



**December 2, 2022**

## **Midterms Come with No Big Waves**

Thanks to everyone who joined our post-election call on November 14<sup>th</sup>. You received a summary of that call shortly after and we have also attached it to this report. While the results in some districts were being tallied, on the call it was assumed the Senate balance would remain either split or a 1 vote Democratic margin and that the House would flip to a Republican majority with slim margins. That assumption held.

See attached for a full summary of results and some insights on what to expect on likely changes to committees and leadership in the next Congress. Sante has provided insights on how the results will impact CWCC priorities.

The FY23 Continuing Resolution was passed to fund the federal government until **December 16<sup>th</sup>**. This will allow more time for enactment of the regular appropriations bills, perhaps during the lame duck session. Summaries of relevant appropriation bills are included in the attached report.

## **Key Advocates Report**

Included with this notice is Key Advocates recent report which is current to November 30, 2022.

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cleanwaterconstructioncoalition.org | P.O. Box 728 | Allenwood, NJ 08720 | Office: (732) 292-4300 | Fax: (732) 292-4310

Robert Briant, Jr. – Chairman

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\* Steering Committee Member



(703) 340-4666

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November 15, 2022

To: Dan Kennedy  
From: Sante Esposito  
Subject: November 14 Call Summary Update

**NOTE: this summary includes an update of the issues discussed on the November 14 call. Their status is as of November 15, 2:00PM EST.**

### **Midterm Election**

Like many, we were planning for a red wave. That was based not only on the polls and news reports but also on calls we made to a number of Member offices. What we learned from those calls was that the Republicans were more than optimistic - they were confident while the Democrats were, at best, concerned. And then Tuesday and every day thereafter happened.

Starting with the House of Representatives, let me begin by putting things into historical perspective. Historically, on average, 27 House seats have been lost by the party in power – that is, the party that controls The White House - in the midterm election. As examples, the Republicans lost 40 seats in the Trump midterm, the Democrats 63 in the Obama midterm and the Democrats 54 in the Clinton midterm. Also, when the President is below 50% approval rating – which Biden is – the historical midterm average loss since 1982 is 46 seats.

### **The Results**

Starting with the House, going into the election the Democrats had 222 seats and the Republicans 213. As of now, the Democrats have won 204 seats and the Republicans 215. That leaves 16 seats outstanding. Some are competitive seats but many are western races that have not as yet finished vote counting. However, if you look at who is ahead at this time in the 16 remaining races, the Democrats lead in 10 and the Republicans in 6 – making the final total for each 214 Democrats and 221 Republicans (MSNBC has it at 215 Dems to 220 Reps plus or minus 3). The magic number for majority in the House is 218 so, at best, it would be a slim Republican majority. And that would mean a net gain of 8 seats or so by the Republicans – well below the average and definitely not a red wave.

In the Senate, going into the election the Democrats had 50 seats and the Republicans 30, the Vice President holding the tie vote. Historically, on average, 4 seats have been lost by the party in power in the midterm election. As of now, the Democrats have 50 seats (including a net gain of 1 seat) and the Republicans 49. So the Dems will maintain the majority in the Senate with Georgia still at play with a Dec 6 runoff. Georgia is still key in either giving the Democrats an extra vote if they need it (because of Sens Manchin and/or Sinema) or the Republicans a tie per the current situation.

## Leadership Offices

Starting with the Senate Democrats because that's the easiest one to predict. There's no indication of a change in leadership with Schumer solidly entrenched to be majority leader. No timing on elections announced yet.

On the Republican side, the consensus is that the absence of a red wave was favorable to Senator McConnell to retain his leadership for a number of reasons - he did not predict a red wave, he was adamant in saying that some of the Republican candidates were not the best and he did not have a lead role on election strategy and funding so cannot be "blamed" for the overall outcome. Had there been a red wave - say 54-55 Republican seats - then maybe he would have been challenged. For example, Senator Rick Scott of Florida - chair of the Senate Campaign Committee - has not denied that he would be interested. Now, Scott is in the doghouse. The leadership elections are scheduled for this week - as of now McConnell wants to process but others want to postpone until after the Dec. 6 Georgia election to give Walker a chance to vote in the caucus if he wins.

