

The Bipartisan American Affordability and Jobs Act of 2026 and the Federal Energy Regulatory Commission's Backstop Siting Authority

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The Bipartisan American Affordability and Jobs Act of 2026 (BAAJA; S. 5653) was introduced on September 30, 2026. The bill would address numerous aspects of energy infrastructure permitting, including by amending the conditions under which the Federal Energy Regulatory Commission (FERC) may issue a construction permit for certain electricity transmission lines (commonly referred to as FERC's backstop siting authority). This analysis compares aspects of current law and policy with how Section 2101 of BAAJA would affect FERC's backstop siting authority. For additional discussion of current law, see CRS Report R47862, *Electricity Transmission: What Is the Role of the Federal Government?* This analysis does not cover all provisions in Section 2101 of BAAJA.

Geographic Coverage

Under current law, FERC's backstop siting authority is limited in its geographic coverage. FERC may issue construction permits only in areas of the country designated as National Interest Electric Transmission Corridors (NIETCs) by the Department of Energy (DOE) (16 U.S.C. §824p(b)).

Under BAAJA, FERC's backstop siting authority would instead apply to most areas of the country in which eligible (as described below) new or modified interstate transmission facilities were being developed. The area of Texas served by the grid operator known as ERCOT (Electric Reliability Council of Texas) would remain exempt from FERC's backstop siting authority. Under BAAJA, DOE's authority to designate NIETCs would be repealed.

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Eligible Transmission Facilities

Under current law, FERC's backstop siting authority applies only to transmission facilities that meet two sets of criteria. One set of criteria applies to characteristics of the transmission facilities themselves (16 U.S.C. §824p(b)(2)-(6)). BAAJA would amend these criteria.

Under current law, the facilities must (1) be used to transmit electricity interstate; (2) be consistent with the public interest; (3) be able to reduce transmission congestion in interstate commerce and protect or benefit consumers; (4) be consistent with sound national energy policy and enhance energy independence; and (5) maximize existing infrastructure to the extent reasonable and economical.

Under BAAJA, facilities must (1) be used to transmit electricity in interstate or foreign commerce, or used to transmit electricity from the outer continental shelf to a state; (2) be consistent with the public interest; (3) be able to protect or benefit consumers and provide improved reliability; (4) be rated at not less than 230 kilovolts (kV) or, for advanced conductors, a voltage determined to be appropriate by FERC; and (5) maximize existing infrastructure to the extent reasonable and economical, if applicable.

Another set of criteria is related to state consideration of a permit application, including that a state siting authority must have withheld a decision on an application for at least a year or denied an application before FERC may review a construction permit application (16 U.S.C. §824p(b)(1)). BAAJA would not make changes to this set of criteria.

Public Comments on Permit Applications

Current law directs FERC to provide a reasonable opportunity for certain stakeholders to present their views and recommendations with respect to the need for and impact of a proposed facility (16 U.S.C. §824p(d)). These stakeholders are "each State in which a transmission facility covered by the permit is or will be located, each affected Federal agency and Indian tribe, private property owners, and other interested persons."

Under BAAJA, FERC would be directed to additionally take into account input from affected landowners (as defined in the bill) when authorizing construction or modification of transmission facilities.

Application Timelines

Under FERC's [current regulations](#), applicants seeking a construction permit for a transmission facility must pre-file certain information with FERC before submitting an application for a construction permit to FERC. FERC's policy, most recently affirmed in [Order No. 1977](#) issued in May 2024, is to avoid overlapping state and federal review of a project. Under current FERC policy, project developers cannot pre-file with FERC at the same time they submit a state application.

BAAJA would change this policy. Under BAAJA, pre-filing at FERC "may commence before, but shall commence no later than, an application is submitted to the applicable State commission or other entity that has authority to approve the siting of the applicable facility." Also, for transmission facilities rated at 345 kV or above, developers could submit an application (not a pre-filing) to FERC at the same time they submit an application to the applicable state entity, and FERC would commence a proceeding to review the application. Thus, under BAAJA, certain transmission facilities could be under review by both state and federal permitting authorities at the same time. The BAAJA timeline for pre-filing and applications would not change the criteria for state consideration of a permit described above.

Cost Allocation

Current law does not specify how costs of FERC-permitted transmission facilities should be recovered. Typically, the owner of an interstate transmission facility would file a request with FERC to recover the cost of the line by charging its customers a rate for transmission services, and FERC would approve that rate if FERC found it to be just and reasonable (16 U.S.C. §824d).

Under BAAJA, any owner of a transmission facility meeting the amended criteria described above under “Eligible Transmission Facilities” would be required to file a request with FERC to allocate the costs of the transmission to customers in a manner “at least roughly commensurate” with specified transmission benefits: (1) improved reliability; (2) reduced congestion; (3) reduced power losses; (4) greater carrying capacity that delivers improved reliability or reductions in the cost of delivered power; (5) reduced operating reserve requirements; and (6) improved access to generation that achieves reductions in the cost of delivered power. Customers that receive “no benefit, or benefits that are trivial in relation to the costs sought to be allocated” could not be involuntarily allocated any costs. The cost allocation principles articulated in BAAJA are similar to existing FERC policies that apply to projects identified through regional and interregional planning.

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