

Suspend the Rules and Pass the Bill, H.R. 4969, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

115TH CONGRESS
2^D SESSION

H. R. 4969

To improve the design and construction of diplomatic posts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2018

Mr. McCAUL introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To improve the design and construction of diplomatic posts, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Embassy Security Au-
5 thorization Act, Fiscal Year 2019”.

6 **SEC. 2. STANDARD DESIGN IN CAPITAL CONSTRUCTION.**

7 (a) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that the Department of State’s Bureau of Overseas

1 Building Operations (OBO) or successor office should give
2 appropriate consideration to standard embassy design, in
3 which each new embassy and new consulate starts with
4 a standard design and keeps customization to a minimum.

5 (b) CONSULTATION.—The Secretary of State shall, in
6 consultation with the appropriate congressional commit-
7 tees, carry out any new embassy compound project or new
8 consulate compound project that is in the design phase
9 or pre-design phase as of the date of the enactment of
10 this Act and that utilizes a non-standard design. The Sec-
11 retary shall provide such committees, for each such
12 project, the following documentation:

13 (1) A comparison of the estimated full lifecycle
14 costs of the project at issue to the estimated full
15 lifecycle costs of such project if such project were to
16 use a standard embassy design.

17 (2) A comparison of the estimated completion
18 date of such project to the estimated completion
19 date of such project if such project were to use a
20 standard embassy design.

21 (3) A comparison of the security of such com-
22 pleted project to the security of such completed
23 project if such completed project were to use a
24 standard embassy design.

1 (4) A justification for the Secretary’s selection
2 of a non-standard design over a standard embassy
3 design for such project.

4 (5) A written explanation if any of the docu-
5 mentation necessary to support the comparisons and
6 justification, as the case may be, described in para-
7 graphs (1) through (4) cannot be provided.

8 **SEC. 3. STATEMENT OF POLICY.**

9 It is the policy of the United States that the Bureau
10 of Overseas Building Operations of the Department of
11 State or its successor office shall continue to balance
12 functionality and security with accessibility as defined by
13 guidelines established by the United States Access Board
14 in constructing embassies and consulates and shall ensure
15 compliance with the Architectural Barriers Act of 1968
16 to the fullest extent possible.

17 **SEC. 4. CAPITAL CONSTRUCTION TRANSPARENCY.**

18 (a) IN GENERAL.—Section 118 of the Department of
19 State Authorities Act, Fiscal Year 2017 (22 U.S.C. 304)
20 is amended—

21 (1) in the section heading, by striking “**AN-**
22 **NUAL REPORT ON EMBASSY CONSTRUCTION**
23 **COSTS**” and inserting “**QUARTERLY REPORT ON**
24 **OVERSEAS CAPITAL CONSTRUCTION**
25 **PROJECTS**”; and

1 (2) by amending subsections (a) and (b) to read
2 as follows:

3 “(a) IN GENERAL.—Not later than 180 days after
4 the date of the enactment of this subsection and every 90
5 days thereafter, the Secretary shall submit to the appro-
6 priate congressional committees a comprehensive report
7 regarding all ongoing overseas capital construction
8 projects and major embassy security upgrade projects.

9 “(b) CONTENTS.—Each report required under sub-
10 section (a) shall include the following with respect to each
11 ongoing overseas capital construction project and major
12 embassy security upgrade project:

13 “(1) The initial cost estimate as specified in the
14 proposed allocation of capital construction and main-
15 tenance funds required by the Committees on Appro-
16 priations for Acts making appropriations for the De-
17 partment of State, foreign operations, and related
18 programs.

19 “(2) The current cost estimate.

20 “(3) The value of each request for equitable ad-
21 justment received by the Department of State to
22 date.

23 “(4) The value of each certified claim received
24 by the Department of State to date.

1 “(5) The value of any usage of the project’s
2 contingency fund to date and the value of the re-
3 mainder of the project’s contingency fund.

4 “(6) An enumerated list of each request for ad-
5 justment and certified claim that remains out-
6 standing or unresolved.

7 “(7) An enumerated list of each request for eq-
8 uitable adjustment and certified claim that has been
9 fully adjudicated or that the Department has settled,
10 and the final dollar amount of each adjudication or
11 settlement.

12 “(8) The date of estimated completion specified
13 in the proposed allocation of capital construction
14 and maintenance funds required by the Committees
15 on Appropriations not later than 45 days after the
16 date of the enactment of an Act making appropria-
17 tions for the Department of State, foreign oper-
18 ations, and related programs.

