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**STATE AND LOCAL GOVERNMENT ADVOCACY AND PUBLIC-PRIVATE PARTNERSHIPS GROUP**

# Overview of BAAJA + Impacts for Local Governments and Additional Public Entities – November 24, 2026

## Executive Summary

On November 19, the Senate passed the Bipartisan American Affordability and Jobs Act (BAAJA) (H.R. 2347) by a 62-33 vote. The bill proposes comprehensive permitting reform, including changes affecting infrastructure permitting, energy development, electric transmission, grid interconnection, National Environmental Policy Act (NEPA) reviews, and other federal approval processes. Although energy infrastructure is a major focus, the legislation could impact a broader range of projects, including transportation, housing, water infrastructure, data centers, and economic development projects. Key implications include, but are not limited to:

- **Environmental Review Procedures:** The bill makes significant changes to NEPA and other federal environmental review procedures intended to accelerate project approvals, including establishing clearer timelines and procedures for determining the appropriate level of environmental review, coordinating federal agency reviews, using programmatic environmental documents and categorical exclusions, processing applications, and challenging agency decisions. **These changes could provide greater permitting certainty for project sponsors, but may also limit the time available for public and local-government participation in federal reviews.**
- **Land Remediation / Economic Development:** The bill includes provisions to reauthorize and strengthen EPA's Brownfields Program, supporting the assessment, cleanup, and redevelopment of contaminated and underutilized properties. **These provisions could help local governments advance redevelopment, housing, infrastructure, and other economic development projects involving brownfield sites.**
- **Transportation:** The bill clarifies that the Department of Transportation (DOT) is considered to have predominant control and responsibility over federal financial assistance for projects receiving more than $10 million in federal assistance from DOT. **These provisions could further streamline federal review and permitting responsibilities for major transportation projects.**
- **Clean Water:** The bill modifies Clean Water Act (CWA) requirements to streamline permitting and state certification processes, including changes affecting water-quality certifications, National Pollutant Discharge Elimination System (NPDES)

permits, dredged and fill-material permits, and judicial review. **These changes could accelerate permitting for water, wastewater, transportation, housing, and other infrastructure projects while altering the procedures available to states, Tribes, and other entities during federal permitting.**

- **Data Centers:** The bill broadens protections intended to prevent costs associated with electric infrastructure serving data centers from being shifted to residential, municipal, and other customers. **It also establishes a new Department of Energy (DOE) technical assistance program to provide local communities with impartial information about the potential energy, water, and economic development impacts associated with data center development.**
- **Historic Preservation:** The bill includes substantial changes to the National Historic Preservation Act (NHPA) review process while providing additional procedural protections for Tribal governments and historic preservation offices. **It also maintains a $200 million annual authorization for the Historic Preservation Fund (HPF), a $50 million annual increase in current authorization levels.**

Key provisions of the bill relevant to public entities are summarized below:

| Key Provision | Concise Description / Significance | Key Change / Significance |
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| **Sec. 1105: Procedure for Determination of Level of Review** | Allows qualifying State, Tribal, or other federal reviews to satisfy NEPA where they serve a similar function. A lead agency's determination that no environmental document is required must be respected by other agencies. | **Reduces duplicative federal environmental review and expands reliance on equivalent State, Tribal, and federal processes.** |
| **Sec. 1106: Timely and Unified Federal Reviews** | Establishes defined agency roles and deadlines for NEPA reviews and related federal authorizations, including **1 year for environmental assessment (EAs) and 2 years for environmental impact statements (EISs)**. Project sponsors may seek judicial enforcement of missed deadlines. | **Creates more enforceable permitting timelines and strengthens coordination with a lead agency.** |

