



Legislative Bulletin.....December 12, 2012

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S. 3542 – No-Hassle Flying Act (*Klobuchar, D-MN*)

Order of Business: The bill is scheduled to be considered on Wednesday, December 12, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: [S. 3542](#) would allow the Assistant Secretary of Homeland Security (TSA) to modify screening requirements for checked baggage arriving from preclearance airports.

Specifically, it would allow for the TSA to determine a list of airports that would not require re-screening by the explosives detection system for a flight originating from an airport outside of the US and traveling to the US with respect to which checked baggage has been screened in accordance with an aviation security preclearance agreement.

The Department of Homeland Security must submit an annual report to Congress on the rescreening of baggage which shall include a list of airports outside of the US from which a flight, or flight segment, traveled to the United States that DHS determined was not required to be re-screened in the US by an explosive detection system.

Committee Action: Senator Amy Klobuchar (D-MN) introduced S. 3542 on September 13, 2012, and it was referred to the Senate Commerce, Science, and Transportation Committee. The legislation was agreed to by unanimous consent in the committee and then agreed to in the Senate by unanimous consent on November 29, 2012.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: No CBO score is available.

Does the Bill Expand the Size and Scope of the Federal Government?: This legislation is arguably a decrease in the size of the federal government by reducing required TSA screening procedures.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: No constitutional authority statement is required for legislation introduced in the Senate.

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S. 1998 – DART Act (Brown, R-MA)

Order of Business: The bill is scheduled to be considered on Wednesday, December 12, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: [S. 1998](#) provides an avenue for an unqualified audit opinion to improve financial accountability and management at DHS.

Within 180 days, the DHS must develop a comprehensive financial management strategy and an implementation plan to strengthen internal control over financial reporting and modernize financial management systems of all Department components. The objectives are:

- To eliminate internal control weaknesses and ineffective/inefficient business processes by modernizing systems and integrating financial information and business processes throughout the Department in order to obtain an unqualified opinion on internal control over financial reporting.
- To establish and maintain effective financial management systems that provide reliable, timely, standardized, and useful financial data to support:
 1. Daily operational decision-making, auditable financial statements.
 2. Compliance with federal financial management laws/regulations.
 3. Elimination of delays and manual processes for preparing auditable financial statements in order to obtain an unqualified audit opinion.
- Require disciplined processes to minimize financial management system modernization/implementation project risk, including requirements management, testing, data conversion and system interfaces, risk management, project management, and quality assurance.
- Incorporate key human capital practices to ensure that financial management transformation efforts are properly staffed with appropriately skilled employees.

The DHS shall provide a report to Congress on progress on these audit requirements. The plan shall include an unqualified opinion on the full set of financial statements, an unqualified opinion on its internal controls over financial reporting, and modernization of the financial management systems of the Department, including timelines, goals, alternatives, and costs of the plan.

Committee Action: Senator Scott Brown (R-MA) introduced S. 1998 on December 15, 2011, and it was referred to the Senate Committee on Homeland Security and Governmental Affairs. It was voted out of committee on November 2, 2012, (Report No. 112-230) and was passed Senate by unanimous consent on November 28, 2012. It was then referred to the House Committee on Homeland Security and the Committee on Oversight and Government Reform.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: The CBO [estimates](#) that implementing S. 1998 would have no significant cost to the federal government.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The legislation establishes a WWI Centennial Commission.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: No constitutional authority statement is required for legislation introduced in the Senate.

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H.R. 6364 – Frank Buckles World War I Memorial Act (Poe, R-TX)

Order of Business: The bill is scheduled to be considered on Wednesday, December 12, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: [H.R. 6364](#) would establish a commission to ensure a suitable observance of the centennial of World War I, to designate memorials to the service members of WWI, including a National WWI Memorial on the National Mall.

There is also a prohibition upon obligating federal funds to carry out this legislation.

The legislation would also designate the Liberty Memorial of Kansas City at America’s national World War I Museum in Kansas City, Missouri as the “National World War I Museum and Memorial.”

