



Permitting Reform Is Back On. What Should It Include?

Fixing the maze of reviews, vetoes, and lawsuits that keeps American energy and infrastructure stuck in limbo

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Executive Summary

Permitting reform is once again on the table, and Congress, along with the Trump administration, has a real opportunity to fix a fundamentally flawed permitting process that hampers energy abundance, infrastructure development, economic growth, and environmental progress. The U.S. permitting and regulatory system is complex, redundant, and prone to litigation, which discourages investment and innovation. While reform to the National Environmental Policy Act receives the most attention, improvements to the Clean Water Act, the Clean Air Act, the Endangered Species Act, and the National Historic Preservation Act will ensure that permitting reform is substantial and meaningful.



This paper outlines opportunities to streamline reviews, reduce duplication, clarify legal standards, and offer greater certainty for project developers while maintaining strong environmental protections. These reforms will support all types of energy generation and linear infrastructure, helping to eliminate bottlenecks and improve energy security. Most importantly, American consumers will benefit from more affordable, reliable power. The window for action is narrow, but the opportunity is significant. If implemented correctly, permitting reform can bring common sense back to a system that has drifted too far from its original purpose.

Introduction

Senate Democrats have recently reopened the door for negotiations with Republicans and the White House. After the Trump administration revoked permits for offshore wind, Democrats have specified that renewable permits must proceed smoothly as a necessary condition for ongoing dialogue. Importantly, the White House has also expressed interest in reaching a deal. Time is of the essence, as there is much to negotiate and only relatively few opportunities to move reforms through Congress. Nevertheless, expediency should not be an excuse to compromise on substance.

The need for permitting reform is clear. Dependable energy is the engine of the economy. The deployment of additional energy generation, transmission, and pipeline capacity is necessary to meet rising demand. If energy supply cannot keep up, households and businesses will face even higher bills. Expanded load growth could strain the grid in certain regions of the country. Reliable infrastructure is the backbone for moving goods to consumers in the U.S. and around the world. Highways, railroads, ports, and airports carry the food to our grocery stores, medicine to our hospitals, energy to our homes, and materials that keep construction and manufacturing moving.

Most of these energy and infrastructure projects require federal permits. Far too often, however, permitting processes and regulations are abused as a tool to obstruct, delay, and sue. The result is higher costs, deterred investment, and ultimately, a process that undermines economic growth and environmental progress by slowing the deployment of newer, cleaner, and more efficient technologies.

For permitting reform to have its intended effects of improving efficiency, transparency, and certainty, legislation must be comprehensive. Congress and President Trump have a unique chance to repair a fundamentally broken system. Doing so will strengthen an American energy dominance agenda, promote innovative technologies, bring significant capital into the economy, and most importantly, provide families with more affordable energy and reliable infrastructure.

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Evidence of a System Gone Awry

All energy sources, transportation methods, and manufacturing processes have tradeoffs. The environmental impacts of a new energy facility can include effects on air quality, water quality, greenhouse gas emissions, land use, water consumption, and animal habitats. Some risks are more well-known; others are less understood. Certain environmental risks are immediate and locally focused, while others are dispersed and can last for decades or even centuries.

To mitigate environmental risks, policymakers have enacted major environmental laws, many of which are over 50 years old. Some laws require companies to meet certain environmental standards, such as pollution standards. But even those laws change relatively frequently. Other procedural “look before you leap” laws require federal agencies to conduct environmental reviews for various projects.

Developers often need to navigate multiple federal and state agencies to receive permission to build. This includes the Clean Air Act, the Clean Water Act, the Endangered Species Act, the National Historic Preservation Act, the Federal Land Management and Policy Act, the Natural Gas Act, the Federal Power Act, the Migratory Bird Treaty Act, the Marine Mammal Protection Act, and the Coastal Zone Management Act –to name a few.

At the core is the National Environmental Policy Act (NEPA). NEPA doesn't require specific environmental results, but it compels federal agencies to assess the environmental impacts of major projects, evaluate alternatives, and publicly disclose these impacts through Environmental Assessments or Environmental Impact Statements. Beneath this are broader requirements, such as consultation under the Administrative Procedure Act (APA), which governs how agencies make decisions and provides the legal process for judicial review.

