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[Report No. 115–218]

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.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2017

Mr. BLUNT (for himself, Mr. NELSON, Mr. PETERS, Mr. ROBERTS, Mr. MORAN, Mr. BURR, Ms. KLOBUCHAR, Mr. MANCHIN, Mr. WICKER, Mrs. CAPITO, Mr. ISAKSON, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MARCH 22, 2018

Reported by Mr. THUNE, without amendment

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Concrete Masonry
3 Products Research, Education, and Promotion Act of
4 2017”.

5 **SEC. 2. DECLARATION OF POLICY.**

6 (a) PURPOSE.—The purpose of this Act is to author-
7 ize the establishment of an orderly program for devel-
8 oping, financing, and carrying out an effective, contin-
9 uous, and coordinated program of research, education, and
10 promotion, including funds for marketing and market re-
11 search activities, that is designed to—

12 (1) strengthen the position of the concrete ma-
13 sonry products industry in the domestic market-
14 place;

15 (2) maintain, develop, and expand markets and
16 uses for concrete masonry products in the domestic
17 marketplace; and

18 (3) promote the use of concrete masonry prod-
19 ucts in construction and building.

20 (b) LIMITATION.—Nothing in this Act may be con-
21 strued to provide for the control of production or otherwise
22 limit the right of any person to manufacture concrete ma-
23 sonry products.

24 **SEC. 3. DEFINITIONS.**

25 For the purposes of this Act:

1 (1) BLOCK MACHINE.—The term “block ma-
2 chine” means a piece of equipment that utilizes vi-
3 bration and compaction to form concrete masonry
4 products.

5 (2) BOARD.—The term “Board” means the
6 Concrete Masonry Products Board established under
7 section 5.

8 (3) CAVITY.—The term “cavity” means the
9 open space in the mold of a block machine capable
10 of forming a single concrete masonry unit having
11 nominal plan dimensions of 8 inches by 16 inches.

12 (4) CONCRETE MASONRY PRODUCTS.—The
13 term “concrete masonry products” refers to a broad-
14 er class of products, including concrete masonry
15 units as well as hardscape products such as concrete
16 pavers and segmental retaining wall units, manufac-
17 tured on a block machine using dry-cast concrete.

18 (5) CONCRETE MASONRY UNIT.—The term
19 “concrete masonry unit” means a concrete masonry
20 product that is a manmade masonry unit having an
21 actual width of 3 inches or greater and manufac-
22 tured from dry-cast concrete using a block machine.
23 Such term includes concrete block and related con-
24 crete units used in masonry applications.

1 (6) CONFLICT OF INTEREST.—The term “con-
 2 flict of interest” means, with respect to a member
 3 or employee of the Board, a situation in which such
 4 member or employee has a direct or indirect finan-
 5 cial or other interest in a person that performs a
 6 service for, or enters into a contract with, for any-
 7 thing of economic value.

8 (7) DEPARTMENT.—The term “Department”
 9 means the Department of Commerce.

10 (8) DRY-CAST CONCRETE.—The term “dry-cast
 11 concrete” means a composite material that is com-
 12 posed essentially of aggregates embedded in a bind-
 13 ing medium composed of a mixture of cementitious
 14 materials (including hydraulic cement, pozzolans, or
 15 other cementitious materials) and water of such a
 16 consistency to maintain its shape after forming in a
 17 block machine.

18 (9) EDUCATION.—The term “education” means
 19 programs that will educate or communicate the ben-
 20 efits of concrete masonry products in safe and envi-
 21 ronmentally sustainable development, advancements
 22 in concrete masonry product technology and develop-
 23 ment, and other information and programs designed
 24 to generate increased demand for commercial, resi-
 25 dential, multifamily, and institutional projects using

1 concrete masonry products and to generally enhance
2 the image of concrete masonry products.

3 (10) MACHINE CAVITIES.—The term “machine
4 cavities” means the cavities with which a block ma-
5 chine could be equipped.

6 (11) MACHINE CAVITIES IN OPERATION.—The
7 term “machine cavities in operation” means those
8 machine cavities associated with a block machine
9 that have produced concrete masonry units within
10 the last 6 months of the date set for determining eli-
11 gibility and is fully operable and capable of pro-
12 ducing concrete masonry units.

13 (12) MANUFACTURER.—The term “manufac-
14 turer” means any person engaged in the manufac-
15 turing of commercial concrete masonry products in
16 the United States.

17 (13) MASONRY UNIT.—The term “masonry
18 unit” means a noncombustible building product in-
19 tended to be laid by hand or joined using mortar,
20 grout, surface bonding, post-tensioning or some com-
21 bination of these methods.

22 (14) ORDER.—The term “order” means an
23 order issued under section 4.

24 (15) PERSON.—The term “person” means any
25 individual, group of individuals, partnership, cor-

1 poration, association, cooperative, or any other enti-
2 ty.

3 (16) PROMOTION.—The term “promotion”
4 means any action, including paid advertising, to ad-
5 vance the image and desirability of concrete masonry
6 products with the express intent of improving the
7 competitive position and stimulating sales of con-
8 crete masonry products in the marketplace.

9 (17) RESEARCH.—The term “research” means
10 studies testing the effectiveness of market develop-
11 ment and promotion efforts, studies relating to the
12 improvement of concrete masonry products and new
13 product development, and studies documenting the
14 performance of concrete masonry.

15 (18) SECRETARY.—The term “Secretary”
16 means the Secretary of Commerce.

17 (19) UNITED STATES.—The term “United
18 States” means the several States and the District of
19 Columbia.

20 **SEC. 4. ISSUANCE OF ORDERS.**

21 (a) IN GENERAL.—

22 (1) ISSUANCE.—The Secretary, subject to the
23 procedures provided in subsection (b), shall issue or-
24 ders under this Act applicable to manufacturers of
25 concrete masonry products.

