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RSC THE REPUBLICAN STUDY COMMITTEE

H.R. 3823 — Disaster Tax Relief and Airport and Airway Extension Act of 2017 (Rep. Brady, R-TX)

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FLOOR SCHEDULE:

Expected to be considered September 27, 2017, under a closed rule.

The rule would self-execute an amendment offered by Rep. Curbelo that would require the Secretary of the Treasury to make payments to Puerto Rico and the U.S. Virgin Islands. Additional background on that amendment can be found here.

The rule would also provide for suspension authority for Thursday, September 28, 2017.

TOPLINE SUMMARY:

H.R. 3823 would extend the authorization for the Federal Aviation Administration (FAA) as well as the taxes and expenditure authority for the Airport and Airways Trust Fund through March 31, 2018. The bill would also extend certain expiring health care programs. The bill would also amend the Flood Disaster Protection Act of 1973 to clarify that flood insurance that has been obtained through private firms satisfies the requirement that homeowners possess flood insurance for properties in flood zones that are backed by a federal financing guarantee. Finally, the bill would provide targeted tax relief for victims of recent hurricanes.

COST:

No Congressional Budget Office (CBO) estimate is available. A partial score from the Joint Committee on Taxation (JCT), covering the revenue provisions in Tiles II and V only is available here.

According to the JCT, the revenue provisions of the FAA extension in Title II would have no revenue effect compared to the current law baseline.

The hurricane tax relief provisions of Title V would reduce revenues by $5.39 billion over the FY 2018 – 2027 period.

Title V, as amended pursuant to the rule, would also increase outlays by an unknown amount that is greater than $42 million for payments to Puerto Rico and the U.S. Virgin Islands.

The bill would exempt the budgetary effects of Title V from the Statutory Pay-As-You-Go Act and the

PAYGO rule in the Senate by designating that title of the bill as an emergency requirement.

CONSERVATIVE CONCERNS:

Some conservatives may be concerned that this bill extends the Essential Air Service (EAS) program. This program heavily subsidizes flights to and from rural areas—often at a cost of several hundred dollars per passenger. The RSC Budget recommended eliminating the EAS.

- **Expand the Size and Scope of the Federal Government?** No.
- **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:

Title I and Title II – Federal Aviation Programs and Aviation Revenue Provisions

The authorization for the FAA and other aviation programs is currently set to expire on September 30, 2017. This bill would extend the authorization through March 31, 2018, for:

- The Airport Improvement Program;
- Federal Aviation Administration Operations;
- Air Navigation Facilities and Equipment;
- Research, Engineering, and Development;
- The Essential Air Service;
- Revenue sources for the Airport and Airway Trust Fund, including ticket and fuel taxes; and
- Expenditure authority from the Airport and Airway Trust Fund.

Title III – Expiring Health Care Programs

Title III would extend certain expiring health care programs, offset by tapping the Medicare improvement Fund (MIF). Specifically, Title III would extend the Special Diabetes Program for Indians and the Teaching Health Care Graduate Medical Education (GME) program created for the first quarter of FY 2018. Additionally, it would extend the Medicare IVIG Access Demonstration Project through 2020. The Ways and Means and Energy and Commerce Committees use the MIF as a "parking spot" to bank savings to offset future spending. If the MIF is not spent by Congress, the funds because available to the HHS Secretary after FY 2021 and may be used to make improvements to the Medicare fee-for-service program.

Title IV- Private Flood Insurance

Title IV contains similar language to H.R. 1422, which was reported by the House Committee on Financial Services. The report accompanying H.R. 1422 can be found here. Similar language, H.R. 2901, was also passed by the House in the 114th Congress by a vote of 419-0. The RSC legislative bulletin for H.R. 2901 can be found here.

Presently, the flood insurance market is highly concentrated, with roughly 5 million property owners relying on the U.S. government's flood insurance program (NFIP), which is roughly $23 billion in debt. Federally guaranteed mortgages for properties in flood zones are required by law to carry flood insurance. Though the current requirement to purchase flood insurance does not stipulate that the policy must be provided by the federal government, mortgage lenders have expressed uncertainty that private flood coverage satisfies federal requirements. This legislation would stipulate that licensed, admitted or state-approved private policies where the property is located would satisfy the federal requirement for flood insurance for flood-zone properties with federal guarantees as would policies provided by the NFIP. Policies issued by non-admitted insurers would also apply. Moreover, it would clarify that all federal lenders and banking regulators would be required to accept state-approved private flood insurance in order to satisfy mandatory flood insurance requirements. This legislation would re-stipulate that any building or personal property financed by a federally-backed mortgage that is designated in a special flood hazard zone would require flood insurance. Federal banking regulators would be required to instruct regulated institutions to not make loans that are secured by real property in flood zones, unless that property possesses flood insurance. Both private and NFIP plans would satisfy flood insurance requirements for regulated financial institutions.

