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When Permits Aren't Permanent

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September 2026







How Permitting Instability Reaches the American Retirement Portfolio and the Statutory Reforms That Will Restore Investor Confidence

The United States needs to build on a scale it has not attempted in two generations. The American Society of Civil Engineers' 2025 Report Card assigned the nation's infrastructure an overall grade of C-, the highest grade since the report began in 1998 and the first year in which no category received a D-. Even so, it concluded that \$9.1 trillion must be invested between 2024 and 2033 to bring the country's roads, bridges, water systems, and electric grid into good repair. Planned public and private funding totals roughly \$5.4 trillion, leaving a \$3.7 trillion gap that has widened rather than narrowed since 2021.¹ Energy received a lower grade despite record federal spending, reflecting capacity constraints and lagging transmission. The Infrastructure Investment and Jobs Act authorizations behind the recent gains also expire this year.² At the same time, data centers, reshored manufacturing, and electrification are driving the largest sustained increase in electricity demand in a generation.³

Public budgets cannot close that gap. Most of the capital must come from private investors willing to commit money for thirty to fifty years, and the world's largest pools of that kind of capital are the retirement savings of American workers. Public pension systems, corporate plans, insurance general accounts that back annuities, university endowments, and the target-date funds held in ordinary 401(k)s now treat infrastructure as a core asset class because it was expected to provide stable, long-duration, inflation-linked returns. That expectation depends on one



assumption: a lawfully issued federal lease, right-of-way, license, or permit will remain valid for the decades needed to recover the investment.

Over the past year, the federal government has shown-through stop-work orders affecting projects already under construction, lawsuits challenging approved construction plans, and negotiated buyouts of lawfully acquired offshore leases-that this assumption can no longer be treated as safe. Whatever one thinks of a particular technology or administration, the precedent is now both technology-neutral and administration-neutral: one administration's authorization can be undone by the next. An LNG terminal, pipeline, nuclear license, toll road concession, or bridge replacement built based on a federal record of decision faces the same exposure to a future hostile administration that an offshore wind lease faced under this one.

This paper's main analytical contribution is a distinction largely absent from the permitting debate: capital recovery is not the same as capital stranding. If a project is terminated early or unwound with compensation, investors recover all or nearly all of their money and can put the principal to work elsewhere. The economy loses the project, but not the capital. Litigation, regulatory delay, or a policy reversal can produce a different outcome, leaving funds trapped in a half-built or unworkable asset. Those funds earn nothing, cannot be redeployed, and accumulate opportunity costs year after year. The arithmetic is unforgiving: a \$5 billion project halted at 80 percent completion carries roughly \$300 million per year in dead-weight cost of capital, before counting any lost output. Applied across the multitrillion-dollar pipeline of American infrastructure, even a half-percentage-point political-risk premium adds billions of dollars to financing costs each year. Ratepayers and tollpayers ultimately cover that expense, and a meaningful share of the supply is never built. None of it appears in any federal budget score.

Congress is nearer to permitting reform than it has been at any point in a decade. In December 2025, the House passed the



SPEED Act with bipartisan support. Since then, the CERTAIN, FREEDOM, Let America Build, and Unlock American Energy and Jobs bills have followed. At the same time, Senate negotiators have said they agree on the broad contours of a deal. Disputes remain over historic-preservation review and transmission—and, for the first time, over the President’s authority to cancel approved projects. This paper examines those proposals and identifies a shared blind spot: nearly every bill speeds up the permitting system’s front door, while almost none secures the back door. Without durability, faster approval only reduces the time between approval and reversal.

The paper thus sets out a minimum statutory agenda that could attach to any of the pending vehicles:

1. Codified finality for authorizations issued validly, revocable only for cause defined by statute
2. Vesting project rights when the approval milestone is reached
3. Findings, certification, sunset, and review requirements whenever national-security or emergency cancellation authority is invoked
4. An honest compensation framework under which an administration that ends a valid authorization for policy reasons must seek an appropriation and publicly account for the cost

It also includes the enforceable shot clocks and short, uniform limitations period that the pending bills already largely contain.

Permitting durability is not a partisan cause. It is what makes possible the private capital formation on which every serious vision of American infrastructure depends, from conventional projects to renewable ones, and from highways to transmission lines. At its core, this is also about protecting the retirement security of American workers whose pension funds trusted that the United States government meant what its signature said.



The Infrastructure Financing Landscape

The State of American Infrastructure

The ASCE Report Card is about as close as the country gets to a balance sheet for its built environment. Its 2025 edition points to some recovery, though decades of deferred maintenance still show. Eight of the eighteen categories assessed received higher grades, and no sector received a D-minus for the first time. Ports earned a B. Even so, nearly half the categories—including energy,



aviation, transit, stormwater, and levees-remain in the D range. Roads moved only from D to D-plus, while nearly 40 percent of major roadways remain in poor or mediocre condition. Bridges stayed at C. Energy, meanwhile, was downgraded despite record federal outlays; the report pointed to mounting capacity constraints and a transmission system that has failed to keep pace with demand.⁴

The sheer scale of the shortfall is the central fact of the financing problem. ASCE estimates that \$9.1 trillion will need to be invested between 2024 and 2033 to bring all categories to good repair and keep them there.⁵ By comparison, about \$5.4 trillion in public and private funding is expected if recent federal investment levels continue, leaving a \$3.7 trillion gap, up from \$2.59 trillion four years earlier.⁶ Roads, energy, and schools account for the largest unmet needs. Even the expectation that federal funding will remain at current levels is uncertain. The Infrastructure Investment and Jobs Act authorizations behind much of the recent improvement expire in 2026, and ASCE warns that these gains stem from short-term funding surges, not long-term certainty.

