



Memo to Snohomish County Council

Fr: Dale Learn and Paul Hoover

Re: Federal Legislative Update

January 25, 2023

Since it is the beginning of the year and organization of Congress is still ongoing, this memo is intended to be a very high-level summary of what happened at the end of 2022 and speculation of what could occur in 2023 with the new Congress and Administration. Much of the federal government's efforts for 2023 will begin in earnest when President Biden submits his Fiscal Year 2024 (FY24) budget request, which we anticipate in mid-March.

Federal Funding and Policy Priorities

In discussions with Senator Murray's office and her new role as Chairman of the Appropriations Committee, they have requested a top-level list of the County's needs and priorities. This is a great opportunity to highlight well-defined problems or specific projects in need of federal funding or policy changes. To develop our list, we met with each department to hear their ideas and will submit it to Council for final approval. This is a preliminary list and we are not committing to actually requesting items from it, nor does it bar us from asking for something different.

Additionally, we are reviewing potential ideas for RAISE grant (Rebuilding American Infrastructure with Sustainability and Equity) applications. This grant traditionally funded highway, rail, and bridge improvements, and was updated and expanded from last year to include ports, culverts, and even certain non-motorized projects. We are reviewing potential options and looking to submit them before the end of February deadline.

Omnibus Appropriations Package

On December 29th, President Biden signed into law a \$1.7 trillion federal spending package to avert a government shutdown and complete federal appropriations for FY23. The spending bill, which includes a pile of high-profile year-end priorities from nearly \$40 billion in Ukraine aid to an election law overhaul, was Democrats' final legislative act before surrendering their House majority to Republicans.

In total, the regular 12 appropriations bills include \$800 billion in non-defense funding, a \$68 billion – 9.3 percent – over last year. This is the highest level for non-defense funding ever and a larger increase in both dollars and percentage than FY22. The bills also provide \$858 billion in defense funding.

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What's IN

- **Tax items on the table:** Included in the bigger spending bill is a measure aimed at curbing fraudulent tax breaks reaped from land conservation deals and legislation to boost retirement savings in tax-advantaged accounts. The additions of both provisions follow uncertainty over whether there would be any tax title in the government funding bill at all.
- **Boost for NLRB:** Lawmakers increased the budget for the National Labor Relations Board by \$25 million for the first time in nearly a decade — a top priority for unions amid a surge in union organizing across the country. Its funding now exceeds \$299 million.
- **Ukraine aid:** Congressional leaders want to give the country about \$45 billion to help fend off Russian attacks, exceeding President Biden's request for \$37 billion.
- **TikTok ban:** Legislation pushed by Sen. Josh Hawley (R-MO) that would bar the download of the popular app on government devices made it into the final bill. The measure originally passed the Senate unanimously and comes as many states have enacted similar TikTok bans on government devices, heeding broad bipartisan concerns about the Chinese-owned app and its reach in the U.S.
- **Earlier end to Covid rules:** The bill includes a bipartisan deal to end a Covid-era Medicaid policy that gave states more funding and barred them from kicking people off federally funded insurance, setting a new end date of April 1, 2023, instead of July 2023.
- **Telehealth extension:** An extension of HHS rules that made telehealth more accessible during the pandemic. But the provision, which extends the flexibility through the end of 2024, falls far short of a push from some lawmakers who wanted to make that flexibility permanent.
- **Electoral Count Act:** Senate Majority Leader Chuck Schumer noted earlier this month that the funding bill will include a bipartisan deal to revamp the century-old Electoral Count Act, which governs congressional certification of presidential ballots, which was tested on and in the aftermath of January 6, 2021.

What's OUT

- **Popular tax provisions tossed:** An extension of the enhanced Child Tax Credit pushed by Democrats and a provision allowing businesses to immediately write off their research expenses, rather than over a period of five years, did not make the final cut.
- **Pandemic aid:** President Biden had wanted \$9 billion to help combat the Covid pandemic and address emerging needs, but Republicans blocked these additional funds.

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- **Cannabis banking legislation:** The so-called SAFE Banking Act, which would give the cannabis industry increased access to financial services, remains on the cutting room floor amid opposition from Senate Minority Leader Mitch McConnell.
- **Drug sentencing deal:** A bipartisan agreement to narrow the sentencing disparities between crack and powder cocaine was also booted from the bill after Attorney General Merrick Garland instructed federal prosecutors last week to eliminate the sentencing disparities.
- **Helping pregnant workers:** Legislation that would expand protections for pregnant workers, called the Pregnant Workers Fairness Act, got left out of the bill after being stalled in the Senate for months.
- **Energy permitting reforms:** Sen. Joe Manchin's (D-WV) hope to expedite energy projects through a permitting policy overhaul didn't make it into annual defense policy legislation — and it's officially out of the spending bill, too.

