

House Amendment to the Senate Amendment to H.R. 302 – FAA Reauthorization Act of 2018 (Rep. Shuster, R-PA)

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FLOOR SCHEDULE:

Expected to be considered September 26, 2018, under suspension of the rules, which requires a 2/3 majority for passage.

TOPLINE SUMMARY:

[The House Amendment to the Senate Amendment to H.R. 302](#) would reauthorize the Federal Aviation Administration's accounts, make a number of changes to FAA grant programs, and amend and expands regulations related to passenger travel.

The bill would reauthorize the National Transportation Safety Board and the Transportation Security Administration.

The bill also makes a number of reforms to the manner in which federal disaster aid is dispersed and adjusts the limits of certain disaster aid programs.

The bill would provide \$1.7 billion in emergency-designated Community Development Block Grant (CDBG) supplemental appropriations for areas affected by disasters in 2018.

The bill would also establish a Concrete Masonry Products Board, after a referendum approval by producers of concrete masonry products. The board would establish, finance, and carry out a coordinated research and education program to promote concrete masonry products in the domestic market, funded by a federally administered assessment on concrete masonry producers.

Division F, the Better Utilization of Investments Leading to Development (BUILD) Act of 2018 would authorize the establishment of the U.S. International Development Finance Corporation (USIDFC), a new international development finance institution, by consolidating the authorities of the Overseas Private Investment Corporation (OPIC), the United States Agency for International Development (USAID), Development Credit Authority (DCA), and the Enterprise Funds. The USIDFC would subsidize private sector development in less developed foreign countries through the use of loans, loan guarantees, insurance and reinsurance, grants, and by becoming a direct minority shareholder in firms.

The bill would establish a working group to be known as the Syria Study Group to examine and make recommendations on the military and diplomatic strategy of the United States with respect to the conflict in Syria.

COST:

A Congressional Budget Office (CBO) cost estimate is not available at this time.

Rule 28(a)(1) of the Rules of the Republican Conference prohibit measures from being scheduled for consideration under suspension of the rules without an accompanying cost estimate. Rule 28(b) provides that the cost estimate requirement may be waived by a majority of the Elected Leadership.

CONSERVATIVE CONCERNS:

Some conservatives may be concerned that the FAA Reauthorization bill includes a number of provisions that are not related to the Federal Aviation Administration. Many of these provisions are not even in the jurisdiction of the Transportation and Infrastructure Committee. The bill includes provisions related to supplemental appropriations, the National Transportation Safety Board, disaster recovery reform, concrete masonry, a Syria study group, maritime security, and the Transportation Security Administration. Only half of the 1,205-page bill is dedicated to the reauthorization of the FAA. While the FAA reauthorization language is similar to the House-passed [bill](#), most of the other provisions are new to most House Members and have little or no connection to the FAA.

Disaster Supplemental Appropriations

Conservatives may be concerned that the bill would provide \$1.7 billion in cap-exempt emergency-designated supplemental appropriations through the Community Development Block Grant Program (CDBG). Some conservatives may believe that supplemental emergency funding is not needed at this time. According to the [Speaker's Office](#), "as of September 20, the federal government's Disaster Relief Fund totals \$24.8 billion. The National Flood Insurance Program's capacity to pay claims is \$15.8 billion," and additionally, "The defense and health funding bill makes an additional \$8.8 billion available for Hurricane Florence relief." Further, the President has not requested supplemental appropriations, as is customary when such funds are needed. The [RSC Budget](#) and President Trump's budget would both eliminate funding for the CDBG program.

Preventing Emerging Threats Provisions

Some conservatives may be concerned that Division H of the bill would allow the Secretary of Homeland Security and the Attorney General to (1) track without consent, including intercept of communications; (2) warn the operator; (3) disrupt control without consent; (4) seize or confiscate; or, (5) use reasonable force to disable or destroy an unmanned aircraft or drone system in response to a credible threat to a covered asset. This authority to intercept private communication and to seize and destroy private property could be broad, given that the bill would allow the Secretary of Homeland Security and the Attorney General to define the term "credible threat". Conservatives may be further concerned that the bill would not require judicial action authorizing such actions. Conservatives may be concerned the bill would allow forfeiture of property seized under the bill.

Masonry Check Off Program

The bill would create a new [check off program](#) for concrete masonry products, which would collect an assessment of up to \$.05 for each masonry unit sold (enforced by the threat of federal penalty), with the proceeds being used for research and promotion for the masonry industry. Many conservatives have expressed concerns that such check off programs are a prime example of crony capitalism. The [RSC Budget](#) would eliminate all check off programs, stating "The result of these arrangements is that producers are taxed using the force of government to fund advertising activities they might not otherwise be willing to pay for and may not actually benefit from. This, in turn, results in increased prices for consumers."

Development Finance Provisions

Some conservatives believe that international investment is an issue most appropriately addressed by market forces, not by subsidization from the federal government and ultimately the taxpayers.

Some conservatives may be concerned that the bill explicitly provides that the subsidies provided by the bill “shall continue to constitute obligations of the United States, and the full faith and credit of the United States is hereby pledged for the full payment and performance of such obligations.” This puts the taxpayers on the hook for risky investments in developing countries that the private sector may be unwilling to undertake without government-subsidized support.

Some conservatives might view OPIC as an ineffective tool in international development with a scope of operations too large to counter specific U.S. strategic development interests like countering Chinese investments in certain regions. However other conservatives believe that such a consolidation of agencies and programs in the bill would make the newly established Development Finance Corporation more effective by streamlining multiple federal agencies distributing foreign aid into one agency.

Some conservatives in support of international assistance and financing would argue that in many parts of the world it is impossible to get traditional financing, and that agencies like the new Development Finance Corporation would play a robust alternative to state-directed investments by authoritarian governments and United States strategic competitors.

The bill would allow the new Development Finance Corporation to set and charge fees for its services. The bill would allow the Corporation to make payments for insurance and reinsurance claims using the collections from loans and loan guarantees without further appropriation by Congress. The bill would allow the Corporation to borrow “such sums as necessary” from the U.S. Treasury. The bill would restrict the provision of support in a less developed country with an upper-middle-income economy unless the President certifies to Congress that such support furthers the national economic or foreign policy interests of the United States; and such support is likely to be highly developmental or provide developmental benefits to the poorest population of that country.

FAA Provisions

Some conservatives may be concerned that the bill creates and reauthorizes a number of programs that are not appropriate activities of the federal government. One of these is the reauthorization of the Essential Air Service. This program heavily subsidizes flights to and from rural areas—often at a cost of several hundred dollars per passenger. Congress has debated eliminating this program for years. The federal government should not be borrowing money to provide air service to areas of the country where the market will not support it. The Essential Air Service program is recommended for elimination in the [RSC Budget](#).

Some conservatives may be pleased that the bill repeals a provision of current law that allows for an automatic increase in the authorization for facilities and equipment to the appropriation level if the amount appropriated exceeds the authorization.

Some conservatives may be pleased the bill streamlines the permitting process and increases transparency in grants and contracts.

- **Expand the Size and Scope of the Federal Government?** Yes. The bill creates or expands a number of government programs.

The bill results in number of additional regulations, such as, prohibiting the involuntarily bumping of passenger, requiring mothers' rooms at airports, establishing minimum seat dimensions, and prohibiting cell phone calls and the use of e-cigarettes on flights. The bill would also allow the secretary to require airlines to allow pregnant passengers to have priority boarding.

