

AN OBJECTIVE BUT SKEPTICAL REVIEW

BAAJA, Line by Line

What the Senate permitting bill actually says, what it changes in federal law, and who wins and loses

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BILL

Bipartisan American Affordability and Jobs Act of 2026 (BAAJA), S. 5653

SPONSORS

Sens. Capito, Lee, Whitehouse, and Heinrich

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The short version

BAAJA is the Senate's permitting deal: a 417-page bill that makes federal approvals faster and harder to undo. It puts short clocks on agencies and on lawsuits, limits what a court can do when a challenger wins, freezes issued permits with Treasury money behind the freeze, builds a federal backstop for big power lines, and makes large data centers pay for the grid costs they cause. It narrows state water reviews, historic preservation reviews, and endangered species reviews along the way. It is technology-neutral on its face. It has not had a hearing, and its text is expected to change.

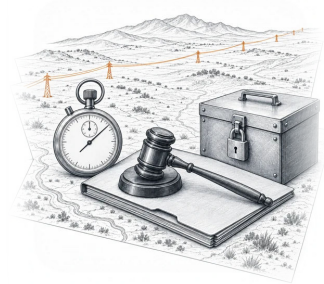
What it is

The Bipartisan American Affordability and Jobs Act of 2026 (BAAJA) is S. 5653. Sen. Shelley Moore Capito (R-W.Va.) introduced it on September 30, 2026, with Sens. Mike Lee (R-Utah), Sheldon Whitehouse (D-R.I.), and Martin Heinrich (D-N.M.) [1]. They are the chairs and ranking members of the two Senate committees that own the subject: Environment and Public Works (EPW) and Energy and Natural Resources (ENR).

The bill has two divisions, seven titles, and 71 sections, about 59,000 words in all. Division A, from EPW, rewrites the National Environmental Policy Act (NEPA) and parts of the Clean Water Act and the Endangered Species Act (ESA), and adds a "Project Certainty" title. Division B, from ENR, covers transmission, energy permitting on federal land and offshore, and historic preservation.

As of October 1, 2026, the only recorded action is referral to committee, and no outlet we read expects a vote before the November 3 election. Capito's stated goal, a claim, is for it to be "the first vote when we come back" [2]. Sen. Whitehouse has promised a manager's amendment [3]. A side deal with the White House on wind and solar is not in the text, and Whitehouse calls it "unresolved" [4]. The House has not taken up this text. If the bill does not pass before the 119th Congress ends in January 2027, it dies.

Clocks, remedies, and certainty: three tools that move leverage to permit holders.



What it does, in one paragraph

BAAJA moves leverage from people outside a permit to the people who hold or want one, using three tools. **Clocks:** agencies get deadlines that only the project sponsor can enforce in court, and challengers get 150 days to sue (Sec. 1106, 55:5–58:12; Sec. 1110, 67:23–68:9). **Remedies:** for a NEPA violation, a court may only send the approval back to the agency, and the project can keep going while the agency fixes it (Sec. 1110,

69:22–70:3; 71:13–25). **Certainty:** agencies may not pull permits already issued except in five narrow cases, and a sponsor who wins in court collects 25 to 50 percent of its costs incurred to date, paid from the Treasury's Judgment Fund (Sec. 1401, 159:9–166:10). Around that core sit a new transmission regime and a rule that data centers of 20 megawatts or more pay the incremental grid costs they cause (Secs. 2101–2107).

The ten biggest changes

Part I covers each of these in the bill's own words.

1. **NEPA lawsuits** must be filed within 150 days, by someone who commented (where comment was offered) and who alleges direct harm, in a federal court of appeals. A winner gets a remand, not an order stopping the project.
2. **Issued permits are frozen**, and sponsors are paid when agencies try to revoke them.
3. **The Federal Energy Regulatory Commission (FERC) "shall" permit** major transmission lines in the national interest, anywhere in the country, when states do not act. The statute's own measure of compensation for condemned land is deleted; the Constitution's requirement of just compensation remains.
4. **Data centers pay** for the grid upgrades their new load causes, measured by the utility's estimate and subject to regulators' approval.
5. **State water certification** under Clean Water Act Section 401 narrows, and the Environmental Protection Agency's (EPA) dredge-and-fill veto gets a fixed window.
6. **Historic preservation review** moves from regulation into about 5,700 words of statute, with a narrower definition of harm.
7. **Endangered species consultation** gets shorter clocks, and highway and transit projects in existing rights-of-way are freed from the no-jeopardy duty.
8. **Project sponsors** must approve any extension of a NEPA deadline, and a White House council's ruling in disputes between agencies becomes final and unreviewable.
9. **Listed oil, gas, and geothermal activities** on federal land leave NEPA, and many wells lose the federal drilling permit.
10. **Energy and minerals suits** get a 150-day clock, and miners may locate as many mill sites as are reasonably necessary.

Who gains and who loses

Permit holders of every kind gain, through the freeze and the money. So do transmission developers, pipeline operators, onshore oil and gas operators, geothermal and hydropower developers, and miners. The Council on Environmental Quality (CEQ) and lead federal agencies gain control over schedules and disputes. Utility customers gain protection from data-center grid costs.

Challengers lose the most: environmental groups, neighbors, and downstream states face shorter clocks, narrower standing, and weaker remedies. States lose ground as water certifiers, and state and tribal preservation officers lose ground in historic preservation review. Landowners lose the statute's compensation formula for transmission condemnations. Wind and solar, tribes, counties, and data centers land in the middle, with real gains and real costs. Parts II through V take each group in turn.

Where it came from and who is talking

About 28 percent of the bill's words appeared in an earlier bill or law. The energy permitting title borrows most heavily, from the 2024 Manchin-Barrasso bill. Some of the most consequential parts have no textual ancestor: the historic preservation rewrite, the class-wide damages in Sec. 1402, and the data-center rule. In the first two days we logged 58 public positions: 35 in support, 9 opposed, and the rest conditional, mixed, or neutral. Almost no one attacks the transmission title or the data-center rule. The fights are over endangered species, historic preservation, lawsuits, and state water certification. Part VII has the details.

What would happen if it passed

The bill sets 180 distinct clocks for agencies, courts, states, and sponsors. FERC alone would owe about ten rules or orders in two years. None of the rulemaking deadlines carries a stated consequence for missing it. Part VIII lays out the calendar.

The text also has problems. We verified 36 drafting defects: 7 substantive, 21 ambiguities, and 8 cosmetic. Examples include a citation to the wrong statute in the clause that exempts oil and gas drilling permits from NEPA, and a data-center cost rule made "subject to" limitations that do not exist. Part IX lists them, along with the legal questions courts would have to answer.

Is this a data-center bill?

One concern runs through the public debate: that the bill's real effect is to speed up data centers, and the power plants and power lines that serve them, while weakening environmental and community review. The next chapter tests that concern against the text. In brief, the bill's general tools (faster clocks, weaker remedies, frozen permits, and a federal transmission backstop) help the power supply that data centers need, along with every other kind of project. But no provision fast-tracks data centers by name. The provisions that do name them deal with grid costs and data, and the main one makes them pay more.

Our own data puts numbers on the stakes. In a preliminary snapshot of U.S. data-center projects (research cutoff September 28, 2026), 661 of the 852 project groups that state a capacity are at or above the bill's 20-megawatt floor. About 85 percent of all stated capacity is planned or under construction rather than operating, so the cost rule, which covers only loads that connect after enactment, could still reach most of what is coming. The same snapshot counts 1,011 accepted local data-center moratorium records in 903 jurisdictions across 45 states; a record shows a local action, not that a moratorium is in force. The bill leaves siting and zoning with local governments, and it is silent on most of the community issues our 50-state policy survey documents, including water use, noise, backup diesel generators, and tax incentives [5]. Part VI maps the landscape.

How to read this report

Bill citations are page and line in the 417-page text released September 30, 2026, written like this: (Sec. 1110, 68:1–9). Current law is cited to the U.S. Code or the Code of Federal Regulations. Outside facts carry a numbered source. Statements by senators, agencies, companies, and advocacy groups are labeled as claims.

Where the meaning of the text is uncertain, we say so and frame it as an open legal question. The chapter after next explains how we built the analysis and how far to trust it.

Is this a data-center bill?

Partly. BAAJA speeds up the lines, pipelines, and plants data centers depend on: it compresses clocks, moves water-permit and transmission decisions from states toward federal agencies and courts, and limits what a winning challenger can get. It never requires anyone to study what a wave of large new loads does to emissions, water, or nearby communities. But it does almost nothing to speed the data centers themselves, and the only sections that name them make them pay more and give states new power over them. Data-center demand is the bill's main source of momentum, not its main beneficiary.

The concern, and how we tested it

The concern, at full strength: BAAJA, the Bipartisan American Affordability and Jobs Act (S. 5653), clears the road for data centers and their power supply by moving decisions from states, tribes, and expert agencies to federal agencies and sponsors, and by running out the clock on anyone who wants full environmental and social review.

No statute states its motive, so we tested effects. We broke the concern into five claims and, for each, list the evidence that fits, the evidence that cuts against it, and what is missing, checking every absence against the full bill text. Two of our own sources add weight: our private project-and-moratorium dataset (aggregates only; preliminary snapshot, research cutoff Sept. 28, 2026) and our 50-state survey paper, "The State of Server Country" [5]. Part VI, "Where the Data Centers Are," has the detail.

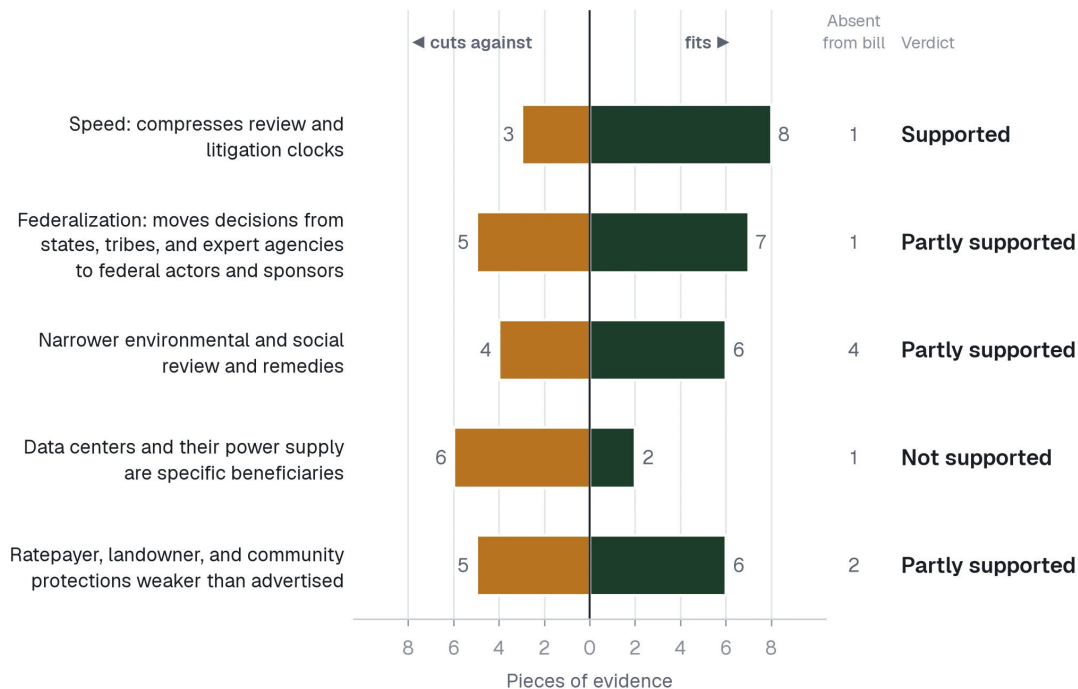


Figure 1: Of five tests, one is supported, three are partly supported, and one is not supported; the fitting evidence is about power supply, and the evidence against is about data centers themselves

Why the question is fair to ask

The timing alone puts data centers at the center of this bill.

- **The White House moved first.** A July 2025 executive order, "Accelerating Federal Permitting of Data Center Infrastructure," told agencies to rely on categorical exclusions (actions treated as too minor for full environmental review) and to give data-center projects FAST-41 fast-track treatment [7].
- **The Federal Energy Regulatory Commission (FERC) has open large-load cases.** In October 2025, the Secretary of Energy asked FERC for rules on connecting loads "greater than 20 megawatts" (RM26-4) [8]. In December 2025, FERC told PJM, the Mid-Atlantic grid operator, to offer firm and non-firm service to data centers sited at power plants (EL25-49) [9]. In June 2026, it ordered all six regional grid operators to justify or fix their large-load rules, including MISO in the Midwest (EL26-70) [10].
- **Congress is fighting over who pays.** The House passed the Ratepayer Protection Act (H.R. 9340) 417-3 on September 16. It would only require state commissions to *consider* a cost standard for loads of 100 megawatts (MW) or more [11]. On September 30, the day BAAJA came out, the Senate failed to take it up, 57-43, with 60 votes needed [12]. Senate Minority Leader Chuck Schumer's one-word summary: "optional" (a party claim) [13].
- **The sponsors talk about demand.** Sen. Martin Heinrich (D-N.M.) opened his statement in the joint release with "America is entering a new era of energy demand." He added that "as data centers drive demand for more power," the bill "will ensure they pay their fair share" (party claims) [6]. The sponsors name data centers as the source of demand and as a group that should pay. None pitches the bill as a way to build data centers faster.

The test is whether the text turns that urgency into special help.

First, a fact that shapes everything else

"Data center" appears in only two of the bill's 71 sections: Sec. 2107 on pricing and a ratepayer floor, and Sec. 2114 on a federal electricity survey (231:18–240:8; 279:1–25). Together they are about 3.7 percent of its words.

That matters because a data center is mostly a private building on private land, permitted by local zoning boards and state agencies, with federal review only through hooks like a wetlands permit, federal land, or federal money. The Clean Air Act, which governs on-site turbines and backup generators, appears once, in a clause saying a pipeline provision does not affect it (205:1–10). So if BAAJA speeds data centers, it does so through the power supply.

Test 1: Does it compress the clocks?

Verdict: supported, for power supply. The clocks do not single out data centers.

What fits. The bill shortens or tightens nearly every clock it touches:

- **Environmental reviews.** Under the National Environmental Policy Act (NEPA), the existing one-year and two-year deadlines for reviews can now be extended only "with the approval of the project sponsor," not just "in consultation with the applicant" (Sec. 1106, 53:3–5). (A full review is an environmental impact statement, or EIS.)
- **Lawsuits.** Suits must be filed within 150 days in five separate programs (Sec. 1110, 68:1–9). The default today is six years.
- **Power lines.** FERC "shall ... issue one or more permits" for lines of 230 kilovolts (kV) or more that are "necessary in the national interest" (Sec. 2101, 188:10–16). For lines of 345 kV or more, a developer can file at FERC "simultaneously with" its state application (191:17–192:2).
- **State water permits.** A state's Clean Water Act section 401 certification for a gas pipeline or transmission line is capped at nine months (Sec. 1202, 118:13–119:2).
- **Grid upgrades and pipeline expansions.** Adding grid capacity inside an existing right-of-way is "not ... a major Federal action," so it needs no NEPA review (201:19–202:9). The same goes for "looping, compression, [and] capacity-enhancement" of existing interstate gas pipelines (203:18–204:25), the projects that bring more gas to new power plants.
- **Interconnection studies.** New grid-data rules cover "generation or load interconnection" studies (266:18–22), so data centers benefit too.

What cuts against. None of these clocks asks what a project's power is for. Nothing gives a large load a right or a deadline to connect (the Sec. 2110 queue rulemaking covers generators). And states may deliberately slow data centers, awarding service by "the greatest benefit to other ratepayers ... notwithstanding the order in which applications ... are received" (237:1–5).

Test 2: Does it move decisions from states, tribes, and expert agencies to federal actors and sponsors?

Verdict: partly supported. Yes for the supply chain. For data-center rates, power moves the other way.

What fits.

The bill names data centers in two sections, and both send them a bill.



- **State water permits move toward federal control.** For transmission, a state's water certification becomes a "Federal authorization" (195:10–18), reviewable only in the federal appeals courts that hear FERC cases (197:2–11).
- **The White House gets the last word between agencies.** If a sponsor takes a dispute between federal agencies to the Chairman of the Council on Environmental Quality (CEQ), the Chairman's order "shall not be subject to judicial review" and counts as "full compliance" with the consultation duties in dispute (52:5–23). That reaches Endangered Species Act (ESA) consultation, though only the procedure, not the duty to avoid jeopardizing a species.
- **Sponsors shape the options.** Alternatives that do not "meet the goals of an applicable non-Federal project sponsor" are dropped from review (38:6–12).
- **Expertise counts for less.** "Special expertise" no longer earns an agency cooperating status in a review (38:15–23). State and tribal historic preservation offices that regularly miss timelines can lose grants and, if still out of line two years later, Interior "shall assume all or part" of their functions (374:1–21; 377:5–14).

What cuts against. On data-center electricity, the bill hands power to states.

A State may treat covered loads as a separate class of service, and may establish rates, charges, terms, conditions, and interconnection or service priorities for covered loads that differ from, and that are less favorable than, those applicable to other large industrial, manufacturing, or commercial loads. (Sec. 2107, 238:24–239:5)

States may also charge data centers more than cost, auction the right to connect, and require them to bring their own new generation (236:7–238:23), and the section does not diminish state authority over "resource planning" (239:7–12). States can also take over ESA consultation, and a similar state review can replace NEPA review (28:23–29:3).

Siting the data center itself stays local, and that is where the fight is. Our dataset (preliminary snapshot, research cutoff Sept. 28, 2026) holds 1,011 local moratorium records that passed our evidence review, across 903 jurisdictions; not all are in force. Michigan has the most, 138, mostly from townships. The bill touches none of them. Its only local-siting lever is for transmission (188:24–189:5). It leaves the zoning fight local while speeding the supply side those campuses wait on.

What's missing. Nothing gives a host community or a tribe a say over the large loads that drive the new lines.

Test 3: Does it narrow environmental and social impact review?

Verdict: partly supported. Enforcement gets much weaker, and review of linear supply projects shrinks. The scope of a full review stays the same.

What fits.

- **Winning in court stops less.** If a court finds a NEPA violation, "the only remedy the court may order ... is to remand, without vacatur or issuance of an injunction" (69:24–70:3), and the approval "shall remain in effect" (71:14–18). Courts give "substantial deference" to agencies on the scope of a review (73:23–74:2).
- **Federal loans no longer trigger review.** A project whose only federal tie is "a loan guarantee or loan" is not a major federal action (17:1–3), and for historic review the same goes for loans and grants (383:22–384:3).
- **Wetlands permits look at less.** For general permits, the U.S. Army Corps of Engineers considers "only the effects on compliance with water quality requirements." Any fill under 2 acres counts as a minimal effect (125:11–22). Inference: that covers more than pipelines and power lines, likely including the commercial site work a data-center campus might need.
- **Oil and gas drilling loses review.** Listed oil, gas, and geothermal activities "shall not be considered a major Federal action" (349:6–16). That is the upstream end of the gas supply.

What cuts against.

- **A full review covers the same ground.** The bill keeps NEPA's "reasonably foreseeable environmental effects" standard (5:10–16; 37:7–8) and, unlike the House's SPEED Act, does not limit effects to those "proximately caused by" the project.
- **The Supreme Court got there first.** Its 2025 *Seven County* decision already called NEPA "purely procedural," required "substantial deference," and said a flawed review "does not necessarily require vacating" an approval [14]. BAAJA codifies it and goes further on remedies.
- **Other laws still bite.** A preliminary injunction is still available for likely violations of laws other than NEPA and the historic-preservation law (70:11–71:12). None of these limits targets data centers.

What's missing. Our survey paper documents 13 community issues that drive opposition to data centers. The bill is silent on 10 of them: water quantity, noise, diesel and air permits, environmental justice, tax incentives, local control, emissions from new generation, transparency, labor standards, and farmland. It fully addresses only ratepayer cost [5]. "Greenhouse," "emission," "climate," "cumulative," "diesel," and "noise" never appear. "Forecast" shows up only as a transmission-planning input (225:5–6; 267:2), so load growth is something to plan for, never an effect to study. One section may push the other way. Sec. 2108 opens wholesale markets to dispatchable "generator[s]" behind a customer's meter, with no emissions condition (240:20–241:6). Inference: a data center's backup engines may qualify, which would reward running engines that states like Virginia try to keep on emergency duty [5].

Test 4: Are data centers specific beneficiaries?

Verdict: not supported as a favored industry. Data centers benefit indirectly, through the power buildout.

What fits. Data centers need firm power and wires, and the bill speeds both (Tests 1 and 2). Heatmap says the package "could help spur a large-scale buildout of electricity infrastructure paid for by the data center boom" [15].

What cuts against. Every section that names data centers either charges them or tracks them. Heatmap calls the data-center provisions a "double tap" that would let states and utilities "discriminate against" data centers and crypto miners "for the first time" [15].

No portion of the incremental cost may be allocated to, or recovered in the rates of, any customer other than a covered load (Sec. 2107, 234:23–235:1)

- **Federal pricing.** Sec. 2107(a) tells FERC to charge data centers "the embedded cost and the incremental cost of transmission service" (229:15–230:6): a share of the existing grid plus the new equipment built for them. FERC's 1994 policy charges whichever is higher, not both [15].
- **No leaving early.** Utilities must collect "financial assurances" before building for a data center, and recovery continues even if it exits early (235:10–236:1).
- **A low threshold.** Of 852 project groups in our dataset that state a capacity (preliminary snapshot, re-search cutoff Sept. 28, 2026), 661 are 20 MW or larger, against 476 at H.R. 9340's 100 MW and 414 at the 150 MW in Heinrich's own S. 5199. Every state threshold our paper records is higher, from 25 MW to 150 MW; the paper counts large-load protections in 33 states, but not all of them set a threshold [5]. The floor also has no carve-out for ERCOT, the Texas grid.

What's missing. The bill has no tax break, subsidy, federal-land offer, or permitting shortcut for data centers.

Test 5: Are ratepayer, landowner, and community protections weaker than advertised?

Verdict: partly supported. The ratepayer floor is real but narrower than the sales pitch. Landowner and community protections are thin.

What fits.

- **The ratepayer floor is narrower than advertised.** Heinrich's fact sheet says data centers will pay "all of their associated transmission costs" (a party claim) [16]. The text measures cost "based on costs estimated by the electric utility at or around the time that the covered load becomes operational," subject to FERC or state approval (233:18–234:3). Inference: later system-wide costs, like higher capacity prices, may fall outside it.
- **Existing deals are grandfathered.** The floor reaches only loads that connect "on or after the date of enactment," and approved arrangements "shall remain in effect" (240:1–8). That leaves standing state deals such as Georgia's 100 MW rule, Virginia's new data-center rate class, and a Michigan utility's contracts for a single 1,383 MW campus [5].

- **The fine print is unfinished.** The floor is "subject to the limitations described in subsection (e)," which contains none (234:23–235:2; 239:6–23). And Heinrich's line that it covers "a factory or a data center" overstates it; factories are not covered.
- **The landowner compensation clause is gone.** For land taken for FERC-permitted lines, current law sets compensation at "fair market value (including applicable severance damages)" (16 U.S.C. 824p(f)). The bill strikes that subsection and puts cost allocation in its place (Sec. 2101, 192:15–19). The Fifth Amendment still requires just compensation; the statutory yardstick is what disappears.
- **The public gets less time.** The comment period on the notice that starts an EIS is boxed at 45 to 60 days, or 75 if the sponsor agrees (44:24–45:6).

What cuts against.

- **The floor is mandatory.** H.R. 9340, the bill that failed on September 30, was optional.
- **Most of the build-out is still ahead.** About 85 percent of the stated capacity in our dataset (preliminary snapshot, research cutoff Sept. 28, 2026) is planned or under construction, so the new-loads-only rule still reaches most of it. Stated capacity is a developer's full-buildout claim, not expected demand.
- **Other protections exist.** States may credit data-center surpluses to other customers (235:3–9), customers with only "trivial" benefits from a federally permitted line cannot be charged for it involuntarily (194:9–18), and FERC must find a line "will protect or benefit consumers" (189:14–16).
- **Supporters see real savings.** Harvard's Ari Peskoe called the provisions "an improvement on the status quo," and the Searchlight Institute predicts "billions of dollars a year in ratepayer savings" (both claims) [15,17].

What's missing. The bill has no community-benefit requirement. Payments to "jurisdictions impacted" by new lines are recoverable in rates, but nothing requires them (198:9–12). Data centers have no disclosure duty: the only reporting change adds their load to Form 861, an Energy Information Administration (EIA) survey of utilities (279:21–25), and the bill's only uses of "disclos-" concern classified information and confidential tribal sites (162:13; 416:5–8).

Who's for it, and who's quiet

Supporters include oil and gas groups, manufacturers, clean-power trade groups, and pro-building think tanks (party claims; see Part VII). The tech industry is nearly silent: we found no statement from the Data Center Coalition or any of the biggest cloud and AI companies. Utilities are expected to push back on the mandatory cost language [3].

The data-center critics are environmental groups. Food & Water Watch calls the bill "a power grab by Big Tech and the fossil fuel industry to fast-track AI data centers" [18]. Oil Change International says it accelerates "energy-guzzling AI data centers and liquefied natural gas export projects" (both claims) [19]. Their point about speed fits the evidence; their reading of the cost sections does not.

The bottom line, in plain words

BAAJA is a bill for building energy infrastructure, and data-center demand is the main reason it is moving now. It makes it faster and safer to build the lines, pipeline expansions, and power plants data centers need, by setting clocks, moving water and transmission fights into federal hands and courts, and turning a NEPA

win into a remand rather than a halt. It never asks anyone to study the energy, water, emissions, or community effects of the loads that justify that building. On those points, the concern holds up.

On the rest, it doesn't. The bill does not speed the data centers themselves or shrink what a full environmental review must cover, and the only sections that name data centers make them pay more and let states rank them last. The fair summary: BAAJA builds the road data centers need and sends them the bill for it, while communities along that road get fewer chances to slow it down.

WHAT THIS MEANS FOR DATA CENTERS

Mixed: the concern holds on process and fails on money. Fits: 150-day suit windows, no vacatur for NEPA violations, federal-court review of state water certifications for transmission, NEPA exemptions for grid and gas-pipeline capacity, and no duty to study load growth. Cuts against: the speed tools are technology-neutral, the review standard is unchanged, and the two data-center sections impose costs and let states set terms "less favorable than" those for other industry (239:3–5). If a manager's amendment weakens the cost floor while keeping the speed tools, the concern gets much stronger.

How we read 417 pages

We read every line, matched it to the law it changes, and then tried to prove ourselves wrong. Software turned the PDF into 10,164 numbered lines and pulled the current U.S. Code and federal regulations for every provision the bill touches. Two AI models from different companies annotated all 71 sections independently. Then 21 specialized AI agents each read a slice of the bill or the outside world, kept a diary, and wrote memos with page-and-line citations. A final agent checked 51 of the headline claims against the text. None was wrong; 4 were overstated and have been corrected.



Figure 2: The pipeline: from the PDF to verified findings, with every claim traceable to page and line

Step 1: Turn the PDF into citable lines

The bill text is the 417-page PDF the two committees released on September 30, 2026, draft number KAT26639 [20]. We converted it with a layout-preserving text tool and recorded every printed line with its page and line number, 10,164 lines in all. That is why every bill cite in this report looks like (Sec. 1110, 68:1–9): page 68, lines 1 through 9. Every bill quote in this report was checked against that line file; the ones in Part I were checked by script.

Every bill quote here was checked against the bill's numbered lines.



We then split the text into its 71 sections, 7 titles, and 2 divisions. The longest section, the historic preservation rewrite in Sec. 2301, runs about 5,700 words. The three largest titles, transmission, NEPA, and energy permitting, each run more than 13,000.

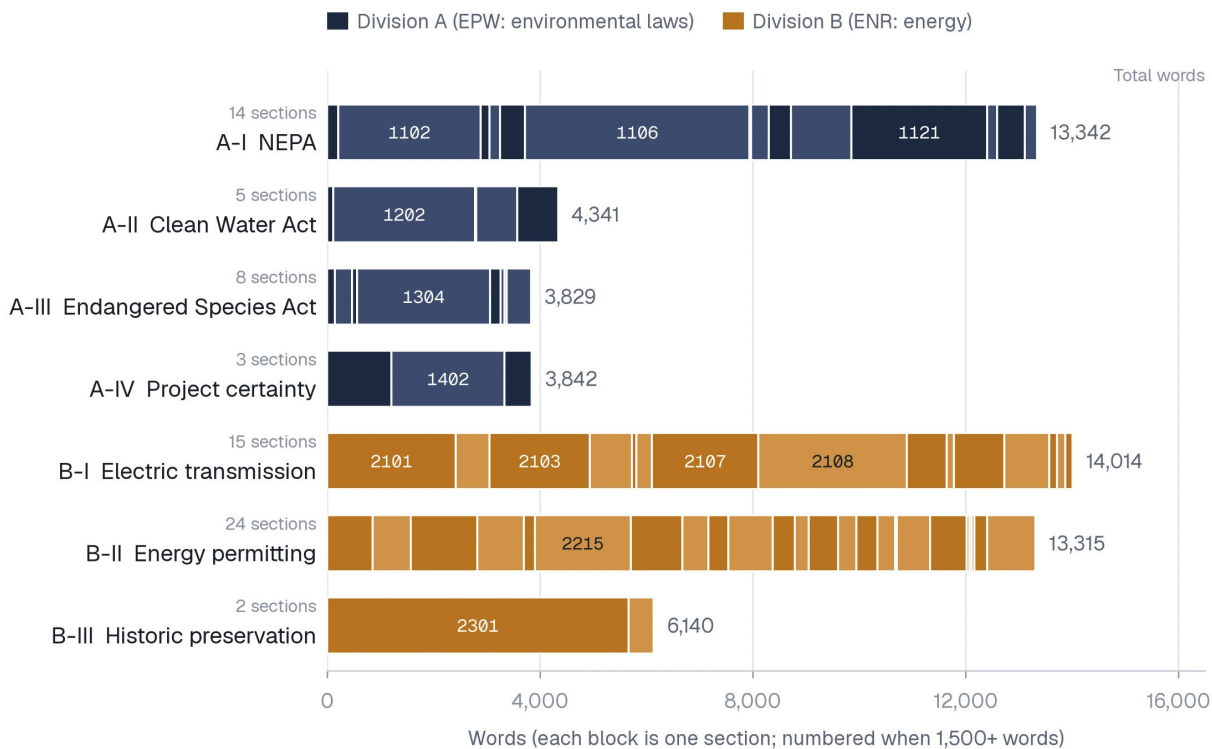


Figure 3: Where the words are: transmission, NEPA, and energy permitting make up more than two-thirds of the bill

A second copy posted by the Energy committee the same day, marked "FINAL," has an identical body; only the cover page differs. So page and line cites hold for both [21].

Step 2: Pull the law the bill changes

A bill like this mostly edits other laws, so you cannot read it alone. We extracted every citation (about 1,500 U.S. Code, public law, and act references) and fetched the current text of each target:

- **U.S. Code:** about 130 cited sections across 15 titles, plus the full text of those titles, from the government's official annual edition on GovInfo [22].
- **Code of Federal Regulations:** 27 parts and sections, about 330,000 words, from the electronic CFR as of late August to late September 2026 [23]. The eCFR site blocked our workstation on September 29, so these downloads ran through a short-lived cloud server we set up to relay the requests.

With current law on hand, every "before and after" in this report compares the bill to the actual text it would change, not to someone's description of it.

Step 3: Machine reading, twice

Two layers of automated reading came next.

Language tools (our kaos-nlp library) found the bill's sentences, its 166 defined terms, 117 deadline phrases, the actors it names, and 99 "is amended" instructions with their targets.

Two AI models then read all 71 sections independently with the same structured form: Anthropic's Claude Sonnet 5.5 and OpenAI's GPT-6.1 Sol. For each section, each model wrote a summary, listed the laws changed, named who gains and who loses, rated the effect on courts, states, the public, and agency discretion, flagged energy technologies, and pulled key quotes with page and line. We then measured how often the two agreed. They agreed well on what each section changes, and less well on judgment calls such as whether a section is "fossil-relevant." Appendix A has the numbers. We used the models as a map and a cross-check, never as the source of a finding.

Step 4: Twenty-one agents, each with a diary

The core reading was done by 21 AI agents, each with one job and one folder:

- **Seven readers** split the bill by title: NEPA and judicial review; Clean Water Act and ESA; project certainty; transmission and data centers; energy and minerals permits on federal land; geothermal, hydropower, and offshore; and historic preservation.
- **Five context agents** traced where the text came from (30 earlier bills and 5 public laws), what agencies are already doing (161 Federal Register documents and dockets), who has taken positions (58), what 21 outside analyses say, and how the sponsors' descriptions match the text.
- **Seven synthesis agents** each wrote a cross-cutting memo: lawsuits, federal-state power, winners and losers, the calendar, landowners and the public, energy mix, and drafting defects.
- **One verifier and one overview agent** checked the others and wrote the master memo.

Each agent kept a timestamped diary as it worked: what it read, what it fetched, what it decided, and where it hit dead ends. Each wrote a structured file per section with page-and-line quotes, plus a memo. The drafting agent also ran small checking scripts for cross-references, struck text, numbering, and citations to the wrong statute.

Step 5: Sweep the outside world

To find what others were saying, we ran 178 searches across 15 themes on two search services, Exa and SerpAPI. That produced 1,896 candidate links. A low-cost AI model scored each for relevance; we kept 1,185 and fetched 1,020 of them in full, with fallbacks for PDFs and pages that need a browser. The kept sources run from bill text and press releases to news, law-firm and think-tank analyses, agency documents, and court filings. The context agents worked from that corpus.

Step 6: Bring in our data-center research

Two of our own sources let us test the bill against what is happening on the ground. Two more agents connected them to the text.

The paper. Our SSRN working paper, *Data Center Policy Across the 50 States* (working title "The State of Server Country"), surveys state incentives, land use, and energy rules, with data through July 17, 2026 [5]. One agent built a crosswalk of 21 entries that maps 51 of the paper's findings to the bill sections they bear on, and wrote policy profiles for 11 states. It then listed 13 environmental and community issues the paper documents, such as water use, noise, backup diesel generators, and local moratoria, and searched the full bill text for each one, case-insensitive and across line breaks. The bill does not address 10 of the 13. The paper was written before the bill existed, and most of its facts are secondary. We checked five of its underlying sources ourselves; everything else is labeled as the paper's claim.

The dataset. Our private registry of U.S. data-center projects and local policy actions supplied the counts in Part VI. A script computes aggregate statistics from a frozen release of the dataset, read-only, and checks its own counts against the release's published descriptive tables: 99 of 99 checks matched. The rules for using it are strict:

- **Aggregates only**, each with its denominator. No project, company, issuer, or local-government name is drawn from the private dataset. Where the report names a utility, township, or city, the name comes from a cited public source (a commission order, statute, or the paper's public references), not from the dataset. The point-level files used to draw the Part VI map are kept out of the shared repository, and the map carries no labels.
- **Every figure carries the label** "preliminary snapshot, research cutoff Sept. 28, 2026." The release has not had independent review.
- **Capacity is a claim, not a measurement.** Gigawatt totals add up stated, often full-build-out, capacity. They are not installed or expected load.
- **A moratorium record is not a law.** Accepted records are local actions the dataset classifies as data-center moratoria under a narrow definition. Acceptance does not prove that a moratorium was enacted or that it covers a given project. Sharing a county with a moratorium does not mean a project is affected.

Step 7: Build the knowledge graph

Everything above went into one network: bill sections, the laws and rules they cite, agencies, deadlines, defined terms, earlier bills, court cases, organizations, and the relationships among them (amends, limits, empowers, cites, supports, opposes, and more). The result has 2,324 nodes and 4,753 links. Standard network measures then showed which pieces hold the bill together. Appendix A explains what they found.

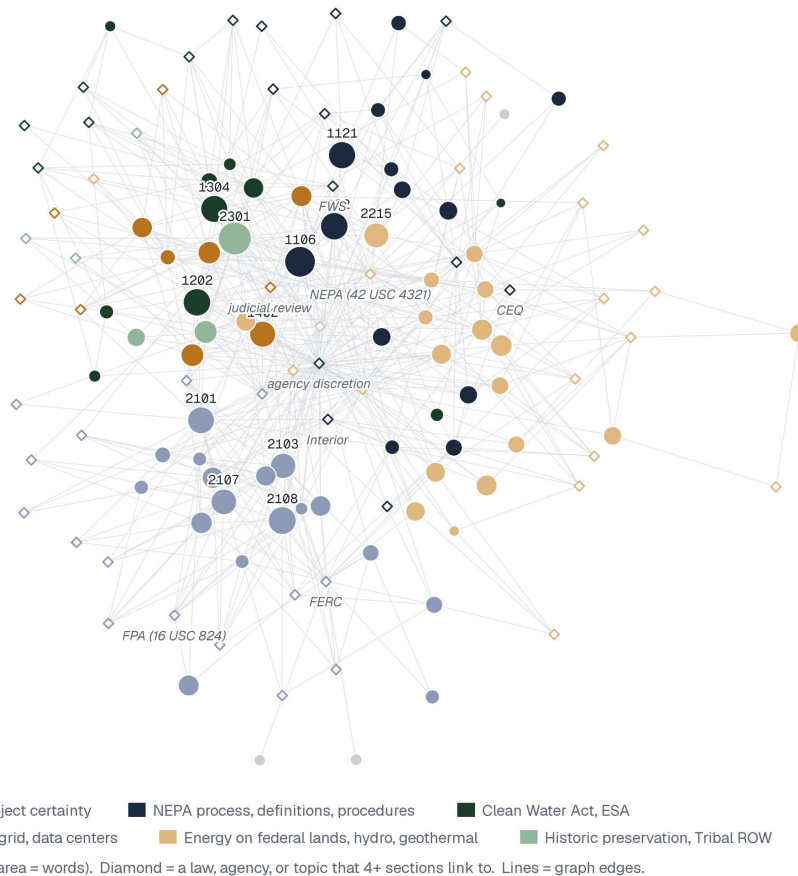


Figure 4: The bill as a network: sections cluster around lawsuits, NEPA, water, species, transmission, energy, and preservation

Step 8: Try to prove it wrong

A separate agent's only job was to break the others' claims. From a pool of 109 headline claims, it checked eight claims we flagged in advance as most consequential (14 checks in all), a random sample of 28, three more on specific passages, and, in a second round, six findings the overview planned to feature. For each it went back to the bill lines and the current law.

0 OF 51

Checked claims that turned out to be wrong. Four were overstated; 31 needed a caveat.

The main weakness was compression: the agents' detailed files kept the qualifiers, but their one-line summaries often dropped them. Every correction is recorded in a registry that binds every writer of this report. Appendix B summarizes it.

What we did not do, and where the limits are

- **This is not the official print.** We read the committees' released text, not the Government Publishing Office version, which had not been posted as of October 1. When it is, every page-and-line cite will need

to be remapped.

- **The U.S. Code is the 2024 edition.** It does not include laws passed in 2025 or 2026. For example, it lacks the paid, expedited NEPA review that Congress added in 2025 (Pub. L. 119-21). Where agents knew of a later change, they cited the public law directly; others may be missing.
- **The machine layers have known errors.** One line is missing from the line file, and the automated amendment finder misattributed nested amendments in Sec. 2301. Where they differ, the agents' readings control. All known defects are logged (Appendix B).
- **Most claims were not adversarially checked.** The verifier checked 51 of 109 headline claims. The others rely on the agents' page-and-line cites and were not tested one by one.
- **Some outside facts were not re-checked,** including a comparison to an earlier Senate bill (S. 722), a White House warning reported on September 24, and the primary text of FERC Order No. 1920, whose download failed when the relay server shut down. We did not retrieve FERC's June 2026 large-load orders; we relied on law-firm summaries.
- **The data-center figures are preliminary.** The dataset is a snapshot that has not had independent review, and the paper's data end in July 2026, before the bill existed.
- **The outside record is two days old.** The stakeholder count reflects press releases from the first two days, not votes.
- **AI did the first reading.** Language models read faster than people, and they also compress. That is why every claim in this report traces to a page and line, and why the verification pass exists.

PART I

What the Bill Does

Ten changes, in the bill's own words.