Outlook for Congress in 2023

After two years of unified Democratic Control, we now have a split Congress for at least the next two years. This time, it comes in the form of a Democratic Senate and a narrow House Republican majority, where we expect policy confrontations over a series of must-pass bills on the debt ceiling, appropriations bills to avert a shutdown, and agriculture policy for the Farm bill. Due to the division, we expect each majority to focus on what can be done unilaterally: Senate Democrats will focus on advancing federal judges and other Executive Branch nominees, while House Republicans have laid out a game plan for hearings to investigate and question the administration.

While we expect much drama surrounding the annual appropriations – with unfortunately perhaps a federal government shutdown or two – we do anticipate the Congress will come together on a budget in the end. Below is a look at what both chambers could prioritize, and a glimpse of some potential other issue areas where they could collaborate.

U.S. House of Representatives

House Republicans have been clear that investigations of President Biden administration officials will be a central focus in the new term, and that they aim to home in on specific individuals, including Homeland Security Secretary Alejandro Mayorkas, who they claim has exacerbated the border security crisis. In a press conference last winter, some conservative lawmakers indicated that they were interested in impeachment, arguing that Mayorkas has not sufficiently deterred migrants at the border despite record levels of apprehensions and confiscation of contraband.

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Other issues as investigatory targets include the U.S. withdrawal from Afghanistan, Attorney General Merrick Garland's handling of the Justice Department (Justice), and the business dealings of President Biden's son Hunter Biden. Congress is limited in how it can follow through on investigations as lawmakers are unable to bring criminal charges, but they can recommend Justice bring charges. Justice has already denied subpoenas from the House regarding ongoing investigations, per their custom. However, lawmakers can draw negative attention to the administration, which could have significant political value before the presidential election.

Beyond these investigations, Speaker McCarthy (R-CA) has laid out a legislative agenda called the "Commitment to America," which sets up four pillars the party will focus on, including the economy, safety, individual freedom, and government accountability. Policies that are part of this proposal include everything from retention and recruitment bonuses for law enforcement to a parent's bill of rights that supports feedback on school curriculums.

Of these proposals, Republicans have said that some of the earliest ones they aim to work on include bills that increase border security resources like physical barriers at the southern border, and legislation that tries to roll back \$80 billion in funding for the IRS that Democrats passed in the Inflation Reduction Act. Many of these bills will likely be stymied in the Senate, and Speaker McCarthy may have some difficulty getting these plans through the House, too.

U.S. Senate

One of the most impactful things the Senate can do on its own is to confirm liberal-leaning judges, after Republicans did the same for years during President Trump's administration. According to progressive group Demand Justice, there are 69 judicial vacancies that do not have a nominee, as of late December, and 44 nominees pending confirmation. President Biden has already seen the highest number of judges confirmed of any recent President at this point in their term, including one Supreme Court justice, 28 circuit court judges, and 68 district court judges. That number surpasses the more than 80 judges confirmed in President Trump's first two years. Democrats have a chance to continue this trend in the new term and expedite some of these confirmations.

While Sen. Kyrsten Sinema (I-AZ) has changed her party affiliation to independent, she's said she does not intend to caucus with Republicans, meaning Democrats will be able to hold committee majorities in the new term. In the last Congress, due to the 50/50 Senate split they had equal numbers on all committees with the Chair of each one being a Democrat due to the Vice President's role as President of the Senate. Having this

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majority could help Democrats more quickly move judges, and other legislative measures, even in the case of tie committee votes. Now, even if Sinema doesn't caucus with Democrats, the party will have a one-seat majority, giving it more sway over committee procedure.

Beyond judicial nominees, there are a lot of policies that Democrats were not able to get through by the end of the year that they could continue to push in the new term. One such proposal is a bill that would enable banks to work with marijuana retailers in states where weed has been legalized (see above). This bill has also picked up bipartisan support in the House, a factor that could make it more tenable.

Immigration reform is another issue that fell by the wayside at the end of the year, which lawmakers have said they hope to revisit. A compromise on the matter has long proved elusive for Congress, and its chances remain slim. Still, Sinema is among the senators who's said she intends to try again in 2023.

The White House has also offered some early signs of the economic agenda that it hopes to push in 2023, much of which will encounter big challenges in a split Congress, too. Elements of that agenda could center on reducing childcare and elder care costs for families, both subjects the administration previously fell short trying to tackle in reconciliation bills, and both which are aimed at boosting workforce participation. Other policies that Democrats have been unable to pass during their tenure, including an expanded child tax credit, could come up again, though most are set to have a tough time making more progress because of House Republican resistance.