1 (2) SCOPE.—Any order shall be national in
2 scope.

3 (3) ONE ORDER.—Not more than one order
4 shall be in effect at any one time.

5 (b) PROCEDURES.—

6 (1) DEVELOPMENT OR RECEIPT OF PROPOSED
7 ORDER.—A proposed order with respect to the ge-
8 neric research, education, and promotion with re-
9 gards to concrete masonry products may be—

10 (A) proposed by the Secretary at any time;

11 or

12 (B) requested by or submitted to the Sec-
13 retary by—

14 (i) an existing national organization of
15 concrete masonry product manufacturers;

16 or

17 (ii) any person that may be affected
18 by the issuance of an order.

19 (2) PUBLICATION OF PROPOSED ORDER.—If
20 the Secretary determines that a proposed order re-
21 ceived in accordance with paragraph (1)(B) is con-
22 sistent with and will effectuate the purpose of this
23 Act, the Secretary shall publish such proposed order
24 in the Federal Register not later than 90 days after
25 receiving the order, and give not less than 30 days

1 notice and opportunity for public comment on the
2 proposed order.

3 (3) ISSUANCE OF ORDER.—

4 (A) IN GENERAL.—After notice and oppor-
5 tunity for public comment are provided in ac-
6 cordance with paragraph (2), the Secretary
7 shall issue the order, taking into consideration
8 the comments received and including in the
9 order such provisions as are necessary to ensure
10 that the order is in conformity with this Act.

11 (B) EFFECTIVE DATE.—If there is an af-
12 firmative vote in a referendum as provided in
13 section 7, the Secretary shall issue the order
14 and such order shall be effective not later than
15 140 days after publication of the proposed
16 order.

17 (c) AMENDMENTS.—The Secretary may, from time to
18 time, amend an order. The provisions of this Act applica-
19 ble to an order shall be applicable to any amendment to
20 an order.

21 **SEC. 5. REQUIRED TERMS IN ORDERS.**

22 (a) IN GENERAL.—Any order issued under this Act
23 shall contain the terms and provisions specified in this sec-
24 tion.

25 (b) CONCRETE MASONRY PRODUCTS BOARD.—

(1) ESTABLISHMENT AND MEMBERSHIP.—

(A) ESTABLISHMENT.—The order shall 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.

(B) MEMBERSHIP.—

(i) NUMBER OF MEMBERS.—The Board shall consist of not less than 15 and not more than 25 members.

(ii) APPOINTMENT.—The members of the Board shall be appointed by the Secretary from nominations submitted as provided in the order.

(iii) COMPOSITION.—The Board shall consist of manufacturers. No employee of an industry trade organization exempt from tax under paragraph (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 shall serve as a member of the Board and no member of the Board may serve concurrently as an officer of the board of directors of a national concrete

1 masonry products industry trade associa-
2 tion. Only two individuals from any single
3 company or its affiliates may serve on the
4 Board at any one time.

5 (2) DISTRIBUTION OF APPOINTMENTS.—

6 (A) REPRESENTATION.—To ensure fair
7 and equitable representation of the concrete
8 masonry products industry, the composition of
9 the Board shall reflect the geographical dis-
10 tribution of the manufacture of concrete ma-
11 sonry products in the United States, the types
12 of concrete masonry products manufactured,
13 and the range in size of manufacturers in the
14 United States.

15 (B) ADJUSTMENT IN BOARD REPRESENTA-
16 TION.—Three years after the assessment of
17 concrete masonry products commences pursuant
18 to an order, and at the end of each 3-year pe-
19 riod thereafter, the Board, subject to the review
20 and approval of the Secretary, shall, if war-
21 ranted, recommend to the Secretary the re-
22 apportionment of the Board membership to re-
23 flect changes in the geographical distribution of
24 the manufacture of concrete masonry products

1 and the types of concrete masonry products
2 manufactured.

3 (3) NOMINATIONS PROCESS.—The Secretary
4 may make appointments from nominations by manu-
5 facturers pursuant to the method set forth in the
6 order.

7 (4) FAILURE TO APPOINT.—If the Secretary
8 fails to make an appointment to the Board within
9 60 days of receiving nominations for such appoint-
10 ment, the first nominee for such appointment shall
11 be deemed appointed, unless the Secretary provides
12 reasonable justification for the delay to the Board
13 and to Congress and provides a reasonable date by
14 which approval or disapproval will be made.

15 (5) ALTERNATES.—The order shall provide for
16 the selection of alternate members of the Board by
17 the Secretary in accordance with procedures speci-
18 fied in the order.

19 (6) TERMS.—

20 (A) IN GENERAL.—The members and any
21 alternates of the Board shall each serve for a
22 term of 3 years, except that members and any
23 alternates initially appointed to the Board shall
24 serve for terms of not more than 2, 3, and 4
25 years, as specified by the order.

1 (B) LIMITATION ON CONSECUTIVE
 2 TERMS.—A member or an alternate may serve
 3 not more than 2 consecutive terms.

4 (C) CONTINUATION OF TERM.—Notwith-
 5 standing subparagraph (B), each member or al-
 6 ternate shall continue to serve until a successor
 7 is appointed by the Secretary.

8 (D) VACANCIES.—A vacancy arising before
 9 the expiration of a term of office of an incum-
 10 bent member or alternate of the Board shall be
 11 filled in a manner provided for in the order.

12 (7) DISQUALIFICATION FROM BOARD SERV-
 13 ICE.—The order shall provide that if a member or
 14 alternate of the Board who was appointed as a man-
 15 ufacturer ceases to qualify as a manufacturer, such
 16 member or alternate shall be disqualified from serv-
 17 ing on the Board.

