



November 2, 2022

All Eyes on the Midterms

Midterms are generally viewed as a referendum on incumbent leadership and there is a lot at stake related to the interests of the Coalition. President Biden and incumbent Democrats have underscored their efforts to strengthen the country's ageing infrastructure but with far too few projects heading to construction from the first year of the IIJA, it's been noticeably quiet on that front.

Congress remains in recess until **November 14th**. As previously reported, a FY23 Continuing Resolution was passed to fund the federal government until **December 16th**. This will allow more time for enactment of the regular appropriations bills.

After recess it is expected that appropriations bills will move. Details obviously depend on the outcome of the election. As previously reported, this summer the House passed a six-bill appropriations bill that included the Interior, Energy, and Transportation Appropriations bills. The House Interior Appropriations Bill provides \$1.752B for the Clean Water SRF, \$1.126B for the Safe Drinking Water SRF and \$72M for WIFIA. On the same day, the Senate Appropriations Committee released its FY23 Interior Appropriations Bill that provides \$1.689B for the Clean Water SRF, \$1.176B for the Safe Drinking Water SRF and \$66.9M for WIFIA.

IIJA: A Federal Investment Guide for Local Leaders

In partnership with Accelerator for America and the U.S. Conference of Mayors, Drexel University's Nowak Metro Finance Lab has released a guide to the IIJA focused on educating local leaders on the full scale of funded programs (formula and competitive). The guide lays out six strategies local leaders can adopt and modify to access / compete for these critical funds:

- Strategy #1: Approach IIJA Funds in Terms of Recipients and Applicants
- Strategy #2: Engage Private Financing Using Infrastructure as a Platform
- Strategy #3: Build Economic Opportunity Through Deployment
- Strategy #4: Geographically Align Spending to Support Place-Making
- Strategy #5: Use the IIJA to Address the Climate Crisis and Build Resiliency
- Strategy #6: Position Your City as a Clean Energy & Tech Innovation Hub

We are sharing this resource in the event you may find it useful.

[CLICK HERE](#) to download the full report.

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AGC of America • AGC of Texas • Alabama Utility Contractors Association • Arizona Utility Contractors Association • Associated Pennsylvania Constructors • Associated Utility Contractors Of Maryland* • Connecticut Construction Industries Association • CIC of Westchester County & Hudson Valley* • Engineering Contractors Association • General Contractors Association Of New York • Georgia Utility Contractors Association • Indiana Constructors Inc. • Long Island Contractors Association • Maryland Transportation Builders & Materials Association • Michigan Infrastructure & Transportation Association • Minnesota Utility Contractors Association* • National Rural Water Association • New Mexico Utility Contractors Association • NYSLECET • Ohio Contractors Association • Public Works Contractors Association of Maryland • Tennessee RoadBuilders Association • Underground Contractors Association of Illinois* • United Contractors* • UCA of Anne Arundel County • Utility Contractors Association of New England* • Utility & Transportation Contractors Association of New Jersey* • Contractors Association of West Virginia • Wisconsin Underground Contractors Association

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“Build America, Buy America” title of the Infrastructure Investment & Jobs Act (IIJA)

Federal agencies are implementing a key provision included within the “Build America, Buy America” title of the Infrastructure Investment & Jobs Act (IIJA). Of interest to the Coalition, pursuant to Section 70914(c) of the Act, EPA may waive Buy America preference where EPA finds that:

- Applying the domestic content procurement preference would be inconsistent with the public interest (a “public interest waiver”);
- Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or
- Inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent (an “unreasonable cost waiver”)

The EPA has already approved various [waivers](#) related to these provisions. [See BABA Act waivers open for public comment](#). Feel free to share with Dan Kennedy any challenges you see related to state implementation of these waivers or if your state is seeking a waiver that we may be able to show support for.

Key Advocates Report

Included with this notice is Key Advocates recent report which is current to October 31, 2022.



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November 2022 Insights

Note: Congress is in recess until November 14.