Although well-intentioned, the permitting process has become a sprawling, duplicative system that layers reviews, invites litigation, and stretches timelines into years or even decades. The process is burdensome for project applicants and the agencies conducting the review, requiring extra paperwork, unclear procedures, and redundant efforts. Most concerning, though, is that the process creates opportunities for seemingly endless litigation. In many cases, these lawsuits are filed by a small group of NIMBYs or litigious environmental activists.

Examples abound where the permitting process has stalled or killed the deployment of infrastructure. In other instances, litigation and regulatory uncertainty increased costs and delays to the point that developers ultimately abandoned the project. Critically, the problem spans most regions of the country and extends to all types of energy infrastructure, whether it be a natural gas pipeline, a solar array, or an advanced nuclear reactor. Some recent examples include:



New England Clean Energy Connect (Maine). The New England Clean Energy Connect is a 145-mile high-voltage line that delivers clean hydropower from Quebec through western Maine and into the New England grid. First proposed in 2017 by Central Maine Power, the project cleared federal environmental reviews and state permitting processes. Residents objected to tree clearing and landscape alteration, and opponents organized a statewide referendum and pursued multiple lawsuits to stop the project. Construction halted despite years of regulatory approvals, before courts eventually allowed the project to move forward. The project finally became operational in January 2026.¹

Keystone XL Pipeline (Montana to Nebraska). An \$8 billion project, the Keystone XL pipeline would have delivered oil from Alberta, Canada, to Gulf Coast refineries, delivering over \$5 billion in property tax revenues to the states through which it passed.² The Obama administration denied the presidential permit because of the pipeline's climate change impacts, even after the State Department's environmental review concluded that the pipeline would not meaningfully contribute to climate change.³ After President Trump approved the permit, environmental groups sued the federal government in 2017, arguing that the environmental review for the pipeline was inadequate. A federal judge ruled in 2018 that the environmental analysis violated NEPA and halted construction until a new review was completed.⁴ The project was repeatedly delayed by litigation and regulatory decisions before ultimately being canceled in 2021.

Micron's Semiconductor Fab (New York). After 612 days of environmental review, thousands of pages of analysis, and broad support from local leaders and workers eager for the jobs, Micron's \$100-billion semiconductor fab in upstate New York still faced a potential delay because of a lawsuit backed by just six plaintiffs over land-use impacts, water use concerns, and whether the project meaningfully included community input.⁵

Atlantic Coast Pipeline (Mid-Atlantic). Led by Dominion Power and Duke Energy, the Atlantic Coast Pipeline was proposed to deliver natural gas from West Virginia to Virginia and North Carolina. The project underwent rigorous environmental reviews and included extensive mitigation measures. Yet a series of lawsuits brought by environmental groups under NEPA, the Clean Water Act, and the Endangered Species Act led courts to repeatedly overturn permits and force regulators back to the drawing board. Courts often agreed on narrow administrative grounds, vacating permits and forcing agencies to redo paperwork. After seven years of legal battles, the developers canceled the \$8-billion project. The project developers even won several of their cases in court, including a Supreme Court victory⁶, yet the cumulative burden of litigation and regulatory uncertainty ultimately made the project unfinanceable. At the time of the cancellation, 98 percent of the easements for the project's route had been secured.⁷

Calico Solar Project (California). Federal lands offer some of the best opportunities for solar energy, but they are subject to the most burdensome NEPA permitting processes. Project developers who must navigate NEPA face lawsuits nearly two-thirds of the time and face cancellations nearly one-third of the time.⁸ One example is the Calico Solar Project on federal



land in California. As the Obama administration sought to distribute money from the American Recovery and Reinvestment Act, clean energy projects were a priority, but red tape stood in the way. The 850-megawatt Calico Solar project received federal approval after a long NEPA review. Still, lawsuits challenged the agencies' failure to fully consider impacts on bighorn sheep, desert tortoises, and white-margined beardtongues.⁹ Specific mitigation requirements, including setting aside thousands of acres of habitat, a 4,000-foot wildlife corridor, and several redesigns that required additional mitigation efforts,¹⁰ were not sufficient to satisfy the litigants. Whether the project was economical, even with subsidies, is unknown. But the persistent litigation raised costs and increased uncertainty for project developers, a situation all too familiar for solar energy companies.