What the Bill Does

BAAJA changes how the federal government says yes, and how hard it is for anyone to make it say no. It sets short deadlines for lawsuits and limits what a court can do when a challenger wins. It protects permits already issued and pays project owners from the Treasury when an agency pulls one. It makes the Federal Energy Regulatory Commission (FERC) the backstop for big power lines and makes large data centers pay for the grid upgrades they cause. It also narrows state water reviews, historic preservation reviews, and endangered species reviews. And it hands project sponsors more control over the federal review calendar. This part walks through the ten biggest changes, ranked by how much they matter, each one quoted in the bill's own words.

The Bipartisan American Affordability and Jobs Act of 2026 (BAAJA, S. 5653) runs 417 pages and 71 sections. Most of those sections tune something. The ten below rewrite something. We ranked them by consequence: how many projects they reach, how far they move current law, and how hard they would be to undo.

Each change gets the same treatment: what the text says, what the law says today, and what the change does not do. The last point matters as much as the first. Many early summaries of this bill, including some from its sponsors, dropped a qualifier that the text contains. We put the qualifiers back.

Each of the ten includes claims that our adversarial verification pass checked against the bill text and current law. That pass looked at 51 claims. It found none wrong, 4 overstated, and 31 accurate but in need of a caveat. The corrected versions are what you read here.

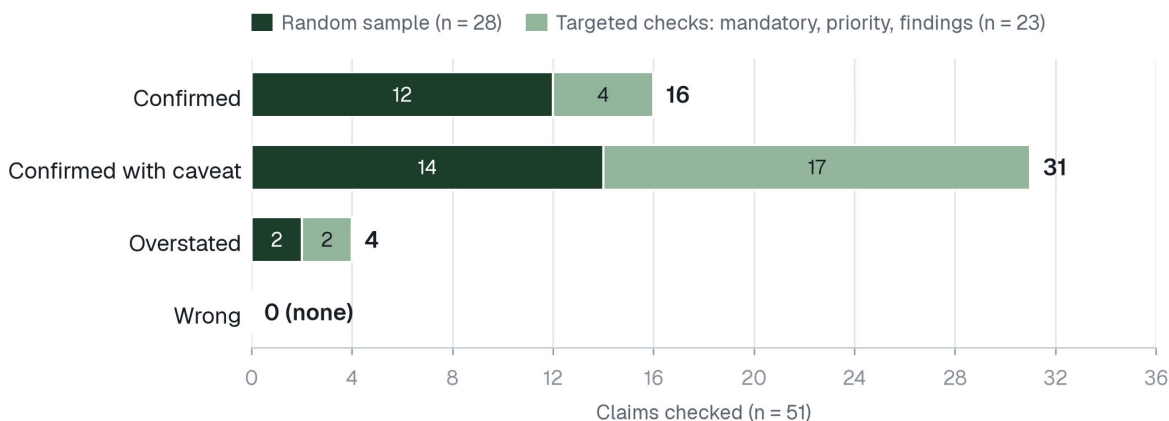


Figure 5: None of 51 checked claims was wrong, but most needed a caveat before they could be repeated

1. NEPA lawsuits get shorter, narrower, and weaker

The National Environmental Policy Act (NEPA) is the 1970 law that makes federal agencies study the environmental effects of what they approve. It has no veto in it. Its teeth have always come from lawsuits: a challenger proves the study was inadequate, and a judge sets the approval aside until the agency does it right.

Sec. 1110 adds a new section 111 to NEPA that changes all three parts of that story: who can sue, when, and what they can win.

Who and when. A claim must be filed within 150 days. The clock starts when the approval is published in the Federal Register (if the agency wrote a full environmental impact statement) or when it was made public (in other cases). A shorter deadline in another law still controls (Sec. 1110, 67:23–68:9). Where the agency offered a comment period, the challenger must have filed a comment detailed enough to flag the issue. The challenger must also allege "an actual or imminent injury in fact amounting to a direct harm" (68:10–20). Both conditions apply, joined by "and." Today, the default deadline for suing the federal government is six years (28 U.S.C. 2401(a)).

Where. Claims skip the district courts and go straight to the federal court of appeals for the circuit where the project will be built (68:22–69:2).

What a winner gets. This is the biggest change.

if a court determines that an authorization does not comply with the requirements of this Act, the only remedy the court may order to redress that violation is to remand, without vacatur or issuance of an injunction, the applicable authorization to the agency (Sec. 1110, 69:22–70:3)

A court can find a violation and still not stop the project.



"Remand without vacatur" means the court sends the approval back to the agency to fix, but the approval stays alive. The bill says so directly: a remanded authorization "shall remain in effect," and the project "may, notwithstanding that remand, be carried out" (71:13–25). The court sets a schedule for the fix of no more than 180 days.

What it does not do. The bill keeps one path to stop a project in court. A judge may still issue a preliminary injunction when there is "a substantial likelihood the authorization violates a Federal law other than" NEPA or the National Historic Preservation Act (NHPA). That means, for example, the Clean Water Act or the Endangered Species Act (ESA) (70:11–71:12). The same 150-day window shows up four more times in the bill: for Clean Water Act dredge-and-fill permits (129:1–130:12), biological opinions under the ESA (154:14–21), historic preservation reviews (408:17–409:8), and energy and minerals approvals (284:9–17). How these limits apply to approvals made before enactment is an open question that Part IX takes up.

2. Issued permits are frozen, and sponsors get paid when agencies try to pull them

Sec. 1401, in a title called "Project Certainty," protects permits that are already issued.

a Federal department or agency shall not take any new action that would revoke, rescind, withdraw, terminate, suspend, amend, or alter a Federal authorization or permit in effect on or after September 16, 2026 (Sec. 1401, 159:11–15)

The rule covers projects with non-Federal sponsors or permit holders, and it also bars "any other action to interfere with or prevent the construction or operation at full capacity" of a fully permitted project (159:9–19). There are five exceptions: a court order, a material breach or violation of law by the holder, fraud, "specific, urgent, substantial, and proximate harm" "based on new information," and a request from the holder itself (159:19–160:16). The agency has to prove an exception "by clear and convincing evidence" (161:19–162:8).

The money is what makes this section unusual. A sponsor that wins gets its permit back, its legal fees, and its delay costs. On top of that, the court must award between 25 and 50 percent "of the total of all costs incurred" on the project as of the date of the agency's action, net of fees and delay costs already awarded. That base includes "development, permitting, land acquisition, financing, engineering, procurement, and construction" (164:3–15). Bad faith, a pattern of interference, and actual economic harm move the award within the band. They do not decide whether the 25 percent floor applies; it always does.

Awards come from the Judgment Fund, a standing Treasury account, and are "not ... subject to the availability of appropriations" (165:18–24). The U.S. Court of Federal Claims loses jurisdiction over claims "for, or in respect to, this section" while a petition is pending and "in perpetuity if relief is granted" (166:1–10).

A companion section, Sec. 1402, goes further for whole categories of projects. It lists 46 project types, with wind, solar, coal, gas, nuclear, and storage side by side (169:4–14). An applicant that proves "an intentional course of action" by the government to block its project type can recover 50 to 100 percent of expected construction cost (168:22–24; 179:20–24).

What it does not do. The award is not a share of "construction cost" or "total project cost," as some summaries say. It is a share of costs already incurred. And the freeze protects permits already granted; nothing in it makes an agency grant a new one.

3. FERC's power to approve major transmission lines becomes nationwide and mandatory

Since 2005, Section 216 of the Federal Power Act (FPA) has given FERC a "backstop" power: if a state blocks or sits on a major power line, FERC can step in and permit it. The power is narrow. It applies only inside corridors the Department of Energy (DOE) designates, and FERC "may" act (16 U.S.C. 824p(b)). Sec. 2101 rewrites it.

the Commission shall, after notice and an opportunity for hearing, including a public comment period of at least 45 days, issue one or more permits to individual or joint applicants for the construction or modification of electric transmission facilities necessary in the national interest (Sec. 2101, 188:10–16)

The DOE corridor requirement is gone (185:11–13). The line must carry at least 230 kilovolts (189:17–20). The state's one-year window now runs from the date the developer filed with the state (188:24–189:5). For lines of 345 kilovolts or more, a developer may file at FERC "simultaneously with" its state filing (191:17–192:2).

Elsewhere in the same title, regions must plan lines regionally and between regions, with costs following benefits (Sec. 2103), and incumbent utilities lose any federal "right of first refusal" to build lines selected in those plans (224:9–14).

Sec. 2101 also deletes something. FPA 216(f) now says that when a developer condemns land for a FERC-permitted line, the owner gets "the fair market value (including applicable severance damages)" of the property (16 U.S.C. 824p(f)(2)). The bill strikes subsection (f) and puts a cost-allocation rule in its place (192:15–19). Condemnation cases would follow Federal Rule of Civil Procedure 71.1 (192:10–14).

What it does not do. Landowners would still be owed just compensation. The Fifth Amendment requires it, and the bill does not touch that. What disappears is the statute's own measure of what fair payment includes. Part IV explains why that matters.

4. Large data centers pay for the grid upgrades they cause

Sec. 2107 adds a new FPA section 228, a ratepayer protection rule for data centers. It covers "covered load": data center or high-density computing load of 20 megawatts or more at one site, or at several sites under common ownership, counted at full buildout for phased projects (232:3–13).

No portion of the incremental cost may be allocated to, or recovered in the rates of, any customer other than a covered load, subject to the limitations described in subsection (e). (Sec. 2107, 234:23–235:2)

In plain terms, the new grid costs a large data center causes stay on the data center's bill. States get extra tools. They may charge more than incremental cost, rank new loads by their benefit to other ratepayers, require new generation, and treat data centers as a separate class with terms "less favorable than" those for other large industrial customers (236:7–239:5). Separately, Sec. 2107(a) orders FERC to revise its 1994 transmission pricing policy within 270 days (229:14–231:17).

What it does not do. Three limits matter. First, the cost is "based on costs estimated by the electric utility" around the time the load starts up, "subject to approval by the Commission or a State" (233:24–234:3). Second, the cost floor and its companion rules apply only to loads that connect after enactment, and arrangements already approved stay in place (240:1–8). The state power to set less favorable terms has no such limit. Third, the "limitations described in subsection (e)" do not exist; subsection (e) contains a jurisdiction clause, not limits (239:6–23). The section also says nothing about what kind of power the data center uses.

5. State water certification and EPA's veto get narrower

Under Section 401 of the Clean Water Act, a project that may discharge into U.S. waters needs a state certification that it meets water quality rules. It is the main way a state's own water standards reach a federally licensed project. Sec. 1202 adds new subsections 401(e) through (h).

deny certification for any reason other than making a determination by clear and convincing evidence that no modification to or reasonable condition on the certification would make it possible to grant the certification without violating water quality requirements (Sec. 1202, 105:1–7)

That is a prohibition: no state may deny on any other basis. Review is limited to "water quality requirements" (104:19–22), a defined term. The federal licensing agency sets the review period (114:15–115:2). Gas pipelines under the Natural Gas Act and interstate transmission lines need certification only for a "direct point source discharge," a term the bill never defines, with a 9-month cap (118:15–119:2; 121:10–21). And for transmission, a 401 certification, along with any other state approval required by federal law except Coastal Zone Management Act reviews, becomes a "Federal authorization" reviewable only in the federal courts of appeals (195:10–18).

Sec. 1204 limits the Environmental Protection Agency's (EPA) veto over dredge-and-fill permits, known as 404(c), to the window between a complete application and the permit's issuance (123:19–124:5). It also requires the Army Corps of Engineers to keep nationwide permits covering the activities of five existing permits, including Nationwide Permit 12 for utility lines (125:23–127:2).

What it does not do. The one-year ceiling on certification and the "deemed waiver" if a state misses it are already law (33 U.S.C. 1341(a)(1)). What is new is who sets the period and the 9-month cap. The 404(c) window applies only to applications filed after enactment (124:6–10). The bill waives ESA and historic preservation consultation when nationwide permits are reissued, but only if the reissued permit does not narrow, eliminate, or raise the threshold for preconstruction notice (127:11–128:14).

6. Historic preservation review moves from regulation into statute, and narrows

Section 106 of the National Historic Preservation Act is two sentences today: before approving an "undertaking," an agency "shall take into account the effect of the undertaking on any historic property" (54 U.S.C. 306108). Everything else lives in regulations (36 CFR part 800). Sec. 2301 replaces those two sentences with about 5,700 words of statute, the longest section in the bill.

The definition of harm narrows first. An "adverse effect" must be reasonably foreseeable and must "directly" alter a historic property's characteristics (379:24–380:10). Then come exclusions. The term "does not include":

any visual, atmospheric, or audible element, unless the visual, atmospheric, or audible element would have a direct impact on a historic property that would significantly diminish the eligible characteristics of the historic property (Sec. 2301, 380:13–18)

Temporary alterations are excluded as well (380:19–22). Projects whose only federal link is a loan, grant, or other financial help are no longer "undertakings" at all (383:22–384:3). The agency official may end review when, "in the sole discretion of the Federal official," other considerations outweigh preservation (393:4–12). Review must finish when the NEPA document does (397:15–398:12). Interior reviews state and tribal historic preservation programs every two years. A program found inconsistent loses grants, and if it is still inconsistent two years after that finding, Interior "shall assume all or part" of its functions (374:1–21; 377:5–14).

What it does not do. General consultation at the first steps, drawing the area of potential effects and identifying historic properties, becomes discretionary. But the agency still must seek and incorporate information that states, tribes, and others send within 30 days (387:6–388:9). And a separate statute that requires agencies to consult tribes about places of religious and cultural significance, 54 U.S.C. 302706(b), survives

(372:24–25). The bill leaves those two rules in tension. Visual and noise effects still count when they directly and significantly harm a property. The bill names only one regulation, 36 CFR 800.14, and keeps it (388:14–21); how much of the rest of part 800 survives depends on how courts read the conflicts.

7. Endangered species consultation gets shorter, and one class of projects leaves it

When a federal action may affect a listed species, the acting agency must consult with the Fish and Wildlife Service or the National Marine Fisheries Service under Section 7 of the ESA. Sec. 1302 cuts the formal consultation period from 90 days to 60, and the outer mark that needs the applicant's consent from 150 days to 100 (134:14–135:5). If a proposed period runs past 145 days without the applicant's consent, the applicant may sue to compel action (135:16–24). That is a trigger to sue, not a cap on consultation.

Sec. 1304 lets states take over consultation duties, and the Secretary "shall approve" a state that meets the criteria (144:1–3). Sec. 1305 sends challenges to biological opinions to the D.C. Circuit within 150 days (154:14–21).

The sharpest piece is Sec. 1303.

any project that is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) pursuant to section 1316 of the Moving Ahead for Progress in the 21st Century Act (23 U.S.C. 109 note; Public Law 112–141) shall be exempt from paragraphs (2), (3), and (4) of subsection (a). (Sec. 1303, 136:22–137:3)

Section 1316 of the 2012 highway law (MAP-21) covers highway and transit projects inside an existing operational right-of-way. Paragraph (2) of ESA section 7(a) is the duty to ensure an action "is not likely to jeopardize the continued existence" of a listed species (16 U.S.C. 1536(a)(2)). For that class of projects, the duty itself goes away, not just the paperwork.

What it does not do. The class is narrow: transportation projects in existing rights-of-way. The ESA's section 9 ban on killing or harming listed species still applies to them.

8. Sponsors get more control of the NEPA calendar, and CEQ gets the last word in agency disputes

NEPA already sets deadlines: one year for an environmental assessment, two for an environmental impact statement (42 U.S.C. 4336a(g)(1)). Sec. 1106 keeps those clocks (46:8–49:6) and changes who controls them. Today a lead agency may extend a deadline "in consultation with the applicant." The bill strikes that phrase and inserts "with the approval of the project sponsor" (53:3–5). Alternatives that do not "meet the goals of an applicable non-Federal project sponsor" must be dropped from consideration (38:6–12). A sponsor may petition a court over a missed deadline (55:5–58:12).

Missed deadlines also carry personal consequences. Thirty days after the CEQ Chairman finds that an agency has caused a missed deadline, its Chief Environmental Review and Permitting Officer and supervisory senior executives with a role in the delayed review must spend at least half their workweek fixing it

(53:12–54:8). Sixty days after a missed deadline, if the work is still not done, the agency head may not travel more than 25 miles from the duty station on official business; the Secretary of Defense is exempt (54:9–55:4).

The Council on Environmental Quality (CEQ), in the White House, gets a new role. A sponsor can take a dispute or delay among federal agencies to the CEQ Chairman, whose order "shall be final and conclusive" and "shall not be subject to judicial review" (52:5–13). And the order shall,

for purposes of judicial review of the ultimate agency action and all other Federal law, constitute full compliance with and satisfaction of any requirement for interagency consultation, coordination, concurrence, authorization, or other procedural obligation under Federal law that is the subject of the dispute or delay. (Sec. 1106, 52:14–23)

Because the bill defines "authorization" to include "any interagency consultation" (6:5–11), this reaches ESA Section 7 consultation between federal agencies.

What it does not do. The order deems procedural duties met. It does not say it satisfies the ESA's substantive duty to avoid jeopardy. The dispute must be "between those Federal agencies" (51:13–14). State and tribal preservation officers are not federal agencies, so the reach into historic preservation review is limited.

9. Listed oil, gas, and geothermal activities leave NEPA, and many wells lose the federal drilling permit

Sec. 2229 sits in the geothermal subtitle, but most of its weight falls on oil and gas. Since 2005, a list of routine oil and gas activities on federal land has carried "a rebuttable presumption" that a categorical exclusion from NEPA applies (42 U.S.C. 15942(a)). The bill turns the presumption into a flat rule: those activities, now including geothermal, "shall not be considered a major Federal action" (349:6–16). And their drilling permits lose NEPA entirely.

activities described in subsection (b) that require a drilling permit under the Mineral Leasing Act (30 U.S.C. 1001 et seq.) or a geothermal drilling permit under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) shall not have any requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). (Sec. 2229, 351:2–8)

Note the citation error in the quote: the Mineral Leasing Act is cited as "30 U.S.C. 1001," which is the Geothermal Steam Act. The list also grows. Pipeline placement in a corridor approved within the past 10 years (up from 5) qualifies, as do power lines of up to 20 miles in an approved corridor for geothermal (350:1–351:1).

Sec. 2211 then removes the federal permit to drill for some wells altogether. The first prong keeps a familiar test: the well is on non-Federal land and the United States owns under 50 percent of the oil and gas in the drilling or spacing unit. Two new prongs have no percentage test. They cover wells on non-Federal land over non-Federal minerals whose wellbore enters federal minerals, or merely passes through them (286:15–287:12). On that land, the Interior Department also loses authority to require a bond, enter without the landowner's consent, impose mitigation, or approve reclamation (289:14–22).

What it does not do. A drilling permit is still required for the Sec. 2229 activities (350:14–22). What goes is the NEPA review attached to it. Sec. 2211 applies only within a drilling or spacing unit and not on Indian lands, and state and tribal requirements still apply (286:15–22; 288:6–12).

10. A 150-day clock for energy and minerals suits, and more room for mines

Sec. 2201 sets a 150-day limit on suits challenging a final decision granting or denying an energy or minerals authorization, under the Mineral Leasing Act, the Mining Law, the Outer Continental Shelf Lands Act, the Geothermal Steam Act, and for projects that produce, store, or move energy (281:13–282:12; 283:14–15).

a civil action arising under Federal law seeking judicial review of a final agency action granting or denying an authorization shall be barred unless the civil action is filed by the date that is 150 days after the date on which the grant or denial of the authorization is required to be made public (Sec. 2201, 284:10–15)

The decision must be made public within 3 days (284:19–21). The clock runs from the date it is "required to be made public," not from the date it actually is.

For hardrock mining, Sec. 2215 lets a miner locate and include in its plan of operations "as many mill site claims under this subsection as are reasonably necessary for its operations" (308:7–10). Mill sites are land for processing and support facilities, up to 5 acres each (308:17–18). They may sit on land that is mineral-in-character, nonmineral, or undetermined (307:9–24). Current law allows mill sites only on "nonmineral land" (30 U.S.C. 42). Geothermal and hydropower get their own clocks and exclusions in Secs. 2221–2234.

What it does not do. "Unlimited" mill sites, a word some readers used, is wrong. The test is what is reasonably necessary for an approved plan, and a mill site conveys no mineral rights (308:14–15).

What ties the ten together

Read together, the changes use three tools. Clocks: 150 days to sue, 60 days to consult, deadlines that only the sponsor can enforce. Remedies: a court can find a violation and still not stop the project. Certainty: issued permits are frozen, with Treasury money behind the freeze. Around that core sit a new transmission regime and a rule that large data centers pay their own grid costs.

The design is technology-neutral. "Fossil" and "clean energy" never appear in the text. Coal and wind sit on the same list in Sec. 1402 (169:4–14). Where the bill does name a technology, it gives the grid, geothermal, and hydropower the most sections, and gives oil, gas, and mining the hardest tools: a NEPA exemption and no federal drilling permit for many wells. Part V takes that up in detail.

WHAT THIS MEANS FOR DATA CENTERS

Only one of the ten changes names data centers, and it cuts against the concern: FPA 228 makes new loads of 20 megawatts or more pay the incremental grid costs they cause (234:23–235:2), though the cost is the utility's estimate and existing loads are grandfathered. None of the ten creates a permitting fast track written for data centers. The neutral changes still help the projects that serve them: a mandatory federal transmission backstop, narrower state water review for pipelines and power lines, shorter windows to sue, and frozen permits apply to the generation and grid that data centers need as much as to anything else. So the verdict for this part is mixed: faster and harder to challenge for the power supply, more expensive for the data center itself. The chapter "Is this a data-center bill?" weighs the evidence on both sides.

PART II

Courts and Lawsuits

Faster and narrower for challengers; new rights and money for sponsors.



Courts and Lawsuits

BAAJA changes almost every lever a court uses in a permitting case, and it moves nearly every one in the same direction. A person challenging an approval gets 150 days to sue instead of six years, must clear new comment and "direct harm" tests, lands in a court of appeals, faces "substantial deference" to the agency, and, if they win on the National Environmental Policy Act or the historic preservation law, gets a remand that leaves the project's approval in force. A project sponsor gets new lawsuits with no stated filing deadline, a home-district court, a burden of proof placed on the government, injunctions the court "shall provide," and, in two cases, money from the Treasury. The rules are written for every kind of project, from pipelines to wind farms. That makes them broad, not targeted.

The pattern in one table

Judicial review comes down to five questions: how long you have to sue, who is allowed to sue, which court hears the case, how hard the judge looks, and what the judge can do if you win. Our review of the bill found 22 separate provisions that answer one or more of those questions. Ten of them narrow the path for challengers, eight open a new or wider path for sponsors, and four cut both ways or mainly shield the executive branch. None widens the path for a challenger.

QUESTION	CHALLENGER TO AN APPROVAL	SPONSOR OR PERMIT HOLDER
Time to sue	150 days in five places	No deadline stated
Who may sue	Must have commented; must allege "direct harm"	Any sponsor or applicant; no comment or harm test
Court	Court of appeals (NEPA, Section 106, biological opinions, transmission)	District court where the project sits
Standard	"Substantial deference" to the agency	Government must prove its case "by clear and convincing evidence"
Remedy	Remand "without vacatur or issuance of an injunction"	Injunction the court "shall provide"; money in two suits

The rest of this part walks through each row, then looks at what the bill puts beyond review entirely, where it is even-handed, and how it compares with the House bills it borrowed from.

The clock: 150 days, five times

Today, a person suing the United States has six years from the time "the right of action first accrues" (28 U.S.C. 2401(a)). In *Comer Post v. Board of Governors*, 603 U.S. 799 (2024), the Supreme Court held that the clock starts when the plaintiff is injured, not when the agency acts. The main exception today is FAST-41, the 2015 law that put large infrastructure projects on a public permitting schedule. Claims about a FAST-41 project must be filed within two years of the Federal Register notice (42 U.S.C. 4370m-6(a)(1)(A)).

BAAJA writes a 150-day limit into five different laws, and each one starts the clock a little differently:

- **The National Environmental Policy Act (NEPA)**, the law that requires environmental reviews. The clock runs from Federal Register publication when the agency prepared a full environmental impact statement (EIS), and otherwise from the date the approval was "made public" (Sec. 1110, 68:1–9).
- **Clean Water Act (CWA) section 404**, the wetlands and dredge-and-fill permit. The clock runs from the date the permit or verification "was issued" (Sec. 1205, 129:9–12).
- **Endangered Species Act (ESA) biological opinions**, the wildlife agency's verdict on whether a project jeopardizes a listed species. The clock runs from the date the opinion is "made public" on the agency's website (Sec. 1305, 154:19–21).
- **Section 106 of the National Historic Preservation Act (NHPA)**, the review of effects on historic and sacred places. The clock runs from the later of public release or notice to the State or Tribal Historic Preservation Officer (Sec. 2301, 408:24–409:8).
- **Every energy, minerals, and hazardous-fuels authorization**. The clock runs from the date a grant or denial "is required to be made public," which the bill sets at no later than 3 days after the decision (Sec. 2201, 284:9–21).

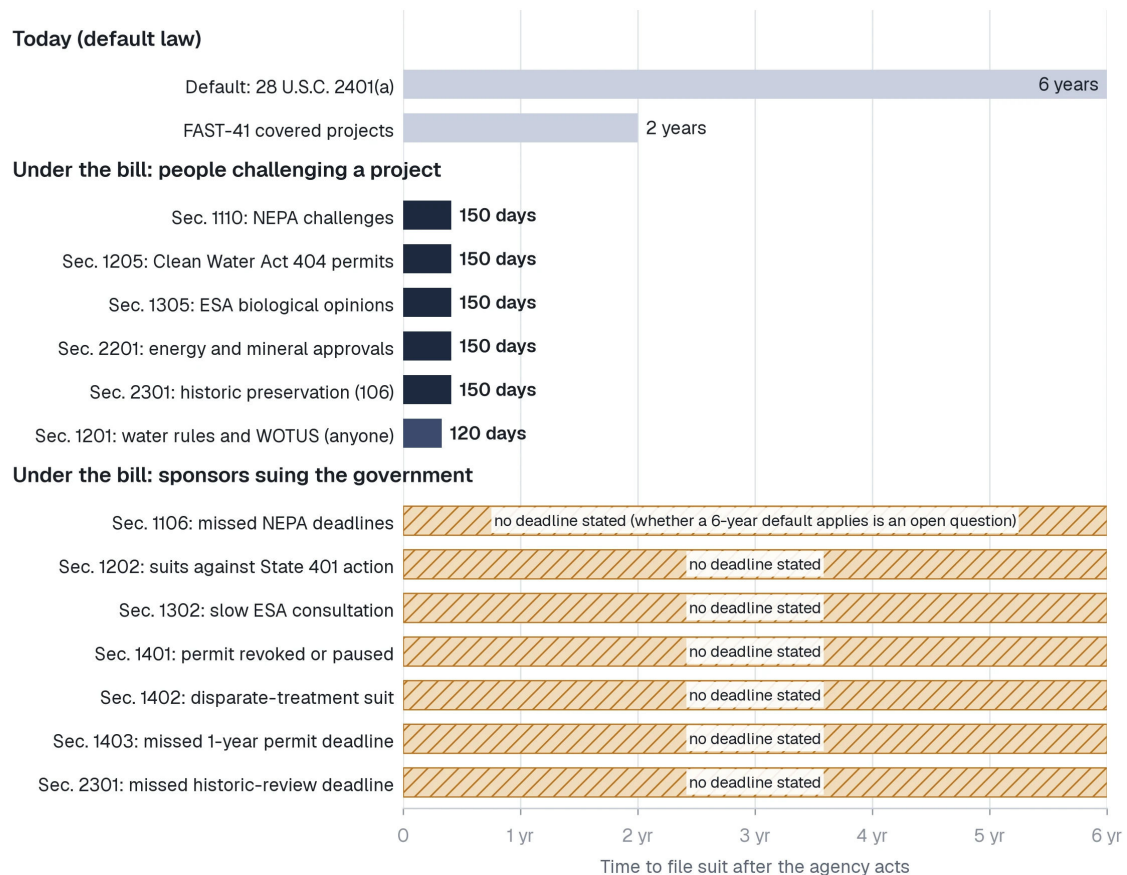


Figure 6: Challengers' time to sue drops from six years (two under FAST-41) to 150 days, while sponsor suits carry no stated deadline

The last trigger deserves a second look. Section 2201 starts the clock on the date the decision was *required* to be published, not the date it was. Our reading is that a decision posted late could start running before anyone outside the agency can see it.

Sponsors get no clock at all. The NEPA deadline suit (55:18–23), the water-certification petition (112:7–13), the ESA consultation-delay suit (135:16–24), the Section 106 deadline suit (399:7–16), and the three Title IV suits (Secs. 1401–1403) state no filing deadline. Section 1402 actually makes an applicant *wait* 180 or 280 days before suing (181:16–182:6). Which deadline, if any, governs these sponsor suits is an open question the text does not answer.

Courts get deadlines on the same pattern. A sponsor's deadline suit must be decided within 120 days, and the agency must then act within 60 (58:3–12; 184:22–185:4). A challenger's NEPA or Section 106 case must be decided only "as expeditiously as possible" (69:15–18; 412:16–21).

The door: who is allowed to sue

The comment and "direct harm" tests. To bring a NEPA claim, a plaintiff must have filed a comment "sufficiently detailed to put the applicable Federal agency on notice of the particular issue," if the agency offered a chance to comment. The plaintiff must also allege "an actual or imminent injury in fact amounting to a direct harm" (68:10–20). Both conditions apply. The bill does not define "direct harm." The Section 106 version asks for a "substantive and unique comment" plus "direct harm" (409:9–410:6), but it exempts consulting parties, including tribes, that gave detailed written notice during consultation (410:7–22). The wetlands version requires a prior comment only where a draft ran in the Federal Register for at least 30 days (131:7–14). The biological-opinion route has no comment or injury test at all: "Any person" may petition (154:14).

Doors that close. Five kinds of decisions become unreviewable:

1. The Council on Environmental Quality (CEQ) chairman's choice of lead agency, which is "final and conclusive" and "shall not be subject to judicial review" (35:22–36:4).
2. The CEQ chairman's orders resolving disputes between federal agencies (52:5–23), discussed below.
3. A State's affirmative waiver of its water-quality certification (116:6–10).
4. NEPA review of decisions about tribal trust land, unless the beneficiary tribe sues or the effects reach beyond trust land (73:1–22).
5. Challenges by non-signers to how a Section 106 programmatic agreement is carried out (412:22–413:9).

Doors that open, all for sponsors. A "project sponsor" may sue over a missed NEPA deadline (55:18–23), an existing right the bill strengthens. "An applicant" may petition over a State's water-certification delays (112:7–13). An ESA applicant becomes "eligible for relief" when consultation runs long (135:23–24). A Section 106 applicant may sue over a missed deadline (399:7–16). A "non-Federal project sponsor or holder" may sue over a revoked permit (161:12–14). An applicant for one of 46 listed project types may sue over a "pattern of disparate treatment" (173:11–15). Neighbors, opponents, and States that do not hold the permit get none of these, and Section 1402 bars class actions and representative suits (181:8–15).

The forum: courts of appeals for challengers, home courts for sponsors

Most permitting cases today start in a federal district court under the Administrative Procedure Act (APA), the general law that lets people challenge federal agency actions. BAAJA moves the challenger's case up a level:

- **NEPA.** The court of appeals for the circuit where the project "will be constructed, expanded, or operated" gets "original and exclusive jurisdiction" (68:22–69:2).
- **Section 106.** The same rule applies (411:18–24).
- **Biological opinions.** These go straight to the D.C. Circuit (154:17–19).
- **Transmission.** Every federal or State approval needed to site a line goes to the courts that hear appeals of Federal Energy Regulatory Commission (FERC) orders (197:2–11). That includes a State's Clean Water Act certification, which the bill reclassifies as a "Federal authorization" (195:10–18). Part III takes up what that means for States.

Sponsor suits stay home. Suits under Secs. 1401, 1402, and 1403 go to a district court where the project "is at least partially located" (161:16–18; 173:13–15; 183:6–8), and the Section 106 deadline suit is expressly carved out of the appeals-court rule (411:18–20).

Judge assignment follows the same split, and the contrast is in the design rather than a legal conflict, since the two rules govern different courts and claims. NEPA and Section 106 challenges must be randomly assigned "to avoid the appearance of favoritism or bias" (69:9–14). A sponsor who wins a Section 1401 case gets an injunction that the government can lift only with an order "from the same judge (assuming that judge continues to sit in the same district) that heard the original matter" (163:17–19).

Overlaps are likely. An interstate gas pipeline's other permits already go to the regional court of appeals under the Natural Gas Act (15 U.S.C. 717r(d)(1)); its biological opinion would now also be reviewable in the D.C. Circuit. A transmission line's wetlands permit carries Section 1205's 150-day clock and remedy limits but goes to a FERC-review court under Section 2101. FERC's own review statute starts its 60-day clock from a FERC rehearing order (16 U.S.C. 825l(b)), which other agencies and States never issue. Our reading is that transmission permits may end up with a court but no clear deadline.

The standard: deference follows the outcome

When an agency approves a project, the bill tells judges to defer. NEPA claims get "substantial deference to the agency relating to the scope and contents of an environmental document" (73:23–74:2). That tracks the Supreme Court's 2025 decision in *Seven County Infrastructure Coalition v. Eagle County*, which said courts "should afford substantial deference" [14]. The Section 106 version is broader: courts "shall afford substantial deference to the agency" and "may not substitute the judgment of the court for the judgment of the agency" (406:14–18), with no limit to the contents of a document.

When an agency acts against a project, the burden flips:

- **Revoked or suspended permits.** "Notwithstanding" the APA, the court must "place the burden of proof on the Federal agency to demonstrate by clear and convincing evidence" that an exception applies (161:19–162:8). Under ordinary APA review, the challenger must show the action was arbitrary (5 U.S.C. 706(2)(A)).
- **State water-certification denials.** The State carries the burden by clear and convincing evidence (117:4–118:3).
- **Missed deadlines.** The agency must prove its excuse by clear and convincing evidence (56:5–7; 183:12–14).

Clear and convincing evidence is the standard courts use for things like fraud. It is much harder to meet than the ordinary "more likely than not."

In reviewing a claim of whether an authorization complies with the requirements of this Act, a court shall afford substantial deference to the agency relating to the scope and contents of an environmental document. (Sec. 1110, 73:23–74:2)

the reviewing court shall... place the burden of proof on the Federal agency to demonstrate by clear and convincing evidence that 1 or more of the matters described in subparagraphs (A) through (E) of that paragraph applies. (Sec. 1401, 161:25–162:8)

The remedy: no vacatur for challengers, injunctions for sponsors

This is the change with the most practical bite. When a court finds that an agency broke the law, the usual remedy is vacatur: the court sets the approval aside, and work stops until the agency fixes it (5 U.S.C. 706(2)). BAAJA takes that off the table for NEPA and Section 106.

the only remedy the court may order to redress that violation is to remand, without vacatur or issuance of an injunction, the applicable authorization to the agency (Sec. 1110, 69:24–70:3)

A NEPA violation gets a remand, not a halt; the approval stays in force.



The approval "shall remain in effect," and the project "may, notwithstanding that remand, be carried out" while the agency fixes its review, on a remand schedule of no more than 180 days (70:6–10; 71:14–25). The Section 106 text is the same (406:25–407:3). *Seven County* said a deficient EIS "does not necessarily require vacating" an approval [14]. BAAJA turns "not necessarily" into "never."

One narrow path survives. A court may still grant a preliminary injunction if there is "a substantial likelihood the authorization violates a Federal law other than" NEPA or the NHPA, plus the usual showings of irreparable harm, balance of equities, and public interest (70:11–71:4). So a project that likely violates the ESA or the Clean Water Act can still be paused. A project whose only flaw is a deficient environmental review cannot.

For wetlands permits, a court "may not vacate, revoke, enjoin, or otherwise limit the permit" unless the work "would present an imminent and substantial danger to human health or the environment for which there is no other equitable remedy" (132:7–15). Biological opinions and the energy authorizations in Section 2201 keep their full APA remedies. Those sections change only the clock and the court, plus a 180-day cap on remand schedules in Section 2201 (285:2–11).

Sponsors get the mirror image. When a sponsor proves an agency missed a deadline, "the court shall provide injunctive relief, as appropriate" (57:17–21). The same words appear for State water-certification delays (113:11–18), Section 1403 deadlines (184:11–17), and Section 106 deadlines (399:17–25). "Shall" makes relief mandatory; "as appropriate" leaves the judge discretion over its form.

Provision (bill section)	Who may sue	Deadline	Court	Standard of review	Remedy
NARROWS THE CHALLENGER'S PATH (10)					
1110 NEPA challenges	Detailed commenters with direct harm	150 days	Court of appeals only	Substantial deference	Remand only; no vacatur
1110 Tribal trust actions	Only the beneficiary Tribe	150 days	Court of appeals only	Substantial deference	Remand only
1106 CEQ dispute orders	Nobody	n/a	n/a	Not reviewable; courts as compliance	None
1202 State waiver	Nobody	n/a	n/a	Not reviewable	None
1205 CWA 404 permits	Detailed commenters	150 days	District court (as today)	APA	Remand; vacatur only for danger
1305 Biological opinions	Any person	150 days	D.C. Circuit only	APA	No limit
2201 Energy, mineral approvals	Anyone, incl. applicants	150 days	Not specified	Unchanged	Expedited; vacatur allowed
2226 Geothermal processing	n/a	n/a	n/a	n/a	Processing goes on unless a court orders
2301 Historic review (106)	Direct harm + unique comment	150 days	Court of appeals only	Substantial deference	Remand only; no vacatur
2301 Programmatic agreements	Signatories only	n/a	No jurisdiction for others	n/a	n/a
NEUTRAL (4)					
1106 CEQ lead-agency pick	Nobody	n/a	n/a	Not reviewable	None
1201 Water rules, WOTUS	Any interested person	120 days (for all)	Court of appeals	APA	Unchanged
1304 Suits v. assuming State	Any plaintiff	Not stated	District courts	Same as v. Secretary	Same; EAJA fees
2101 Transmission approvals	Party aggrieved (FPA 313)	Not stated (open question)	Courts of appeals only	Not stated (APA)	Not stated
OPENS A PATH FOR SPONSORS (8)					
1106 Sponsor deadline suit	Project sponsor	None stated	Any competent court	Agency must prove excuse	Mandatory injunction
1202 Applicant v. State 401	Applicant	None stated	Undefined court	Pretext evidence allowed	Injunctive relief
1202 State denial or conditions	Not specified	Not specified	Not specified	Burden on State, clear and convincing	Not specified
1302 Slow ESA consultation	Applicant	None stated	Not specified	Relief after 145 days	Order to act
1401 Permit revoked or paused	Sponsor or permit holder	None stated	District where project sits	Burden on agency, clear and convincing	Reinstatement; 25-50% of costs
1402 Disparate treatment	Applicant; no class actions	No limit stated	District where project sits	Adverse inference against U.S.	Damages; 50-100% of build cost
1403 Missed permit deadline	Applicant	None stated	District where project sits	Agency must prove excuse	Mandatory injunction
2301 Applicant 106 deadline	Applicant	None stated	Where project sits	Deadline compliance	Mandatory injunction

■ No review at all ■ Narrower for challengers ■ Unchanged, symmetric, or not stated ■ New or stronger for sponsors

Figure 7: Of 22 judicial review provisions, 10 narrow the path for challengers, 8 open one for sponsors, 4 are neutral, and none widens a challenger's path

Money: Title IV's paid lawsuits

Title IV, "Project Certainty," gives permit holders and applicants something no challenger gets: a claim for money. The APA's waiver of sovereign immunity covers only "relief other than money damages" (5 U.S.C. 702), so this is new ground.

Section 1401: revoked permits. No federal agency may "revoke, rescind, withdraw, terminate, suspend, amend, or alter a Federal authorization or permit in effect on or after September 16, 2026" for a project with a non-federal sponsor, or otherwise interfere with a fully permitted project, unless one of five exceptions applies (159:9–19). The exceptions are a court order, a material breach or other violation of law, fraud, "specific, urgent, substantial, and proximate harm" based on new information, and the holder's own request (159:20–160:16). If the sponsor wins, it gets reinstatement, the same-judge injunction, fees, delay costs, and a further award.

25–50%

Of all costs a winning sponsor had incurred on the project to date, owed on top of reinstatement, fees, and delay costs (Sec. 1401, 164:3–9).