That shortfall is calculated from a fixed baseline, so it leaves out the new demand now reaching the electric system. Data centers, reshored manufacturing, and the electrification of transport and industry are driving the fastest sustained increase in electricity demand in a generation. Meeting that increase will require investment in generation, transmission, and distribution that, by any serious estimate, adds trillions of dollars to the ASCE figure over the coming decade.⁷ And these are not short-lived projects: a highway, bridge, substation, gas plant, nuclear unit, or transmission corridor is a thirty-to-sixty-year asset, financed on thirty-to-sixty-year terms.



Why Public Budgets Cannot Carry It Alone

The federal government will not close a \$3.7 trillion gap through appropriations. Net interest on the federal debt now stands alongside defense spending as a major line item. The Highway Trust Fund, meanwhile, has needed repeated transfers from the general fund to stay solvent, while state and local governments face their own constraints.⁸ A more realistic model—one the United States has quietly adopted over the past two decades—puts public money alongside private capital: regulated utilities finance grid investment through private debt and equity; independent power producers build generation under long-term contracts; pipelines, terminals, and ports rely on project finance; and public-private partnerships deliver managed lanes, toll roads, and bridges through long concession agreements.

The practical point is that nearly every category on ASCE's list depends, at least partly, on private long-duration capital. The conditions attached to that funding determine what infrastructure costs the users. When a transmission line becomes more expensive to finance, electricity bills rise. When concession financing costs more, tolls do too. And if a project cannot attract capital at all, the result is tangible: a road stays narrow, a plant goes unbuilt, and a bottleneck remains.

The Long-Duration Investor: Pensions, Endowments, and Retirement Accounts

Beginning in the 2000s, institutional investors started committing substantial portions of their portfolios to infrastructure—energy generation and transmission, pipelines, ports, terminals, toll roads, airports, water systems, and other long-lived assets. That shift accelerated during the low-interest-rate decade following the financial crisis. The attraction was structural: infrastructure can provide long-duration cash flows that are contracted or regulated and linked to inflation, a profile that



fits the long-duration liabilities of pension systems and annuity writers unusually well. Public pension plans in the United States now routinely assign meaningful portions of their portfolios to infrastructure and other real assets. They do so through dedicated funds, co-investments, and listed infrastructure securities. Corporate pension plans, sovereign wealth funds, university endowments, and insurance general accounts operate on much the same logic. To meet that demand, the world's largest asset managers have built or bought major infrastructure platforms. National and state pension systems—from Canada and Northern Europe to the American states—also appear on ownership registers for U.S. energy and transportation projects, including the offshore leases involved in the recent buyouts and the joint ventures behind projects currently subject to stop-work orders.⁹

The retail saver is part of this chain, often without realizing it. Infrastructure funds may sit directly in a state employee's defined-benefit pension. In the private sector, a worker's 401(k) target-date fund may own listed infrastructure and utility equities. A retiree's fixed annuity, meanwhile, is backed by an insurer's general account, which holds infrastructure debt because its duration matches the annuity liability. The money financing American infrastructure is not some abstract pool of "Wall Street" capital. At first approximation, it is deferred wages.

The relationship works in both directions, which is the point of this section. Retirement security relies on infrastructure producing the stable returns it was bought to provide. Infrastructure, in turn, relies on retirement capital remaining willing to commit funds at a reasonable price. When confidence in the underlying authorizations is shaken, the effects move through both systems at once: the assets retirees already own lose value, while the cost of building what the country still needs rises.



Why These Assets are Uniquely Sensitive to Authorization Risk

Infrastructure valuations rest on discounted cash-flow models extending twenty to forty years. Two aspects of that calculation matter here. Most of the asset's value comes from cash flows far in the future, so even a small change in the discount rate can cause a large shift in present value. Just as important, the entire stream of cash flows usually rests on one governmental predicate: the lease, license, right-of-way, record of decision, or permit that allows the asset to exist and operate. An infrastructure project cannot pivot the way a diversified operating company can. If that authorization fails, the cash flows do not merely decline; they end.

This is why authorization durability is not just one risk among many for the asset class; it is the risk on which all the others depend. Commodity prices can be hedged, physical damage insured against, and structures designed to account for counterparty credit. But no market instrument can hedge the possibility that the United States government will reverse its position on a signature it has already given. An investor can only demand a higher return for accepting that risk-or refuse to accept it. Both responses are now clearly underway, and someone pays for each: ratepayers and consumers bear the cost of the higher return, while workers pay when their retirement systems lose access to the very asset profile those systems were built to hold.



