



Special Report

# Lame Duck Preview & 2022 Midterm Election Results

November 18, 2022

# Table of Contents

<b>Introduction</b>	<b>2</b>
<b>Lame Duck Preview</b>	<b>2</b>
FY 2023 Appropriations .....	2
National Defense Authorization Act (NDAA) .....	3
Water Resources Development Act (WRDA) .....	3
Emergency Supplemental .....	4
Energy Permitting Reform .....	5
Tax Extenders .....	5
Lands, Water, and Other Native American and Natural Resources Measures .....	6
Electoral College Reform .....	6
Same-Sex Marriage Codification .....	6
Judicial Nominees .....	7
<b>2022 Election Results Overview</b>	<b>7</b>
The House of Representatives .....	7
The Senate .....	8

# Introduction

Congress returned to Washington on Monday, November 14, for the post-election lame-duck session and will have just four weeks to reach a funding deal and avert a federal government shutdown on December 16. The remainder of the 117th Congress is only 13 and 19 legislative days for the House and Senate, respectively. That said, lawmakers have a loaded schedule of legislative items to tackle before the end of this session of Congress. Leaders of both parties will look to settle on various legislative and regulatory issues, allowing the 118th Congress to start with a clean slate in January 2023. This NATaT Special Report covers several items that Congress will likely address during the lame-duck session. These critical pieces of legislation include the fiscal year (FY) 2023 government spending package; the National Defense Authorization Act (NDAA); the Water Resources Development Act (WRDA); an emergency supplemental package; permitting reform; judicial nominations; and a variety of riders and reauthorizations. The Report also provides a recap of the 2022 midterm election results that concluded with Republicans taking control of the House of Representatives and Democrats maintaining power in the Senate. NATaT will continue to provide updates as we learn more about the pending election results and subsequent committee assignments/leadership. We will also provide additional updates on lame-duck activities between now and when Congress adjourns.

## Lame Duck Preview

### FY 2023 Appropriations

To date, Congress has yet to enact any of the 12 annual appropriations bills. The House passed six of 12 spending bills through a “minibus” spending package in July. The other six appropriations bills have passed out of committee. However, the Senate has not advanced any of its bills through the appropriations committee, although lawmakers in the chamber have released all 12 bills. On September 16, 2022, President Biden signed (after Congress passed) a stopgap spending measure ([P.L. 117-180](#)), extending government funding at current FY 2023 levels through December 16. A spending package is one of two must-pass items for lawmakers, and they have yet to reach a bicameral agreement on topline defense and domestic spending. Top negotiators on both sides of the aisle and in both chambers prefer a clean slate for the start of a new Congress. Speaker of the House Nancy Pelosi (D-CA) and the Senate Majority Leader Chuck Schumer (D-NY) will consider combining the two must-pass legislative items (the other being the National Defense Authorization Act (NDAA), covered in depth later in the document). If leaders choose this option, it will limit floor time and increase support for the omnibus spending package. Key provisions negotiators will haggle over are total defense, and non-defense spending and what policy riders to include (Ukraine aid, hurricane relief, COVID-19 aid, an extension of the National Flood Insurance Program (NFIP), and an extension of expiring Medicare and Medicaid programs to name a few).

**Lame Duck Outlook:** It is doubtful that a government shutdown will occur. Democrat and Republican disagreements over the spending numbers and policy provisions will require considerable negotiation between Congressional leaders to reach a compromised final spending package. During the lame-duck House Republicans will vote on if the Conference will ban earmarks, which returned for FY 2022, having massive implications for the 118th Congress. Both parties, but House Republicans especially, will want to clear the

legislative calendar for a clean docket when Congress returns on January 3, 2023. There is, however, a possibility that Congress will pass another continuing resolution (CR) to fund the federal agencies into 2023.

## National Defense Authorization Act (NDAA)

Congress takes up the NDAA every year, which sets policy and authorizes funding for the Department of Defense (DOD). Congress has passed the NDAA every year for over six decades. The House passed its bill ([H.R. 7900](#)), as amended, by a vote of 329-101 in July. It authorizes \$839.3 billion – \$37 billion more than requested by the President – for procurement, research and development activities, military construction, and family housing, and to cover inflationary costs for fuel and construction.