The Purple Line Light Rail Transit (Maryland). The Purple Line is a 16-mile light rail that will connect Prince George's and Montgomery Counties in Maryland. Seen as an environmentally friendly option for commuters, the light rail is expected to start operating by 2027. However, it has faced delays, with several setbacks, including frivolous lawsuits from a few plaintiffs attempting to block it for years. In the first lawsuit, plaintiffs claimed that the agencies responsible for environmental assessments did not consider the impact on a tiny, shrimp-like creature about half the length of a fingernail. Two plaintiffs said they had a "special and unique bond" with the amphipods.¹¹ This is questionable because the plaintiffs lived in Chevy Chase, Maryland, near the project, while amphipods are found only in Washington, DC's section of Rock Creek Park.¹² It is also important to note that the agencies did study whether the route would harm the shrimp or its habitat and found no adverse effects. The plaintiffs lost the lawsuit, but delayed the project by a year. Two more lawsuits followed, and now the project is seven years behind schedule and \$4 billion over budget.¹³

Uinta Basin Railway (Utah). Until a recent Supreme Court case, one issue with federal environmental assessments was that activists and courts sought to require agencies to analyze impacts far beyond the project itself. The Uinta Basin Railway is an 88-mile rail line proposed to connect Utah's energy-rich Uinta Basin to the national rail network, allowing producers to move crude oil and other commodities to refineries and markets across the country. After years of environmental review, opponents sued under NEPA, claiming that regulators failed to analyze the upstream and downstream environmental impacts of the oil that might eventually be transported on the line. Essentially, the groups asked federal agencies to account for the broader climate impacts of oil production, refining, and consumption, rather than just conducting an environmental assessment of the rail line. In *Seven County Infrastructure Coalition v. Eagle County*, the Supreme Court limited that broad interpretation of NEPA, ruling that the law requires agencies to analyze the environmental impacts of the project they are approving, not speculative effects from other projects or market activity outside their control.

These are just a few examples of projects delayed or canceled because of red tape, longer timelines, and lawsuits, which increase uncertainty and costs. The reality is that nearly all projects that require procedural review or regulatory compliance with federal laws suffer from unclear guidelines and reviews that pass through multiple agencies, leading to unreasonably lengthy timelines.¹⁴ Prolonged litigation, often initiated by

a small group of plaintiffs or litigious environmental activists, keeps projects tied up in court for years.¹⁵ Even the mere threat of litigation also extends timelines, as risk-averse agencies seek to avoid lawsuits. Litigation-proofing environmental reviews adds significant time, pages, and costs to reviews without providing much additional benefit.¹⁶

Exacerbating the problem is the executive branch's concentration of power. Unilateral decisions in recent years have delayed oil and gas permits on federal lands, paused liquefied natural gas export terminals, or revoked already-granted permits for coal mines and offshore wind projects. Both political parties have stopped projects based on spurious claims.

System-wide reforms are necessary to improve transparency, efficiency, and certainty in the development and deployment of economically viable projects to meet our energy and infrastructure needs.

Building On Current Proposals

Congress has introduced or passed several bills in the 119th Congress that provide a foundation for negotiations and lead to much-improved processes. Some of the more notable bills would modernize NEPA, the Clean Water Act, the Endangered Species Act, and the Clean Air Act, address transmission-specific challenges, and provide greater permitting certainty. Proposals include:

The National Environmental Policy Act (NEPA)

THE SPEED ACT

Introduced by Representatives Bruce Westerman (R-AK) and Jared Golden (D-ME), the Standardizing Permitting and Expediting Economic Development (SPEED) Act (H.R. 4776) would make several substantive fixes to NEPA. Chief among them is:

A more streamlined process with a narrower focus. The Act would eliminate the need for a NEPA analysis if the proposed agency action is reviewed under another federal law or if a review by a state or tribal entity serves a purpose similar to NEPA. This change would reduce redundancies and allow states and tribes to conduct more efficient reviews that better address local communities' needs and concerns. The bill would also limit the scope of environmental assessments to those with a "reasonably close causal relationship to and are proximately caused by" the project or agency consideration. This would eliminate the need to evaluate speculative, downstream, and indirect effects, which often extend the analysis and lead agencies into complex chains of causal effects for projects and actions. This was a key point in the recent Supreme Court decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, which clarified and narrowed the scope of NEPA review. The bill further enhances NEPA efficiency by expanding categorical exclusions (such as Farm Service Agency loans and loan guarantees), permitting the use of previous studies and data, and clarifying that federal funding through grants, loans, and loan guarantees cannot be the sole trigger for a NEPA review.

