

H.R. 266 - Department of the Interior, Environment, and Related Agencies Appropriations Act, 2019 (Rep. McCollum, D-MN)

FLOOR SCHEDULE:

H.R. 266 is expected to be considered January 11, 2019, under a closed rule.

The rule would waive all points of order against consideration of the bill and against provisions in the bill.

The rule provides the bill one motion to recommit.

TOPLINE SUMMARY:

The bill would provide full-year FY 2019 appropriations for agencies and departments that are annually funded under the Department of the Interior, Environment, and Related Agencies Appropriations Act. Funding lapsed for agencies and departments funded under this act, and the following acts, at the end of December 21, 2018:

- 1. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act
- 2. Commerce, Justice, Science, and Related Agencies
- 3. Financial Services and General Government Appropriations Act
- 4. State, Foreign Operations, and Related Programs
- 5. Transportation, and Housing and Urban Development, and Related Agencies
- 6. Department of Homeland Security

The bill would direct that furloughed federal and state employees receive back-pay.

COST:

According to a Congressional Budget Office (CBO) <u>cost estimate</u> for <u>H.R. 21</u>, which included substantially the same language with respect to funding covered by the Department of the Interior, Environment, and Related Agencies Appropriations Act, the bill would provide a net total of \$35.868 billion in Fiscal Year 2019 base discretionary budget authority that is subject to the Budget Control Act (BCA) discretionary spending caps (as increased by the Bipartisan Budget Act of 2018 (BBA18)).

CONSERVATIVE CONCERNS:

Wall Funding & Shutdown

For the second week in a row, Speaker Pelosi will be forcing the House to vote on appropriations measures that have no realistic chance of becoming law. Many conservatives will view this bill as a waste of time by House Democratic Leadership because it was understood by House and Senate

leadership that the Senate would not consider a government funding measure until it was agreed to by the President.

Conservative members may be concerned that House Democrats are forcing separate consideration of this and the other appropriations measures being brought up in the House this week in an attempt to peel off Republican members from voting 'no' by focusing on the programs funded in the individual bills. Conservatives should be resolute in understanding that votes on individual funding bills represent part of a cohesive position on the FY 2019 funding debate. Further, the vote may be seen by conservatives as a ploy to blame Republicans for continuing the partial shutdown.

Many conservatives will be concerned that appropriations are being concerned without an agreement in place to provide full-year funding for the Department of Homeland Security with additional funding for a southern border wall/barrier as requested by President Trump. Currently enacted funding (section 230 of the FY 2018 Omnibus) for the Department of Homeland Security includes \$1.571 billion for fencing and border security technology along the southern border, of which about \$1.34 billion can be used for fencing. None of that funding can be used for construction of a President Trump wall according to restrictions of that section. House Republicans passed an amended continuing resolution on December 20, 2018 prior to the lapse in discretionary funding that would have fully funded the President's wall funding request.

Programmatic Funding Concerns

Despite the fact that many conservatives oppose funding land acquisition and increasing the property holding of the federal government, the bill would provide funding for such purposes.

The bill would dictate that \$3 million of funds appropriated to the FWS shall be provided to the National Fish and Wildlife Foundation. Some conservatives may interpret this appropriation to be an earmark.

For the <u>Centennial Challenge</u> program, the bill would provide \$23 million to provide matching grants to "improve visitor services, support outreach to new audiences, and strengthen partnerships to reinvigorate national parks and forge connections to new communities." This may concern conservatives given that the President's Budget request would have not funded the program.

Some conservatives may be concerned that the bill funds the Kennedy Center, Wilson Center, and National Endowments for the Arts and Humanities.

Conservatives may be concerned that the bill does NOT contain language in the House-passed bill to repeal the Army Corps of Engineers and the Environmental Protection Agency (EPA) rule changing the definition of "navigable waters" under the Clean Water Act.