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| **Sec. 1108: Use of Categorical Exclusions by Other Agencies** | Creates a public record of federal categorical exclusions (CEs) managed by the Council on Environmental Quality (CEQ) and allows agencies to adopt CEs used by other agencies following consultation and public documentation. | **Expands agencies' ability to use existing CEs and avoid duplicative NEPA review.** |
| **Sec. 1109: Applications for Authorizations** | Requires federal agencies to determine within **60 days** whether a permit/authorization application is complete and identify any additional information needed. Once complete, agencies generally have another **60 days** to determine that NEPA review is unnecessary, require an EA, or issue a notice of intent for an EIS. Applications requiring environmental review must also identify other required governmental authorizations and include a record of stakeholder engagement and a brief statement of purpose and need. | **Creates firm timelines for application completeness and NEPA determinations, providing project sponsors greater certainty about when federal environmental review begins and what information is required.** |
| **Sec. 1202: CWA Permitting & State Certification** | Limits Clean Water Act (CWA) §401 review to water-quality requirements and establishes clearer procedures for conditions, denials, incomplete applications, and review deadlines. Prior to December 31, 2027, State/Tribal authorities may require additional application materials under rules established in this provision, but | **Preserves meaningful State/Tribal §401 authority while imposing clearer procedural and evidentiary limits on certifications.** |

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| | must do so through regulation if done on or after December 31, 2027. | |
| **Sec. 1401: Maintaining Federal Authorizations or Permits** | Generally bars agencies from reopening or disrupting previously approved non-federal projects, subject to exceptions for court orders, legal violations, fraud, urgent health/environmental harms, applicable law, or sponsor requests for **permits in effect on or after November 6, 2026**. Provides expedited judicial review and significant remedies for improper agency action. | **Provides substantial protection for valid federal permits while retaining defined legal, environmental, and public-health exceptions.** |
| **Sec. 1602: Brownfields Revitalization** | Reauthorizes EPA Brownfields Program funding at **$200 million annually through FY2031**, with the following authorized levels for individual awards for specific grants:<br>• Remediation Grants: $1 million ($500,000 increase)<br>• Multipurpose Grants: $2 million ($1 million increase)<br>This provision also makes 501(c)(6) nonprofits (i.e. chambers of commerce, trade associations, etc.) eligible for brownfields funds. | **Significantly expands Brownfields funding, award levels, and eligibility.** |
| **Sec. 2101: Transmission Permitting** | Expands FERC permitting and cost-allocation authorities for qualifying interstate transmission, generally covering facilities of **230 kV or greater** | **Expands federal transmission-permitting authority while preserving State participation and** |

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| | and related interconnection facilities. **Includes State, Tribal, landowner, and ratepayer protections for those affected by relevant transmission facilities in this provision** | **strengthening cost-allocation protections.** |
| **Sec. 2103: Transmission Planning** | Requires recurring DOE congestion studies and FERC regional/interregional transmission planning, with planning cycles at least every **three years** and costs allocated roughly commensurate with benefits. Provides States and Tribes commensurate participation rights. | **Creates a more standardized regional planning framework with stronger Tribal parity.** |
| **Sec. 2105: Federal Right of First Refusal** | Prohibits federal rights of first refusal for transmission projects selected through regional or interregional planning, **while preserving existing FERC exceptions**. | **Restricts incumbent utility ROFRs without overriding existing FERC exceptions.** |
| **Sec. 2107: Ratepayer Protection** | **Requires computational loads, including data centers and AI/crypto facilities, to bear the incremental generation, transmission, and distribution costs of serving them.** Directs FERC to revise transmission pricing and preserves broad State authority over retail rates and service requirements. | **Strengthens protections against shifting data-center infrastructure costs to other ratepayers.** |
| **Sec. 2117: Data Center Community** | Creates a DOE program providing State, local, and Tribal governments technical assistance on data centers' **energy,** | **Provides communities new federal technical assistance while expressly** |