Some conservatives may be concerned that the bill increases the amount of disaster relief funding states, nonprofits, and individuals are able to receive.

Some conservatives may be concerned the bill would establish a new checkoff program for concrete masonry.

- **Encroach into State or Local Authority?** Yes. The bill prohibits states from collecting taxes or fees on any business at a commercial service airport unless the revenue is used exclusively for the airport.

This bill would allow sports medicine professionals to practice in a secondary state under the licensure of their home state. The bill would also require insurers to provide coverage out of state, regardless of state insurance regulations.

- **Delegate Any Legislative Authority to the Executive Branch?** Division H of the bill would allow the Secretary of Homeland Security or the Attorney General to define the term “credible threat” which would allow the federal government to (1) track without consent, including intercept of communications; (2) warn the operator; (3) disrupt control without consent; (4) seize or confiscate; or, (5) use reasonable force to disable or destroy an unmanned aircraft or drone system.

- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

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Division A – Sports Medicine Licensure

Division A contains similar language to the House-passed H.R. 302, which passed the House on January 9, 2017, under suspension. The RSC's legislative bulletin can be found [here](#).

Currently, athletic trainers and sports medicine professionals who travel outside their home state – such as trainers with a sports team – are not provided legal protections through their medical liability insurance as they are outside or the state in which they are licensed to practice. This bill would ensure covered sports medicine professionals, such as physicians or athletic trainers, who are actively carrying medical liability insurance for their primary state of practice, would be granted reciprocal protections in a secondary state and require medical malpractice insurance policies to cover such practice as though it were in the professional's home state. The covered professional would be deemed to have satisfied the licensure requirements of the secondary state when providing services to the individual or team they have accompanied.

Though the legislation does allow for insurance premium increases to offset incurred costs and risks, some conservatives may be concerned that the bill would impose mandatory coverage requirements on insures to cover out-of-state practice.

This bill would allow sports medicine professionals to practice in a secondary state under the licensure of their home state. The bill would also require insures to provide coverage out of state, regardless of state insurance regulations.

Division B – FAA Reauthorization

Division B reauthorizes the Federal Aviation Administration (FAA). This division is similar to [H.R. 4](#), which passed the House of Representatives by a vote of [393-13](#) on April 27, 2018. The RSC's legislative bulletin for H.R. 4 can be found [here](#). Some of the key provisions are described below.

The bill reauthorizes from the Airport and Airway Trust Fund the following amounts:

Federal Aviation Administration's (FAA) **Airport Improvement Program** (AIP) account: \$3.350 billion for fiscal year 2018 through fiscal year 2023.

FAA's Facilities and Equipment account:

- FY18: \$3.330 B
- FY19: \$3.398 B
- FY20: \$3.469 B
- FY21: \$3.547 B
- FY22: \$3.624 B
- FY23: \$3.701 B

FAA's Operations account:

- FY18: \$10.247 B
- FY19: \$10.486 B
- FY20: \$10.732 B
- FY21: \$11.000 B
- FY22: \$11.269 B
- FY23: \$11.537 B

Out of the above operation's appropriation authorization, the amendment adds an authorization for **commercial space transportation activities**, as follows:

- FY18: \$22.587 M
- FY19: \$33.038 M
- FY20: \$43.500 M
- FY21: \$54.970 M
- FY22: \$64.449 M
- FY23: \$75.938 M

The bill would reauthorize the FAA's **weather reporting programs** at \$39 million for fiscal years 2019 -2023.

Current [law](#) allows for an automatic increase in the authorization for facilities and equipment if the amount appropriated exceeds the original authorization to the appropriation level. The bill repeals this provision.

Current [law](#) also provides a guarantee for the Airport and Airway Trust Fund to be funded at 90 percent of the estimated level of receipts. The bill removes this provision beginning in FY 2019.

Marshall Islands, Micronesia and Palau: The bill extends the eligibility of airports located in the Marshall Islands, Micronesia and Palau for discretionary grants under [49 U.S.C. 47115](#) and grants from the Small Airport Fund under [49 U.S.C. 47116](#) through 2023.

Midway Island Airport: The bill extends the authority for the Secretary of Transportation to enter into a reimbursable agreement with the Secretary of the Interior to fund airport development at Midway Island Airport through fiscal year 2023.

The bill would reauthorize the Secretary of Transportation's ability to make [grants](#) for the development and implementation of compatibility plans by state and local governments and the pilot program that provides [grants](#) for the redevelopment of airport properties through fiscal year 2023.

Passenger Facility Charges: The bill would remove certain [limitations](#) to when the secretary can authorize agencies to impose increased passenger facility charges. The bill removes the increase in the underlying passenger facility charges.

Mothers' Rooms at Airports: The bill would require airports applying for an airport development [grant](#) to assure the secretary that the owner or operator will maintain a lactation area and baby changing table in each passenger terminal building. *Some conservatives may be concerned that this adds a new regulation to airports.*

Expansion of the State Block Grant Program: The bill expands the State Block Grant Program established under [49 U.S.C. 47128](#) from 10 states to 20 states. *Some conservatives may be concerned this expands a federal government program.*

The bill would require the secretary to establish a grant program for airport planning and development and noise compatibility planning and [programs](#). The bill would authorize the following amounts:

- FY19: \$1.020 B
- FY20: \$1.041 B

- FY21: \$1.054 B
- FY22: \$1.087 B
- FY23: \$1.110 B

State Taxation: Prohibits states from collecting taxes or fees on any business at a commercial service airport unless the revenue is used exclusively for airport or aeronautical purposes. This does not apply to taxes or fees that were enacted prior to enactment of this bill. *Some conservatives may feel this encroaches upon state authority.*

Small Community Air Service: Under currently law, communities are only allowed to participate in the Small Community Air Service Development Program in support of the same project once. The bill allows communities to participate again after ten years have passed. The bill requires the secretary give priority to communities that are seeking to restore air service that has been terminated. *Some conservatives may be concerned that this allows communities to participate in support of the same project multiple times.*

The Small Community Air Service program is reauthorized at \$10 million for FY 2018-2023; \$4.8M of which must be used to carry out the Regional Air Transportation Pilot Program established by the bill.

The bill would repeal the inherently low-emission airport vehicle pilot [program](#) and the airport ground support equipment emissions retrofit pilot [program](#).

The bill would express the sense of Congress that air carriers should have a sexual misconduct policy.

The bill would increase civil penalties for interfering with cabin or flight crew from \$25,000 to \$35,000.

The bill would require the FAA to establish a process to accept safety standards for small drones, and authorizing the operation of small drones that have been produced in accordance with those standards.

The bill would require the FAA to allow for the public use of certain actively tethered drones that are operated under 150 feet and within the line of sight, without requiring approval from the FAA.

The bill would authorize \$1 million for each of fiscal years 2019-2023 for the Know Before You Fly campaign.

The bill would clarify that is the United States policy that drones must be operated in a way that protects personal privacy.

The bill would require the FAA to submit a report to Congress evaluating the regulations that should apply to drones that spray chemicals for agricultural purposes.

The bill would make the violation of a privacy policy by a person using a drone for compensation an unfair and deceptive practice.

The bill would require the development of a plan to allow for the implementation of drones for traffic management beyond the line of sight.

The bill would make changes to the Pilot's Bill of Rights.