Committee Action: Representative Ted Poe (R-TX) introduced H.R. 6364 on September 10, 2012 and it was referred to the House Oversight and Government Reform Committee and the House Natural Resources Subcommittee on National Parks, Forests and Public Lands. A mark-up was held ([Mark-up report](#)) and it was reported out by unanimous consent on December, 5, 2012.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: According to the CBO, H.R. 6364 would increase authorization by about \$4 million over the 2013-2017 periods, subject to appropriations. Those funds would be used to plan, develop, and carry out activities and prepare reports.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The legislation establishes a WWI Centennial Commission.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The Constitutional Authority Statement accompanying the bill upon introduction states, “Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8, Clauses 1, 12, 16, and 18.”

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H.R. 4053 – Improper Payments Elimination and Recovery Improvement Act of 2012 (*Towns, D-NY*)

Order of Business: The bill is scheduled to be considered on Wednesday, December 12, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: [H.R. 4053](#) would intensify efforts to identify prevent and recover payment error, waste, fraud and abuse within federal spending.

Specifically the legislation requires that:

- The OMB shall identify a list of high-priority federal programs for greater levels of oversight and review in which the highest dollar value or highest rate of improper payments occur or for which there is a higher risk of improper payments. The OMB shall then establish annual targets and semi-annual or quarterly actions for reducing improper payments associated with each high-priority program.

- Each agency shall submit to the Inspector General of that agency a report on that program which shall describe any action the agency has taken or plans to take to recover improper payments and intendeds to take to prevent future improper payments under the Improper Payments Information Act of 2002.
- The OMB shall provide guidance to agencies for improving the estimates of improper payments. The OMB shall also determine the current and historical rates and amount of recovery of improper payments, including a list of agency recovery audit contract programs and specific information of amounts and payments recovered by recovery audits.

Committee Action: Representative Ed Towns (D-NY) introduced H.R. 4053 on February 2, 2012, and assigned to the Committee on Oversight and Government Reform. It was reported out of committee on November 30, 2012 (H. Rept. [112-698](#)).

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: CBO estimates that implementing H.R. 4053 would have no significant cost over the next five years.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The Constitutional Authority Statement accompanying the bill upon introduction states, “Congress has the power to enact this legislation pursuant to the following: This Bill is enacted pursuant to Article I, Section 8, Clause 3 of the United States Constitution, known as the ‘Commerce Clause.’ This provision grants Congress the broad power to ‘regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.’ Please note, pursuant to Article I, section 8, Congress has the power “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

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S. 3315 –GAO Mandates Revision Act of 2012 (*Carper, D-DL*)

Order of Business: The bill is scheduled to be considered on Wednesday, December 12, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: [S. 3315](#) would reduce the number of reviews and audits conducted by the Government Accountability Office (GAO) for eight specified activities. The Congress often requires that the GAO perform an annual examination of a program, agency, or other federal activity. S. 3315 would modify or repeal a small number of the reviews and audits GAO is required to perform.

Specifically the legislation:

- Amends the Arizona-Idaho Conservation Act of 1988 to require audits of the transactions of the U.S. Capitol Preservation Commission at least once every three years, rather than annually.
- Amends the federal judicial code to repeal the requirement that the GAO review contributions to the Judicial Survivors' Annuities Fund at the end of each three-fiscal year period.
- Changes reporting and audit requirements of the Office of National Drug Control Policy (ONDCP) to require: (1) reports on the strategy of ONDCP's national media campaign on February 1, 2013, and every three years thereafter, rather than annually, and (2) audits of the programs and operations of ONDCP not later than December 31, 2013, and every three years thereafter, rather than annually.
- Amends the Veterans' Benefits Act of 2010 to modify the annual GAO reporting requirement for the demonstration project for referral of claims under the Uniformed Services Employment and Reemployment Rights Act of 1994 to the Office of Special Counsel to require only one annual report after the commencement of the demonstration project.
- Amends the Semipostal Authorization Act to repeal the requirement that GAO issue an interim report four years after a semipostal stamp is first made available to the public and a final report not later than six months before the semipostal stamp's scheduled expiration date.
- Amends the Caribbean Basin Economic Recovery Act to eliminate the annual GAO review requirement for the Earned Import Allowance Program for imports of textiles.
- Eliminates requirements that the American Battle Monuments Commission prepare an annual financial statement and obtain an annual audit of its financial statement by GAO.
- Requires audits of the Senate Preservation Fund at least once every three years, rather than annually, unless the Chairman or the Ranking Member of the Senate Committee on Rules and Administration or the Secretary of the Senate requests that an audit be conducted at an earlier date.

