

Calendar No. 365

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 115-218

CONCRETE MASONRY PRODUCTS RE-
SEARCH, EDUCATION, AND PROMOTION
ACT OF 2017

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 374



MARCH 22, 2018.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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CONCRETE MASONRY PRODUCTS RESEARCH, EDUCATION, AND PROMOTION ACT OF 2017

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Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 374]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 374) to enable concrete masonry products manufacturers to establish, finance, and carry out a coordinated program of research, education, and promotion to improve, maintain, and develop markets for concrete masonry products, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 374, the Concrete Masonry Products Research, Education, and Promotion Act of 2017, is to enable concrete masonry products manufacturers to establish, finance, and carry out a “check-off” program, a coordinated program of research, education, and promotion to improve, maintain, and develop markets for concrete masonry products.

BACKGROUND AND NEEDS

Concrete block is a durable product used in the construction of public infrastructure, commercial facilities, and homes. Virtually every congressional district has at least one concrete masonry producer, and nationwide the industry employs thousands of workers. The economic downturn, however, affected the industry.

Check-off programs are industry-wide, coordinated efforts to promote research, marketing, and education regarding specific cat-

egories of generic products. They allow producers of commodities to collect funds from their members to support promotion efforts. Promotion must be generic and cannot focus on a particular producer. Ultimately, check-off programs seek to improve the market position of commodities by expanding markets, increasing demand, and developing new uses for these products.

Currently, there are 35 commodity check-off programs in place (e.g., the programs that sponsor campaigns like “Got Milk?” and “Pork, the Other White Meat,” and “The Incredible, Edible Egg”). These programs allow entire industries to pool their resources with non-branded commodities. While most check-off programs are agriculture-related, check-off programs for the propane and oil heat industries also exist. Because check-off campaigns traditionally involve agricultural commodities, the Department of Agriculture has authorized most of them. The Department of Commerce (DOC) would authorize the check-off program that S. 374 envisions. It would be the first commodity check-off program to be administered by the DOC.

SUMMARY OF PROVISIONS

S. 374 would build off of the long-established Federal check-off program for agricultural goods and would establish a similar program for concrete masonry products. The bill would direct the Secretary of Commerce (Secretary) to create a Concrete Masonry Products Board (Board). The Board’s mission would be to develop, finance, and carry out a collective research, education, and promotion campaign to maintain, strengthen, and expand the marketplace for concrete masonry products. Mandatory fees assessed on concrete masonry manufacturers would be collected by the Board and would finance these activities. Further, S. 374 would authorize the Secretary to issue other orders related to concrete masonry, subject to simple majority votes in referenda, and would provide the Secretary with numerous tools to implement and enforce the Act. S. 374 includes limitations on the obligation of funds, a Government Accountability Office (GAO) reporting requirement, and a requirement that the DOC study and report on the propriety of applying a commodity check-off program model to a non-agricultural industry.

LEGISLATIVE HISTORY

S. 374 was introduced on February 14, 2017, by Senator Blunt (for himself and Senator Nelson). The measure is also cosponsored by 10 other Senators and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On August 2, 2017, in open Executive Session, the Committee, by voice vote, ordered the bill reported favorably without amendment.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 374—Concrete Masonry Products Research, Education, and Promotion Act of 2017

Summary: S. 374 would establish the Concrete Masonry Products Board (board), upon approval of a referendum by producers of masonry products made from concrete (CMP), such as cinder blocks. The board would develop research and education programs as well as efforts to promote CMP in domestic markets. Funding for those activities would be derived from assessments on CMP manufacturers based on the number of masonry units sold each year. The bill would direct the Secretary of Commerce to organize and hold the referendum; the agency's costs would be reimbursed by the board from initial collections of assessments.

CBO estimates that enacting S. 374 would increase net revenues by \$77 million and increase direct spending by \$71 million over the 2018–2027 period, leading to a net decrease in the deficit of \$6 million over the 10-year period. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues. In addition, CBO estimates that implementing S. 374 would cost \$2 million over the 2017–2022 period; such spending would be subject to the availability of appropriated funds.

