

## 116TH CONGRESS H.R. 6793

To authorize the Secretary of Health and Human Services to create, maintain, protect, expand, or restore domestic industrial base capabilities essential for pandemic preparedness, and for other purposes.

## IN THE HOUSE OF REPRESENTATIVES

May 8, 2020

Mrs. Trahan (for herself, Mr. Pappas, and Mr. Malinowski) introduced the following bill; which was referred to the Committee on Energy and Commerce

## A BILL

To authorize the Secretary of Health and Human Services to create, maintain, protect, expand, or restore domestic industrial base capabilities essential for pandemic preparedness, 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 "Pandemic Production
- 5 Act".

1	SEC. 2. EXPANSION OF PRODUCTIVE CAPACITY AND SUP-
2	PLY RELATED TO PANDEMIC PREPARED
3	NESS.
4	(a) Secretarial Authorization for Pandemic
5	Preparedness.—
6	(1) In general.—To create, maintain, protect
7	expand, or restore domestic industrial base capabili-
8	ties essential for pandemic preparedness, the Sec-
9	retary shall make provision—
10	(A) for purchases of or commitments to
11	purchase essential medical technology, including
12	vaccines, and related materials, including per-
13	sonal protective equipment;
14	(B) for the encouragement of production of
15	essential medical technology and related mate-
16	rials;
17	(C) for the development and maintenance
18	of production capabilities; and
19	(D) for the increased use of emerging tech-
20	nologies in biological, chemical, and radiological
21	security program applications and the rapid
22	transition of emerging technologies—
23	(i) from Government-sponsored re-
24	search and development to commercial ap-
2.5	plications: and

1	(ii) from commercial research and de-
2	velopment to pandemic preparedness appli-
3	cations.
4	(2) Secretarial Determinations.—Except
5	as provided in paragraph (4), the Secretary may not
6	execute a contract under this subsection unless the
7	Secretary determines, with appropriate explanatory
8	material and in writing to the Committee on Bank-
9	ing, Housing, and Urban Affairs of the Senate and
10	the Committee on Financial Services of the House of
11	Representatives, that—
12	(A) the essential medical technology or re-
13	lated materials is essential to the pandemic re-
14	sponse strategy of the United States;
15	(B) without Secretarial action under this
16	section, the United States industry cannot rea-
17	sonably be expected to provide consistently the
18	capability for the needed essential medical tech-
19	nology or related materials in a timely manner;
20	and
21	(C) purchases, purchase commitments, or
22	other action pursuant to this section are the
23	most cost effective, expedient, and practical al-
24	ternative method for meeting the need.

1	(3)	NOTIFICATION	ТО	CONGRESS	OF	SHORT
2	FALL.—					

- (A) IN GENERAL.—Except as provided in paragraph (4), the Secretary shall provide written notice to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives of a domestic industrial base shortfall prior to taking action under this subsection to remedy the shortfall. The notice shall include the determinations made by the Secretary under paragraph (2).
- (B) AGGREGATE AMOUNTS.—If the taking of any action under this subsection to correct a domestic industrial base shortfall would cause the aggregate outstanding amount of all such actions for such shortfall to exceed \$5,000,000 within a five year period, the action or actions may be taken only after the 30-day period following the date on which the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives have been notified in writing of the proposed action.

1 (4) Waiver authorized.—The Secretary may 2 waive the requirements of paragraphs (1) through 3 (3) during a period of national emergency declared by an Act of Congress or the President. (b) Secretarial Findings.— 5 6 (1) IN GENERAL.—The Secretary may take the 7 actions described in paragraph (2), if the Secretary 8 finds— 9 (A) under generally fair and equitable ceil-10 ing prices, for any raw or nonprocessed mate-11 rial, there will result a decrease in supplies 12 from high-cost sources of such material, and 13 that the continuation of such supplies is nec-14 essary to carry out the objectives of this sec-15 tion; or 16 (B) an increase in cost of transportation is 17 temporary in character and threatens to impair 18 maximum production or supply in any area at 19 stable prices of any materials. 20

(2) Subsidy payments authorized.—Upon a finding under paragraph (1), the Secretary may make provision for subsidy payments on any such domestically produced material in such amounts and in such manner (including purchases of such material and its resale at a loss), and on such terms and

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- conditions, as the Secretary determines to be necessary to ensure that supplies from such high-cost sources are continued, or that maximum production or supply in such area at stable prices of such materials is maintained, as the case may be.
- 6 (c) Incidental Authority.—The procurement 7 power granted to the Secretary by this section shall in-8 clude the power to transport and store and have processed 9 and refined any materials procured under this section.
- 10 (d) Installation of Equipment in Industrial 11 Facilities.—If the Secretary determines that such action 12 will aid the pandemic response strategy of the United 13 States, the Secretary is authorized—
  - (1) to procure and install additional equipment, facilities, processes, or improvements to plants, factories, and other industrial facilities owned by the Federal Government;
    - (2) to procure and install equipment owned by the Federal Government in plants, factories, and other industrial facilities owned by private persons;
    - (3) to provide for the modification or expansion of privately owned facilities, including the modification or improvement of production processes; and
- 24 (4) to sell or otherwise transfer equipment 25 owned by the Federal Government and installed

