NACo LEGISLATIVE ANALYSIS | S. 5653

The Bipartisan American Affordability and Jobs Act of 2026

What counties need to know

November 2, 2026

NATIONAL ASSOCIATION of COUNTIES NACo

What is Permitting Reform?

Procedural statutes

Require the federal government to evaluate the environmental impacts of its actions

Substantive statutes

Prohibit specific actions unless a permit is issued

Statutes addressed in the bill

- National Environmental Policy Act (NEPA)
- Clean Water Act (CWA)
- National Historic Preservation Act (NHPA)
- Endangered Species Act (ESA)
- Federal Power Act (Electric transmission)

One comprehensive package

Past efforts amended individual laws. BAAJA would cover both procedural and substantive permitting laws.

Why is permitting reform important for counties?

The challenge

Federal permitting has delayed critical infrastructure such as energy, water, transportation, housing and broadband. Recent regulatory actions also changed how counties work with the federal government and created inconsistencies across agencies.

COUNTIES ARE INVOLVED AS…

Project sponsors

Counties sponsor housing, broadband, transportation and water projects that need federal permits.

Cooperating agencies

Counties join federal reviews to share local knowledge about projects in their communities.

Hosts of federal land

Counties host projects on federal land within their boundaries.

Key takeaways for counties - BAAJA

Cooperating agencies

Counties would be named as cooperating agencies and project sponsors in NEPA reviews.

Firm deadlines

Environmental assessments would be capped at one year; environmental impact statements would be capped at two years.

Lifeline exclusion

Repair or replacement of county roads, bridges, water and sewer systems would skip NEPA, so long as capacity grows 20 percent or less.

Funding alone

A federal grant or loan alone would no longer trigger NEPA review if the agency doesn't control the outcome of the project.

Permit certainty

Issued permits could be rescinded or changed only for narrow reasons, with clear and convincing evidence.

Federal lands revenue

Faster geothermal and energy permitting could affect royalty revenue shared with counties.

NACo Advocacy in 119th Congress

December 18, 2025 — Standardizing Permitting and Expediting Economic Development (SPEED) Act passed U.S. House with 221-196 bipartisan vote

April 15, 2026 — Create Expedited Reviews to Transform American Infrastructure Now (CERTAIN) Act introduced in U.S. House

September 30, 2026 — Bipartisan American Affordability and Jobs Act (BAAJA) introduced in U.S. Senate

A formal seat at the table

1

30 days

Lead federal agency identifies and invites likely cooperating agencies

2

7 days

An invited agency accepts or declines

3

Early input

County comments, limited to matters within its jurisdiction, must be considered by the lead agency

Who counts?

"Cooperating agency" and "project sponsor" would both explicitly include a county, borough, parish, city or any other political subdivision of a State.

Being named would not expand a county's legal authority over the project, but it guarantees the ability to share local knowledge early.

Fewer projects trigger NEPA review

Federal funding alone

A grant or loan would no longer trigger NEPA if the funding agency does not control the project's outcome.

Revenue-sharing funds

Projects supported by general revenue-sharing funds like PILT would remain excluded, so counties could keep effectively using PILT for essential services.

Lifeline infrastructure

Repair, reconstruction or replacement work on “lifeline infrastructure,” which includes roads, bridges, water lines, and more, would no longer require NEPA review. In the context of transportation projects, this exemption would only apply so long as a project does not add capacity (i.e. road widening).

Categorical exclusions

Agencies could stack several categorical exclusions on one project and borrow one another agency has already published.

Firm deadlines, shorter window to sue

1 year

Deadline for an environmental assessment

2 years

Deadline for a full environmental impact statement

90–120

Days for other agencies to act on remaining approvals

10 years

Validity of programmatic reviews, up from five

A shorter window to sue

- 150-day statute of limitations for NEPA lawsuits
- Only plaintiffs who submitted substantive comments and can show harm would be able to sue
- Courts would be directed to prioritize remand for fixes over halting a project
- CEQ Chairman would run a dispute resolution process to keep reviews on schedule

Clean Water Act

1 year

Cap on certification review. If the deadline is missed, the certification is deemed waived.

9 months

Faster, separate certification timeline for interstate transmission lines and natural gas pipelines.

5 to 10 years

Longer life for NPDES permits and Section 404 nationwide permits.

Higher bar

Certifying authorities could deny or condition a certification only with clear and convincing evidence tied to water quality.

Endangered Species Act

Section 7 consultation

- State primacy program lets qualifying state wildlife agencies take over consultation from USFWS; sponsors can still elect USFWS
- Consultation must conclude no later than the NEPA document itself
- 150-day statute of limitations on challenges to biological opinions

Species listing data

- “Best scientific and commercial data available” defined in statute for the first time
- State-collected data must be considered in listing and delisting decisions if it meets that standard

$150M

per year, 2027 through 2031, for consultation work and state participation in the primacy program

$50M

per year, 2028 through 2032, for a National Fish and Wildlife Foundation Coastal State Fund

National Historic Preservation Act

30 days

Decide whether an action is an "undertaking"

60 days

Identify affected historic properties

90 days

Consultation period

30 days

Objection window

Clearer definitions

- "Undertaking" would exclude the non-federally controlled part of a project and exclude projects that qualify solely through federal funding
- Thresholds set for "adverse effect" and "area of potential effects"

Oversight and funding

- State and Tribal offices face performance reviews every two years and funding audits every four
- Historic Preservation Fund set at $200M a year through 2036, plus $20M a year through 2030 for Tribal grants
- 150-day statute of limitations; courts favor remand over blocking

County roads, bridges and water systems

Would be excluded from NEPA when the work…

- Repairs, reconstructs, restores, retrofits or replaces “lifeline infrastructure” such as county roads, bridges, water supply and sewage treatment
- Does not alter the function or increase capacity by more than 20% and is in the “vicinity” of the existing infrastructure
- Adds no new travel lanes, in the context of road and bridge projects

Water Infrastructure

Projects with under $50M in federal funding through Army Corps continuing authorities or environmental infrastructure programs would also fall outside “major federal action.”