18 (8) COMPENSATION.—

19 (A) IN GENERAL.—Members and any al-
 20 ternates of the Board shall serve without com-
 21 pensation.

22 (B) TRAVEL EXPENSES.—If approved by
 23 the Board, members or alternates shall be reim-
 24 bursed for reasonable travel expenses, which
 25 may include per diem allowance or actual sub-

1 sistence incurred while away from their homes
2 or regular places of business in the performance
3 of services for the Board.

4 (c) POWERS AND DUTIES OF THE BOARD.—The
5 order shall specify the powers and duties of the Board,
6 including the power and duty—

7 (1) to administer the order in accordance with
8 its terms and conditions and to collect assessments;

9 (2) to develop and recommend to the Secretary
10 for approval such bylaws as may be necessary for
11 the functioning of the Board and such rules as may
12 be necessary to administer the order, including ac-
13 tivities authorized to be carried out under the order;

14 (3) to meet, organize, and select from among
15 members of the Board a chairperson, other officers,
16 and committees and subcommittees, as the Board
17 determines appropriate;

18 (4) to establish regional organizations or com-
19 mittees to administer regional initiatives;

20 (5) to establish working committees of persons
21 other than Board members;

22 (6) to employ such persons, other than the
23 members, as the Board considers necessary, and to
24 determine the compensation and specify the duties
25 of the persons;

1 (7) to prepare and submit for the approval of
2 the Secretary, before the beginning of each fiscal
3 year, rates of assessment under section 6 and an an-
4 nual budget of the anticipated expenses to be in-
5 curred in the administration of the order, including
6 the probable cost of each promotion, research, and
7 information activity proposed to be developed or car-
8 ried out by the Board;

9 (8) to borrow funds necessary for the startup
10 expenses of the order;

11 (9) to carry out generic research, education,
12 and promotion programs and projects relating to
13 concrete masonry products, and to pay the costs of
14 such programs and projects with assessments col-
15 lected under section 6;

16 (10) subject to subsection (e), to enter into con-
17 tracts or agreements to develop and carry out pro-
18 grams or projects of research, education, and pro-
19 motion relating to concrete masonry products;

20 (11) to keep minutes, books, and records that
21 reflect the actions and transactions of the Board,
22 and promptly report minutes of each Board meeting
23 to the Secretary;

24 (12) to receive, investigate, and report to the
25 Secretary complaints of violations of the order;

1 (13) to furnish the Secretary with such infor-
2 mation as the Secretary may request;

3 (14) to recommend to the Secretary such
4 amendments to the order as the Board considers ap-
5 propriate; and

6 (15) to provide the Secretary with advance no-
7 tice of meetings to permit the Secretary or the Sec-
8 retary's representative to attend the meetings.

9 (d) PROGRAMS AND PROJECTS; BUDGETS; EX-
10 PENSES.—

11 (1) PROGRAMS AND PROJECTS.—

12 (A) IN GENERAL.—The order shall require
13 the Board to submit to the Secretary for ap-
14 proval any program or project of research, edu-
15 cation, or promotion relating to concrete ma-
16 sonry products.

17 (B) STATEMENT REQUIRED.—Any edu-
18 cational or promotional activity undertaken with
19 funds provided by the Board shall include a
20 statement that such activities were supported in
21 whole or in part by the Board.

22 (2) BUDGETS.—

23 (A) SUBMISSION.—The order shall require
24 the Board to submit to the Secretary for ap-
25 proval a budget of the anticipated expenses and

1 disbursements of the Board in the implementa-
2 tion of the order, including the projected costs
3 of concrete masonry products research, edu-
4 cation, and promotion programs and projects.

5 (B) TIMING.—The budget shall be sub-
6 mitted before the beginning of a fiscal year and
7 as frequently as may be necessary after the be-
8 ginning of the fiscal year.

9 (C) APPROVAL.—If the Secretary fails to
10 approve or reject a budget within 60 days of re-
11 ceipt, such budget shall be deemed approved,
12 unless the Secretary provides to the Board and
13 to Congress, in writing, reasonable justification
14 for the delay and provides a reasonable date by
15 which approval or disapproval will be made.

16 (3) ADMINISTRATIVE EXPENSES.—

17 (A) INCURRING EXPENSES.—The Board
18 may incur the expenses described in paragraph
19 (2) and other expenses for the administration,
20 maintenance, and functioning of the Board as
21 authorized by the Secretary.

22 (B) PAYMENT OF EXPENSES.—Expenses
23 incurred under subparagraph (A) shall be paid
24 by the Board using assessments collected under
25 section 6, earnings obtained from assessments,

1 and other income of the Board. Any funds bor-
2 rowed by the Board shall be expended only for
3 startup costs and capital outlays.

4 (C) LIMITATION ON SPENDING.—For fiscal
5 years beginning 3 or more years after the date
6 of the establishment of the Board, the Board
7 may not expend for administration (except for
8 reimbursement to the Secretary required under
9 subparagraph (D)), maintenance, and func-
10 tioning of the Board in a fiscal year an amount
11 that exceeds 10 percent of the assessment and
12 other income received by the Board for the fis-
13 cal year.

14 (D) REIMBURSEMENT OF SECRETARY.—
15 The order shall require that the Secretary be
16 reimbursed by the Board from assessments for
17 all expenses incurred by the Secretary in the
18 implementation, administration, and supervision
19 of the order, including all referenda costs in-
20 curred in connection with the order.