Prohibition of Cell Phone Calls: The secretary is required to issue regulations prohibiting the use of cell phones to make phone calls during flights. In 2017, the Federal Communication Commission withdrew a [proposal](#) to allow cellphone calls to be made on flights. Advances in technology has lessened the safety risks originally associated with making phone calls during flights, but many argue that the phone calls still shouldn't be allowed because of the effect it would have on the relaxing atmosphere of the cabin. *Some conservatives may feel this not an appropriate area for the federal government to regulate.*

Electronic Cigarettes: Prohibits the use of electronic cigarettes on flights. *Some conservatives may feel this is not an appropriate area for the federal government to regulate and instead should be left up to the individual airlines.*

Strollers: The bill would prohibit air carriers from being deny a passenger from being able to check a stroller at the gate. *Some conservatives may feel this is not an appropriate area for the federal government to regulate and instead should be left up to the individual airlines.*

The bill would require the secretary to review the rate at which airlines change passenger itineraries over 24 hours before a departure.

The bill would make it illegal to put a live animal in an overhead compartment. *Some conservatives may feel this is not an appropriate area for the federal government to regulate and airlines instead should voluntarily implement this policy.*

The bill would allow the secretary to revise regulations to require air carriers to provide pregnant passengers advance boarding. *Some conservatives may feel this is not an appropriate area for the federal government to regulate and instead should be left up to the individual airlines.*

The bill would prohibit airlines from involuntarily bumping a passenger that has already boarded the aircraft. *Some conservatives may feel this is not an appropriate area for the federal government to regulate and instead should be left up to the individual airlines.*

Essential Air Service Authorization: The bill reauthorizes the Essential Air Service at the following amounts:

- FY18: \$155 M
- FY 19: \$158 M
- FY 20: \$161 M
- FY21: \$165 M
- FY22: \$168 M
- FY23: \$172 M

This program heavily subsidizes flights to and from rural areas—often at a cost of several hundred dollars per passenger. Congress has debated eliminating this program for years. Many conservatives believe the federal government should not be borrowing money to provide air service to areas of the country where the market will not support it. The Essential Air Service program is recommended for elimination in the [RSC Budget](#).

The bill would authorize \$10 million for fiscal years 2019 through 2023 to provide grant to support aviation workforce development programs. *Some conservatives may be concerned that this is an expansion of government*

The bill would codify penalties for the unsafe operation of drones.

The bill reauthorizes from the Airport and Airway Trust Fund the following amounts for Safety Research and Development:

- FY18: \$189 M
- FY19: \$194 M
- FY20: \$199 M
- FY21: \$204 M
- FY22: \$209 M
- FY23: \$214 M

The bill would establish a federal geographic data committee, which would establish standards for each national geospatial data asset data theme.

The bill reauthorizes expenditure authority from the Airport and Airway Trust Fund and the aviation taxes that fund the Airport and Airway Trust Fund.

Airport and Airway Trust Fund: Renews general expenditure authority for the Airport and Airway Trust Fund and aviation taxes funding the Airport and Airway Trust Fund through September 30, 2023.

Minimum Seat Dimensions: Requires the FAA to issue regulations establishing minimum seat dimensions for passenger seats. The regulations must include minimums for seat pitch, width and length. *Some conservatives may be concerned this adds a new regulation, and this should be left to individual airlines to compete for passenger fares.*

Division C – National Transportation Safety Board Reauthorization

The bill would reauthorize the National Transportation Safety Board at the following amounts:

- FY19: \$111.4 M
- FY20: \$112.4 M
- FY21: \$113.4 M
- FY 22: \$114.4 M

Division D – Disaster Recovery Reform

This division is similar to Title VI of H.R. 4, which passed the House of Representatives by a vote of [393-13](#) on April 27, 2018. The RSC's legislative bulletin for H.R. 4 can be found [here](#). Some of the key provisions are described below.

The bill amends the Stafford Act ([42 U.S.C. 5121 et seq.](#)). The following changes apply to all major disasters and emergencies declared after August 1, 2017. The bill includes provisions based upon the Disaster Recovery Reform Act (DRRA). The focus of the DRRA is on expanding the available uses of federal disaster assistance efforts, including for mitigation efforts to reduce the impact of

potential natural disasters. Additional background from the Transportation and Infrastructure Committee can be found [here](#).

Repair and Replacement of Damaged Facilities: Current [law](#) allows for state and local governments to accept an in-lieu contribution of 90 percent of the federal share of the federal estimate of the cost of repairing or replacing a public facility destroyed by a major disaster if the state or local government deems the public welfare is not be best served by repairing or replacing the damaged facility. The funds may be used to repair or expand other facilities, construct new facilities or fund hazard mitigation measures. The bill increases the in-lieu contribution from 90 percent to 100 percent of the federal share. The same program is available to those who own nonprofit facilities and current law provides 75 percent of the federal share for the same purposes. The bill increases the contribution to 100 percent of the federal share. *Some conservatives may be concerned that this increases funds to state and local governments or private nonprofits for buildings that were not affected by a major disaster.*

Waiver of Debts Owed if Disbursed in Error: Allows FEMA to waive a debt owed to the federal government if the money was disbursed based on an error made by FEMA at no fault of the debtor if the collection of the debt would be against equity and good conscience. The debt may not be waived if the debt involved fraud or misrepresentation. The inspector general of the Department of Homeland Security (DHS) must monitor the percentage of assistance distributed in error. Should the rate exceed 4 percent, the waiver authority is revoked.

Assistance to Individuals and Households: Current law limits the amount of financial assistance that may be received by an individual or household under [42 U.S.C. 5174](#) to \$25,000. This bill excludes amounts given to individuals or households to rent alternate housing and exclude financial assistance to cover medical, dental, child care, funeral expenses, personal property, transportation, and other necessary expenses in the \$25,000 limit calculation. A second \$25,000 limit applies to financial assistance to cover medical, dental, child care, funeral expenses, personal property, transportation, and other necessary expenses. These limits do not apply to expenses to replace accessibility-related improvements or personal property for those with disabilities. *Some conservatives may be concerned that this could result in a substantial increase in the amount of federal assistance that is received by individuals and households.*

The bill allows the president to provide waivers for certain document replacement fees.

Division E – Concrete Masonry

The bill would create a new [check off program](#) for concrete masonry products, which would collect an assessment of up to \$.05 for each masonry unit sold (enforced by the threat of federal penalty), with the proceeds being used for research and promotion for the masonry industry.

Division E would direct the Secretary of Commerce to issue orders applicable to U.S. manufacturers of concrete masonry products. Any order shall be national in scope. Not more than one order shall be in effect at any one time. The bill would allow that a proposed order with respect to the generic research, education, and promotion with regards to concrete masonry products be: proposed by the Secretary at any time; requested by or submitted to the Secretary by an existing national organization of concrete masonry product manufacturers, or any person that may be affected by the issuance of an order. The bill would further clarify specific guidelines for the issuance and publication of an order.

Division E would mandate that any order provide for the establishment of a Concrete Masonry Products Board to carry out a program of generic promotion, research, and education regarding concrete masonry products. The division would set the conditions for the board's composition, to include between 15 and 25 members, appointed by the Secretary of Commerce from submitted nominations, and composed of manufacturers.