Judicial review. The SPEED Act would restrict the court’s authority to invalidate an agency action only if the agency abused its “substantial discretion” and the “agency would have reached a different result on said action without the abuse.” The bill indicates that any inadequate NEPA analysis, such as a deficiency or error in an environmental impact statement, does not require a court to vacate the agency’s approval of a project. Instead, the agency’s action will stay in effect, and the project can continue as the agency corrects any errors or deficiencies. Regarding legal standing, the Act would require individuals to have actively participated in the NEPA process, such as submitting public comments, before filing suit, and to demonstrate direct harm, as outlined in the comments. Additionally, the bill protects categorical exclusions from lawsuits. It would also reduce the statute of limitations to 150 days from the current 6-year limit.

EPERMIT ACT

Introduced by Reps. Dusty Johnson (R-SD) and Scott Peters (D-CA), the ePermit Act would fully digitize the NEPA permitting process by creating a single online portal that simplifies application submission, centralizes document posting, and consolidates public notices and interagency comments on NEPA documents.¹⁷ President Trump issued an Executive Memorandum to update the permitting process, emphasizing the use of digital technology and the development of a unified permitting portal. Congress has the authority to formalize this memorandum and require all agencies to establish and utilize a government-wide permitting portal.

STUDYING NEPA’S IMPACT ON THE PROJECTS ACT

Introduced by Rep. Rudy Yakym (R-IN), this bill would require the Council on Environmental Quality (CEQ) to produce an annual report that revises and consolidates three previously created reports. The first is a yearly NEPA litigation survey published from 2001 to 2013, which details NEPA litigation data. The second report addresses the length, number of drafts, costs, and five-year trends of these data for environmental assessments and environmental impact statements; it was previously prepared in 2019 and 2020. The bill’s third provision mandates reporting on the duration of a project’s NEPA review and provides a description of 10-year trends; this data was previously reported in 2018 and 2020.

The Clean Water Act (CWA)

THE PERMIT ACT

Clean Water Act permitting generally comes down to two key approvals. The first is Section 404, which requires a permit from the U.S. Army Corps of Engineers for any dredging or filling of wetlands and other jurisdictional waters. If a project crosses streams, disturbs wetlands, or discharges material into waters of the United States, it will require a 404 permit. The second is Section 401, which gives states the authority to certify that a project complies with their water quality standards before a federal permit can be issued. That means even if a project clears federal review, states can impose conditions or deny certification altogether.

In addition, many projects also need permits under the National Pollutant Discharge Elimination System (NPDES) for stormwater runoff and wastewater discharges during construction and operation.

Introduced by Representative Mike Collins (R-GA), the Promoting Efficient Review for Modern Infrastructure Today (PERMIT) Act aims to provide clearer and more efficient regulations for Clean Water Act (CWA) permits and certifications. This clarity would benefit farmers, homebuilders, and energy and infrastructure developers, ultimately helping American households through increased supply. Reforms will be particularly helpful for large linear infrastructure projects, such as pipelines and transmission lines. Specifically, the bill would:

Prohibits Section 401 abuses. The PERMIT Act narrows how states can use Section 401 water quality certifications, which are often used to block federally approved projects like pipelines, transmission lines, and energy infrastructure. States would be restricted to evaluating water-quality impacts directly related to the discharge itself, rather than broader environmental concerns, climate change, or noise pollution.