21 (e) CONTRACTS AND AGREEMENTS.—

22 (1) IN GENERAL.—The order shall provide that,
23 with the approval of the Secretary, the Board may—

24 (A) enter into contracts and agreements to
25 carry out generic research, education, and pro-

1 motion programs and projects relating to con-
2 crete masonry products, including contracts and
3 agreements with manufacturer associations or
4 other entities as considered appropriate by the
5 Secretary;

6 (B) enter into contracts and agreements
7 for administrative services; and

8 (C) pay the cost of approved generic re-
9 search, education, and promotion programs and
10 projects using assessments collected under sec-
11 tion 6, earnings obtained from assessments, and
12 other income of the Board.

13 (2) REQUIREMENTS.—Each contract or agree-
14 ment shall provide that any person who enters into
15 the contract or agreement with the Board shall—

16 (A) develop and submit to the Board a
17 proposed program or project together with a
18 budget that specifies the cost to be incurred to
19 carry out the program or project;

20 (B) keep accurate records of all trans-
21 actions relating to the contract or agreement;

22 (C) account for funds received and ex-
23 pended in connection with the contract or
24 agreement;

1 (D) make periodic reports to the Board of
 2 activities conducted under the contract or
 3 agreement; and

4 (E) make such other reports as the Board
 5 or the Secretary considers relevant.

6 (3) FAILURE TO APPROVE.—If the Secretary
 7 fails to approve or reject a contract or agreement
 8 entered into under paragraph (1) within 60 days of
 9 receipt, the contract or agreement shall be deemed
 10 approved, unless the Secretary provides to the Board
 11 and to Congress, in writing, reasonable justification
 12 for the delay and provides a reasonable date by
 13 which approval or disapproval will be made.

14 (f) BOOKS AND RECORDS OF BOARD.—

15 (1) IN GENERAL.—The order shall require the
 16 Board to—

17 (A) maintain such books and records
 18 (which shall be available to the Secretary for in-
 19 spection and audit) as the Secretary may re-
 20 quire;

21 (B) collect and submit to the Secretary, at
 22 any time the Secretary may specify, any infor-
 23 mation the Secretary may request; and

1 (C) account for the receipt and disburse-
 2 ment of all funds in the possession, or under
 3 the control, of the Board.

4 (2) AUDITS.—The order shall require the Board
 5 to have—

6 (A) the books and records of the Board au-
 7 dited by an independent auditor at the end of
 8 each fiscal year; and

9 (B) a report of the audit submitted di-
 10 rectly to the Secretary.

11 (g) PROHIBITED ACTIVITIES.—

12 (1) IN GENERAL.—Subject to paragraph (2),
 13 the Board shall not engage in any program or
 14 project to, nor shall any funds received by the Board
 15 under this Act be used to—

16 (A) influence legislation, elections, or gov-
 17 ernmental action;

18 (B) engage in an action that would be a
 19 conflict of interest;

20 (C) engage in advertising that is false or
 21 misleading;

22 (D) engage in any promotion, research, or
 23 education that would be disparaging to other
 24 construction materials; or

1 (E) engage in any promotion or project
2 that would benefit any individual manufacturer.

3 (2) EXCEPTIONS.—Paragraph (1) does not pre-
4 clude—

5 (A) the development and recommendation
6 of amendments to the order;

7 (B) the communication to appropriate gov-
8 ernment officials of information relating to the
9 conduct, implementation, or results of research,
10 education, and promotion activities under the
11 order except communications described in para-
12 graph (1)(A); or

13 (C) any lawful action designed to market
14 concrete masonry products directly to a foreign
15 government or political subdivision of a foreign
16 government.

17 (h) PERIODIC EVALUATION.—The order shall require
18 the Board to provide for the independent evaluation of all
19 research, education, and promotion programs or projects
20 undertaken under the order, beginning 5 years after the
21 date of enactment of this Act and every 3 years thereafter.
22 The Board shall submit to the Secretary and make avail-
23 able to the public the results of each such evaluation.

24 (i) OBJECTIVES.—The Board shall establish annual
25 research, education, and promotion objectives and per-

1 formance metrics for each fiscal year subject to approval
 2 by the Secretary.

3 (j) BIENNIAL REPORT.—Every 2 years the Board
 4 shall prepare and make publicly available a comprehensive
 5 and detailed report that includes an identification and de-
 6 scription of all programs and projects undertaken by the
 7 Board during the previous 2 years as well as those planned
 8 for the subsequent 2 years and detail the allocation or
 9 planned allocation of Board resources for each such pro-
 10 gram or project. Such report shall also include—

- 11 (1) the Board’s overall financial condition;
- 12 (2) a summary of the amounts obligated or ex-
 13 pended during the 2 preceding fiscal years; and
- 14 (3) a description of the extent to which the
 15 Board’s objectives were met according to the metrics
 16 required under subsection (i).

17 (k) BOOKS AND RECORDS OF PERSONS COVERED BY
 18 ORDER.—

19 (1) IN GENERAL.—The order shall require that
 20 manufacturers shall—

- 21 (A) maintain records sufficient to ensure
 22 compliance with the order and regulations; and
- 23 (B) make the records described in subpara-
 24 graph (A) available, during normal business

1 hours, for inspection by employees or agents of
2 the Board or the Department.

3 (2) TIME REQUIREMENT.—Any record required
4 to be maintained under paragraph (1) shall be main-
5 tained for such time period as the Secretary may
6 prescribe.

7 (3) CONFIDENTIALITY OF INFORMATION.—

8 (A) IN GENERAL.—Except as otherwise
9 provided in this paragraph, trade secrets and
10 commercial or financial information that is
11 privileged or confidential reported to, or other-
12 wise obtained by the Board or the Secretary (or
13 any representative of the Board or the Sec-
14 retary) under this Act shall not be disclosed by
15 any officers, employees, and agents of the De-
16 partment or the Board.