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- 1 under this subsection to the owners of such plants,
- 2 factories, or other industrial facilities.
- 3 (e) Excess Essential Medical Technology, In-
- 4 CLUDING VACCINES, AND RELATED MATERIALS, INCLUD-
- 5 ING PERSONAL PROTECTIVE EQUIPMENT.—Notwith-
- 6 standing any other provision of law to the contrary, essen-
- 7 tial medical technology, including vaccines, and related
- 8 materials, including personal protective equipment ac-
- 9 quired pursuant to this section which, in the judgment of
- 10 the Secretary, are excess to the needs of programs under
- 11 this section, shall be transferred to the Strategic National
- 12 Stockpile, when the Secretary deems such action to be in
- 13 the public interest.
- 14 (f) Substitutes.—When, in the judgement of the
- 15 Secretary, it will aid pandemic preparedness, the Sec-
- 16 retary may make provision for the development of sub-
- 17 stitutes for strategic and critical materials, critical compo-
- 18 nents, critical technology items, and other industrial re-
- 19 sources.
- 20 (g) Pandemic Production Act Fund.—
- 21 (1) Establishment of fund.—There is es-
- tablished in the Treasury of the United States a sep-
- arate fund to be known as the "Pandemic Produc-
- 24 tion Act Fund" (in this subsection referred to as the
- 25 "Fund").

1	(2) Moneys in fund.—There shall be credited
2	to the Fund—
3	(A) all moneys appropriated for the Fund,
4	as authorized by subsection (i); and
5	(B) all moneys received by the Fund on
6	transactions entered into pursuant to this sec-
7	tion.
8	(3) Use of fund.—The Fund shall be avail-
9	able to carry out the provisions and purposes of this
10	section subject to the limitations set forth in this
11	section and in appropriations Acts.
12	(4) Duration of fund.—Moneys in the Fund
13	shall remain available until expended.
14	(5) Fund Manager.—The Secretary shall des-
15	ignate a Fund manager. The duties of the Fund
16	manager shall include—
17	(A) determining the liability of the Fund
18	in accordance with paragraph (6);
19	(B) ensuring the visibility and account-
20	ability of transactions engaged in through the
21	Fund; and
22	(C) reporting to the Congress regarding
23	activities of the Fund—
24	(i) quarterly, with respect to the pre-
25	vious quarter; or

1	(ii) weekly, during a period of national
2	emergency declared by an Act of Congress
3	or the President, with respect to the pre-
4	vious week.
5	(6) Liabilities against fund.—When any
6	agreement entered into pursuant to this section im-
7	poses any contingent liability upon the United
8	States, such liability shall be considered an obliga-
9	tion against the Fund.
10	(h) Delegation of Authority.—The Secretary
11	may only delegate authority under this section to the As-
12	sistant Secretary for Preparedness and Response and such
13	Assistant Secretary may not further delegate such author-
14	ity.
15	(i) AUTHORIZATION OF APPROPRIATIONS.—There is
	authorized to be appropriated such sums as may be nec-
	essary for fiscal year 2020 and each fiscal year thereafter
18	for the carrying out of the provisions and purposes of this
19	section.
20	(j) DEFINITIONS.—For purposes of this section, the
21	following definitions shall apply:  (1) Character government (2) it is a
22	(1) CRITICAL COMPONENT.—The term "critical
23	component" includes such components, subsystems,
24	systems, and related special tooling and test equip-

ment essential to the production, repair, mainte-

- nance, or operation of biological, chemical, and radiological security program applications or other items of equipment identified by the Secretary as being essential to the execution of a pandemic response strategy of the United States.
  - (2) Critical technology.—The term "critical technology" includes any technology designated by the Secretary to be essential to the execution of a pandemic response strategy of the United States.
  - (3) Critical technology item" means materials directly employing, derived from, or utilizing a critical technology.
  - (4) Domestic industrial base" means domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national pandemic response requirements during peacetime or national emergency.
  - (5) Domestic source.—The term "domestic source" means a business concern—
    - (A) that performs in the United States substantially all of the research and development, engineering, manufacturing, and production activities required of such business concern

- under a contract with the United States relating to a critical component or a critical technology item; and
  - (B) that procures from business concerns described in subparagraph (A) substantially all of any components and assemblies required under a contract with the United States relating to a critical component or critical technology item.
  - (6) Facilities.—The term "facilities" includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.
  - (7) Industrial resources.—The term "industrial resources" means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national pandemic response industrial base.
- 23 (8) Materials.—The term "materials" in-24 cludes—

1	(A) any raw materials (including minerals,
2	metals, and advanced processed materials),
3	commodities, articles, components (including
4	critical components), products, and items of
5	supply; and
6	(B) any technical information or services
7	ancillary to the use of any such materials, com-
8	modities, articles, components, products, or
9	items.
10	(9) Pandemic response strategy of the
11	UNITED STATES.—The Secretary shall defined the
12	term "pandemic response strategy of the United
13	States".
14	(10) Person.—The term "person" includes an
15	individual, corporation, partnership, association, or
16	any other organized group of persons, or legal suc-
17	cessor or representative thereof, or any State or
18	local government or agency thereof.
19	(11) Secretary.—The term "Secretary"
20	means the Secretary of Health and Human Services.
21	(12) Services.—The term "services" includes
22	any effort that is needed for or incidental to—
23	(A) the development, production, proc-
24	essing, distribution, delivery, or use of an indus-
25	trial resource or a critical technology item;

1	(B) the construction of facilities; or
2	(C) the movement of individuals and prop-
3	erty by all modes of civil transportation.

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