



**TO:** STEVE SMITH  
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

**FROM:** MIKE McINTYRE

**SUBJECT:** APRIL MONTHLY LEGISLATIVE UPDATE

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## WASHINGTON NEWS

### President Biden Releases FY 2023 Budget Request to Congress

On Monday, March 28, President Biden released his FY 2023 [Budget Request](#) to Congress. The request calls for \$5.8 trillion in spending in FY 2023, including \$1.6 trillion in discretionary funding through the annual appropriations bills. Nearly all departments and major agencies would receive increases relative to FY 2021 funding (FY 2022 funding was just approved so the administration had to rely on FY 2021 numbers to develop the budget request). Defense-related programs would receive \$813 billion, up from \$782 billion in FY 2022. Non-defense discretionary programs would receive \$769 billion, up from \$730 billion. The deficit would be reduced by \$1 trillion over the next 10 years due in part to a proposed tax on billionaires.

The President’s annual budget request to Congress is a *proposal*. The legislative branch is ultimately responsible for developing and approving the federal budget. However, Congress may use the President’s

budget request as a baseline to understand the needs of each agency and the policy goals of the administration. Accordingly, Congress will hold hearings over the coming weeks and months to review the proposed funding levels and policy changes in the request as it develops the actual federal budget for FY 2023.

Notably, one agency that did not receive a proposed increase in funding is the U.S. Army Corps of Engineers. The request [proposed](#) a 15.3 percent decrease in funding for the Corps, down to \$6.6 billion. It is not atypical for the annual budget request to propose a decrease in funding for the Corps. Congress typically provides the Corps more funding in the final budget than is proposed in the annual budget request from the administration.

### [Bipartisan Senators Introduce Legislation to Establish Greater Transparency on Risk Rating 2.0](#)

On March 14, Senators Bill Cassidy, M.D. (R-LA) and Kirsten Gillibrand (D-NY) [introduced](#) S. 3829, the *Flood Insurance Pricing Transparency Act*. The bill requires FEMA to publish the formulas used to calculate mitigation credits for policyholders under Risk Rating 2.0. It also requires FEMA to release a toolkit that could be used to estimate the cost of insurance for new construction, without compromising proprietary information. Senator John Kennedy (R-LA) is a cosponsor of the legislation.

In their [joint press release](#), the Senators said they introduced the bill because “FEMA is continuing its plans to allow Risk Rating 2.0 to go into full effect on April 1, 2022, despite the widespread uncertainty as to how it will impact homeowners.” Last month, FEMA publicly acknowledged the existence of an internal study finding that the implementation of Risk Rating 2.0 to the NFIP could cause 20 percent of policyholders to drop out of the program due to skyrocketing premiums.

### [House Passes Bipartisan Bill to Provide Restaurants and Other Small Businesses Additional COVID Relief](#)

On April 7, the House of Representatives [passed](#) H.R. 3807, the *Relief for Restaurants and Other Hard Hit Small Business Act of 2022*. This bipartisan bill would deliver \$55 billion in relief to small businesses through the Restaurant Revitalization Fund and establish a new program for hard-hit industries.

Congress created the \$28.6 billion Restaurant Revitalization Fund under the *American Rescue Plan Act* (ARPA). The program supplied over 100,000 small bars and restaurants with grants to help them pay key expenses and stay afloat. The program was met with overwhelming demand, and 177,000 eligible restaurants that applied for grants did not receive them due to lack of funding. The *Relief for Restaurants and Other Hard Hit Small Businesses Act* will provide \$42 billion to replenish the Fund to help fund those applicants that did not receive an award.

The bill would also:

- Provide \$13 billion to establish the Hard Hit Industries Award Program, which will assist small businesses with 200 or fewer employees that have experienced 40 percent or more in lost revenue.

- Update the Shuttered Venue Operators Grant Program to provide entertainment venues with more time and flexibility to use federal relief funds.
- Offset program funding by utilizing recovered money from fraud cases in pandemic relief programs.
- Deliver \$30 million total to the SBA Inspector General, DOJ's COVID-19 Fraud Enforcement Task Force, and the Pandemic Response Accountability Committee, to further investigate and recover fraudulent funds.

### Senators Reach Deal on COVID Relief Agreement with Additional ARPA Flexibility

On April 4, Senate Majority Leader Chuck Schumer (D-NY) and Senator Mitt Romney (R-UT) [announced](#) that they had reached a bipartisan agreement on a \$10 billion emergency supplemental funding package for President Biden's domestic COVID-19 response. Full text of the legislation is available [here](#) and a summary of the agreement is available [here](#).