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| **Assistance Program** | **water, infrastructure, and economic impacts**, without giving DOE authority over local siting decisions. | **preserving local siting and zoning authority.** |
| **Sec. 2229: NEPA Review** | Excludes specified oil, gas, and geothermal activities from treatment as major federal actions under NEPA, extends qualifying prior reviews from **5 to 10 years**, and covers certain geothermal transmission lines of up to **20 miles**. | **Broadens NEPA exemptions for qualifying energy development activities.** |
| **Sec. 2301: Historic Preservation** | Substantially streamlines the NHPA Section 106 process by narrowing what constitutes an undertaking and adverse effect, establishing firm consultation deadlines, coordinating Section 106 with NEPA, expanding programmatic alternatives, and significantly limiting judicial remedies. This provision also adds meaningful Tribal protections, including corrective-action procedures, technical assistance, reinstatement rights, greater THPO program authority, and continued federal obligations to consult directly with Tribes.<br><br>Requires DOI to evaluate State Historic Preservation programs every two years, rather than every four years. | **Retains major Section 106 streamlining while adding significant Tribal due-process protections and easing requirements on SHPOs/THPOs.** |
| **Sec. 2302: Historic** | Authorizes **$200 million annually for FY2027-2036** for the Historic Preservation Fund and **$20 million** | **Authorizes substantial HPF and Tribal preservation funding, but funding** |

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| **Preservation Fund** | **annually for FY2027-2030** for THPO database grants, with protections against public disclosure of sensitive Tribal information. | **remains subject to future appropriations rather than becoming automatically available.** |

**Additional Amendments Proposed but Not Adopted**

During the week of November 16, Senate negotiators explored an agreement to allow votes on a limited number of the more than 150 amendments filed or proposed. **However, Senators did not reach agreement on the slate of amendments prior to final passage. As a result, additional proposals addressing Tribal consultation, historic preservation, transmission and landowner concerns, data centers, terminated federal awards, and other issues were not included in the Senate-passed bill.** If the bill does not pass the House during the lame duck session of the 119th Congress, it will need to be **reintroduced next Congress and some of these provisions could be incorporated by the new Democratic majority.**

Of note, the following amendments relevant to public entities were **not** incorporated into the Senate-passed bill:

- **Managers Amendment, EPW and ENR Leadership:** Would have increased the annual Historic Preservation Fund authorization from $200 million to $300 million, while keeping the funding subject to annual appropriations. It also would have excluded certain Internet, telecommunications, and communications facilities from the bill's data-center provisions and modified the NHPA provisions in ways that addressed some, but not all, concerns regarding Tribal consultation and historic-preservation review.
- **S.Amdt. 6882, Sen. Adam Schiff (D-CA):** Would have removed the bill's NHPA changes, including provisions concerning the Historic Preservation Fund and Tribal Historic Preservation Officers.

- **S.Amdt. 6895, Sen. Jeanne Shaheen (D-NH):** Would have scaled back the bill's proposed restrictions on state and Tribal authority under Clean Water Act §401 while preserving its changes to EPA water-quality criteria.
- **S.Amdt. 6917, Sen. Jeff Merkley (D-OR):** Would have prohibited federal agencies from terminating, rescoping, or declining to continue federal awards solely because of changing agency priorities and required reinstatement of awards terminated on that basis after September 30, 2024.

**Conclusion and Next Steps**

BAAJA now awaits action in the House, which could approve the bill without changes and send to the President, or make additional changes requiring further Senate action. Speaker Mike Johnson (R-LA) originally indicated that he hoped to consider the bill under suspension of the rules, which would prohibit floor amendments but require a two-thirds majority for passage. **However, House Republican leadership has instead decided to consider the bill under a rule amid concerns that it lacks sufficient Democratic support to pass under suspension. This approach requires only a simple majority for passage and will allow House members to offer amendments.**

At this time, the bill faces an uncertain path during the remaining lame-duck session. House Democratic Leader Hakeem Jeffries (D-NY) has expressed support for permitting reform generally but has also called for greater House involvement in the legislation. Concerns among House Democrats over NEPA, NHPA, Tribal consultation, and judicial review, combined with the limited legislative calendar, could complicate passage before the end of the 119th Congress. Senate EPW and ENR leaders are also exploring opportunities to advance provisions from the unsuccessful Managers Amendment proposed last week through other year-end legislation (i.e. a continuing resolution (CR)).

For local governments, the Senate-passed bill presents a mixed set of impacts. It could provide greater certainty for federally authorized projects, improve transmission planning, accelerate generator interconnection, and strengthen protections against shifting data-center electricity costs to other customers. However, it could also reduce opportunities for local participation in federal environmental and historic-preservation reviews, impose new

requirements on municipal utilities, and leave Historic Preservation Fund increases dependent on future appropriations.