17 (B) SUITS AND HEARINGS.—Information
18 referred to in subparagraph (A) may be dis-
19 closed only if—

20 (i) the Secretary considers the infor-
21 mation relevant; and

22 (ii) the information is revealed in a
23 judicial proceeding or administrative hear-
24 ing brought at the direction or on the re-
25 quest of the Secretary or to which the Sec-

1 retary or any officer of the Department is
2 a party.

3 (C) GENERAL STATEMENTS AND PUBLICA-
4 TIONS.—This paragraph does not prohibit—

5 (i) the issuance of general statements
6 based on reports or on information relating
7 to a number of persons subject to an order
8 if the statements do not identify the infor-
9 mation furnished by any person; or

10 (ii) the publication, by direction of the
11 Secretary, of the name of any person vio-
12 lating any order and a statement of the
13 particular provisions of the order violated
14 by the person.

15 (D) PENALTY.—Any officer, employee, or
16 agent of the Department of Commerce or any
17 officer, employee, or agent of the Board who
18 willfully violates this paragraph shall be fined
19 not more than \$1,000 and imprisoned for not
20 more than 1 year, or both.

21 (4) WITHHOLDING INFORMATION.—This sub-
22 section does not authorize the withholding of infor-
23 mation from Congress.

1 **SEC. 6. ASSESSMENTS.**

2 (a) ASSESSMENTS.—The order shall provide that as-
3 sessments shall be paid by a manufacturer if the manufac-
4 turer has manufactured concrete masonry products during
5 a period of at least 180 days prior to the date the assess-
6 ment is to be remitted.

7 (b) COLLECTION.—

8 (1) IN GENERAL.—Assessments required under
9 the order shall be remitted by the manufacturer to
10 the Board in the manner prescribed by the order.

11 (2) TIMING.—The order shall provide that as-
12 sessments required under the order shall be remitted
13 to the Board not less frequently than quarterly.

14 (3) RECORDS.—As part of the remittance of as-
15 sessments, manufacturers shall identify the total
16 amount due in assessments on all sales receipts, in-
17 voices or other commercial documents of sale as a
18 result of the sale of concrete masonry units in a
19 manner as prescribed by the Board to ensure com-
20 pliance with the order.

21 (c) ASSESSMENT RATES.—With respect to assess-
22 ment rates, the order shall contain the following terms:

23 (1) INITIAL RATE.—The assessment rate on
24 concrete masonry products shall be \$0.01 per con-
25 crete masonry unit sold.

26 (2) CHANGES IN THE RATE.—

1 (A) AUTHORITY TO CHANGE RATE.—The
2 Board shall have the authority to change the
3 assessment rate. A two-thirds majority of voting
4 members of the Board shall be required to ap-
5 prove a change in the assessment rate.

6 (B) LIMITATION ON INCREASES.—An in-
7 crease or decrease in the assessment rate with
8 respect to concrete masonry products may not
9 exceed \$0.01 per concrete masonry unit sold.

10 (C) MAXIMUM RATE.—The assessment
11 rate shall not be in excess of \$0.05 per concrete
12 masonry unit.

13 (D) LIMITATION ON FREQUENCY OF
14 CHANGES.—The assessment rate may not be in-
15 creased or decreased more than once annually.

16 (d) LATE-PAYMENT AND INTEREST CHARGES.—

17 (1) IN GENERAL.—Late-payment and interest
18 charges may be levied on each person subject to the
19 order who fails to remit an assessment in accordance
20 with subsection (b).

21 (2) RATE.—The rate for late-payment and in-
22 terest charges shall be specified by the Secretary.

23 (e) INVESTMENT OF ASSESSMENTS.—Pending dis-
24 bursement of assessments under a budget approved by the

1 Secretary, the Board may invest assessments collected
2 under this section in—

3 (1) obligations of the United States or any
4 agency of the United States;

5 (2) general obligations of any State or any po-
6 litical subdivision of a State;

7 (3) interest-bearing accounts or certificates of
8 deposit of financial institutions that are members of
9 the Federal Reserve System; or

10 (4) obligations fully guaranteed as to principal
11 and interest by the United States.

12 (f) ASSESSMENT FUNDS FOR REGIONAL INITIA-
13 TIVES.—

14 (1) IN GENERAL.—The order shall provide that
15 no less than 50 percent of the assessments (less ad-
16 ministration expenses) paid by a manufacturer shall
17 be used to support research, education, and pro-
18 motion programs and projects in support of the geo-
19 graphic region of the manufacturer.

20 (2) GEOGRAPHIC REGIONS.—The order shall
21 provide for the following geographic regions:

22 (A) Region I shall comprise Connecticut,
23 Delaware, the District of Columbia, Maine,
24 Maryland, Massachusetts, New Hampshire,

1 New Jersey, New York, Pennsylvania, Rhode
2 Island, Vermont, and West Virginia.

3 (B) Region II shall comprise Alabama,
4 Florida, Georgia, Mississippi, North Carolina,
5 South Carolina, Tennessee, and Virginia.

6 (C) Region III shall comprise Illinois, Indi-
7 ana, Iowa, Kentucky, Michigan, Minnesota, Ne-
8 braska, North Dakota, Ohio, South Dakota,
9 and Wisconsin.

10 (D) Region IV shall comprise Arizona, Ar-
11 kansas, Kansas, Louisiana, Missouri, New Mex-
12 ico, Oklahoma, and Texas.

13 (E) Region V shall comprise Alaska, Cali-
14 fornia, Colorado, Hawaii, Idaho, Montana, Ne-
15 vada, Oregon, Utah, Washington, and Wyo-
16 ming.

