



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 7, 2018

H.R. 3808 **Infrastructure Expansion Act of 2017**

As ordered reported by the House Committee on the Judiciary on January 30, 2018

In tort law, an absolute (or strict) liability standard imposes 100 percent liability for injury on the defendant, regardless of actual fault or negligence on the part of that defendant. Under a comparative negligence standard of liability, the court assesses the relative fault of the defendant and the plaintiff to determine the division of liability and apportions the award of damages accordingly. H.R. 3808 would affect claims stemming from gravity-related accidents—for example, when a worker is injured in a fall or by a falling object—on infrastructure projects that are federally owned or funded with federal assistance. Specifically, the bill would require courts to apply a comparative negligence standard when considering such claims.

CBO expects that under H.R. 3808, injured parties may be found to be partially liable for injuries that occur during work on federally owned or funded construction projects. Such a finding could result in lower settlement payments by employers and contractors. That limitation on liability also could reduce the insurance costs for such projects.

CBO estimates that any budgetary effects of enacting H.R. 3808 would be insignificant over the 2018-2022 period. The provisions of the bill would apply to projects built in one state with federal grants or assistance. Any savings in that state because of lower insurance or settlement costs would generally not affect the amounts provided for federal construction grants.

Enacting H.R. 3808 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 3808 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3808 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) by preempting state laws that impose absolute liability on employers for workplace injuries caused by gravity-related accidents. The bill would preempt those laws by requiring the state to instead apply a comparative negligence standard that considers the negligence of the injured person in cases that arise involving

gravity related injuries on projects that are federally owned or funded. That financial connection could mean that the preemption of state law should be interpreted as a condition of aid. However, CBO believes that the preemption of state law would constitute a mandate because, in many cases, the state government would have little or no jurisdiction over whether recipients, such as local governments or private entities, accept federal funds. At present, the State of New York is the only state that maintains a law imposing absolute liability in cases of gravity-related accidents of construction projects. Therefore, CBO expects that the bill's effects would be focused on New York. Although the preemption would limit the application of state law in cases covered by the bill, CBO estimates that H.R. 3808 would impose no duty on state, local, or tribal governments that would result in additional spending or a loss of revenues.

H.R. 3808 would impose a private-sector mandate on any person who works or supervises work on an infrastructure project that is supported with federal funds by limiting the amount of awards that person could receive for injuries from gravity-related accidents. Specifically, under a standard of comparative negligence, settlements awarded to an injured plaintiff would be reduced in proportion to the degree of fault attributed to the plaintiff by a court. The cost of the mandate would be the forgone net value of settlements that would have been awarded for such claims in the absence of the bill. Using information about the number of settlements for such cases in New York in recent years, the amounts of those settlements, and the number of projects that have received federal assistance, CBO estimates that the mandate would reduce awards to injured persons by less than \$20 million per year over the 2018-2022 period—well below the annual threshold for private-sector mandates established in UMRA (\$156 million in 2017, adjusted annually for inflation).

The CBO staff contacts for this estimate are Sarah Puro and Janani Shankaran (for federal costs) and Jon Sperl (for mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.