The 25 percent floor applies whatever the actual loss. Harm, bad faith, and a pattern of conduct only move the award within the 25-to-50 band. Sponsor summaries describe the award as "up to 50 percent of construction costs," which is incomplete: the cap is right, but the summaries omit the floor and narrow the base.

Section 1402: class-wide freezes. An applicant for one of 46 listed project types, from offshore wind and solar to coal export and helium pipelines, can sue if it proves "an intentional course of action" by the government to deny or delay permits for its type (168:22–24; 169:1–172:20). Only a pattern after enactment counts (175:9–11). A winner can recover "not less than 50 percent and not more than 100 percent of the total reasonably expected cost of construction of the project" (179:20–24).

Section 1403: a one-year deadline. Permits that need no EIS or environmental assessment must be decided within one year after the last application is complete (173:4–8). A sponsor can sue to enforce it. There is no money award.

Both money awards come from the Judgment Fund, the Treasury's permanent appropriation for court judgments, and "shall not be subject to the availability of appropriations" (165:18–24; 181:1–7). Nothing requires the agency that lost to repay the Fund. Section 1401 also strips the Court of Federal Claims, the court that normally hears money claims against the United States, of jurisdiction "in perpetuity if relief is granted" (166:1–10). Whether that bar also cuts off a later constitutional takings claim on the same facts is an open question; the text ties the bar to claims "for, or in respect to, this section," which is narrower than the formula in 28 U.S.C. 1500.

The bill names no project, but in our reading the special rule in Section 1401 closely tracks the 2025–26 offshore wind fights, in which courts enjoined stop-work orders against Revolution Wind, Empire Wind, Sunrise Wind, Coastal Virginia Offshore Wind, and Vineyard Wind 1 [24,25]. That rule routes cases about stop-work orders issued within one year before enactment back to "the same judge" (165:1–17). If the bill is enacted after December 22, 2026, the December 22, 2025 orders fall outside that window. What drops out is the same-judge routing, not the general protection in Section 1401.

What no court can review: the CEQ referee

The quietest change may be the most consequential. Under Section 1106, a project sponsor can notify the CEQ chairman that federal agencies are in a dispute or causing delay, and the chairman resolves it by order (51:3–52:4). Only a sponsor can start this process.

any order given or action taken by the Chairman in resolution of an eligible dispute or delay ... (I) shall be final and conclusive; (II) shall not be subject to judicial review; and (III) shall, for purposes of judicial review of the ultimate agency action and all other Federal law, constitute full compliance with and satisfaction of any requirement for interagency consultation, coordination, concurrence, authorization, or other procedural obligation under Federal law that is the subject of the dispute or delay. (Sec. 1106, 52:5–23)

Because the bill defines "authorization" to include "any interagency consultation," this plainly reaches ESA section 7 consultation between an action agency and the Fish and Wildlife Service.

WHAT THE CEQ ORDER DOES AND DOES NOT DO

It deems *procedural* duties satisfied. It does not say it satisfies the ESA's substantive duty to ensure an action is not likely to jeopardize a listed species. Its reach into Section 106 is limited, because State and Tribal Historic Preservation Officers and tribes are not federal agencies, and the dispute must be between federal agencies. The accurate summary is that a White House office can end an ESA consultation dispute by an unreviewable order. It does not override the Endangered Species Act itself.

Where the bill is even-handed, or leaves things alone

Several provisions do not fit the pattern:

- **Section 2201 cuts both ways.** Its 150-day limit covers a final action "granting or denying an authorization" (284:11–12), so an applicant appealing a denial also has only 150 days.
- **Section 1201 shortens everyone's window.** It moves water-quality criteria and the definition of "waters of the United States" into the CWA's list of rules reviewable only in the courts of appeals within 120 days (103:1–9). That binds industry challengers as much as environmental groups. Under existing law, a rule that could have been challenged there cannot be contested later in an enforcement case (33 U.S.C. 1369(b)(2)). Our reading is that a landowner who misses the 120 days loses that argument for good.
- **Biological opinions keep full remedies.** Section 1305 changes time and forum only. A court can still vacate a flawed opinion.
- **The non-NEPA injunction path survives.** As noted above, a likely ESA or Clean Water Act violation can still stop work.
- **Tribes gain one form of control.** Only the beneficiary tribe may bring a NEPA claim over trust-land decisions (73:1–22). Third parties can sue only over effects beyond trust land.
- **Every technology gets the same rules.** The 150-day clock, the remedy limits, and the Title IV suits apply to wind farms and pipelines alike. Section 1402's list of 46 protected project types includes off-shore wind, solar, and geothermal next to coal export and gas.

Pending cases and old approvals

The NEPA rules apply to claims "filed on or after the date of enactment" (67:16–18). Suits already on file are not "claims" under that definition, so pending cases are not cut off by the 150-day bar or the remedy limit. That leaves an outstanding legal question: does a suit filed just after enactment, against an approval made public more than 150 days before, fail immediately? The text does not provide a transition period. Sections 1205, 1305, and 2201 say nothing about pending cases or older approvals, and we found no general effective-date section in the bill. Section 1401 reaches backward: it protects permits "in effect on or after September 16, 2026" (159:14–15), two weeks before the bill was introduced.

Where it came from: SPEED and RESTART

The NEPA review section is built on the SPEED Act (H.R. 4776), which the House passed on December 18, 2025 [26]. The two share the 150-day limit, the "substantive and unique comment" and "direct harm" tests, remand without vacatur, and "substantial deference." BAAJA differs from SPEED in several ways:

- It moves NEPA claims to the courts of appeals; SPEED had no venue clause.
- It adds random assignment of judges and the preliminary-injunction path for violations of other laws.
- It drops SPEED's 180-day deadline for courts to decide these cases.
- It drops SPEED's bar on challenging how categorical exclusions are established.
- On revoked permits, SPEED gave sponsors ordinary APA review in the court of appeals and no money. It also barred agencies from asking a court to vacate or remand their own permits without the holder's consent. BAAJA drops that bar and adds money, the burden shift, and the same-judge rule.

The RESTART Act (S. 1449, 118th Congress) went further on time: a 60-day filing deadline, a 180-day deadline for district courts, and pending NEPA claims against built or operating projects declared "moot and barred." Random assignment and the no-review rule for State waivers come from RESTART. BAAJA is milder than RESTART on time and retroactivity, and harsher on remedies, which RESTART did not limit.

Outstanding legal questions

1. Does a NEPA "claim" include a decision that no review was needed at all, such as a categorical exclusion or a "not a major Federal action" finding? If not, those decisions escape the 150 days, the comment rule, and the remedy bar.
2. Can a NEPA plaintiff get the preliminary injunction the bill allows without pleading a separate claim under another law, given that a "claim" is by definition a NEPA claim?
3. Is the D.C. Circuit route for biological opinions exclusive, and how does it fit with the Natural Gas Act's regional-circuit route for pipelines and Section 2201's clock for energy projects?
4. What filing deadline applies to State and non-FERC transmission approvals now routed to FERC-review courts?
5. Can an unreviewable order from the CEQ chairman displace ESA consultation, consistent with the Appointments Clause and due process?
6. Does "direct harm" narrow standing for membership groups or for aesthetic injuries below what the Constitution already requires?
7. Can Congress direct a case to "the same judge," and does Section 1401's perpetual bar on the Court of Federal Claims extinguish takings claims?
8. When an agency asks a court to vacate its own permit, does the resulting order count as the "order of a court" exception to Section 1401?

WHAT THIS MEANS FOR DATA CENTERS

Mixed. Data centers and the lines, pipelines, and plants that serve them would face fewer and slower legal challenges: 150-day windows, new standing tests, no vacatur for NEPA or Section 106 violations, and an unreviewable CEQ route around stalled ESA consultations. Transmission gets its own boost, since State water certifications for lines move to the FERC-review courts. But nothing in these provisions is aimed at data-center supply. The same rules protect offshore wind, solar, mines, and pipelines, Section 1402's protected list spans every technology, and Section 2201's clock also binds applicants appealing denials. Data-center projects benefit as one class of large project among many, not as a favored one.

PART III

Who Decides

Power moves from states, tribes, and expert agencies to sponsors, CEQ, and FERC.



Who Decides

BAAJA rarely says outright that federal law overrides the States. Instead it moves decisions through clocks that end in a deemed result, burdens of proof placed on the State, federal courts, and offers of delegation with strings attached. The biggest shifts land on transmission. The Federal Energy Regulatory Commission (FERC) gets a mandatory, nationwide power to permit lines when a State takes more than a year, and a State's water-quality certification for a line becomes a "Federal authorization" reviewed in federal appeals courts. Gas pipelines get a narrower water review. Power plants are mostly untouched, because federal law does not site them. The one major grant of authority runs the other way: new Federal Power Act section 228 bars shifting the added cost of serving large data centers to other customers and confirms State power to charge them more. Texas's ERCOT grid stays outside the new siting and planning rules but not outside the data-center cost rule.

The question

Every permitting fight is partly a fight over who gets the last word. This part maps where BAAJA moves it, among States, tribes, expert agencies, FERC, CEQ, and sponsors, and whether the moves reach the projects that would power new demand: transmission lines, gas pipelines, and generation.

Our review counted 49 distinct power shifts. Nineteen work by preemption, twelve by deadlines, eight by moving review to a different court or decision-maker, four by "deeming" one decision to satisfy another, three by shifting the burden of proof, and three by funding.

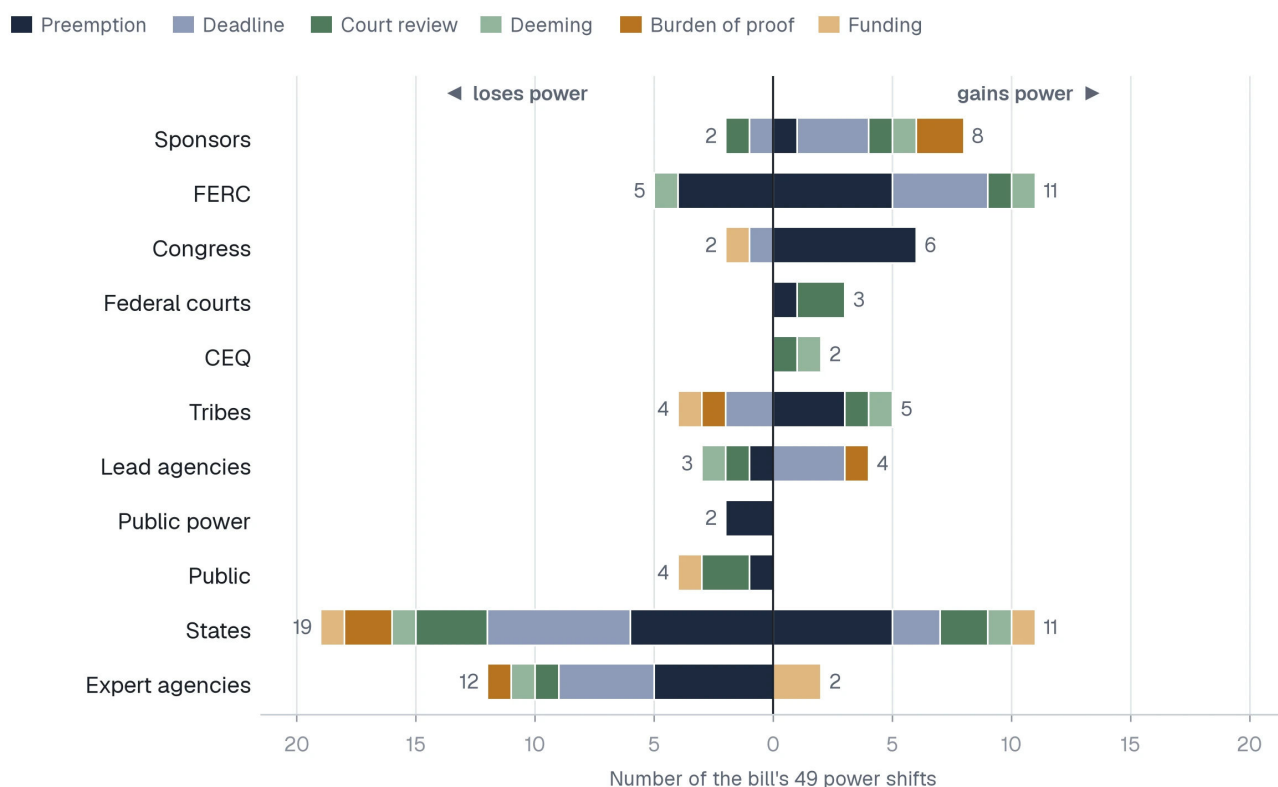


Figure 8: Most of BAAJA's 49 power shifts move authority from States, tribes, and expert agencies toward federal permitting agencies, CEQ, FERC, and sponsors, mainly by preemption and deadlines

Water: the State certification survives, on federal terms

Section 401 of the Clean Water Act (CWA) is one of the main tools States have over federally licensed projects. Before a federal agency can license anything that may discharge into U.S. waters, the State must certify that the discharge meets water standards. Today the State has up to a year, and its certification may include "any other appropriate requirement of State law" (33 U.S.C. 1341(a)(1), (d)).

BAAJA keeps the State's role but changes four things around it (Sec. 1202):

- **Scope.** Review is limited to "water quality requirements" (104:19–22), a closed list of CWA sections 301, 302, 303, 306, and 307 and the laws implementing them (122:15–23).
- **Clock.** The federal licensing agency, not the State, sets the review period, up to one year, "in consultation with" the State (114:15–115:2). If the State does not act in time, "the requirement for a certification ... shall be waived" (115:10–11). The one-year ceiling and the waiver already exist today. What is new is that the federal agency sets the period and that only the applicant can ask for more time (115:16–23).
- **Burden.** A State may deny only on "clear and convincing evidence" that no condition would make the project comply (105:1–7). Conditions must be "the least burdensome" (105:14–16). In court, the State carries the burden (117:4–118:3), and an applicant can sue over the State's process and get an injunction the court "shall provide" (113:11–18).
- **Pipelines and transmission.** For a natural gas pipeline certificate or an "interstate transmission line project," the State certifies only a "direct point source discharge," on a clock capped at nine months (118:13–119:2; 121:10–21). The bill never defines "direct point source discharge." Despite the label, "inter-

state" here means any line that is part of the bulk-power system (118:6–12), so a line entirely inside one State qualifies.

Section 2101 then reclassifies the State's certification for transmission.

The term 'Federal authorization' includes a certification under section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341) from a certifying authority (as defined in subsection (h) of that section) and any other permit, license, concurrence, or approval of a State administrative agency required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), in order to site a transmission facility. (Sec. 2101, 195:10–18)

Any State order that issues, conditions, or denies such an authorization is reviewable only in the federal courts of appeals that hear FERC orders, which get "original and exclusive jurisdiction" (197:2–11). This reaches every transmission facility that needs a federal authorization, not only FERC-permitted lines. Whether FERC's rehearing step and 60-day filing limit also apply to a State agency's action is unclear, as is whether an applicant could take a State denial to the President under the existing appeal in 216(h)(6).

Transmission siting: the backstop becomes the main road

Section 216 of the Federal Power Act (FPA) has given FERC a "backstop" siting power since 2005, but only inside a "national interest electric transmission corridor" designated by the Department of Energy (DOE). BAAJA removes that limit and makes the power mandatory.

	CURRENT FPA 216 (16 U.S.C. 824P)	BAAJA
Where FERC may act	Only inside a DOE corridor (824p(b))	Anywhere; corridors struck (185:11–13)
FERC's duty	"may"	"shall" (188:10–16)
State clock	1 year after the later of filing or corridor designation	1 year from the State filing (188:24–189:5)
Timing	State first; FERC pre-filing later, by FERC rule (Order No. 1977)	FERC case runs at the same time as the State's for lines of 345 kV or more (191:17–192:2)
Condemnation procedure	Follows State-court practice (824p(e)(3))	Federal Rule of Civil Procedure 71.1 (192:10–14)
Compensation clause	Fair market value plus severance damages (824p(f))	Struck; replaced by cost allocation (192:15–194:18)
Lead federal agency	DOE (824p(h)(2))	FERC, or Interior offshore (195:19–196:4)

The key trigger is the State clock. FERC "shall" issue a permit for a line "necessary in the national interest" if, among other triggers, a State has withheld approval for more than a year after "the date on which the application was filed with the State commission or other entity" (188:10–16; 188:24–189:5). For lines of 345 kilovolts (kV) or more, the developer may file at FERC "simultaneously with, or any time after," the State filing (191:17–192:2), so the federal case is already running when the State's year ends. FERC still cannot issue a permit before a State-failure finding (192:3–9).

Landowners would still be owed just compensation under the Fifth Amendment; what disappears is the statute's own valuation text, including severance damages (Part IV).

States keep a few things: new 216(d)(1), "Preservation of State Siting Authority" (190:7–13); a State record FERC "shall consider" (191:3–9); and the untouched State-law clause in 824p(g). Developers may recover "payments to jurisdictions impacted" in their FERC rates (198:9–12), a new way to compensate host communities.

Planning: FERC sets the rules, and an old order holds the States' seat

New FPA 225 orders FERC to require regional and joint interregional transmission planning by rule within 180 days (211:11–14), with regional filings due in two years (214:17–25). FPA 318 merges generator interconnection and regional planning into one process (224:18–225:17). A project selected in a regional or interregional plan automatically satisfies most of FERC's siting findings under 216(b) (217:8–14).

FPA 225 names no role for State commissions. Today, States have one through FERC's Order No. 1920 series: regions must file a cost-allocation method the States agree to, consult States on planning scenarios, and give them an engagement period [27]. BAAJA preserves that seat indirectly. Section 225(h) says compliance with the FERC orders published June 11, 2024, December 6, 2024, and April 28, 2025 "shall constitute compliance with the regional transmission planning and cost allocation requirements" (217:1–7). So the States' role in regional planning survives through that safe harbor. Interregional planning under 225 has no counterpart.

Miss the one-year State clock, and FERC must step in.



FPA 227 bans any "Federal right of first refusal" for facilities selected in a regional or interregional plan, "Notwithstanding any rule or order" of FERC (224:9–14). That language overrides Order 1920's right of first refusal for right-sized replacement lines when they are selected for regional cost allocation. Our reading is that 227 leaves State right-of-first-refusal laws alone, because it addresses only federal rights.

FPA 226 adds to State power: a State may refer a utility's local transmission planning to a joint FERC-State team, with fines of up to \$5,000,000 per facility "payable to the referring State" (220:3–10; 222:20–223:9).

Who is in, who is out: ERCOT and public power

Much of the high-voltage grid is run by regional transmission organizations (RTOs) and independent system operators (ISOs) under FERC oversight. Most of Texas is served by the Electric Reliability Council of Texas (ERCOT), a grid with no synchronous ties to its neighbors and therefore largely outside FERC's wholesale jurisdiction.

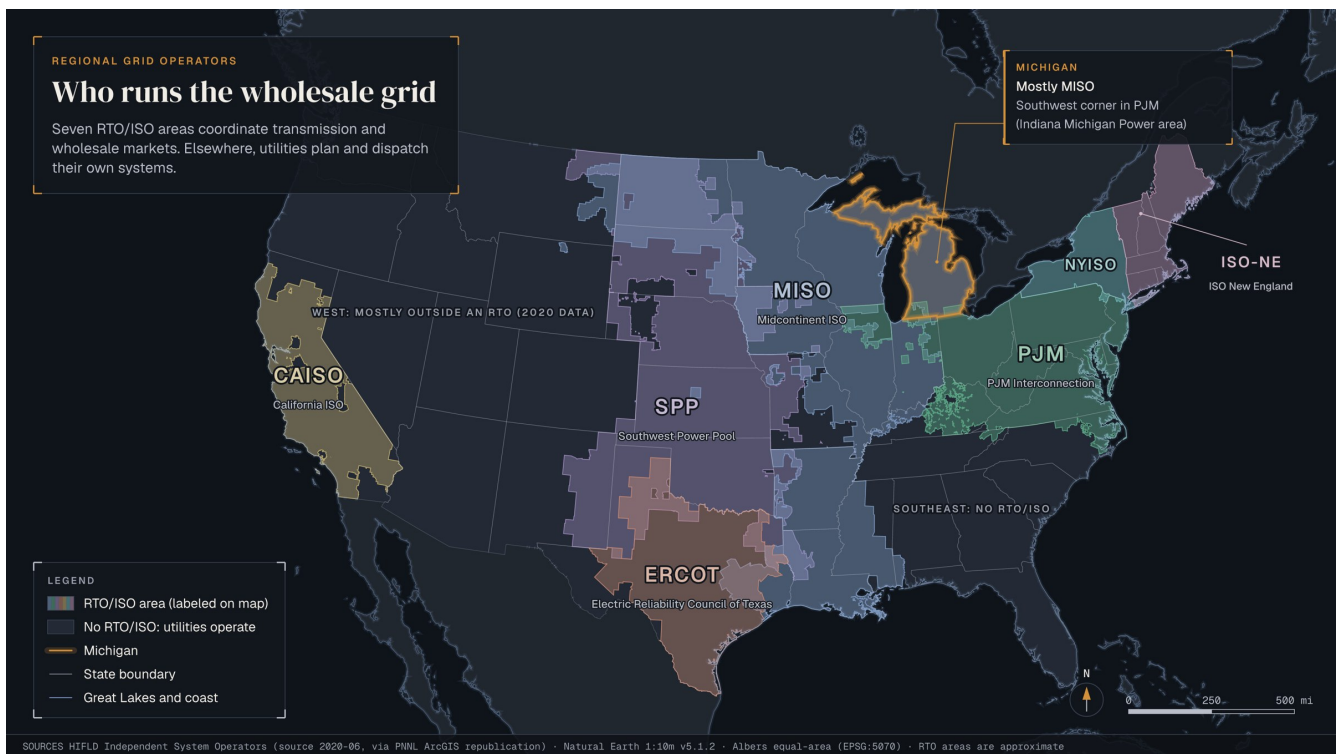


Figure 9: Seven RTO/ISO areas run most of the U.S. wholesale grid; Michigan is mostly MISO, and ERCOT covers most of Texas

WHAT IS ACTUALLY NEW ABOUT ERCOT

The ERCOT exclusion from federal transmission siting is not new. Current law already says FPA 216 "shall not apply within the area referred to in section 824k(k)(2)(A)," the ERCOT area (16 U.S.C. 824p(k)). BAAJA re-enacts that sentence (198:17–18). What is new is a second exclusion by utility: FERC's 216 jurisdiction covers all transmitting utilities "but excluding any ERCOT utility ... and any exempt transmitting utility that does not voluntarily subject itself to Commission jurisdiction" (198:20–199:3). FPA 225 repeats both exclusions (210:19–211:5) and separately leaves ERCOT out of the definition of a "transmission planning region" (210:13–17). FPA 318 uses that definition, so ERCOT drops out of it too.

The data-center cost rule is different. FPA 228 has no ERCOT exclusion. It binds every "electric utility," a term the FPA defines to include State and municipal entities (16 U.S.C. 796(22)), so on its face it reaches Texas utilities serving data centers. But 228 also says that, except for the State tools in subsection (c), "nothing in this section expands or diminishes the jurisdiction of the Commission or of any State" (239:7–12). Because 228 does not expand FERC's reach, our reading is that enforcing it inside ERCOT would fall mainly to Texas regulators.

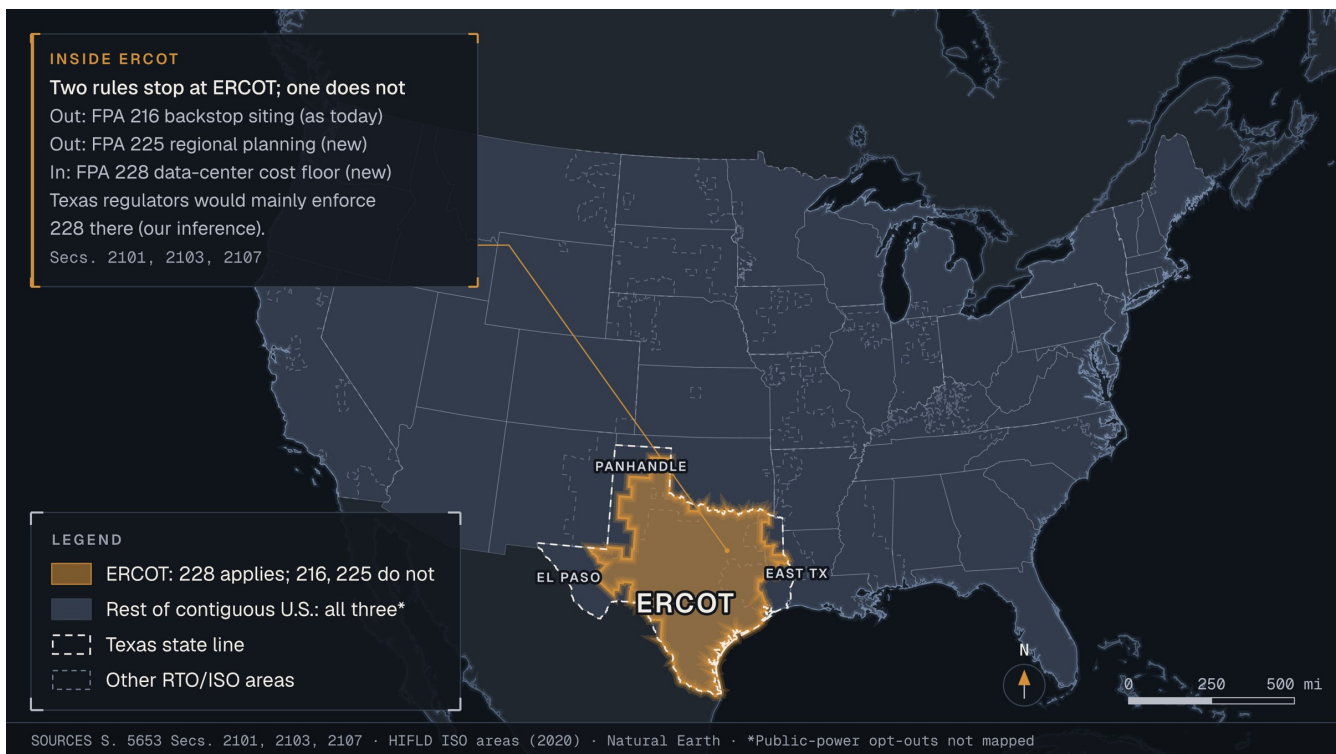


Figure 10: ERCOT sits outside new FPA 216 siting and FPA 225 planning but inside FPA 228, the data-center cost floor

Two other parts of the title may also reach Texas. The water-certification narrowing in 401(g) turns on the "bulk-power system" (118:6–12), and our reading is that ERCOT is part of it. FPA 216A's exemption for grid work within existing rights-of-way also has no ERCOT carve-out.

Public power. "Exempt transmitting utilities" are States, political subdivisions, and electric cooperatives selling less than 4,000,000 megawatt-hours a year (208:3–10). Under 216 and 225, they are covered only if they opt in (198:20–199:3). But new 216(f)(2) says FERC, "notwithstanding section 211A(c), shall require" an exempt utility that owns or operates a permitted facility to provide transmission service over it (193:6–15). Whether that duty overrides the opt-in for a municipal or cooperative co-owner is an open question. Section 2115 also extends FPA sections 225 through 233, including 228, to these public entities through FPA 201(b) (2) (280:3–11).

Data centers: a federal floor under State retail rates

Section 2107 deals with large computing loads. Its first part declares it unjust and unreasonable for any utility to charge computational load "less than the embedded costs and incremental expansion costs" of transmission service (226:20–227:4), and directs FERC to revise its pricing policy.

Its second part, new FPA 228, applies to "covered load": data-center or high-density computing load of 20 megawatts (MW) or more at one site, or at sites under common control, counted at full buildout (232:3–13).

No portion of the incremental cost may be allocated to, or recovered in the rates of, any customer other than a covered load, subject to the limitations described in subsection (e). (Sec. 2107, FPA 228(b)(1), 234:23–235:2)

The "incremental cost" is what the utility would have avoided by not serving the load, including generation, storage, transmission, and distribution. The utility estimates it around the time the load goes live, "subject to approval by the Commission or a State" (233:18–234:3). Subsections (b) and (c) apply only to loads that interconnect after enactment, and arrangements approved before enactment "shall remain in effect" (239:24–240:8).

The section then lists State tools. "Notwithstanding" any FERC rule, a State may charge covered loads more than both embedded and incremental cost, credit the excess to other customers, award service by open season ranked by benefit to other ratepayers, and require new self-supplied generation or interruptible service (236:7–238:23). It may also treat data centers as a separate class with terms "less favorable than" those for other large industrial loads (238:24–239:5). That last authority is not limited to new loads. The section says it "recognizes and confirms" this State authority and "is not the source" of it (239:19–23), and Section 2115(b) says nothing in the title gives FERC authority "over sales of electric energy at retail or the local distribution of electricity" (280:17–21).

Our reading is that 228(b) still works as a federal limit on State retail rate design. A State that wanted to spread some data-center costs across all customers, for example to attract investment, could not. The text also points to a subsection (e) for "limitations" that subsection (e) does not contain, a drafting gap covered in Part IX.

Wildlife, NEPA, and historic preservation: delegation with strings

Endangered Species Act. New ESA section 7A lets the Interior Secretary hand section 7 consultation to a State for projects inside its borders (139:21–140:5), and the Secretary "shall approve" a capable State (144:1–3). The price is steep: the State must waive sovereign immunity (141:24–142:1), consent to federal-court jurisdiction (145:12–17), and accept four years of annual audits (148:14–149:6). And the applicant "may elect to consult with the Secretary" instead (148:5–10). No provision lets a tribe assume consultation.

NEPA. The Council on Environmental Quality (CEQ) chairman can settle disputes "between those Federal agencies" by an unreviewable order (51:3–52:23), covered in Part II. States, tribes, and local governments may serve as cooperating agencies only with "jurisdiction by law"; "special expertise" no longer qualifies (38:15–23). In the other direction, a State or tribal review that "serves a similar function" can make a federal NEPA document unnecessary (28:23–29:3).

Historic preservation. Interior's review of State and Tribal Historic Preservation Officers (SHPOs and THPOs) moves from every four years to every two (373:7). A program whose officer does not "regularly comply with timelines" can be found inconsistent, which suspends federal grants; if it is still inconsistent two years later, "the Secretary shall assume all or part of the functions" of the officer (373:18–374:21). The federal official "may consult" with SHPOs, THPOs, and tribes at the early steps (387:8–16), though a narrower duty to consult tribes about places of religious and cultural significance remains (54 U.S.C. 302706(b)). Part IV covers these changes for tribes.

What the savings clauses actually save

Each of the bill's State-authority savings clauses protects less than its title suggests:

- New 401(e)(2)(C) keeps necessary State conditions in the federal permit (105:21–106:2), but the pipeline-and-transmission rule in 401(g) applies "notwithstanding subsection (d)," the clause that lets State con-

ditions bind (120:20–121:9).

- New 216(d)(1) preserves State siting authority except where a State-failure trigger applies (190:8–13), which is where the bill moved the clock.
- FPA 228(e)(1) preserves State and FERC jurisdiction (239:7–12), and Section 2115(b) denies FERC retail authority (280:17–21). Neither addresses the floor in 228(b).

Our reading is that nothing in the bill saves a State's water-certification authority over transmission from the Section 2101 reclassification.

Two models: Michigan and Texas

Michigan and Texas show how the same bill lands on two very different grids. Both already regulate data-center load on their own, and in both, BAAJA would sit on top of rules the State wrote first. The State facts below come mainly from our own working paper on State data-center policy, with data through July 17, 2026 [5]. Where we checked the paper's underlying source ourselves, we cite that source too. Part VI ("Where the Data Centers Are") covers project counts and local moratoria in both States.

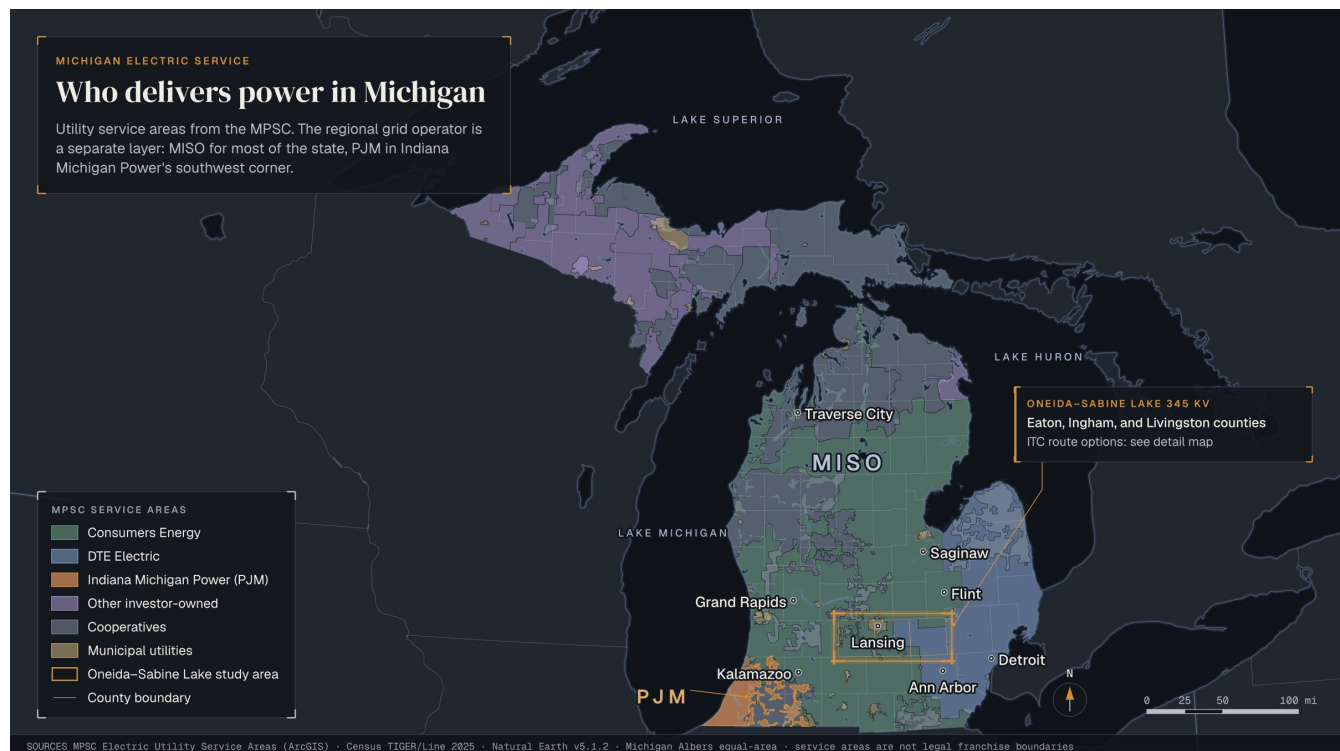


Figure 11: Michigan's utilities sit in two regional grids, MISO for most of the State and PJM in the southwest corner, with cooperatives and municipal utilities scattered across both

	MICHIGAN	TEXAS
Regional grid	MISO (Midcontinent ISO) for most of the State; PJM in Indiana Michigan Power's southwest corner	ERCOT for most of the State; parts of the Panhandle and East Texas in SPP and MISO; El Paso in the Western grid
State regulator	Michigan Public Service Commission (MPSC)	Public Utility Commission of Texas (PUCT)

	MICHIGAN	TEXAS
Line siting	Act 30: MPSC certificate for lines of 345 kV or more and 5 miles or more, decided within 1 year [28,29]	PUCT certificate, decided within 180 days [30]
FPA 216 backstop and 225 planning	Apply; MISO States' role kept by the Order 1920 safe harbor	Do not apply in the ERCOT area or to ERCOT utilities
CWA 401(g) narrowing	Applies to bulk-power lines, interstate or not	Likely applies (our reading)
State large-load threshold	100 MW (Consumers Energy tariff; paper's finding)	75 MW (Senate Bill 6)
FPA 228 floor (20 MW)	Applies; reaches loads the State tariffs do not	Applies on its face; Texas regulators would enforce (our reading)
Local control of data centers	Not preempted; the paper counts more than 50 enacted local moratoria [5]; our registry holds 138 accepted records (Part VI)	Counties lack general zoning power [5]

Michigan: transmission. Under Act 30, a "major transmission line" of 345 kV or more and 5 miles or more needs an MPSC certificate (MCL 460.562, 460.565) [28,31]. Other lines of 100 kV or more may seek one voluntarily (MCL 460.569) [32]. The MPSC "shall grant or deny the application ... not later than 1 year after the application's filing date" (MCL 460.568) [29], and a certificate overrides conflicting local ordinances (MCL 460.570) [33].

That one-year clock matches BAAJA's new federal trigger exactly. Our reading is that an MPSC case that runs past its statutory year would also open the door to FERC, and for lines of 345 kV or more the FERC case could already be running. For lines between 230 and 344 kV, siting is largely a local zoning matter unless the developer opts into Act 30. Whether a developer could argue that the State therefore "does not have authority to ... approve the siting" of such a line (16 U.S.C. 824p(b)(1)(A)(i)) and go straight to FERC is an open question. Michigan's many cooperatives and municipal utilities, visible on the map, stay outside 216 and 225 unless they opt in.

Michigan: data-center load. The MPSC already sets terms for large loads case by case. Consumers Energy's tariff covers loads of 100 MW or more, with 80 percent minimum billing and 15-year contracts (Case U-21859; the paper's finding, which we did not check against the order) [34]. On December 18, 2025, the MPSC approved DTE Electric's special contracts for a 1,383 MW data center in Saline Township: a 19-year term, 80 percent minimum billing, a termination payment, and DTE bearing any costs it cannot recover from the customer [35]. FPA 228's 20 MW floor would reach new loads between 20 and 100 MW that the Consumers tariff does not (our reading). The DTE contracts were approved before enactment, so they "shall remain in effect" (240:5–8).

Michigan's tax law points the same way. Public Acts 181 and 207 of 2024 (Senate Bill 237 and House Bill 4906) exempt qualifying data centers from sales and use tax through 2050. For an enterprise data center to qualify, it must use municipal water, procure clean energy equal to 90 percent of its forecast use, and not take service under "a rate that causes residential customers to subsidize the costs incurred to provide electric service to the facility" [36]. That last condition and FPA 228 work as complements. BAAJA does not touch the exemption or its conditions.

Michigan: who controls siting. Michigan preempts local control over large solar, wind, and storage projects. Under Public Act 233 of 2023, the MPSC may site them when a local government fails to act within 120 days, denies a compliant application, or tightens its ordinance (MCL 460.1222, 460.1223) [37,38]. It does

not preempt local control over data centers, and the paper counts more than 50 local moratoria there [5]. BAAJA changes neither. Its only local-siting effect in Michigan is on transmission, through the FERC backstop.

Texas: transmission. ERCOT stays outside FPA 216, 225, and 318 by text (198:17–25; 210:13–211:5). Texas law guards that separation on its own side: a new import or export tie to ERCOT needs a Texas certificate, applied for 180 days before any FERC filing (Tex. Util. Code 37.051(c-1)) [39]. The PUCT must decide a transmission certificate within 180 days [30], half the federal one-year clock.

Texas: data-center load. Senate Bill 6 (2025) set Texas's own large-load regime at a 75 MW default threshold. The enrolled text requires a study fee of at least \$100,000 and disclosure of backup generation, lets ERCOT direct a large load to deploy its backup generation or curtail, and sets approval rules for co-location with existing plants [40]. Under that law, the PUCT approved a transitional "Batch Zero" process for loads of 75 MW or more on June 18, 2026 [41].

The demand behind those rules is very large. The paper reports ERCOT large-load requests of about 410 GW as of late March 2026, 87 percent of them data centers, citing ERCOT's April update [42]. The paper's structured data give a later figure, 438 GW and 89 percent as of June 18, 2026 [5]. The two figures are inconsistent within the paper. The later one is the more current, and both are mid-2026 snapshots of a queue that changes monthly.

FPA 228's 20 MW threshold sits well below SB 6's 75 MW, so on its face it reaches smaller loads. Because 228 does not expand FERC's jurisdiction, the PUCT would decide how the floor applies inside ERCOT. Much of what 228(c) would "confirm," such as curtailment and required self-supply, Texas already has under SB 6.

Two other data-center provisions raise an outstanding legal question for Texas: do Sec. 2107(a)'s transmission pricing rule and FPA 229's market-access rule reach ERCOT at all? Our reading is that they probably do not. FPA 229 runs to a "Transmission Organization," which the FPA defines as one finally approved by FERC, and ERCOT is not one. Sec. 2107(a) works through FERC-jurisdictional transmission rates, which ERCOT utilities generally do not file with FERC. Neither section says so expressly.