- **Expand the Size and Scope of the Federal Government?** The bill provides discretionary funding at levels greater than what was provided for last fiscal year.
- **Encroach into State or Local Authority?** Some conservatives may believe that many of the programs funded by the bill should be the responsibility of state and local governments.
- Delegate Any Legislative Authority to the Executive Branch? No.
- Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits? The bill would dictate that \$3 million of funds appropriated to the FWS shall be provided to the National Fish and Wildlife Foundation. Some conservatives may interpret this appropriation to be an earmark.

DETAILED SUMMARY AND ANALYSIS:

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2019

Net Total Discretionary in Millions of Dollars

FY18 Enacted	FY19 President Request	FY19 Dem House Level	FY19 vs 18 Enacted	FY19 vs President
35,252	28,276	35,853	+601	+6,057

Net total discretionary budget authority appropriated for the Department of the Interior, Environment, and Related Agencies Appropriations under bill for FY 2019 totals \$35.853 billion, \$601 million above the FY 2018 enacted level, and \$6.1 billion more than the President's request.

Title I: Department of the Interior

Net Total Discretionary in Millions of Dollars

FY18 Enacted	FY19 President Request	FY19 Dem House Level	FY19 vs 18 Enacted	FY18 vs President
13,053	10,527	13,110	+57	+ 2,583

The bill would provide \$13.1 billion in discretionary appropriations for the Department of the Interior, a level that is \$2.6 billion above the President's Budget request and \$57 million above the FY 2018 enacted level.

Bureau of Land Management (BLM): The bill would provide \$1.34 billion in discretionary appropriations for the BLM, a level \$320 million above the President's Budget request and \$11 million above the FY 2018 enacted level.

The bill would provide \$1.177 billion for Management of Lands and Resources, \$189.7 million for Land Acquisition coming from the Land and Water Conservation Fund, and \$107 million for Oregon and California Grant Lands. Many conservatives oppose funding land acquisition and increasing the property holding of the federal government.

Wild Horses & Burros: The bill contains language that would prohibit the use of BLM funds for the destruction of healthy, unadopted, wild horses and burros in the care of the Bureau or its contractors or for the sale of wild horses and burros that results in their destruction for processing into commercial products.

U.S. Fish and Wildlife Service (FWS): The bill would provide \$1.57 billion in discretionary appropriations for the FWS, a level \$349 million above the President's Budget request and \$19.7 million below the FY 2018 enacted level.

The bill would provide \$1.292 billion for resource management, \$50.4 million for construction, \$45.2 million for land acquisition, \$49.495 million for the Cooperative Endangered Species Conservation Fund – a program the President's FY 2019 Budget would eliminate, \$43 million for the North American Wetlands Conservation Fund, \$4 million for Neotropical Migratory Bird Conservation, \$12.06 million for the Multinational Species Conservation Fund, and \$65.6 million for State and Tribal Wildlife Grants – a program the President's FY 2019 Budget would cut in half.

The bill would dictate that \$3 million of funds appropriated to the FWS shall be provided to the National Fish and Wildlife Foundation. Some conservatives may interpret this appropriation to be an earmark.

National Park Service (NPS): The bill would provide \$3.22 billion in discretionary appropriations for the NPS, a level \$517 million above the President's Budget request and \$16.4 million above the FY 2018 enacted level.

Centennial of the NPS: The National Parks Service turned 100 years old in 2016. For the <u>Centennial Challenge</u> program, the bill would provide \$23 million to provide matching grants to "improve visitor services, support outreach to new audiences, and strengthen partnerships to reinvigorate national parks and forge connections to new communities." This may concern conservatives given that the President's Budget request would have not funded the program.

U.S. Geological Survey (USGS): The bill would provide \$1.15 billion in discretionary appropriations for the USGS, a level \$289 million above the President's Budget request and equal to the FY 2018 enacted level.

Bureau of Ocean Energy Management (BOEM): The bill would provide \$129.45 million in net discretionary appropriations for the BOEM, a level the same as the President's Budget request and \$15 million above the FY 2018 enacted level. This bureau is charged with offshore energy leasing activities, including developing the Five-Year Outer Continental Shelf Oil and Gas Leasing Program.