The Senate Armed Services Committee passed its version of the NDAA ([S. 4543](#)) last July, but the full Senate has not considered the bill. The Senate NDAA authorizes \$846.9 billion – \$44.9 billion more than requested by the President – for procurement, operations and maintenance, research and development activities, and inflationary costs. In October, the Senate proceeded to consider H.R. 7900, but a complete substitute amendment ([S.Amdt.5499](#)) was offered, which included 75 amendments, including the biennial Water Resources Development Act ([S. 4136](#)), intelligence program authorization ([S. 4503](#)), and the Taiwan Policy Act ([S. 4428](#)), among others.

Congressional and committee staff spent the October recess negotiating which other proposed amendments will be included in the final Senate bill (more than 900 have been offered). For example, Senator Mark Warner (D-VA) submitted his Financial Data Transparency Act ([S. 4295](#)) bill as [Senate Amendment 5788](#). His legislation would establish uniform data standards for entities currently required to submit financial information to the Municipal Securities Rulemaking Board (MSRB), including any municipality that has issued publicly traded debt.

Similar to the FY 2022 NDAA negotiations, the Senate could move forward to a conference committee without holding a floor vote. Without a floor vote, provisions in the House bill could be on the negotiating table. House Armed Services Chair Adam Smith (D-WA) and Ranking Member Mike Rogers (R-AL) said a final version of the NDAA could be ready for a vote as early as the first week of December. Reports say that a combined omnibus-NDAA package could be on the table to overcome political opposition and expedite passage.

**Lame Duck Outlook:** The NDAA has been continuously passed and enacted for 61 years, and we expect the FY 2023 bill to pass in the lame-duck session. Congress will likely consider an NDAA bill in the first week of December.

## Water Resources Development Act (WRDA)

The Water Resources Development Act (WRDA) would authorize the U.S. Army Corps of Engineers (Corps) to carry out a two-year roadmap of water infrastructure projects. During the recess, as lawmakers campaigned in their home states, Senate Majority Leader Chuck Schumer allowed the Armed Services Committee to begin the NDAA amendment process. Senators included WRDA in the NDAA, and as long as it remains in the Senate NDAA following a conference with the House, it will pass in the lame-duck.

[H.R. 7776](#): WRDA 2022 authorizes \$25.3 billion in financing to the Corps for various water infrastructure, resiliency, sustainability, and development investments across the nation. It authorizes 18 pending Chief's

reports, 72 new feasibility studies, and directs the expedition of 18 existing studies. Notably, this year's WRDA bill expands the Corps' authority to address communities' future water resource needs. It directs the Corps to work to understand the water needs of all communities, including economically disadvantaged rural and urban communities.

Representatives Peter DeFazio (D-OR), chairman of the House Transportation and Infrastructure Committee, and Sam Graves (R-MO), the Committee's ranking Republican, introduced H.R. 7776 on May 16, 2022. The measure passed the House on June 8 by a 384-37 vote and passed the Senate on July 2 by a 93-1 vote. The lame-duck will serve as a time for Congress to conference any remaining differences.

[S. 914](#): The "Drinking Water and Wastewater Infrastructure Act" reauthorizes various groundwater, wastewater, and stormwater programs administered by the EPA through 2026. In total, the bill would authorize \$35 billion through the fiscal year 2026. This includes \$11.4 billion each for Clean Water State Revolving Loan Funds and Drinking Water State Revolving Loan Funds, \$1.4 billion for sewer overflow and stormwater reuse municipal grants, \$510 million for Assistance for Small and Disadvantaged Communities, and \$200 million in WIFIA programs.

Senators Tammy Duckworth (D-IL) was the lead sponsor and introduced the legislation on March 23, 2021, along with Environment and Public Works Committee Chair Tom Carper (D-DE) and Ranking Member Shelley Moore Capito (R-WV). The legislation passed the Committee by unanimous vote on April 14, 2021.

**Lame Duck Outlook:** House and Senate staff have been informally negotiating and seeking to reconcile differences "behind the scenes" for many weeks. Given that WRDA was added to NDAA as an amendment, the legislation will pass during the lame-duck.

