

116TH CONGRESS
2D SESSION

S. 4458

To grant the authority for States to enter into interstate compacts or agreements for the purpose of procuring COVID–19 tests.

IN THE SENATE OF THE UNITED STATES

AUGUST 5, 2020

Mr. CASSIDY (for himself, Ms. SMITH, Mr. TILLIS, Mr. KING, and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To grant the authority for States to enter into interstate compacts or agreements for the purpose of procuring COVID–19 tests.

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 “Suppress COVID–19
5 Act of 2020”.

6 **SEC. 2. INTERSTATE COMPACTS AND AGREEMENTS.**

7 (a) ESTABLISHMENT AND PURPOSES.—The consent
8 of Congress is hereby given to States and Indian Tribes
9 to enter into compacts, not in conflict with any law of the

1 United States, for cooperative effort and mutual assist-
2 ance in procuring COVID–19 tests and supplies for such
3 tests, or cooperative agreements (referred to in this section
4 as “agreements”) for cooperative effort and mutual assist-
5 ance in procuring COVID–19 tests and supplies through
6 memoranda of understanding.

7 (b) ASSISTANCE.—The Secretary of Health and
8 Human Services (referred to in this section as the “Sec-
9 retary”) shall—

10 (1) take all possible steps to encourage and as-
11 sist States and Indian Tribes entering into interstate
12 compacts or agreements under this section;

13 (2) cooperate with such compacts and agree-
14 ments;

15 (3) cooperate with States and Indian Tribes
16 forming cooperative agreements for cooperative ef-
17 fort and mutual assistance in procuring COVID–19
18 tests and supplies for such tests, through memo-
19 randa of understanding instead of compacts; and

20 (4) encourage cooperative activities of Federal
21 departments and agencies with such compacts or
22 agreements.

23 (c) FUNDING.—

24 (1) APPROPRIATION.—

1 (A) IN GENERAL.—Effective on the date
2 that is 30 days after the date of enactment of
3 this Act, there are authorized to be appro-
4 priated to the Secretary, and there are hereby
5 appropriated, out of amounts in the Treasury
6 not otherwise appropriated, \$25,000,000,000,
7 for purposes of supporting testing procurement.
8 Of such amount—

9 (i) \$20,000,000,000 shall be made
10 available to States and Indian Tribes on
11 the date that is 30 days after such date of
12 enactment, which States or Indian Tribes
13 may forward to interstate compacts or
14 agreements authorized under this section;
15 and

16 (ii) \$5,000,000,000 shall be reserved
17 for States and Indian Tribes that enter
18 into compacts authorized or agreements
19 recognized under this section.

20 (B) RESERVATION OF AMOUNTS.—Of the
21 amounts appropriated under subparagraph (A),
22 not less than \$667,000,000 shall be reserved
23 for awards to Indian Tribes that shall be dis-
24 tributed by the Secretary in consultation with
25 the Indian Health Service.

1 (C) EMERGENCY DESIGNATION.—

2 (i) IN GENERAL.—The amounts pro-
 3 vided by this paragraph are designated as
 4 an emergency requirement pursuant to sec-
 5 tion 4(g) of the Statutory Pay-As-You-Go
 6 Act of 2010 (2 U.S.C. 933(g)).

7 (ii) DESIGNATION IN SENATE.—In the
 8 Senate, this paragraph is designated as an
 9 emergency requirement pursuant to section
 10 4112(a) of H. Con. Res. 71 (115th Con-
 11 gress), the concurrent resolution on the
 12 budget for fiscal year 2018.

13 (2) ALLOTMENTS.—

14 (A) FUNDS FOR STATES.—Out of amounts
 15 appropriated under paragraph (1) and allocated
 16 for the purpose described in paragraph
 17 (1)(A)(i) and not reserved under paragraph
 18 (1)(B), the Secretary shall allot to each State
 19 an amount that bears the same relationship to
 20 the total amount so allocated under paragraph
 21 (1)(A)(i) and not so reserved that the amount
 22 allotted to such State under the State's Public
 23 Health Emergency Preparedness cooperative
 24 agreement for fiscal year 2019 bears to the
 25 total amount appropriated to the Public Health

1 Emergency Preparedness program for fiscal
2 year 2019 for purposes of making allocations to
3 States.

4 (B) ALLOCATIONS FOR STATES ENTERING
5 INTO COMPACTS OR AGREEMENTS.—The Sec-
6 retary, not later than 45 days after the date of
7 enactment of this Act, shall allocate the
8 amounts appropriated under paragraph (1) and
9 allocated for the purposes described in para-
10 graph (1)(A)(ii) to eligible States and Indian
11 Tribes that have entered into a compact or
12 agreement under this section or stated their in-
13 tent to enter into such a compact or agreement,
14 according to a formula established by the Sec-
15 retary that provides a base amount to each
16 such State and Indian Tribe, plus an additional
17 amount based on population.