Prevents preemptive and retroactive vetoes. The EPA can preemptively veto a project or revoke a permit for an existing project. The agency can exercise its Section 404(c) authority to veto a project after a permit has already been issued or even after significant investment has been made. Retroactive vetoes inject greater uncertainty into the permitting process. Moreover, the EPA can issue a preemptive veto and block a project from ever moving forward if the agency determines the discharge of dredged or fill material would have “unacceptable adverse effects” on water supplies, fisheries, wildlife, or recreation. Preemptive vetoes are presented to save taxpayers and applicants money because the project will not go through the time and cost of an environmental assessment. However, when the EPA issued a preemptive veto for a proposed mine in Alaska, it was based on hypothetical plans rather than a real-world permit.¹⁸ The PERMIT Act would create greater certainty for projects by banning the Environmental Protection Agency from issuing preemptive and retroactive vetoes on 404 dredge-and-fill permits granted by the Army Corps of Engineers.

Improves permitting efficiency and reduces litigation risk. The Act would establish clearer timelines, enhance coordination by reducing federal and state overlap, and provide clearer requirements for permit applications and agency decision-making. The bill would also extend the duration of certain nationwide permits (for example, those under Section 404) from five to ten years, thereby lowering renewal risk and supporting more stable infrastructure planning. Further, the bill offers greater clarity about “waters of the United States,” narrows the definition of regulated waters, and sets forth standards so that permit-seekers know what they face, reducing the chance of surprise delays.



THE ENDANGERED SPECIES ACT (ESA)

The Endangered Species Act (ESA), designed to protect and recover listed species and habitats, is well-intentioned but poorly executed. Clearly defined problems exist with the ESA as currently structured, including delayed economic investment, threatened private property rights, perverse incentives that undermine habitat protection, and the federal government's inability to quickly adapt to a constantly changing environment. Additionally, the law has struggled to achieve its core objective of species recovery, with more than 97 percent of listed species remaining endangered or threatened.

The unintended consequences of the ESA have been documented for years. There is plenty of anecdotal evidence showing that landowners have managed their land in ways that destroy habitats to avoid dealing with endangered species. Several studies have examined landowners' preemptive habitat destruction. In one example, researchers studied forest plots occupied by red-cockaded woodpeckers. They found that private landowners logged timber near the woodpeckers' colonies well before the timber matured, preventing the birds from nesting and thus reducing available habitat. The result was poor economic and environmental outcomes. Structural reforms, such as fixing the consultation process and ensuring compliance with relevant information quality guidelines, would go a long way to reducing some of the bureaucratic obstacles.¹⁹ Recent reform efforts include:

The ESA Amendments Act. Introduced by Rep. Westerman, the ESA Amendments Act would revise ESA to achieve measurable recovery. It establishes clear statutory deadlines for listing, delisting, and five-year status reviews; limits future "critical habitat" designations to areas occupied by a species; and creates a recovery-credit marketplace that rewards private and state landowners who improve habitat. It also instructs the Fish and Wildlife Service to prioritize resources for the most at-risk species while reducing "sue-and-settle" litigation by capping attorneys' fees and increasing transparency in citizen suits. These changes are designed to streamline project permitting, promote genuine conservation efforts, and restore congressional intent without weakening vital wildlife protections.

Discretionary Protection for Threatened and Endangered Species: The ESA Flexibility Act, introduced by Rep. Peter Stauber (R-MN), would give the Secretary of the Interior the authority

to apply Section 4(d), which allows tailored rules for threatened species, to endangered species as well. Congress can clarify that threatened listings automatically trigger species-specific 4(d) rules, encouraging landowners to participate in Safe Harbor agreements and aligning regulations with actual threats.

Streamlined “Not Likely to Adversely Affect” Consultations. Even projects expected to have negligible impacts still require ESA consultations. The Department of the Interior’s 2022 guidance piloted a 30-day informal concurrence track for Not Likely to Adversely Affect (NLAA) actions, but adoption is inconsistent. Congress can lock in a 30-day concurrence limit, require standardized digital templates, and mandate annual public reporting on NLAA timelines to maintain accountability.