In the House, on the Democratic side, the lack of a red wave seems, at least initially, to have lessened the pressure for a new breed of leaders - Pelosi, Hoyer and Clyburn are in their eighties. That doesn't mean that there wouldn't be challenges and changes. And Pelosi has implied that because of the incident involving her husband and his recovery which is expected to be long term, she may step aside. While a valid concern, she may also be using that as cover for the age issue and losing the House even marginally as a way out. Nov. 30 has been set for the elections.

As for the Republicans, a red wave would have sealed the speakership for Congressman McCarthy because he would have inherited many new supporters. However, that didn't happen and now he is seeking to preside over what appears likely to be an extremely thin majority - a scenario that hands massive leverage to the far right. The Republican Freedom Caucus - the MAGA Members - have already laid out their demands in return for their vote for McCarthy as Speaker, and they say that they are willing to play hardball to get what they want. So far the biggest sticking point is that they want to restore the "motion to vacate" which the Democrats repealed. That motion allows a single Member to force a vote on the speakership at any given time. In essence, it would be a vote to fire the Speaker. Also, Congressman Andy Biggs (R-AZ) is running for speaker not that he would get the nomination as McCarthy only needs a majority of the caucus but to show McCarthy that as of now he does not have the 218 votes he needs to be elected speaker by the full House. The nomination vote is scheduled for today. The full House vote in January.

## Committee/Subcommittees

Committee and subcommittee assignments will be a work in progress for some time given the results of the election, retirements, and Members' preferences. Last Congress, the Senate Commerce Committee did not finalize its subcommittee assignments until March of the next year. As to the number of majority versus minority members on Senate committees and subcommittees, if Warnock loses and the Senate stays at 50/50 then the number of both sides on committees and subcommittee will stay as is - equal number. If Warnock wins, the Democrats will get one more slot than the Republicans on committees and subcommittees making it easier to move legislation. Right now, with equal numbers, to move a bill out of committee or subcommittee if there is a tie vote, the bill sponsoring side must offer a motion to discharge the committee or subcommittee on the Senate Floor which is debatable, time consuming and causes delays in the overall legislative process. In the House, with an expected Republican majority, there will be new committee and subcommittee chairs, with the number of majority to minority

members on committees and subcommittees reflecting the overall ratio of majority to minority members in the full House.

## Priorities

We haven't heard anything from the Senate or House Democrats on priorities for the new Congress. We have in the House from Congressman McCarthy. However, that was before the election results. He identified three: 1) repeal Biden policies although no specifics on which policies; 2) cut spending with the focus on the appropriations process but also including entitlement reform such as Medicare/Medicaid; and, 3) investigations including the Afghan withdrawal, Ukraine funding, COVID cause and treatment, immigration including the border wall and reform, and Hunter Biden. Also, Congressman Sam Graves (R-MO), the incoming chair of the Transportation and Infrastructure Committee, announced that he wants to hold hearings on the Bipartisan Infrastructure Law.

## Coalition Impact

Granted everything is and will be in flux for some time but in terms of congressional leaders, committee and subcommittee chairs and assignments, there will be new members in key positions and new staff and with that the need to pursue new relationships while continuing to build on existing ones.

In terms of the McCarthy announced priorities (if these hold), does repeal of Biden's policies include revisiting the Bipartisan Infrastructure Law and, if so, will the SRF's and Title XVI WIIN grants funds be on the table? Both SRF's and Title XVI, among many other Federal water programs, have never been supported by Republicans as they view them as a state and local responsibility.

On spending cuts, will that include the "add-ons" to the BIF that have been included in the annual appropriations bills. For example, in this year's appropriations bills, nearly \$1.7B is included for the Clean Water SRF and \$20M for WIIN grants, both amounts over and above the BIF funding levels. Will it also end earmarks like the Republicans did when they last took the House?