Not a blanket exemption

Other federal permitting requirements still apply. Projects that don't qualify still benefit from the streamlined NEPA process.

Transmission and linear projects

FERC backstop siting	FERC could approve interstate lines without a corridor designation; federal and state reviews run concurrently for lines of 345 kV or more.
Existing rights-of-way	Upgrades such as reconductoring would be exempt from NEPA and historic preservation review.
Pipelines and lines	Interstate transmission lines and natural gas pipelines get a 9-month certification timeline instead of one year.
USACE Section 404 permits	Valid for 10 years instead of 5 for linear transportation projects and telecommunication lines.
ESA exemption	Transportation projects with a NEPA categorical exclusion skip separate Section 7 review within existing right-of-way.



$20M

a year through 2031 for a new DOE program giving counties technical assistance to streamline permitting and inspection of rooftop solar and batteries

Certainty for permits already issued

Protection

- Once a non-federal sponsor has a permit, an agency could rescind, suspend or materially change it only for narrow reasons
- The agency must prove its case with clear and convincing evidence

Remedies

- A wrongly affected permit holder could recover reinstatement, attorney's fees and delay costs
- Damages up to half of construction costs incurred

Deadlines

- One-year decision deadline for permits that don't need a full NEPA review
- Applicants could ask a court to force a decision, with narrow exceptions such as natural disasters or fraud
- Sponsors could sue over a pattern of unfair treatment

Federal lands: maintenance and energy

Deferred maintenance

Maintenance and state-of-good-repair work on federal facilities costing under $10M would skip NEPA reviews.

Wildfire projects

Healthy Forests Restoration Act fuel and forest restoration projects gain expedited consideration.

Oil and gas wells

No DOI drilling permit where the government owns under half the mineral estate; state permit still required.

Energy project certainty

Establishes 150-day window for challenges to energy projects on federal lands.

Renewable energy

Firm deadlines for right-of-way applications and new categorical exclusions for low-disturbance sites.

Hardrock mining

Mill sites up to five acres at $400 a year; fees fund a new Abandoned Hardrock Mine Fund.

150-day statute of limitations for lawsuits over energy, mining or forest projects; agencies get 180 days to act after a remand

Geothermal permitting improvements

25%

of royalties and fees from geothermal projects on federal land go to the counties where they sit

Faster permitting could increase the number of geothermal projects

Exploration

Would establish a categorical exclusion for geothermal observation test projects; routine exploration needs no federal review.

Royalties and leasing

Royalties run a fixed 10 years once a facility is in service; DOI must hold competitive lease sales every year.

Coordination

A new DOI Geothermal Ombudsman and an interagency task force would coordinate reviews across agencies.

Drilling permits

No federal drilling permit on leases over 50% non-federal subsurface; DOI notice still required but Tribal land excluded.

Hydropower and offshore transmission

Hydropower licensing

- FERC must study market barriers to hydropower within 270 days of enactment
- Land management agencies could impose license conditions only tied to a project's actual effects
- Routine maintenance, repairs and emergency weather response would no longer need advance FERC sign-off
- New expedited 10- to 20-year license for small hydrokinetic projects of 5 MW or less that don't impound water

Offshore transmission

- DOI could grant rights-of-way for transmission through National Marine Sanctuary units
- DOI must identify preferred offshore routes every three years
- Permitting rule for offshore transmission would be due within two years

Data centers and ratepayer costs

270 days

after enactment, FERC would be required to issue a proposed rule on data center transmission costs

20 MW+

data centers above this size would pay all associated transmission costs

Rate Authority

States would keep authority to set data center rates, siting authority and may use extra revenue to lower rates for other ratepayers

The goal: keep the cost of new data center demand from landing on individual ratepayers.

What county officials can do

1

Contact your U.S. Senators

Call or send NACo's BAAJA template letter to urge them to support this bipartisan permitting reform package and vote yes on the cloture vote on November 9th

2

Highlight permitting challenges your county has faced on social media

How have delays due to permitting impacted infrastructure projects in your county? Share those stories on your county social media platforms and with your Congressional delegation

3

Publish letters to the editor and op-eds

Use NACo's permitting reform advocacy hub to write op-eds illustrating the bill's impact on infrastructure project delivery in your county

Tell us more

- **NEPA Cooperating Agency Response Timeline**: How often does your county have meetings – weekly, biweekly, monthly?
- **NHPA Section 106 consultations**: Has your county participated in one of these consultations? Did the previous process work how it was intended?
- **Federal Transmission Backstop Authority**: When your county works with an electric co-op or municipal utility on a new line or upgrade, when does FERC step in?

Thank you

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Scan to view NACo's permitting advocacy hub