The Clean Air Act (CAA)

The empirical data on environmental quality in the United States are encouraging. Between 1970 and 2020, US emissions of the six major “criteria” pollutants (carbon monoxide, sulfur dioxide, nitrogen oxides, coarse and fine particulate matter, lead, and ozone) dropped by 78 percent even as the economy, population, and energy use all grew.²⁰

However, the statute’s regulatory architecture remains rooted in a 1970s framework that does not align well with today’s energy system, economic realities, or technological capabilities. In many cases, this outdated structure produces regulations that impose high compliance costs while delivering diminishing environmental returns. Modernizing the Clean Air Act should not mean weakening its objectives but rather updating its tools to achieve cleaner air more efficiently, with greater flexibility, and at lower cost to consumers and the broader economy. Several bills introduced in the House would provide more regulatory efficiency and flexibility. While some reforms are more directly tied to permitting than others, others provide additional flexibility in regulatory compliance, enabling more economic activity, ensuring environmental protection, and providing greater clarity for businesses, counties, and states that must comply with air quality regulations. The bills include:

The Clean Air and Economic Advancement Reform (CLEAR) Act (Rep. Buddy Carter, R-GA) grants states and the EPA more flexibility when the agency sets or revises National Ambient Air Quality Standards (NAAQS).²¹ The bill would allow the EPA to consider technological feasibility and economic achievability. This marks a shift from the current framework, which the Supreme Court has deemed cannot include cost considerations. It also provides states additional time to develop and implement State Implementation Plans (SIPs) and meet attainment deadlines, especially in areas with persistent nonattainment. The bill would also extend the NAAQS review cycle from every 5 years to every 10 years, reducing regulatory churn and giving states and regulated entities a more stable planning horizon.

The New Source Review Permitting Improvement Act (Rep Morgan Griffith, R-VA) clarifies that routine upgrades or operational changes at existing facilities that do not increase emissions do

not trigger New Source Review permitting, removing ambiguity around what counts as a “modification” under the Clean Air Act.²² The bill would ensure that efficiency improvements or emissions-reducing upgrades are not delayed or discouraged by permitting requirements, helping modernize facilities, boost production, and lower emissions.

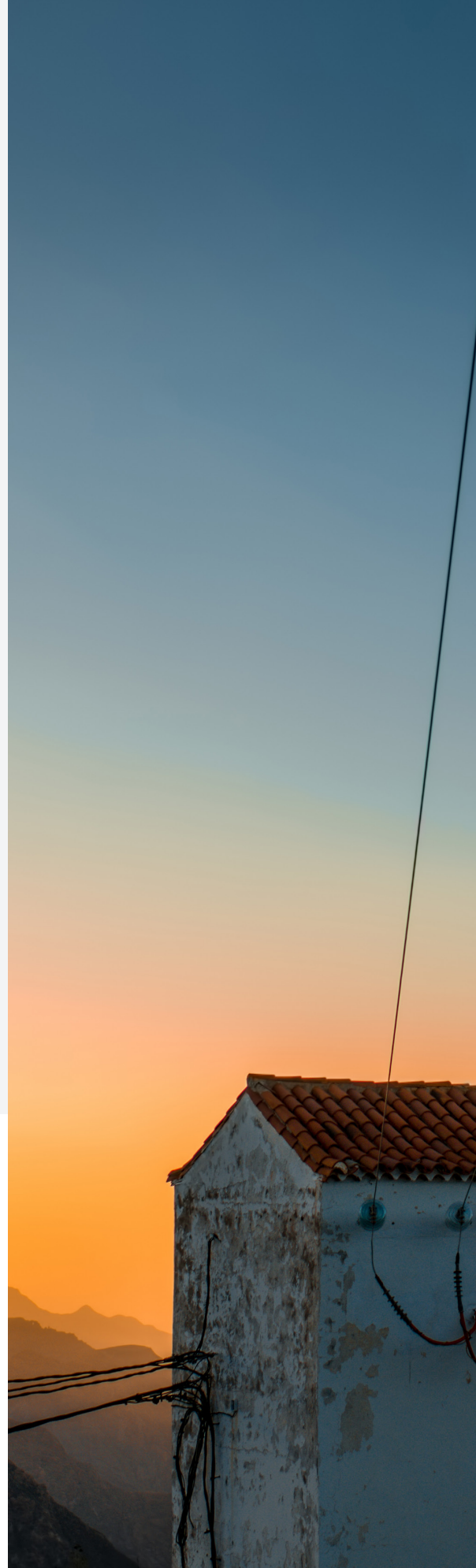
The Reducing and Eliminating Duplicative Environmental Regulations (RED Tape) Act (John Joyce, R-PA) removes unnecessary “second-review” requirements by the EPA under NEPA when another agency has already completed an environmental impact statement, thereby reducing redundant reviews and speeding up project approvals.²³