19 “(9) The current date of estimated comple-
20 tion.”.

21 (b) INITIAL REPORT.—The first report required
22 under subsection (a) of section 118 of the Department of
23 State Authorities Act, Fiscal Year 2017 (as amended by
24 this section) shall include an annex regarding all overseas
25 capital construction projects and major embassy security

1 upgrade projects completed during the 10-year period end-
2 ing on December 31, 2018, including, for each such
3 project, the elements specified in subsection (b) of such
4 section 118 (as amended by this section).

5 **SEC. 5. CONTRACTOR PERFORMANCE INFORMATION.**

6 (a) **DEADLINE FOR COMPLETION.**—The Secretary of
7 State shall complete by October 1, 2020, all contractor
8 performance evaluations required by subpart 42.15 of the
9 Federal Acquisition Regulation.

10 (b) **PRIORITIZATION SYSTEM.**—

11 (1) **IN GENERAL.**—Not later than 90 days after
12 the date of the enactment of this Act, the Secretary
13 of State shall develop a prioritization system for
14 clearing the current backlog of required evaluations
15 referred to in subsection (a).

16 (2) **ELEMENTS.**—The system required under
17 paragraph (1) should prioritize such evaluations as
18 follows:

19 (A) Project completion evaluations should
20 be prioritized over annual evaluations.

21 (B) Evaluations for relatively large con-
22 tracts should have priority.

23 (C) Evaluations that would be particularly
24 informative for the awarding of government
25 contracts should have priority.

1 (c) BRIEFING.—Not later than 90 days after the date
2 of the enactment of this Act, the Secretary of State shall
3 brief the appropriate congressional committees on the De-
4 partment of State’s plan for completing all evaluations by
5 October 1, 2020, and the prioritization system developed
6 pursuant to this section.

7 (d) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that—

9 (1) contractors deciding whether to bid on De-
10 partment of State contracts would benefit from
11 greater understanding of the Department as a client;
12 and

13 (2) the Department should develop a forum
14 through which contractors can rate the Depart-
15 ment’s project management performance.

16 **SEC. 6. GROWTH PROJECTIONS FOR NEW EMBASSIES AND**
17 **CONSULATES.**

18 (a) IN GENERAL.—For each new embassy compound
19 project (NEC) and new consulate compound project
20 (NCC) in or not yet in the design phase as of the date
21 of the enactment of this Act, the Office of Management
22 Policy, Rightsizing, and Innovation of the Department of
23 State shall project growth over the estimated life of the
24 facility at issue using all available and relevant data, in-
25 cluding the following:

1 (1) Relevant historical trends for Department
2 personnel and personnel from other agencies rep-
3 resented at the NEC or NCC that is to be con-
4 structed.

5 (2) An analysis of the tradeoffs between risk
6 and the needs of United States Government policy
7 conducted as part of the most recent Vital Presence
8 Validation Process, if applicable.

9 (3) Reasonable assumptions about the strategic
10 importance of the NEC or NCC, as the case may be,
11 over the life of the building at issue.

12 (4) Any other data that would be helpful in pro-
13 jecting the future growth of NEC or NCC.

14 (b) OTHER AGENCIES.—Each Federal agency rep-
15 resented at an embassy or consulate shall provide to the
16 Department of State, upon request, growth projections for
17 the personnel of such agency over the estimated life of
18 such embassy or consulate, as the case may be.

19 (c) BASIS FOR ESTIMATES.—The Department of
20 State shall base growth assumption for all NECs and
21 NCCs on the estimates required under subsections (a) and
22 (b).

23 (d) CONGRESSIONAL NOTIFICATION.—Any congres-
24 sional notification of site selection for a NEC or NCC sub-
25 mitted after the date of the enactment of this Act shall

1 include the growth assumption used pursuant to sub-
2 section (c).