17 (3) ADJUSTMENT OF GEOGRAPHIC REGIONS.—
18 The order shall provide that the Secretary may,
19 upon recommendation of the Board, modify the com-
20 position of the geographic regions described in para-
21 graph (2).

22 **SEC. 7. REFERENDA.**

23 (a) INITIAL REFERENDUM.—

24 (1) REFERENDUM REQUIRED.—During the 60-
25 day period immediately preceding the proposed effec-

1 tive date of the order issued under section 4, the
 2 Secretary shall conduct a referendum among manu-
 3 facturers eligible under subsection (b)(2) subject to
 4 assessments under section 6.

5 (2) APPROVAL OF ORDER NEEDED.—The order
 6 shall become effective only if the Secretary deter-
 7 mines that the order has been approved by a major-
 8 ity of manufacturers voting who also represent a
 9 majority of the machine cavities in operation of
 10 those manufacturers voting in the referendum.

11 (b) VOTES PERMITTED.—

12 (1) IN GENERAL.—Each manufacturer eligible
 13 to vote in a referendum conducted under this section
 14 shall be entitled to cast one vote.

15 (2) ELIGIBILITY.—For purposes of paragraph
 16 (1), a manufacturer shall be considered to be eligible
 17 to vote if the manufacturer has manufactured con-
 18 crete masonry products during a period of at least
 19 180 days prior to the first day of the period during
 20 which voting in the referendum will occur.

21 (c) MANNER OF CONDUCTING REFERENDA.—

22 (1) IN GENERAL.—Referenda conducted pursu-
 23 ant to this section shall be conducted in a manner
 24 determined by the Secretary.

1 (2) ADVANCE REGISTRATION.—A manufacturer
2 who chooses to vote in any referendum conducted
3 under this section shall register with the Secretary
4 prior to the voting period, after receiving notice from
5 the Secretary concerning the referendum under
6 paragraph (4).

7 (3) VOTING.—The Secretary shall establish pro-
8 cedures for voting in any referendum conducted
9 under this section. The ballots and other information
10 or reports that reveal or tend to reveal the identity
11 or vote of voters shall be strictly confidential.

12 (4) NOTICE.—Not later than 30 days before a
13 referendum is conducted under this section with re-
14 spect to an order, the Secretary shall notify all man-
15 ufacturers, in such a manner as determined by the
16 Secretary, of the period during which voting in the
17 referendum will occur. The notice shall explain any
18 registration and voting procedures established under
19 this subsection.

20 (d) SUBSEQUENT REFERENDA.—If an order is ap-
21 proved in a referendum conducted under subsection (a),
22 the Secretary shall conduct a subsequent referendum—

23 (1) at the request of the Board, subject to the
24 voting requirements of subsections (b) and (c), to

1 ascertain whether eligible manufacturers favor sus-
2 pension, termination, or continuance of the order; or

3 (2) effective beginning on the date that is 5
4 years after the date of the approval of the order, and
5 at 5-year intervals thereafter, at the request of 25
6 percent or more of the total number of persons eligi-
7 ble to vote under subsection (b).

8 (e) SUSPENSION OR TERMINATION.—If, as a result
9 of a referendum conducted under subsection (d), the Sec-
10 retary determines that suspension or termination of the
11 order is favored by a majority of all votes cast in the ref-
12 erendum as provided in subsection (a)(2), the Secretary
13 shall—

14 (1) not later than 180 days after the ref-
15 erendum, suspend or terminate, as appropriate, col-
16 lection of assessments under the order; and

17 (2) suspend or terminate, as appropriate, pro-
18 grams and projects under the order as soon as prac-
19 ticable and in an orderly manner.

20 (f) COSTS OF REFERENDA.—The Board established
21 under an order with respect to which a referendum is con-
22 ducted under this section shall reimburse the Secretary
23 from assessments for any expenses incurred by the Sec-
24 retary to conduct the referendum.

1 **SEC. 8. PETITION AND REVIEW.**

2 (a) PETITION.—

3 (1) IN GENERAL.—A person subject to an order
4 issued under this Act may file with the Secretary a
5 petition—

6 (A) stating that the order, any provision of
7 the order, or any obligation imposed in connec-
8 tion with the order, is not established in accord-
9 ance with law; and

10 (B) requesting a modification of the order
11 or an exemption from the order.

12 (2) HEARING.—The Secretary shall give the pe-
13 titioner an opportunity for a hearing on the petition,
14 in accordance with regulations issued by the Sec-
15 retary.

16 (3) RULING.—After the hearing, the Secretary
17 shall make a ruling on the petition. The ruling shall
18 be final, subject to review as set forth in subsection
19 (b).

20 (4) LIMITATION ON PETITION.—Any petition
21 filed under this subsection challenging an order, any
22 provision of the order, or any obligation imposed in
23 connection with the order, shall be filed not less than
24 2 years after the effective date of the order, provi-
25 sion, or obligation subject to challenge in the peti-
26 tion.

1 (b) REVIEW.—

2 (1) COMMENCEMENT OF ACTION.—The district
3 courts of the United States in any district in which
4 a person who is a petitioner under subsection (a) re-
5 sides or conducts business shall have jurisdiction to
6 review the ruling of the Secretary on the petition of
7 the person, if a complaint requesting the review is
8 filed no later than 30 days after the date of the
9 entry of the ruling by the Secretary.

10 (2) PROCESS.—Service of process in pro-
11 ceedings under this subsection shall be conducted in
12 accordance with the Federal Rules of Civil Proce-
13 dure.

14 (3) REMANDS.—If the court in a proceeding
15 under this subsection determines that the ruling of
16 the Secretary on the petition of the person is not in
17 accordance with law, the court shall remand the
18 matter to the Secretary with directions—

19 (A) to make such ruling as the court shall
20 determine to be in accordance with law; or

21 (B) to take such further action as, in the
22 opinion of the court, the law requires.