The legislation includes the text of the Senate-passed *State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act* (S. 3011), which provides additional flexibility for local, county, and state governments to use their ARPA Coronavirus State and Local Fiscal Recovery Funds for infrastructure and disaster relief and to help smaller governments comply with program requirements. Specifically, local, county, and state governments would be allowed to spend the greater of \$10 million or 30 percent of their total ARPA allocation on 27 infrastructure-related activities authorized under federal surface transportation laws or Title I of the Housing and Community Development Act of 1974, with funds allowed to be obligated until September 30, 2026:

1. **INFRA grants** under 23 U.S.C. §117
2. **National Highway Performance Program grants** under 23 U.S.C. §119
3. The new discretionary **Bridge Investment Program grants** under 23 U.S.C. §124
4. **Surface Transportation Block Grant Program grants** under 23 U.S.C. §133
5. **Metropolitan Planning grants** under 23 U.S.C. §134
6. **Highway Safety Improvement Program grants** under 23 U.S.C. §148
7. **Congestion Mitigation and Air Quality Program grants** under 23 U.S.C. §149
8. The new discretionary **Charging and Fueling Infrastructure Grants** under 23 U.S.C. §151
9. **Territorial and Puerto Rico Highway Program grants** under 23 U.S.C. §165
10. **National Highway Freight Program grants** under 23 U.S.C. §167
11. The new **Rural Surface Transportation grant program** under 23 U.S.C. §173
12. The new **Carbon Reduction Program grants** under 23 U.S.C. §175
13. The new **PROTECT grant program** under 23 U.S.C. §176
14. **Tribal Transportation grants** under 23 U.S.C. §202
15. **Federal Lands Transportation Program grants** under 23 U.S.C. §203
16. **Federal Lands Access Program grants** under 23 U.S.C. §204
17. **RAISE grants**
18. **TIFIA credit assistance** under chapter 6 of title 23 U.S.C.
19. **Appalachian Development Highway System grants** under 40 U.S.C. §14501
20. **Urbanized area formula grants** under 49 U.S.C. §5307

21. **Capital Investment Grants** under 49 U.S.C. §5309
22. **Rural area formula grants** under 49 U.S.C. §5311
23. **State of good repair grants** under 49 U.S.C. §5337
24. **Bus and bus facility grants** under 49 U.S.C. §5339
25. The new **National Culvert Removal, Replacement, and Restoration grants** under 49 U.S.C. §6703
26. **HUD Community Development Fund Grants**
27. Grants under the **new formula bridge program**

For INFRA grants, FTA Capital Investment Grants, and RAISE grants, the legislation allows special districts, localities, counties, and states to use their ARPA Fiscal Recovery Funds to “satisfy a non-Federal share requirement applicable to such project,” and for TIFIA projects, the COVID money could either be used to satisfy the non-Federal share or else to repay the loan itself.

Congress may vote on the \$10 billion COVID relief package in the coming weeks. However, an immigration issue causing political turmoil will likely delay Congressional action on the package for several weeks.

### Representative Rouzer Introduces Bipartisan Disaster Resiliency Legislation

On March 24, Representative Rouzer and Representative Jason Crow (D-CO) [announced](#) introduction of H.R. 7178, the *Championing Local Efforts to Advance Resilience* (CLEAR) Act. The CLEAR Act authorizes a new grant program that allows states and tribes to create and maintain resilience offices and implement plans to address other risks and vulnerabilities. The CLEAR Act authorizes \$200 million each year for six years to make 2-year grants to states and Tribes for the purposes of maintaining and operating resilience offices.

In order to be eligible, the state or Tribe must develop a resiliency framework, to be updated every five years, to identify the current and projected risks and vulnerabilities in the following areas: environment, natural hazards, economy, infrastructure, housing, and health and social services.

Grant funding can be used for:

- Establishing or maintaining a resiliency office
- Implementing resilience programming
- Developing resilience planning and analytic tools
- Providing technical assistance to local governments or state and Tribal agencies. Funds can also be sub-granted to local governments.

### CEQ Issues Final Phase I NEPA Rule

The White House Council on Environmental Quality (CEQ) has issued its final Phase 1 National Environmental Policy Act (NEPA) rule, restoring a series of review mandates that the Trump administration eliminated in its rewrite of the rule. The rewrite, according to CEQ Chair Brenda Mallory,

will ensure that marginalized communities are consulted and that agencies will better consider climate and other risks that agencies were not required to consider under the Trump version of the rule.