“Build Back Better” Bill: Round Two?

Word came from various sources this month – Members, including the Senate Republican leadership office, committees and staff – that they expect the lame duck session to be like a two month Christmas with legislative presents abounding. Bottom line, we are coming to the end of the current Congress and bills not enacted into law by final adjournment “die;” that is, they must start anew in the next Congress. What happens in the lame duck session will very much depend on the outcome of the November election. If the Democrats hold the majority then there is less pressure to do more this year as opposed to waiting until next year. If, however, the Democrats lose either the House or the Senate, then the next two months may be their last chance for maybe two years to pass bills they support. For the Coalition, pending the results of the election, we continue to advocate for a possible second round of infrastructure spending, enactment of H.R. 5118 or some variation, and the FY23 appropriations bills (see sections below).

Included in the House-passed bill of interest to the Coalition:

- \$30B for Safe Drinking Water SRF lead service line replacement projects;
- \$100M for state public water systems;
- \$700M to reduce lead in school drinking water;
- \$100M for large scale water recycling projects;
- \$1.15B for emergency drought relief;
- \$125M for Alternative Water Source Program grants;
- \$2B for sewer overflow and storm water reuse grants;
- \$4B for reduction of carbon in the surface transportation sector;
- \$4B for affordable and safe transportation access; and,
- \$6B for local surface transportation projects.

No funding for the Clean Water SRF is included in the House BBB. It does include new taxes.

Unofficially, the Senate Environment and Public Works Committee released its BBB title which includes \$9B for SDWSRF-funded lead remediation projects, \$225M for rural and low-income water assistance grants, \$125M for Alternative Water Source Program grants, and \$500M for sewer overflow and storm water reuse municipal grants.

FY23 Appropriations

Congress passed an FY23 Continuing Resolution funding the government until December 16 to allow more time for enactment of the regular appropriations bills. To date, 6 of the 12 bills have

passed the House, none in the Senate. The Federal government has operated under CR's in all but three of the last 46 years. It is expected that this will not be the last CR for FY23.

On July 20, the House passed a six bill appropriations bill that included the Interior and Energy Appropriations bills.

The House Interior Appropriations Bill provides \$1.752B for the Clean Water SRF, \$1.126B for the Safe Drinking Water SRF and \$72M for WIFIA.

On July 28, the Senate Appropriations Committee released its FY23 Interior Appropriations Bill that provides \$1.689B for the Clean Water SRF, \$1.176B for the Safe Drinking Water SRF and \$66.9M for WIFIA.

The House Energy and Water Appropriations Bill includes \$63.7M for the traditional Title XVI program, \$20M for WIIN grants and \$75M for WaterSMART grants.

On July 28, the Senate Appropriations Committee released its FY23 Energy and Water Appropriations Bill that includes \$35M for the traditional Title XVI program, \$20M for WIIN grants and \$55M for Water SMART grants.

The House Transportation Appropriations Bill includes:

- \$775M for national infrastructure investments (RAISE/TIGER/BUILD), including \$30M for grants to assist areas of persistent poverty and \$100M for the Thriving Communities program;
- Research and technology funding to create more equitable access to transportation systems, combat climate change, and reduce greenhouse gas emissions;
- \$18.7B for the FAA, including \$1.6B for aviation safety and \$273M for airport improvement grants and projects;
- \$61.3B for the FHWA formula programs including \$1.8B for discretionary highway programs and projects;
- \$874M for FMCSA and \$1.2B for NHTSA to make cars, trucks and roads safer;
- \$3.8B for FRA including \$555M for the Intercity Passenger Rail grant program, \$630M for the CRISI grants program, and \$2.3B for Amtrak, including \$882M for the Northeast Corridor and \$1.5B for National Network grants;
- \$17.5B for the FTA, including \$13.6B for buses, \$3B for capital investment grants, and \$646M for transit infrastructure grants; and,
- \$987M for MARAD.