Committee Action: Senator Tom Carper (D-DE) introduced S. 3315 on June 20, 2012, and it was referred to the Committee on Homeland Security and Governmental Affairs. It was reported out of committee ([report 112-219](#)) on September 19, 2012, and it passed the Senate on September 22, 2012, by unanimous consent.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: The CBO estimates that implementing the legislation would have no significant impact on the federal budget.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: No constitutional authority statement is required for legislation introduced in the Senate.

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S. 1379 – D.C Courts and Public Defender Service Act of 2011 (*Akaka, D-HI*)

Order of Business: The bill is scheduled to be considered on Wednesday, December 12, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: [S. 1379](#) amends Title 11 of DC Code to revise certain administrative authorities of the DC courts and to authorize the DC Public Defender Service to provide professional liability insurance for officers and employees of the Service for claims relating to services furnished within employment. It also reduces from five to three years the term an individual may be assigned to serve as a judge of the Family Court of the Superior Court.

Committee Action: Senator Daniel Akaka (D-HI) was introduced on July 18, 2011, and referred to the Senate Homeland Security and Governmental Affairs Committee that voted it out on June 25, 2012 (Report No. [112-178](#)) and it passed the senate by voice vote on July 9, 2012. It was referred to the House Committee on Oversight and Government Reform, which has taken no public action.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: The CBO estimates that S. 1379 would not have a significant impact upon the federal budget.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:

Constitutional Authority: No constitutional authority statement is required for legislation introduced in the Senate.

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H.R. 5817 – Eliminate Privacy Notice Confusion Act as Amended (Luetkemeyer, R-MO)

Order of Business: The legislation is scheduled to be considered under suspension of the rules on Wednesday, December 12, 2012. The bill will require two-thirds majority vote for passage, and provides forty minutes of debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services.

Summary: H.R. 5817 would amend the Gramm-Leach-Bliley Act to provide an exception to the annual privacy notice requirement. The legislation would eliminate the requirement that financial institutions send annual privacy notices to their customers, under certain circumstances. The legislation would allow the exception for a financial institution that:

- provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b) of the Gramm-Leach-Bliley Act (Authority to Grant Exceptions),
- has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this legislation.

The legislation would allow for the exceptions for those firms until such time as the financial institution fails to comply with any criteria described above.

Background: The 1999 Gramm-Leach-Bliley Act required that financial institutions such as banks, securities companies, and insurance companies, provide customers with a privacy notice that explains what personal and financial information the institution collects and how it is used, shared, and protected when a customer begins a relationship with a covered financial institution. The privacy notices are required to be provided to customers every year and anytime an institution changes its privacy policy.

Committee Action: H.R. 5817 was introduced by Rep. Blaine Luetkemeyer (R-MO) on May 17, 2012 and referred to the House Committee on Financial Services. On July 11, 2012 the legislation was referred to the Subcommittee on Financial Institutions and Consumer Credit, which took no public action.

Administration Position: A Statement of Administration Policy has not been released.

Cost to Taxpayers: A CBO report was unavailable.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No, the legislation reforms a private sector mandate by providing an exception for a financial institution.

Does the Bill Contain any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:
No.

Constitutional Authority: According to the statement of Constitutional Authority provided by Rep. Luetkemeyer, “Congress has the power to enact this legislation pursuant to the following: The constitutional authority on which this bill rests is the explicit power of Congress to regulate commerce in and among the states, as enumerated in Article 1, Section 8, Clause 3, the Commerce Clause, of the United States Constitution. Additionally, Article 1, Section 7, Clause 2 of the Constitution allows for every bill passed by the House of Representatives and the Senate and signed by the President to be codified into law; and therefore implicitly allows Congress to repeal any bill that has been passed by both chambers and signed into law by the President.”

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H.R. 6190 – Asthma Inhalers Relief Act of 2012 (Burgess, R-TX)

Order of Business: The bill is scheduled to be considered on Wednesday, December 12, 2012, under a motion to suspend the rules requiring two thirds majority vote for passage.