The division would prohibit an employee of an industry trade organization exempt from tax under paragraphs (3) or (6) of section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) representing the concrete masonry industry or related industries from serving on the board. No member of the board would be allowed to serve concurrently as an officer of the board of directors of a national concrete masonry products industry trade association. Additionally, only two individuals from any single company or its affiliates would be allowed to serve on the board at any one time. The composition of the board would be mandated to reflect the geographical distribution of the manufacture of concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States. The members and any alternates of the board would each serve for a three-year term, except members and any alternates initially appointed to the board who would serve for terms of not more than two, three, and four years, as specified by an order.

The Secretary's order would specify the board's powers and duties, including the power and duty: to administer the order in accordance with its terms and conditions and to collect assessments; to develop and recommend to the Secretary of Commerce for approval, bylaws and rules as may be necessary for the functioning of the board; to meet, organize, and select a chairperson, other officers, and committees and subcommittees, from among members of the board; to establish regional organizations or committees to administer regional initiatives; to establish working committees of persons other than board members; to employ such persons, other than the members, as the board considers necessary, and to determine the compensation and specify the duties of the persons; to prepare and submit for the approval of the Secretary of Commerce, rates of assessment and an annual budget of the anticipated expenses to be incurred in the administration of the order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the board; to borrow funds necessary for the startup expenses of the order to carry out generic research, education, and promotion programs and projects relating to concrete masonry products, and to pay the costs of such programs and projects with assessments collected to enter into contracts or agreements to develop and carry out programs or projects of research, education, and promotion relating to concrete masonry products; to keep minutes, books, and records, and promptly report minutes of each board meeting to the Secretary; to receive investigate, and report to the Secretary complaints of violations of the order; to furnish the Secretary with information as the Secretary may request; to recommend to the Secretary amendments to the order as the board considers appropriate; and to provide the Secretary with advance notice of meetings to permit the Secretary or the Secretary's representative to attend the meetings.

The board would additionally be required to submit a budget of anticipated expenses and disbursements to the Secretary of Commerce for approval. Division E would further layout additional requirements for the operation of the board. With the approval of the Secretary, the board would be authorized to: enter into contracts and agreements to carry out generic research, education, and promotion programs and projects relating to concrete masonry products, including contracts and agreements with manufacturer associations or other entities; enter into contracts and agreements for administrative services; and pay the cost of approved generic research, education, and promotion

programs and projects using collected assessments, earnings obtained from assessments, and other income of the board.

Each contract or agreement would be required to provide that any person who enters into the contract or agreement with the board would develop and submit a proposed program or project together with a budget that specifies the cost to be incurred to carry out the program or project; keep accurate records of all of transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the board of activities conducted under the contract or agreement; and make other reports as the board or the Secretary considers relevant.

The board would be prohibited from engaging in any program or project to, nor shall any funds received by the board be used to influence legislation, elections, or governmental action; engage in an action that would be a conflict of interest; engage in advertising that is false or misleading; engage in any promotion, research, or education that would be disparaging to other construction materials; or engage in any promotion or project that would benefit any individual manufacturer. The board would be required to provide for the independent evaluation of all research, education, and promotion programs or projects undertaken under the order, beginning five years after the bill's enactment and every three years afterwards. The manufacturers would be directed to maintain records sufficient to ensure compliance with the order and regulations; and make the records available, during normal business hours for inspection by employees of the Department of Commerce or board.

Any order would additionally require that quarterly assessments be paid by manufacturers for any concrete masonry products manufactured at least 180 days before the assessment's remittance to the board. As part of the remittance of assessments, manufacturers would be required to identify the total amount due in assessments on all sales receipts, invoices or other commercial documents of sale as a result of the sale of concrete masonry units to ensure compliance with the order. The assessment rate on concrete masonry products would be \$0.01 per concrete masonry unit sold. The board would be authorized to increase or decrease the rate but any change would not exceed \$0.01 per unit, and be made no more than once per year. The maximum rate would be \$0.05 per unit. Pending disbursement of assessments under a budget approved by the Secretary of Commerce, the board may invest collected assessments under specified conditions. No less than 50 percent of the assessments paid by a manufacturer would be used to support research, education, and promotion programs and projects in support of the geographic region of the manufacturer.

During the 60-day period preceding the proposed effective date of an order, the Secretary of Commerce would be directed to conduct a referendum for an order approval, according to specified procedures, among the manufacturers required to pay assessments under it. A person subject to an order would be allowed to file a petition with the Department of Commerce: stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with law; and requesting a modification of the order or an exemption from the order.

A district court of the United States would have jurisdiction to enforce, and to prevent and restrain any person from violating, this legislation or an order or regulation issued by the Secretary of Commerce under the legislation. Any person in violation of such orders or regulations would potentially be assessed by the Secretary a civil penalty of not more than \$5,000 for each violation. The Department of Commerce would have the ability to conduct appropriate investigations to administer the legislation with the power to issue subpoena to witnesses, take evidence, and require the production of records. The Secretary of Commerce would be required to suspend or terminate an

order or a provision of an order if the Secretary finds that it obstructs or does not tend to effectuate the purpose of the bill, or if the Secretary determines that the order or a provision of an order is not favored by a majority of all votes cast in the referendum. The bill would not affect or preempt any other federal or state law authorizing research, education, and promotion relating to concrete masonry products. Funds appropriated to carry out the legislation would not be used for the payment of the expenses or expenditures of the board in administering an order. In each covered fiscal year, the board would not be authorized to obligate an amount greater than the sum of: 73 percent of the amount of assessments estimated to be collected under section 6 in such fiscal year; 73 percent of the amount of assessments actually collected in the most recent fiscal year for which an audit report has been submitted under specified conditions; and amounts permitted in preceding fiscal years to be obligated pursuant to this subsection that have not been obligated. Assessments collected in excess of the amount permitted to be obligated in a fiscal year would be deposited in an escrow account for the duration of the covered period, during which the board would not be permitted to obligate or borrow against amounts required to be deposited in the escrow account. After the covered period, the board would be permitted to withdraw and obligate in any fiscal year an amount in the escrow account that does not exceed 1/5th of the amount in the escrow account on the last day of the covered period. The bill would require the Government Accountability Office to prepare and submit a study examining: how the board spends assessments collected; the extent to which the board's reported activities help achieve its annual objectives; any changes in demand for concrete masonry products relative to other building materials; (4) any impact of the board's activities on the market share of competing products; as well as other requirements.

Division E contains nearly identical language to [H.R. 1046](#), the Concrete Masonry Products Research, Education, and Promotion Act of 2017 introduced in the House on February 14, 2017 and to [H.R. 985](#), Concrete Masonry Products Research, Education, and Promotion Act of 2015, as amended [passed](#) in the 114th Congress. The RSC's Legislative Bulletin for H.R. 985 can be found [here](#).

Some conservatives may be concerned that the legislation would incur an assessment rate on concrete masonry products based on the number of masonry units sold each year in order to fund the Concrete Masonry Products Board's activities. Some conservatives may be concerned that such an arrangement functions similarly to a combination of federal tax and directed spending program benefiting the covered product.

Many conservatives have expressed concerns that such check off programs are a prime example of crony capitalism. The [RSC Budget](#) would eliminate all check off programs, stating "The result of these arrangements is that producers are taxed using the force of government to fund advertising activities they might not otherwise be willing to pay for and may not actually benefit from. This, in turn, results in increased prices for consumers."

The bill would create a new federally administered fee collection and remittance program covering concrete masonry products.