Does the shift reach the projects that serve data centers?

Taking each type of supporting infrastructure in turn:

- **Transmission: yes, heavily.** The nationwide FERC backstop, simultaneous filing at 345 kV, the 401 re-classification, the FERC-review courts, the 9-month water clock, and the 216A exemption for work in existing rights-of-way all apply to lines, except in ERCOT and for non-opt-in public power.
- **Gas pipelines: yes, in targeted ways.** Interstate pipelines get the narrowed 401 review and nine-month cap (118:13–119:2), and new Natural Gas Act section 7(i) puts looping, compression, and capacity additions within existing rights-of-way outside NEPA and Section 106 (203:11–205:10). FERC already preempts State siting of interstate pipelines, so the State-to-federal shift here is mostly about water certification.
- **Generation: mostly no.** Power plant siting remains a State and local matter; nothing in the title gives a federal agency power to site generation on private land.
- **Data centers themselves: no siting change.** The bill does not touch local zoning or State permits for a data center. Its direct data-center provision, FPA 228, is a cost rule that leaves States more power, not less.

Outstanding legal questions

1. Can an applicant use the 216(h)(6) presidential appeal against a State 401 denial for a transmission line, now that it is a "Federal authorization"?
2. Can 228(b) bind State retail rates, including in ERCOT and for public power, given FPA 201(b)(1), 228(e)(1), and Section 2115(b)? Who enforces it?
3. Do the ESA 7A sovereign-immunity waiver and Section 2301's rule that State and tribal officers spend half their workweek on late reviews survive Eleventh Amendment and anticommandeering challenges?
4. Can a State water condition on a pipeline or transmission line survive 401(g)(5), which applies "notwithstanding subsection (d)"?
5. Does 216(f)(2) override the opt-in for exempt utilities in 216(k)(2)(A)?

No State utility commission, NARUC (the national association of State utility regulators), or tribe had taken a public position on BAAJA as of October 1, 2026. The National Governors Association says it is "encouraged," a party claim [43].

WHAT THIS MEANS FOR DATA CENTERS

Mixed, leaning toward the concern for the grid that serves data centers. The text does move real authority away from States where it matters most for new load: transmission siting, where a missed one-year State clock now triggers a mandatory FERC permit, and State water certification for lines and gas pipelines, which is narrowed and capped at nine months, and for lines also moved to federal appeals courts. It does not move power over generation siting or over data-center sites themselves. And the one provision written for data centers, FPA 228, cuts against the concern: it makes 20 MW-plus loads bear their incremental cost, lets States charge them more and rank them behind other customers, and applies even in ERCOT.

PART IV

Landowners, Tribes, and the Public

Fewer days to comment, fewer ways to sue, and a missing sentence on compensation.



Landowners, Tribes, and the Public

BAAJA changes the rules for people who are not applying for a permit: members of the public, landowners in the path of a power line, and Indian tribes. The public gets a shorter comment window on major environmental reviews, and filing a detailed comment becomes the price of a later lawsuit. Landowners get a statutory definition and a promise that the Federal Energy Regulatory Commission (FERC) will "take into account" what they say. The bill also deletes the Federal Power Act's own sentence on how condemned land is valued. Landowners would still be owed just compensation under the Constitution, but the statutory yardstick, fair market value plus severance damages, is gone. Tribes gain control over rights-of-way on their own land, a definition of culturally important places, and grant money. In historic preservation review, they lose time, leverage, and some of the effects they can raise. Of the 35 rights and opportunities we tracked for these three groups, 20 are narrowed or removed, 10 are new or expanded, and 5 are unchanged.

The public: a shorter window, and a comment becomes a ticket to court

Most people meet a federal project through a comment period. BAAJA changes that point of contact for major environmental reviews under the National Environmental Policy Act (NEPA), the law that requires agencies to study a project's effects before approving it.

The comment window gets a ceiling. When an agency announces that it will prepare an environmental impact statement (EIS), the notice of intent (NOI) must now ask for comment "on alternatives or impacts." The comment period runs at least 45 and at most 60 days, and only the agency and the project sponsor together can stretch it, to no more than 75 days (Sec. 1106, 44:24–45:6). The statute has never set a length before. The old Council on Environmental Quality (CEQ) rule with a 45-day floor is no longer in force, so the floor is not really the change. The ceiling is, and the public has no way to lift it.

"The lead agency shall establish a comment period of not less than 45 days and not more than 60 days after the date on which the notice to prepare an environmental impact statement is published in the Federal Register, unless the lead agency and project sponsor agree to a longer deadline, which shall not exceed 75 days." Sec. 1106, 44:24–45:6

Late science can be ignored. "No Federal agency shall be required to consider any scientific or technical research that becomes publicly available after" the notice of intent, and an agency may not delay a decision past its deadline to wait for new research (43:12–25). A study published midway through a two-year review does not have to be read.

The sponsor tells the first story. The sponsor files a "record of stakeholder engagement" of up to 20 pages, which may describe the "ways in which feedback from stakeholders was incorporated" (21:21–22:18). The bill sets no matching step for the community to file its own account.

Comment becomes a condition of suing. Three sections use the same device. To bring a claim, a person must have filed a comment detailed enough to flag the issue (where the agency offered a comment period), must sue within 150 days, and, in two of the three, must allege "direct harm."

LAW	WHO MAY SUE	DEADLINE	COURT	CITE
NEPA (Sec. 1110)	A commenter whose comment was "sufficiently detailed to put the applicable Federal agency on notice," where comment was offered; must allege "an actual or imminent injury in fact amounting to a direct harm"	150 days	Court of appeals	68:1–69:2
Clean Water Act 404 (Sec. 1205)	A detailed commenter, where a draft was in the Federal Register with at least 30 days for comment	150 days	Not specified (district court under existing law)	129:1–131:14
Historic preservation (Sec. 2301)	A party alleging direct harm that filed a "substantive and unique comment" by the deadline	150 days	Court of appeals	408:17–410:6
Endangered Species Act (ESA) opinions (Sec. 1305)	"Any person," no comment needed	150 days from a website posting	D.C. Circuit	154:14–155:7

Today the general deadline to sue a federal agency is six years (28 U.S.C. 2401(a)), and no comment is required. The ESA row is the outlier. It has no comment test, but its clock starts when the opinion is posted on an agency website, not when it appears in the Federal Register.

Winning may not stop anything. In a NEPA case, "the only remedy the court may order ... is to remand, without vacatur or issuance of an injunction," and the approval stays in effect while the agency fixes it (69:19–25; 71:13–25). Part II covers the remedies in detail. For a resident, the practical point is simple: a person can file the right comment, sue on time, win, and still watch construction continue.

One new opening. FERC must now hold a "public comment period of at least 45 days" before it issues a federal backstop permit for a transmission line (188:10–16). Current law requires notice and a hearing but sets no minimum (16 U.S.C. 824p(b)).

What drops out of historic preservation review. Today's Section 106 regulations tell agencies to "seek and consider the views of the public" and to plan for public involvement (36 CFR 800.2(d), 800.3(e)). The new statutory process in Sec. 2301 has no matching step.

Environmental justice. The phrase "environmental justice" appears nowhere in the bill. FERC's 2024 siting rule defines an "environmental justice community" and requires an engagement plan for them (18 CFR 50.1, 50.4(a)(4)). The bill neither adopts nor repeals those rules, so they last as long as FERC keeps them. The short comment window and the comment-to-sue rule ask the most of the communities with the fewest lawyers and consultants.

Landowners: new definitions, and a deleted sentence on compensation

Landowners mostly meet this bill through Sec. 2101, which rewrites FERC's backstop power to permit interstate transmission lines (Federal Power Act section 216, or 16 U.S.C. 824p). Part III explains why that power gets stronger: FERC "shall" issue permits for qualifying lines, where current law says "may" (188:10–16). This section covers what a landowner on the route gains and loses.

Who counts as an affected landowner

For the first time, the statute defines an "affected landowner." The term includes each owner of a property interest in affected property, including the federal government, "a State or local government," and each owner on the latest county or city tax record (185:15–22). "Affected property" covers:

- land the line crosses or uses as a site;
- land that abuts a utility right-of-way or proposed site within 500 feet of the line; and
- land "on which a residence is located not more than 500 feet from the boundary of any right-of-way" (185:23–187:11).

FERC's own 2024 rule counts owners whose land is "crossed or used," including by access roads, staging areas, and temporary workspace, and owners with a home within 50 feet of a construction work area (18 CFR 50.1). The statute reaches farther for homes, 500 feet instead of 50, and adds governments. It does not mention access roads or temporary workspace, so some owners the rule counts could fall outside the statutory definition.

What FERC must do with landowner views

The operative rule is one sentence: FERC "shall take into account landowner input" (190:23–191:2). "Landowner input" means input FERC receives from affected landowners, "such as farmers and ranchers," through FERC's own "notification ... and consultation" (187:17–188:2). The bill sets no deadline for that notice, says nothing about what it must contain, and gives no remedy if FERC skips it. The detailed protections stay in regulation: pre-filing notice, translations, a Landowner Bill of Rights, and an applicant code of conduct (18 CFR 50.4(c), 50.12). FERC can revise those rules. Separately, the existing promise that "private property owners" get "a reasonable opportunity to present their views" survives (190:14–22).

Faster, parallel siting

FERC's pre-filing process "may commence before, but shall commence no later than," the state siting application. For lines of 345 kilovolts or more, the developer may file at FERC "simultaneously with" the state filing (191:10–192:2). FERC's 2024 rule, Order No. 1977, had declined to run the two side by side. A landowner on a large line could face a state siting board and a federal proceeding at the same time.

Condemnation and compensation

Federal eminent domain for these lines is not new, and the main limit on it stays. A permit holder may condemn only if it "has made good faith efforts to engage with landowners and other stakeholders early," a condition the bill leaves alone (16 U.S.C. 824p(e)(1)). Two other things change.

First, procedure. Condemnation cases in federal court used to follow the practice of the state where the land sits. Now they will run "in accordance with rule 71.1 of the Federal Rules of Civil Procedure," the general federal condemnation rule (192:10–14).

Second, the valuation text. Current law has a subsection titled "Compensation." It says a right-of-way taken this way "shall be considered a taking of private property for which just compensation is due," and that just compensation equals "the fair market value (including applicable severance damages) of the property taken" (16 U.S.C. 824p(f)). Severance damages pay an owner for the loss in value of the land that is left, not just the strip that is taken. The bill strikes that subsection and puts a cost-allocation rule in its place.

"Section 216 of the Federal Power Act (16 U.S.C. 824p) is amended by striking subsection (f) and inserting the following: '(f) COST ALLOCATION.—' Sec. 2101(e)(1), 192:16–19

LANDOWNERS ARE STILL OWED JUST COMPENSATION

Deleting subsection (f) does not take away a landowner's right to be paid. The Fifth Amendment requires just compensation for any taking, and federal-court condemnations would run under Rule 71.1. The sponsors' section-by-section summary says as much: the Constitution "entitles all landowners to just compensation" (a party claim) [53]. What disappears is the statute's own measure of payment, including its express mention of severance damages. Nothing else in the bill restates it. Courts would fall back on constitutional case law, and a landowner loses a text to point to.

Landowners keep the right to be paid; the statute's valuation yardstick goes.



No sponsor material we read explains why the subsection was struck. The same substitution appears in the 2024 Manchin-Barrasso bill (S. 4753), which this title draws on. Whether the change was intended, and what valuation rule a court would apply in its place, are outstanding legal questions. None of the outside analyses we read mentioned it.

Ratepayers and surface owners

The replacement subsection carries a new ratepayer protection. Customers that get "no benefit, or benefits that are trivial in relation to the costs," from a backstop line "shall not be involuntarily allocated" its costs (194:9–15). A new rate rule also lets utilities recover "payments to jurisdictions impacted by" these lines (198:9–12). Those payments go to governments, not to landowners.

A different group of landowners gains under the oil and gas title. Where a well on private land reaches federal minerals inside a drilling unit, the Interior Department may no longer require a bond to protect the private land, "enter non-Federal land without the consent of the applicable landowner," impose mitigation, or require approval of surface reclamation (289:12–22). The surface owner gets more control and loses a federal backstop for cleanup.

Tribes: more control at home, less leverage over other people's projects

Tribes appear throughout the bill. The largest change for them is the rewrite of Section 106 of the National Historic Preservation Act (NHPA), the review an agency runs before a federal project affects a historic or culturally important place. Today Section 106 is two sentences of statute (54 U.S.C. 306108), and the process lives in the Advisory Council on Historic Preservation's regulations (36 CFR part 800). Sec. 2301 writes about 5,700 words of procedure into the statute itself.

Consultation at the early steps

The first steps of a Section 106 review are setting the "area of potential effects" (the map of where a project could affect historic places) and identifying the historic properties inside it. For those steps, the new text says the federal official "may consult" with State and Tribal Historic Preservation Officers (SHPOs and THPOs), tribes, Native Hawaiian organizations, local governments, and applicants (387:6–16). The official "shall seek, discuss, as appropriate, and incorporate, as applicable," information those parties send within 30 days of a request (387:17–388:9).

That text sits beside a duty the bill leaves in place. Current law says that in carrying out Section 106, "a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance" to a property (54 U.S.C. 302706(b)). Sec. 2301 changes only a cross-reference in that sentence (372:24–25). General consultation at the early steps becomes discretionary, and the narrower statutory duty to consult tribes about religious and cultural places remains. How the two fit together is an outstanding legal question. Does "may consult" narrow the older "shall consult," or does 302706(b) still require consultation with those tribes at every step? The bill does not say.

The rest of the new process

Other changes work together to shorten the review and narrow what counts:

- **A 30-day window.** If a SHPO, THPO, tribe, Native Hawaiian organization, or local government "fails to respond within 30 days" to a request for review, the official proceeds without it. If the party comes back later, the official need not "reconsider any previous report or finding" and may consult the Advisory Council instead (400:12–401:14).
- **A written reply counts as consultation.** Once the agency answers an objection in writing, its duty to consult on that report "shall be considered to be fulfilled" (402:24–403:5).
- **Ending review alone.** The agency may close review without agreement if, "in the sole discretion of the Federal official," other considerations "outweigh the consideration of historic preservation" (393:4–12). Consultation must also finish when the NEPA document does (397:15–398:12).
- **Narrower effects.** An adverse effect must "directly alter" a property. Visual, atmospheric, and audible effects count only if they would have a direct impact that would "significantly diminish" the property's eligible characteristics (380:1–18). Temporary alterations are excluded. Cumulative effects largely drop out through a narrow "reasonably foreseeable" test (382:1–16). For a tribe concerned about a line across a ridge visible from a ceremonial site, this is the change that matters most.
- **Fewer projects.** A project whose only federal link is "a loan, loan guarantee, grant ... or other form of financial assistance" is no longer an "undertaking" (383:22–384:3).

- **A frozen record.** A property listed on the National Register after review begins does not require the agency to "delay, reopen, supplement, or otherwise modify the review" (413:10–17).

Some exclusions sit elsewhere in the bill. Grid work in existing rights-of-way "shall not be considered to be ... an undertaking" (202:4–9), and the same goes for gas pipeline looping and compression that stays inside an existing covered area (204:14–25). Reissued Corps of Engineers nationwide permits need no Section 106 consultation, as long as the reissued permit does not narrow, eliminate, or raise the threshold for preconstruction notice (128:4–14).

Program reviews and takeover

The Interior Department will review each THPO program every 2 years instead of every 4 (373:5–7). A tribal program is not "consistent" if its officer "does not regularly comply with timelines for consultation, complete consultation expeditiously, or meet required metrics" (376:10–16). The bill does not define "required metrics." A finding of inconsistency suspends contracts and Historic Preservation Fund grants (376:17–377:4). If the program is still inconsistent 2 years after that finding, "the Secretary shall assume all or part of the functions of the Tribal Historic Preservation Officer" (377:5–14). Takeover is a two-step process, not an immediate penalty for one missed deadline. Even so, speed becomes a test of whether a small tribal office keeps its program. The THPO paragraph also asks the officer to show that "the State program is consistent," an apparent copying error (377:12–14).

What tribes gain

The bill also hands tribes several new tools:

- **Rights-of-way on their own land.** "An Indian tribe may grant a right-of-way over and across the Tribal land of the Indian tribe for any purpose," without Interior approving each grant, once Interior approves a tribal regulation (291:6–17). The tribe must run its own environmental review that answers public comments (292:14–293:10). It sets compensation and keeps its sovereign immunity (298:9–20). This is the clearest expansion of tribal authority in the bill.
- **A definition.** A "property of traditional religious or cultural importance" is defined as "an identifiable geographic location or feature at which an event of continuing religious or cultural significance to a living community occurred" (372:11–21). It gives tribes a statutory anchor. The "event" element may be hard to meet for landscapes or places tied to a species.
- **Their own agreements prevail.** If a SHPO or THPO and a federal agency each have a programmatic agreement for the same category of projects, the officer's agreement applies (405:12–21).
- **Money.** A \$20 million-a-year competitive grant program, FY2027 to 2030, helps THPOs build databases of culturally important places, with no duty to disclose locations that could harm a site (415:3–417:2). The Historic Preservation Fund is authorized at \$200 million a year through FY2036, subject to appropriations (414:8–11).
- **A litigation carve-out.** The comment and direct-harm tests do not apply to a historic preservation claim where a SHPO, THPO, tribe, Native Hawaiian organization, or local government "provided detailed notice in writing during the consultation process" (410:7–22).

Trust lands and NEPA

For any federal action that authorizes use of land or resources held in trust for a tribe, "there shall be no administrative or judicial review" based on a NEPA claim. The exceptions are a suit by that tribe or a claim about effects off trust land (73:1–22). When a tribe initiates a project on its own trust resources, the agency must

presume that doing nothing would be harmful (37:23–38:5). Both rules strengthen a tribe's hand over its own land. Whether the bar also reaches allotments held for individual Indians is unclear.

The scorecard

Our people memo tracks 35 rights and opportunities across the three groups and compares current law with the bill. Tribes have the most entries and the most losses: 9 narrowed and 1 removed, against 5 new or expanded. The public's losses are concentrated in court access and remedies. Landowners are the most evenly split.

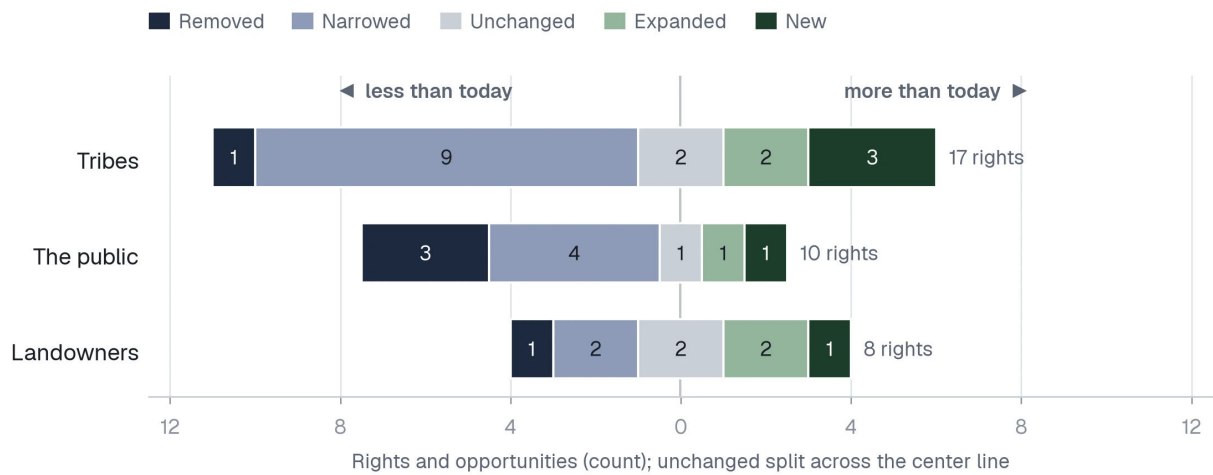


Figure 12: Of 35 rights for the public, landowners, and tribes, 20 are narrowed or removed and 10 are new or expanded

GROUP	REMOVED	NARROWED	UNCHANGED	EXPANDED	NEW
Public (10)	3	4	1	1	1
Landowners (8)	1	2	2	2	1
Tribes (17)	1	9	2	2	3

The counts weigh every right equally, which they are not. Losing the power to stop a project that violated NEPA matters more than gaining a 45-day comment period at FERC. The table shows direction, not size.

Who has spoken, and who hasn't

Everything in this section is a party claim from the first two days after release.

Sponsors. Sen. Heinrich says the bill protects "the ability of Tribes to formally consult during these processes" [6]. The text gives tribes a defined place in the new process, but consultation at the first steps is discretionary, a party that misses a 30-day window is passed over, and only applicants can sue over missed deadlines (387:6–16; 400:12–21; 399:6–16).

Tribal-aligned and preservation groups. A coalition including the Indigenous Environmental Network said "Indigenous Peoples deserve better than being treated as a negotiation pawn in backroom permitting deals" [44]. The 106 Strong Coalition called the bill "a betrayal of the Tribal Nations" [45]. The National Trust for Historic Preservation said it "would dramatically narrow the historic and cultural properties and projects that are subject to review," while supporting the \$200 million fund [46]. The American Cultural Resources Association (ACRA) called it the largest change to Section 106 since 1966 [47]. Holland & Knight, a law firm, read the rewrite as preserving "formal consultation roles" [48]. The text supports the narrower reading for the early steps, with the 302706(b) duty still on the books.

Parallel agency action. The Advisory Council on Historic Preservation is moving the same way by regulation. Members reportedly voted 15-5-2 on July 24, 2026 to advance a part 800 rewrite [49]. Ira Matt of the National Association of Tribal Historic Preservation Officers called that draft "an affront to Tribal sovereignty" [50]. The National Congress of American Indians' (NCAI's) August 18 statement targets the rulemaking, not this bill [51].

Property rights. Pacific Legal Foundation, a property-rights litigation group, supports the bill, but the sections it names are on lawsuits, wetlands vetoes, and endangered species, not transmission condemnation [52].

MISSING VOICES

We found no BAAJA-specific statement from any tribal government, NCAI, or the Native American Rights Fund, from any landowner group or Farm Bureau, from any state utility regulator or its national association, or from any consumer advocate. These are the groups that Sec. 2101's condemnation changes and Sec. 2301's Section 106 rewrite affect most directly. This is a snapshot of the first two days, and it should be rechecked once hearings or comment letters appear.

Outstanding legal questions

1. Does "may consult" at 387:6–16 narrow the "shall consult" duty to tribes in 54 U.S.C. 302706(b), or does 302706(b) still require consultation with those tribes throughout Section 106?
2. With 16 U.S.C. 824p(f) gone, what valuation rule governs a FERC-permitted condemnation under Rule 71.1? Does a court read in the old fair-market-value-plus-severance measure, or apply constitutional case law alone?
3. Does the written-notice exception at 410:7–22 help only the tribe or officer that gave notice, or any plaintiff challenging the same action?
4. Is a "property of traditional religious or cultural importance" limited to the site of an "event," and does that leave out landscapes and places tied to a species?
5. The new THPO definition reaches only "within the boundaries of the applicable tribal land" (383:1–7). Who speaks for a tribe about an off-reservation site?
6. What are the "required metrics" that can lead to a THPO takeover (376:10–16)?
7. The 45-to-60-day cap covers comment on the notice of intent. The bill sets no separate comment period on a draft EIS. What, if anything, takes its place?

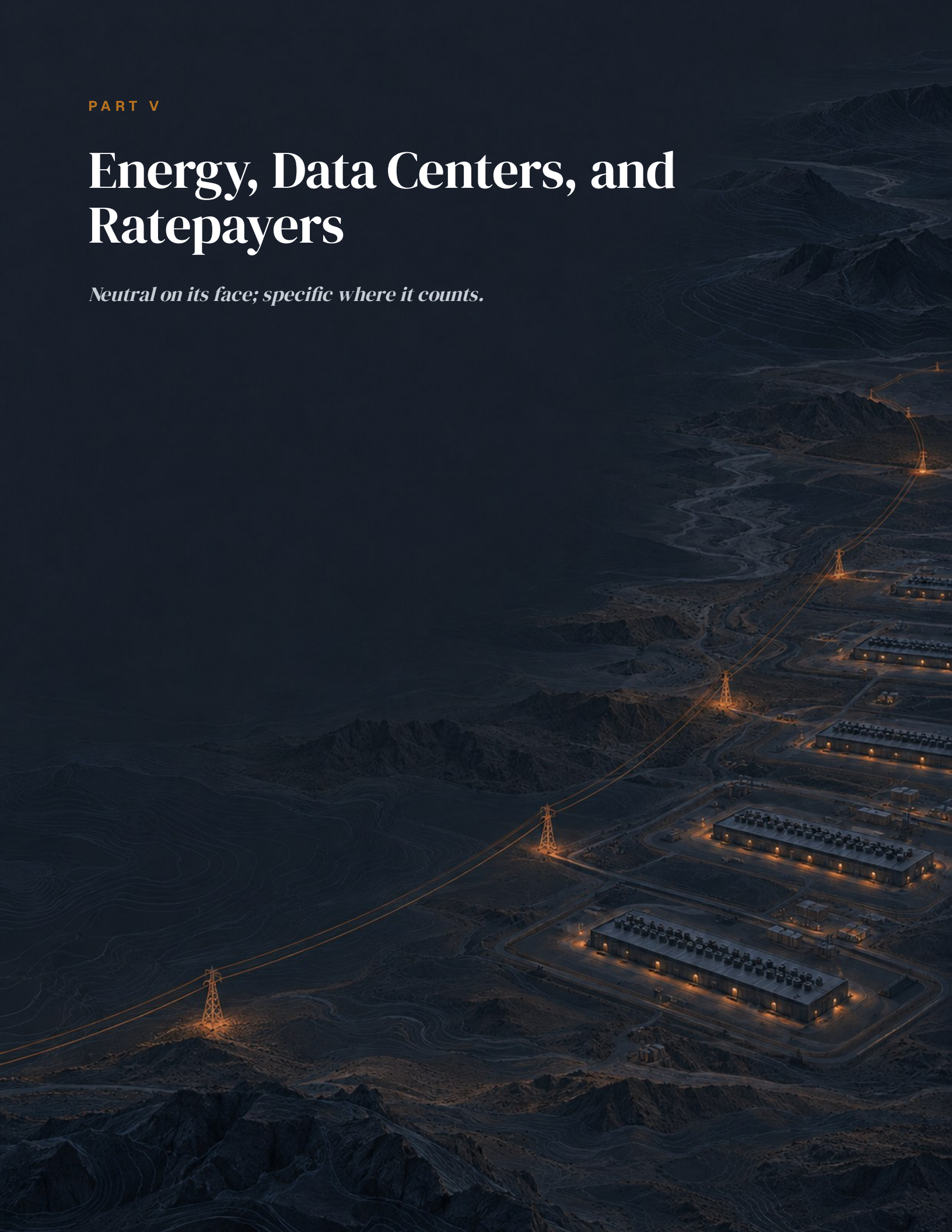
WHAT THIS MEANS FOR DATA CENTERS

Nothing in this part names data centers. The comment, lawsuit, and Section 106 changes apply to every project that needs a federal decision. The effects land on data centers indirectly, through the lines and pipelines that serve them. The stronger FERC backstop, parallel federal and state siting at 345 kilovolts and up, the deleted valuation text, and the exclusion of in-right-of-way grid and pipeline work from Section 106 all fall on the landowners and tribes along new supply routes. Against that, the bill adds a statutory landowner definition, a 45-day FERC comment period, and a rule that customers who get no real benefit from a backstop line cannot be made to pay for it. On balance, the record is mixed. The bill eases the path for power infrastructure across other people's land, but none of these provisions is written for data centers.

PART V

Energy, Data Centers, and Ratepayers

Neutral on its face; specific where it counts.



Energy, Data Centers, and Ratepayers

On its face, BAAJA picks no energy winners. The words "fossil" and "clean energy" never appear, and most of its rules apply to any project that needs a federal decision. Where the text does name a technology, it leans two ways at once. Clean energy and the grid get more sections, mostly clocks and streamlined reviews; oil and gas get fewer but harder tools: one section says listed drilling activities are not "major Federal actions" under the National Environmental Policy Act (NEPA) at all. Supporters call the transmission title the most consequential grid policy in two decades (a claim). For data centers, the bill does two separate things. It sets a federal floor saying new data-center load of 20 megawatts (MW) or more must pay its own incremental grid costs, and it gives states broad power to charge and rank those loads. It also speeds up the wires, pipelines, and interconnection queues that will serve them. No permitting provision names data centers themselves.

Neutral by design

The bill's core tools are written for "projects," not fuels. The NEPA, Clean Water Act, Endangered Species Act (ESA), and historic preservation changes in Division A apply to any project that needs a federal permit or approval. So do the Title IV "certainty" rules, which bar agencies from revoking issued permits and pay damages to sponsors who prove a pattern of hostile treatment (Part II covers both).

The clearest sign of the design is Sec. 1402's list of 46 "specific type[s] of covered project." Any of them can sue if the government targets its whole category. The list does not rank them. Onshore wind comes first, and coal and natural gas follow a few lines later.

"(A) A project to produce electricity from onshore wind. (B) A project to produce electricity from offshore wind. (C) A project to produce electricity from solar. (D) An energy storage project. (E) A project to produce electricity from coal. (F) A project to produce electricity from natural gas." Sec. 1402, 169:4–14

The list runs through nuclear fission, uranium, liquefied natural gas (LNG) export, carbon dioxide pipelines, helium pipelines, coal gasification, and a court-certified catch-all for any other "energy related project" (169:4–172:20). Sec. 2201's 150-day deadline to sue likewise covers any project to "develop, produce, generate, store, transport, or distribute energy" (281:13–284:13).

Coal and onshore wind share one list, and the list ranks neither.



Where the text names a technology

Our energy memo sorted every section by whether its text names a technology or applies only to one. The result is lopsided in count and in force, in opposite directions.

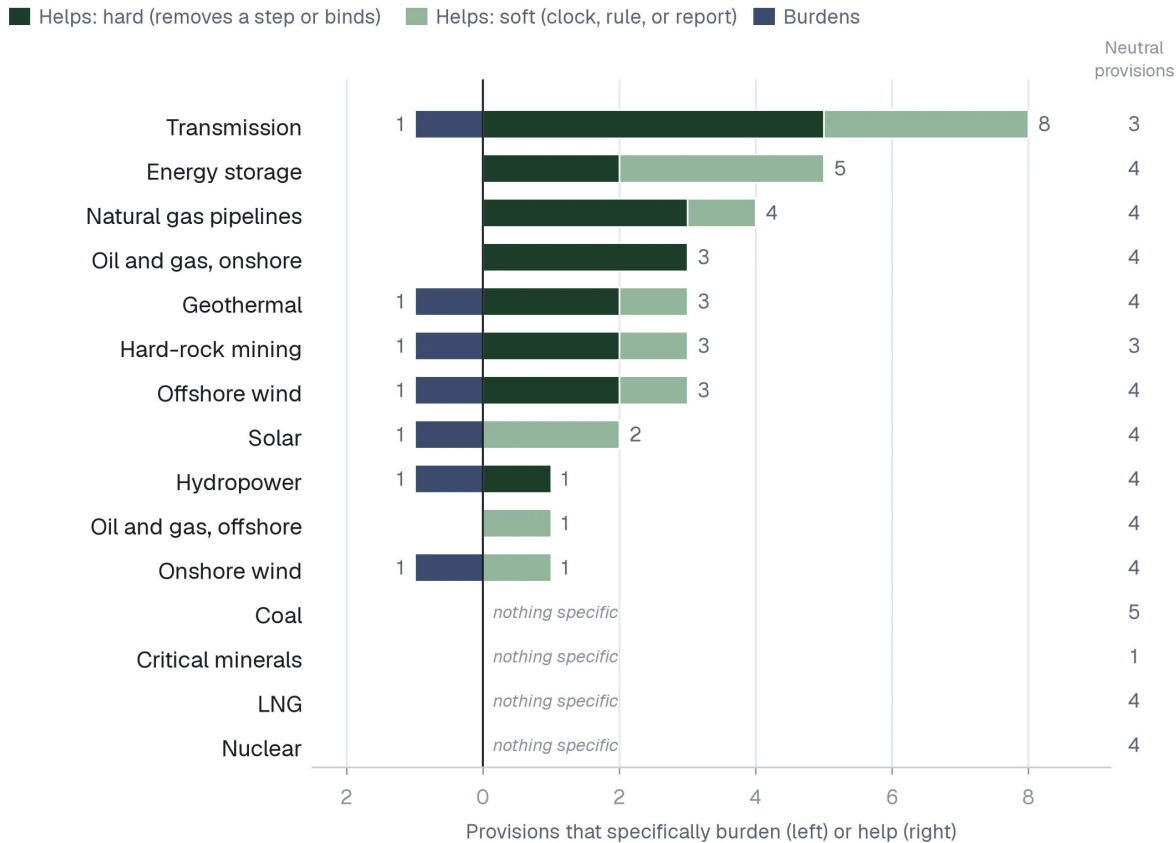


Figure 13: Clean technologies get more named sections; oil, gas, and pipelines get fewer but harder tools

The grid

Transmission gets the most. The Federal Energy Regulatory Commission (FERC) "shall" permit lines "necessary in the national interest" where a state fails to act, without the old requirement of a Department of Energy (DOE) corridor (188:10–16; 185:11–13). Every region must plan regionally and with its neighbors, with costs following benefits (Sec. 2103). Federal rights of first refusal (ROFRs), which let incumbent utilities claim new lines in their territory, are banned for lines selected in a regional plan (224:9–14). Grid work inside an existing right-of-way, including adding "energy storage at or near a covered facility," becomes a statutory categorical exclusion from NEPA and is not a Section 106 "undertaking" (201:19–203:8). FERC must "require that public utilities use advanced transmission technologies," with a cut in allowed profit for utilities that do not (261:11–16; 264:15–21). All of this is fuel-neutral.

Gas pipelines

Pipelines get rules that mirror the grid's. New Natural Gas Act (NGA) section 7(i) treats looping, compression, and capacity additions inside an existing right-of-way as neither a major federal action nor a Section 106 undertaking, while the Clean Water Act and Clean Air Act still apply (203:20–205:10). State water-quality certi-

fication under Clean Water Act section 401 is limited, for interstate gas pipelines and transmission lines, to a "direct point source discharge," with a 9-month cap (118:15–119:2). The Corps of Engineers must keep nationwide permits 12 (oil and gas pipelines), 57 (electric and telecommunications lines), and three others as reissued in January 2026 (125:23–126:14).

Oil and gas

Two sections do the most. Sec. 2229 sits in the geothermal subtitle but mostly concerns oil and gas. Current law gives listed drilling activities only "a rebuttable presumption" that a categorical exclusion applies (42 U.S.C. 15942(a)). The bill turns that into a flat rule.

"Action by the Secretary of the Interior in managing public land, or the Secretary of Agriculture in managing National Forest System land, with respect to an activity described in subsection (b) shall not be considered a major Federal action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if the activity is conducted pursuant to the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) for the purpose of exploration or development of oil, gas, or geothermal resources." Sec. 2229, 349:6–16

A drilling permit is still required. What goes is NEPA review for the listed activities, which now include pipelines in corridors approved within the last 10 years instead of 5 (350:1–9). Sec. 2211 removes the federal permit to drill for many wells on private land in mixed-ownership units. It covers wells where the United States owns under half the unit's oil and gas, and wells on private surface whose wellbore merely enters or crosses federal minerals (286:15–287:12).

Geothermal and hydropower

Geothermal gets nine sections (2221 to 2229), more than any other source of power. They include annual lease sales, permit clocks, and a 60-day decision deadline that starts only after NEPA, ESA, and historic preservation work is done (342:3–12). Hydropower gets four sections, including a one-year license for projects of 5 MW or less (Secs. 2231–2234).

Wind and solar

Wind and solar get less by name than their trade groups' statements suggest. Sec. 2213 gives federal land managers 30 days to grant, deny, or defer a right-of-way for wind, solar, geothermal, or storage (300:24–301:11). Deferring with a notice satisfies the clock, and a missed clock has no stated remedy. The same section orders categorical exclusions for small solar arrays and meteorological towers. Offshore, Sec. 2251 softens the test for interference with other ocean uses, and Sec. 2252 orders preferred offshore cable routes.

What the bill leaves alone matters as much. A 2022 law ties wind and solar rights-of-way on federal land to onshore oil and gas lease sales, and offshore wind leases to offshore oil and gas sales of at least 60 million acres (43 U.S.C. 3006(b)). Sec. 2251 expressly preserves the offshore link: "Nothing in this section ... modifies the limitations described in section 50265(b)(2) of Public Law 117–169" (364:22–25). The bill never mentions the onshore link, so it stays too.

Nuclear, LNG, coal, and mining

Nuclear, LNG, coal, and offshore oil and gas appear only on the Sec. 1402 list and in general rules. "Critical minerals" never appears. Hardrock mining gets one strong provision: a claimant may locate "as many mill site claims ... as are reasonably necessary" for an approved operation, including on land with minerals in it (307:9–308:10).

Putting it together

Call a provision "hard" if it removes a review step or imposes a binding duty, and "soft" if it sets a clock, a rulemaking, or a report without a remedy. By that measure, the clean side gets more sections (15 named for wind, solar, geothermal, hydropower, and offshore energy) and the fossil side gets fewer, harder ones. Geothermal is the exception on the clean side, because its tools copy the oil and gas templates.

The wind and solar side deal

Democratic support for the bill rests in part on something that is not in it. The text has no wind- or solar-specific limit on executive action beyond Title IV's general freeze. One special rule covers a project whose stop-work order was issued within a year before enactment and "enjoined by a court," and it names no technology (165:1–7). It tracks the December 2025 offshore wind orders, which fall outside that window if the bill is signed after December 22, 2026.

The reported deal exists only in party and press accounts. Sens. Whitehouse and Heinrich broke off talks on December 22, 2025, saying "The illegal attacks on fully permitted renewable energy projects must be reversed if there is to be any chance that permitting talks resume" [54]. In late September 2026, the administration reportedly offered to move forward on about 30 of roughly 300 wind projects held up at the Pentagon [55]. On September 30, Whitehouse called the offer "a very reasonable opening proposal" but said the return to "regular order" for wind and solar was still "unresolved" [4]. Punchbowl reported a last-minute fight over an offshore wind provision [56].

The American Clean Power Association praised "an Administration commitment to approve wind projects" [57], which is not in the text. The Sierra Club said the bill "cannot guarantee that more wind and solar projects will actually get built" [62]. Until the deal is written into a manager's amendment or an executive action, wind and solar rely on Title IV's general rules, which protect a gas pipeline just as much.

Data centers: what the bill does

Where data centers appear in the text

We searched the full text. The phrase "data center" appears in only two sections: Sec. 2107, on transmission pricing, which also adds new Federal Power Act (FPA) section 228; and Sec. 2114, which adds data-center load to the Energy Information Administration's Form 861 survey (279:21–25).

Data centers are not on the Sec. 1402 list of 46 project types. No NEPA, Clean Water Act, ESA, or historic preservation provision names them. Everything specific to data centers is about who pays for their power and what data the government collects.

Sec. 2107(a): a new FERC pricing policy

Congress declares it unjust and unreasonable to charge "computational load" less than "the embedded costs and incremental expansion costs" of transmission (226:20–227:4). Embedded cost is a share of the existing grid. Incremental cost is the new equipment a customer's arrival requires. Within 270 days, FERC must revise its 1994 transmission pricing policy to require both, credit the payments to other customers to avoid double recovery, and offer a lower price for data centers that accept interruptible, "non-firm" service (229:14–230:14). A proposed rule and a final rule follow (231:10–17). This directive has no megawatt threshold and no date limit. It also reaches a layer the states cannot. Our 50-state survey of data-center policy, "The State of Server Country," says of state tariffs that "what they cannot do is alter the regional network-upgrade cost allocation set through FERC-jurisdictional RTO processes" [5]. Regional transmission organizations (RTOs) such as PJM and MISO allocate those shared upgrades under FERC's rules, and Sec. 2107(a) works at that federal layer.