3 **SEC. 7. LONG-RANGE PLANNING PROCESS.**

4 (a) PLANS REQUIRED.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of the enactment of this Act and an-
7 nually thereafter for five years, the Secretary of
8 State shall develop—

9 (A) a comprehensive six-year Long-Range
10 Overseas Buildings Plan (LROBP) docu-
11 menting the Department of State's overseas
12 building program for the replacement of over-
13 seas diplomatic facilities taking into account se-
14 curity factors under the Secure Embassy Con-
15 struction and Counterterrorism Act of 1999
16 and other relevant statutes and regulations, as
17 well as occupational safety and health factors
18 pursuant to the Occupational Safety and
19 Health Act of 1970 and other relevant statutes
20 and regulations, including environmental factors
21 such as indoor air quality that impact employee
22 health and safety; and

23 (B) a comprehensive six-year plan detailing
24 the Department's long-term planning for the
25 maintenance and sustainment of completed fa-

1 ilities, known as a Long-Range Overseas Main-
2 tenance Plan (LROMP), which takes into ac-
3 count security factors under the Secure Em-
4 bassy Construction and Counterterrorism Act of
5 1999 and other relevant statutes and regula-
6 tions, as well as occupational safety and health
7 factors pursuant to the Occupational Safety
8 and Health Act of 1970 and other relevant
9 statutes and regulations, including environ-
10 mental factors such as indoor air quality that
11 impact employee health and safety.

12 (2) INITIAL REPORT.—The first plan developed
13 pursuant to paragraph (1)(A) shall also include a
14 one-time status report on existing small diplomatic
15 posts and a strategy for establishing a physical dip-
16 lomatic presence in countries in which there is no
17 current physical diplomatic presence. Such report,
18 which may include a classified annex, shall include
19 the following:

20 (A) A description of the extent to which
21 each small diplomatic post furthers the national
22 interest of the United States.

23 (B) A description of how each small diplo-
24 matic post provides American Citizen Services,
25 including data on specific services provided and

1 the number of Americans receiving services over
2 the previous year.

3 (C) A description of whether each small
4 diplomatic post meets current security require-
5 ments.

6 (D) A description of the full financial cost
7 of maintaining each small diplomatic post.

8 (E) Input from the relevant chiefs of mis-
9 sion on any unique operational or policy value
10 the small diplomatic post provides.

11 (3) UPDATED INFORMATION.—The annual up-
12 dates of the plans developed pursuant to paragraph
13 (1) shall highlight any changes from the previous
14 year’s plan to the ordering of construction and
15 maintenance projects.

16 (b) REPORTING REQUIREMENTS.—

17 (1) SUBMISSION OF PLANS TO CONGRESS.—Not
18 later than 60 days after the completion of the
19 LROBP and the LROMP, the Secretary of State
20 shall submit such plans to the appropriate congres-
21 sional committees.

22 (2) REFERENCE IN BUDGET JUSTIFICATION
23 MATERIALS.—In the budget justification materials
24 submitted to the appropriate congressional commit-
25 tees in support of the Department of State’s budget

1 for any fiscal year (as submitted with the budget of
2 the President under section 1105(a) of title 31,
3 United States Code), the plans specified in the
4 LROBP and LROMP shall be referenced to justify
5 funding requested for building and maintenance
6 projects overseas.

7 (3) FORM OF REPORT.—The plans required to
8 be submitted under paragraph (1) shall be submitted
9 in unclassified form but may include classified an-
10 nexes

11 (c) SMALL DIPLOMATIC POST DEFINED.—In this
12 section, the term “small diplomatic post” means any con-
13 sulate that has employed five or fewer United States Gov-
14 ernment employees on average over the 36 months before
15 the date of the enactment of this Act.

16 **SEC. 8. VALUE ENGINEERING AND RISK ASSESSMENT.**

17 (a) FINDINGS.—Congress makes the following find-
18 ings:

19 (1) Federal departments and agencies are re-
20 quired to use value engineering (VE) as a manage-
21 ment tool, where appropriate, to reduce program and
22 acquisition costs pursuant to OMB Circular A–131,
23 Value Engineering, dated December 31, 2013.

24 (2) OBO has a Policy Directive and Standard
25 Operation Procedure, dated May 24, 2017, on con-

1 ducting risk management studies on all international
2 construction projects.

3 (b) NOTIFICATION REQUIREMENTS.—

4 (1) SUBMISSION TO AUTHORIZING COMMIT-
5 TEES.—The proposed allocation of capital construc-
6 tion and maintenance funds that is required by the
7 Committees on Appropriations of the House of Rep-
8 resentatives and the Senate not later than 45 days
9 after the date of the enactment of an Act making
10 appropriations for the Department of State, foreign
11 operations, and related programs shall also be sub-
12 mitted to the appropriate congressional committees.

13 (2) REQUIREMENT TO CONFIRM COMPLETION
14 OF VALUE ENGINEERING AND RISK ASSESSMENT
15 STUDIES.—The notifications required under para-
16 graph (1) shall include confirmation that the De-
17 partment of State has completed the requisite VE
18 and risk management studies described in subsection

19 (a).