Bureau of Safety and Environmental Enforcement: The bill would provide \$134 million in net discretionary appropriations for the Bureau of Safety and Environmental Enforcement, a level \$2 million more than the President's Budget request and \$10.6 million more than the FY 2018 enacted level. This bureau is charged with regulating safety of offshore energy activities.

Office of Surface Mining Reclamation and Enforcement (OSM): The bill would provide \$253 million in discretionary appropriations for the OSM, a level \$131 million above the President's Budget request and \$2.6 million below the FY 2018 enacted level. The OSM is charged with reclaiming abandoned coal mines for environmental purposes, often in cooperation with state agencies.

Abandoned Mine Reclamation Fund: Within funding for the Office of Surface Mining Reclamation and Enforcement, the bill would provide \$138 million for payments from the Abandoned Mine Reclamation Fund under the Abandoned Mine Land (AML) Reclamation Program, a level \$118 million above the President's Budget request and \$1.7 million under the FY 2018 enacted level. The AML program collects fees on coal production and distributes grants to states and tribes to reclaim land and waters damaged by coal mining. Of the total payments, \$23 million is derived from the Abandoned Mine Reclamation Fund and \$115 million is from the Treasury's General Fund for grants to states. Within the total payments, the bill directs that of the \$115 million for state grants \$75 million to the three Appalachian States with the largest unfunded needs for the reclamation of Priority 1 and Priority 2 sites, and \$30,000,000 to be distributed in equal amounts to the 3 Appalachian States with the subsequent greatest amount of unfunded needs to meet such priorities, and \$10,000,000 shall be for grants to federally recognized Indian Tribes.

Indian Affairs: The bill would provide a total of \$3.07 billion in discretionary appropriations for the Bureau of Indian Affairs and the Bureau of Indian Education, a level \$663 million above the President's Budget request and \$13 million above the FY 2018 enacted level. These bureaus provide services such as law enforcement, elementary and secondary education, and social programs to 1.9 million Native Americans in the 567 federally recognized tribes.

Office of the Secretary: The bill would provide \$132 million for the Office of the Secretary to provide departmental operations, a level the same as the President's Budget request, and \$8 million above the FY 2018 enacted level.

Payments in Lieu of Taxes (PILT): The bill would provide \$465 million in discretionary funding for PILT, the same as the President's Budget request and \$65 million less than the FY 2018 enacted level. This program compensates local governments for the lost property taxes within their jurisdiction because of untaxable federal land.

Wildland Fire: The bill would provide \$4.36 billion for wildland fire management activities. This includes \$1.16 billion for the DOI and \$3.2 billion for the Forest Service (FS). This amount would provide fire suppression funding at \$900 million above the 10-year average. The \$900 million would be split \$176 million for DOI and \$724 million for the FS. A CRS report on the wildfire programs can be found https://example.com/here-new-management activities. This includes \$1.16 billion for the DOI and \$3.2 billion for the Forest Service (FS). This amount would provide fire suppression funding at \$900 million above the 10-year average. The \$900 million would be split \$176 million for DOI and \$724 million for the FS. A CRS report on the wildfire programs can be found https://example.com/here-new-management activities. This includes \$1.00 million above the 10-year average.

Pursuant to the <u>FY 2018 Omnibus</u>, wildfire suppression funding will be exempt from the Budget Control Act discretionary spending caps up to \$2.25 billion in FY 2020 and growing to \$2.95 billion in FY 2027.

Land and Water Conservation Fund (LWCF): The bill would appropriate a total of \$425 million from the LWCF for state and local programs, the Forest Legacy Program, and Federal Land Acquisition.

POLICY PROVISIONS:

Wild Horse and Burro: The bill authorizes the Interior department to enter into multi-year agreements with nonprofit organizations for the long-term care and maintenance of excess wild free roaming horses and burros by such organization on private land. Agreements may not exceed 10 years. The bill also authorizes the Secretary of the Interior to transfer excess wild horses or burros that have been removed from the public lands to other Federal, State, and local government agencies for use as work animals.

Sage Grouse: The bill includes a provision that would prohibit the issuance of a proposed rule for the Sage grouse under the Endangered Species Act.