The New Reversibility Problem

American permitting debates have usually centered on the process's opening stages: the time needed to secure federal authorization, the number of agencies that must agree, and the years of environmental review and litigation separating an application from actual construction. These front-end problems are real and well documented. Congress has made progress at times, most notably with the FAST-41 process improvements and the categorical-exclusion and page-limit reforms enacted in 2023.¹⁰



But 2025 and 2026 revealed a second, arguably more corrosive problem at the back end of the process: a federal authorization, once granted, may not survive a change in administration. Offshore wind became the test case. In August 2025, the Bureau of Ocean Energy Management ordered work on Revolution Wind to halt, even though the project had received final federal approval in 2023, all its foundations had been installed, 45 of its 65 turbines were in place, and it was 80 percent complete.¹¹ The order was lifted a month later, but by then the developer had recorded a \$77 million impairment, while lenders and contractors had reassessed the project's risk.¹² Then, in December 2025, the government issued stop-work orders for five offshore wind projects under construction, including Revolution Wind for a second time, when it was 87 percent complete. The stated reason was national-security concerns involving radar interference.¹³ The government has also challenged approved construction plans in court. Federal courts rejected each of the administration's attempts to sustain the stop-work orders, five for five by February 2026, and Interior then turned its attention to leases not yet under construction.¹⁴ Beginning in March 2026, the Department of the Interior negotiated a series of agreements through which leaseholders voluntarily surrendered lawfully acquired offshore leases and received reimbursement for their bid payments, provided they made equivalent investments in conventional energy projects.

The largest agreement involved TotalEnergies, which gave up its New York Bight and North Carolina lease interests in return for roughly \$928 million. The money was redirected to U.S. LNG and Gulf Coast oil and gas development.¹⁵ In April 2026, Interior announced similar agreements for the Bluepoint Wind lease in the New York Bight-purchased for \$765 million in the intensely competitive 2022 auction and planned to support 2.4 gigawatts of capacity-and the Golden State Wind lease off Morro Bay, California. In both cases, the lease was canceled, the bid amount was reimbursed dollar-for-dollar against qualifying conventional-energy investment, and the developers agreed not to pursue new offshore wind development in the United States.¹⁶ The pace



has since accelerated: in August 2026, Interior agreed to return \$1.22 billion to RWE for leases off California, Louisiana, and New York, bringing the government's commitments to nearly \$4 billion across roughly a dozen offshore leases.¹⁷

These transactions need to be described accurately: they were negotiated resolutions, not seizures. With an administration openly hostile to their projects, the leaseholders decided that a clean, compensated exit was better than spending years in litigation over stranded assets, and they said so publicly. Critics on the other side have challenged both the administration's statutory authority to carry out the buyouts and the legality of using the Judgment Fund—an account Congress established to pay court judgments and settlements—to finance discretionary policy reversals. Seven East Coast states have sued over the TotalEnergies agreement, California filed suit on August 28, 2026 over the Golden State Wind agreement, and the ranking member of the House Natural Resources Committee has opened an inquiry. The state suits contend, among other things, that a “settlement” of litigation that was never filed is not a settlement at all.¹⁸

This paper does not take a position on which side of the dispute is right, because, for capital markets, the dispute itself is the injury. Everyone involved—the government that engineered the transactions, the investors who accepted them, and the critics who challenge them—agrees on the underlying fact: multibillion-dollar federal authorizations proved reversible when political priorities changed. TotalEnergies' chairman made clear what his firm had concluded: the company has “renounced” offshore wind development in the United States and will not return.¹⁹ Once one of the world's largest energy companies says it is treating the United States as a jurisdiction where authorizations cannot be relied on, the problem extends beyond any one technology or administration.

Nor should conservatives assume this precedent will always work in a congenial direction or remain limited to energy. The past year has shown what these tools can do: stop-work orders



based on broad national-security findings, lawsuits challenging construction plans already approved, and negotiated unwinds financed outside the ordinary appropriations process. They are now available to every future administration and can be applied to any federally authorized asset. An LNG export terminal, a pipeline right-of-way, a nuclear license, or an offshore drilling lease is just as exposed to a hostile future administration as an offshore wind lease was to this one. The same applies to a highway or bridge project whose financing closed on the strength of a federal record of decision and a Clean Water Act Section 404 permit. The instruments differ; the arithmetic does not. The pattern predates the current moment. Across two administrations, the Keystone XL cross-border permit was granted by one, and revoked by the other after the final reversal came after construction had already begun.²⁰ Then, in 2024, the pause on LNG export approvals taught the conventional sector the same lesson the wind sector has now learned.²¹ Reversibility is a bipartisan disease. It requires a statutory cure.







Stranded Capital Versus Recovered Capital

Not every failed project amounts to an economic catastrophe. Markets are supposed to absorb failure: if a project does not pencil out, it should not be built, and a system that ends such projects early is working as intended. For infrastructure readiness and retirement security, the real issue is what happens to the capital afterward—not whether projects fail. That leaves two distinct scenarios.



Two Ways a Project Can Fail

Capital recovery refers to a termination where the capital committed to a project returns to its owners. That can happen because the decision to stop comes before the money is turned into physical assets that cannot be redeployed, or because the party responsible for ending the project pays the cost. The investor gives up the expected upside and loses some time, but the principal remains available for the next project. One asset disappears from the economy; the capital needed to build another does not. In this limited sense, the 2026 lease buyouts amounted to capital recovery: bid payments were reimbursed, and the developers walked away whole.

Capital stranding is the reverse. Money has already become foundations, steel, cleared right-of-way, turbines waiting on a quayside, and long-lead equipment that has no other use. Yet the project cannot move forward, cannot be sold for anything close to its cost, and cannot simply be abandoned without additional spending on demobilization and decommissioning. The capital neither earns a return nor returns. It remains tied up, generating interest costs for lenders and foregone returns for equity holders. At the same time, the expense of finishing the asset rises, and the revenue it was meant to produce is delayed or disappears. For a long-duration investor, stranded capital is the worst possible result: a limited, recoverable loss becomes an open-ended loss that keeps compounding.