On July 28, the Senate Appropriations Committee released its FY23 Transportation Appropriations Bill that includes:

- \$1B for the RAISE grant program, \$3.2B for the Federal Highway Administration to support additional funding for PROTECT grants for resiliency projects, tribal high priority projects, bridge formula funding, and development of the Appalachian Development Highway System;
- \$2.6B for Amtrak;
- \$200M for the Federal-State Partnership for State-of-Good-Repair (SOGR) to fund the replacement, rehabilitation, or repair of major infrastructure assets providing intercity passenger rail service;

- \$535M for the Consolidated Rail Infrastructure and Safety Improvement (CRISI) program;
- \$2.51B for the Federal Transit Administration’s Capital Investment Grants program;
- \$527M for Transit Infrastructure Grants to advance investments into Bus and Buses Facilities, the Low or No Emissions Vehicle Program, Areas of Persistent Poverty, ferry programs, and research to accelerate zero emission technology; and
- \$234M for the Port Infrastructure Development program.

All the above appropriated amounts are in addition to the Bipartisan Infrastructure Law funding amounts.

“Inflation Reduction Act of 2022” (IRA)

To review, the Senate passed the bill on August 7, the House on August 12 and the President signed it into law on August 16. Highlights include:

- \$369B in energy and climate change programs, with the goal of reducing carbon emissions by 40% by 2030;
- Medicare would to negotiate the prices of certain medications and cap out-of-pocket costs at \$2,000 for those enrolled in Medicare drug plans. The Health and Human Services Secretary would negotiate the prices of 10 drugs in 2026, and another 15 drugs in 2027 and again in 2028. The number would rise to 20 drugs a year for 2029 and beyond;
- It would also redesign Medicare's Part D drug plans so that seniors and people with disabilities wouldn't pay more than \$2,000 a year for medication bought at the pharmacy;
- The deal would require drug companies to pay rebates if they increase their prices in the Medicare and private-insurance markets faster than inflation;
- The agreement would also extend expiring enhanced subsidies for Affordable Care Act coverage for three years
- Tax credits for electric vehicles are in. Electric Vehicle tax credits will continue at their current levels, up to \$4,000 for a used electric vehicle and \$7,500 for a new EV. However, there will be a lower income threshold for people who can use the tax credits.

To pay for the agreement, the bill would impose a 15% minimum tax on corporations, which would raise \$313 billion over a decade. The current deal also closes the carried interest loophole, which allows investment managers to treat their compensation as capital gains and pay a 20% long-term capital gains tax rate instead of income tax rates of up to 37%. The package also calls for providing more funding to the IRS for tax enforcement. Families making less than \$400,000 per year would not be affected and there would be no new taxes on small businesses.

“Infrastructure Investment and Jobs Act” (BIF)

To review, the \$1.2T law (P.L. 117-58) includes the following (it does not include any new taxes) –

- For FY22-26 \$12.838B for the Clean Water State SRF, starting at \$2.127B in FY22 and going up to \$2.828B in FY26;
- \$35.713B over five years for the Safe Drinking Water SRF, starting at \$6.702B in FY22 and going up to \$7.403B in FY26;
- No appropriations are included for the Alternative Water Source Projects program (an authorization of \$125M over 5 fiscal years is included);

- \$8.3B for the USBR for FY22-26 with an annual cap of \$1.66B per year including a number of programs under USBR’s jurisdiction with specific appropriated amounts but without specifying annual funding amounts for each program;
- For water recycling, the bill appropriates \$1B over 5 FY’s, broken down to \$550M for Title XVI and WIIN Act grants and \$450M for “large scale” projects (those with project costs >\$500M);
- \$400M over 5 FY’s for WaterSMART;
- \$1.2B for water storage and groundwater;
- \$25M for desalination; and,
- S. 914, as passed by the Senate, which authorizes \$14.65B over five fiscal years for the Clean Water SRF and the Safe Drinking Water SRF, and \$125M for the AWSP and which includes the Feinstein-Padilla amendment which limits the prohibition against applying for Alternative Water Source Program (AWSP) grants to USBR projects that received construction funds; and,