The Foreign Emissions and Nonattainment Clarification for Economic Stability (FENCES) Act (Rep. August Pfluger, R-MN) states that emissions coming from outside the United States (such as from international wildfires or international pollution) do not count against a state’s attainment status, which would prevent states and industries from being penalized for pollution they did not cause.²⁴

The Fire Improvement and Reforming Exceptional Events (FIRE) Act (Rep. Gabe Evans, R-CO) updates how “exceptional events” are treated under the Clean Air Act and excludes wildfire and prescribed burn emissions from compliance calculations.²⁵ This ensures states are not punished for emissions they cannot control and provides greater flexibility to conduct prescribed burns to reduce the much greater environmental costs of wildfires.

The National Historic Preservation Act (NHPA)

Congress enacted the National Historic Preservation Act in 1966 to ensure that federal agencies consider the impacts of their projects on historic and cultural resources, primarily through the Section 106 review process. The law played an important role at the time, drawing attention to preservation and giving communities a voice in federal decision-making. However, nearly six decades later, NHPA has become a procedural bottleneck that often prioritizes process over results, adding redundant reviews onto already complex permitting



systems like NEPA. Section 106 consultations can extend for years, create significant uncertainty, and pose litigation risks, even when projects proceed unchanged. While NEPA serves as the umbrella statute for other major environmental laws, the NHPA frequently serves as a secondary basis for broader permitting lawsuits. As a result, NEPA and NHPA are often litigated together.

In addition, Section 106 requires agencies to consider the effects of a project on historic properties, but the statute does not prescribe specific mitigation outcomes. Under the Advisory Council on Historic Preservation guidelines, agencies typically resolve adverse effects through Memoranda of Agreement that outline mitigation measures. While some agreements have led to positive mitigation outcomes, others are less effective at preserving a site. As Thomas Hochman from the Foundation for American Innovation noted, in one instance, a wind developer was required to fund a fitness lane near a boardwalk.²⁶ Solar developers have abandoned projects because NHPA requirements were too burdensome.²⁷

Although there has been less congressional activity on NHPA in the 119th Congress, reforms should:

Upgrading existing infrastructure and building new lines can help relieve transmission bottlenecks, reduce interconnection delays, lower costs, and improve grid reliability.

Establish clear timelines and a defined scope that specifies what effects should be considered.

Congress should amend the language that currently requires agencies to “take into account the effect of an undertaking” to specify that the effects must be direct, proximate, and with a causal relationship. For multijurisdictional projects, Congress should require agencies to designate a lead agency before reviews begin.

Align NHPA claims with the Administrative Procedure Act’s (APA) judicial review standard.

When a federal agency’s Section 106 compliance is challenged in court, the lawsuit is typically brought under the APA, which means the court can only review the agency’s final decision and must defer to the agency’s judgment unless it was arbitrary or unreasonable. However, federal courts have not consistently applied those constraints to NHPA cases and have treated Section 106 as imposing mitigation obligations that appear nowhere in the statute. The Supreme Court has already corrected this under NEPA, holding that procedural statutes enforced through the APA do not require fully developed mitigation plans and that an agency’s review is limited to the project at hand. Congress should do the same for NHPA.

Align NHPA reform with NEPA reforms that narrow the scope of environmental review.

Like the SPEED Act, reforms should include permitting remand without vacatur and shortening the statute of limitations to greatly improve transparency and efficiency while ensuring that communities and affected parties can participate in the process.

Make greater use of programmatic agreements and categorical exclusions for low-impact, routine projects, so resources are directed toward projects that genuinely raise historic preservation concerns.

Provide clearer standards for tribal consultation and earlier engagement to strengthen cultural protections while reducing last-minute surprises that derail projects. Once Section 106 obligations are met, the process should conclude, giving developers the certainty they need to move forward.