	Capital Recovery	Capital Stranding
Typical Trigger	Early commercial decision; negotiated exit with compensation	Litigation, regulatory delay, or policy reversal after capital is sunk
When it Occurs	Before construction, or with payment from the terminating party	Mid-construction or post-completion, without compensation
What Happens to the Capital	Returned to owners and redeployed	Immobilized in non-redeployable assets; earns nothing
Character of the Loss	Bounded: forgone upside and time	Open-ended: carrying cost escalation, lost output, decommissioning
Effect on the Pension Holder	Modest, and offset by redeployment	Impairment booked to fund NAV; return permanently reduced
Effect on the Economy	One project lost; capital available for the next	Project and capital both lost; supply not built; prices higher
Recent Illustration	2026 offshore lease reimbursements	Revolution Wind stop-work orders at 80–87% completion

Three Pathways to Stranding

Delay stranding happens before construction starts, and it is the form most commonly associated with debates over front-end permitting. Over years of reviews and lawsuits, developers spend capital on engineering, environmental studies, land options, interconnection deposits, and legal fees without earning anything. Meanwhile, cost estimates rise, and market conditions change. Announced in 2014 with an estimated cost of \$4.5 to \$5 billion, the Atlantic Coast Pipeline had a projected price of \$8 billion by July 2020, after six years of permit litigation. Its developers abandoned the project less than a month after winning a critical permit case in the Supreme Court, concluding that the remaining



legal uncertainty made further investment of shareholder capital unjustifiable.²² Billions of dollars in development costs were written off. The Constitution Pipeline, which had held a federal certificate since 2014, spent roughly four years fighting a state water-quality denial before its sponsor walked away in 2020.²³ The Cape Wind project took more than a decade and a half to develop before it was terminated in 2017.²⁴ In both cases, the capital was not simply returned late. A substantial share was spent during the process and never recovered.

Mid-construction stranding costs the most per dollar invested, and the past year has shown this pathway at scale. If a stop-work order or permit revocation arrives when a project is 80 percent complete, capital exposure peaks while liquidity is at its lowest. Contractors demobilize and submit claims. Specialized vessels and cranes, chartered at day rates in the hundreds of thousands of dollars, are either released or left idle. Equipment warranties continue to run, and lenders reassess the financing. Revolution Wind offers a clear example: even a one-month halt, later lifted, resulted in a \$77 million impairment and helped produce a \$262 million quarterly loss for its developer. A second halt came when the project was 87 percent complete.²⁵ Keystone XL shows the same pattern in the conventional sector. Construction was already underway when the cross-border permit was revoked in January 2021. The sponsor then pursued a claim of roughly \$15 billion under the North American trade agreement's legacy provisions—a claim that, regardless of its merits, indicates the amount of capital the sponsor considered stranded.²⁶

Post-completion stranding describes what happens after an asset is built. Still, its authorization is later revoked, suspended, or restricted, leaving it unable to generate the revenue that financed it: an export terminal prohibited from exporting, a completed line refused cost recovery, or a plant ordered offline based on findings it has no chance to challenge. In the United States, this outcome has been rare, and the reforms proposed below aim to preserve that record. That rarity is exactly the stability premium the country has benefited from—and is now using up.



Quantifying the Lost Potential: Illustrative Arithmetic

Stranding imposes real costs, but they are scattered across the economy. Since none appears as a distinct line in the federal budget, policy debates tend to give them less weight than they deserve. The examples below rely on round figures and conservative assumptions. What matters is the scale, not the decimal.

The cost of delay is substantial. Take a \$1 billion project financed at a blended cost of capital of 8 percent. If permitting and litigation push the pre-construction period three years beyond schedule, the pure time cost—the return that capital would have earned if deployed as planned—comes to roughly $\$1 \text{ billion} \times (1.08^3 - 1)$, or about \$260 million. That figure does not include the double-digit construction-cost escalation seen across most infrastructure categories in recent years. Put differently, a three-year delay consumes more than a quarter of the project's original value before any legal or regulatory dollars are spent.

The cost of being stranded mid-construction is substantial. Consider a \$5 billion project halted at 80 percent completion, after \$4 billion has already been converted into assets that cannot be redeployed. At the same 8 percent cost of capital, carrying that immobilized capital would cost about \$320 million per year. If the asset were a 700-megawatt generating facility—roughly the size of Revolution Wind—it would produce on the order of 2.5 to 3 terawatt-hours annually; at wholesale values of \$50 to \$70 per megawatt-hour, that amounts to \$150 to \$200 million a year in energy that never reaches a grid already in need of it. For a single project, one year of stranding brings the combined cost close to half a billion dollars, even before demobilization, contractor claims, and the eventual cost of restarts. If the project is never completed, the full \$4 billion is lost, leaving the region's ratepayers to pay for replacement supply at whatever price the market sets then.



Large infrastructure projects are built under project labor agreements and multiyear contracts with the building trades—electricians, ironworkers, laborers, operating engineers, and mariners—who are hired for the duration of construction and who plan their lives around it. When a stop-work order arrives, those crews are demobilized within days, and certifications that took months to earn sit unused. Revolution Wind illustrates the scale. Its developer credits more than 1,000 local union workers with the project’s construction, and the August 2025 stop-work order landed while crews were mid-rotation on vessels off the Atlantic coast, with no word on whether they would be paid for the remainder of their shift. The second order arrived over the Christmas holiday. Members of the building trades who finished Vineyard Wind 1 and expected to move directly onto the next project have said there was no next project to move onto. Labor leaders in Rhode Island and Massachusetts have been blunt that the stop-work orders and lease buyouts are taking good-paying union jobs off the table; the Department of the Interior has replied that no jobs were lost because the surrendered leases were not yet supporting employment.[27] Both statements can be true of different leases, and that is exactly the point: a negotiated buyout preserves the capital but not the jobs, while a mid-construction stranding destroys both.