Other core infrastructure -

- \$65B for Broadband
- \$17B for Ports
- \$25B for Airports
- \$7.5B for Zero and Low-Emission Buses and Ferries
- \$7.5B for Plug-In Electric Vehicle Chargers
- \$65B to Rebuild the Electric Grid
- \$21B for Superfund and Brownfield sites

Highway Bill (FAST Act reauthorization)

The Senate FAST Act reauthorization bill is included in the enacted BIF. It authorizes \$287B in highway spending, ninety percent of which would be distributed to the states by formula. It also authorizes \$10.8B for various programs addressing resiliency and \$2.5B for electric, hydrogen, and natural gas vehicle charging and fueling stations. It provides billions for curbing emissions, reducing congestion and truck idling. It also streamlines infrastructure permitting and sets a two-year target for environmental reviews. Lastly, the bill authorizes \$12.5M per year to fund state and regional pilot testing of user-based alternative revenue mechanisms to the gas tax.

Funding Opportunities

USBR Title XVI Recycled Water Grants – on August 18 awards were announced. Announcement emailed to Coalition members.

State and Tribal Assistance grants – no new grant opportunities because of the number of FY22 STAG earmarks and the projected number of FY23 earmarks. Per EPA, two information documents were sent pending release of the final Community Grants Guidance: one on how to prepare for the grant application process and the second, an optional project status questionnaire.

Alternative Water Source Program grants – pending action on a second round of infrastructure spending.

WRDA 2022 – both passed bills include only Corps of Engineers issues. Conference pending; will continue to monitor for possible inclusion of issues of interest.

H.R. 5118, the “Wildlife Response and Drought Resiliency Act” - S. 4231, the “STREAM Act”

Contacted Morgan Leonard, Napolitano staffer, and the House Natural Resources Committee, to see what their plans are in dealing with the Senate either on H.R. 5118 or the STREAM Act. The report we got back was that “at this time, it’s unclear what will happen although we are keeping the pressure on for action.” Also contacted Senator Feinstein staffers who reaffirmed the Senator’s commitment to action on the STREAM Act. However, no insights as to status, plans, etc.

On July 29 the House, by a vote of 218 to 199, passed the above bill which includes funding authorizations for items included in H.R. 1015, 3404 and 4099. The bill authorizes \$600M (this is in addition to the \$550M appropriated in the Bipartisan Infrastructure Law) for Title XVI with no breakdown between the traditional Title XVI program and WIIN grants, with no fiscal year limitation, with an increase in the Federal share from \$20M to \$50M, and with project priority funding. The bill also authorizes \$700M (again, this is in addition to the \$450M appropriated in the Bipartisan Infrastructure Law) for large water recycling projects with total estimated cost of at least \$500M. The bill draws from the following which the Coalition has supported and advocated for enactment:

H.R. 1015 authorizes \$500M for WIIN Act grants, eliminates the requirement that Congress must approve funding awards for specific projects by designating them in an enacted appropriations bill and increases the Federal share from \$20M to \$30M.

On May 17, Senator Feinstein (with Senators Kelly and Sinema – both Arizona Democrats – as cosponsors) introduced S. 4231, the STREAM Act. A hearing was held on the bill on May 25 by the Energy and Natural Resources Subcommittee on Water and Power. The bill authorizes – it does not appropriate - \$300M for FY24-28 for the WIIN grant program. These funds, albeit authorizations, are over and above the BIF WIIN grant appropriated amount of \$550M. The Federal share is \$20M. Priority is given to projects that meet certain criteria.

H.R. 3404 authorizes \$500M for the WIIN Act grant program, increases the Federal share to \$30M, and authorizes a new \$300M water trust fund with \$100M earmarked for recycled water projects.

H.R. 4099 authorizes \$450M for large water recycling projects with total estimated cost of at least \$500M with the Federal share at \$20M.

Bill Tracking

Tracking bills that are marked up by committees and/or come to our attention.