FPA 228: the ratepayer protection floor

Who is covered. "Covered load" is load from data centers or "high-density computing facilities" of 20 MW or more at one site or at sites under common ownership, counted at "full buildout" for phased projects (232:3–13). The definition covers artificial intelligence training and inference, cloud computing, and cryptocurrency mining (232:14–233:5). It excludes computing that is "ancillary" to a factory or other business (233:6–12).

The floor.

"No portion of the incremental cost may be allocated to, or recovered in the rates of, any customer other than a covered load, subject to the limitations described in subsection (e)." FPA 228(b)(1), 234:23–235:2

"Incremental cost" is broad. It means the cost "that would be avoided had a specific covered load not been served," including generation, storage, transmission, and distribution (233:18–24).

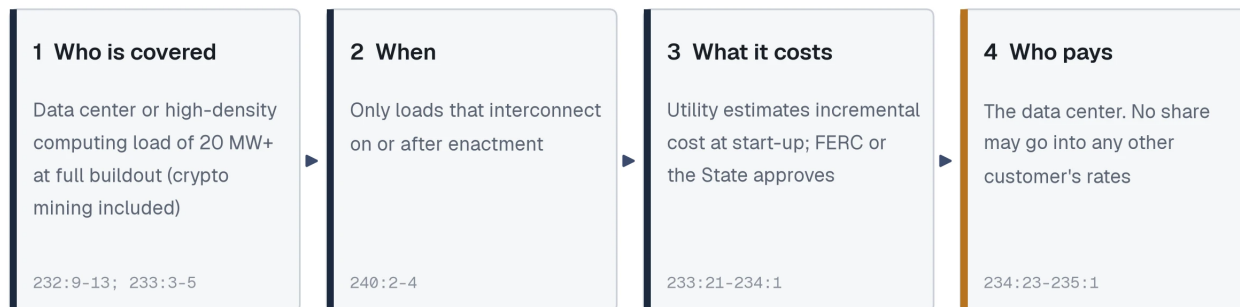
Staying power. Recovery continues even if the data center ends its contract early or stops buying power (235:10–19). Before building anything to serve the load, the utility "shall require" the data center to post financial assurances or contributions that cover the cost (235:20–236:6).

State tools. States get a menu for retail service to covered loads (236:7–239:5). They may:

- charge more than both embedded and incremental cost, and credit the surplus to other customers;
- run an "open season" that awards service to the data centers that return "the greatest benefit to other ratepayers," regardless of who applied first;
- require a data center to procure or build "new generation resources sufficient to serve" its demand;
- require it to accept service that can be limited when the grid is stressed; and
- treat data centers as their own class, with terms "less favorable than" those for factories and other large industrial users.

"A State may treat covered loads as a separate class of service, and may establish rates, charges, terms, conditions, and interconnection or service priorities for covered loads that differ from, and that are less favorable than, those applicable to other large industrial, manufacturing, or commercial loads." FPA 228(d), 238:24–239:5

How FPA 228's cost floor works (Sec. 2107(b))



Loads already connected: approved arrangements "shall remain in effect" (240:5-8). States may still charge more, run open seasons, require new generation, and treat data centers as a less-favored class (236-239).

Size thresholds: BAAJA and the competing bills

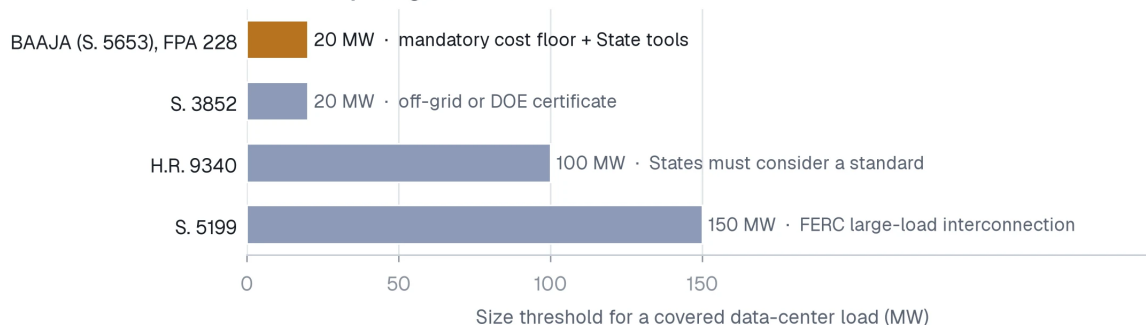


Figure 14: FPA 228 makes new data-center loads of 20 MW or more pay their incremental cost, as estimated by the utility and approved by regulators, at a lower threshold than competing bills

How the floor meets state rules

FPA 228 does not arrive on empty ground. Our survey found that by mid-June 2026, 33 states had some protection against large-load cost shifts, mostly built from the same parts: a megawatt threshold, long contracts, minimum bills, and exit fees [5]. Every state threshold the survey records is above 20 MW. They run from 25 MW (Virginia's new rate class and AEP Ohio's data-center tariff) to 100 MW (Georgia's rule and Consumers Energy's tariff in Michigan), and Alabama's 2026 law sets 150 MW for contract review. Three consequences follow:

- **Reach.** The federal floor would cover loads between 20 MW and each state's line, which no state rule reaches today. In our data (preliminary snapshot, research cutoff Sept. 28, 2026), among projects that are planned or under construction (the only ones a new-loads rule can reach), moving the line from 150 MW down to 20 MW adds 119 project groups but only about 8 gigawatts of stated capacity. Part VI, "Where the Data Centers Are," has the state-by-state detail.
- **Open seasons are untested.** FPA 228 lets a state award scarce service by benefit to other ratepayers rather than by place in line (236:23-237:13). The survey records no state that has run such an open season. The nearest example is Texas's "Batch Zero" process for 75 MW loads, approved in June 2026, which our survey reports but we did not check.
- **Different yardsticks.** State tools mostly guard against stranded cost: a data center that leaves or shrinks still pays. FPA 228 does that too, but its core measure is the utility's incremental-cost estimate at start-up.

The limits on the floor

Five features shape how much the floor does.

- 1. The utility's estimate.** Incremental cost is "based on costs estimated by the electric utility at or around the time that the covered load becomes operational and subject to approval by the Commission or a State, as appropriate" (233:24–234:3). Costs that show up later, or spread across the whole system, such as higher capacity prices, may fall outside it. In retail-choice states such as Ohio, Pennsylvania, and Illinois, the local wires utility owns no power plants and customers may buy power from competing suppliers. Incremental cost still includes "power generation" costs "estimated by the electric utility," and the text does not say who estimates that part there.
- 2. New loads only.** The floor and the open-season rules apply to load that "interconnects on or after the date of enactment," and any arrangement "approved by the Commission or by a State before the date of enactment ... shall remain in effect" (240:1–8). Every state tariff and special contract our survey records as approved predates the bill, so those stay; matters still pending at enactment, such as Pennsylvania utilities' compliance tariffs, Illinois's open investigation, and a pending Michigan case, would not be grandfathered. What the text leaves unclear is a new data center that connects after enactment under a state tariff approved before it. Subsection (f)(1) would seem to cover it, and (f)(2) would seem to preserve the older tariff's terms. The state power to treat data centers as a less-favored class has no date limit. Neither does the Sec. 2107(a) pricing directive.
- 3. A dangling cross-reference.** The floor applies "subject to the limitations described in subsection (e)," but subsection (e) contains rules of construction, not limitations (239:6–23). It may mean the jurisdiction clause; the text does not say.
- 4. Jurisdiction.** FPA 228 says it neither expands nor diminishes federal or state authority, and that it "recognizes and confirms" state power over retail service rather than being "the source" of it (239:6–23). Sec. 2115(b) adds that nothing in the title gives FERC authority over retail sales (280:17–21). Whether a federal floor can bind retail rates set by a state is an outstanding legal question. FPA 228 also names no enforcement procedure or penalty of its own. It works through the rates that FERC and state commissions approve.
- 5. Texas.** The new transmission permitting and planning rules exclude the Texas grid run by the Electric Reliability Council of Texas (ERCOT), both by area and by utility (198:17–25; 210:13–211:2). FPA 228 has no such exclusion and binds every "electric utility." So the data-center rule has no Texas carve-out, but the transmission rules do. Because FPA 228 does not expand FERC's jurisdiction, enforcement inside ERCOT would fall mainly to Texas regulators (our inference).

The bill sets no rule on how data centers are powered. A state may require new generation, but the text names no fuel and no emissions standard.

Faster power for large loads

The data-center provisions on cost sit beside provisions that speed up supply in general. Several of them help large loads as well as generators:

- **Interconnection.** Within a year, FERC must start a rulemaking on using "artificial intelligence, machine learning, and automation" to speed interconnection studies (265:13–25). Grid data needed for a study must be handed over within 15 days (268:19–23), and studies cover "generation or load" requests (266:19–20).
- **Planning.** Within 18 months, each region must merge interconnection and transmission planning into one process that plans for "future forecasted demand and forecasted generation over the next 20 years"

(224:18–225:7).

- **Behind-the-meter resources.** Batteries, fuel cells, and "a generator" behind a customer's meter that can be dispatched within 15 minutes gain access to wholesale markets (240:14–241:20; 243:13–23). The definition is fuel-neutral and carries no emissions condition. A data center is a retail customer, so its backup diesel or gas engines appear to qualify, though that reading is our inference and an open question. Our survey describes Virginia's effort to keep data-center diesel engines on emergency duty only [5]. Wholesale market access would give owners a reason to run them more. State air permits would still apply.
- **NEPA for loans.** A non-federal project "for which the only Federal involvement is a loan guarantee or loan" is no longer a major federal action (17:1–3). Current law excludes loans only where the agency lacks control over how the money is used (42 U.S.C. 4336e(10)(B)(iii)).

What the text does not address

We searched the joined text of all 417 pages. The bill never uses the words "emission," "greenhouse," "climate," "cumulative," "load growth," or "environmental justice." It contains no water-use or noise provision. "Forecast" appears only in the 20-year planning rule above and in the grid-data definition. No section asks any agency to study the environmental or community effects of new large loads or the plants that serve them. The one data-gathering step is the Form 861 change in Sec. 2114, a utility survey that yields load by utility, not facility-level energy or water use. Water, noise, backup generators, zoning, and local moratoria, the issues our survey finds driving local opposition, stay with states and localities (see Part VI). Under current law, NEPA reaches a data center only when it needs a federal decision, and the bill does not change that.

Competing approaches to the same problem

BAAJA arrived the same day the Senate rejected a weaker version of the idea.

BILL	HOW IT WORKS	THRESHOLD	STATUS
BAAJA Sec. 2107 / FPA 228	FERC pricing policy, plus a federal cost floor and state tools	20 MW	Introduced Sept. 30, 2026
H.R. 9340, Ratepayer Protection Act	States must <i>consider</i> a full-incremental-cost standard under the Public Utility Regulatory Policies Act (PURPA)	100 MW	Passed House 417–3 on Sept. 16; Senate cloture failed 57–43 on Sept. 30 [12,59]
S. 5199, GRID Savings Act (Heinrich)	New FERC large-load interconnection rule with direct cost assignment	150 MW	In committee since July 30 [60]
S. 3852, GRID Act (Hawley, Blumenthal)	Data centers run off the grid or hold a DOE certificate	20 MW	In committee since Feb. 11 [61]

Four Democrats voted for cloture on H.R. 9340 [12]. BAAJA's floor is mandatory where H.R. 9340 is voluntary. Sen. Heinrich wrote S. 5199 and is a BAAJA sponsor.

How the bill meets FERC's own work

FERC is already working on large loads. DOE asked it in October 2025 to write interconnection rules for loads "greater than 20 megawatts" [8]. In December 2025, FERC told PJM, the mid-Atlantic grid operator, to offer firm and non-firm service to data centers co-located with power plants [9]. On June 18, 2026, it ordered all six regional grid operators outside Texas to justify their large-load tariffs [10]. Sec. 2107's directive, embedded plus incremental cost with a non-firm discount, is more specific than those orders as law firms summarize them. We did not retrieve the orders themselves.

Ratepayers beyond data centers

The bill shields ratepayers in two places: the data-center floor, and the rule that customers getting "no benefit, or benefits that are trivial," from a FERC backstop line "shall not be involuntarily allocated" its costs (194:9–15). It also creates costs that can reach ratepayers or taxpayers. Utilities may recover their "payments to jurisdictions impacted by" new lines (198:9–12), advanced transmission technology costs are presumed prudent (Sec. 2109), and Title IV awards to permit holders come from the Treasury's Judgment Fund, with nothing making the losing agency repay it (165:18–24; 181:1–7).

Who is talking

Most stakeholders leave the transmission title and the data-center rule alone; those provisions hold the coalition together. Supporters range from the American Clean Power Association [57] to the Niskanen Center, which calls the transmission policy "the most consequential" in two decades [58]. Searchlight predicts "billions of dollars a year in ratepayer savings" (a claim) [17]. Food & Water Watch calls the bill "a power grab by Big Tech and the fossil fuel industry to fast-track AI data centers" (a claim) [18]. American Electric Power, the one utility we found commenting, supports the bill without addressing the end of incumbents' right of first refusal [63]. Punchbowl expects utilities to push back on FERC siting power and on the mandatory data-center cost language [3].

MISSING VOICES

We found no BAAJA-specific statement from state utility regulators or their national association, from consumer advocates, from the investor-owned, cooperative, or public power trade groups, or from data-center operators and their trade association. This is a snapshot of the first two days after release.

Outstanding legal questions

1. Can FPA 228's floor bind state retail rates, given its own rules of construction and Sec. 2115(b)? Who enforces it inside ERCOT?
2. Does the Sec. 2107(a) pricing directive, which has no date limit, reach data centers already connected? Does FPA 228 apply to a new load served under a state tariff approved before enactment? In retail-choice states, who estimates the generation part of incremental cost?

3. What does "subject to the limitations described in subsection (e)" mean when subsection (e) states no limitations?
4. Does 43 U.S.C. 3006(b)(1) still hold up wind and solar rights-of-way on federal land, and what happens when a Sec. 2213 clock runs out?
5. Can a data center's backup diesel or gas engines qualify as behind-the-meter "generator" resources under Sec. 2108?

WHAT THIS MEANS FOR DATA CENTERS

The record is mixed. The bill does not fast-track data centers themselves: no permitting provision names them, and their federal reviews change only through rules that apply to every project. It does speed up what powers them, and it requires no analysis of the emissions, water use, or community effects of new large loads; its behind-the-meter rule may even reward running backup engines (our inference). Against that, FPA 228 is a real constraint, set at 20 MW, below every state threshold our survey found, and Sec. 2107(a) reaches regional transmission costs that state tariffs cannot. Its reach still depends on utility estimates that regulators approve, it leaves every existing state deal in place, its open-season tool is untested, and its hold on retail rates is an open question.

PART VI

Where the Data Centers Are

1,038 project groups, 1,011 accepted local moratorium records, and the state rules the bill lands on (preliminary snapshot, Sept. 28, 2026).



Where the Data Centers Are

Our data-center registry (preliminary snapshot, research cutoff Sept. 28, 2026) lists 1,038 project groups stating about 360 gigawatts (GW). About 85 percent of that is planned or under construction, which is the capacity new Federal Power Act (FPA) section 228 can reach, since its cost rule covers only load that connects after enactment. Its 20-megawatt (MW) floor reaches far more projects than the 100 and 150 MW floors in rival bills, but little extra capacity. PJM, MISO, and ERCOT (Texas) each get a different mix of the bill's tools. It lands on large-load protections that our paper counts in 33 states (approved, required by statute, filed by a utility, or pending); every state threshold the paper records is above 20 MW, and approved arrangements are grandfathered. It leaves alone the local fight: 1,011 accepted moratorium records, mostly from 2026, led by Michigan with 138. Of 13 community and environmental issues our 50-state survey documents, the bill addresses one directly.

Two sources, and how far to trust them

This part draws on two of our own sources, so the caveats come first.

The first is our **data-center registry**, a private dataset of projects, local moratorium records, and other state and local policy records. It is a candidate release that has not had independent review. We publish only totals, never project, company, or local-government names, and every number from it is labeled **preliminary snapshot, research cutoff Sept. 28, 2026**. Our counts match the dataset's own descriptive-count table on all 99 checks we ran.

The second is our working paper, *Data Center Policy Across the 50 States: A Survey of Incentives, Land Use, and Energy Regulation* (working title "The State of Server Country"; Jillian Bommarito and Michael J. Bommarito II, ALEA Institute working paper, 2026) [5]. Its data run through July 17, 2026, ten weeks before BAAJA was introduced, so it never discusses the bill. Most of its facts are secondary. We re-checked five of its sources against the originals [64,65,35,40,36] and cite those directly. Everything else from the paper is labeled as the paper's finding.

1. The buildout

The registry groups records that describe the same campus into one "project group." By status, the 1,038 groups break down like this (preliminary snapshot, research cutoff Sept. 28, 2026):

STATUS	PROJECT GROUPS	STATED GW (GROUPS THAT STATE A CAPACITY)
Planned (including 11 "announced")	414	
Under construction	195	
Planned or under construction, together	609	304.8
Operational	268	15.2
Expansion of an existing site	63	16.5
Canceled	96	20.0

STATUS	PROJECT GROUPS	STATED GW (GROUPS THAT STATE A CAPACITY)
On hold	2	3.0
Total	1,038	359.6

Preliminary snapshot, research cutoff Sept. 28, 2026. 852 of 1,038 groups state a power capacity; 186 do not, 114 of them in the pipeline.

85 %

Share of stated data-center capacity in projects that are planned or under construction (304.8 of 359.6 GW; preliminary snapshot, research cutoff Sept. 28, 2026).

The capacity is lopsided. The 115 groups that each state 1 GW or more account for about 225 GW, or 62 percent of the total. In the pipeline, 100 such groups account for 203 GW, two-thirds of the pipeline's stated capacity. At the other end, 191 groups state less than 20 MW and add up to barely 1 GW (all figures preliminary snapshot, research cutoff Sept. 28, 2026).

Why stated GW is not expected demand

The 360 GW figure is a sum of claims, not a forecast. Read it as a measure of ambition, for five reasons.

- **It is the size a campus says it could reach.** Developers announce full build-out, often in phases over a decade that may never all get built.
- **The basis varies.** Some figures describe a whole campus, some a single phase, and some the computing load rather than grid power. The dataset's own guide declines to publish total megawatts for this reason; we use the sums only to compare thresholds and regions.
- **"Planned" includes speculation.** Of the 609 pipeline groups, 420 were announced in 2025 or 2026. Developers often shop one project to several sites, and only some get built.
- **Projects fall away.** The registry already holds 96 canceled groups that stated 20 GW (preliminary snapshot, research cutoff Sept. 28, 2026).
- **It is not metered load.** Nothing here is measured at the meter or tied to a signed interconnection agreement.

Grid operators see the same inflation in their queues. The paper reports that large-load requests in Texas reached about 410 GW by late March 2026, 87 percent of them from data centers, and its structured data give more than 438 GW, nearly 89 percent data centers, as of June 18, 2026 [5]. Both are the paper's findings, not checked by us. A request is a place in line, not a power plant. None of this makes the pipeline irrelevant. It shows where developers are trying to build and at what scale, which is what the bill's thresholds and regional rules are drawn against.

2. Who the FPA 228 floor reaches

New FPA 228, added by Sec. 2107, is the bill's data-center cost rule. Part V explains how it works. Here is the definition that decides who is in.

Most stated data-center capacity has not yet plugged in.

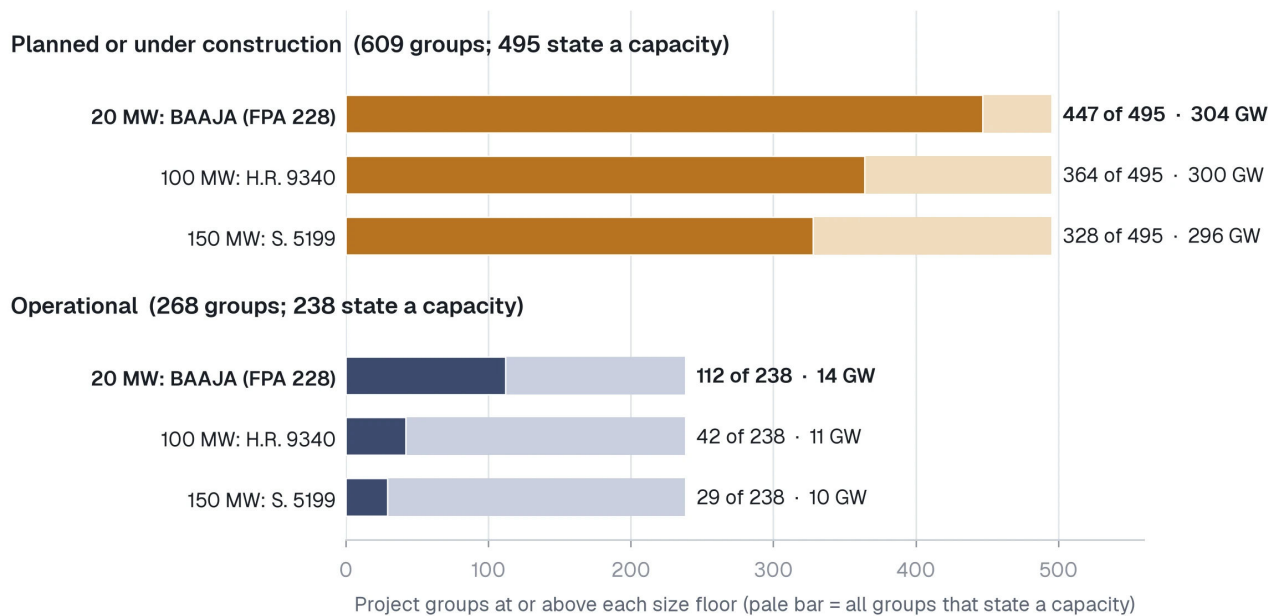


"The term 'covered load' means electric load that— (A) is attributable to 1 or more data centers or high-density computing facilities located at a single site, or at multiple sites under common ownership or control; and (B) equals or exceeds 20 megawatts or, in the case of data centers or high-density computing facilities developed in phases, is reasonably expected to equal or exceed 20 megawatts at full buildout." FPA 228(a)(2), Sec. 2107, 232:3–13

Two competing bills set the line higher: H.R. 9340 at 100 MW and S. 5199 at 150 MW. The registry lets us compare all three.

FLOOR	PIPELINE GROUPS AT OR ABOVE (OF 495 THAT STATE A CAPACITY)	PIPELINE GW AT OR ABOVE	OPERATIONAL GROUPS AT OR ABOVE (OF 238)	OPERATIONAL GW AT OR ABOVE
20 MW (BAAJA, FPA 228)	447 (90%)	304.4	112	14.5
100 MW (H.R. 9340)	364 (74%)	299.9	42	11.0
150 MW (S. 5199)	328 (66%)	295.9	29	9.6

Preliminary snapshot, research cutoff Sept. 28, 2026. "Pipeline" means planned or under construction (609 groups, 114 of which state no capacity).



Preliminary snapshot, research cutoff Sept. 28, 2026.

GW = sum of stated capacity claims, often whole-campus build-outs; not expected demand.

Figure 15: A 20 MW floor reaches 447 of 495 planned or under-construction project groups that state a capacity, against 328 at 150 MW, but adds only about 8 GW: the choice of floor changes how many projects are covered, not how much capacity (preliminary snapshot, research cutoff Sept. 28, 2026)

Moving the floor from 150 MW down to 20 MW adds 119 mid-sized pipeline groups but only about 8 GW, under 3 percent of stated pipeline capacity (preliminary snapshot, research cutoff Sept. 28, 2026). The giant campuses clear any of the three lines. What the low floor buys is coverage of many more projects, utilities, and communities, not much more capacity.

The registry probably undercounts coverage. Sites under "common ownership or control" are added together, so two 15 MW buildings owned by one company count as 30 MW, and the registry cannot test ownership. Some of the 48 pipeline groups below 20 MW may be covered too.

Why "new loads only" matters

The floor does not reach everyone over 20 MW. It reaches load that connects after the bill becomes law.

"(1) PROSPECTIVE APPLICATION.—Subsections (b) and (c) apply to a covered load that interconnects on or after the date of enactment of this section. (2) EXISTING ARRANGEMENTS.—An arrangement to serve a covered load that was approved by the Commission or by a State before the date of enactment of this section shall remain in effect." FPA 228(f), Sec. 2107, 240:1–8

Subsection (b) is the no-subsidy floor; (c) is the menu of state tools, such as open seasons. The state power in (d) to treat data centers as a less-favored rate class is not limited to new loads (CORRECTIONS F21).

Because about 85 percent of stated capacity is planned or under construction, most of the capacity at stake has not yet connected, and the floor can reach it if it connects after enactment. Operational sites, 268 groups stating about 15 GW, sit mostly outside (preliminary snapshot, research cutoff Sept. 28, 2026). So "new loads only" is a small exemption measured by future capacity, but a large one measured by today's bills, because operational sites are the ones already drawing power.

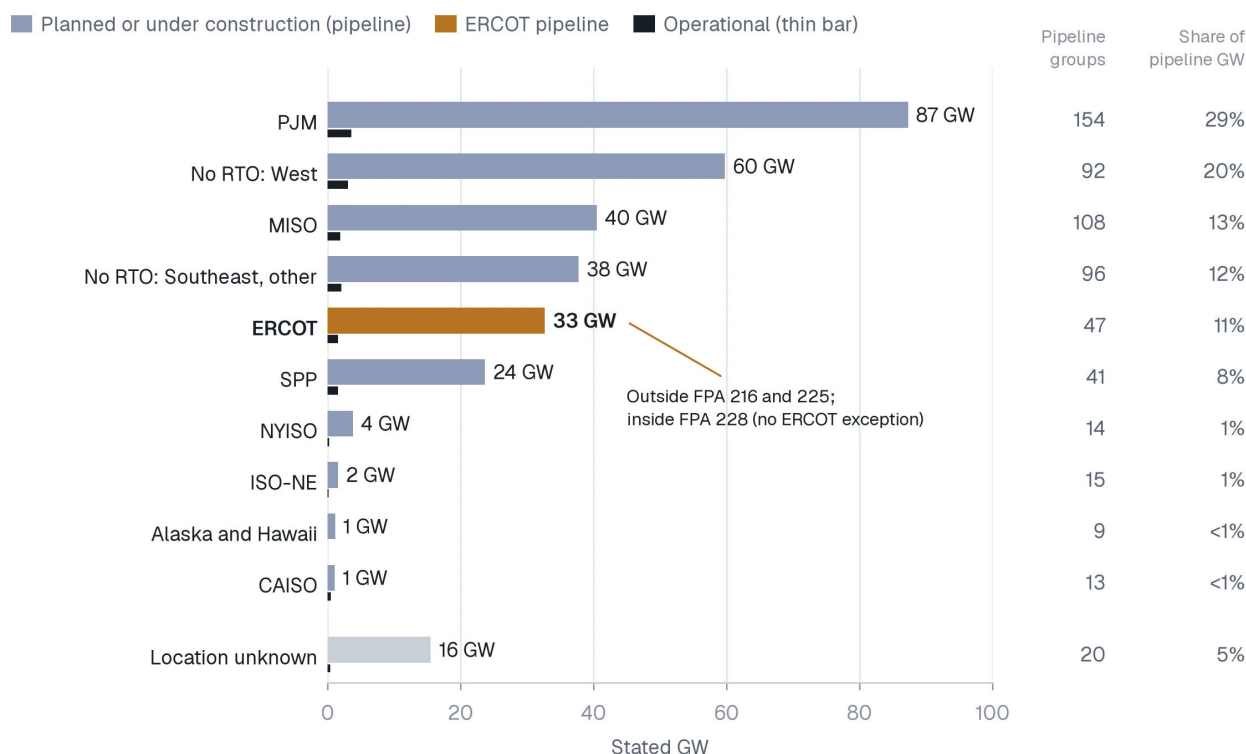
Two caveats keep that from being a clean "the floor covers almost everything." First, "under construction" projects may connect before a bill passes. The 195 groups under construction state about 110 GW, and an enactment date that slips into 2027 or later lets more of them in under the old rules. Second, the text does not say how it treats the 63 expansion groups, which state 16.5 GW (preliminary snapshot, research cutoff Sept. 28, 2026). Whether the added load at an existing site "interconnects on or after" enactment is an outstanding legal question.

3. Where, by grid region

We placed each located project group in a regional grid operator's territory using public federal boundary maps [66]. A regional transmission organization (RTO) or independent system operator (ISO) runs the high-voltage grid and wholesale markets across several states. Areas outside an RTO are run by individual utilities.

REGION	PROJECT GROUPS	STATED GW, ALL STATUSES	STATED GW, PLANNED OR UNDER CONSTRUCTION	SHARE OF PIPELINE GW
PJM (Mid-Atlantic, Ohio Valley, Chicago area)	247	97.4	87.3	29%
MISO (Midwest, down to Louisiana)	172	52.6	40.5	13%
ERCOT (most of Texas)	58	34.9	32.7	11%
SPP (Plains)	64	27.5	23.7	8%
Non-RTO West	177	73.0	59.8	20%
Non-RTO Southeast and other	165	46.6	37.8	12%
CAISO, NYISO, ISO-NE	114	9.2	6.4	2%
Alaska and Hawaii	14	1.1	1.1	<1%
Location unknown	27	17.2	15.5	5%

Preliminary snapshot, research cutoff Sept. 28, 2026. Shares are of 304.8 GW of stated pipeline capacity. 261 groups have a street-address point; most others are placed at a town or county center.



Preliminary snapshot, research cutoff Sept. 28, 2026.

GW = sum of stated capacity claims, often whole-campus build-outs; not expected demand. Percentages of 305 GW pipeline incl. unlocated.

Figure 16: PJM and MISO hold about 42 percent of stated pipeline capacity; ERCOT holds about 11 percent, and that capacity sits outside the bill's new federal transmission permitting and planning rules but inside the data-center cost rule (preliminary snapshot, research cutoff Sept. 28, 2026)

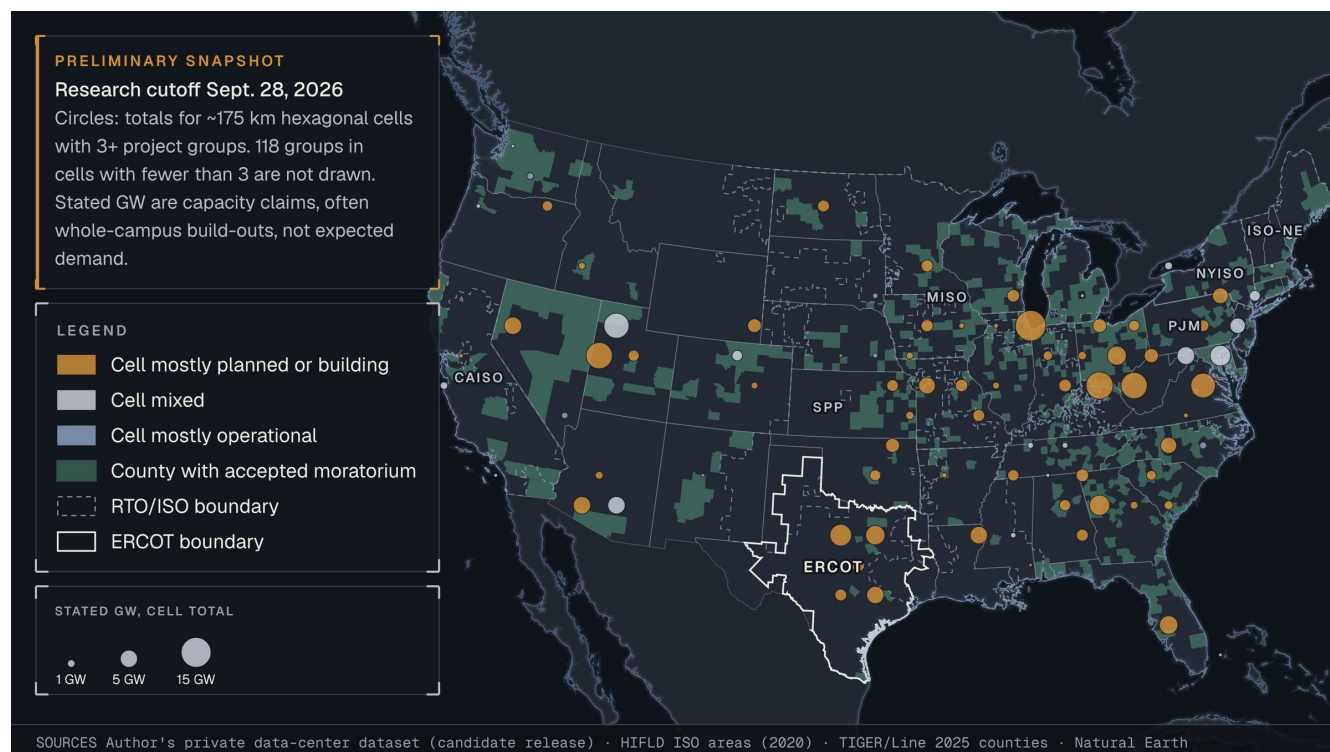


Figure 17: Data-center projects sized by stated capacity, and counties with accepted local moratorium records, over regional grid boundaries; moratoria cluster in MISO, PJM, and the Southeast (preliminary snapshot, research cutoff Sept. 28, 2026)

The bill has five tools that matter here: the FERC transmission permitting backstop (FPA 216, Sec. 2101), regional planning (FPA 225, Sec. 2103, alongside the 20-year consolidated plan in FPA 318, Sec. 2106), FERC transmission pricing for computing load (Sec. 2107(a)), the FPA 228 cost floor, and wholesale market access for generators and batteries behind a customer's meter (FPA 229, Sec. 2108). They land differently in each region.

PJM

PJM holds the largest stated pipeline, about 87 GW across 154 groups (preliminary snapshot, research cutoff Sept. 28, 2026). All five tools apply. FERC's siting backstop kicks in when a state takes more than a year (188:24–189:5). Interconnection and regional planning are merged into one process with a 20-year horizon under new FPA 318 (224:18–225:7). FERC must reprice transmission so computing load pays embedded and incremental cost (229:14–230:14), which reaches the layer the paper says state tariffs cannot touch: "what they cannot do is alter the regional network-upgrade cost allocation set through FERC-jurisdictional RTO processes" [5]. FPA 228 applies, and so does market access for behind-the-meter generators, because PJM is a FERC-approved RTO (243:13–23).

PJM's distinctive problem is retail choice. In much of PJM, the local wires utility does not build or own power plants. FPA 228 defines incremental cost to include generation and leaves the estimate to "the electric utility" (233:18–234:3). The text does not say who estimates the generation part where the utility owns no generation. Nor does it say whether higher capacity-market prices, which every customer pays, count as an incremental cost. Both are outstanding questions.

MISO

MISO holds about 40 GW of stated pipeline across 108 groups (preliminary snapshot, research cutoff Sept. 28, 2026). The same tools apply. MISO's states keep their role in deciding how regional lines are paid for through a safe harbor that treats compliance with FERC's existing planning orders, including Order 1920, as compliance with the new rule (217:1–7; Part III). Most MISO states regulate utilities that own their generation, so FPA 228's "utility estimates the cost" model fits better there than in retail-choice PJM (our reading). MISO also holds the most moratorium records of any region, 289 of 1,011 (preliminary snapshot, research cutoff Sept. 28, 2026).

ERCOT

ERCOT holds only 58 groups, 6 percent of the total, but about 33 GW of stated pipeline, 11 percent, because its projects are large (preliminary snapshot, research cutoff Sept. 28, 2026). This is where the bill's two halves come apart.

- **Permitting and planning: out.** The new FPA 216 "shall not apply within the area" of ERCOT and excludes ERCOT utilities (198:17–199:3), and FPA 225 does the same (210:13–211:5). The old 216 already excluded the ERCOT area; what is new is the explicit exclusion of ERCOT utilities and of public power that does not opt in (CORRECTIONS M6).
- **The cost floor: in, on paper.** FPA 228 has no ERCOT exclusion and binds every "electric utility." Because it also says it does not expand FERC's jurisdiction (239:7–12), enforcement inside ERCOT would fall mainly to Texas regulators (Inference; CORRECTIONS M6).
- **FERC pricing and market access: probably out.** Sec. 2107(a) works through FERC-filed transmission rates, which ERCOT utilities do not file. FPA 229 market access runs to a "Transmission Organization," and ERCOT is not one approved by FERC. Both points are our inference.

Texas already has its own large-load law. Senate Bill 6 (2025) sets a 75 MW default threshold, requires large loads to disclose backup generation, and lets ERCOT direct them to run that backup or curtail in an emergency [40]. FPA 228's 20 MW line sits well below that, with no federal enforcer. Local moratoria are rare there: 9 of 1,011 accepted records fall inside ERCOT (preliminary snapshot, research cutoff Sept. 28, 2026). The paper notes that Texas counties lack general zoning power [5], which leaves them few tools for a moratorium (our reading).

Everywhere else

Areas outside any RTO hold nearly a third of stated pipeline capacity: about 60 GW in the West and 38 GW in the Southeast, which also holds 250 accepted moratorium records (preliminary snapshot, research cutoff Sept. 28, 2026). There, FPA 228 and the FERC backstop apply, planning runs through existing non-RTO planning regions, and FPA 229 market access has no RTO market to work in.

4. The state rules the bill lands on

FPA 228 does not arrive on empty ground. The paper found that by mid-June 2026, 33 states had some large-load protection, approved, required by statute, filed by a utility, or formally pending [5]. Most use the same three parts: a megawatt threshold, long contracts, and minimum bills that keep a data center paying even if it uses less power or leaves. The paper cannot say whether that reflects states converging on a good idea or copying each other [5]. Our registry points the same way: it holds 84 accepted state and local records on utility rates, tariffs, or load terms (preliminary snapshot, research cutoff Sept. 28, 2026).

Every threshold the paper records is above 20 MW. FPA 228 therefore reaches a band of mid-sized loads that no state rule reaches today, from 20 MW up to each state's line (our reading).

STATE	THRESHOLD	WHAT IT DOES	STATUS BEFORE BAAJA	HOW FPA 228 LANDS	SOURCE
Georgia	100 MW	New customers over 100 MW pay upstream generation, transmission, and distribution costs as built; contracts up to 15 years; minimum bills; all contracts filed with the PSC	PSC rule, Jan. 2025	Federal floor adds the 20–100 MW band; rule predates enactment	Georgia PSC [64]
Virginia	25 MW	New GS-5 rate class; minimum bills of 85% of contracted wires demand and 60% of generation demand; effective 2027	SCC order, Nov. 2025	Adds 20–25 MW; GS-5 predates enactment; FPA 228(d) confirms a separate class	Virginia SCC [65]
Michigan	100 MW; one 1,383 MW contract	Large-load tariff (paper's finding) and special contracts for one campus (19 years, 80% minimum bill)	MPSC orders, Nov. and Dec. 2025	See Michigan below	MPSC [35]; paper [5]
Ohio	25 MW	Data-center tariff: 85% minimum bill, 12 years, exit fees; on appeal	PUCO order, 2025	Adds 20–25 MW; tariff predates enactment	Paper [5]
Indiana	70 MW	Utility settlement: 80% minimum bill, 12 years, exit fees	IURC order, Feb. 2025	Adds 20–70 MW	Paper [5]
Texas	75 MW	Curtailment, backup-generation disclosure, study fees	Statute (SB 6, 2025)	Adds 20–75 MW; no federal enforcer in ERCOT	Texas SB 6 [40]

STATE	THRESHOLD	WHAT IT DOES	STATUS BEFORE BAAJA	HOW FPA 228 LANDS	SOURCE
Pennsylvania	50 MW (100 MW aggregate)	Model large-load tariff for utilities to adopt	PUC order, May 2026	Utility tariffs filed after enactment would not be grandfathered	Paper [5]
Florida	50 MW	Large-load statute	Statute, 2026	Adds 20–50 MW	Paper [5]
Maryland	25 MW	Large-load registry	Statute, 2026	Adds 20–25 MW	Paper [5]
Alabama	150 MW	Commission review of large-load contracts	Statute, 2026	Adds 20–150 MW	Paper [5]
Illinois	50 MW (proposed)	Commission investigation of large-load protections	Pending at paper cutoff	Federal floor arrives before a state one	Paper [5]
Arizona	No threshold set	Public-power utilities may require minimum bills, collateral, and customer-funded infrastructure	Statute, 2026	FPA 228 binds public power too (our reading)	Paper [5]
BAAJA FPA 228	20 MW	No incremental cost shifted to other customers; financial assurance before any build-out	New		232:3–13; 234:23–236:6

State facts are as of the paper's July 17, 2026 cutoff. "Paper" means the paper's finding, not checked by us. The Virginia release confirms the threshold, the 85/60 split, and the 2027 start, but not the 14-year term the paper reports.