CBO estimates that enacting S. 374 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

S. 374 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

S. 374 would impose private-sector mandates on CMP manufacturers. On the basis of information from industry experts, CBO estimates that the annual cost of the mandates would fall well below the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of S. 374 is shown in the following table. The costs of this legislation fall primarily within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017–2022	2017–2027
INCREASES IN REVENUES													
Estimated Revenues	0	0	6	8	8	9	9	9	9	9	10	31	77
INCREASES IN DIRECT SPENDING													
Estimated Budget Authority	0	0	6	8	8	8	9	9	9	9	6	31	73
Estimated Outlays	0	0	3	9	8	8	8	9	9	9	7	29	71
NET INCREASE OR DECREASE (–) IN THE DEFICIT FROM INCREASES IN DIRECT SPENDING AND REVENUES													
Impact on Deficit	0	0	–3	1	*	*	*	*	*	*	–3	–3	–6

Note: * = between –\$500,000 and zero, components may not sum to totals because of rounding.

Basis of estimate: In CBO's view, the board that would be established under S. 374 would be acting on behalf of the federal government. While the board would be formed only upon approval by a majority of the producers of CMP, once created, the requirement to pay assessments would be compulsory and could be enforced by the federal government's sovereign authority, for example through a court order. Hence, in keeping with guidance specified by the 1967

President's Commission on Budget Concepts, the proposed board's cash flows should be recorded in the federal budget.¹

Based on information from industry representatives, CBO anticipates that the referendum would be approved by the industry and that the board and supporting staff would be appointed near the end of fiscal year 2018. We expect that assessments would be collected beginning in the first half of fiscal year 2019; the bill would require assessments to be paid quarterly.

The bill would apply to producers of both concrete block and concrete pavers, but CBO expects that only producers of concrete block would participate in the referendum. Because there is little differentiation among concrete blocks across manufacturers, all producers of concrete blocks would benefit from an industry-wide research and promotion program. Manufacturers of concrete pavers, on the other hand, are able to distinguish their products in ways that allow consumers to recognize individual brands. Consequently, those producers have little incentive to participate in an industry-wide marketing effort. Based on information from manufacturers of concrete pavers, CBO expects that those producers would not participate in the referendum.

For this estimate, CBO assumes that the bill will be enacted near the end of 2017, that the necessary amounts will be appropriated each year. Estimated spending is based on historical patterns for similar programs.

Revenues

S. 374 would authorize the Board to levy an assessment of one cent on each concrete block product sold by all CMP manufacturers in the United States. Based on information from industry experts and historical sales information, CBO expects about 1.1 billion concrete blocks will be sold in 2018 and we expect sales to grow with inflation, yielding, on average, estimated collections of about \$12 million per year. Those amounts would be recorded in the budget as revenues, because payment of the assessments would be compulsory, and could be enforced by federal courts. CBO estimates that enacting S. 374 would increase gross revenues by \$105 million over the 2018–2027 period.

Because excise taxes and other indirect business taxes (such as assessments by the board) reduce the base of income and payroll taxes, higher amounts of those indirect business taxes would lead to reductions in revenues from income and payroll taxes. As a result, gross assessments would be partially offset by a loss of receipts of about 25 percent each year. Thus, CBO estimates that enacting S. 374 would increase net revenues by \$77 million over the 2018–2027 period.

Direct spending

S. 374 would authorize the board to spend a portion of the amounts collected, without further appropriation, on research and education efforts as well as on programs to promote sales of CMP. The bill also would authorize the board to borrow funds to cover the board's start-up expenses and to invest collections in interest-

¹For more information see, *How CBO Determines Whether to Classify an Activity as Governmental When Estimating Its Budgetary Effects*, Congressional Budget Office, June 2017.

bearing securities issued by the Treasury, thereby generating additional funding for its activities. Expenditures of assessments and accrued interest would be considered direct spending.

