



## Conference Report for H.R. 2577: Fiscal year 2017 Military Construction, Veterans Affairs, and Related Agencies Appropriations Act and Zika Response and Preparedness Act (Rep. Rogers, R-KY)

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### FLOOR SCHEDULE:

The House is expected to the Conference Report on June 23, 2016, under a [rule](#).

While the rule is not available at this time, according to the Rules Committee, the rule would “provide floor management authorities for the upcoming district work period” and would “provide for the adoption of a title change for the Conference Report.”

### TOPLINE SUMMARY:

The Conference Report would provide appropriations for military construction and the Department of Veterans Affairs in Fiscal Year 2017 and supplemental appropriations to respond to the outbreak of the Zika virus.

It would also include the text of H.R. 897, the Zika Vector Control Act, which would repeal Environmental Protection Act (EPA) requirements that require permitting under the Clean Water Act (CWA) for the application of EPA approved pesticides.

### COST:

A Congressional Budget Office (CBO) estimate is not available.

The Military Construction and Veterans Affairs portion of the Conference Report would provide a net total of \$82.5 billion in Fiscal Year 2017 base discretionary budget authority that is subject to the Budget Control Act (BCA) discretionary spending caps (as increased by the Bipartisan Budget Act of 2015 (BBA15)). The bill is written at a level that would comply with the higher \$1.070 trillion in discretionary spending allowed by BBA15. The bill also includes \$172 million in Global War on Terror (GWOT)/Overseas Contingency Operations (OCO) funding that is exempt from the discretionary spending caps.

The Zika portion of the Conference Report would provide a total of \$1.1 billion in additional appropriations for Zika response and rescind \$750 million in unused funds. The entire \$1.1 billion appropriation is designated as emergency funding (which is exempt from the discretionary spending

caps) and the bill rescinds \$107 million in unused Ebola funds that were previously designated as emergency. The bill also rescinds \$643 million in non-emergency spending, with \$543 million being rescinded from the funds available to establish Affordable Care Act exchanges in US territories and \$100 million being rescinded from the non-recurring expenses fund of the Department of Health and human Services..

The Congressional Budget Office (CBO) has estimated that enacting H.R. 897 (the Zika Vector Control Act) would “have no significant effect on the federal budget”.

## **CONSERVATIVE CONCERNS:**

Many conservatives will be concerned that the Conference Report would include \$1.1 billion in emergency designated supplemental appropriations with only \$750 million in offsets, including \$107 million in other emergency offsets.

Many conservatives will be concerned that the text of the Conference Report was only made publicly available on [docs.house.gov](https://docs.house.gov) at 10:43 PM on June 22, 2016, only approximate 4 hours prior to a vote.

This new emergency designation allows new discretionary spending above and beyond the caps set forth in law by the Budget Control Act (BCA) (as increased by the Bipartisan Budget Act of 2015 (BBA15)). The [BCA spells out](#) the requirements for what spending can be designated as an emergency. An emergency situation must meet two tests:

1. The spending must be “for the prevention or mitigation of, or response to, loss of life or property, or a threat to national security”; and
2. Unanticipated, defined as “sudden,” “urgent,” “unforeseen,” and “temporary.”

Many conservatives may feel that the size and scope of this emergency designation is particularly unwarranted given that only 3 months remain in the current fiscal year and funds could otherwise be provided in the regular appropriations process for FY 2017.

- **Expand the Size and Scope of the Federal Government?** Yes.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

## **DETAILED SUMMARY AND ANALYSIS:**

### **Division A - Military Construction and Veterans Affairs Appropriations**

#### **Title I: Military Construction**

The Conference Report would provide \$7.726 billion for military construction, a level that is \$281 million above the President’s Budget request and \$445 million below the FY 2016 enacted level.

A list of construction projects by [state](#) and country can be found [here](#).

## **Title II: Department of Veterans Affairs**

The Conference Report would provide \$74.859 billion in net discretionary funding for the Department of Veterans Affairs, a level that is \$654 million below the President's Budget request and \$2.944 billion above the FY 2016 enacted level.