Division F - Build Act of 2018

Division F, the Better Utilization of Investments Leading to Development (BUILD) Act of 2018 would authorize the establishment of the U.S. International Development Finance Corporation (USIDFC), a new international development finance institution, by consolidating the authorities of the Overseas Private Investment Corporation (OPIC), the United States Agency for International Development (USAID), Development Credit Authority (DCA), and the Enterprise Funds. The USIDFC would

subsidize private sector development in less developed foreign countries through the use of loans, loan guarantees, insurance and reinsurance, grants, and by becoming a direct minority shareholder in firms.

Division F would issue a statement of policy of the United States to facilitate market-based private sector development and economic growth in less developed countries through the provision of credit, capital, and other financial support to mobilize private capital in support of sustainable, broad-based economic growth, poverty reduction, and development through demand-driven partnerships with the private sector that further the foreign policy interests of the United States; to finance development that builds and strengthens civic institutions, promotes competition, and provides for public accountability and transparency; to help private sector actors overcome identifiable market gaps and inefficiencies without distorting markets; to achieve clearly defined economic and social development outcomes; to coordinate with institutions with purposes similar to the purposes of the Corporation to leverage resources of those institutions to produce the greatest impact; to provide countries a robust alternative to state-directed investments by authoritarian governments and United States strategic competitors using high standards of transparency and environmental and social safeguards, and which take into account the debt sustainability of partner countries; to leverage private sector capabilities and innovative development tools to help countries transition from recipients of bilateral development assistance toward increased self-reliance; and to complement and be guided by overall United States foreign policy, development, and national security objectives, taking into account the priorities and needs of countries receiving support.

Title I:

Title I of Division F would establish the United States International Development Finance Corporation under [chapter 91 of title 31, United States Code](#), under the foreign policy guidance of the Secretary of State. The corporation would mobilize and facilitate the participation of private sector capital and skills in the economic development of less developed countries, and countries in transition from nonmarket to market economies, in order to complement the development assistance objectives, and advance the foreign policy interests, of the United States.

The Corporation would restrict the provision of support in a less developed country with an upper middle-income economy unless the President certifies to Congress that such support furthers the national economic or foreign policy interests of the United States; and such support is likely to be highly developmental or provide developmental benefits to the poorest population of that country.

The division would further determine the structure and composition of the corporation to include a board of directors and staff. The President would appoint and maintain an Inspector General in the Corporation.

Division F would designate the Secretary of State as chair of the Board of Directors. The Administrator of the United States Agency for International Development, or the designee of the Administrator shall serve as the Vice Chairperson of the Board. Division F would require the Board of Directors to have two public meetings each year. These provisions were not included in the House-passed version of the BUILD ACT ([H.R. 5105](#)).

An individual who is a member of the board or an officer or employee of the Corporation has no liability with respect to any claim arising out of or resulting from any act or omission by the individual within the scope of the employment of the individual in connection with any transaction by the Corporation.

The division would establish a Development Advisory Council to advise the Board on development objectives of the Corporation. The Board shall call upon members of the Council, either collectively or individually, to advise the Board regarding the extent to which the Corporation is meeting its development mandate and any suggestions for improvements in with respect to meeting that mandate, including opportunities in countries and project development and implementation challenges and opportunities.

The Corporation shall establish and publish procedures for avoiding conflicts of interest on the part of officers and employees of the Corporation and members of the Development Advisory Council. These provisions were not included in the House-passed version of the BUILD ACT.

The board would establish a transparent and independent accountability mechanism to annually evaluate and report to the board and Congress regarding compliance with environmental, social, labor, human rights, and transparency standards, consistent with Corporation statutory mandates; provide a forum for resolving concerns regarding the impacts of specific Corporation-supported projects with respect to such standards; and provide advice regarding Corporation projects, policies, and practices.

Title II:

Title II of division F would outline the authorities of the U.S. International Development Finance Corporation to mitigate risks to United States taxpayers by sharing risks with the private sector and qualifying sovereign entities through co-financing and structuring of tools; and ensure that support is additional to private sector resources by mobilizing private capital that would otherwise not be deployed without such support.

The bill would authorize the Corporation to make loans or guaranties under its own established terms denominated and repayable in United States dollars or foreign currencies. Foreign currency denominated loans and guaranties would only be provided if the board determines there is a substantive policy rationale for such loans and guaranties.

The Corporation would be authorized to, as a minority investor, support projects with funds or use other mechanisms for the purpose of purchasing, and may make and fund commitments to purchase, invest in, make pledges in respect of, or otherwise acquire, equity or quasi-equity securities or shares or financial interests of any entity, including as a limited partner or other investor in investment funds. The authority of an enterprise fund to provide support would terminate on the earlier of the date that is seven years after the date of the first expenditure of amounts from the enterprise fund; or the date on which the enterprise fund is liquidated. The bill would require the board to develop guidelines and criteria to require that the use of the authority with respect to a project has a clearly defined development and foreign policy purpose, taking into account: the support for the project would be more likely than not to substantially reduce or overcome the effect of an identified market failure in the country in which the project is carried out; the project would not have proceeded or would have been substantially delayed without the support; the support would meaningfully contribute to transforming local conditions to promote the development of markets; the support can be shown to be aligned with commercial partner incentives; and the support can be shown to have significant developmental impact and will contribute to long-term commercial sustainability.

The aggregate amount of support with respect to any project would not exceed 30 percent of the aggregate amount of all equity investment made from any source to the project at the time that the

Corporation approves support of the project, and would be limited to not more than 35 percent of the Corporation's aggregate exposure on the date that such support is provided. The Corporation would be authorized to sell and liquidate any support for a project as soon as commercially feasible, commensurate with other similar investors in the project and taking into consideration the national security interests of the United States. The Corporation may issue insurance or reinsurance to private sector entities and qualifying sovereign entities assuring protection of their investments in whole or in part against any or all political risks such as currency inconvertibility and transfer restrictions, expropriation, war, terrorism, civil disturbance, breach of contract, or non-honoring of financial obligations.

The Corporation may initiate and support, through financial participation, incentive grant, or otherwise, feasibility studies for the planning, development, and management of, and procurement for, potential bilateral and multilateral development projects eligible for support, including training activities undertaken in connection with such projects, for the purpose of promoting investment in such projects and the identification, assessment, surveying, and promotion of private investment opportunities, utilizing wherever feasible and effective, the facilities of private investors.

The Corporation would, to the maximum extent practicable, require any person receiving funds to share the costs of feasibility studies and other project planning services, and reimburse the Corporation those funds, if the person succeeds in project implementation. The Corporation may also administer and manage special projects and programs in support of specific transactions. The Corporation may, following consultation with the Secretary of State, the USAID Administrator and the heads of other relevant departments or agencies, establish and operate enterprise funds under specified guidelines.

Nothing in the provision shall be construed to make an enterprise fund an agency or establishment of the United States Government, or to make the officers, employees, or members of the Board of Directors of an enterprise fund officers or employees of the United States.

The Corporation, subject to the approval of the board, may designate private, nonprofit organizations as eligible to receive support. The Inspector General of the Corporation shall conduct periodic audits of the activities of each enterprise fund. Any funds resulting from any liquidation, dissolution, or winding up of an enterprise fund, in whole or in part, shall be returned to the Treasury of the United States.

The authority of an enterprise fund to provide support would terminate on the earlier of the date that is 10 years (this was seven years in the House-passed version) after the date of the first expenditure of amounts from the enterprise fund; or the date on which the enterprise fund is liquidated.