The arithmetic follows the pattern of the capital figures above. A construction workforce of 1,000 at a fully loaded cost of roughly \$100,000 per worker per year represents about \$100 million in annual payroll for the duration of the build, before counting the port, vessel, fabrication, and supply-chain employment that a project of this scale sustains. A one-year halt removes that payroll from a regional economy and pushes trained workers toward other trades or other states, so that when the project restarts, the crew must be reassembled and, in part, retrained. This cost is felt both through the direct loss of wages and the indirect impairment of retirement assets whose returns were tied to the project. A durable authorization protects both sides of that ledger.



The cost of the premium is systemic, not confined to any one project, because it applies across all of them. Suppose the events of the past year raise the required return on authorization-dependent American infrastructure by half a percentage point—a modest increase by emerging-market standards and consistent with what investors have said publicly. Applied to \$1 trillion in new investment over the coming decade—well under a third of the ASCE need, even before counting the electricity buildout—that premium adds \$5 billion a year to financing costs. Ratepayers, tollpayers, and taxpayers ultimately cover those costs, which compound over thirty-year asset lives to more than \$150 billion. That is the price of the premium on the projects that get built. It says nothing about projects that fail to clear the threshold. At a 10 percent hurdle rate, a transmission line expected to return 9.6 percent is not built, and the congestion it might have relieved—estimated by widely cited studies to cost American electricity customers well into the tens of billions of dollars in a single year²⁷—remains.

The cost to the pension is less abstract. Take a \$300 billion public pension system with 5 percent, or \$15 billion, allocated to infrastructure and real assets. If a quarter of that allocation is tied to U.S. projects dependent on authorization, and those holdings are marked down 10 percent once the political-risk premium is priced in, the system takes a \$375 million loss—roughly one year of benefits for nine thousand retirees receiving \$40,000 each. Fiduciary accounting requires recording that loss when the probability of stranding increases, not when a project actually fails. Taxpayers then make up public pension shortfalls. The saver pays three times: as an investor, a ratepayer, and a taxpayer. Recovery is the favorable outcome—and it isn't the default behavior the system generates.

The 2026 lease buyouts, whatever else may be said about them, amounted to capital recovery rather than stranding, and the leaseholders were right to favor that outcome. Still, the recovery came through improvised negotiations, was funded from a disputed source, depended on unrelated investment commitments, and was available only to leaseholders with



enough leverage and patience to secure it. A developer whose project is stranded by a NEPA lawsuit, a state water-quality denial, or an agency's silence receives no buyout. Settlement-based recovery is not a policy. It shows that the policy has failed. Statutory reform should make recovery the rule when termination is warranted, keep stranding uncommon, and require the government to pay openly when it is responsible for the termination rather than doing so quietly.





Pricing the Precedent: From Political Risk to the Retirement Statement

In emerging-markets investing, political risk is a familiar consideration. Analysts routinely apply country risk premiums to account for the possibility that a government may expropriate or renegotiate, or fail to honor concessions. The United States' defining advantage as an investment destination was that investors never thought such a premium necessary. In practice, the stability of American rule of law subsidized every infrastructure project in the country—an invisible, unpriced, and enormous benefit.

The past year's events repriced that subsidy. It happened through four steps, none remarkable on its own. That ordinariness is exactly why their combined effect is so serious.

First, hurdle rates rise. When investment committees see stop-work orders issued for projects already under construction and



executed leases unwound through negotiation, they add a U.S. political-risk premium to the discount rates used for American assets that depend on authorization. This is not speculation about what might happen; it reflects the stated reasoning of investors who have already exited, as well as the response fiduciaries are required to make to observed risk. A fiduciary who watched five under-construction projects receive stop-work orders without adjusting the risk model would be derelict.

Second, existing holdings are marked down. As required returns rise, the present value of long-duration cash flows declines, and fund marks decline with it. Before the settlements were reached, the developers involved in the recent buyouts had already recorded impairment charges on their U.S. offshore assets. Those charges pass directly through fund net asset values and into the accounts of the pension systems and retirement funds that hold them. A project need not fail for the loss to appear; it is recorded as soon as the probability of failure increases.

Third, new investment gets rationed. Projects that might have passed under a lower hurdle rate no longer pencil out. The marginal transmission line, gas plant, terminal, or managed-lane concession-the one that would have gone ahead in a stable-authorization world-never gets built. That effect is hard to see because it is made up of things that do not happen. It comes at the worst possible time, as the country faces both a \$3.7 trillion maintenance gap and the largest electricity buildout in its history.

Fourth, the retirement saver pays twice. First, as an investor: asset values are impaired, and retirement capital is shut out of an asset class being repriced against American projects. Then, as a consumer, she faces the higher energy costs and tolls that a higher cost of capital mechanically produces in a capital-intensive industry. The schoolteacher whose pension holds the infrastructure fund-and whose utility bill finances the next project's return on equity-stands on both sides of the transaction. She has no lobbyist in the permitting debate. This paper argues that she should be understood as its principal stakeholder.