The final rule is very similar to the draft rule CEQ proposed last year when officials sought to restore NEPA requirements that agencies again assess “direct,” “indirect,” and “cumulative” effects, requirements the Trump administration had stripped from previous regulations. The final rule also requires agencies to “work with communities to develop and analyze alternative approaches that could minimize environmental and public health costs,” and reinstates a provision that CEQ’s rules are a floor, rather than a ceiling, for federal agencies’ review. In its announcement, CEQ also reiterated that it plans to adopt a series of broader reforms in an upcoming Phase 2 rule.

### OMB ‘Buy America’ Memo Provides Direction Ahead of Agency Guidance

The White House Office of Management and Budget (OMB) has issued [guidance](#) for EPA and other agencies on how to interpret the new “Buy America, Build America” requirements in the Bipartisan Infrastructure Law (BIL). Additional agency guidance is expected to provide clarity on infrastructure project proponents with inadequate domestic supplies of certain construction materials and other items. The “Buy America, Build America” provisions of the BIL become effective May 14, requiring the use of U.S.-made iron and steel, other construction materials, and manufactured items for projects funded by the infrastructure law, unless the project has obtained specific waivers.

The BIL’s “Buy America, Build America” provisions cover three categories of items: iron and steel, manufactured products, and construction materials. Water utilities, among others, have expressed concerns to EPA about the “Buy America, Build America” provisions, noting that while they have experience complying with longstanding American iron and steel requirements to obtain EPA infrastructure funding, they are struggling to understand the broader provisions in the BIL governing construction materials and manufactured items.

### Biden Administration Releases Bipartisan Infrastructure Law ‘Rural Playbook’

On April 11, the Biden administration [released](#) a Bipartisan Infrastructure Law “[Rural Playbook](#)” to help local governments and other stakeholders better understand BIL programs that specifically benefit rural areas. The Rural Playbook builds on the release of the Bipartisan Infrastructure Law Guidebook and provides rural communities with information on the “what, when, where, and how to apply” for funding under the law. The Playbook also identifies over 100 programs funded under the law with federal cost-share flexibilities and matching requirement waivers for rural areas.

### Supreme Court WOTUS Update

On April 11, legal briefs were due to the Supreme Court in *Sackett v. EPA*, the closely watched high court case that could determine the definition of “waters of the United States” (WOTUS) under the Clean Water Act (CWA). Idaho landowners Chantell and Michael Sackett are asking the Supreme Court to reconsider a lower court’s conclusion that their property contains a WOTUS subject to CWA permitting

requirements. In the case, the Supreme Court is set to determine whether the U.S. Court of Appeals for the 9th Circuit “set forth the proper test for determining whether wetlands are ‘waters of the United States’” under the CWA. That court referenced Justice Kennedy’s “significant nexus” test of jurisdictional waters as opposed to the late Justice Scalia’s “relatively permanent continuous flow” test.

The Supreme Court is expected to hear arguments in *Sackett* this fall.

More than two dozen states recently filed an amicus brief in *Sackett*. In essence, the states’ brief argues that the 9th Circuit got it wrong when it sided with EPA in determining that the couple's property near Priest Lake in northern Idaho contains water that is federally protected. Their brief states, “Federalism would become an afterthought, too, even though Congress wrote the [Clean Water Act] to ‘recognize, preserve, and protect the primary responsibilities and rights of States’ to mitigate pollution and ‘develop and use’ water resources.” The amicus brief was led by West Virginia and included the states of Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and Wyoming.

## ADVOCACY UPDATE

### Virtual Washington Meetings in June

The time has come to once again begin scheduling meetings with TISPC's Congressional delegation in Washington. **We propose scheduling these meetings for Tuesday, June 7, with a backup date of Wednesday, June 8, in the event we cannot conduct certain meetings on June 7.** The purpose of these meetings is to discuss TISPC's federal priorities with the Congressional delegation.

We will begin to schedule these meetings as soon as TISPC confirms that the June 7 date is suitable.

At this time, we advise that these advocacy meetings be held virtually. There continue to be visitor restrictions on Capitol Hill because of the pandemic *and* reduced numbers of Capitol Police Officers available to staff the Capitol complex. This means that only smaller groups (approximately five people or less) are allowed on Capitol Hill and the process of getting to and from meetings is more time-consuming.