The Corporation would be required to undertake, in cooperation with appropriate departments, agencies, and instrumentalities of the United States as well as private entities and others, to broaden the participation of United States small businesses and cooperatives and other small United States investors in the development of small private enterprise in less developed friendly countries or areas. This provision was not included in the House-passed version of the bill.

The Corporation shall collect data on the involvement of minority- and women-owned businesses in projects supported by the Corporation, including the amount of insurance and financing provided by the Corporation to such businesses in connection with projects supported by the Corporation; and to the extent such information is available, the involvement of such businesses in procurement activities

conducted or supported by the Corporation. This provision was not included in the House-passed version of the bill.

The Corporation would require the parties to the project to bear the risk of loss in an amount equal to at least 20 percent of the guaranteed support in the project; and may not make or guarantee a loan unless the Corporation determines that the borrower or lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States. The bill would further set specified interest rate conditions for loans. Any loan guaranty provided by the Corporation would be conclusive evidence that the guaranty has been properly obtained; the loan qualified for the guaranty; and but for fraud or material misrepresentation by the holder of the guaranty, the guaranty is presumed to be valid, legal, and enforceable.

The Corporation would be required to prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans, and may not make loans or loan guaranties except to the extent that budget authority to cover the costs of the loans or guaranties is provided in advance in an appropriations act. If the Corporation determines that the holder of a loan guaranteed by it suffers a loss as a result of a default by a borrower on the loan, the Corporation shall pay to the holder the percent of the loss, as specified in the guaranty contract after the holder of the loan has made further collection efforts and instituted enforcement proceedings required by Corporation. The authorities terminate on the date that is seven years after the bill's enactment.

Title III:

Title III of division F would authorize the U.S. International Development Finance Corporation to provide support in connection with projects in any country the government of which has entered into an agreement with the United States authorizing the Corporation to provide such support in that country. The bill would further set guidelines for claim settlements. The Corporation would be authorized to lease, purchase, or otherwise acquire, improve, and use such real property wherever situated, as may be necessary for carrying out the functions of the Corporation, except that, if the real property is for the Corporation's own occupancy, the lease, purchase, acquisition, improvement, or use of the real property shall be entered into or conducted in consultation with the Administrator of General Services.

The maximum contingent liability of the Corporation outstanding at any one time shall not exceed in the aggregate \$60 billion. Conservatives may be pleased that language that would have adjusted that figure after five years to reflect the percentage of the increase in the average of the Consumer Price Index (CPI) during the preceding five-year period was removed in the most recent version of the BUILD Act.

The bill would establish the Corporate Capital Account within the Treasury to carry out the purposes of the Corporation, consisting of charged and collected fees, any amounts received, investments and returns on such investments, unexpended balances transferred to the Corporation payments received in connection with settlements of all insurance and reinsurance claims of the Corporation, and all other collections transferred to or earned by the Corporation, excluding the cost of loans and loan guaranties. The Corporation would be permitted to make payments from the Corporate Capital Account for the activities of the Corporation authorized by the bill subject to appropriations acts. However, collections of loans and loan guarantees would be available for the payment of insurance and reinsurance claims as well as payments to the U.S. Treasury without further appropriation by Congress.

The bill explicitly provides that “all support provided pursuant to predecessor authorities or title II [of division F] shall continue to constitute obligations of the United States, and the full faith and credit of the United States is hereby pledged for the full payment and performance of such obligations.” The Corporation is authorized to borrow from the Treasury such sums as may be necessary to fulfill obligations of the United States and any such borrowing shall be at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yields on outstanding marketable obligations of the United States of comparable maturities, for a period jointly determined by the Corporation and the Secretary. The bill would require the Corporation to assess an annual dividend payment to the Treasury if the Corporation’s insurance portfolio is more than 100 percent reserved.

Title IV:

Title IV of division F would require the Corporation to establish a risk committee and an audit committee to have oversight responsibility of: formulating risk management policies of the operations of the Corporation; reviewing and providing guidance on the operation of the Corporation’s global risk management framework; developing policies for enterprise risk management, monitoring, and management of strategic, reputational, regulatory, operational, developmental, environmental, social, and financial risks; developing the risk profile of the Corporation, including a risk management and compliance framework and governance structure to support the framework; developing policies and procedures for assessing, prior to providing, and for any period during which the Corporation provides, support to any foreign entities; the integrity of the Corporation’s financial reporting and systems of internal controls regarding finance and accounting; the integrity of the Corporation’s financial statements; the performance of the Corporation’s internal audit function; and compliance with legal and regulatory requirements related to the Corporation’s finances. The Corporation would be required to produce and submit an annual report to Congress.

The Corporation, acting through the Chief Development Officer, shall, in cooperation with the USAID Administrator develop a strategic relationship with private sector entities focused at the nexus of business opportunities and development priorities. Not later than 15 days prior to the Corporation making a financial commitment in an amount in excess of \$10 million, the Chief Executive Officer of the Corporation shall submit a report in writing to Congress that contains the amount of each such financial commitment; an identification of the recipient or beneficiary; and a description of the project, activity, or asset and the development goal or purpose to be achieved by providing support by the Corporation.

Title V:

Title V of division F would mandate that no entity receiving support from the Corporation may receive more than an amount equal to five percent of the Corporation’s maximum contingent liability. The Corporation should give preferential consideration to projects sponsored by or involving private sector entities that are United States persons. The Corporation shall consult with the United States Trade Representative with respect to the status of countries eligible to receive support and the compliance of those countries with their international trade obligations.

The Corporation should support projects in countries that are taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country, including any designated zone in that country. The board shall not vote in favor of any project proposed to be

supported by the Corporation that is likely to have significant adverse environmental or social impacts that are sensitive, diverse, or unprecedented, except under specified conditions; and unless the Corporation, applying best practices with respect to environmental and social safeguards, includes in any contract relating to the project provisions to ensure the mitigation of any adverse environmental or social impacts.

The Corporation would be directed to consider the impacts of its support on women's economic opportunities and outcomes and make efforts to mitigate gender gaps and maximize development impact by working to improve women's economic opportunities. The Corporation would further be directed to give preferential consideration to projects for which support may potentially be provided in countries the governments of which have demonstrated consistent support for economic policies that promote the development of private enterprise, both domestic and foreign, and maintaining the conditions that enable private enterprise to make its full contribution to their development.

The Corporation shall consider, using information readily available, whether the project is sponsored by or substantially affiliated with any person taking or knowingly agreeing to take actions within the past three years which demonstrate or otherwise evidence intent to comply with, further, or support any boycott under 1773(a) of the Export Control Reform Act of 2018 ([subtitle B of title XVII of Public Law 115-232](#)).

The Corporation shall, using broad criteria, make, to the maximum extent possible consistent with this division, efforts to give preferential consideration in providing support to projects sponsored by or involving small businesses; and to ensure that the proportion of projects sponsored by or involving United States small businesses, including women-, minority-, and veteran-owned small businesses, is not less than 50 percent of all projects for which the Corporation provides support and that involve United States persons. This provision was not included in the House-passed version of the BUILD Act.

The Corporation is prohibited from providing support in a country the government of which the Secretary of State has determined has repeatedly provided support for acts of international terrorism, or from supporting a project that directly benefits any entity subject to sanctions imposed by the United States.