Digitize cultural and historic data systems to modernize records, reduce redundant surveys, and eliminate delays caused by outdated, fragmented records.

Explore ways to incentivize mitigation voluntarily. Voluntary frameworks should incentivize and reward proactive engagement with affected communities that protect cultural and historically significant resources while providing certainty for developers.

CONGRESSIONAL PRIORITIES FOR TRANSMISSION POLICY REFORM

Upgrading existing infrastructure and building new lines can help relieve transmission bottlenecks, reduce interconnection delays, lower costs, and improve grid reliability.²⁸ However, electric transmission policy should start with a clear economic goal set by the Federal Energy Regulatory Commission: provide reliable power at the lowest possible cost to consumers.

Transmission infrastructure will benefit from permitting fixes that make the process more efficient, transparent, and less litigious for all energy projects. Reforms in the SPEED Act, the PERMIT Act, the ESA Amendments Act, and the NHPA will benefit all energy developers. However, more efficient interregional planning and transfer capability can lower costs, relieve congestion, and strengthen reliability.²⁹

Sponsored by Rep Andy Barr (R-KY) and Rep. Scott Peters (D-CA), the Streamlining Powerlines Essential to Electric Demand and Reliability Act (SPEED and Reliability Act) would also aim to streamline federal siting and permitting for transmission and narrow judicial review. It would also improve processes for upgrading existing grid infrastructure, reconductoring, and building on existing rights-of-way.

Nevertheless, two of the major sticking points for any bipartisan agreement on transmission policy have been cost allocation and the relationship between federal and state authority. When competing policy priorities muddle the costs and benefits of transmission projects, it becomes harder to maintain accountability and guarantee that consumers get value for the infrastructure they fund through their electricity bills.

As policymakers deliberate on which language to include in the transmission title of a permitting reform bill, they should:

Maintain the beneficiary pays principle and stick to benefits being “roughly commensurate”³⁰ with costs, consistent with existing case law, to ensure disciplined cost allocation.

Ensure that states have a leading role in transmission siting, but a strengthened federal backstop authority at the Federal Energy Regulatory Commission (FERC) can further encourage state cooperation.³¹ This would eliminate the need for Department of Energy involvement and redundant National Interest Electric Transmission Corridors designation and reviews.

Prohibit transmission owners from independently planning projects above 100 kV. Under the current system, utilities can build “local” transmission projects without regional scrutiny, even if these projects are more expensive and less efficient.³² Transmission planning for anything with regional impact, generally 100 kV and above, should be done through independent, regional processes, not by monopoly utility self-interest. That will ensure that what gets built delivers reliability and the least cost to consumers.

Encourage FERC and hold the agency accountable for analyzing how to lower the total cost of reliable electricity for consumers. Proper FERC oversight of utility-initiated projects, which typically receive unconditional formula rates, would reduce excess transmission costs. FERC should ensure utilities follow “good utility practice” in the use of advanced transmission technologies and reduce barriers to voluntary transmission expansion, such as merchant high-voltage direct current lines.

Let's Make a Deal

The United States is already an energy-dominant nation. The U.S. has abundant resources, capital, innovation, and human ingenuity to build on its success. However, it lacks a permitting system that can keep pace with modern energy and infrastructure needs. An outdated permitting and regulatory framework drives up energy prices, constrains supply, and reduces economic opportunity for Americans across the country. Thoughtful reforms to NEPA, the Clean Air Act, the Clean Water Act, the Endangered Species Act, and the National Historic Preservation Act will help us meet growing energy demands by improving efficiency, removing redundancy, and providing the certainty that developers and communities need.

If policymakers get this right, the payoff is significant: faster deployment of reliable infrastructure, stronger domestic supply chains, and a more resilient and affordable energy system. Substantive reform will help deploy innovative technologies that yield better environmental outcomes. But if reform efforts fall short or become overly narrow, the status quo will continue to choke off investment and stall progress. A durable, bipartisan permitting framework should prioritize clarity, accountability, and timeliness across all energy sources and infrastructure types. For President Trump, signing a comprehensive permitting bill could be a legacy-defining achievement that cements an energy-dominance agenda for the next several decades.

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