23 (c) ENFORCEMENT.—The pendency of proceedings
24 instituted under this section shall not impede, hinder, or

1 delay the Attorney General or the Secretary from obtain-
2 ing relief under section 9.

3 **SEC. 9. ENFORCEMENT.**

4 (a) JURISDICTION.—A district court of the United
5 States shall have jurisdiction to enforce, and to prevent
6 and restrain any person from violating, this Act or an
7 order or regulation issued by the Secretary under this Act.

8 (b) REFERRAL TO ATTORNEY GENERAL.—A civil ac-
9 tion authorized to be brought under this section shall be
10 referred to the Attorney General of the United States for
11 appropriate action.

12 (c) CIVIL PENALTIES AND ORDERS.—

13 (1) CIVIL PENALTIES.—A person who willfully
14 violates an order or regulation issued by the Sec-
15 retary under this Act may be assessed by the Sec-
16 retary a civil penalty of not more than \$5,000 for
17 each violation.

18 (2) SEPARATE OFFENSE.—Each violation and
19 each day during which there is a failure to comply
20 with an order or regulation issued by the Secretary
21 shall be considered to be a separate offense.

22 (3) CEASE-AND-DESIST ORDERS.—In addition
23 to, or in lieu of, a civil penalty, the Secretary may
24 issue an order requiring a person to cease and desist
25 from violating the order or regulation.

1 (4) NOTICE AND HEARING.—No order assessing
2 a penalty or cease-and-desist order may be issued by
3 the Secretary under this subsection unless the Sec-
4 retary provides notice and an opportunity for a hear-
5 ing on the record with respect to the violation.

6 (5) FINALITY.—An order assessing a penalty or
7 a cease-and-desist order issued under this subsection
8 by the Secretary shall be final and conclusive unless
9 the person against whom the order is issued files an
10 appeal from the order with the appropriate district
11 court of the United States.

12 (d) ADDITIONAL REMEDIES.—The remedies provided
13 in this Act shall be in addition to, and not exclusive of,
14 other remedies that may be available.

15 **SEC. 10. INVESTIGATION AND POWER TO SUBPOENA.**

16 (a) INVESTIGATIONS.—The Secretary may conduct
17 such investigations as the Secretary considers necessary
18 for the effective administration of this Act, or to determine
19 whether any person has engaged or is engaging in any
20 act that constitutes a violation of this Act or any order
21 or regulation issued under this Act.

22 (b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

23 (1) INVESTIGATIONS.—For the purpose of con-
24 ducting an investigation under subsection (a), the
25 Secretary may administer oaths and affirmations,

1 subpoena witnesses, compel the attendance of wit-
2 nesses, take evidence, and require the production of
3 any records that are relevant to the inquiry. The
4 production of the records may be required from any
5 place in the United States.

6 (2) ADMINISTRATIVE HEARINGS.—For the pur-
7 pose of an administrative hearing held under section
8 8(a)(2) or section 9(c)(4), the presiding officer may
9 administer oaths and affirmations, subpoena wit-
10 nesses, compel the attendance of witnesses, take evi-
11 dence, and require the production of any records
12 that are relevant to the inquiry. The attendance of
13 witnesses and the production of the records may be
14 required from any place in the United States.

15 (c) AID OF COURTS.—

16 (1) IN GENERAL.—In the case of contumacy by,
17 or refusal to obey a subpoena issued under sub-
18 section (b) to, any person, the Secretary may invoke
19 the aid of any court of the United States within the
20 jurisdiction of which the investigation or proceeding
21 is conducted, or where the person resides or con-
22 ducts business, in order to enforce a subpoena issued
23 under subsection (b).

24 (2) ORDER.—The court may issue an order re-
25 quiring the person referred to in paragraph (1) to

1 comply with a subpoena referred to in paragraph
2 (1).

3 (3) FAILURE TO OBEY.—Any failure to obey
4 the order of the court may be punished by the court
5 as a contempt of court.

6 (4) PROCESS.—Process in any proceeding
7 under this subsection may be served in the United
8 States judicial district in which the person being
9 proceeded against resides or conducts business, or
10 wherever the person may be found.

11 **SEC. 11. SUSPENSION OR TERMINATION.**

12 (a) MANDATORY SUSPENSION OR TERMINATION.—
13 The Secretary shall suspend or terminate an order or a
14 provision of an order if the Secretary finds that an order
15 or provision of an order obstructs or does not tend to ef-
16 fectuate the purpose of this Act, or if the Secretary deter-
17 mines that the order or a provision of an order is not fa-
18 vored by a majority of all votes cast in the referendum
19 as provided in section 7(a)(2).

20 (b) IMPLEMENTATION OF SUSPENSION OR TERMI-
21 NATION.—If, as a result of a referendum conducted under
22 section 7, the Secretary determines that the order is not
23 approved, the Secretary shall—

24 (1) not later than 180 days after making the
25 determination, suspend or terminate, as the case

1 may be, collection of assessments under the order;
2 and

3 (2) as soon as practicable, suspend or termi-
4 nate, as the case may be, activities under the order
5 in an orderly manner.

6 **SEC. 12. AMENDMENTS TO ORDERS.**

7 The provisions of this Act applicable to the order
8 shall be applicable to any amendment to the order, except
9 that section 8 shall not apply to an amendment.

10 **SEC. 13. EFFECT ON OTHER LAWS.**

11 This Act shall not affect or preempt any other Fed-
12 eral or State law authorizing research, education, and pro-
13 motion relating to concrete masonry products.

14 **SEC. 14. REGULATIONS.**

15 The Secretary may issue such regulations as may be
16 necessary to carry out this Act and the power vested in
17 the Secretary under this Act.