Gray Wolves: The bill does not include a provision from the House-passed bill that would require the Interior Department within 60 days of enactment to re-issue final rules removing gray wolves in Wyoming and the Great Lakes region from listing under the Endangered Species Act. Nor does the bill contain language from the House-passed bill that would require by the end of the fiscal year 2019 that the Interior Department to issue a rule to remove the gray wolf (except for the Mexican gray wolf) in each of the 48 contiguous states from the List of endangered and threatened wildlife.

Title II: Environmental Protection Agency (EPA)

Net Total Discretionary in Millions of Dollars

FY18 Enacted	FY19 President Request	FY19 Dem House Level	FY19 vs 18 Enacted	FY19 vs President
8,058	6,191	8,058	0	- 1,866

The bill would provide \$8.058 billion in appropriations for the EPA under Title II, a level that is \$1.87 billion above the President's Budget request and the same as the current FY 2018 enacted level.

Science and Technology: The bill would provide \$706 million for EPA Science and Technology, a level that is \$258 million above the President's Budget Request and the same as the FY 2018 enacted level. This account funds research related to environmental, climate, and health concerns.

Environmental Programs and Management: The bill would provide \$2.597 billion for Environmental Programs and Management, a level \$813 million above the President's Budget request and the same as the



FY 2018 enacted level. This account funds abatement, prevention, enforcement, and compliance activities of the EPA.

Clean Air: The bill would provide \$273 million for Clean Air activities, a level \$130 million above the President's Budget request and the same as the FY 2018 enacted level.

Great Lakes Restoration Initiative: The bill would provide \$300 million for the Great Lakes Restoration Initiative, a level that is \$270 million above the President's Budget request and equal to the FY 2018 enacted level.

Hazardous Substances Superfund: The bill would provide \$1.091 billion for the Hazardous Substances Superfund, a level \$3.1 million above the President's Budget request and the same as the FY 2018 enacted level. This fund is used to clean up emergency hazardous materials, spills, and dangerous, uncontrolled, and abandoned hazardous waste sites.

State and Tribal Assistance Grants (STAG): The bill would provide \$3.575 billion for STAG, a level \$645 million above the President's Budget request and \$12.9 million above the FY 2018 enacted level. STAG provides infrastructure assistance to local governments for environmental projects and categorical grants to state and tribal governments to operate environmental programs.

Water Infrastructure Programs: The bill would provide \$2.482 billion for water infrastructure programs, including \$1.694 billion for the Clean Water State Revolving Fund; \$1.164 billion for the Drinking Water State Revolving Fund; and \$63 million for the Water Infrastructure Finance and Innovation Act (WIFIA) Program, including \$8 million for administration and \$55 for direct loan subsidies.

The bill also provides that 10 percent of the Clean Water State Revolving Fund and 20 percent of Drinking Water State Revolving Fund made available to each state should be used for forgiveness of principal on negative interest loans.

Diesel Emissions Reduction Act (DERA) Grants: The bill would provide \$50 million for DERA. The <u>RSC Budget</u> recommended eliminating DERA grants because "Grants made under Diesel Emissions Reduction Act (DERA) have gone to wasteful projects involving cherry pickers, electrifying parking spaces at rest stops, and retrofitting old tractors."

Fountain Pens: The bill does not contain language from the House-passed bill under which the EPA would not be authorized to obligate or expend more than \$50 to purchase of any individual fountain pen.

Title III: Related Agencies

Net Total Discretionary in Millions of Dollars

FY18 Enacted	FY19 President Request	FY19 Dem House Level	FY19 vs 18 Enacted	FY18 vs President
13,365	11,558	13,918	+552	+ 2,360

The bill would provide \$13.918 billion in discretionary appropriations for related agencies funded by the Division A, a level \$2.36 billion above the President's Budget request, \$552 million above the FY 2018 enacted level.

Forest Service: The bill would provide a total of \$6.298 billion for the U.S. Department of Agriculture Forest Service, a level \$1.640 billion above the President's Budget request and \$364 million above the FY 2018 enacted level.

