybrid electrical systems,
 - Component manufacturers,
 - Software designers.

Electricity Delivery & Energy Reliability (Smart Grid)

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Electricity Delivery & Energy Reliability (\$4.5 billion)

- Includes \$4.5 billion to **modernize the electric grid**
- DOE Secretary to provide \$4.4 billion in grants for smart grid demonstration projects
- Available until September 30, 2010
- Grants can provide **no more than 50 percent of the cost of the qualifying advanced grid technology investment**
- Within 60 days, DOE to establish procedures for a grant process.

Fossil Energy Research & Development

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Fossil Energy Research & Development (\$3.4 billion)

- \$1 billion for **fossil energy** research and development;
- \$800 million for the **Clean Coal Power Initiative Round III** Funding Opportunity Announcement;
- \$1.52 billion for a competitive solicitation for a range of **industrial carbon capture and energy efficiency improvement projects**, including a small allocation for innovative concepts for beneficial CO₂ reuse; and
- \$50 million for a competitive solicitation for **site characterization activities in geologic formations**.

Buy American Restrictions

- **“Buy American”** provision: Stipulates funds may not be used for a **“project for the construction, alteration, maintenance, or repair of a public building or public work** unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.”
- However, this restriction can be waived in three situations:
 - Inconsistency with public interest—rarely invoked
 - Goods are not produced in U.S. in sufficient and reasonably available quantities and satisfactory quality
 - U.S. goods would increase project cost by more than 25%
- Additionally, the provision is applied in manner consistent with U.S. international obligations, *i.e.*, the rules of the WTO Agreement on Government Procurement, NAFTA and other trade agreements.

Buy American Restrictions

Relevant Questions

- Is the project for a public building or public work?
- What is the product—is it a manufactured good?
- What is the source of the product—in what country is it made? Is the product from a country covered by an international agreement?
- What is the procuring entity—federal agency, state agency, private utility company? (Some states have not adopted WTO Procurement Code)
- What is the value of the procurement—does it meet any relevant thresholds?

Upcoming Energy Legislation

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- Priority for House and Senate leaders
- Could include:
 - Renewable Energy Portfolio Standards (RPS)
 - Electric Transmission Expansion and Modernization
 - Specific criteria for loan guarantee program
 - Low carbon fuel standard
 - New building and appliance standards

Climate Change Legislation

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- Congress likely to create a cap and trade program for GHG emissions.
- Cap will create a price for carbon and other GHGs and, in turn, reward energy efficiency and promote low carbon energy production and carbon sequestration.
- Issues to be resolved:
 - who will be subject to an emissions cap;
 - stringency and timing of required emission reductions;
 - allowances be allocated or sold at auction;
 - will revenues from an auction of allowances be returned to consumers/taxpayers or invested in renewable energy or other government programs;
 - how to protect energy intensive domestic industries from foreign competition located in countries without stringent GHG controls; and
 - whether to preserve or preempt more stringent state and local GHG programs.
- Copenhagen meeting in December 2009 to replace Kyoto

Looking Forward

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- Cleantech is different from other areas of venture investment: government has a critical role through regulation and funding.
- Government's role is likely to increase in the foreseeable future
- Government will help determine winners and losers through regulation and funding
- Cleantech companies need to understand how government works
- The rules are in flux and can be modified: companies can gain or lose competitive advantages due to legislation and implementing regulations.
- Cleantech companies need to monitor developments in Washington to be successful.