What is grandfathered

FPA 228(f)(2) says an "arrangement to serve a covered load" approved by FERC or a state before enactment "shall remain in effect" (240:5–8). Almost every row in the table was approved before BAAJA was introduced. For those arrangements, the federal floor does not displace their terms; whether it also applies to loads that connect later under them is the first question below. Georgia's rule, Virginia's GS-5 class, Michigan's special contracts, and the Ohio and Indiana tariffs keep working on their own terms. Several of them spell out terms the federal floor does not, such as minimum bills over contracts of a decade or more.

The grandfather clause raises three questions the text does not answer.

- 1. New loads under old tariffs.** Suppose a 60 MW data center connects in 2028 under a tariff approved in 2025. Subsection (f)(1) applies the floor to load that "interconnects on or after" enactment; (f)(2) says the old arrangement "shall remain in effect." Perhaps both apply, with the floor on top of the tariff, but the text does not say which controls where they conflict. With most of the pipeline still to connect, this is the outstanding legal question that matters most.
- 2. What counts as an "arrangement."** A specific contract approved by a commission is plainly an arrangement. A tariff probably is. A statute such as Texas SB 6, or a general rule like Georgia's, is less clearly an "arrangement to serve a covered load" that was "approved by ... a State."
- 3. Pending cases.** Anything approved after enactment is not grandfathered. That includes Pennsylvania utilities' compliance tariffs, Illinois's open investigation, and Michigan's pending case discussed below.

Different yardsticks

State tools mostly guard against stranded cost: if the data center leaves or shrinks, it still pays. FPA 228 does that too (235:10–236:6), but its core measure is incremental cost estimated by the utility near start-up, subject to regulators' approval (233:24–234:3; CORRECTIONS F21). The paper treats ratepayer harm partly as a market-wide price effect, citing 2025 retail rate increases of 18.9 percent in Pennsylvania and 26.3 percent in the District of Columbia [5]. One utility's start-up estimate is unlikely to capture effects like those (our reading).

5. Local fights the bill doesn't touch

The bill's data-center text is about who pays for power. The fights in our registry are about where data centers go.

The registry holds 2,254 moratorium decision records. Of these, 1,011 are "accepted," meaning the evidence supports the specific fact recorded, such as that a local body adopted a pause; 817 were rejected and 426 are unresolved. The accepted records cover 903 local governments in 45 states. "Accepted" does not mean a moratorium is in force today or applies to any project. Of the 1,011, 933 record an adoption-type action (620 from official records, 313 from news reports only), and only 111 have an accepted start and end date (preliminary snapshot, research cutoff Sept. 28, 2026).

The timing is sharp. Dating each record by its adoption, or by its first recorded action:

PERIOD	ACCEPTED RECORDS
Any single quarter before Oct. 2025	10 or fewer
Oct.–Dec. 2025	31
Jan.–Mar. 2026	122
Apr.–Jun. 2026	265
Jul.–Sept. 28, 2026 (partial)	231
Undated or year only	313

Preliminary snapshot, research cutoff Sept. 28, 2026. Denominator: 1,011 accepted records.

So 618 of the 1,011 records, and 618 of the 698 that carry a date, fall in 2026. County governments account for 389 records, cities for 310, and townships for 168. The leading states are Michigan (138), Ohio (127), Georgia (90), North Carolina (60), and Iowa (50) (preliminary snapshot, research cutoff Sept. 28, 2026).

The paper, with an earlier cutoff and narrower collection, counted 208 local moratorium actions in 34 states [5]. The direction is the same.

Co-location, not causation

How often does a planned data center sit near a moratorium? Of the 581 planned or under-construction groups whose county we know, 223 (38 percent) are in a county with at least one accepted moratorium record. Those 223 groups state about 85 GW. Only 121 groups of any status (12 percent) are in a county whose own county government adopted one (preliminary snapshot, research cutoff Sept. 28, 2026).

SHARING A COUNTY IS NOT BEING BLOCKED

A township's moratorium does not reach a site in the next township, and a pause adopted after a project was approved may not reach it at all. The registry supports legal applicability, meaning a moratorium that actually covers a given project, for only five moratorium-project pairs. The 38 percent figure measures how often projects and local pushback sit in the same county. It does not measure how many projects a moratorium stopped.

Beyond moratoria, the registry's 686 accepted state and local policy records skew the same way: tax and incentive terms appear in 228, land use and siting in 145, utility rates in 84, and water and environment in 74 (preliminary snapshot, research cutoff Sept. 28, 2026; records can fall in several groups).

What the bill does and does not do here

The bill leaves data-center siting with local governments. "Zoning" and "moratorium" never appear in its text, and "land use" appears once, about federal land plans (302:22). The paper's map of local control survives intact: discretionary local review dominates, and West Virginia goes furthest, preempting all county and municipal regulation of state-certified data centers of 90 MW or more [5]. BAAJA neither adds a preemption nor restores local authority.

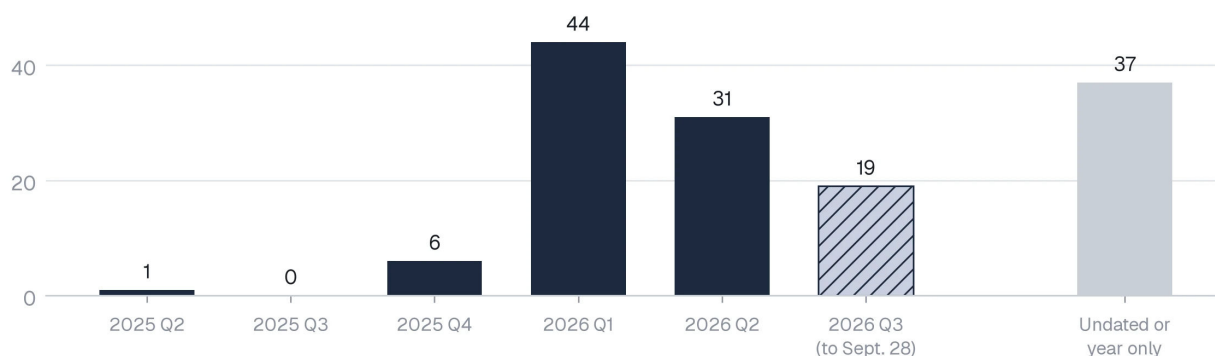
What the bill does change is the supply side. Its only local-siting override is for transmission: a state that takes more than a year to act on a line opens the door to FERC (188:24–189:5). It also speeds pipelines and interconnection studies. The paper's central finding is that energy access is "the gatekeeping constraint" for hyperscale siting, with tax incentives as a tiebreaker, though it labels that a cross-state pattern, not a proven cause [5]. If it holds, the bill's supply sections will shape where data centers go more than the two sections that name them. The town hall decides whether a campus can build on a given field. The bill helps decide whether power can reach it.

6. Michigan up close

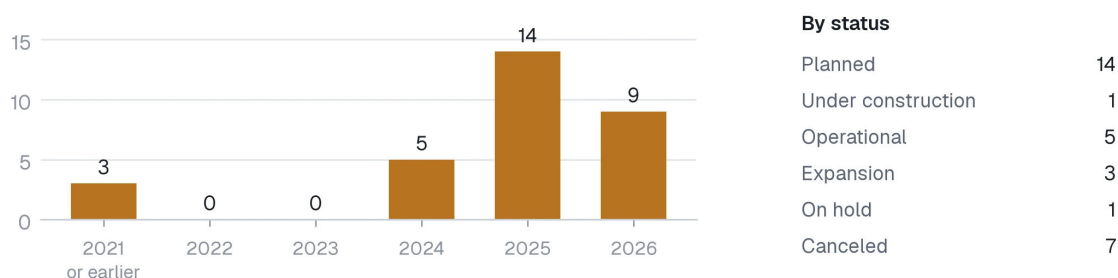
Michigan shows the whole pattern in one state: a modest pipeline, the country's most active local pushback, and state utility rules approved before the bill.

The registry lists 31 Michigan project groups. Fifteen are planned or under construction, 5 are operational, 3 are expansions, 1 is on hold, and 7 have been canceled, an unusually high canceled share. Twenty-three state a capacity, together 7.9 GW. The 15 pipeline groups state 2.8 GW, though 7 of them state no capacity. Twenty-seven groups are in MISO and 4 in PJM's slice of southwest Michigan. They sit in 15 counties (all figures preliminary snapshot, research cutoff Sept. 28, 2026).

Accepted local moratorium records in Michigan, by quarter of adoption or first action (n = 138)



Michigan data-center project groups, by announcement year (n = 31)



Preliminary snapshot, research cutoff Sept. 28, 2026.

A record is accepted evidence of an action, not proof a moratorium is in force.

Figure 18: Michigan has more accepted local moratorium records than any other state, 138, mostly township actions and mostly dated to 2026; every Michigan county with a project group also has an accepted record (preliminary snapshot, research cutoff Sept. 28, 2026)

Michigan leads the country with 138 accepted moratorium records, 13.6 percent of the national total, from 120 local governments: 101 township actions, 31 city actions, and only 2 county actions, because Michigan townships do much of their own zoning. Dated records cluster in 2026: 44 in the first quarter, 31 in the second, and 19 in the partial third, with 37 undated. Accepted records reach 38 counties, and every one of the 15 counties with a project group also has at least one (preliminary snapshot, research cutoff Sept. 28, 2026). As above, that is co-location, not proof that any moratorium covers any project.

The state rules already in place

Michigan's 2024 data-center tax exemption is conditioned on, among other things, municipal water, a 90 percent clean-energy standard, and a bar on rates that make residential customers subsidize the facility [36]. That last condition and FPA 228's floor point the same way.

On rates, the Michigan Public Service Commission (MPSC) has two approvals that predate the bill:

- **A large-load tariff at 100 MW** for one major utility, with 80 percent minimum bills and 15-year terms, approved in November 2025 (Case U-21859; paper's finding) [5].
- **Special contracts for a single 1,383 MW campus**, approved Dec. 18, 2025: a 19-year term, 80 percent minimum billing, a termination payment, and the utility, not its other customers, responsible for costs it cannot recover from the data center (Case U-21990) [35].

Both were approved by "a State before the date of enactment," so both "shall remain in effect" (240:5–8). FPA 228 would add nothing to the 1,383 MW contracts. For the tariff, the floor would add coverage for loads from 20 to 100 MW, which the tariff does not reach (our reading). A third case, which would set protections above 100 MW at a site, was pending at the paper's cutoff (Case U-22061) [5]. If the MPSC decides it after enactment, it is not grandfathered and must meet the federal floor. And any data center that connects after enactment under the November 2025 tariff raises the (f)(1)-versus-(f)(2) question above.

On transmission, Michigan's one-year deadline for the MPSC to decide a major line matches the bill's new trigger for the FERC backstop (Part III). But the bill touches none of the 138 local actions, nor Michigan's water-withdrawal law or tax-incentive conditions. Michigan's siting fight is happening in township halls, and those are outside the bill.

7. What the bill is silent on

The paper documents 13 environmental and community issues that drive data-center policy and opposition. We checked each against the bill's full text, joined across line breaks, with a case-insensitive search.

ISSUE	SEARCH TERMS WITH ZERO HITS IN THE BILL	BILL ADDRESSES IT?
Water use (quantity)	water use, consumptive, groundwater, aquifer, drought	No. Water changes concern quality under Clean Water Act section 401
Noise	noise, decibel	No
Diesel backup and air permits	diesel, backup, air quality, emission	No. "Clean Air Act" appears once, in a savings clause (205:7)
Environmental justice	environmental justice, low-income, disproportionate	No
Cost of state tax incentives	tax exemption, sales tax, property tax, abatement	No
Interstate incentive competition	(same)	Partly, indirectly: a uniform cost floor removes one lever (our reading)
Community benefits	community benefit	Partly, for transmission only: utilities may recover payments to host jurisdictions (198:9–12)
Local control and moratoria	zoning, moratorium	No for data centers. For transmission, the FERC backstop runs the other way
Climate and emissions of new generation	greenhouse, climate, emission, cumulative	No. States may require new generation, but no fuel or emission standard is named (237:14–18)
Transparency and NDAs	nondisclosure	No. Sec. 2114 adds data-center load to a federal utility survey (279:21–25)
Ratepayer cost-shifting	—	Yes , for the direct incremental cost of new loads (234:23–235:2)
Construction labor standards	prevailing wage, Davis-Bacon	No
Farmland and property values	farmland, property value	No

The bill addresses one of the 13 issues directly, touches two partly, and is silent on ten. One contrast stands out: FPA 228 forbids other ratepayers from subsidizing a data center's added grid cost, while the paper documents states subsidizing the same electricity through sales-tax exemptions [5].

Silence is not necessarily a defect. Tax, zoning, and noise have always been state and local law. But a reader who hears that the bill makes "data centers pay their own way" should know that it covers the electric bill, not the neighbors' other complaints.

One section may push the other way: Sec. 2108

Sec. 2108 opens wholesale markets to "qualifying behind-the-meter distributed energy system" facilities. These include "an energy storage system ..., a fuel cell system, a generator, or other resource" at a retail customer's site that can come online within 15 minutes, at 5 kilowatts or more (240:14–241:8). Aggregations of 100 kilowatts or more get market access in RTO markets 18 months after enactment (242:1–8; 243:13–23). The definition names no fuel and sets no emissions condition.

A data center is a retail customer, and its backup engines are dispatchable generators behind its meter, so on the text they appear to qualify (Inference). The paper reports about 9,000 data-center generators in Virginia, most on an older emissions standard, kept below major-source air thresholds by being limited to emergency use [5]. The bill does not override those state air permits, so there is no legal conflict. But it creates a market reason to run backup engines more often, against the emergency-only model states rely on. Whether RTOs would admit such engines, and how they would square dispatch with permit hour limits, are outstanding questions.

WHAT THIS MEANS FOR DATA CENTERS

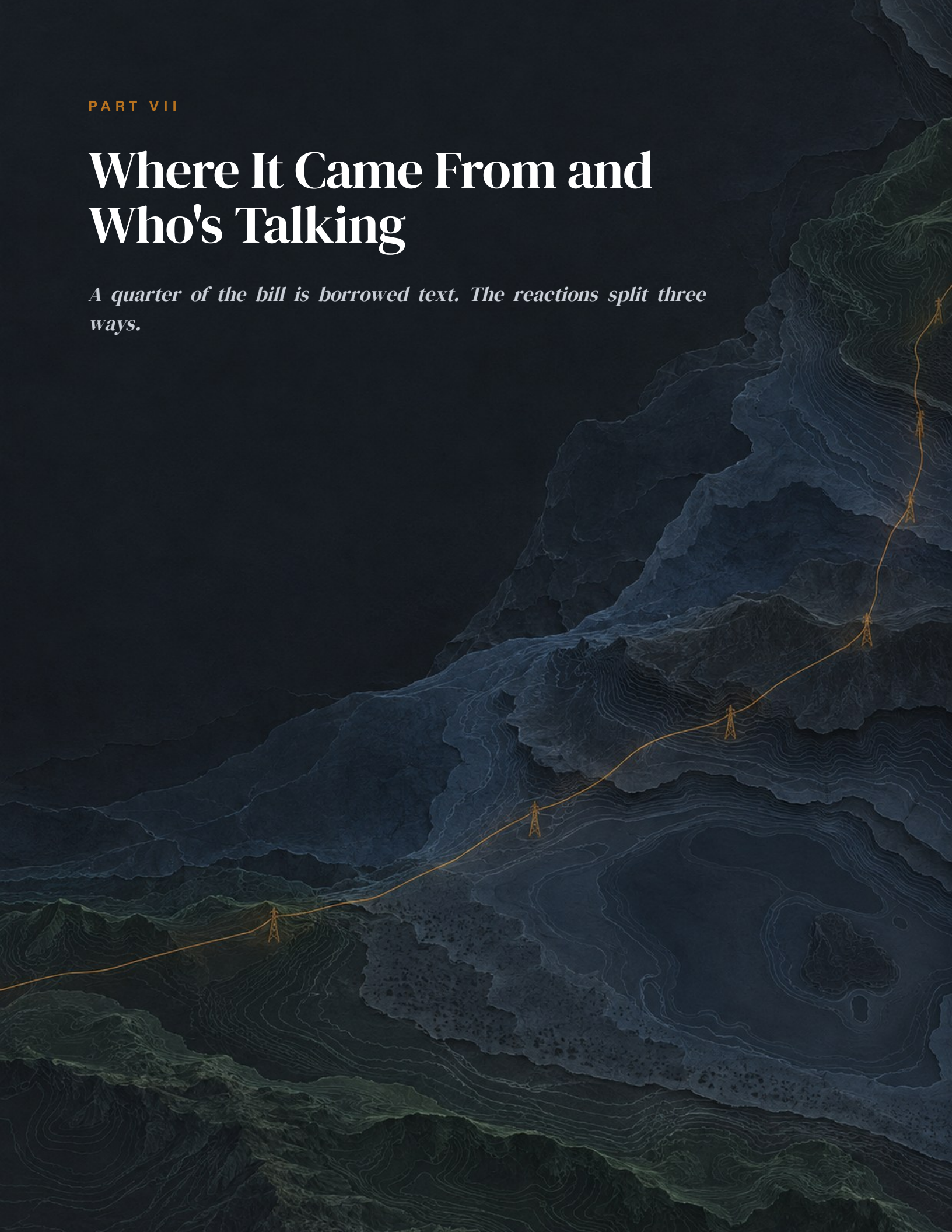
Mixed, leaning against the simplest "giveaway" reading on cost and toward the concern on siting.

The 20 MW floor is the broadest of the three proposals in Congress, and because about 85 percent of stated capacity has not yet connected, "new loads only" leaves most of the capacity at stake inside the rule (preliminary snapshot, research cutoff Sept. 28, 2026). That cuts against the claim that the cost rule was drawn to exempt data centers. Cutting the other way, the bill leaves untouched the local land-use fight shown by 1,011 accepted moratorium records, while its transmission, planning, and pipeline sections speed the power supply most where the pipeline is: PJM and MISO hold about 128 GW of it. In ERCOT, about 33 GW of stated pipeline gets the cost rule on paper with no federal enforcer, and little of the federal transmission help: the FERC backstop and regional planning stop at the ERCOT line, though the existing-right-of-way grid work in FPA 216A and the narrower Section 401 review for bulk-power lines likely still reach it (our reading). The pre-enactment state tariffs survive, the (f)(1)-versus-(f)(2) question is open, and Sec. 2108 may reward running backup generators, so how much the floor changes in practice depends on regulators and courts, not on the text alone.

PART VII

Where It Came From and Who's Talking

A quarter of the bill is borrowed text. The reactions split three ways.



Where It Came From and Who's Talking

About 28 percent of BAAJA's words already appeared in an earlier bill or law, and that is a floor, not a ceiling. The energy permitting title is mostly the 2024 Manchin-Barrasso bill. The NEPA title borrows the House SPEED Act's design but not its words. Some of the most consequential pieces, including the Section 106 rewrite, the Sec. 1402 damages remedy, and the data center rule, have no textual ancestor at all. In the first two days, 35 of 58 public statements supported the bill. Fire concentrated on the Endangered Species Act, historic preservation, court limits, and state water certification, while almost nobody attacked the transmission title or the data center rule. When we checked 33 sponsor claims against the text, only 2 were fully accurate and complete. Most were right but left something out, and several of the omissions involve provisions that favor project sponsors.

A splice, not a fresh draft

The Bipartisan American Affordability and Jobs Act of 2026 (BAAJA) was introduced as S. 5653 on September 30, 2026. Sen. Shelley Moore Capito (R-W.Va.) is the sponsor. Sens. Mike Lee (R-Utah), Sheldon Whitehouse (D-R.I.), and Martin Heinrich (D-N.M.) are the original cosponsors [1]. Those four are the chairs and ranking members of the two Senate committees that own permitting: Environment and Public Works (EPW) and Energy and Natural Resources (ENR). This is the first text in the permitting-bill family to carry all four names. The only recorded action is referral to ENR, even though Division A sits in EPW's jurisdiction [1].

To find where the text came from, our lineage agent compared every BAAJA section against 28 earlier bill texts and 4 public laws. The test was strict. It counted the share of each section's eight-word sequences that also appear, word for word, in an earlier text. By that test, about 28 percent of the bill's words were already in a prior bill or law. The number is a floor. A section that borrows an idea and rewrites the words, as BAAJA often does with the House SPEED Act, scores low even when the design is the same.

A quarter of the bill was already written, in bills that never passed.



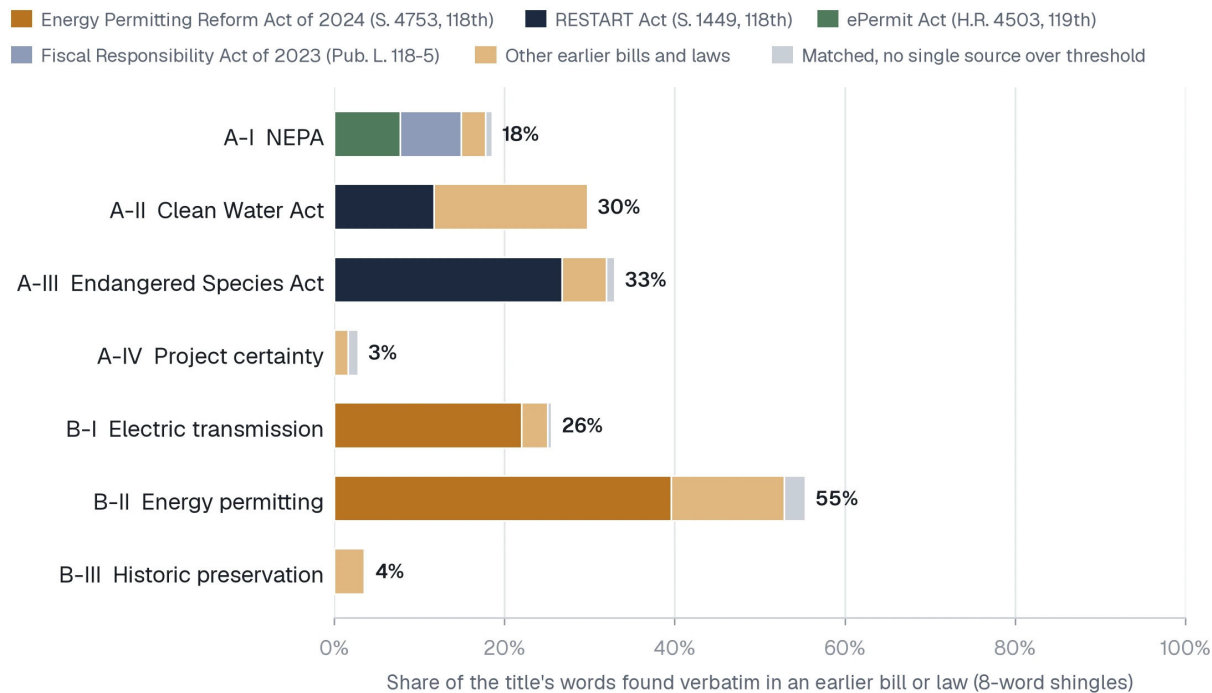


Figure 19: Energy permitting is mostly recycled text; the NHPA rewrite and the permit-certainty title are almost entirely new

PART OF THE BILL	WORDS	SHARE FOUND IN EARLIER	MAIN SOURCE
		TEXTS	
Div. A, Title I: NEPA	13,342	18.5%	SPEED Act design; Fiscal Responsibility Act structure
Div. A, Title II: Clean Water Act	4,341	29.7%	House PERMIT Act; Capito's RESTART Act
Div. A, Title III: Endangered Species Act	3,829	32.9%	RESTART Act; House ESA Amendments Act
Div. A, Title IV: Project certainty	3,842	2.8%	SPEED Act exceptions, in new words
Div. B, Title I: Transmission	14,014	25.5%	Energy Permitting Reform Act of 2024
Div. B, Title II: Energy permitting	13,315	55.3%	Energy Permitting Reform Act of 2024; stand-alone bills
Div. B, Title III: Historic preservation	6,140	3.7%	None found

The family tree in one line

The deadline to sue tells the lineage in a sentence. FAST-41, the 2015 permitting law, allowed 2 years. The BUILDER Act proposed 120 days in 2023. Capito's RESTART Act proposed 60 days the same year. The Energy Permitting Reform Act of 2024 (EPRA) set 150 days for energy and mineral approvals. The SPEED Act set 150 days for NEPA claims in 2025. BAAJA uses 150 days for NEPA, the Clean Water Act, the ESA, historic preservation, and energy approvals.

Here is where each title comes from.

- **Energy permitting (Div. B, Title II) is mostly EPRA.** That bill, sponsored by Sen. Joe Manchin with Sen. John Barrasso, was reported by ENR in December 2024 and then lapsed. Sections 2201, 2212, 2241, and

2243 are essentially verbatim from it. Section 2234, on micro hydrokinetic projects, is verbatim from the FLOWS Act. Geothermal pieces come from the CLEAN, HEATS, and Gold Book bills.

- **NEPA (Div. A, Title I) follows SPEED's design, not its words.** Only 18.5 percent of the title matches earlier text. BAAJA usually rewrote SPEED's ideas inside the NEPA sections the 2023 Fiscal Responsibility Act created. It keeps that law's 2-year deadline for an environmental impact statement (EIS) and 1-year deadline for an environmental assessment (EA).
- **The Clean Water Act and ESA titles come from House committee bills and Capito's own 2023 RESTART Act.** Sec. 1203, which lets water discharge permits run up to 10 years, is the same sentence in three earlier bills. The 60-day and 100-day ESA consultation clocks in Sec. 1302 are RESTART word for word.
- **Transmission (Div. B, Title I) is built on EPRA, with changes.** Sec. 2101 shares 58 percent of its words with EPRA's siting section. The edits matter. FERC "shall," not "may," issue a backstop permit. The comment period drops from 60 to 45 days. The voltage floor rises from 100 kV to 230 kV.
- **The data center rule is new.** No bill in the comparison set matches Sec. 2107's text; its overlap is under 3 percent. The competing approaches were the House-passed Ratepayer Protection Act (H.R. 9340, a 100 MW threshold routed through state commissions), Heinrich's GRID Savings Act (150 MW), and the Hawley-Blumenthal GRID Act (20 MW). BAAJA takes the FERC route with a 20 MW line.

Where BAAJA departs from SPEED

SPEED passed the House 221-196 on December 18, 2025, and it remains the House vehicle [67]. We found no House companion to BAAJA. BAAJA's NEPA title tracks SPEED on the 150-day filing window, the requirement to have commented, the "direct harm" standing test, remand without vacatur, and "substantial deference" to agencies. It departs in four ways.

1. **Forum.** BAAJA sends NEPA claims straight to the federal courts of appeals. SPEED left them in district court.
2. **An injunction path.** BAAJA allows a preliminary injunction if a project likely violates some federal law other than NEPA or the National Historic Preservation Act (NHPA). SPEED had no such clause.
3. **Scope of review.** SPEED limited NEPA analysis to effects with a "reasonably close causal relationship" to the action. That wording does not appear in BAAJA's NEPA title. It shows up only in the NHPA rewrite.
4. **Where the permit freeze lives.** SPEED put limits on revoking approvals inside NEPA. BAAJA moves them to a new Title IV, widens them to every federal permit held by a non-federal sponsor, adds a "new information" test, and sets a September 16, 2026 start date.

What has no ancestor

Some of the most consequential text has no match in any of the texts compared:

- the Section 106 historic preservation rewrite (about 5,700 words in Sec. 2301);
- Sec. 1402's damages claim for an applicant whose type of project faces an intentional federal pattern of unequal treatment;
- the data center ratepayer rule (Sec. 2107);
- the Sec. 1401 money award, which takes SPEED's five revocation exceptions and then adds cash from the Treasury's Judgment Fund.

The Sec. 1401 award reads this way:

costs in an amount equal to not less than 25 percent and not more than 50 percent of the total of all costs incurred by the non-Federal project sponsor or holder of the Federal authorization or permit in connection with the project as of the date of the action (Sec. 1401, 164:3–9)

Some things were also left behind. BAAJA's Sec. 2251 keeps EPRA's offshore leasing edits but drops EPRA's mandate for annual offshore wind lease sales and its 30-gigawatt goal. It also does not carry over EPRA's onshore oil and gas leasing, coal lease, and LNG export sections.

How the deal came together

The road to September 30 ran through a year of stops and restarts. Our politics agent logged 37 dated events; these are the turning points.

DATE	EVENT
Dec. 18, 2025	House passes SPEED, 221-196 [67].
Dec. 22, 2025	Whitehouse and Heinrich end talks after the administration halts work on offshore wind farms under construction. Their claim: "The illegal attacks on fully permitted renewable energy projects must be reversed if there is to be any chance that permitting talks resume" [54].
Jan. 28, 2026	Capito holds an EPW hearing "to get us back on the path to fruitful compromise" [68].
July 13, 2026	Negotiators are reported "aligned on the broad contours" but fighting over details [69].
Sept. 16, 2026	House passes the Ratepayer Protection Act, 417-3 [11].
Sept. 24, 2026	A White House official warns that wind and solar concessions will not be frozen until the lame duck [70].
Sept. 30, 2026	Text released and S. 5653 introduced. The same day, the Senate fails 57-43 to take up the Ratepayer Protection Act [12].

One thing stands out: the deal's Democratic support rests partly on something outside the text. Whitehouse says the administration's wind and solar offer is "a very reasonable opening proposal" but that a return to "regular order" for those projects is "unresolved" [4]. He has also promised a manager's amendment, so the text will change [3].

A White House official said, "We support this deal, which will deliver transformative policies to lower Americans' energy and housing costs." The same official said, "We look forward to seeing it pass quickly" [2]. Both are party claims. Capito's stated goal, also a claim, is for the bill to be "the first vote when we come back" after the November 3 election [2]. Inference: the bill will need 60 votes for cloture, and the Senate fell three short on the data center bill the same day. The 119th Congress ends in January 2027, and the bill dies with it if it has not passed.

Who's talking

Our stakeholder agent logged 58 public positions from the first two days. The split is 35 supporting, 9 opposing, 7 conditional, 4 mixed, and 3 neutral. That tally measures who issued a statement within a day or two, not who has votes or influence. Every quote below is a party's claim.

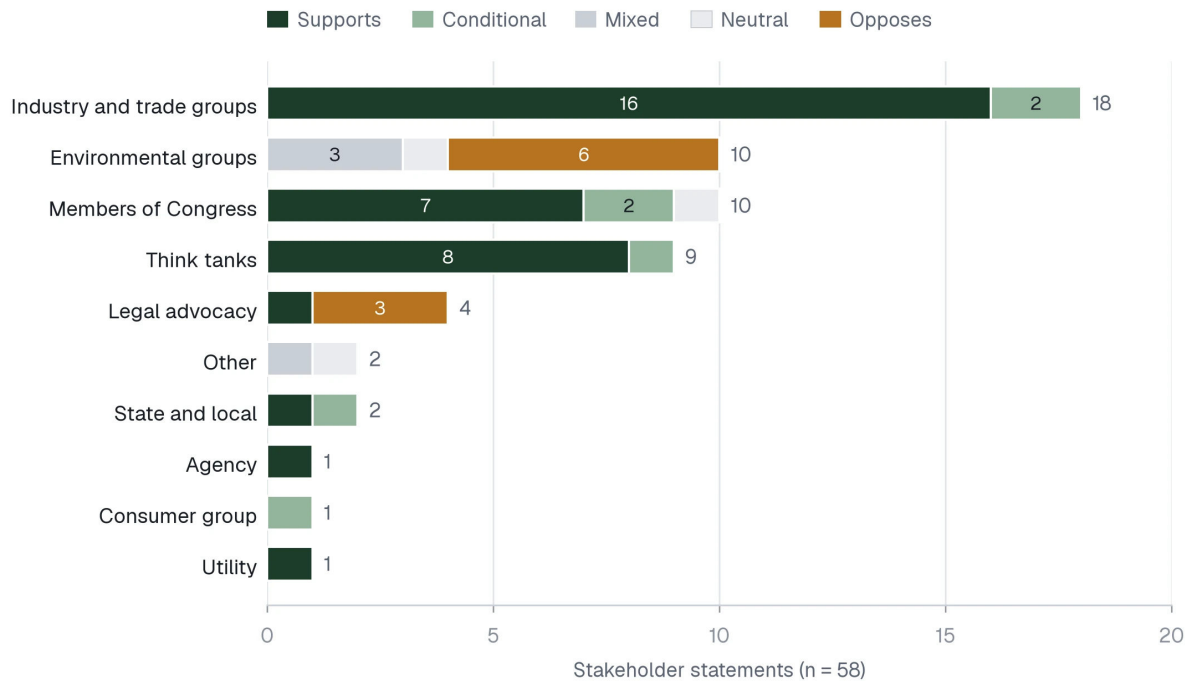


Figure 20: Industry and think tanks back the bill almost without exception; environmental groups split three ways

KIND OF STAKEHOLDER	SUPPORTS	CONDITIONAL	MIXED	NEUTRAL	OPPOSES
Industry and trade groups (18)	16	2			
Members of Congress (10)	7	2		1	
Environmental groups (10)			3	1	6
Think tanks (9)	8	1			
Legal advocacy (4)	1				3
State and local (2), utility (1), consumer (1), White House (1), other (2)	3	2	1	1	

Supporters

- **The sponsors.** Whitehouse: "Like all major pieces of bipartisan legislation, this bill is a compromise" [6].
- **Oil, gas, and the business lobby.** API's Mike Sommers calls it "a generational opportunity to fundamentally transform a broken permitting system" [71]. IPAA, the exploration and production council, the offshore industry, the gas pipeline association (INGAA, conditionally), the chemical industry, the National Association of Manufacturers, Business Roundtable, and the home builders all back it. Their reasons point to specific sections: the 150-day limit on suits, the Section 401 limits, and the freeze on issued permits.

- **Clean power.** The American Clean Power Association (ACP), ACORE, SEIA, and Advanced Energy United back it for the transmission title and the Sec. 1402 damages remedy. ACP praised "an Administration commitment to approve wind projects" [57]. That commitment is not in the text.
- **Think tanks.** Niskanen calls the transmission title "the most consequential" in two decades [58]. Searchlight predicts "billions of dollars a year in ratepayer savings" from the data center rule [17].
- **Counties.** NACo calls cooperating-agency status "a major win for counties" [72]. The text says the lead agency "may" designate a county, and only one with "jurisdiction by law" (38:15–23).

Critics

- **SELC:** the bill "reads like total capitulation to the fossil fuel industry" [73].
- **Defenders of Wildlife:** it "would bulldoze America's most important wildlife law" [74].
- **Food & Water Watch:** "This bill is a power grab by Big Tech and the fossil fuel industry to fast-track AI data centers" [18].
- **The environmental justice coalition** (Climate Justice Alliance, GreenLatinos, the Indigenous Environmental Network, WE ACT, and the Western Environmental Law Center): "Indigenous Peoples deserve better than being treated as a negotiation pawn in backroom permitting deals" [44].
- **Historic preservation.** The National Trust opposes the Section 106 rewrite but supports the \$200 million a year Historic Preservation Fund. The American Cultural Resources Association (ACRA) calls the rewrite the biggest change to Section 106 since 1966 [47].
- **Rep. Jared Huffman,** the top Democrat on House Natural Resources, says the ESA changes are "so extreme" that a milder version "spooked several House Republicans" [75].

The undecided middle

NRDC states the dilemma: "The transmission provisions contained in the bill are desperately needed; the question is do those benefits outweigh the cost of the rollbacks" [76]. Evergreen Action, the Sierra Club, and the League of Conservation Voters are in the same zone. The environmental community splits three ways: supportive think tanks such as Niskanen, Breakthrough, and C2ES; conditional groups such as NRDC, Sierra Club, and Evergreen; and opponents such as CBD, SELC, Defenders, and the environmental justice coalition.

Where the fire lands

Positions on individual provisions show where the bill's coalition holds and where it breaks.

THEME	SUPPORTS	OPPOSES	NOTE
Transmission siting and planning	14	0	One conditional (Consumer Energy Alliance)
Permit certainty and damages	11	2	Five conditional
Judicial review	9	7	The 150-day limit, standing, and remand are the sticking points
Data center pricing	7	2	Food & Water Watch and Oil Change say it does not go far enough
Section 401 water certification	5	5	Industry and pipelines for; CBD, SELC, and others against
Section 106	2	5	Both supporters are a sponsor and an allied think tank
ESA	1	5	Supporters rarely defend it by name

Almost no one attacks the transmission title or the data center rule. Those provisions hold the coalition together. The fights are over the ESA, Section 106, judicial review, and Section 401.

Who has not spoken

The silences are as telling as the statements. As of October 2, we found no BAAJA statement from:

- **any tribal government**, the National Congress of American Indians (NCAI), or the Native American Rights Fund. Tribal-aligned views came only through the Indigenous Environmental Network and preservation groups;
- **the building trades or other unions**, apart from labor members inside one clean-grid coalition;
- **incumbent utility trade groups** (EEI, NRECA, and APPA), even though Sec. 2105 bans the federal right of first refusal that incumbents use to build new lines. AEP is the only utility on record, and its statement does not mention that ban;
- **state utility regulators and consumer advocates** (NARUC and NASUCA);
- **the Farm Bureau or landowner groups**, despite the new FERC backstop siting authority;
- **data center operators**. The Data Center Coalition and the large cloud companies had not commented on Sec. 2107. The only buyer-side voice was the Corporate Energy Buyers Association, reported secondhand as encouraging Congress to move the bill forward [77]. USTelecom was conditionally supportive on broadband grounds [78].

Many statements say the group is still reviewing the 417 pages, so these are first positions and will move.

What the sponsors say versus what the text does

The sponsors released six documents: Heinrich's fact sheet [16], a joint press release [6], Capito's EPW release [88], Heinrich's remarks at the press event [89], the EPW summary [87], and a 23-page section-by-section [53]. Our politics agent checked 33 specific claims from them against the bill text.

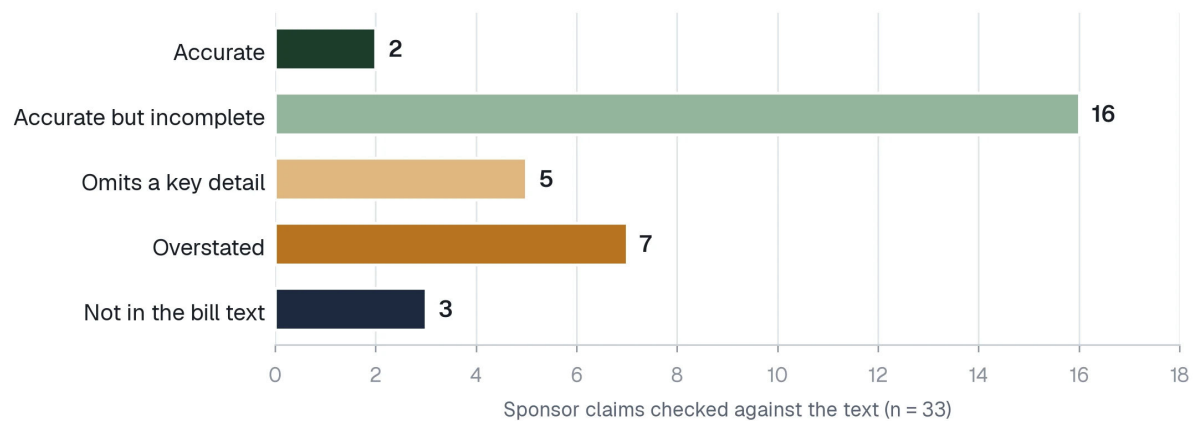


Figure 21: Most sponsor claims are accurate but incomplete; seven overstate what the text does

The verdicts: 2 accurate, 16 accurate but incomplete, 5 that omit a key detail, 7 overstated, and 3 that are predictions the text cannot confirm (for example, that the bill "creates jobs"). No claim was simply false. The pattern is that the one-page fact sheet, the document reporters quote, says the least. The 23-page section-

by-section is far more candid. It discloses the end of DOE's corridor program, the ban on rights of first refusal, the Texas grid (ERCOT) exclusions, the mill sites, and Interior's oversight of state and tribal preservation offices.

