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Senate Permitting Bill May Sink Beneath Blue Wave

By **Keith Goldberg**

Law360 (November 4, 2026, 7:49 PM EST) -- The chances of Congress passing legislation aimed at speeding permits for infrastructure projects plummeted as Democrats seized control of Capitol Hill in Tuesday's elections, and any related bill introduced in 2027 could look a lot different than the current version.

U.S. senators will take up the Bipartisan American Affordability and Jobs Act of 2026, which was introduced in September, when they return for the lame-duck session on Nov. 9. However, Democrats' expected desire to craft their own permitting legislation may hinder efforts to get the bill to President Donald Trump's desk by the end of the year, energy policy experts said Wednesday.

"There will be an attempt to go ahead and pass it during the lame-duck, but my suspicion is it will probably take the upcoming session of Congress to address it," said Scott Segal, who co-chairs the policy resolution group at Bracewell LLP and frequently represents clients in the energy industry. "The lame-duck won't be sufficient."

For starters, it's a challenge to advance any comprehensive piece of legislation during a lame-duck session that isn't a must-pass spending bill, experts say. With Democrats poised for sizable 2027 majorities in both the Senate and House, there simply may not be enough lawmakers who have an appetite to spend the next few weeks trying to push the BAAJA through, according to Holland & Knight LLP partner Liz Leoty Craddock, a former staff director for the U.S. Senate Committee on Energy and Natural Resources.

"Even before the election, there were 85 members of Congress that were either retiring or just not coming back for the next Congress," Craddock said. "So that was going to make attendance ... tough anyhow, and I think yesterday's results make it even tougher in that sense."

The shift in congressional power will also provide further ammunition to Democratic lawmakers and environmental and tribal groups who have come out against the BAAJA over its truncation of environmental and judicial reviews.

For example, Rep. Jared Huffman, D-Calif., who is in line to take the chairman's gavel of the House Committee on Natural Resources, has publicly criticized the BAAJA's permitting changes and said that Democrats should rewrite the legislation when they regain control of Congress.

Segal of Bracewell said the federal and state election results also reflect the growing backlash to data

centers, which could be a warning sign for the portion of the BAAJA that aims to speed up electric transmission development.

"You've got environmental [nongovernmental organizations] who want concrete changes to the first section of the bill," Segal said. "And then you've got an increasing realization that the second section of the bill is somewhat in service to data centers, and those are two issues that were at play in the midterm elections."

However, the Democratic co-architects of the BAAJA aren't ready to punt on a 2026 permitting deal.

"We don't have more years to lose as clean energy projects sit on the sidelines, and there's no guarantee Congress would ever find another compromise that would be able to pass the Senate," Sen. Sheldon Whitehouse, D-R.I., said in a statement Wednesday. "Democrats ran and won on affordability, and this bill lowers costs for families and will allow us to start delivering on our election promises. It's a bird in the hand. We'd be fools not to take it."

"This is the closest we have come to actually finding something that can get signed into law, and I'm not going to wait," Sen. Martin Heinrich, D-N.M., who is poised to chair the Senate energy committee, said in a statement Wednesday. "I've always said I would negotiate in good faith, whether I was the chair or the ranking member, with whoever sat on the other side."

The Republican co-architects of the BAAJA, Sens. Mike Lee, R-Utah, and Shelley Moore Capito, R-W.Va., didn't return requests for comment Wednesday.

Crowell & Moring LLP energy partner Tyler O'Connor said a key indicator of the BAAJA's future will be whether senators, especially Democratic ones, can pass a vote to begin debate on the bill when they return on Nov. 9.

"I think that will really dictate whether a sufficient contingent of House Democrats ultimately vote to push the bill across the line, or whether they think the political winds aren't behind the bill and that they should come back next Congress and fight for the improvements they've been seeking," said O'Connor, who as the lead energy lawyer for the House Committee on Energy and Commerce helped craft the 2022 Inflation Reduction Act.

If Congress can't pass the BAAJA in the lame-duck session, that doesn't necessarily mean permitting legislation would begin 2027 on a blank slate. Experts say there are still significant portions of the current bill — for example, encouraging transmission development and preventing the executive branch from stymieing existing permits — that are largely popular among lawmakers.

"I think that the subject matters that are covered by the existing permitting deal will probably exist in any upcoming permitting deal," Segal said. "The question is: What is done in each of those subject areas? And, among options, how far things go."

However, it's hard to see some of the BAAJA's more controversial pieces, including limitations on National Environmental Policy Act, Clean Water Act, Endangered Species Act and National Historic Preservation Act reviews, surviving in their current form if Democrats are intent on putting their own stamp on permitting legislation, experts say.

Which leads to another question: Will Trump sign such a permitting bill? The White House has signaled

some support for the BAAJA — Jarrod Agen, executive director of the National Energy Dominance Council, lauded the Nov. 9 Senate vote in a Wednesday post on social media platform X — but support for a permitting bill dominated by Democratic policy priorities is less likely, experts say.

"If Democrats think they're going to get a better deal when they're when they have the gavels next Congress, they still have to get Trump to sign it, and I don't know that he's going to sign anything less than this deal," said former Federal Energy Regulatory Commission Chairman Neil Chatterjee, who also served as energy adviser to former Senate Majority Leader Mitch McConnell, R-Ky.

Chatterjee, who is now the chief government affairs officer at clean energy finance firm Palmetto, said that punting a permitting bill to 2027 could lead to a repeat of the last time the Senate attempted bipartisan permitting legislation two years ago. The Energy Permitting Reform Act of 2024 advanced out of committee but didn't get a floor vote before the November election, and was effectively abandoned after Trump was elected and Republicans took control of both houses of Congress.

"If that happens, I'm worried that we're just going to waste another two years, and we'll be discussing this as we roll into the 2028 lame-duck period," Chatterjee said.

Other experts are more optimistic that there's enough industry and political momentum to convince Trump to sign permitting legislation in some form, even if it's largely authored by Democrats, as long as there is significant buy-in from GOP lawmakers.

"I think if you have 10 Republicans supporting permitting reform coming out of the Senate, and you have the Republican president vetoing that, then ... it's a folly on the president at that point," Craddock of Holland & Knight said. "It's not a folly on Congress."

--Editing by Alanna Weissman and Emily Kokoll.

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