Summary: H.R. 6190 directs the Administrator of the Environmental Protection Agency (EPA) to permit the sale and distribution of remaining inventories of over-the-counter (OTC) chlorofluorocarbon (CFC) epinephrine inhalers until August 1, 2013. It also requires the EPA to issue No Action Assurance letters to any requesting distributor or seller expressing that the EPA will not initiate any enforcement action against the sale or distribution of CFC epinephrine inhalers until August 1, 2013. Lastly, it expresses that the FDA is not prevented from ensuring the safety and effectiveness of these inhalers.

Pursuant to Title VI of the Clean Air Act¹, the manufacture and sale of CFC epinephrine has been banned for purposes of reducing ozone-depleting substances since December 31, 2011. There are an estimated 1.2 million OTC epinephrine inhalers currently in storage. House Energy and Commerce Committee report #[112-673](#) states that prior to the

¹ This 1990 amendment to the Clean Air Act (P.L. 101-549) implemented the 1989 Montreal Protocol on Substances that Deplete the Ozone Layer international environmental treaty designed to reduce emissions of ozone-depleting substances. CFC inhalers were exempt from the law’s phase out of CFC manufacture and sale in the United States until 2008. The FDA and EPA extended this 2008 phase out of inhalers until December 31, 2011.

ban, the Food and Drug Administration estimated 1.7 to 2.3 million consumers purchased 4.5 million inhalers annually.

The FDA has [stated](#) that epinephrine users can still continue to use any unused OTC CFC epinephrine purchased before the December 31, 2011 deadline as long as it has not expired.

The bill had been previously scheduled for floor consideration the week of November 12, 2012, but was not considered then.

Additional Background: These inhalers (commonly marketed as Primatene Mist) use CHC propellants to administer epinephrine to those with asthma. They have been sold over-the-counter for more than 40 years. According to reports, Armstrong Pharmaceuticals, Inc is the last company to manufacture such inhalers and has over 1.2 million in storage with a potential market value between \$15 to \$18 million. Requests by manufacturers and other related trade associations to sell the remaining OTC inventories have been denied by the EPA.

Opponents of the bill, including some medical organizations, claim it amounts to providing Armstrong Pharmaceuticals, Inc. a regulatory preference since it will likely benefit only one company that has remaining inventory of inhalers in storage. They also contend that medical guidelines do not recommend CFC epinephrine for asthma treatment. Additionally, they cite that other OTC non-CFC epinephrine-related products are planning to enter the market.²

Supporters of the bill maintain that this existing stock pile of CFC epinephrine inhalers should not go to waste, and that this amount in storage would not negatively impact the environment. They cite an FDA statement in 2008 which expressed that removing the inhalers would reduce emissions by only a fraction of 1 percent of total global CFC emissions. Also, supporters point out that these inhalers help those with asthma who live long distances from medical service providers self-administer this medication.

Committee Action: Representative Michael Burgess (R-TX) introduced H.R. 6190 on July 25, 2012. On July 19, 2012, the House Energy and Commerce Subcommittee on Energy and Power marked up the bill and reported it out by voice vote. On August 1, 2012, the full House Energy and Commerce Committee reported the bill out favorably by voice vote.

Administration Position: No Statement of Administration Policy is available.

Cost to Taxpayers: The August 22, 2012 Congressional Budget Office (CBO) [cost estimate](#) for the bill estimates that there would be no significant impact on the federal budget.

² The Dissenting Views included in the Committee report reference a similar product to be entering the market. It is a hand-held, battery-operated atomizer that uses vials of a variant of epinephrine called Asthmanefrin (as of a July 19, 2012 Subcommittee Markup of similar legislation).

Does the Bill Expand the Size and Scope of the Federal Government?: The bill provides an exemption to the current ban on sale or distribution of a prohibited medical substance until August 1, 2013.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Committee report states that the bill contains no [earmarks](#).

Constitutional Authority: The Constitutional Authority Statement accompanying the bill upon introduction states, “Congress has the power to enact this legislation pursuant to the following: The attached legislation falls within Congress' authority to regulate interstate commerce as found in Article I, Section 8, clause 3 of the U.S. Constitution, which provides the authority for the Congress to ‘To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.’ The epinephrine inhalers at issue in the attached legislation are regulated by the federal Food and Drug Administration (FDA), and the propellant at issue is regulated by the Environmental Protection Agency. The product further falls within the subject matter of an international treaty known as the Montreal Protocol on Substances that Deplete the Ozone Layer, of which the U.S. is a signatory.”

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