20 (c) REPORTING AND BRIEFING REQUIREMENTS.—

21 The Secretary of State shall provide to the appropriate
22 congressional committees upon request—

23 (1) a description of each recommendation from
24 each study described in subsection (a) and a table

1 detailing which recommendations were accepted and
2 which were rejected; and

3 (2) a report or briefing detailing the rationale
4 for not implementing recommendations made by VE
5 studies that may yield significant cost savings to the
6 Department of State, if implemented.

7 **SEC. 9. BUSINESS VOLUME.**

8 Subparagraph (E) of section 402(c)(2) of the Omni-
9 bus Diplomatic Security and Antiterrorism Act of 1986
10 (22 U.S.C. 4852(c)(2)) is amended by striking “in 3
11 years” and inserting “cumulatively over 3 years”.

12 **SEC. 10. EMBASSY SECURITY REQUESTS AND DEFICIENCIES.**

13
14 The Secretary of State shall provide to the appro-
15 priate congressional committees, upon request, informa-
16 tion on security deficiencies at United States diplomatic
17 posts, including—

18 (1) requests made over the previous year by
19 United States diplomatic posts for security up-
20 grades; and

21 (2) significant security deficiencies at United
22 States diplomatic posts that are not operating out of
23 a new embassy compound or new consulate com-
24 pound.

1 **SEC. 11. OVERSEAS SECURITY BRIEFINGS.**

2 Not later than 90 days after the date of the enact-
3 ment of this Act, the Secretary of State shall revise the
4 Foreign Affairs Manual to stipulate that the Bureau of
5 Diplomatic Security of the Department of State shall pro-
6 vide a security briefing or written materials with up-to-
7 date information on the current threat environment in
8 writing or orally to all United States Government employ-
9 ees traveling to a foreign country on official business. To
10 the extent practicable, such briefing or written materials
11 shall be provided to traveling Department employees via
12 teleconference prior to their arrival at a post.

13 **SEC. 12. CONTRACTING METHODS IN CAPITAL CONSTRU-**
14 **CTION.**

15 (a) DELIVERY.—Except in cases in which the Sec-
16 retary of State determines that such would not be appro-
17 priate, the Secretary shall make use of the design-build
18 project delivery system at diplomatic posts that have not
19 yet received design or capital construction contracts as of
20 the date of the enactment of this Act.

21 (b) NOTIFICATION.—Not later than 15 days after
22 any determination to make use of a delivery system other
23 than design-build in accordance with subsection (a), the
24 Secretary of State shall notify the appropriate congres-
25 sional committees in writing of such determination, includ-
26 ing the reasons therefor.

1 (c) PERFORMANCE EVALUATION.—Not later than
2 180 days after the date of the enactment of this Act, the
3 Secretary shall report to the appropriate congressional
4 committees regarding performance evaluation measures in
5 line with GAO’s “Standards for Internal Control in the
6 Federal Government” that will be applicable to design and
7 construction, lifecycle cost, and building maintenance pro-
8 grams of the Bureau of Overseas Building Operations of
9 the Department of State.

10 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

11 There is authorized to be appropriated
12 \$2,314,474,000 for fiscal year 2019 for the purposes of
13 the “Embassy Security, Construction, and Maintenance”
14 account of the Department of State, of which
15 \$1,549,015,000 is authorized to be appropriated for the
16 costs of worldwide security upgrades.

17 **SEC. 14. DEFINITIONS.**

18 In this Act:

19 (1) APPROPRIATE CONGRESSIONAL COMMIT-
20 TEES.—The term “appropriate congressional com-
21 mittees” means—

22 (A) in the House of Representatives—

23 (i) the Committee on Foreign Affairs;

24 and

1 (ii) the Committee on Appropriations;

2 and

3 (B) in the Senate—

4 (i) the Committee on Foreign Rela-
5 tions; and

6 (ii) the Committee on Appropriations.

7 (1) DESIGN-BUILD.—The term “design-build”
8 means a method of project delivery in which one en-
9 tity works under a single contract with the Depart-
10 ment of State to provide design and construction
11 services.

12 (2) NON-STANDARD DESIGN.—The term “non-
13 standard design” means—

14 (A) a design for a new embassy compound
15 project or new consulate compound project that
16 does not utilize a standardized embassy design
17 for the structural, spatial, or security require-
18 ments of such embassy compound or consulate
19 compound, as the case may be; or

20 (B) a new embassy compound project; or
21 new consulate compound project that does not
22 utilize a design-build delivery method.