S. 374 would limit the board's authority to spend its estimated collections throughout the 2018–2029 period and would further limit the board's authority to obligate funds in 2027 and 2028. Over that period, the board would be authorized to obligate 73 percent of its estimated collections. The bill also creates a formula that authorizes the board to obligate more or less than this amount depending on whether the board over or under estimated its collections in previous years or did not obligate the full amount it was authorized to obligate. For this estimate, CBO expects the board to estimate its collections accurately and to obligate the entire authorized amount each year. In 2027 and 2028, the board would be required to further limit obligations to 62 percent of the last actual collection in those years. Based on historical spending patterns for similar activities, CBO estimates that expenditures by the proposed board would total \$71 million over the 2018–2027 period.

Beginning in 2030, the obligation limitations would expire and the board would be authorized to spend the full amount of its estimated collections. The board also would be authorized to spend a portion of the amounts that were collected but unavailable for obligation over the 2019–2030 period, as well as the interest earned on any such amounts during that period. CBO estimates that \$52 million would be available to spend from those amounts.

Spending subject to appropriation

S. 374 would direct the Secretary of Commerce to develop an order to establish the board and set out its authorities, and to conduct a referendum among eligible CMP manufacturers to approve the order. After passage of the referendum, the Secretary would be responsible for approving the board's programs and budgets each year. The bill also would direct the Secretary of Commerce and the Government Accountability Office to prepare several reports for the Congress to explain the effect the board has on the concrete masonry block industry and the effectiveness of the referendum model on a nonagricultural industry. Based on the cost of similar reports and activities, CBO estimates that implementing those provisions would cost about \$2 million over the 2017–2022 period, assuming the availability of appropriated funds.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 374, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON AUGUST 2, 2017

	By fiscal year, in millions of dollars—														2017– 2022	2017– 2027
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027					
	NET INCREASE OR DECREASE (–) IN THE DEFICIT															
Statutory Pay-As-You-Go Impact	0	0	–3	1	0	0	0	0	0	0	–3	–3	–6			
Memorandum:																
Changes in Revenues	0	0	6	8	8	9	9	9	9	9	10	31	77			

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 374, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON AUGUST 2, 2017—Continued

	By fiscal year, in millions of dollars—														2017– 2022	2017– 2027
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027					
Changes in Outlays	0	0	3	9	8	8	9	9	9	9	9	7	29	71		

Note: Components may not sum to totals because of rounding.

Increase in long-term direct spending and deficits: Each year beginning in 2030, the board would be authorized to spend up to 20 percent of the amounts it previously collected but was not authorized to spend over the 2018–2029 period, as well as any interest accrued on those funds. CBO estimates that this newly available balance would total \$52 million and would be spent without further appropriation in 2030 and later years.

Moreover, because the obligation limitation on the board’s authority to spend its estimated collections would expire in 2029 and because the board would be authorized to spend gross assessments collected after 2029, rather than the net collections after accounting for reductions in revenues from income and payroll taxes, CBO estimates that, on net, implementing S. 374 would increase the deficit in each year beginning in 2030. However, CBO estimates that enacting S. 374 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

Estimated impact on state, local, and tribal governments: S. 374 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: S. 374 would impose private-sector mandates on manufacturers of concrete masonry products, such as cinder blocks. Those manufacturers would be required to pay to the board an assessment of one cent per masonry unit sold. CBO estimates that the cost of this mandate would amount to about \$12 million annually on average. The bill also would impose mandates on CMP manufacturers by requiring them to maintain records and make those records available for inspection as required by the board. Based on information from industry experts, the cost of complying with the recordkeeping requirements would be small. Consequently, CBO estimates that the aggregate cost of the private-sector mandates in the bill would fall well below the annual threshold established in UMRA (\$156 million in 2017, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Stephen Rabent; Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Logan Smith.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The legislation would apply to manufacturers of concrete masonry products.

ECONOMIC IMPACT

The legislation is not expected to have an adverse economic impact on the Nation.