Title VI:

Title VI would direct the President to submit to Congress a reorganization plan regarding: the transfer of agencies, personnel, assets, and obligations to the Corporation; any consolidation, reorganization, or streamlining of agencies transferred to the Corporation; any efficiencies or cost savings achieved as a result of the transfer of agencies, personnel, assets, and obligations to the Corporation.

The bill would transfer the functions, personnel, assets, and liabilities of the Overseas Private Investment Corporation (OPIC), the Development Credit Authority (DCA) within USAID, Legacy Credit portfolio under the Urban Environment Program and any other direct loan programs and non-Development Credit Authority guaranty programs, the Office of Private Capital and Microenterprise, and the enterprise funds to the Corporation, as well as the loan accounts and the legal rights and responsibilities for the sovereign loan guaranty portfolio held by USAID. The bill would further set guidelines for the transfer period of such agencies and programs.

Division F would authorize pending OPIC Board nominees to serve on the Board of the new Development Finance Corporation if their nomination is not considered by the Senate prior to the establishment of the new U.S. International Development Finance Corporation.

Division F's initiative would mirror the [Office of Management and Budget \(OMB\)'s Reform Plan and Reorganization Recommendations proposal](#) to consolidate OPIC and DCA into the Development Finance Institution.

Division F is similar to [H.R. 5105, the BUILD Act](#), which passed the House by voice vote on July 17, 2018. The RSC's legislative bulletin for H.R. 5105 can be found [here](#).

Some conservatives believe that international investment is an issue most appropriately addressed by market forces, not by subsidization by the federal government.

Some conservatives may be concerned that the bill explicitly provides that the subsidies provided by the bill "shall continue to constitute obligations of the United States, and the full faith and credit of the United States is hereby pledged for the full payment and performance of such obligations." This puts the taxpayers on the hook for risky investments in developing countries that the private sector may be unwilling to undertake without government-subsidized support.

Some conservatives might view OPIC as an ineffective tool in international development with a scope of operations too large to counter specific U.S. strategic development interests like countering Chinese investments in certain regions. However other conservatives believe that such a consolidation of agencies and programs in the bill would make the newly established Development Finance Corporation more effective by streamlining multiple federal agencies distributing foreign aid into one agency.

Some conservatives in support of international assistance and financing would argue that in many parts of the world it is impossible to get traditional financing, and that agencies like the new Development Finance Corporation would play a robust alternative to state-directed investments by authoritarian governments and United States strategic competitors.

While some conservatives may believe that the Corporation's \$60 billion maximum contingent liability cap is too high, others believe that the Corporation's maximum contingent liability does not reflect its appropriations, arguing that the cap would translate to \$30 billion in new liabilities over the next seven years, not the full \$60 billion because the bill transfers OPIC's current liabilities, totaling over \$23 billion, and more than \$3.5 billion in liabilities from USAID to the new Development Finance Corporation.

The bill would establish a new U.S. International Development Finance Corporation (USIDFC), by consolidating the authorities of the Overseas Private Investment Corporation (OPIC), the United States Agency for International Development (USAID), Development Credit Authority (DCA), and the Enterprise Funds. According to the [Heritage Foundation](#), "the BUILD Act would immediately set the maximum contingent liability of the [USIDFC] to \$60 billion—roughly double the current resources for the consolidated entities."

The bill would allow the Corporation to set and charge fees for its services. The bill would allow the Corporation to make payments for insurance and reinsurance claims using the collections from loans and loan guarantees without further appropriation by Congress. The bill would allow the Corporation to borrow "such sums as necessary" from the U.S. Treasury. The bill would restrict the provision of support in a less developed country with an upper-middle-income economy unless the President certifies to Congress that such support furthers the national economic or foreign policy interests of the United

States; and such support is likely to be highly developmental or provide developmental benefits to the poorest population of that country.

Division G – Syria Study Group

Division G would establish a working group to be known as the Syria Study Group to examine and make recommendations on the military and diplomatic strategy of the United States with respect to the conflict in Syria, composed of 12 members, none of whom may be members of Congress. The division would set the composition of the group. A member would be appointed for the life of the group. The study group would conduct a review on the current United States military and diplomatic strategy with respect to the conflict in Syria that includes a review of current United States objectives in Syria and the desired end state in Syria.

The group would conduct a comprehensive assessment of the current situation in Syria, the impact of such situation on neighboring countries, the resulting regional and geopolitical threats to the United States, and current military, diplomatic and political efforts to achieve a stable Syria; and develop recommendations on the military and diplomatic strategy of the United States with respect to the conflict in Syria.

The study group would receive the full and timely cooperation of the Secretary of Defense, the Secretary of State, and the Director of National Intelligence in providing the Group with analyses, briefings, and other information necessary for the discharge of the duties of the group.

The Secretary of Defense, the Secretary of State, and the Director of National Intelligence shall each designate at least one officer or employee of the Department of Defense, the Department of State, and the Office of the Director of National Intelligence, respectively, to serve as a liaison to the Group.

The United States Institute of Peace would take appropriate actions to facilitate the Group in the discharge of its duties.

Not later than 180 days after the bill's enactment, the group shall submit to the President, the Secretary of Defense, and the Congress a report that sets forth the findings, conclusions, and recommendations, to include: an assessment of the current security, political, humanitarian, and economic situations in Syria; an assessment of the current participation and objectives of the various external actors in Syria; an assessment of the consequences of continued conflict in Syria; recommendations for a resolution to the conflict in Syria, including options for a gradual political transition to a post-Assad Syria; and actions necessary for reconciliation; a roadmap for a United States and coalition strategy to reestablish security and governance in Syria, including recommendations for the synchronization of stabilization, development, counterterrorism, and reconstruction efforts; any other matter with respect to the conflict in Syria that the Group considers to be appropriate. The group would terminate 18 days after the report submission.

Division H – Preventing Emerging Threats

This bill would allow the following actions to be taken against drones, if the action is necessary to mitigate a credible threat to safety or security: (1) track without consent, including intercept of communications; (2) warn the operator; (3) disrupt control of the drone without consent; (4) seize or confiscate the drone; or, (5) use reasonable force to disable or destroy the drone.

The bill requires “the interception or acquisition of, or access to, or maintenance or use of, communications to or from an unmanned aircraft system” to be “conducted in a manner consistent with the First and Fourth Amendments to the Constitution.” *However, some conservatives may be concerned the bill does not explicitly require a warrant or judicial order authorizing the tracking, interception of communications, disruption of control, destruction or seizure of an unmanned aircraft or system. Some conservatives may be further concerned the bill would exempt the actions authorized by the bill from current provisions of law governing interception of electronic communications.*

The bill would provide that any unmanned aircraft or system seized pursuant to the bill is subject to forfeiture. *Many conservatives have expressed concerns regarding the use of civil asset forfeiture.*

Some conservatives may be concerned that the bill allows the Secretary of Homeland Security or the Attorney General to define the term “credible threat”. The bill does not require a “credible threat” to be an imminent threat or an actual threat to life or property.

Division I – Supplemental Appropriations for Disaster Relief, 2018

The bill would appropriate \$1.688 billion to the Community Development Block Grant (CDBG) Program administered by the Department of Housing and Urban Development for “disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization” in areas most impacted by a major disaster as declared so pursuant to the Stafford Act in 2018.

This appropriation is designated within the bill as an emergency requirement and thus would be effectively exempt for the Budget Control Act (BCA) spending caps.