National Forest System: With Forest Service funds, the bill would provide \$1.937 billion for the National Forest System, a level \$217 million above the President's Budget request and \$13.9 million above the FY 2018 enacted level.

Indian Health Service: The bill would provide \$5.772 billion for the Indian Health Service, a level \$348 million above the President's Budget request and \$234 million above the FY 2018 enacted level.

Smithsonian Institution: The bill would provide \$1.043 billion for the Smithsonian Institution, a level \$86 million above the President's Budget request and the same as the FY 2018 enacted level.

National Gallery of Art: The bill would provide \$167 million for the National Gallery of Art, a level \$20 million above the President's Budget request and \$1.2 million above the FY 2018 enacted level.

Kennedy Center: The bill would provide a total of \$41.3 million in subsidies for the John F. Kennedy Center for the Performing Arts in Washington, D.C., a level \$3.8 million above the President's Budget request and about equal to the FY 2018 enacted level.

The RSC Budget proposed eliminating this funding, stating "It is inappropriate for the federal government to subsidize a performing arts center in one of the wealthiest areas in the country." Article I, Section 8, Clause 8 of the Constitution states that "The Congress shall have Power ... To promote the ... useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." However, the enumerated powers in the Constitution do not explicitly include the authority for Congress to provide direct taxpayer subsidies for the arts.

Many conservatives may believe that these subsidies are not necessary; the Kennedy Center has the ability to charge market-rate ticket prices for its shows and events. Tickets for the Broadway show *Hamilton* retail for \$199-625, and are available on the secondary market for higher. The Kennedy Center's website currently lists 16 multinational corporations as Executive benefactors contributing at least \$250,000 annually and 17 in the Corporate Leadership Circle as giving over \$100,000 per year, along with other contributors. The Kennedy Center also accepts tax-deductible contributions from individuals.

The bill would also include the <u>reauthorization</u> for appropriations for the Kennedy Center for FY 2019. Some conservatives may be concerned this authorization would be <u>unlikely to pass</u> on its own merits. Some conservatives may also be concerned that including the authorization in the appropriation bill distorts the regular order process of providing oversight and accountability for federal spending projects.

Wilson Center: The bill would provide \$12 million for Woodrow Wilson International Center for Scholars, a level that is \$4.5 million above the President's Budget request and equal to the FY 2018 enacted level. The <u>Wilson Center</u> is a taxpayer funded "think tank".

National Endowment for the Arts. The bill would provide \$155 million for the National Endowment for the Arts, a level that is \$126 million above the President's Budget request and \$2 million above the FY 2018 enacted level. The RSC Budget proposed eliminating this funding, stating "Support for the arts can easily, and more properly be found from non-governmental sources." The Heritage Foundation supports eliminating this program. Article I, Section 8, Clause 8 of the Constitution states that "The Congress shall have Power ... To promote the ... useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." However, the enumerated powers in the Constitution do not include the authority for Congress to provide direct taxpayer subsidies for the arts.

National Endowment for the Humanities. The bill would provide \$155 million for the <u>National Endowment for the Humanities</u>, a level that is \$113 million above the President's Budget request and \$2 million above the FY 2018 enacted level. The <u>RSC Budget</u> proposed eliminating this funding, stating "Support for the arts can easily, and more properly be found from non-governmental sources." The <u>Heritage</u>

<u>Foundation</u> supports eliminating this program. Article I, Section 8, Clause 8 of the <u>Constitution</u> states that "The Congress shall have Power ... To promote the ... useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." However, the enumerated powers in the Constitution do not include the authority for Congress to provide direct taxpayer subsidies for the arts.

POLICY PROVISIONS:

Waters of the United States: The bill does NOT contain language in the House-passed bill to repeal the Army Corps of Engineers and the Environmental Protection Agency (EPA) rule changing the definition of "navigable waters" under the Clean Water Act.