**Advance Appropriations for Veterans Health Administration:** The [Fiscal Year 2016 Consolidated Appropriations Act](#) provided \$63.271 billion in advance appropriations FY 2017 funds for veterans' health benefits. The Conference Report would provide \$66.385 billion in advance appropriations for veterans' health benefits for FY 2018, an amount equal to the President's Budget request.

**VA Claims Backlog:** According to the [most recent report](#) from the VA, 366,252 veterans' claims remain pending with the VA, including 75,353 that have been pending for more than 125 days. To address this problem, the bill provides \$2.856 billion for General Operating Expenses for the Veterans Benefits Administration, an amount \$148 million above the FY 2016 enacted level and \$30 million above the President's Budget request.

**VA Construction:** The Conference Report would provide \$528.1 million for major VA construction projects, an amount equal to the President's Budget request and \$716 million below the FY 2016 enacted level. The major projects funded by the Conference Report can be found [here](#).

Additionally, the Conference Report would provide \$372 million for minor VA construction projects, equal to the President's Budget request and \$34 million below the FY 2016 enacted level.

## **Title IV: Global War on Terror (GWOT)/Overseas Contingency Operations (OCO):**

The Conference Report would provide \$172 million for military construction projects funded using GWOT funds. This level is \$449,000 below the President's Budget request and \$172 million above the enacted FY 2016 level. GWOT spending is exempted from the annual spending caps established by the Budget Control Act, as amended. A list of construction projects funded by Title IV can be found [here](#).

### **Other Provisions:**

**Guantanamo Bay Detainees:** The Conference Report includes language prohibiting the use of funds for the renovation, expansion, or construction of any facility in the continental United States for the purpose of housing any individual who has been detained at Guantanamo Bay. The Conference Report also would prohibit the use of funds to close or realign Guantanamo Bay.

**Fertility Treatments:** The Conference Report includes an authorizing provision that would permit the use of VA Medical Services funds to provide fertility counseling and treatment using assisted reproductive technology for veterans with a service connected disability that results in the inability to procreate without the use of fertility treatment and their spouses. The term assisted reproductive technology is defined to align with services permitted for active duty service members under a [2012 memorandum](#) that permits In vitro Fertilization (IVF) services.

The Conference Report would also permit the use of funds for adoption reimbursement for veterans with a service connected disability that results in the inability to procreate without the use of fertility treatment.

The funds allowed by this provision would be subject to the [rider included](#) in the FY 2016 Omnibus that prohibits the use of funds the creation of human embryos for research or for research in which a human embryo is destroyed.

### **Division B - Zika Appropriations**

The conference report would provide a total \$1.108 billion for Zika response and preparedness operations in FY 2016, and would include a rescission of \$107 million of unobligated funds originally provided for Ebola response at the U.S. Agency for International Development (USAID). All funds made available by this division would be designated as an emergency and be exempt from the spending caps established by the Budget Control Act, as increased by the Bipartisan budget act of 2015.

The specific allocation of funding under this title follows below:

#### **Title I**

- \$476 million for the Centers for Disease Control and Prevention, to prevent, prepare for, and respond to Zika virus and other vector-borne diseases. \$88 million of such funds may be used to reimburse other CDC accounts that were drawn down for Zika response prior to enactment of this act.
- \$230 million for the National Institutes of Health (NIH) National Institute of Allergy and Infectious Disease for Zika research and vaccine development.
- \$227 million for the NIH Public Health and Social Services Emergency Fund for prepare for and prevent Zika, as well as develop and purchase vaccines and other therapeutics. These funds would also be available for additional payments under the Social Services Block Grant Program. \$95 million of such funds would be required to be transferred into the Social Services Block grant Program, with at least \$80 million being required to be for territories with the highest rate of Zika transmission, most likely resulting in a minimum \$80 million allocation for Puerto Rico. An additional \$40 million would be required to be used to fund the expansion of primary care health centers in Puerto Rico and \$6 million to assign National Health Service Corps members to Puerto Rico. In total, roughly \$126 million of the \$227 million made available by this section would be for public health services in Puerto Rico.