Some conservatives will be concerned given that CDBG funding has historically been used, according to the House Budget Committee, for a “vast range of activities are eligible for funds, such as home water and energy efficiency activities, historic preservation, demolishing blighted properties, street and sidewalk repairs, job training, grants to local businesses, and community planning.”

The [President’s Budget for FY 2019](#) would eliminate the CDBG program, and so would the FY 2019 [RSC Budget](#). As the President’s Budget notes, “The Federal Government has spent over \$150 billion on CDBG since its inception in 1974, but evaluations have been unable to demonstrate program results.”

Furthermore, conservatives may be concerned that CDBG funding is less focused on providing immediate disaster relief with a majority of outlays occurring years after the disaster. For instance in [H.R. 601](#), when Congress appropriated \$7.3 billion for CDBG disaster purposes, CBO projected nearly 88% of CDBG funding would not be outlayed until after two years.

Additionally, the Disaster Relief Fund (DRF), according to the Speaker’s office, as of September 20 contains \$24.8 billion. The DRF is used for disaster response purposes ranging from debris removal operations, repairing or replacing damaged public infrastructure, direct aid to impacted households, and carrying out mitigation and resiliency projects.

Additionally, the Conference Report to H.R. 6157, would allow funding provided for FEMA’s Disaster Relief Fund -- \$7.901 billion total, and \$7.366 billion for major disasters declared pursuant to the Stafford Act on an annualized basis -- to be expended at a rate necessary to carry out disaster response and recovery activities under the Stafford Act.

Division J — Maritime Security Improvement Act

The bill would require Secretary of Homeland Security to provide TSA with updates to vulnerability assessments and identify any security gaps that could be exploited to cause a transportation security incident.

The bill would require the secretary of the department in which the Coast Guard is operating to partner with federal, state, and local agencies to leverage existing technology to monitor high-risk maritime borders.

Division K - TSA Modernization Act

The bill would reauthorize the Transportation Security Administration (TSA) at the following levels:

- FY19: \$7.849 B
- FY20: \$7.888 B
- FY21: \$7.918 B

The bill would require the TSA to assess the operational security impact of using biometric technology to identify passengers and the effects on privacy.

The bill would require the TSA to establish a pilot program to implement automated exit lanes at certain airports. The bill authorizes \$15 million for each of fiscal year 2019 through fiscal year 2021.

The bill would reauthorize the monitoring of passenger exit lane security by TSA at \$77 million for fiscal year 2018 through fiscal year 2021.

The bill would require TSA to provide real-time security checkpoint wait times.

The bill would require the GAO to assess the cost of purchasing, installing, and maintaining screening equipment at certain airports.

The bill would require the establishment of a working group to determine how to support nonfederal domestic detection canine breeding, and require the establishment of standards for third party canine certification.

The bill would require the TSA to study the cost and feasibility of implementing enhanced employee inspection measures at certain airports.

The bill would require the TSA to increase the number of awards and funding amount of awards under the Law Enforcement Officer Reimbursement Program to increase the number of officers in public areas of airports. The bill authorizes \$55 million for each of fiscal years 2019 through 2021.

The bill would require the TSA enter into an agreement with two private sector entities to increase the methods of enrolling in TSA PreCheck. The bill would also set enrollment targets, reaching 15 million passengers at the end of fiscal year 2021. According to [TSA](#), the current enrollment is 5.5 million. The bill would also prohibit passengers who are not enrolled in a trusted traveler program

from using a TSA PreCheck security screening lane. The bill would also require the TSA to consider the feasibility of providing financial assistance or incentives to certain individuals and groups.

The bill would require the TSA to issue standards for using third party explosives detection canines for screening air cargo.

The bill would require the TSA to establish an air cargo security division, to be staffed with existing TSA personnel, to engage with stakeholders on the implementation of air cargo security programs.

The bill would allow for TSA to donate security screening equipment to a foreign last point of departure airport operator if it can reasonably be expected to mitigate a specific security vulnerability.

The bill would require TSA to brief Congress on the security measure at airports at Cuba that have air service to the U.S.

The bill would require TSA to establish a standard written agreement for all negotiations between the U.S. and foreign governments on the presence of federal air marshals on flights to and from the U.S. The bill would allow federal air marshals to be scheduled on flights to a foreign country that does not have a written agreement if TSA determines the mission is necessary for aviation security.

The bill would require TSA to continue to carry out and encourage increased air carrier employee participation in the self-defense training [program](#).

The bill would require TSA assess vulnerabilities to surface transportation systems.

The bill would require TSA to establish a Surface Transportation Advisory Committee to make recommendations on surface transportation security.

The bill would allow Amtrak security upgrade [grants](#) to be used to improve passenger verification, employee and contractor verification, or the security of Amtrak computer systems.

The bill would require TSA to establish a program to promote surface transportation security through training of surface transportation officers and would require TSA to maintain a national telephone number to report suspicious activity.

The bill would establish the National Deployment Office within the TSA to maintain an National Deployment Force to provide response capabilities and augment homeland security operations to mitigate and reduce risk including for airports needing additional personnel, special events and response to manmade disaster.

COMMITTEE ACTION:

The original bill, H.R. 302, was introduced on January 5, 2017, as the Sports Medicine Licensure Clarity Act of 2017. The bill passed the House by voice vote under suspension on January 9, 2017, and was sent to the Senate. The Senate passed H.R. 302 with an amendment by unanimous consent on September 6, 2018. The provisions of the Sports Medicine Licensure Clarity Act now make up Division A of the House Amendment to the Senate Amendment to H.R. 302.

Division B, the FAA reauthorization, is similar to H.R. 4, which passed the House of Representatives by a vote of [393-13](#) on April 27, 2018. The RSC's legislative bulletin for H.R. 4 can be found [here](#). Additional information provided by the Committee on Transportation and Infrastructure can be found [here](#).

H.R. 2997, the 21st Century AIRR Act, was the original FAA reauthorization introduced by Chairman Bill Shuster. H.R. 4 removed the portions of H.R. 2997 that would have created a not-for-profit organization to manage air traffic control purposes, but is otherwise very similar to H.R. 2997. H.R. 2997 was reported from the Committee on Transportation and Infrastructure on September 27, 2017, by a vote of 32-25. The report accompanying the bill (H. Rept. 115-296) can be found [here](#).

H.R. 4 also includes H.R. 4460, the Disaster Recovery Reform Act (DDRA), introduced by rep. Lou Barletta. The bill was marked up in the Committee on Transportation and Infrastructure on November 30, 2017, and reported by voice vote. The bill was then attached to H.R. 4667, which would have made supplemental appropriations for disaster assistance for Hurricanes Harvey, Irma, and Maria. The bill passed the House floor on December 21, 2017 by a vote of [251-169](#). The hurricane disaster assistance was eventually passed through another legislative vehicle but DDRA was not included. The RSC's legislative bulletin for H.R. 4467 can be found [here](#).

ADMINISTRATION POSITION:

No Statement of Administration Policy is available at this time.

CONSTITUTIONAL AUTHORITY:

According to the bill's sponsor: "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; To borrow Money on the credit of the United States; To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States; To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures; To provide for the Punishment of counterfeiting the Securities and current Coin of the United States; To establish Post Offices and post Roads; To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries; To constitute Tribunals inferior to the supreme Court; To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations; To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water; To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval Forces; To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress; To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and

other needful Buildings;--And To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*