As we have done for previous meetings, we will develop meeting materials and talking points for the meetings. We will provide TISPC with ample time to review these documents and provide any feedback. We will also plan to schedule a preparatory phone conference in late May or early June for everyone participating in the Virtual Washington Meetings. **Please advise us as to the names of those who will be representing TISPC in these virtual meetings. We recommend that up to two persons from each Town be available.**

### North Topsail Beach CBRA Mapping Issue

We continue to monitor the status of the proposed technical corrections to Topsail Unit L06. Capitol Hill staff have contacted the House Natural Resources Committee to request an update on the Committee's efforts to draft a bill related to the proposed FWS technical corrections, which we anticipate will be part of a larger technical corrections package that includes map changes to at least six other CBRS units. We will provide an update to TISPC once the delegation receives an update on the status of the bill.

### Sand Borrowing Issue

On April 21, the Congressional Research Service (CRS) published a report titled, "[Nonstructural Shoreline Stabilization Projects, or 'Beach Renourishment,' and the Coastal Barrier Resources Act \(CBRA\)](#)." As you are aware, the CRS is tasked with providing the U.S. Congress with non-partisan advice on issues that may come before Congress. Most reports are written at the initiative of a CRS analyst, although some reports can be prompted by a request from a staffer or Member of Congress.

The CBRA report published on April 21 regarding beach renourishment is unique. Based on our research of over 40,000 CRS reports, the CRS has not published a report specific to beach renourishment before, and it is unclear at this time what or who prompted CRS to draft the report.

The seven-page report gives brief overviews of coastal barrier islands, beach renourishment, the CBRA, and DOI's changing interpretations over the last few decades regarding sand borrowing. CRS also included at the end of the report a "Considerations for Congress" section, which is typical of CRS reports and includes possible legislative actions Congress could take to address the issue at hand. In this section, CRS suggests that DOI's changing interpretations of the CBRS and sand borrowing "may be of interest to Congress in a number of ways," including, but not limited, to the fact that the revised interpretation from 2021 may affect authorized Corps projects, particular those developed under the 2019 interpretation (including Wrightsville Beach and Carolina Beach). The report also acknowledges that "DOI's revised interpretation may also affect the appropriations required for any projects that were authorized based on USACE plans to use System sediment to renourish beaches outside the System. Such projects may require additional federal funding if USACE modifies the project to obtain the sediment from outside the System with federal funds at a higher cost than System sediment." The report points to WRDA 2022 as a potential avenue for Congress to "to modify project authorizations for projects that planned to use System sediment for non-System beach renourishment." We have previously reported to TISPC that efforts are already underway to use WRDA 2022 as a way to require the federal government to cover the excess cost of using sand from borrow sites that are not considered to be the least cost method of disposal (for certain projects).

The report concludes that "coastal areas are increasingly affected by the impacts of climate change, Congress may wish to consider whether the CBRA and DOI's interpretation of the statutory text reflect Congress's preferred policy with respect to the management of undeveloped coastal barriers. To the extent the interpretation is consistent or Congress wishes to leave these determinations to the agency's discretion, Congress may wish to leave the CBRA as is and adjust USACE project authorizations as needed to reflect DOI's interpretation. To the extent DOI's interpretation is not consistent with Congress's current priorities or Congress wishes to curtail DOI's discretion over how CBRA exceptions are interpreted, Congress may wish to consider amending the CBRA. Congress may also wish to consider whether other legislation may be required to achieve its goals with respect to coastal barrier resources and development."

A legislative solution to this issue has been elusive for many years, as you well know, so it is unlikely Congress will make any major legislative advancements outside the possible WRDA-related provisions discussed above and in previous Monthly Reports, but it is encouraging to have this report available exploring suggestions for Congress to consider.

### Greater Island-Wide Coordination in Disaster Recovery

In May, we plan to follow up with Town Managers Rose, Breuer, and Derian to discuss FEMA disaster recovery coordination issues. We have been conducting additional research on the issues being experienced in disaster recovery efforts on the island, and we look forward to following up with the Town Managers in the coming month, as discussed during our initial phone conference on March 10.

## Support and Promote the Community Rating System and the Federal Flood Insurance Program

With the NFIP again set to expire on September 30, 2022, we are beginning to see more NFIP-related legislation introduced in Congress (see Washington News section above). However, the committees of jurisdiction are still far from agreeing on compromise legislation. Once the committee begins to work seriously on a compromise NFIP reauthorization bill, we will begin discussions about how TISPC can best support and benefit from changes to the Community Rating System and NFIP.

Please note that FEMA has released two new guides providing improved transparency into the Risk Rating 2.0 methodology: a [Rate Explanation Guide](#) and a [Discount Guide](#). However, stakeholder concerns remain about the overall transparency of how the new rates are calculated.