The Principle at Stake: Neutral Rules, Not Favored Projects

It would be easy-and wrong-to treat the recent lease buyouts as just another episode in the partisan energy wars, applauded or criticized depending on one's opinion of offshore wind. The conservative tradition provides a firmer vantage point. Stable property rights, respect for contracts, and the government's duty to honor its own commitments belong to neither the left nor the right; they are prerequisites for a market economy. When a government can revoke its predecessor's lawful authorizations at will, its promises become less valuable across every sector and auction, regardless of which party controls the next administration.



Serial reversal is now a familiar pattern across ideological lines: a cross-border pipeline permit revoked after an administration changes; LNG export approvals put on hold; offshore wind projects already under construction halted by stop-work orders; and executed leases unwound through negotiation. Each side sees the other's reversals as lawlessness and its own as a course correction. Capital markets treat every one of these actions the same way—as evidence that the United States approves infrastructure on terms lasting, at most, four years.

This raises a fiscal-accountability issue that should concern conservatives regardless of which projects are at stake. When negotiated settlements unwind authorizations using funds outside the ordinary appropriations process, Congress never sees the cost of reversing the policy. It is not scored, debated, or compared with alternatives. Nearly four billion dollars has now been committed to lease reimbursements through mechanisms with a disputed statutory basis; critics argue that the money comes from an account Congress established for court judgments, not policy preferences.²⁸ Whatever the legal merits, a constitutional conservative should want the matter resolved through statute. If the political branches want to pay their way out of the government's earlier commitments, they should appropriate the money publicly and accept responsibility for the cost. That discipline would do more than any other single reform to align each administration's incentives with lasting policies.

Technology neutrality is not a rhetorical concession in this paper. It is the point. A permitting framework that protects only favored technologies merely repackages the reversibility problem. The statutory reforms proposed below apply in the same way to a wind lease, a drilling lease, a pipeline right-of-way, a nuclear license, an LNG export authorization, and the federal approvals behind a highway or bridge. Their durability comes from that evenhandedness, as does their ability to attract the trans-partisan coalition any lasting statute requires.



The Legislative Landscape: What Is on the Table

Congress is closer to enacting permitting reform than at any point since the FAST-41 provisions of 2015. The proposals currently pending are serious, and several have bipartisan support. Senate negotiators have also reported agreement on the broad outlines of a deal. The question, under the standard developed in this paper, is whether a proposal makes a validly issued authorization a bankable fact or speeds up the process of obtaining one.²⁹

Proposal	Status (as of Sep. 2026)	Primary Focus	Back-end Durability
SPEED Act (H.R. 4776) — Westerman (R-AR), Golden (D-ME)	Passed House 221-196, Dec. 18, 2025, with 11 Democrats; pending in Senate	NEPA: narrower review thresholds, 60-day completeness and classification deadlines, codified agency deference, limits on judicial review, counties as cooperating agencies	Contains a provision against rescinding permits for already-approved projects; its scope was among the contested last-minute changes and is narrower than the finality and vesting framework proposed here
PERMIT Act —House	Passed House, Dec. 2025; pending in Senate	Clean Water Act permitting	None
CERTAIN Act (H.R. 8308) — Peters (D-CA), Evans (R-CO) and bipartisan cosponsors	Introduced April 15, 2026	Whole-of-process framework from application to final decision; accountability, transparency, and timelines; sponsors frame it as ending the political permitting pendulum	Closest in spirit to durability among House bills; statutory finality, vesting, and emergency-authority discipline would need to be made explicit
FREEDOM Act — Harder (D-CA), Lawler (R-NY)	Introduced Feb. 3, 2026	Enforceable federal timelines and agency-compliance mechanisms for covered energy projects	None
Let America Build Act of 2026 — Barrasso (R-WY)	Introduced June 2026	NEPA judicial review or coal, oil, and gas; deference to state oversight; streamlined federal review	None; not technology-neutral
Unlock American Energy and Jobs Act of 2026 — McCormick (R-PA)	Introduced Spring 2026	NEPA, Clean Water Act, and judicial-review reforms; LNG facility permitting	None
Energy Permitting Reform Act of 2024 (S. 4753) — Manchin, Barrasso	Cleared Senate ENR15-4 in 2024; not enacted; treated by Senate Democrats as the transmission starting point	Leasing, transmission cost allocation, judicial review across energy sources	Limited; no finality or vesting provisions
Senate bipartisan negotiations — ENR (Lee) and EPW	Contours agreed; GOP offer under Democratic review; NHPA review, transmission, and presidential cancellation authority unresolved; floor time sought before Sept. 30; Senate in recess for October	Package combining NEPA, NHPA, and Clean Water Act streamlining with transmission measures	First negotiation to place restraint on presidential cancellation of approved projects on the table; a bipartisan Senate bill to that end was introduced in June 2026



What the Pending Proposals Get Right

Taken together, the House bills and the Senate framework would satisfy most of the front-end recommendations set out in this paper. Across the various vehicles are binding deadlines for completeness and classification, narrower thresholds for requiring full environmental impact statements, codification of the Supreme Court's 2025 deference ruling in *Seven County Infrastructure Coalition v. Eagle County*,³⁰ a uniform limitations period for judicial challenges, and consolidated review.³¹ The SPEED Act passed with eleven Democratic votes, while Democratic leaders chose to reopen Senate talks after previously suspending them.³² That combination gives the front-end package a plausible route to sixty votes, provided the remaining disagreements over historic-preservation review and transmission can be resolved. Political conditions also appear to have shifted: more than six hundred organizations signed a coalition letter calling for comprehensive reform, and at a January Senate hearing, Republicans and Democrats agreed that administrations should not cancel fully approved projects simply because political priorities have changed.³³