#### **Title II**

- \$18.6 million for regular and emergency Diplomatic and Consular Programs at the Department of State to support Zika response efforts
- \$1 million for the Repatriation Loans Program at the Department of State, which provides loans for destitute americans in areas of distress to return home.
- \$10 million for USAID operating expenses
- \$145 million for bilateral economic assistance, which would be available for vector control activities or vaccines. These funds would also be available to be transferred to the World Health Organization, the UN Children's Fund, the Pan American Health Organization, the international Atomic Energy Agency, or the Food and Agriculture Organization.

### **Division C - Zika Vector Control Act**

Division C consists of the text of H.R. 897 - the Zika Vector Control Act, which the House passed by a vote of [258-156](#) on May 24, 2016. This legislation repeals Environmental Protection Act (EPA) requirements that require permitting under the Clean Water Act (CWA) for the application of EPA approved pesticides.

The RSC Legislative Bulletin for H.R. 897 is available [here](#).

### **Division D - Rescissions**

Division D contains three separate rescissions of funds, totaling \$750 million, constituted as follows:

- \$543 million rescinded from unobligated funds made available by the Affordable Care Act to establish individual market insurance exchanges in US territories. \$1 billion was originally made available under this section ([42 USC 18043](#))
- \$100 million rescinded from the non-recurring expenses account of HHS. This account is populated by unobligated funds from other HHS transferred into it prior to their termination at the end of a preceding fiscal year ([42 USC 3514a](#))
- \$107 million rescinded from funds made available to the Department of State for Ebola response under the FY 2015 omnibus, as amended (PL 113-235). These funds were designated as an emergency and exempt from the caps established under the budget Control Act, as amended.

### **COMMITTEE ACTION:**

H.R. 2577 originally passed the House as the FY 2016 Transportation, Housing, and Urban Development Appropriations bill on June 6, 2015. The Senate took no action on the bill during the FY 2016 appropriations cycle.

The Senate then used the bill as a shell to consider a combined FY 2017 appropriations bill that included both the Military Construction and Veterans Affairs appropriations as well as the Transportation, Housing, and Urban Development appropriations. During consideration of the FY 2017 bill, the Senate also adopted an amendment making supplemental appropriations for Zika response. The Senate passed these three measures as the Senate Amendment to H.R. 2577 on May 19, 2016.

H.R. 4974 would provide appropriations for the construction and building maintenance activities of the Department of Defense (DOD) as well as funding for the Department of Veterans Affairs (VA). The RSC legislative Bulletin on the bill can be found [here](#). The bill passed the House on May 19, 2016, by a [295 - 129](#) vote.

H.R. 5243 would provide appropriations to respond to the outbreak of the Zika virus and rescind unused appropriated funds. The RSC legislative Bulletin on the bill can be found [here](#). The bill passed the House on May 18, 2016, by a [241 - 184](#) vote.

H.R. 897 would repeal Environmental Protection Act (EPA) requirements that require permitting under the Clean Water Act (CWA) for the application of EPA approved pesticides. The RSC legislative Bulletin on the bill can be found [here](#). The bill passed the House on May 24, 2016, by a [258 - 156](#) vote.

### **ADMINISTRATION POSITION:**

No Statement of Administration Policy is available at this time.

### **CONSTITUTIONAL AUTHORITY:**

“Congress has the power to enact this legislation pursuant to the following: The principal constitutional authority for this legislation is clause 7 of section 9 of article I of the Constitution of the United States (the appropriation power), which states: “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . . .” In addition, clause 1 of section 8 of article I of the Constitution (the spending power) provides: “The Congress shall have the Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States. . . .” Together, these specific constitutional provisions establish the congressional power of the purse, granting Congress the authority to appropriate funds, to determine their purpose, amount, and period of availability, and to set forth terms and conditions governing their use.”

**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.*

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