## Lame Duck Session

As of now, the focus is on four issues:

### 1) "Build Back Better" Bill: Round Two

It has been reported that some Democrats are planning in the lame duck session to bring back the expanded child tax credit or a smaller version of it. Senators Sherrod Brown (D-OH) and Michael Bennet (D-CO) want to pair it with the renewal of an expired R&D tax break for businesses and other non-controversial items. This could be the vehicle for revisiting the "Build Back Better" Bill effort as the Democrats will still hold the majority in both Houses until the end of the year. If so, for the Coalition we would continue to advocate for funding for the Alternative Water Source Program and large scale water recycling projects, inclusion of H.R. 5118 or some variation, and any other items of interest.

Included in the House-passed “Build Back Better” bill of interest to the Coalition (see bold):

- \$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; and,
- \$2B for sewer overflow and storm water reuse grants.

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.

- 2) WRDA 2022 – both passed bills include only Corps of Engineers issues. Conference still pending. Will continue to monitor for possible inclusion of issues of interest.
- 3) FY23 Interior and Energy and Water Appropriation Bills

Congress/the government is operating under a Continuing Resolution until at least Dec. 16. Pending that, work continues on the individual FY23 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. This may not be the last CR for FY23. Included in both the House passed and the Senate announced FY23 appropriation bills are @\$1.7B for the Clean Water SRF, \$1.1B for the Safe Drinking Water SRF and \$20M for WIIN grants.

- 4) H.R. 5118, the “Wildlife Response and Drought Resiliency Act” and S. 4231, the “STREAM Act” (Support to Rehydrate the Environment, Agriculture and Municipalities Act)

H.R. 5118 has passed the House. S. 4231 has been introduced in the Senate. The Coalition supports enactment of H.R. 5118 or some variation in the lame duck session.

H.R. 5118 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.

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.



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## *December 2022 Insights*

### **Midterm Election**

House of Representatives: 220 Republicans, 213 Democrats, majority 218 – 2 remaining races - both likely GOP

Historically, on average, 27 House seats have been lost by the party in power – that is, the party that controls The White House - in the midterm election. As examples, the Republicans lost 40 seats in the Trump midterm, the Democrats 63 in the Obama midterm and the Democrats 54 in the Clinton midterm. Also, when the President is below 50% approval rating – which Biden is – the historical midterm average loss since 1982 is 46 seats. In this month's midterms, the Democrats' likely loss is 9 seats.

Senate: 50 Democrats, 49 Republicans, 1 result outstanding (Dec. 6 George runoff)

Historically, on average, 4 seats have been lost by the party in power in the midterm election. In this month's midterms, the Democrats gained 1 seat with George pending.

### **Leadership**

House of Representatives:

Speaker – Congressman Kevin McCarthy (R-23-CA) nominated pending Full House vote

Majority leader – Congressman Steve Scalise (R-1-LA)

Minority Leader – Hakeem Jeffries (D-8-NY)

Minority Whip – Katherine Clark (D-5-MA)

Senate:

Majority Leader – Senator Chuck Schumer (D-NY)

Majority Whip – Senator Dick Durbin (D-ILL)

Minority Leader – Senator Mitch McConnell (R-KY)

Minority Whip – Senator John Thune (R-ND)

### **Committee/Subcommittees**

Committee and subcommittee assignments will be a work in progress for some time although expect continued activity on this through the rest of the year. Last Congress, the Senate Commerce Committee did not finalize its subcommittee assignments until March of the next year.

House: With a change in majority there will be new committee and subcommittee chairs, with the number of majority to minority members on committees and subcommittees reflecting the overall ratio of majority to minority members in the full House. Committee, subcommittee and committee memberships currently ongoing.