What They Miss

The shared weakness is that nearly every proposal frames permitting as a question of speed. Speed does matter: reducing the pre-approval period narrows the window for delay stranding. But faster approval without durability only reduces the time between authorization and reversal. If a project gets its record of decision in eighteen months instead of five years, then loses that approval through a stop-work order when it is 80 percent complete, the reform has done it no good. Among the proposals surveyed, the SPEED Act is the only House-passed bill with an explicit provision barring the rescission of approved permits. That language was one of the contested last-minute changes.³⁴ The Senate negotiation alone has considered limiting the president's authority to cancel permits, and the administration is least likely to accept that restriction.³⁵ None of the pending texts



includes a vesting rule, a disciplined standard for suspending policy on national-security grounds, or a requirement that policy terminations be funded through an appropriation.

Two additional observations emerge from the survey. Sector-specific bills—those reforming judicial review only for coal, oil, and gas—would, if enacted without a neutral counterpart, worsen rather than solve the reversibility problem. They suggest that durability is a concession granted to preferred technologies, not a rule applied across the board. The calendar adds pressure. The Senate is seeking floor time before the September 30 funding deadline, will be in recess during October, and then faces a lame-duck session with an uncertain composition. Advocates on both sides have cautioned that postponing a deal until the lame duck, without involving a possibly reconstituted House, carries serious risks.³⁶ That constraint shapes the minimum agenda below: it is limited enough to attach to any legislative vehicle that moves.





A Minimum Statutory Agenda for Durable Authorizations

Executive-branch process reforms may be welcome, but they cannot address the central problem: executive-branch positions change. Only Congress can make an authorization durable. The framework below rests on six statutory pillars aimed at one result: a validly issued federal infrastructure authorization should function as a property-like commitment, revocable only for cause, through a defined process, or at an honest public price. Four pillars are missing from every pending vehicle and form the minimum package; the other two appear largely in pending bills and should be retained.

RECOMMENDATION 1



Codify Finality for Validly Issued Authorizations

Congress should amend the Outer Continental Shelf Lands Act, the Mineral Leasing Act, the Federal Land Policy and Management Act, the Natural Gas Act, the Federal Power Act, the Atomic Energy Act, and the surface-transportation and water-resources statutes governing federal-aid highway approvals and Section 404 permits. The amendments should state that a lease, license, right-of-way, certificate, record of decision, or permit validly issued under those laws may be suspended or revoked only for grounds specified in statute: material noncompliance with its terms; fraud or material misrepresentation in obtaining it; or a specific, documented threat to safety or security that meets the standards of Recommendation 5. A change in executive policy preference would not qualify as grounds for revocation. This provision merely puts into law what every bidder in every federal auction and every lender at every financial close has always taken for granted-and what the past year has shown can no longer be taken for granted.

RECOMMENDATION 2

Vest Project Rights at the Approval Milestone

Statute should establish that, once a construction and operations plan is approved and a record of decision, certificate, or equivalent final agency action is issued, the holder's rights vest. Later administrations may enforce the authorization's terms. Still, they may not revisit the underlying approval, reopen completed environmental review without significant new information as defined by existing NEPA standards, or make continued validity depend on new substantive requirements absent from the original instrument. State land-use law has long relied on vesting doctrines because they address this problem at the local level; federal infrastructure law needs that same backbone.



Investment-backed expectations that have endured the full federal review process should not be forced back into litigation every January 20th.

RECOMMENDATION 3

Impose Enforceable Shot Clocks Through Consolidated Review

Durability at the back end requires discipline at the front end. Slow permitting creates investor uncertainty, and longer approval periods increase the chance that delays will strand a project. Congress should extend the FAST-41 model and the deadlines set out in the SPEED and CERTAIN Acts³⁷ by requiring coordinated review for covered infrastructure projects, rather than leaving it optional. It should also set binding deadlines for each agency action, automatically elevate matters when those deadlines lapse, and require one consolidated record of decision. The objective is a permitting timeline measured in months and protected by statute, not one that shifts with each administration. That pillar is largely present in the pending vehicles and should remain intact in any final package.

RECOMMENDATION 4

Set a Uniform, Short Limitations Period for Judicial Challenge

Congress should adopt a uniform statute of limitations for judicial challenges to covered authorizations. The defensible precedent is the 150 days already applied to highway and transit projects under Title 23.³⁸ That deadline should be paired with venue consolidation and expedited scheduling. Without a clear endpoint, litigation exposure can be economically indistinguishable from revocation risk: in either case, an authorization may never become a bankable fact, and delay stranding follows. A short, firm challenge window would preserve judicial review while giving all stakeholders, including project opponents, a defined point after which finality attaches. As



with Recommendation 3, this pillar appears in pending bills and should be carried forward.

RECOMMENDATION 5

Discipline Emergency and National-Security Cancellation Authority

Genuine security threats call for genuine authority, but nothing in this proposal would prevent the government from responding to a real hazard. The past year has shown, however, how readily security rationales can stretch when they are aimed at disfavored projects. Congress should require specific written findings identifying the threat whenever it suspends or revokes a covered authorization on security or emergency grounds. The head of the relevant security agency—not just the land-management or permitting agency—should certify those findings. The action should expire automatically after a defined period unless it is renewed with updated findings, and courts should provide expedited review under a standard that defers to genuine security judgments, not conclusory assertions. Elastic emergency power presents the reversibility problem in its most concentrated form. It is also the provision a future administration with the opposite persuasion is most certain to reach for.