18 **SEC. 15. LIMITATION ON EXPENDITURES FOR ADMINISTRA-**
19 **TIVE EXPENSES.**

20 Funds appropriated to carry out this Act may not
21 be used for the payment of the expenses or expenditures
22 of the Board in administering the order.

1 **SEC. 16. LIMITATIONS ON OBLIGATION OF FUNDS.**

2 (a) IN GENERAL.—In each fiscal year of the covered
3 period, the Board may not obligate an amount greater
4 than the sum of—

5 (1) 73 percent of the amount of assessments es-
6 timated to be collected under section 6 in such fiscal
7 year;

8 (2) 73 percent of the amount of assessments
9 actually collected under section 6 in the most recent
10 fiscal year for which an audit report has been sub-
11 mitted under section 5(f)(2)(B) as of the beginning
12 of the fiscal year for which the amount that may be
13 obligated is being determined, less the estimate
14 made pursuant to paragraph (1) for such most re-
15 cent fiscal year; and

16 (3) amounts permitted in preceding fiscal years
17 to be obligated pursuant to this subsection that have
18 not been obligated.

19 (b) EXCESS AMOUNTS DEPOSITED IN ESCROW AC-
20 COUNT.—Assessments collected under section 6 in excess
21 of the amount permitted to be obligated under subsection
22 (a) in a fiscal year shall be deposited in an escrow account
23 for the duration of the covered period.

24 (c) TREATMENT OF AMOUNTS IN ESCROW AC-
25 COUNT.—During the covered period, the Board may not
26 obligate, expend, or borrow against amounts required

1 under subsection (b) to be deposited in the escrow account.
2 Any interest earned on such amounts shall be deposited
3 in the escrow account and shall be unavailable for obliga-
4 tion for the duration of the covered period.

5 (d) RELEASE OF AMOUNTS IN ESCROW ACCOUNT.—
6 After the covered period, the Board may withdraw and
7 obligate in any fiscal year an amount in the escrow ac-
8 count that does not exceed $\frac{1}{5}$ of the amount in the escrow
9 account on the last day of the covered period.

10 (e) SPECIAL RULE FOR ESTIMATES FOR PARTICULAR
11 FISCAL YEARS.—

12 (1) RULE.—For purposes of subsection (a)(1),
13 the amount of assessments estimated to be collected
14 under section 6 in a fiscal year specified in para-
15 graph (2) shall be equal to 62 percent of the amount
16 of assessments actually collected under such section
17 in the most recent fiscal year for which an audit re-
18 port has been submitted under section 5(f)(2)(B) as
19 of the beginning of the fiscal year for which the
20 amount that may be obligated is being determined.

21 (2) FISCAL YEARS SPECIFIED.—The fiscal
22 years specified in this paragraph are the 9th and
23 10th fiscal years that begin on or after the date of
24 the enactment of this Act.

1 (f) COVERED PERIOD DEFINED.—In this section, the
 2 term “covered period” means the period that begins on
 3 the date of the enactment of this Act and ends on the
 4 last day of the 11th fiscal year that begins on or after
 5 such date of enactment.

6 **SEC. 17. STUDY AND REPORT BY THE GOVERNMENT AC-**
 7 **COUNTABILITY OFFICE.**

8 Not later than 5 years and 8 years after the date
 9 of enactment of this Act, the Comptroller General of the
 10 United States shall prepare a study and submit to Con-
 11 gress and the Secretary a report examining—

12 (1) how the Board spends assessments col-
 13 lected;

14 (2) the extent to which the Board’s reported ac-
 15 tivities help achieve its annual objectives;

16 (3) any changes in demand for concrete ma-
 17 sonry products relative to other building materials;

18 (4) any impact of the Board’s activities on the
 19 market share of competing products;

20 (5) any impact of the Board’s activities on the
 21 overall size of the market for building products;

22 (6) any impact of the Board’s activities on the
 23 total number of concrete-masonry-related jobs, in-
 24 cluding manufacturing, sales, and installation;

1 (7) any significant effects of the Board's activi-
2 ties on downstream purchasers of concrete masonry
3 products and real property into which concrete ma-
4 sonry products are incorporated;

5 (8) effects on prices of concrete masonry prod-
6 ucts as a result of the Board's activities;

7 (9) the cost to the Federal Government of an
8 increase in concrete masonry product prices, if any,
9 as a result of the program established by this Act;

10 (10) the extent to which key statutory require-
11 ments are met;

12 (11) the extent and strength of Federal over-
13 sight of the program established by this Act;

14 (12) the appropriateness of administering the
15 program from within the Office of the Secretary of
16 Commerce and the appropriateness of administering
17 the program from within any division of the Depart-
18 ment of Commerce, including whether the Depart-
19 ment has the expertise, knowledge, or other capabili-
20 ties necessary to adequately administer the program;
21 and

22 (13) any other topic that the Comptroller Gen-
23 eral considers appropriate.

1 **SEC. 18. STUDY AND REPORT BY THE DEPARTMENT OF**
2 **COMMERCE.**

3 Not later than 3 years after the date of enactment
4 of this Act, the Secretary shall prepare a study and submit
5 to Congress a report examining the appropriateness and
6 effectiveness of applying the commodity check-off program
7 model (such as those programs established under sub-
8 chapter II of chapter 101 of title 7, United States Code)
9 to a nonagricultural industry, taking into account the pro-
10 gram established by this Act and any other check-off pro-
11 gram involving a nonagricultural industry.

Calendar No. 365

115TH CONGRESS
2^D Session

S. 374

[Report No. 115-218]

A BILL

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.

MARCH 22, 2018

Reported without amendment