In 2014, the EPA and the Corps proposed regulations that would reverse the long-standing definition of what waters would be regulated by the Clean Water Act. These regulations would place significant permitting and regulatory costs on many property owners. This regulation has been criticized by the Heritage Foundation as allowing regulation of "all ditches, except in narrow circumstances... even includ[ing] man-made ditches," and by the U.S. Chamber of Commerce that it would "subject farmers, ranchers, manufacturers, home builders, local governments—nearly any property owner—to new layers of reviews and permitting."

Prohibition on Lobbying: The bill includes a provision that would prohibit the use of funds to promote public support or opposition to legislation before Congress.

Greenhouse Gas Permitting: The bill includes a provision that would prohibit the EPA from implementing a regulation that would require permitting under the Clean Air Act for carbon dioxide, nitrous oxide, water vapor, or methane emissions resulting from biological processes associated with livestock production.

Manure Management Reporting: The bill includes a provision that would prohibit the EPA from implementing a regulation that would require reporting of greenhouse gas emissions from manure management systems.

Lead in Ammunition and Fishing Tackle: The bill includes a provision that would prohibit regulating the lead content of ammunition or fishing tackle.

Iron and Steel Domestic Sourcing Requirement: The bill would generally require that all iron and steel components used in public water system construction or improvements paid for with State water pollution control revolving funds must be produced in the United States. This provision may concern some conservatives.

Recreation Fee: The bill would extend through FY 2020 the authority of the Recreation User Fee currently authorized to be charged by the Department of the Interior's Bureau of Land Management (BLM), Bureau of Reclamation (BOR), National Park Service (NPS), and U.S. Fish and Wildlife Service (FWS), and the U.S. Department of Agriculture's Forest Service (USFS).

Permitting for Agricultural Activities: The bill includes a provision that would prohibit the use of funds to require permits for the discharge of dredged or fill material under the Clean Water Act (CWA) for agricultural activities identified in subparagraphs (A) and (C) of Section 404(f)(1) of the CWA.

Agricultural Nutrients: The bill does not contain language from the House-passed bill that would prevent the EPA from issuing regulations applying to animal feeding operation under the Solid Waste Disposal Act.

Closing Areas for Hunting and Shooting: The bill does not include a provision from the House-passed bill that would prohibit the BLM from closing areas that were open to recreational hunting and shooting as of January 1, 2013.

Wild Horse and Burros Management: The bill does not contain language from the House-passed bill that would allow the Interior Department to manage wild horses and burros as a non-reproducing or single-sex herd, including through sterilization.

Ozone: The bill does not include language delaying or prohibiting implementation and enforcement of the ozone regulations published in October 2015. Last Congress, the House passed <u>H.R. 806</u>, the Ozone Standards Implementation Act of 2017 to delay the 2015 regulations.

Report on Climate Change Funds: Some conservatives may be concerned that the bill does not require a report from the president describing in detail all federal agency funding for climate change programs, as was required in FY 2016 and FY 2017.

Unauthorized Appropriations: The bill includes billions of dollars in appropriations for dozens of programs that are not authorized by law.

Furlough Back-pay

The bill would provide back-pay for employees furloughed as a result of the funding lapse. Employees include those federal employees whose salaries are paid by this bill.

States and Federal grantees that spent their own funding to administer programs funded by the bill's appropriations would be reimbursed for those expenditures plus interest.

Further, if a State or Federal grantee furloughed employees whose compensation is advanced or reimbursed in whole or in part by the Federal Government, the bill would direct that such States be reimbursed for the cost of compensating furloughed employees during the lapse in federal funding.

COMMITTEE ACTION:

The bill was introduced on January 8, 2019, and was referred to the House Appropriations Committee.

ADMINISTRATION POSITION:

President Trump has consistently voiced his opposition to signing a government funding bill that did not include extra money for the southern border wall.

The <u>Statement of Administration</u> Policy for the bill recommends a veto and states: "The Administration is committed to working with the Congress to reopen agencies affected by lapsed appropriations, but any effort to do so must address the security and humanitarian crisis on our Southwest border and should restore funding for all agencies affected by the lapse."

CONSTITUTIONAL AUTHORITY:

According to the sponsor, 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."

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