SPONSOR CLAIM (SOURCE)	VERDICT	WHAT THE TEXT DOES
Damages "up to 50 percent of the incurred construction costs" (section-by-section)	Omits key detail	The award is 25 to 50 percent of all costs incurred to date, including development, land, and financing, not just construction. It is paid from the Judgment Fund without appropriations (163:23–165:24).
No administration can block a class of projects "without facing legal action and fines" (fact sheet)	Overstated	Sec. 1402 bans nothing. One applicant can sue after a court-tested statistical showing of an "intentional course of action," after a 180- or 280-day wait, with no class actions. The "fines" are damages paid to the applicant (168:22–24; 179:20–24; 181:8–182:6).
An "optional dispute resolution process" (section-by-section)	Omits key detail	It is optional for the sponsor. The order is final, unreviewable, and counts as "full compliance" with any interagency consultation duty in dispute, which reaches ESA consultation between federal agencies (52:5–23).
Limits on stopping a project "while preserving" relief under the Administrative Procedure Act (fact sheet)	Overstated	For NEPA and NHPA violations, vacatur and injunctions are barred "notwithstanding any other provision of law." The project may proceed during remand (69:19–70:3; 71:13–25).
Tribes keep the right "to formally consult" (fact sheet)	Overstated	Consultation at the early steps is "may consult." A party that misses a 30-day window is passed over, and the agency can end review "in the sole discretion of the Federal official." A narrower statutory duty to consult tribes on religious and cultural sites remains (387:6–16; 400:12–21; 393:4–12).
Geothermal permits "in 60 days" (fact sheet)	Overstated	The 60 days start only after NEPA, ESA, and historic preservation work is complete (342:4–12).
A "mandatory funding source" for abandoned mine cleanup (fact sheet)	Overstated	Spending needs no further appropriation, but the \$400 fee that feeds the fund is collected only "to the extent provided in advance in appropriations Acts" (311:9–13).
Data centers "pay for all of their associated transmission costs" (fact sheet)	Accurate but incomplete	Broader than claimed, since it covers generation and distribution too. Narrower in that it applies at 20 MW, only to loads that connect after enactment, and uses the utility's cost estimate subject to regulators' approval (232:3–13; 233:25–234:3; 240:1–8).
Big load centers, "whether that's a factory or a data center" (Heinrich remarks)	Overstated	The rule covers data centers and high-density computing, including crypto mining. Factories are not covered (232:3–233:12).
Two-year EIS and one-year EA deadlines "with consequences" (fact sheet)	Accurate but incomplete	The deadlines already exist from 2023. What is new is enforcement: only the sponsor can sue, extensions need the sponsor's approval, and named officials face sanctions (53:3–55:4).
Just compensation is a constitutional right "not affected" by the Federal Rules (section-by-section)	Omits key detail	True, but the bill strikes the Federal Power Act's text setting compensation at fair market value including severance damages (192:15–19). The Fifth Amendment still requires payment; the statutory measure is gone.
Exempting low-disturbance activity from extra review (fact sheet; section-by-section)	Overstated; omits key detail	Sec. 2229 declares listed oil, gas, and geothermal activities "shall not be considered a major Federal action" under NEPA. It sits under geothermal but mostly concerns oil and gas (349:6–16).
A 150-day deadline for challenges under the Clean Water Act, ESA, NEPA, and NHPA (fact sheet)	Accurate	Confirmed at 68:1–9, 129:1–130:12, 154:14–21, and 408:17–409:8.

What the sponsor materials leave out

The framing check also lists 13 provisions the sponsor materials omit or barely describe. The ones with the most consequence:

- **The landowner compensation text.** No sponsor document says the bill strikes FPA 216(f). None of the outside analyses we read caught it either.
- **The Judgment Fund and the Court of Federal Claims bar.** Sec. 1401 awards come out of the Treasury's Judgment Fund and "shall not be subject to the availability of appropriations." The Court of Federal Claims loses jurisdiction over related claims "in perpetuity if relief is granted" (165:18–166:10).
- **The offshore wind special rule.** Sec. 1401(b)(4)(E) routes new interference with a project whose stop-work order was enjoined in the year before enactment back to "the same judge" (165:1–17). No sponsor material mentions it.
- **The nationwide permit consultation waiver.** When any nationwide permit is reissued, no ESA or Section 106 consultation is required and a programmatic EA suffices, as long as the reissued permit does not weaken preconstruction notice (127:11–128:14).
- **The state data center authority.** States may set terms for data centers "less favorable than" those for other large industrial customers (239:1–5). The sponsors describe a cost floor, not a license to treat data centers worse.
- **Personal sanctions.** Agency heads may not travel more than 25 miles from their duty station on official business once deadlines are missed by 60 days, with the Secretary of Defense exempt (54:9–55:4).

How the sponsors describe data centers

The data center rule is the claim reporters are most likely to quote, so it gets a closer look. The sponsors sell it as making data centers pay their own way "by statute, not a suggestion." That is fair as far as it goes. New FPA 228 says:

No portion of the incremental cost may be allocated to, or recovered in the rates of, any customer other than a covered load, subject to the limitations described in subsection (e). (Sec. 2107, 234:23–235:2)

The text goes beyond the sponsor pitch in two ways. It covers generation and distribution costs as well as transmission. It also lets states treat data centers as a less-favored class, which Heatmap called a "data center double tap" [15]. The text falls short of the pitch in three ways. It applies only to loads that connect after enactment. It relies on the utility's estimate of cost, subject to approval by FERC or a state. And the FERC pricing rule that carries the policy into transmission rates runs on a schedule of 270 days, then 270 more, then a year (Part VIII). The "subsection (e)" the floor refers to contains no limitations, a drafting problem covered in Part IX.

A crowded state field

FPA 228 would not land on empty ground. Our own working paper, "The State of Server Country," a 50-state survey of data center policy with data through July 17, 2026, found that by mid-June 2026, 33 states had a large-load protection that was approved, required by statute, filed by a utility, or formally pending [5]. Most use the same parts: a megawatt threshold, long contracts, and minimum bills. Every state threshold the paper records is higher than FPA 228's 20 MW line, from 25 MW in Virginia and Ohio to 100 MW in Georgia and Michigan, and 150 MW for contract review under Alabama's 2026 law. Arrangements that FERC or a state approved before enactment "shall remain in effect" (240:5–8), so the federal floor does not displace their

terms; whether it applies on top for loads that connect after enactment under them is open (Part IX, question 24). Its new reach would be the band of loads between 20 MW and each state's own threshold (Inference). The paper predates BAAJA and never discusses it. Part VI maps the state rules in detail.

Data centers do not appear on Sec. 1402's list of 46 named project types whose applicants can sue over an intentional pattern of unequal treatment. The list covers generation, pipelines, transmission, mining, and fuel export projects (169:1–172:20).

Misreadings in outside coverage

Two days after release, real analysis was thin. Of 213 legal, think-tank, and section-by-section items in our search corpus, only eight discussed BAAJA, and the Congressional Research Service had not written anything. Our analyses agent compared 21 sources (law firms, Heatmap, Green Tape, Legal Planet, ACRA, the sponsor summaries, and advocacy statements) against our reading. Of 103 claims, 69 agreed with our agents and 31 conflicted with our reading or with the text. On the core of the bill, outside readers and our agents agree.

These are the clearest misreadings, each checked against the text.

SOURCE	WHAT IT SAID	WHAT THE TEXT SAYS	CITE
Heatmap [79]	NEPA suits are open to people who commented "or" who would be directly harmed	Both conditions apply: a detailed comment and a direct harm	68:10–20
Heatmap [79]	ESA review is capped at "145 days, tops"	145 days is when an applicant can sue to compel action if a longer period was set without its consent; the base clock is 60 days	135:16–24
Heatmap [79]	After a state waives certification, the federal government cannot do its own water quality review	The text only bars court review of a waiver	116:6–10
Heatmap [79]	The bill clarifies that states may regulate low-voltage local transmission	FPA 226 creates a state referral to FERC and preserves FERC's authority	224:1–3
Heatmap [79]	Data centers must report energy use every year	EIA must revise a form; no reporting duty falls on data centers by name	279:21–25
Legal Planet [80]	Remedy limits apply only to NEPA suits	Section 404 permits get a near-bar on vacatur; NHPA copies NEPA's rule	132:7–15; 406:25–407:2
Legal Planet [80]	The record rule bars agencies from collecting new information	The text excuses agencies from considering late research; it does not bar collecting it	43:12–17
Holland & Knight [48]	The bill favors "remand ... rather than vacatur" for NEPA	Remand without vacatur is "the only remedy," and the authorization stays in effect	69:24–70:3; 71:14–18
Holland & Knight [48]	The Section 106 rewrite "preserves formal consultation roles"	True only for the adverse-effect step; earlier steps are "may consult"	387:6–16; 392:4–16
Green Tape [81]	The drilling-permit exemption covers units where federal minerals are under half	Only the first prong has that test; two others exempt wells whose wellbore merely crosses federal minerals	287:5–11
Kean Miller [82]	The NEPA detailed-comment rule applies to ESA challenges	Sec. 1305 has no comment requirement	154:14–21

SOURCE	WHAT IT SAID	WHAT THE TEXT SAYS	CITE
The Innovation Attorney [83]	Judicial review is in "Section 1111"	No Sec. 1111 exists; Sec. 1110 inserts NEPA sec. 111	67:8–13
CBD [84]	Pipelines "can never be challenged in court"	The bill sets deadlines and limits; it bars no suit	68:1–9
CBD [84]	It is "impossible to bring an environmental justice claim"	The text never mentions environmental justice; "direct harm" narrows standing but bars no type of claim	68:18–20
Animal Welfare Institute [85]	All Section 7 suits move to the D.C. Circuit	Only petitions on the Secretary's biological opinions do; suits against a state program stay in district court	147:5–10
ENR summary [86]	The 404(c) change affects "the federal water-quality certification process"	That is the dredge-and-fill veto, a different program from Section 401	123:19–124:5
EPW summary [87]	Sec. 1303 exempts certain transportation projects from Section 7 "consultations"	For highway and transit projects in existing rights-of-way, it removes the substantive no-jeopardy duty too; the take ban still applies	136:17–137:3

A dispute the text settles

Heatmap said remand-without-vacatur rules reach Clean Water Act and ESA cases. Legal Planet said they do not. The text splits the difference. Heatmap is right for historic preservation, which copies NEPA's remand-only rule (406:25–407:2), and for Section 404 permits, where a court "may not vacate, revoke, enjoin, or otherwise limit the permit" without "an imminent and substantial danger" (132:7–15). Legal Planet is right for the ESA, where Sec. 1305 sets only a deadline and a court, with no remedy limit (154:14–155:7).

What no outside analysis noticed

A keyword sweep of all the outside analyses found none that mention:

- the strike of FPA 216(f)'s just-compensation text (192:15–19);
- the CEQ Chairman's "full compliance" orders (52:14–23);
- the Sec. 1401 Judgment Fund payment, the perpetual Court of Federal Claims bar, or the same-judge rule;
- the requirement that a sponsor approve any NEPA deadline extension (53:3–5);
- the ERCOT gap: FPA 216 and 225 exclude the Texas grid, but the FPA 228 data center rule has no Texas carve-out;
- the drafting defects in Part IX.

Outside analysts raised two questions we had not taken up. One is whether the Defense Department's slowdown of airspace clearances for wind turbines falls under Secs. 1401 or 1403. The other is whether a new 20-page "record of stakeholder engagement" becomes a bottleneck for drilling permits that need an EA (21:23–22:3; 66:17–67:3). Both remain open.

WHAT THIS MEANS FOR DATA CENTERS

The record cuts both ways. The bill's acceleration machinery (150-day suit limits, remedy limits, sponsor-enforced clocks, the permit freeze) comes from earlier permitting bills, its public backers are mostly oil, gas, pipeline, manufacturing, and clean-power interests, and the sponsor materials understate the provisions that favor sponsors. But the one title written specifically for data centers is new text that puts costs on them, lets states treat them worse than other large customers, and leaves them off Sec. 1402's list of protected project types. Data center operators and the big cloud companies were silent in the first two days, and the loudest "Big Tech" claim came from an opponent. On origins and voices alone, BAAJA reads more like a general permitting deal with a data center cost rule attached than a data center bill.

PART VIII

If It Passes: The Calendar

180 deadlines, most of them with no consequence for missing them.



If It Passes: The Calendar

BAAJA sets 180 separate clocks. Seventy-four are program deadlines that agencies owe once or on a cycle. The other 106 run per project, filing, or application. The bill states no enactment date, so this part uses a **hypothetical enactment date of January 15, 2027** to put the program deadlines on a calendar. On that assumption, 51 program deadlines get a date: 18 fall in the first 180 days, 34 by the end of year one, and 47 by the end of year two. FERC carries the heaviest load, with 19 duties due within two years. The key asymmetry is in enforcement. The clocks that bind individual reviews come with sponsor lawsuits, automatic waivers, and personal sanctions on officials. None of the 23 rulemaking deadlines, including every FERC rule, carries any stated consequence. At least six deadlines cannot work as written, and one, an Energy Information Administration form deadline, can fall before the law exists.

How to read the dates

Every date in this part rests on an assumption: **the bill is signed on January 15, 2027**. That date is hypothetical. Congress has not passed the bill, and the bill sets no date; mid-January 2027 is a working assumption, not a prediction. Change the enactment date and every program date shifts with it. A few deadlines, as shown below, behave strangely depending on when the bill is signed.

Two other conventions apply. Each actor is assumed to act on the last day it is allowed, which is the worst case for whoever is waiting. Where one deadline runs from another (for example, a FERC rule due 270 days after a policy statement is published), the chain assumes same-day publication in the Federal Register (Inference). Calendar days are not adjusted for weekends or holidays, because the bill does not say to.

The 180 clocks come from two sweeps. Our language-processing layer found 117 by matching phrases like "not later than." A second read of the text found 63 more that the machine missed. Among them are the NEPA one-year and two-year clocks, the ESA 60-, 100-, and 145-day marks, both Clean Water Act Section 401 limits, and seven funding authorizations. They were missed because they use phrasing like "not to exceed," "extends beyond," or "effective on the date that is."

What changes on day one

Several parts of the bill take effect the moment it is signed, with no agency rule in between. These are the ones a project sponsor or opponent would feel first.

- **NEPA review deadlines.** The National Environmental Policy Act (NEPA) clocks in new section 107(g) bind projects at once. An environmental assessment (EA) is due one year, and an environmental impact statement (EIS) two years, after the earlier of the agency's decision on the level of review or its notice that the application is complete (46:10–49:6). The bill has no transition rule for reviews already under way. Our calendar agent searched for "pending," "applies to," and "effective"; only Secs. 1110, 1204, and 2107 have applicability clauses (67:16; 124:7; 240:1).
- **Sponsor enforcement.** From day one, a project sponsor may petition a court over a missed NEPA deadline, and "the court shall provide injunctive relief, as appropriate" (55:18–23; 57:17–23).

- **The 150-day limit on NEPA suits.** It covers any claim "filed on or after the date of enactment" (67:14–18). Suits already pending are not covered.
- **The permit freeze.** Sec. 1401 reaches back before enactment. It protects federal permits held by non-federal sponsors that are "in effect on or after September 16, 2026" (159:9–15), two weeks before the bill was introduced.
- **The data center cost floor.** New FPA 228's no-subsidy rule needs no FERC rule to take effect. It applies to any covered load "that interconnects on or after the date of enactment," and arrangements already approved by FERC or a state stay in effect (240:1–8).
- **ESA consultation.** The formal consultation period drops from 90 to 60 days, and the point at which an applicant's consent is needed drops from 150 to 100 days (134:16–135:5). The current rule, 50 CFR 402.14(e), says formal consultation "concludes within 90 days." Inference: it would conflict with the statute from the day of enactment, whether or not the Fish and Wildlife Service finishes the revision it proposed in November 2025 (90 FR 52600).

One item is delayed on purpose. An applicant cannot file a Sec. 1402 claim over an intentional pattern of unequal treatment until 180 days after enactment for permits that need no EA or EIS, or 280 days for permits that do (181:16–182:6).

The program calendar

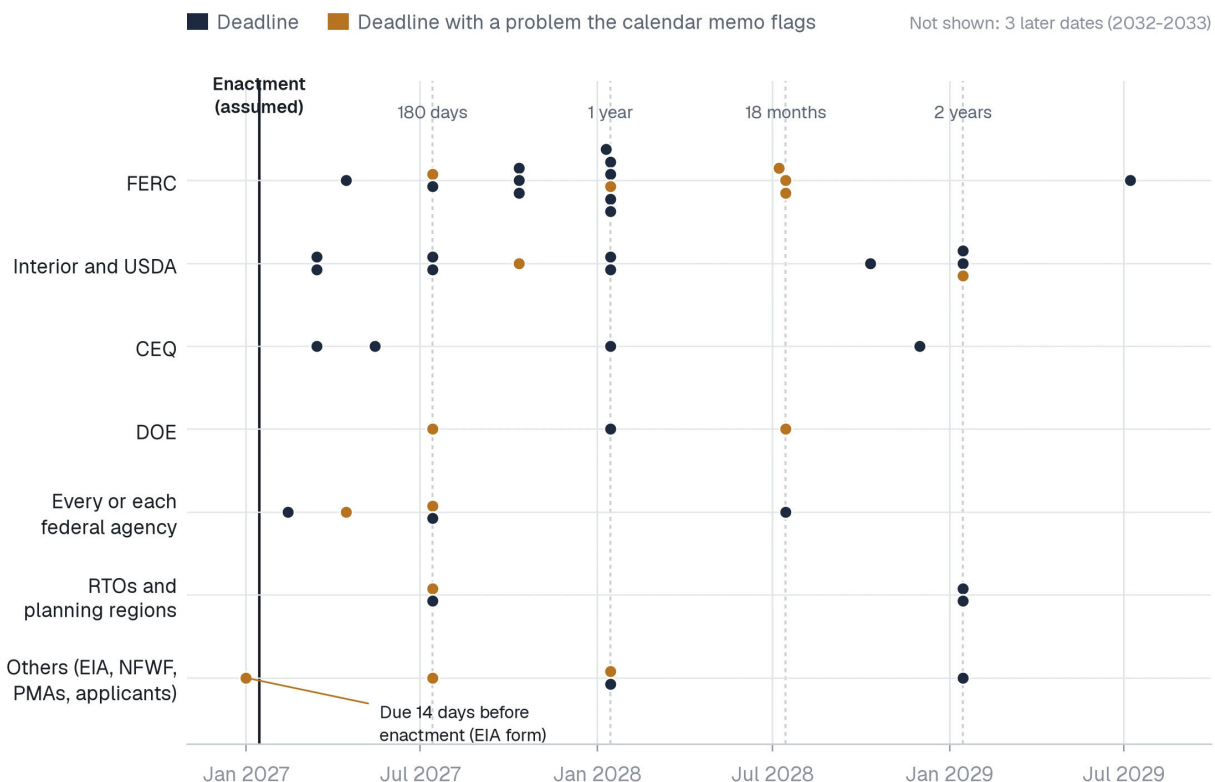


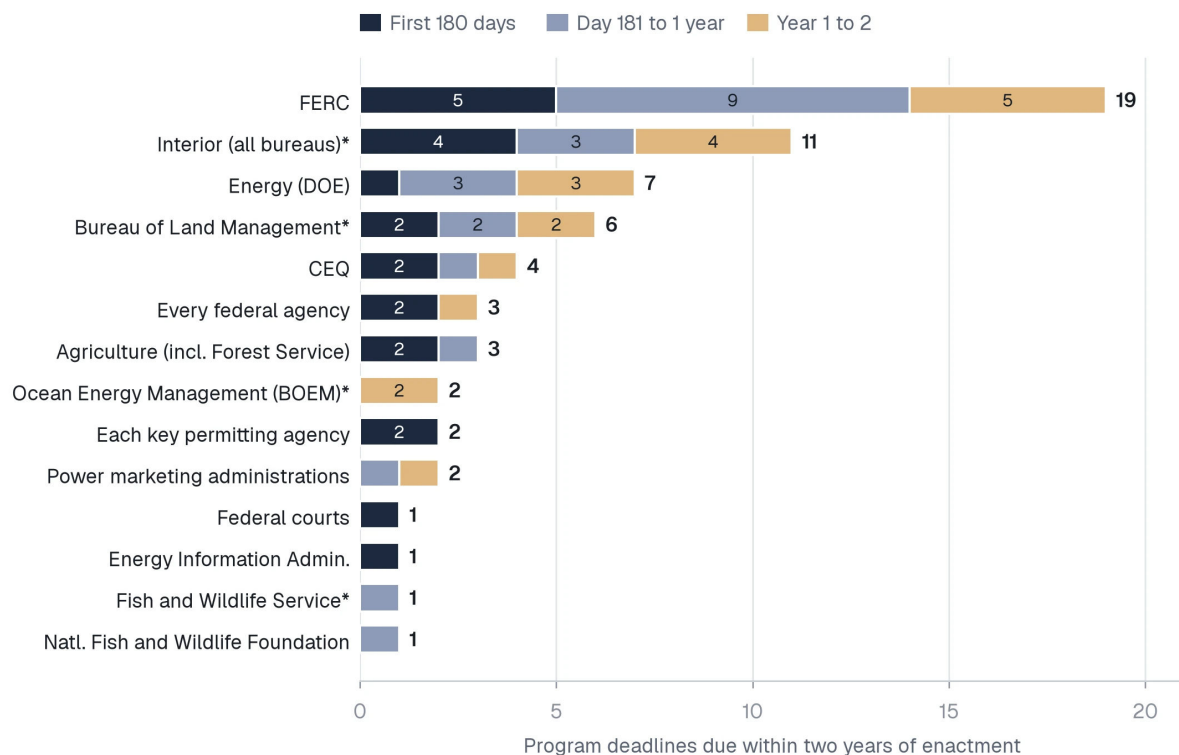
Figure 22: On a hypothetical January 15, 2027 enactment, FERC, Interior, and CEQ deadlines stack up in the first two years

All dates assume the hypothetical January 15, 2027 enactment.

WHEN (HYPOTHETICAL)	WHAT FALLS DUE	CITE
Jan. 1, 2027 (14 days <i>before</i> enactment)	The Energy Information Administration (EIA) revises Form 861 to include data center load	279:21–25
Day 30 (Feb. 14, 2027)	Every agency lists its categorical exclusions for the Council on Environmental Quality (CEQ)	62:12–16
Day 60 (Mar. 16)	CEQ publishes data standards; Interior appoints a Geothermal Ombudsman and Task Force	76:2–5; 333:5; 334:7
Day 90 (Apr. 15)	Key permitting agencies report gaps against the data standards; FERC proposes a hydropower rule	81:16–25; 355:14
Day 120 (May 15)	CEQ issues implementation guidance	77:22
Day 180 (July 14)	All agencies conform their NEPA procedures; FERC regional planning rule (FPA 225); Interior and USDA categorical exclusions for renewables and grid projects; FERC micro-hydro rules; DOE distributed-permitting program; grid operators file behind-the-meter market tariffs	25:17–25; 211:11–14; 301:22; 304:23; 360:21; 256:11; 244:21
Day 270 (Oct. 12)	FERC revises its 1994 transmission pricing policy for data center load; FERC final hydropower rule; Interior's <i>proposed</i> rule for state takeover of ESA consultation	229:14–18; 356:4; 139:1
Year 1 (Jan. 15, 2028)	FERC rules on state referral, advanced transmission technologies, and grid data; FERC opens an interconnection-queue rulemaking; DOE transmission congestion study; geothermal categorical exclusion	220:4; 262:8; 271:9; 265:13; 205:15; 324:17
Month 18 (July 2028)	FERC consolidated planning rule (FPA 318); DOE lead-agency transmission rules; the behind-the-meter market standard takes effect; FERC proposes data center transmission rates (July 8)	224:20–24; 196:15–25; 243:13–15; 230:15–23
Year 2 (Jan. 15, 2029)	Regions file planning processes at FERC; BOEM final offshore transmission rule; preferred offshore cable routes; BLM renewable review standards	214:21–23; 225:22–24; 369:13; 367:15; 304:9
Later	FERC final rule on data center transmission rates (July 8, 2029); five-year reports (Jan. 2032); geothermal cost recovery ends (Sept. 30, 2033)	231:9–17; 345:14; 343:4

The data center pricing rule shows how far a chain can stretch. FERC must revise its 1994 pricing policy within 270 days. It then has 270 days after that policy is published to propose a rule, and one year after the proposal to finish it (229:14–231:17). On the hypothetical calendar, the final rule lands in July 2029, two and a half years after enactment. The FPA 228 cost floor, by contrast, applies to new loads from day one.

Who carries the load



*Interior's row already includes the duties listed for BLM, BOEM, and FWS; do not add them.

Figure 23: FERC owes 19 separate duties within two years, more than any other agency

Counting each duty once for every agency named in it, our calendar agent found this distribution of dated program deadlines.

AGENCY	FIRST 180 DAYS	DAY 181 TO YEAR 1	YEAR 1 TO 2	TOTAL BY YEAR 2	PER-PROJECT CLOCKS
FERC	5	9	5	19	11
Interior (all bureaus)	4	3	4	11	24
DOE	1	3	3	7	0
BLM (also counted in Interior)	2	2	2	6	15
CEQ	2	1	1	4	6
USDA	2	1	0	3	4
Every federal agency	2	0	1	3	42
EPA	0	0	0	0	5
Army Corps of Engineers	0	0	0	0	1
States	0	0	0	0	15

These are counts of separate legal duties, not effort. A FERC rulemaking and a FERC report each count as one.

- **FERC** owes three rules in its own name by day 180 (regional planning, a hydropower proposal, and micro-hydro rules) and eight in all by year one. It also has to review every region's planning filing when they all arrive on the same day in year two (214:21–23; 225:22–24).
- **Interior** owns the proposed state-assumption rule for ESA consultation and the whole geothermal package.
- **CEQ** has only four dated duties, but it also decides every project-level dispute over which agency leads a review and every dispute a sponsor brings over a delay (35:16–21; 51:24–52:4). Those orders are final and unreviewable (35:22–36:3; 52:5–23).
- **EPA, the Corps, and the states** have no dated program deadlines. Their exposure is entirely project-level: Section 401 clocks, longer permit terms, and, for state and tribal historic preservation offices, a two-year performance review that can end in suspension of grants and, two years after that, an Interior takeover (373:18–24; 374:1–21; 377:5–14).

Rules the bill forces or overrides

The calendar sits on top of a busy regulatory record. CEQ removed its government-wide NEPA regulations in 2025 (90 FR 10610; final rule 91 FR 618, January 8, 2026), and agencies wrote their own procedures in 2025 and 2026. Sec. 1103 accepts that model and then makes every agency revise again:

Not later than 180 days after the date of enactment of the Bipartisan American Affordability and Jobs Act of 2026, each agency of the Federal Government shall make any changes to the existing regulations, procedures, or policies of the agency that are necessary to implement the intent, purposes, and procedures set forth in this Act (Sec. 1103, 25:17–23)

Our agency agent mapped 161 Federal Register documents and dockets to the bill. The main collisions:

- **Section 401.** EPA's 2023 rule at 40 CFR part 121 sets a 6-month default review period. The bill lets the federal licensing agency set a period of up to one year, with waiver if the state misses it (114:15–115:15). EPA's January 2026 proposal (91 FR 2008) is still pending.
- **ESA consultation.** As noted above, 50 CFR 402.14(e) says 90 days, and the statute would say 60.
- **Nationwide permits.** The Corps' January 2026 reissuance (91 FR 768) becomes a statutory floor for five permits, and the 5-year limit in 33 CFR 330.6(b) needs revision for terms of up to 10 years.
- **FERC transmission.** Order No. 1977's siting rules (18 CFR part 50) must change. The Order 1920 series becomes a safe harbor for regional planning, and FERC owes a new planning rule in 180 days (211:11–14; 217:1–7).
- **Hydropower.** Sec. 2233 writes FERC docket RM26-3 into the statute and orders a proposed rule "based on" it within 90 days (355:14–25).
- **DOE corridors.** Sec. 2101 strikes the Energy Department's power to designate national interest transmission corridors, so DOE's 2023 to 2025 corridor notices lose their statutory base (185:11–13).

Which deadlines have teeth

This is the most important pattern in the calendar. Deadlines that bind a single project's review come with real consequences. Deadlines that bind an agency's rulemaking come with none.

Project-level clocks with teeth:

- **NEPA.** A sponsor may sue and get an injunction (55:18–57:23). If a key permitting agency is still out of compliance 30 days after CEQ's chairman finds it caused a missed deadline, its chief permitting officer and supervisory senior executives with a role in the review must spend at least half the workweek on the problem (53:12–54:8). After 60 days past the deadline, the agency head may not travel more than 25 miles from the duty station on official business (54:9–55:2). The Secretary of Defense is exempt (55:3–4). One listed excuse is a lapse in appropriations of more than two weeks (57:12–16).
- **Section 401.** A state that misses the period loses the certification requirement entirely (115:3–15).
- **ESA.** An applicant may sue to compel action if a longer consultation period is set past 145 days without its consent (135:16–24).
- **Sec. 1403.** A sponsor may sue over unreasonable delay on permits that need no EIS or EA (184:22–185:4).

Final and unreviewable: the CEQ chairman's lead-agency designations and dispute orders (35:22–36:3; 52:5–23).

No stated consequence: all 23 rulemaking-type deadlines, all 26 report deadlines, and the deadlines that apply to cooperating agencies. FERC is an independent agency. Inference: the practical remedy for a missed rule deadline is a suit under the Administrative Procedure Act to compel action unlawfully withheld (5 U.S.C. 706(1)), which the bill mentions only in the ESA section.

Note who can enforce each kind of clock. The project clocks are enforced by the sponsor: only a sponsor can petition over a missed NEPA deadline, and only an applicant gets the ESA relief. The public's path into court is the separate 150-day, comment-first, direct-harm claim in Sec. 1110 (Part II).

Project clocks

These run per project. Our calendar agent applied them to a hypothetical complete application filed March 1, 2027, with every step taken on its last allowed day.

REVIEW	CLOCK	HYPOTHETICAL RESULT	CITE
NEPA front end	Completeness notice in 60 days; level-of-review decision 60 days later	Starts the EA or EIS clock	64:22–65:14
NEPA EA	1 year; finding of no significant impact in 7 days; participating agencies' permits 90 days after the EA, others 120	EA by Apr. 30, 2028; permits by July 29 or Aug. 28, 2028	46:10–48:6
NEPA EIS	2 years; record of decision in 45 days; permits 90 or 120 days after the EIS	EIS by Apr. 30, 2029; decision June 14; permits July 29 or Aug. 28, 2029	48:15–50:12
ESA Section 7	60-day formal period; applicant consent needed at 100 days; relief past day 145	About 105 days end to end if the current 45-day opinion rule stays (Inference)	134:16–135:24
Clean Water Act 401	Receipt acknowledged in 3 days; completeness in 90 days; action within the period the licensing agency sets, up to 1 year, or 9 months for gas pipelines and interstate transmission	Waiver at the period's end	111:1–112:5; 114:15–115:15; 121:10–21
NHPA Section 106	30 + 60 + 90 + 60 + 45 + 30 days from request to final determination; 30 days of silence lets the agency proceed	315 days at most, and not past the NEPA document's completion absent an approved extension	386:8–395:10; 400:12–21; 398:1–12

REVIEW	CLOCK	HYPOTHETICAL RESULT	CITE
Geothermal drilling permit	Completeness in 30 days; issue or defer in 30 more	About Apr. 30, 2027, if NEPA work is done	330:3–331:18
Court challenge	150 days after publication or public release	Applies to NEPA, Section 404, Section 106, ESA opinions, and energy permits	68:1–9; 129:1–130:12; 154:14–21; 284:9–21; 408:17–409:8

Two of these clocks fit inside others. The 315-day historic preservation sequence fits inside a one-year EA, so the cap tied to the NEPA document matters mainly for shorter schedules (Inference). In the 9-month Section 401 case, the 90-day completeness window sits inside the period, which leaves the state about six months of effective review (Inference).

Deadlines that cannot work as written

Our calendar agent found at least six deadlines that are inconsistent or unworkable on their own terms, plus two related sequencing problems. The first is the clearest:

Not later than 90 days before the first April 1 after the date of enactment of this Act, the Administrator of the Energy Information Administration shall revise Form 861 of the Energy Information Administration to include load from data center entities. (Sec. 2114, 279:21–25)

- 1. A deadline before the law.** EIA must revise Form 861 "not later than 90 days before the first April 1 after the date of enactment" (279:21–25). On the hypothetical January 15, 2027 enactment, the first April 1 is April 1, 2027, and the deadline is January 1, 2027, two weeks before the bill becomes law. Any enactment from January 2 through April 1 puts the deadline in the past.
- 2. 145 days against 100.** Sec. 1302 cuts the consent mark to 100 days but gives the applicant relief only past 145 days (135:2–3; 135:16–24). A period of 100 to 145 days without consent breaks the new rule but has no express remedy. Readers suspect 145 is a leftover; the text does not say.
- 3. A state ESA program with no start date.** Interior must issue a *proposed* rule within 270 days (139:1–4), and no state may take over consultation until "the implementing regulation takes effect" (140:6–10). The bill sets no deadline for the final rule.
- 4. Compliance before the standard.** Grid operators must file behind-the-meter market tariffs within 180 days, and FERC must act within 180 days after that (244:19–245:6). The standard those filings implement takes effect at 18 months (243:13–15). Compliance is due and decided about six months before the rule has legal force.
- 5. Two planning rules, one filing date.** FERC's regional planning rule is due at 180 days and its consolidated planning rule at 18 months, but regions file both at two years (211:11–14; 214:21–23; 224:20–24; 225:22–24). Regions get 18 months under the first rule and 6 months under the second.
- 6. Data standards in the wrong order.** CEQ publishes standards at day 60, agencies report gaps at day 90, and CEQ issues implementation guidance at day 120 (76:2–5; 81:16–25; 77:22). Agencies compare their systems to the standards a month before they learn how to implement them.
- 7. NEPA procedures before transmission rules.** Every agency must conform its NEPA procedures in 180 days, while the DOE lead-agency transmission rules come at 18 months (25:17–25; 196:15–25). Inference: DOE's revised procedures would come before the rules they must fit.

8. **A cause of action that cannot yet be used.** Sec. 1402's one-year decision clock runs from the application, but no claim may be filed until 180 or 280 days after enactment (181:16–182:6). The claim can exist before it can be brought (Inference).

Money: what is guaranteed and what is not

The bill authorizes seven funding streams. An authorization funds nothing until Congress appropriates the money.

PURPOSE	AMOUNT	STATUS	CITE
CEQ	\$5 million a year	Authorization only	96:1–3
Permitting Improvement Fund	\$20 million a year, FY2027–2033	Authorization only	102:14–16
ESA Section 7 and state assumption	\$150 million a year, FY2027–2031	Authorization only	155:18–24
DOE distributed-permitting program	\$20 million a year, FY2026–2031	Authorization only; FY2026 ended the day the bill was introduced	259:20–23
Historic Preservation Fund	\$200 million a year, FY2027–2036	Deposits authorized; spending from the fund needs no further appropriation	414:9–19
Coastal State Fund	Program by year 1	"Subject to the availability of appropriations"	157:3–6

None of the deadlines that depend on this money, such as CEQ's 60-day data standards or DOE's 180-day program, is conditioned on it arriving.

One payment stream works differently. Sec. 1401 awards to sponsors who win a challenge to a revocation or other barred action are paid from the Treasury's Judgment Fund and "shall not be subject to the availability of appropriations" (165:18–24). Sec. 1402 damages are paid the same way (181:1–7).

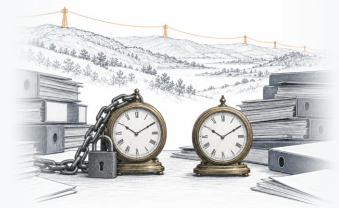
Open questions

- Do the NEPA 107(g) clocks reach environmental reviews that began before enactment? Inference: if they do, a pending EIS whose starting date is more than two years old would be late on day one.
- Is a NEPA suit filed after enactment, against an approval made public more than 150 days earlier, barred on day one?
- Can a state apply to take over ESA consultation before the implementing rule is final, and does Interior's 180-day decision clock then run?
- Does the Section 401 waiver for a missed period also apply to the 9-month period for pipelines and transmission? The waiver cross-refers to the general period (115:3–15; 121:10–21).
- Which date controls where the text says "enactment of this section" (FPA 224, 225, and 229) rather than "enactment of this Act"?
- Can a court order FERC to meet a rule deadline, and does a missed deadline affect a later rule?
- Does a "final rule" required in two years (BOEM, 369:13–17) need a proposed rule first?

WHAT THIS MEANS FOR DATA CENTERS

The calendar mostly fits the concern about speed. The clocks that move individual projects, including generation, pipelines, and transmission that could serve data centers, start on day one and are enforced by sponsors, automatic waivers, and personal sanctions, while rulemakings and reports carry no stated consequence. Money follows the same pattern: sponsor awards come from the Judgment Fund without appropriations, while staffing and preservation funding is only authorized. But the one rule aimed at data centers cuts the other way on timing. The FPA 228 cost floor binds new data center loads from enactment with no rule needed; only the FERC pricing rule that carries the policy into transmission rates is back-loaded to about July 2029 on the hypothetical calendar. The data center reporting duty for EIA is the one data center deadline that cannot be met for many enactment dates.

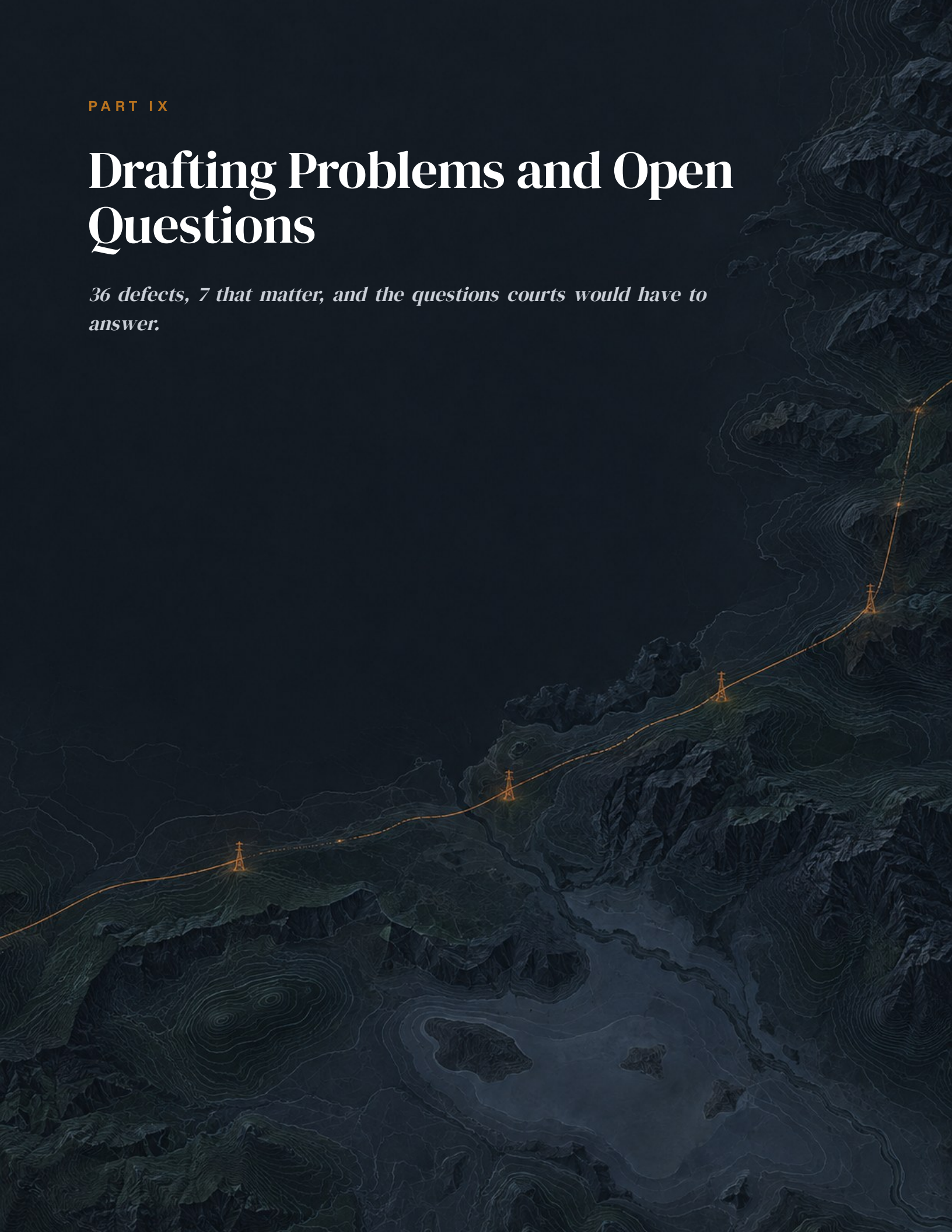
***Project clocks have teeth. Rulemaking deadlines
have none.***



PART IX

Drafting Problems and Open Questions

36 defects, 7 that matter, and the questions courts would have to answer.