Controversial Issues

There are a couple different must-pass bills that will likely be hard fought this year, and include raising the debt ceiling, government funding, and the farm bill, all must-pass bills to keep the country running, making each an opportunity for House Republicans to hold up legislation to make other demands.

Sometime in 2023, lawmakers will have to raise the debt ceiling, the amount that the U.S. is able to borrow, as we have already reached it this year. Treasury is using "extraordinary measures" to continue to pay our debts, but those efforts will reach their limits sometime in the late spring or early summer. Historically, Republicans have been more willing to risk a default on the debt ceiling, using Democrats' fear of financial catastrophe to extract spending cuts. Republicans have already signaled a willingness to employ this strategy again, with Speaker McCarthy noting ahead of the midterms that there would be some requests made in exchange for GOP support. Some conservative

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House Republicans have signaled that they're interested in more aggressive demands including possible cuts to Social Security and Medicare.

Government funding bills could be another inflection point, with Republicans eager to curtail spending for social programs. If Congress fails to pass spending bills by October 1st, the government risks a shutdown that furloughs workers and delays key services. The farm bill, which conservative lawmakers have also withheld support for in the past, is a third chance for House lawmakers to extract concessions. This is legislation that Congress has to renew roughly every five years, and it authorizes many of the Agriculture Department's programs, including SNAP. Previously, the Freedom Caucus sank a Republican farm bill in 2018 when they called for an immigration vote as a condition for its passage.

Potential Areas of Agreement

The likelihood of passing more ambitious legislation, like the American Rescue Plan or the Inflation Reduction Act, is much lower in a split Congress, though there are still some long-shot areas both parties have expressed interest in.

One of these is permitting reform, which would expedite federal permit approvals for fossil fuel projects as well as clean energy projects, enabling them to get completed more quickly. House Republicans have cited the issue as a piece of their legislative agenda, arguing that the government is getting in the way of innovation and business. Democrats, meanwhile, have suggested that reforms are important to help put funding from green energy proposals and legislation like the infrastructure bill to use more quickly. Sen. Joe Manchin (D-WV) has made permitting reform one of his chief priorities as well, to approve the Mountain Valley natural gas pipeline in his home state of West Virginia.

As Sen. Sinema alluded to, immigration reform is also an issue that remains on the table, with Democrats interested in prioritizing DACA recipients, and Republicans looking to beef up resources along the border. It's long been a subject that lawmakers have struggled with in Congress, though they've said they hope to keep working at it.

Foreign policy is another area where there could be more bipartisan collaboration: This past year, the CHIPS Act, which is designed to invest in U.S. supply chains so that the country can more effectively compete against the progress being made in other places, like China, was among the bipartisan packages that made it through. House Republicans have indicated that they'll be focusing on scrutinizing the Chinese government, which could draw some Democratic support as well.

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Backing for Ukraine as the Russian invasion continues has also had bipartisan backing thus far and could continue to see that, although a segment of conservative Republicans has begun vocalizing their opposition.

Trade initiatives and policy – especially the focus on further bilateral agreements – could also be areas where the parties can collaborate. This is one which the Washington State Delegation remains mostly united in its supportive of advancing.

Water Resources Development Act (WRDA)

On December 8th, the House passed the National Defense Authorization Act (NDAA), which included the Water Resources Development Act (WRDA) of 2022, bipartisan legislation to boost federal resources for habitat restoration, improve accessibility for ports, and build cleaner and greener maritime infrastructure. The House easily approved a much-anticipated compromise version of the NDAA with its WRDA provisions, by a vote of 350 to 80, and sent it over to the Senate for final congressional approval.

This bill makes history as the fifth consecutive WRDA, which is the first time in the history of the United States Congress this has been done. WRDA 2022 authorizes new and additional funds for the Corps to carry out critical water and wastewater assistance projects across the nation.

Also known as “Environmental Infrastructure,” this authority was created in WRDA 1992 and is provided to specific localities, subject to appropriations. Among many port and navigational projects, this WRDA also:

- Authorizes a historic total of \$6.58 billion in environmental infrastructure assistance for community-driven projects, and state-wide infrastructure programs carried out in partnership with the Corps throughout the nation.
- Creates additional flexibility and expanded authority for the Corps to address the water resources challenges of economically disadvantaged communities, including communities of color, Tribal communities, and rural communities.
- Provides the Corps with additional funds and the authority to provide technical assistance for resiliency planning, with priority given to economically disadvantaged and Tribal communities.
- Directs the Corps to coordinate with the U.S. Environmental Protection Agency to remediate legacy contamination of potentially hazardous materials at specific locations throughout the nation.
- Increases the number of projects and studies in economically disadvantaged communities that the Corps can carry out at no cost to the communities.

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