## Emergency Supplemental

Various legislative items will be considered under an emergency supplemental:

- **Disaster Relief:** Hurricanes Ian and Nicole tore through Florida, and Hurricane Fiona devastated Puerto Rico, causing billions of dollars in damage. After Hurricane Ian, Senator Marco Rubio (R-FL) introduced a framework requesting \$33 billion for an emergency disaster aid package. Funding related to hurricane relief may hitch a ride to the omnibus spending package that Congress will pass before the December 16th deadline.
- **Ukraine Assistance:** The Continuing Appropriations and Ukraine Supplemental Appropriations Act of 2023 include \$12.35 billion in emergency assistance to Ukraine. These funds provide training, weapons, and other security assistance to Ukraine as it fights to repel the Russian invasion. While the Biden administration is seeking to secure billions in additional defense and humanitarian aid to Ukraine, House Republicans have consistently indicated that they are not in favor of spending more money.
- **COVID Aid:** The continuing resolution did not ultimately include additional funding to combat COVID-19. The Biden administration previously requested \$22.4 billion to address the pandemic—funds that would develop and purchase vaccines and new treatments, as well as to implement a new pandemic preparedness framework. Securing additional COVID funds is an uphill battle in the lame-duck session as Republicans won control of the House.

## Energy Permitting Reform

When the Inflation Reduction Act (IRA) passed in early August of this year, Sen. Joe Manchin (D-WV), Chair of the Senate Energy Committee, issued a statement indicating a promised vote on energy project permitting reform [legislation](#) by the end of September. The measure would have moved the government's regulatory process toward streamlining renewable energy, fossil fuels, and minerals projects.

After weeks of negotiation on its inclusion in the FY 2023 budget continuing resolution, it was ultimately left out of the final bill. In the aftermath of the passage of the IRA, permitting reform has become a political flashpoint for Democrats and Republicans alike with both sides opposing its reconsideration for varying reasons: the Senate and House GOP primarily because they believe it does not go far enough in reforms, preferring to take their chances in a potentially more favorable Congress, and a large bloc of House progressive Democrats harboring deep resentment toward Senator Manchin due to his steadfast opposition to the original Build Back Better plan (IRA's predecessor), along with the widely accepted recognition that the permitting bill is drafted in such a way to accelerate the construction of the Mountain Valley Pipeline in West Virginia – a project progressives vehemently oppose and which would provide a political victory they are in no mood to give the senior senator from West Virginia.

**Lame Duck Outlook:** Senator Manchin has indicated a strong desire to add the permitting bill to one of the few remaining must-pass bills expected in the lame duck session – NDAA or the FY 2023 omnibus. However, given that the GOP will control the House and Democrats will control the Senate by a very narrow margin, it is unlikely the dynamics that previously led to its demise will change in the lame-duck session.

## Tax Extenders

Congress will likely address several tax provisions that expired or are expiring. The [Consolidated Appropriations Act of 2021](#) left off a few key items that have received multiple or temporary extensions. Some House Democrats have demanded to include relief for working families through enhanced child tax credits, which will face certain opposition. A throughline motivating Congress to add these provisions to an omnibus spending package is the hope of a clean slate for the 118th Congress.

The following is a list of expiring tax extenders for 2022 based on the [Joint Committee on Taxation's](#) report, with all provisions expiring on December 31:

- Premium assistance credit enhancements
- Allowance of a full deduction for business meals provided by a restaurant
- Incentives for biodiesel and renewable diesel
- Income tax credits for biodiesel fuel, biodiesel used to produce a qualified mixture, and small agri-biodiesel producers
- Income tax credits for renewable diesel fuel and renewable diesel used to produce a qualified mixture
- Excise tax credits and outlay payments for biodiesel fuel mixtures
- Excise tax credits and outlay payments for renewable diesel fuel mixtures
- Railroad track maintenance credit (expiration of 50-percent rate)
- Temporary delay of designation of multiemployer plans as in endangered, critical, or critical and declining status.

**Lame Duck Outlook:** Rallying Congressional support for specific tax provisions will be a difficult proposition. If Congress passes a CR, it will likely not have space for the tax provisions, and Congress will effectively punt the issue to the next session. Nevertheless, there have been traditional bipartisan support for extending many of the provisions. If Congress passes a spending bill, it will likely tag a few tax extensions onto FY 2023 omnibus package.

## Lands, Water, and Other Native American and Natural Resources Measures

Lawmakers and stakeholders are working to develop a package of bills that could pass during the lame duck. The House Natural Resources Committee, along with the Senate Committees on Energy and Natural Resources and Indian Affairs, have considered hundreds of public lands, water, native American, and recreation bills to some degree. Many of these proposals are non-controversial, allowing an easy vote out of the relevant committee in a bipartisan fashion.

**Lame Duck Outlook:** Lands and water packages coming out of the Natural Resources and Indian Affairs committees have been frequent riders on end-of-year packages. Members are certainly interested in clearing the decks on the hundreds of pending measures before the House and Senate. The challenge in developing a successful package appears to be, as it has been in the past, finding a combination of bills that strikes a good partisan balance that could garner broad support for inclusion and keeps the controversial items that are priorities for some members at arms-length without losing their support.

