

**Metropolitan Transportation Commission and Association of Bay Area Governments
Joint MTC ABAG Legislation Committee**

December 9, 2022

Agenda Item 4d

Washington D.C. Legislative Update

Subject:

November 2022 report on key legislative, funding, and political developments over the past month from Washington, D.C. prepared by the Summit Strategies team.

Issues:

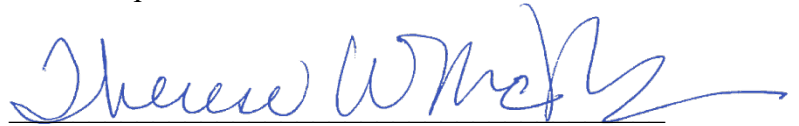
None identified.

Recommendations:

Information

Attachments:

- Attachment A: Summit Strategies Team Report – November 2022



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Summit Strategies Team Report – November 2022

From: Summit Strategies Team

To: Therese McMillan, Executive Director

Date: November 30, 2022

Subject: November Federal Policy Monthly Report

- **Midterm Results in a Divided Congress**
 - **Working with the Federal Railroad Administration (FRA) to Support Grant Applications**
 - **Supporting MTC Funding Opportunities in the Omnibus Spending Package**
 - **Build America Bonds: A Bay Area Toll Authority Issue**
 - **What the Midterm Results Mean for the Lame Duck Session & Financial Data Reporting Requirements**
 - **Agency Actions and Competitive Grant Update**
 - **National Transportation News Roundup**
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Below is a status update on issues of interest to MTC and the actions that we have taken to date.

Midterm Results in a Divided Congress

The 2022 midterms again defied predictions, with the widely anticipated "red wave" failing to materialize. Democrats have maintained control of the Senate after winning close races in Arizona, Nevada, New Hampshire, and Pennsylvania. The Georgia Senate runoff on December 6 will determine if Democrats hold 50 or 51 seats. Republicans will hold a slim majority in the House, where current Minority Leader Kevin McCarthy (R-CA) is predicted to become Speaker of the House. A slight majority in the House means that the Republican conservative wing will have outsized influence in policymaking as Congressman McCarthy will need their votes to pass any of the Conference's legislative priorities.

With Republicans controlling the House, it's widely expected that reducing federal spending will be a top House priority during the 118th Congress, which commences in January 2023. This may include efforts to reduce funding authorized in the American Recovery Plan (ARP), Bipartisan Infrastructure Law (BIL), and Inflation Reduction Act (IRA). While it is very unlikely that funding provided in the BIL will be rescinded, the parts of the law that did not receive guaranteed advanced appropriations are subject to annual appropriations and could be reduced during the annual appropriations process. We can also expect oversight and possibly legislation to block the U.S. Department of Transportation (USDOT) from regulating surface transportation greenhouse gas (GHG) emissions. As a reminder, USDOT issued a draft rulemaking earlier this year proposing to add GHG emissions to the federal transportation performance regime.

Working with the Federal Railroad Administration (FRA) to Support Grant Applications

The DC team has been working with the FRA to support MTC priority rail projects included in MTC's BIL Infrastructure Grants Strategy. FRA is getting ready to release the first round of the Federal State Partnership for Intercity Passenger Rail grant program funds, including high-speed rail. As part of the conversation with the FRA, the D.C. team has sought details on how to help enhance competitiveness for the region's BIL grant priorities and mitigate challenges that could reduce competitiveness. These conversations can help MTC work with partners to best structure their applications moving forward.

Advocacy Supporting MTC's Regional BIL Priority Projects

USDOT is in the thick of reviewing grant applications for several BIL regional priority grants. The MEGA and Bridge Investment Program Grant awards are expected to be announced any day. It's our understanding that MTC's regional BIL priorities for those awards – 680 Forward, Oakland's Waterfront Mobility Hub, Golden Gate Bridge Seismic Retrofit (priority for bridge funds), and the Bay Bridge Rehabilitation project are candidates that made it to the late rounds of review. Congressional leaders raised other Bay Area candidates – notably the Downtown Extension project – as a top MEGA priority. Of course, final decisions will not be known until USDOT makes grant announcements. The Rural Surface Transportation Grant program – the target grant for the State Route 37 project – is expected to be announced in December. The DC team has supported MTC staff's advocacy for the MTC BIL priority projects.

Supporting MTC Funding Opportunities in the Omnibus Spending Package

The DC team continues to work to support key MTC funding opportunities in the omnibus spending package. The House appropriations bill includes \$600 million in supplemental funding for Capital Investment Grant (CIG) projects with full funding grant agreements (FFGA) and impacted by supply chain disruptions and inflation. Of that \$600 million, \$110 million would be directed to Caltrain and BART. Other key beneficiaries would be Seattle's Sound Transit, LA Metro, New Jersey Transit, and Phoenix's Valley Metro. We have been working closely with transit operators and impacted manufacturers in the Bay Area and across the country to build support for this provision, including securing letters of support from members of Congress from key districts and states to their respective House and Senate appropriations leadership. We are also regularly engaging with House and Senate leadership on the issue and advocating for this priority directly with House and Senate appropriations committee staff.

The DC team also continues to engage with Transportation, Housing, and Urban Development, and Related Agencies (THUD) staff supporting funding and report language in both the House and Senate. The new \$200 million "Yes In My Backyard Incentive Grant Program," for which the Bay Area Housing Finance Authority (BAHFA) would be an eligible recipient and "Regional Councils of Government," report language recommending that USDOT and the Department of

Housing and Urban Development consider making regional agencies – like MTC, ABAG and BAHFA – eligible for a wider range of funding programs than is the case today.