This legislation would require Government Sponsored Entities, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, to require flood insurance for properties within special flood hazard areas that are purchased or guaranteed by the entities. They would be required to accept federal or private flood insurance as meeting that requirement. Mortgages offered, insured, or guaranteed by the Department of Housing and Urban Development or through Title V of the Housing Act of 1949 would also be required to accept federal or private flood insurance as meeting that requirement. This legislation would require the Federal Housing Finance Association, in consultation with other relevant groups, to establish uniform financial strength requirements for insurance providers.

This legislation would also allow the Federal Emergency Management Agency (FEMA) to consider policy holders that move off a National Flood Insurance Program (NFIP) and later back onto a NFIP as having continuous coverage if they can demonstrate they maintained a private flood insurance policy in the interim period. Finally, this legislation would prohibit federal regulations from conflicting with state action pertaining to the regulation of flood insurance.

Title V - Tax Relief for Hurricanes Harvey, Irma, and Maria
According to CRS, Congress has at times provided certain tax preferences after natural disasters.

Penalty Free Withdrawals from Retirement Plans: The bill would exempt qualified hurricane disbursements from retirement plans made before January 1, 2019, from the ten percent early withdrawal penalty. Penalty free withdrawals are limited to no more than $100,000.

Employment Retention Credits: The bill would provide a credit to employers for up to 40 percent of wages paid (for up to $6,000) to employees in hurricane affected areas during a time when the business is inoperable through January 1, 2018.

The credit would be available “without regard to whether the employee performs no services, performs services at a different place of employment than such principal place of employment, or performs services at such principal place of employment before significant operations have resumed.”

Suspension of Charitable Contribution Limitations: The bill would suspend the limitations on charitable contributions through December 31, 2017.

Disaster Related Personal Casualty Losses: For those affected by the hurricanes, the bill would waive the requirement that uncompensated personal casualty losses must exceed ten percent of income in order to qualify for a tax deduction.

Special Rule for Earned Income Tax Credit and Child Tax Credit: For those in hurricane affected areas and whose income this year is less than the income of the previous year, the bill would allow taxpayers to choose to use the earned income from the preceding year for the purposes of calculating the Earned Income Tax Credit and Child Tax Credit.

Payments to Puerto Rico and the U.S. Virgin Islands: The rule would self-execute an amendment offered by Rep. Curbelo that would require the Secretary of the Treasury to make payments to Puerto Rico and the U.S. Virgin Islands.

Specifically, the bill as amended requires the Treasury to make a payment to the U.S. Virgin Islands in an amount equal to the revenue loss of the territory due to the hurricane tax relief provisions in Title V of this bill. The Virgin Islands have a mirror tax system whereby the territory's tax code is automatically changed to reflect any changes in the United States' code.

Unlike the Virgin Islands, Puerto Rico does not have a mirror tax system. The bill as amended also requires the Treasury to make a payment to Puerto Rico equal to an amount estimated to the benefits that would been provided to residents of Puerto Rico if would have had a mirror tax system. The bill requires the Treasury to approve a plan by Puerto Rico to distribute the payment from the Treasury to citizens of Puerto Rico.

This amendment expands a provision in the bill as introduced that would have required a payment for revenue losses associated with the special rule for the Earned Income Tax Credit and Child Tax Credit calculation in mirror tax jurisdictions.

PAYGO Exemption: The bill would exempt the budgetary effects of the tax provisions from the Statutory Pay-As-You-Go Act and the PAYGO rule in the Senate by designating the title as an emergency requirement.

COMMITTEE ACTION:

H.R. 3832 was introduced on September 25, 2017, and referred to the Ways and Means; Transportation and Infrastructure; Energy and Commerce; Financial Services; and Budget Committees.

On September 25, 2017, the bill failed n suspension by a 242 – 171 vote (with a 2/3 majority required for passage).

Earlier this year, the House Transportation and Infrastructure Committee marked up and reported H.R. 2997, the 21st Century Aviation Innovation, Reform, and Reauthorization Act of 2016, which would extend aviation programs through 2023 and make major changes to the FAA's air traffic control operations by transitioning those services to a new federally chartered ATC Corporation.

The Senate Commerce, Science and Transportation Committee recently reported S. 1405, the Federal Aviation Administration (FAA) Reauthorization Act of 2016, which would reauthorize aviation programs in their current structure through 2017.

ADMINISTRATION POSITION:

A Statement of Administration Policy can be found here. The statement indicates that if the bill was passed by both chambers in its current form, the President's advisors would recommend he sign the bill into law.

CONSTITUTIONAL AUTHORITY:

"Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1 of the Constitution of the United States."