## Electoral College Reform

The Senate may take up a legislative package sponsored by Senators Susan Collins (R-ME) and Joe Manchin (D-WV) – supported by Minority Leader Mitch McConnell – to reform federal election law. [S. 4573](#), the Electoral Recount Reform and Presidential Transition Improvement Act of 2022 would require one-fifth of the members in each chamber of Congress to agree to delay an electoral vote count. The House bill, [H.R. 8873](#), sponsored by Representatives Zoe Lofgren (D-CA) and Liz Cheney (R-WY), was passed by the House in September.

**Lame Duck Outlook:** If the bill passes the Senate, it will still need a conference with related House legislation. Timing may be the obstacle to final passage.

## Same-Sex Marriage Codification

Senate Majority Leader Charles E. Schumer (D-NY) set up a first procedural vote for November 16 on the Respect for Marriage Act ([H.R. 8404](#)) that would provide federal statutory authority for same-sex and interracial marriages. The legislation cleared a significant procedural vote 62-37. The twelve Republicans who joined all Democrats provided enough votes to pass the critical 60-vote threshold. The bill, passed by the House of Representatives in July on a 267 – 157 vote, repeals and replaces provisions that define, for purposes of federal law, marriage as between a man and a woman and a spouse as a person of the opposite sex with provisions that recognize any marriage that is valid under state law. The bill also repeals and replaces provisions that do not require states to recognize same-sex marriages from other states with provisions that prohibit the denial of full faith and credit or any right or claim relating to out-of-state marriages on the basis of

sex, race, ethnicity, or national origin. The bill allows the Department of Justice to bring a civil action and establishes a private right of action for violations.

**Lame Duck Outlook:** Senators negotiated the bill to avoid a filibuster; Democrats are looking for enough Republican support to ensure at least 60 votes in the Senate for final passage.

## Judicial Nominees

Judicial confirmations will be a top priority during the lame duck and in the 118th Congress. With Democrats retaining control of the Senate Judiciary Committee, they can continue their drive to confirm President Biden's judicial nominations for the federal appellate and district courts, which have more than 100 judicial vacancies combined. Senate Judiciary Chairman Dick Durbin (D-IL), who will likely continue as committee chairman in the new Congress, is expected to hold nomination hearings every two weeks when the Senate is in session and markups as needed.

During the first week after the midterm elections, the Senate Judiciary Committee held a [hearing](#) to examine one circuit court and five district court judicial nominees. It also held a [markup](#) to confirm three circuit and nine district court judicial nominees.

**Lame Duck Outlook:** Senate Democrats plan to confirm dozens more judicial nominees before the end of the year since nominations expire at the end of the Congress. Federal judges not confirmed during the lame duck would have to be renominated and start the Senate process over when the new Congress begins.

# 2022 Election Results Overview

## The House of Representatives

The 2022 midterm elections resulted in Republicans securing control of the House of Representatives for the 118th Congress. On Wednesday night, November 16th, House Republicans won their 218th seat with an election call for incumbent Representative Mike Garcia (R-CA), ensuring the party would hold the gavel for the session of Congress. The slim majority for the Republican party came with disappointing midterm election results for the Conference that expected what many were calling a "red wave." Instead, it took over a week to secure a majority. The Republican party is sure to use control in the House as a check to President Biden, congressional Democrats, and their legislative agenda over the next two years. The most likely outcome for the 118th Congress (i.e., 2023—2024) will be between 222 Republicans and 213 Democrats. The current tally stands at 218 Rs to 211 Ds, with six races awaiting a call from election experts.

On Tuesday, the Republican Conference voted for leadership. House Freedom Caucus Chairman Andy Biggs (R-AZ) challenged Minority Leader Kevin McCarthy (R-CA). After voting to nominate Representative Kevin McCarthy as the next House Speaker by a secret ballot vote of 188-31, the formal vote for Speaker will take place on January 3, 2023, on the first day of the 118th Congress, by all 435 members of the House. Representative Steve Scalise (R-LA) was re-elected to the party's number 2 position and will serve as Majority Leader. Minnesota Republican Tom Emmer was elected as majority Whip for the 118th Congress, defeating Representatives Jim Banks (R-IN) and Deputy Whip Drew Ferguson (R-GA).