Senate: Don't expect significant changes in committee and subcommittee chairs and ranking members given the few changes in the election. As to the number of majority versus minority members on committees and subcommittees, if Senator Warnock loses and the Senate stays at 50/50 then the number of both sides on committees and subcommittee will stay as is – an equal number. If Warnock wins, the Democrats will get one more slot than the Republicans on committees and subcommittees making it easier to move legislation. Right now, with equal numbers, to move a bill out of committee or subcommittee if there is a tie vote, the bill sponsoring side must offer a motion to discharge the committee or subcommittee on the Senate Floor which is debatable, time consuming and causes delays in the overall legislative process. In the House, with an expected Republican majority, there will be new committee and subcommittee chairs, with the number of majority to minority members on committees and subcommittees reflecting the overall ratio of majority to minority members in the full House.

## **Priorities**

We haven't heard anything from the Senate or House Democrats on priorities for the new Congress. We have in the House from Congressman McCarthy. He has identified three: 1) repeal Biden policies although no specifics on which policies; 2) cut spending with the focus on the appropriations process but also including entitlement reform such as Medicare/Medicaid; and, 3) investigations including the Afghan withdrawal, Ukraine funding, COVID cause and treatment, immigration including the border wall and reform, and Hunter Biden. Also, Congressman Sam Graves (R-MO), the incoming chair of the Transportation and Infrastructure Committee, announced that he wants to hold hearings on the Bipartisan Infrastructure Law.

## **Impacts**

Relationships - there will be new Members in key positions and new staff and with that the need to pursue new relationships while continuing to build on existing ones.

Repeals - in terms of the McCarthy announced priorities (if these hold), does repeal of Biden's policies include revisiting the Bipartisan Infrastructure Law and, if so, issues of importance.

Spending cuts - will that include the "add-ons" to the BIF that have been included in the annual appropriations bills. levels. Will it also end earmarks like the Republicans did when they last took the House?

## **Lame Duck Session**

Areas of focus:

### 1) "Build Back Better" Bill: Round Two?

It has been reported that some Democrats are planning in the lame duck session to bring back the expanded child tax credit or a smaller version of it. Senators Sherrod Brown (D-OH) and Michael Bennet (D-CO) want to pair it with the renewal of an expired R&D tax break for businesses and other non-controversial items. This could be the vehicle for revisiting the "Build Back Better" Bill effort as the Democrats will still hold the majority in both Houses until the end

of the year. If so, we would continue to advocate for funding for the Alternative Water Source Program and large scale water recycling projects, inclusion of H.R. 5118 or some variation, and any other items of interest.

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- \$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.

2) WRDA 2022 – both passed bills include only Corps of Engineers issues. Conference still pending. Will continue to monitor for possible inclusion of issues of interest.

3) FY23 Appropriation Bills

Congress/the government is operating under a Continuing Resolution until at least Dec. 16. Pending that, work continues on the individual FY23 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. This may not be the last CR for FY23.

House and Senate “Water” Appropriations Bills:

Included in both the House passed and the Senate announced FY23 Interior and Energy and Water Appropriation Bills are @\$1.7B for the Clean Water SRF, \$1.1B for the Safe Drinking Water SRF and \$20M for WINN 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.

- 4) H.R. 5118, the “Wildlife Response and Drought Resiliency Act” and S. 4231, the “STREAM Act” (Support to Rehydrate the Environment, Agriculture and Municipalities Act)

H.R. 5118 has passed the House. S. 4231 has been introduced in the Senate. The Coalition supports enactment of H.R. 5118 or some variation in the lame duck session.

H.R. 5118 authorizes \$600M for WIIN grants. This is in addition to the \$550M appropriated in the Bipartisan Infrastructure Law for both traditional Title XVI and WIIN grants. The bill also increases the Federal share from \$20M to \$50M, provides priority project funding and 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.

S. 4231 authorizes \$300M for FY24-28 for WIIN grants. These funds are over and above the BIF WIIN grant appropriated amount of \$550M. The Federal share is \$20M. Priority funding is given to projects that meet certain criteria.

## **Funding Opportunities**

USBR FY23 Title XVI Recycled Water Grants – the USBR announced that \$150M plus what is provided in the FY23 appropriations bill would be available for FY23 WIIN grants. The timing of the solicitation and application process TBD.

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.

## **“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.

### **Bill Tracking**

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