Drafting Problems and Open Questions

Our drafting audit logged 37 defects in the 417-page text. A later verification pass withdrew one (the supposed conflict between FERC's Order 1920 and the bill's ban on rights of first refusal), which leaves 36: 7 that change who must do what, 21 ambiguities, and 8 cosmetic slips. Mechanically, the bill is mostly clean. Its cross-references to its own sections, its table of contents, and its list numbering all check out. The defects cluster where text was copied from a neighboring paragraph or written against section numbers that the bill itself changes. The seven substantive defects hit some of the bill's most important provisions: a historic preservation sanction that opens with a stray phrase, an ESA cross-reference that lands on the wrong paragraph, a data center cost floor tied to "limitations" that do not exist, and the wrong Act's citation in the clause that removes NEPA review from oil and gas drilling permits. Beyond drafting, the bill leaves at least two dozen legal questions for courts.

How we looked

Our drafting agent built a registry of defects from three sources: the seven section readers, the two AI annotation layers (Anthropic's Sonnet 5.5 and OpenAI's GPT-6.1 Sol, each reading one section at a time), and our comparison with outside analyses. It then wrote six scripts to check the text mechanically.

CHECK	WHAT IT TESTS	RESULT
Bill cross-references	Every "section NNNN" reference to a bill section exists	No real defects
Internal references	Subsection and paragraph references inside each new section resolve	No real defects beyond those in the registry
Act citations	"The [Act] (N U.S.C. Y)" points to the right part of the U.S. Code	Caught the Mineral Leasing Act miscite on its own
Strike instructions	Text the bill tells the Code to strike actually exists	No real defects
Table of contents	71 headings match the table; no doubled words	Clean
List numbering	Lettered and numbered items run in order	25 odd hits, all explained by insertions into existing law

Every defect quote was matched again against the bill text. The scripts found few new errors, which suggests the bill is mechanically sound outside the defects listed here. The most important new find did not come from a script. It came from comparing the readers' notes on how Sec. 1106 renumbers NEPA with the cross-reference in Sec. 1304.

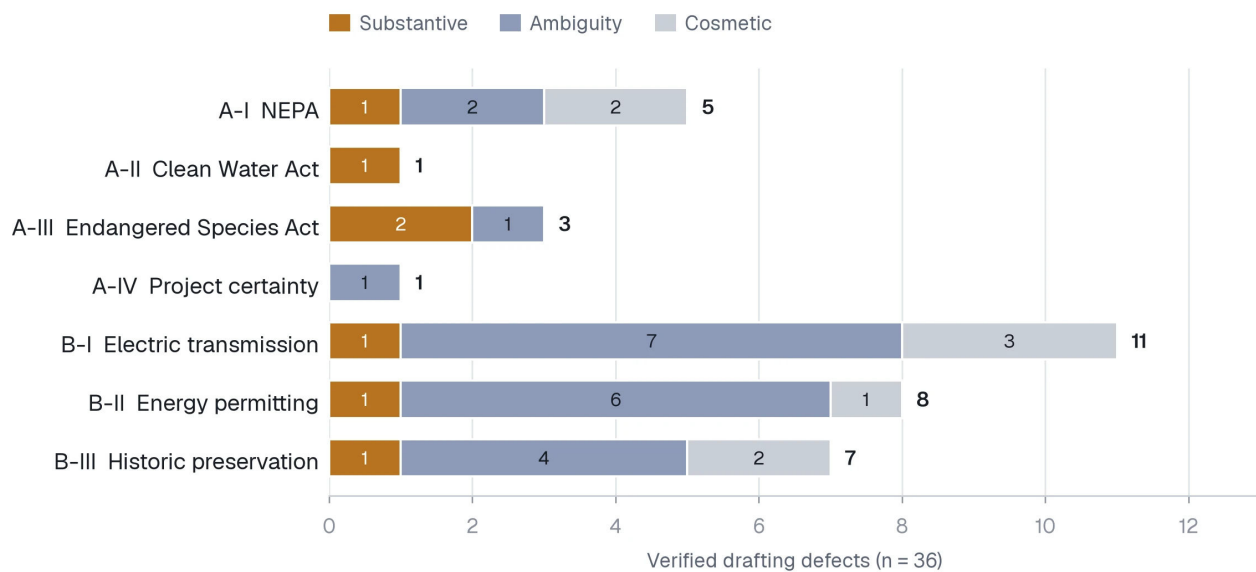


Figure 24: Defects cluster in the transmission, energy permitting, and historic preservation titles; most are ambiguities, not errors

TITLE	SUBSTANTIVE	AMBIGUITY	COSMETIC	TOTAL
Div. A, Title I: NEPA	1	2	2	5
Div. A, Title II: Clean Water Act	1	0	0	1
Div. A, Title III: Endangered Species Act	2	1	0	3
Div. A, Title IV: Project certainty	0	1	0	1
Div. B, Title I: Transmission	1	7	3	11
Div. B, Title II: Energy permitting	1	6	1	8
Div. B, Title III: Historic preservation	1	4	2	7
Total	7	21	8	36

The table reflects the verification pass. The registry as first logged had 37 entries and listed the Order 1920 item as an eighth substantive defect in the transmission title.

Most fixes are one line. Three need real drafting decisions.



The seven that change outcomes

1. A sanction that opens with a stray phrase

New 54 U.S.C. 306108(c)(5)(B)(ii) is the historic preservation twin of NEPA's deadline sanction. Here is the whole sentence after its "if" clause:

the consultation requirement for purposes of this subsection, each State Historic Preservation Officer, Tribal Historic Preservation Officer, and employee within Senior Executive Service (as defined in section 2101a of title 5) that has supervisory authority over personnel in a relevant agency that has a substantive role or responsibility in the consultation, shall spend not less than 50 percent of the workweek, as determined pursuant to title 5 or other applicable law, to remedy the failure. (Sec. 2301, 398:18–399:5)

The sentence has a verb ("shall spend"). The problem is its opening phrase, "the consultation requirement for purposes of this subsection," which attaches to nothing. Words seem to be missing, so nobody can tell whether the consultation requirement is waived, deemed met, or simply stays. The garble is in the source PDF, not in our parsing. The rest of the sentence raises a second problem. It lists State and Tribal Historic Preservation Officers, who are not federal employees, among the people who must spend half their workweek fixing a federal deadline. The parallel NEPA sanction (53:12–54:8) reaches only the permitting agency's own senior staff. A fix has to supply the missing words and decide whom the sanction reaches.

2. An ESA cross-reference that points to the wrong paragraph

Sec. 1304 creates a new ESA section 7A that lets states take over ESA consultation. If Interior sits on a state's application for 180 days, the inaction "shall be considered a failure to act under section 107(g)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4336a(g)(3))" (144:16–23).

Under current law, NEPA 107(g)(3) is the sponsor's right to petition a court. But Sec. 1106 of this same bill rewrites 107(g). In the new numbering, (g)(3) is the personnel-sanction paragraph (53:12–55:4), and the court petition moves to (g)(4) (55:5). Sec. 1110 already cites "section 107(g)(4)" for the right to review (74:13–15). The cross-reference is not dead, because it still lands on a real paragraph. It is misdirected: it lands on the sanctions instead of the court petition. A state relying on the remedy would argue for (g)(4). An agency could point to the text, which says (g)(3). The fix is one number.

3. A data center floor tied to limits that are not there

The core sentence of the data center title says no part of a data center's incremental cost may be shifted to other customers, "subject to the limitations described in subsection (e)" (234:23–235:2). Subsection (e) is headed "Rules of construction" (239:6–23). It says FPA 228 does not expand FERC's or a state's jurisdiction and preserves state authority over retail service. It lists no limits on the floor. Sonnet guessed subsection (c) was meant; subsection (f), on applicability, is another candidate. One could argue that the jurisdiction clause in (e) is the intended "limitation." This is the load-bearing sentence for state commissions and utilities deciding what the floor can be traded against, so the ambiguity matters.

4. The wrong Act's citation in an oil and gas exemption

Sec. 2229 says drilling permits for listed activities "shall not have any requirements under" NEPA. It names two permit types:

a drilling permit under the Mineral Leasing Act (30 U.S.C. 1001 et seq.) or a geothermal drilling permit under the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) (Sec. 2229, 351:3–6)

The two citations are identical, and 30 U.S.C. 1001 is the Geothermal Steam Act. The Mineral Leasing Act, which governs onshore oil and gas, is 30 U.S.C. 181, and the bill cites it correctly five other times (281:17; 286:15; 312:5; 349:12; 350:19). Courts usually follow an Act's name over a bad citation. But Sec. 2229 is the oil and gas section, so the Mineral Leasing Act clause is the point of the exemption. Our citation script found this error with no human input, and the geothermal reader and both AI layers flagged it too.

5. A paid fast track the bill does not mention

In 2025, Congress added a NEPA section 112 that lets a project sponsor pay a fee to get an environmental assessment in 180 days or an environmental impact statement in one year, "notwithstanding section 107(g)(1)" (Pub. L. 119-21, sec. 60026; 42 U.S.C. 4336f). BAAJA rewrites 107(g)(1) from top to bottom. We found no reference to section 112 or 4336f in the bill. That leaves an open question: does the fee track survive, which version of 107(g)(1) does it override, and does a paying sponsor run on the old clock or the new one? The fix is a conforming amendment that either repeals section 112 or aligns it.

6. "Secretary" means Interior only

New ESA 7A defines "Secretary" as the Secretary of the Interior (137:14–15). Under the ESA's general definition, the Secretary is Interior or Commerce depending on the species (16 U.S.C. 1532(15)). Commerce, through the National Marine Fisheries Service (NMFS), handles most marine and anadromous species, such as salmon. Inference: species consulted through NMFS fall outside state assumption. That may be intended, but the text does not say so, and a state that wants to take over marine consultations has no path.

7. An undefined gate in the Clean Water Act

New Clean Water Act 401(g) gives gas pipelines and interstate transmission lines a special rule. They need a state water certification only for a "direct point source discharge," with a 9-month cap on review (118:15–119:2; 121:10–21). The bill never defines "direct point source discharge." Dredge-and-fill material, hydrostatic test water, and construction stormwater all sit in the gray area. Whether those count decides which projects get the shorter, narrower review.

Not a defect: Order 1920 and the ban on rights of first refusal

Earlier readers, including our own overview and several outside analysts, flagged a conflict in the transmission title. Our verification pass found the conflict is not real.

FERC's Order 1920 lets incumbent utilities keep a federal right of first refusal (ROFR) to build "right-sized" replacement facilities. New FPA 225(h) says compliance with Order 1920 and its follow-on orders counts as compliance with the bill's regional planning section (217:1–7). New FPA 227 bans federal rights of first refusal for lines selected in a regional plan, and it opens with an override:

Notwithstanding any rule or order of the Federal Energy Regulatory Commission in effect as of the date of enactment of this section, a Federal right of first refusal is prohibited with respect to a transmission facility selected in a regional or interregional transmission plan for the purposes of cost allocation. (Sec. 2105, 224:9–14)

The safe harbor in 225(h) applies only to section 225's own requirements. So the text does say which rule controls: the ban overrides Order 1920's right-sizing ROFR for plan-selected lines (Inference, but a strong one). What remains is untidiness. Utilities' Order 1920 compliance filings would need revision for right-sized replacements selected for regional cost allocation.

Wrong references and stale citations

These are ambiguities, not outcome changers, but each will need a fix or invite an argument.

DEFECT	WHERE	WHAT IS WRONG	LIKELY FIX
A section that does not exist	FPA 201 lists (280:6–8, three times)	Lists "226A," which exists nowhere; the same lists omit 216A and 224, which the title creates	Delete "226A" or substitute 216A or 224
A fund in a missing section	30 U.S.C. 355(a) (315:17–21)	Sends money to the fund "established by section 205(d)"; the bill has no section 205, and the fund is in Sec. 2215(d)	Cite Sec. 2215(d)
A rule that moved	Secs. 2213 and 2214 (299:3–7; 304:18–22)	Both cite 10 CFR 1021.410(g)(1). In our reading of the current eCFR, DOE's July 2025 rewrite moved that definition to 1021.102(g)(1). Sec. 2213 freezes the version "as in effect on July 2, 2025," while Sec. 2214 says "or successor regulations," so the two could diverge	Cite the current section the same way in both
Wrong paragraph	Geothermal lease sales (329:17–21)	A replacement sale hangs on "paragraph (1)"; the sale requirement is paragraph (2)	Change to (2)
Wrong clauses	FPA 231(e)(2)(F) (264:6–9)	Points to cost tests instead of the conductor criteria	Cite 231(a)(2)(A)–(C)
Wrong proceeding	FPA 229(f)(3)(C) (247:23–248:1)	Points to a tariff filing, not a proceeding that decides anything	Cite the intended proceeding
A clause that modifies nothing	Northwest Power Act (362:19–23)	Adds "since the date of enactment" to the end of a sentence where it attaches to nothing	Redraft
A suit clock that can run before notice	Sec. 2201 (284:9–21)	The 150-day limit runs from when a decision "is required to be made public" (3 days after it is made), not from actual publication	Run it from actual publication

Two more items may be deliberate: the 13-month trigger for listing a late EA as a "transparency project" (97:11–14), and the 145-day ESA relief trigger (135:16–24), which matches neither of the new 60- and 100-day marks. Part VIII covers the timing slips, including the EIA Form 861 deadline that can fall before enactment and the fiscal year 2026 money authorized after that year ended.

Copy-paste errors and typos

- **A tribal clause about a "State program."** Interior holds a Tribal Historic Preservation Officer's functions until the officer shows "the State program is consistent" (377:12–14). It should say tribal program.
- **"Oil and gas" in a geothermal section.** Sec. 2225's notice duty refers to "oil and gas owned by the Federal Government" (339:7–9), apparently lifted from the oil and gas section.
- **"The Commissions determines"** (223:16–18).
- **"Offshore transmission substitutions"** where "substations" was meant (365:3–5).
- **A list item with no subject** in the NEPA injunction test: "necessary to prevent irreparable harm to the plaintiff" (70:24–25).
- **A heading that promises "Additional Funding"** that never appears (414:1–4), and mixed "§" and "SEC." styles in the same section (414:8; 414:14).
- **Circular wording**, "the requirements for minimum functional requirements" (27:1–5), and one stray capital letter (244:13–16).

Undefined or doubled terms

- **"Participating Federal agency."** The 90- and 120-day permit deadlines after an EA or EIS turn on whether an agency is "participating," but Sec. 1102 strikes the NEPA section that defined the term and does not carry it over (47:17–48:5).
- **"Covered project."** Sec. 1402 never defines it on its own; the definition of "specific type of covered project" uses the term inside itself (169:1–3).
- **"Required metrics."** These can make a state or tribal preservation program "inconsistent," which can lead to an Interior takeover, but they are defined nowhere (376:13–16).
- **"Eligible customers."** The data center pricing directive uses this FERC tariff term without defining it, and words it two ways ("on behalf of" and "for" data center owners) (230:7–14; 231:12–17).
- **Two meanings of "undertaking."** The new historic preservation process uses a narrower definition, limited to projects needing a federal permit, license, or approval (383:8–15), while the rest of the Act keeps the broader 54 U.S.C. 300320 definition.
- **"May consult" against "shall consult."** The new Section 106 process makes early consultation permissive (387:6–16), while 54 U.S.C. 302706(b) still says agencies "shall consult" tribes about properties of religious and cultural significance. The bill leaves the two in tension.
- **New loads only, except one subsection.** FPA 228's new-loads-only rule covers subsections (b) and (c). The state power to treat data centers as a less-favored class in (d) has no such limit (239:24–240:4).

Open questions courts would have to answer

Drafting defects can be fixed with a technical amendment. These questions cannot. They come from the bill's design and would be settled in litigation if the text passes as written. We gathered them from every memo in the project. Where a question rests on our own inference, it is labeled.

Courts and remedies

1. Does a NEPA "claim" include an agency's decision that no review was needed at all, such as a categorical exclusion?
2. Can a NEPA plaintiff get the preliminary injunction the bill preserves (70:11–23) without pleading a separate claim under another law?
3. Is a NEPA suit filed after enactment against an approval made public more than 150 days earlier barred on day one? (Pending suits are not covered.)
4. Does "direct harm" narrow standing for associations or for aesthetic injuries below the constitutional minimum?
5. Can Congress assign later cases to "the same judge" (163:15–19; 165:14–17)? The rule sits in deliberate contrast to random judge assignment for NEPA appeals (69:9–14), though the two govern different courts.
6. Is review of biological opinions in the D.C. Circuit exclusive, and how does it fit with the gas pipeline and transmission review routes elsewhere in federal law?

Consultation and review

7. Does a CEQ "full compliance" order satisfy only the procedural duty to consult under ESA section 7, or also cut off review of the substantive duty to avoid jeopardy? Can an unreviewable order displace another agency's statutory role?
8. Does a CEQ order reach a state that has taken over ESA consultation under new section 7A?
9. Does "may consult" (387:11) give way to the "shall consult" duty to tribes in 54 U.S.C. 302706(b), or the reverse?
10. Can a statute require state and tribal preservation officers to spend half their workweek on federal reviews, given limits on Congress commandeering state officials?
11. Does Sec. 2229, by removing NEPA from listed oil and gas permits, also remove ESA and historic preservation duties that depend on a NEPA document?

Landowners and money

12. Once FPA 216(f) is gone, what valuation rule governs a condemnation for a FERC-permitted line? Does a court imply the old fair-market-value-plus-severance measure or apply constitutional case law alone? Landowners still have a Fifth Amendment right to just compensation.
13. Does the perpetual Court of Federal Claims bar in Sec. 1401 reach a later takings claim on the same facts? The text covers claims "in respect to this section," which is narrower than the wording the Supreme Court read broadly in *United States v. Tohono O'odham Nation*.
14. Can an agency get around the permit freeze by asking a court to vacate its own permit and then relying on the "order of a court" exception? SPEED barred that move; BAAJA does not (Inference).
15. Does Sec. 1401 reach a permit revoked by the President, who is not an "agency" under *Franklin v. Massachusetts* (Inference)?
16. What deadline applies to Sec. 1401 to 1403 suits, none of which states one? Is it the six-year default in 28 U.S.C. 2401(a) (Inference)?
17. Does Sec. 1401's catch-all for "any other approval or order" reach a Defense Department or FAA airspace clearance for wind turbines, and does Sec. 1403 reach project types not on the bill's list? (Raised by outside analysts; open.)

States, the grid, and data centers

18. Can FPA 228 bind state retail rates, given its own rule of construction preserving state authority (239:6–23) and Sec. 2115(b)?
19. Who enforces FPA 228 inside ERCOT? FPA 216 excludes the Texas grid two ways and FPA 225 three ways, but FPA 228 has no Texas carve-out. Inference: enforcement there would fall mainly to Texas regulators.
20. Does the Sec. 2107(a) pricing directive reach existing data center loads, and which standard governs where it differs from the FPA 228 floor?
21. Now that a state Section 401 decision on a transmission line is a "Federal authorization," does the presidential appeal route in FPA 216(h)(6) reach state denials, and do FERC's rehearing step and 60-day deadline apply?
22. Does new 401(e)(2), which limits certification to water quality, displace 401(d)'s "any other appropriate requirement of State law" for projects other than pipelines and transmission? The bill says "Notwithstanding subsection (d)" only in the pipeline and transmission rule (120:20–121:9).
23. Does the closed definition of "water quality requirements" (122:15–23; scope limit at 104:19–22) bar a state from attaching water-withdrawal conditions to a Section 401 certification, for example on a Section 404 permit for a data center site? Withdrawal is a question of water quantity, which the new definition does not mention.
24. Does FPA 228(f)(1) or (f)(2) govern a data center that connects after enactment under a tariff or contract approved before enactment? Subsection (f)(1) applies the floor to loads that interconnect "on or after the date of enactment," while (f)(2) says an approved arrangement "shall remain in effect" (240:1–8).
25. Is a Department of Energy lease or right-of-way for a data center on federal land a "Federal authorization or permit" protected from revocation under Sec. 1401 (158:22–159:15)? Our state data center survey reports DOE sites offered for data center development, including Portsmouth, Ohio (the paper's claim; not checked by us). Questions 23 to 25 come from comparing that survey with the bill.

Timing

26. Do the NEPA 107(g) clocks apply to reviews already under way at enactment?
27. Can a court order FERC to meet a rulemaking deadline, and does a missed deadline affect a later rule?
28. Which date controls where the text says "enactment of this section" rather than "enactment of this Act"?

What would fix most of this

Most defects are one-line corrections: a number, a citation, a word. Three need real drafting decisions.

- **The historic preservation sanction.** Supply the missing predicate and decide whether state and tribal officers belong in it.
- **NEPA section 112.** Repeal the 2025 fee track or conform it to the rewritten deadlines.
- **The data center floor.** Name the subsection the floor is "subject to," or delete the clause.

Whitehouse has promised a manager's amendment (Part VII). That would be the natural place for these fixes. When GovInfo posts the official introduced print, every page:line cite here will need to be remapped, and the defects should be checked again against that text.

WHAT THIS MEANS FOR DATA CENTERS

The mix is uneven. The clearest defect touching data centers weakens the bill's main protection for other ratepayers. The FPA 228 floor is "subject to" limits that do not exist, its state authority to disfavor data centers is not limited to new loads, and its pricing directive leaves "eligible customers" undefined, all of which invite utilities and data center buyers to litigate the floor. Other defects touch the infrastructure that would serve new load, including the miscited oil and gas NEPA exemption and the undefined "direct point source discharge" that gates the shorter water review for pipelines and transmission. Those create litigation risk for sponsors rather than a clear advantage. The open questions on ERCOT and state retail rates decide whether the data center floor reaches Texas and retail customers at all.

Appendix A: The knowledge graph and model agreement

The knowledge graph links every bill section to the laws, rules, agencies, deadlines, and people it touches: 2,324 nodes and 4,753 links. Its network measures agree with a plain reading of the text. Sec. 1401's permit freeze, Sec. 1110's limits on NEPA suits, and Sec. 2101's transmission backstop are the most connected sections, and the historic preservation rewrite and the NEPA definitions are the main bridges between otherwise separate parts of the bill. The two AI models that annotated every section agreed moderately to substantially, best on what a section changes and worst on judgment calls about energy tilt.

What is in the graph

The graph has 20 kinds of nodes. The most common are the actors and roles the bill names (653), topics (373), deadlines (236), Federal Register documents (172), U.S. Code sections (167), and defined terms (130). The 71 bill sections sit among them, along with 68 CFR parts, 43 agencies, 88 organizations, 51 other bills, and 27 court cases.

Links come in 26 kinds. The most common say what a node is about (845), what it cites (674), what it requires someone to do (306), what it affects (306), whom it empowers (303), and what it responds to (264). The links that carry the legal analysis are fewer but sharper: 190 "limits," 136 "affects rule," 88 cross-references, 81 "amends," 80 "derived from," and 8 "repeals."

The graph was built in layers. A seed layer from the parsed text and citations supplied 562 nodes and 1,101 links. The two-model AI annotation added 1,342 nodes and 1,271 links. Each reader, context, synthesis, and data-center agent then added its own nodes and links, every link carrying the agent's name and its evidence, usually a page-and-line quote.

Which sections matter most

We used two standard measures. **PageRank** asks how much of the network points to a node, directly or through well-connected neighbors. **Betweenness** asks how often a node sits on the shortest path between two others; high betweenness marks a bridge.

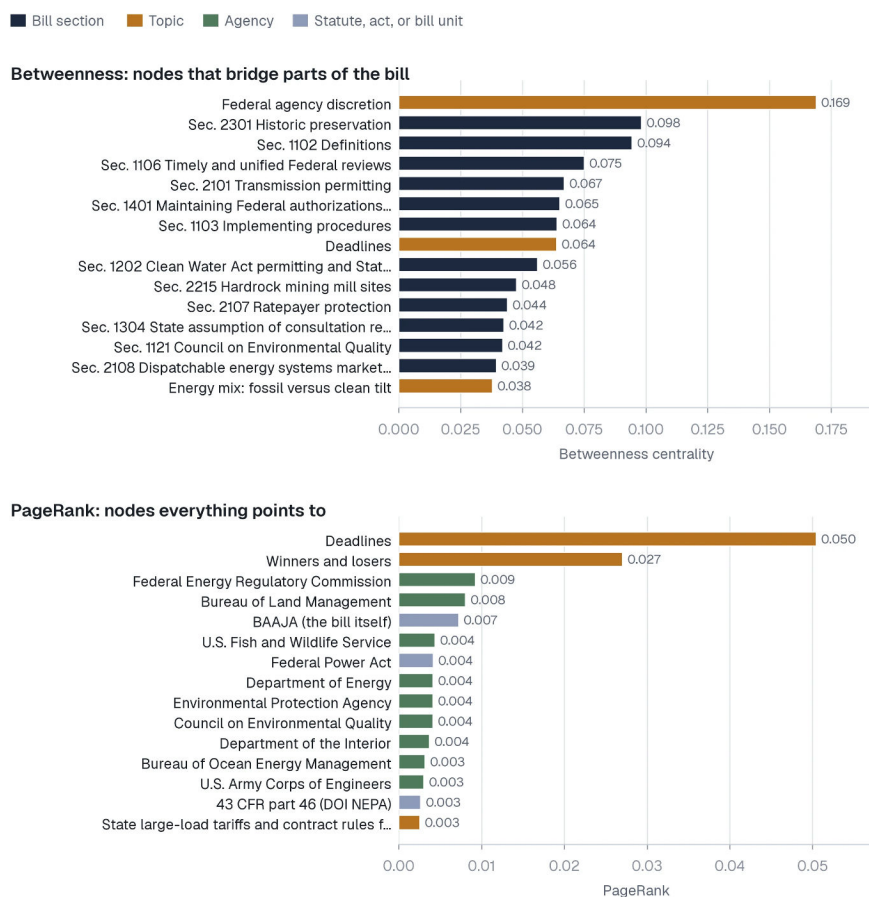


Figure 25: The permit freeze, NEPA suit limits, and transmission backstop are the most connected sections; historic preservation and the NEPA definitions are the main bridges

By PageRank, the top bill sections are Sec. 1401 (the permit freeze), Sec. 1110 (NEPA lawsuits), Sec. 2101 (transmission permitting), Sec. 1202 (Clean Water Act certification), Sec. 2301 (historic preservation), Sec. 2107 (data-center ratepayer protection), and Sec. 1402 (class-wide damages). That is close to the ranking of consequence we reached by reading in Part I. Among statutes, the Federal Power Act is by far the most central, ahead of NEPA and the ESA. Among agencies, FERC leads, followed by the Bureau of Land Management, the Fish and Wildlife Service, DOE, EPA, and CEQ.

By betweenness, the top section is Sec. 2301, the historic preservation rewrite. It ties together tribes, state and tribal preservation officers, Interior, and NEPA timing. Next come Sec. 1102 (the NEPA definitions, which every other NEPA section depends on), Sec. 1106 (deadlines and CEQ disputes), Sec. 2101, Sec. 1401, and Sec. 1103. The single highest-betweenness node of any kind is the topic "federal agency discretion," which links almost every title.

Two cautions. Topic nodes such as "deadlines" score very high on PageRank because many agents tagged many things with them; that reflects how the agents labeled, not the bill. And centrality measures connection, not importance. A long section with many citations will score higher than a short one that changes more.

How the bill clusters

A community-detection method (Louvain) split the graph into 56 groups, with a modularity of 0.64, which means the groups are well separated. The groups mostly follow the bill's titles, with three telling exceptions:

- **The litigation provisions cluster together across both divisions.** Sec. 1110 (NEPA suits), Sec. 1205 (Clean Water Act suits), Sec. 1305 (ESA suits), Secs. 1401 and 1402 (project certainty), and Sec. 2201 (energy suits) form one community. In effect, the bill has a lawsuit chapter scattered across six sections.
- **Transmission permitting groups with offshore energy.** Sec. 2101 sits with Secs. 2251 and 2252, linked by offshore transmission.
- **Tribal land rights group with historic preservation.** Sec. 2212 (rights-of-way across Indian land) sits with Secs. 2301 and 2302.

How well the two AI models agreed

Claude Sonnet 5.5 and GPT-6.1 Sol each annotated all 71 sections with the same form. We measured agreement with Cohen's kappa, which corrects raw agreement for chance: 0 means chance, 1 means perfect, and 0.4 to 0.6 is usually called moderate and 0.6 to 0.8 substantial. The "collapsed" score treats "neutral" and "not applicable" as the same answer, since the difference is wording rather than substance.

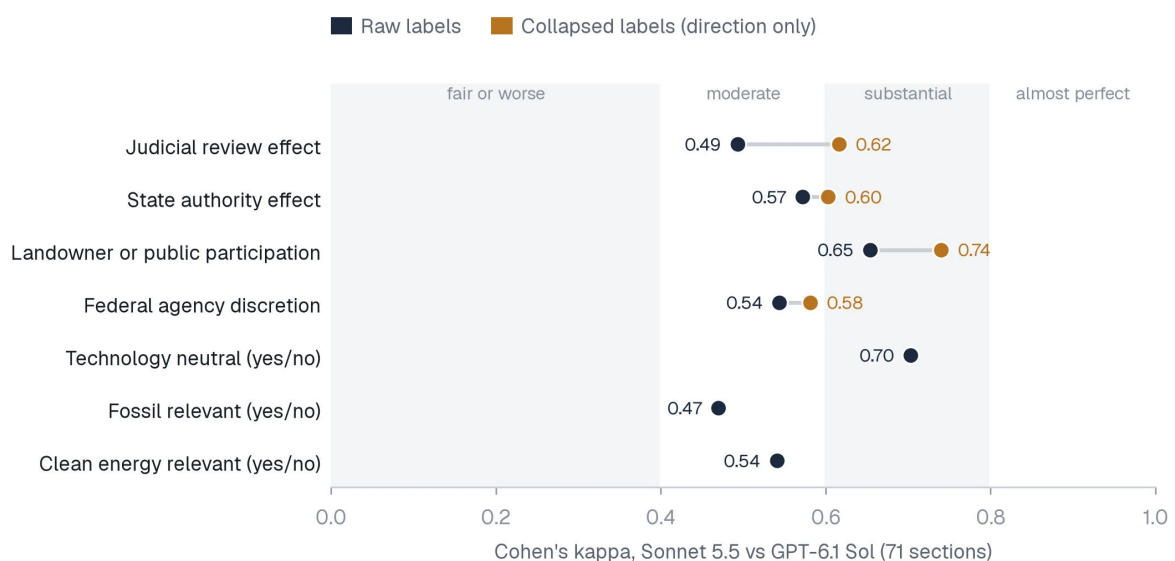


Figure 26: The two models agreed best on technology neutrality and public participation, and least on whether a section matters to fossil fuels

FIELD	RAW AGREEMENT	KAPPA	KAPPA, COLLAPSED
Effect on courts and lawsuits	72%	0.49	0.62
Effect on state authority	73%	0.57	0.60
Effect on landowners and the public	73%	0.65	0.74

FIELD	RAW AGREEMENT	KAPPA	KAPPA, COLLAPSED
Effect on federal agency discretion	69%	0.54	0.58
Technology-neutral	87%	0.70	n/a
Relevant to fossil fuels	73%	0.47	n/a
Relevant to clean energy	82%	0.54	n/a

On lists, the models agreed well on the kind of change a section makes (average overlap 0.76) and on which statutes it changes (0.69), and poorly on free-form topic tags (0.26). In 63 of 71 sections they picked a key quote from the same spot in the text.

The disagreements are informative. The two most disputed sections were Sec. 1205 and Sec. 2107, the data-center section, each split on four fields. On Sec. 2107, one model marked it fossil-relevant, clean-relevant, and technology-neutral all at once; the other marked none of the three. The text names no generation technology. On energy relevance generally, GPT-6.1 Sol flagged more sections than Sonnet did. Two of Sonnet's records (Secs. 2103 and 2112) were empty stubs that were scored as if real, which slightly lowers its numbers.

That is why the energy-mix analysis in Part V relies on the text, not on these labels. We used the model layer as a map of where to look and as a cross-check on the agents. No finding in this report rests on a model label alone.

Appendix B: Data, files, and corrections

Everything behind this report lives in one folder, `bill/`, under the project's research directory, and every finding can be traced back to a file there. This appendix says where each dataset is, how it was built, and what the corrections registry changed. The registry records 35 corrections from the verification pass: 4 claims that were overstated and 31 that were accurate but needed a caveat. It binds every chapter of this report.

Where the data lives

All paths are relative to `research/federal-permitting-2026/bill/`. Scripts in `_scripts/` rebuild each step in order, from `s01_parse_bill.py` to `s10_corrections.py`.

WHAT	PATH	NOTES
Bill PDF, layout text, and checksums	<code>00_source/</code>	Draft KAT26639; <code>provenance.yaml</code> records SHA-256 hashes and the comparison with the ENR "FINAL" copy
Full text and one file per section	<code>01_text/</code>	<code>bill.md</code> ; <code>sections/div-X/title-Y/sec-NNNN.md</code>
Every line with page and line number	<code>02_structure/lines.jsonl</code>	10,164 lines; the basis for every bill cite
Sections and outline	<code>02_structure/sections.jsonl</code> , <code>outline.yaml</code>	71 sections with spans and word counts
Citations found in the bill	<code>03_citations/</code>	About 1,500 citations; <code>targets.yaml</code> maps each section to the laws it cites
Language-tool output	<code>04_nlp/</code>	Sentences, 166 definitions, 117 deadlines, actors, terms, similarity
AI annotations of all 71 sections	<code>04_nlp/llm/</code> , <code>04_nlp/llm_gpt61sol/</code>	Claude Sonnet 5.5 and GPT-6.1 Sol
Model agreement	<code>04_nlp/agreement/</code>	Kappa and overlap by field; disputed sections
Current U.S. Code	<code>05_law/usc/</code>	2024 GovInfo edition; about 130 cited sections in 15 titles; <code>index.yaml</code>
Current federal regulations	<code>05_law/cfr/</code>	eCFR, 27 parts and sections; as-of date in each file
Amendment instructions	<code>06_alignment/amendments.jsonl</code>	99 machine-found "is amended" instructions
Reader agents	<code>07_agents/r-*/</code>	Diary, per-section files, graph fragments, memo
Lineage and agency activity	<code>07_agents/c-*/</code> , <code>10_related/bills/</code> , <code>10_related/agency/</code>	30 earlier bills, 5 public laws, 161 Federal Register items
Topical memos	<code>08_memos/m-*/</code>	Lawsuits, federal-state power, winners and losers, calendar, people, energy mix, drafting

WHAT	PATH	NOTES
Master memo	08_memos/00-overview/	overview.md, top findings, checked passages
Verification	08_memos/v-verify/checks.yaml	51 checks with evidence and verdicts
Corrections registry	08_memos/CORRECTIONS.yaml	Binding on every writer
Knowledge graph	09_graph/	nodes.jsonl, edges.jsonl, graph.json, analytics.yaml, schema.yaml
Web sweep	10_related/search/	Queries, 1,896 candidates, triage, and the 1,185-source corpus
Stakeholders, outside analyses, politics	10_related/stakeholders/, analyses/, politics/	58 positions, 21 analyses, 33 sponsor claims checked
Data-center policy paper crosswalk	10_related/datacenter-paper/	Our SSRN paper mapped to the bill: crosswalk.yaml (21 entries, 51 findings), state_regimes.yaml (11 states), gaps.yaml and gap_search.json (13 community issues searched in the full text)
Data-center dataset aggregates	10_related/datacenter-data/	Private registry; aggregates only, labeled "preliminary snapshot, research cutoff Sept. 28, 2026": stats.yaml, tables/ (including 99 verification checks), build_stats.py. Point-level files in _private/ are kept out of the repository; no project or company names
Pipeline log and known defects	_ops/	issues.yaml, relay server log

The chapters of this report map to those folders. Part II draws on the judicial-review memo, Part III on the federal-state memo, Parts IV and V on the people and energy-mix memos, Part VI on the two data-center folders, Part VII on the rest of 10_related/, Part VIII on the calendar memo, and Part IX on the drafting memo.

The corrections registry

The verifier checked 51 claims. Sixteen were confirmed as stated, 31 were confirmed with a caveat, 4 were overstated, and none was wrong or unverifiable. The registry holds the 35 that needed changes, each with the original claim, the corrected wording, and the agents whose summaries carried it.

The four overstated claims:

- 1. Tribal consultation in historic preservation review.** The claim was that consultation becomes optional. Corrected: general consultation at the early steps becomes discretionary, but the agency must still seek and incorporate information sent within 30 days, and the separate statutory duty to consult tribes about places of religious and cultural significance (54 U.S.C. 302706(b)) remains. The two are in tension.
- 2. "Unlimited" mill sites.** Corrected: as many 5-acre mill sites as are "reasonably necessary" for an approved plan.
- 3. Takeover of state and tribal preservation programs.** Corrected: takeover comes only after a program is found inconsistent, loses grants, and is still inconsistent two years later. It is not triggered by a single missed timeline.

4. **FERC Order No. 1920 versus the new ban on rights of first refusal.** The claim was that nothing says which controls. Corrected: the ban opens "Notwithstanding any rule or order" of FERC, which points to the ban controlling. That is our reading, though a strong one, and we do not treat it as a drafting defect.

The caveats that matter most:

- **Landowner compensation (FPA 216(f)).** The bill deletes the statute's just-compensation clause for FERC-permitted transmission condemnations. The Constitution still requires just compensation. Never "landowners lose compensation."
- **The Sec. 1401 award.** It is 25 to 50 percent of costs incurred to date, net of fees and delay costs. Never "of construction cost" or "of total project cost."
- **CEQ dispute orders.** They can deem ESA consultation between federal agencies complete. They do not say they satisfy the no-jeopardy duty, and their reach into historic preservation review is limited.
- **The ESA right-of-way exemption.** It applies to highway and transit projects in existing rights-of-way, and the ban on harming listed species still applies.
- **The nationwide permit waiver.** It applies only if a reissued permit keeps its preconstruction-notice requirements.
- **NEPA suits.** A preliminary injunction remains available for likely violations of other laws, such as the Clean Water Act or the ESA.
- **State water certification.** The one-year limit and deemed waiver are already law. What is new is that the federal agency sets the period, plus a 9-month cap for pipelines and transmission.
- **The data-center cost rule.** The utility's estimate is subject to approval by FERC or a state, and the new-loads-only rule does not limit states' power to set less favorable terms.
- **EPA's veto window.** It applies to applications filed after enactment, and new permit terms are "up to" 10 years.
- **Drilling permits on mixed-ownership land.** Sec. 2211 keeps a 50-percent test in its first prong and adds two prongs that have none.

The registry also lists nine items that this report treats as open questions or our own reading, never as settled fact. Among them are how the NEPA lawsuit limits apply to approvals made before enactment, whether the permit freeze reaches permits revoked by the President, and what deadline applies to sponsor suits under Sec. 1401.

Known defects in the pipeline

`_ops/issues.yaml` logs eight problems found during the build:

- **Fixed.** The AI layer briefly created duplicate section nodes, which skewed early graph statistics. A field-name collision in the graph schema was renamed. Graph links written by agents briefly pointed from the agent's name instead of the section; the line-level edge file was always correct.
- **Open.** One line of the bill (adding 54 U.S.C. 302707 to a table of sections) is missing from the line file. The automated amendment finder misattributes nested amendments in Sec. 2301. The 2024 U.S. Code edition lacks 2025 and 2026 enactments.
- **Workarounds.** Agents stored agency orders that were never published in the Federal Register under a documented ID convention. Agents sharing one scratch folder overwrote each other's helper scripts; the

affected scripts were copied into the memo folders. A reported error in the Federal Register client could not be reproduced and was traced to agents' own scripts.

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