RECOMMENDATION 6

Require Honest, Appropriate Compensation for Policy Terminations

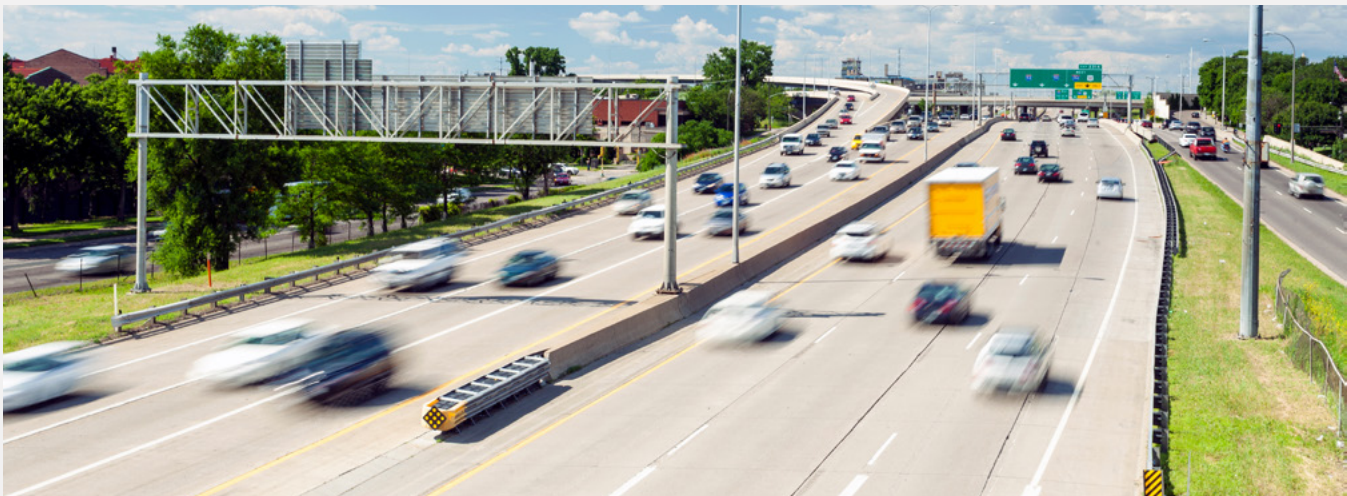
Finally, if the government terminates a valid authorization for policy reasons, Congress should require compensation for the holder's reasonable investment-backed expectations. That compensation should come from funds specifically appropriated for it, rather than from settlement accounts intended for court judgments. This is the framework's keystone: it alters the political economy of reversal. An administration that has to return to Congress, seek an appropriation, and justify the cost of undoing its predecessor's commitments will reverse far fewer



of them-and only when the public case is genuinely strong. Reversal remains possible, but it is no longer free, quiet, or off-budget. Recovery should follow a rule, not a negotiation: when the government causes a termination, it returns the capital. Sound money for sound commitments is a principle any fiscal conservative can defend, regardless of which party's reversals it constrains.

The Minimum Package

Recommendations 1, 2, 5, and 6-finality, vesting, disciplined emergency authority, and appropriated compensation-are the minimum statutory changes needed to restore investor confidence across sectors. Their provisions are brief, technology-neutral, and severable. They could be drafted as one title and attached to the SPEED Act, the CERTAIN Act, or the Senate package without altering the front-end provisions those vehicles already contain. They impose no prospective limits on any administration: a future President would still be free to change the rules for new projects, decline to hold new lease sales, or condition new approvals as the law allows. The aim is narrower-to prevent the retroactive unwinding of commitments on which capital has already been staked. No permitting-speed reform can guard against that act, and no investor can hedge against it.





CONCLUSION

The Signature of the United States

The permitting debate is often presented as a dispute over energy sources or the speed at which the government should approve projects. At bottom, though, this paper argues that the real question is whether the United States government's signature can be treated as bankable. The most significant constituency in that dispute has never really been recognized: the tens of millions of Americans whose retirement security is invested, directly and indirectly, in that very assumption.



The country needs \$9.1 trillion in infrastructure investment this decade,³⁹ along with a historic expansion of its electric system. Appropriations cannot provide that capital. Nor can private investors with long-duration horizons provide it at a reasonable price if the authorizations they depend on are not stable. The recent offshore lease buyouts settled the immediate disputes between the government and leaseholders under terms both sides accepted. They could not, and did not, settle the precedent they created. That precedent is now available to every future administration, with equal force across every technology and asset class. Investors have been clear about their response: higher risk premiums, impairments, and, in some cases, exit. The costs of those responses will show up as higher energy bills, increased tolls, supply that never gets built, and lower retirement returns—just when the nation needs the greatest capital formation in its history.

Congress cannot legislate political disagreement out of existence, especially when energy and land use are involved, and it should not try. Its proper task—one only Congress can perform—is narrower: when those disputes lead to a policy change, the new policy should apply prospectively to new projects, not retroactively by undoing commitments backed by capital that has already been invested. That is what the reforms proposed here would do. They do not favor any technology or lock in a particular administration's preferences. They ask the federal government only what the government asks of every private party to every contract it signs: keep its word or pay openly for the privilege of breaking it. That is not a partisan demand. It is the minimum condition for a country it intends to build.

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