In addition, we are supporting partner efforts to protect funding (\$50 million) in the House bill to help transit agencies implement smart mobility pilots. This includes fare improvement projects and Fare Integration report language encouraging the FTA to assist transit agencies through technical assistance and best practices on successfully establishing integrated fare systems to provide seamless transfers between transit agencies within a region.

Build America Bonds: A Bay Area Toll Authority Issue

Your DC team is working with coalitions across the country advocating for Congress to take action to exempt from sequestration's mandatory spending cuts and Build America Bonds (BABs) credit payments to issuers. Without this exemption, the Bay Area Toll Authority and other BABs issuers would – beginning in 2023 – see annual cost increases (from the lost subsidy) in the tens of millions of dollars (or more).

While sequestration isn't new, and BABs payments have been subject to haircuts over the years, the *scale* of the potential subsidy loss is unprecedented. The COVID relief bills passed by Congress had high expenditures; thus, the offsets needed to meet "pay as you go" budgetary requirements also jumped. They were so high that they dropped BABs credit payments to zero. It's good news that Congress already addressed this once, averting potential cuts that faced BABs issuers in 2022. However, that was just a one-year fix, so we're in the same situation again this year.

We have been engaging with Congressional leadership, Budget committee staff and national associations and it's encouraging that it's widely considered a "must pass" issue. The earliest we could see a resolution is this December, during the lame-duck session. If Congress does not address the issue in December, they could address it retroactively next year.

What the Midterm Results Mean for the Lame Duck Session & the Bay Area Toll Authority's Financial Data Reporting Requirements

There is bipartisan interest in clearing the deck before the start of the 118th Congress. Democratic leadership has floated the idea of combining the omnibus spending package with the National Defense Authorization Act (NDAA) to expedite the process. The NDAA authorization has widely been viewed as a potential legislative vehicle for [The Financial Data Transparency Act of 2022](#) (S. 4295), which would set a two-year deadline for BATA and other government agencies (including transit agencies and state and local governments) that issue debt to comply with a fully revamped set of uniform financial data reporting requirements. BATA and others are concerned the proposed metrics are too narrow and that the timeline for compliance is too tight. Your DC team is partnering with others to encourage more time for discussion and refinement before such a comprehensive overhaul is enacted.

Other Democratic priorities for the lame-duck session, including raising the debt ceiling and extending the Childhood Tax Credit, are very up in the air. While Republican leaders appear interested in clearing the deck so they can focus on new legislative priorities in the House in the 118th Congress, some conservatives want the omnibus and NDAA blocked so they can have control of writing the legislation in the new Congress.

Agency Actions and Competitive Grant Update

FRA Announces Hearing on Train Crew Safety Requirements

On Thursday, October 27, 2022, the Federal Railroad Administration announced a public hearing and extension of the public comment period for a notice of proposed rulemaking (NPRM) that would establish minimum safety requirements for the size of train crews, depending on the operation. The public hearing is scheduled for December 14, 2022, from 9:30 AM to 4:00 PM in Washington, DC. [More information on the announcement can be found here.](#)

EPA Seeks Public Input on IRA Programs to Fight Climate Change

On Friday, November 4, 2022, the U.S. Environmental Protection Agency (EPA) announced the initial public engagement and input opportunities for new and existing programs under the Inflation Reduction Act (IRA). These programs focus on funding climate projects addressing clean energy, transportation, greenhouse gas emissions, and more. The published Request for Information (RFI) seeks feedback on IRA programs. [More information on the announcement can be found here.](#)

Build America, Buy America Waiver Set to Expire

On Tuesday, November 7, 2022, the U.S. Department of Transportation announced that they would not extend a temporary waiver on "Buy America" requirements for construction materials. The "Buy America" requirements went into effect on Thursday, November 10, 2022. The Build America, Buy America Act, which was included in the Bipartisan Infrastructure Law, seeks to maximize the use of domestic products for federally funded projects. As part of the announcement, USDOT proposed two new waivers. One waiver would be for narrow categories of contracts and solicitations to help with the procurement transition for construction materials. The other waiver would be for small grants and other components to allow USDOT and grant recipients to focus domestic sourcing on products that would have the most significant economic effect. [More information on the announcement can be found here.](#)

Notice of Final Agency Action on Proposed Railroad Project in California

On Tuesday, November 10, 2022, the Federal Railroad Administration (FRA) issued a notice to the public to announce a time limit on filing a claim seeking judicial review on the actions surrounding the California High-Speed Rail San Francisco to San Jose Project Section. A claim seeking judicial review of the agency actions on the project must have been filed on or before November 12, 2024. [More information on the notice can be found here.](#)

Requests for Comments on Bus and Bus Facilities Program

On Tuesday, November 10, 2022, the Federal Transit Administration (FTA) issued a notice to announce the intention of the FTA to ask the Office of Management and Budget (OMB) to approve an extension on a request for comments for the Buses and Bus Facilities Formula, Competitive and Low or No Emissions Program. Comments must be submitted before January 9, 2023. [More information on the notice can be found here.](#)

National Transportation News Roundup (links to articles)

- [The infrastructure lobbying frenzy is just getting started. \(Politico\)](#)
- [High Stakes for Transportation in Governors Races. \(Route Fifty\)](#)
- [Cities Turn to Transit Improvements to Shape Their Future. \(Governing\)](#)
- [Cities and States Bristle Over Proposal to Change How They Report on Finances. \(Route Fifty\)](#)
- [USDOT Expands Financing for Certain Transit Projects. \(The National Law Review\)](#)