With such a slim majority, the House Freedom Caucus will use the opportunity to force current Minority Leader Kevin McCarthy to provide concessions to the conservative Caucus to secure their votes at the start of the 118th session. The process to win over the additional votes began with McCarthy backing a few of the Freedom Caucus' proposals, including expanding the number of Steering Committee members, a powerful group determining committee assignments. Essential to the 118th session is the stance House Republicans will take on earmarks. A return of an earmark ban is popular among many in attempts to curb federal spending. Like many of the rules proposed by members, the earmark ban will receive a vote after members return from Thanksgiving break.

House Democrats will hold caucus elections after the Thanksgiving holiday on November 30 and December 1. On Thursday, Speaker of the House Nancy Pelosi (D-CA) announced her decision to step down from leading the House Democratic Caucus, a job she has held since 2003. Alongside the Speaker, Majority Leader Steny Hoyer (D-MD) announced his plans to step down. At the same time, Majority Whip Jim Clyburn (D-SC) stated he would remain in leadership and run for the assistant Democratic leader position. These announcements make way for current Democratic Caucus Chair Hakeem Jeffries (D-NY) to assume the role of leader of the House Democratic Caucus and Minority Leader in the 118th Congress. Joining Jeffries in the top leadership role will be Representatives Katherine Clark (D-MA) as Minority Whip and Pete Aguilar (D-CA) as Caucus Chair, while several other leadership positions are open and will be competitive.

## The Senate

Senate Democrats kept their majority by winning in several key battleground states, including Pennsylvania, Arizona, and Nevada. On Saturday, November 12th pundits called the Nevada Senate race for incumbent Senator Catherine Cortez Masto (D-NV), ensuring a 50-seat majority for Democrats 50-49. The two remaining Senate races with results still not yet official are in Alaska and Georgia. In Alaska, incumbent Lisa Murkowski (R-AL) is trailing Republican challenger Kelly Tshibaka, and no candidate on the ballot will reach 50 percent. Due to the state's ranked-choice election system, many believe Senator Murkowski will earn the votes needed to make up the slim gap. In Georgia, incumbent Senator Raphael Warnock (D-GA) will face Republican challenger Herschel Walker in a December 6th runoff after neither candidate received 50 percent of the vote. All other incumbent Senate Democrats and Republicans who ran for re-election in 2022 won their races.

Regardless of the outcomes in the Georgia runoff, the Senate Democrats will have 50 seats in the upper chamber leading to Vice President Kamala Harris continuing to serve as the tie-breaking vote for the 117th lame-duck session and during the 118th Congress.

Three Senate freshmen are entering the 118th Congress that will succeed retiring Senators. They are former Lt. Governor John Fetterman (D-PA), Representative Ted Budd (R-NC), and venture capitalist J.D. Vance (R-OH).

Senate Republicans held leadership elections on Wednesday amid party divisions over midterm results. Senate Minority Leader Mitch McConnell (R-KY), the longtime leader of the Senate Republican Conference, was challenged by Senator Rick Scott (R-FL), the chair of the National Republican Senatorial Committee. The announcement came on the heels of several Senate Republicans calling for a delay in the Senate GOP leadership elections. Those Senators include Marco Rubio (FL), Rick Scott (FL), Josh Hawley (MO), Lindsay Graham (R-SC), Mike Lee (UT), Ted Cruz (TX), Ron Johnson (R-WI), and Cynthia Lummis (WY). Amidst the calls for delay and the challenge from his fellow senator, Senator McConnell pushed ahead for the vote and won re-

election on a vote of 37-10-1. Senate Minority Whip John Thune (R- SD) and Senate Conference Chair John Barrasso (R-WY) won their third and final terms in their current roles. Montana Republican Senator Steve Daines replaces Senator Rick Scott to oversee the party's efforts to win control of the Senate in 2024. Senator Shelley Moore Capito (R-W.Va.) will be the next vice-chair of the Republican conference, tasked with the party's messaging and succeeding new Policy Chair Senator Joni Ernst (R-IA). The latter will replace retiring Senator Roy Blunt (R-MO) and set policy positions for Senate Republicans.

Senate Democrats will have a leadership election on December 8th, and no one will challenge Senate Majority Leader Chuck Schumer (D-NY). The Majority Leader announced plans to nominate Senator Patty Murray (R-WA) as President Pro-Tempore and replace Vermont's retiring Senator Patrick Leahy.

NATaT will send a follow up report once committee assignments and leadership decisions are final.