PRIVACY

S. 374 would not have a negative impact on the personal privacy of individuals.

PAPERWORK

S. 374 would require the Secretary to issue a proposed order and allow for public comment and review before its adoption to establish the Board. The Board would be required to submit, for approval, to the Secretary any contracts or agreements to carry out the Board's mission, and the Board would be required to submit periodic audits and reviews to the Secretary. S. 374 would require a study and report by the Secretary to examine the propriety and efficacy of applying the commodity check-off program model to a non-agricultural industry. S. 374 also would require the Comptroller General of the United States to submit to Congress and the Secretary a report examining how the Board spends assessments collected, among other things.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section would provide that the bill may be cited as the "Concrete Masonry Products Research, Education, and Promotion Act."

Section 2. Declaration of policy

This section would contain congressional findings that concrete masonry products are important to the U.S. economy and that nothing in the bill would be construed to control production of concrete masonry products.

Section 3. Definitions

This section would define certain terms used in the Act.

Section 4. Issuance of orders

This section would require the Secretary to issue an order to manufacturers of concrete masonry products, to publish the order in the Federal Register within 90 days after receiving a proposed

order or a request for a proposed order, and to provide for no less than a 30-day comment period.

Section 5. Required terms in orders

This section would set the terms for the order required under section 4 of this bill. The order would include terms establishing a “Concrete Masonry Products Board” to carry out a generic promotion, research, and information program for concrete products. The terms of the order would require manufacturers and importers to maintain and make available specified records.

Section 6. Assessments

This section would require concrete manufacturers to pay assessments with respect to concrete manufactured and marketed in the United States. No less than 50 percent of the assessments paid by a manufacturer would be required to be used to support research, education, and promotion programs and projects in support of the geographic region of that manufacturer.

Section 7. Referenda

This section would provide for a 60-day period preceding the proposed effective date of an order, during which the Secretary would conduct a referendum for order approval among the manufacturers required to pay assessments. This section also would outline referendum procedures.

Section 8. Petition and review

This section would allow a person, subject to the order, to file a petition with the Secretary and would establish jurisdiction in Federal district court for review of the petition.

Section 9. Enforcement

This section would establish jurisdiction in Federal district court for enforcement of the order.

Section 10. Investigation and power to subpoena

This section would confer upon the Secretary investigatory powers, including subpoena authority, as necessary to administer this legislation.

Section 11. Suspension or termination

This section would direct the Secretary to suspend or terminate any order or provision that obstructs or does not tend to effectuate the purposes of this Act or that is not favored by a majority of persons voting in a referendum.

Section 12. Amendments to orders

This section would protect the petition and review provisions of section 8 of the legislation from further amendment.

Section 13. Effect on other laws

This section would contain an explicit non-preemption clause concerning other Federal or State law authorizing research, education, and promotion relating to concrete masonry products.

Section 14. Regulations

This section would authorize the Secretary to issue additional regulations as may be necessary to carry out this Act consistent with the power vested in the Secretary under this legislation.

Section 15. Limitation on expenditures for administrative expenses

This section would provide that funds appropriated to carry out this legislation may not be used for the payment of the expenses or expenditures of the Board in administering the order.

Section 16. Limitations on obligations of funds

This section would prohibit the Board from obligating excess funds, as determined by a formulation set forth in this section. It would require that such excess funds be deposited in an escrow account and would establish requirements for the release of such funds from escrow.

Section 17. Study and report by the Government Accountability Office

This section would require a GAO study to examine how the Board spends assessments collected, including the following: the extent to which the Board's reported activities would help achieve its annual objectives; the market impact of the Board's activities, including changes in demand, market share of competing products, overall market size, jobs, prices, cost to the Federal Government; whether key statutory requirements are met; and the issues regarding the program's oversight and administration. The Study would be submitted to Congress and the Secretary.

Section 18. Study and report by the Department of Commerce

This section would require a study and report by the Secretary to examine the propriety and efficacy of applying the commodity check-off program model to a non-agricultural industry, no later than 3 years after the date of enactment of this Act.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.