18 (d) ELIGIBILITY FOR CERTAIN FUNDING.—A State
19 or Indian Tribe is eligible for an allocation under sub-
20 section (c)(2)(B) only if the compact or agreement that
21 the State or Indian Tribe has joined meets all of the fol-
22 lowing requirements:

23 (1) TRANSPARENCY PROVISIONS.—The compact
24 or agreement shall publicly disclose all contract
25 sums, terms, requests for proposals, and recipients

1 of contracts on a quarterly basis, and shall publicly
2 disclose, on a quarterly basis, key performance indi-
3 cators of, with respect to COVID–19 testing used by
4 the compact or agreement, the price, volume, speed
5 to market, and test turnaround time. With respect
6 to new contracts, compacts and agreements shall
7 give priority to contracting entities that can guar-
8 antee fulfillment of existing contracts with States or
9 Indian Tribes.

10 (2) PROCUREMENT GOVERNING STRUCTURE.—

11 The compact or agreement shall demonstrate having
12 consulted with, for purposes of developing contracts
13 for testing procurement, medical professionals, indi-
14 viduals with a background in public health, business,
15 biotechnology, logistics, manufacturing, or procure-
16 ment.

17 (3) ANTI-CORRUPTION PROVISIONS.—The com-

18 pact or agreement shall have in place anti-corruption
19 requirements that prohibit anyone who is overseeing
20 the development of the compact or agreement from
21 personally benefitting from any contract the compact
22 or agreement enters.

23 (4) TIMELY TESTING.—The compact or agree-

24 ment shall have as a goal testing turnaround times
25 of under 24 hours.

1 (e) EXPIRATION.—Amounts appropriated under this
 2 section and made available to States and Indian Tribes
 3 for testing procurement shall remain available until the
 4 later of December 31, 2021, or the date that is 90 days
 5 after the public health emergency declared by the Sec-
 6 retary of Health and Human Services under section 319
 7 of the Public Health Service Act (42 U.S.C. 247d), on
 8 January 31, 2020, with respect to COVID–19 expires,
 9 and, on such applicable date, any such funds that remain
 10 unobligated shall be remitted to the Treasury of the
 11 United States.

12 **SEC. 3. STATE PLANS.**

13 (a) IN GENERAL.—

14 (1) IN GENERAL.—Effective on the date that is
 15 30 days after the date of enactment of this Act,
 16 there are hereby appropriated to the Public Health
 17 and Social Services Emergency Fund, out of
 18 amounts in the Treasury not otherwise appropriated,
 19 \$18,000,000,000, to remain available until ex-
 20 pended, to prevent, prepare for, and respond to
 21 COVID–19, domestically or internationally, for nec-
 22 essary expenses undertaken by States and Tribal au-
 23 thorities to implement COVID–19 testing, contact
 24 tracing, and supporting isolation programs, and to
 25 otherwise monitor and suppress COVID–19.

1 (2) RESERVATION OF AMOUNTS.—Of the
 2 amounts appropriated under subparagraph (A), not
 3 less than \$600,000,000 shall be reserved for awards
 4 to Indian Tribes that shall be distributed by the Sec-
 5 retary in consultation with the Indian Health Serv-
 6 ice.

7 (3) EMERGENCY DESIGNATION.—

8 (A) IN GENERAL.—The amounts provided
 9 by this subsection are designated as an emer-
 10 gency requirement pursuant to section 4(g) of
 11 the Statutory Pay-As-You-Go Act of 2010 (2
 12 U.S.C. 933(g)).

13 (B) DESIGNATION IN SENATE.—In the
 14 Senate, this subsection is designated as an
 15 emergency requirement pursuant to section
 16 4112(a) of H. Con. Res. 71 (115th Congress),
 17 the concurrent resolution on the budget for fis-
 18 cal year 2018.

19 (b) ALLOCATION TO STATES AND INDIAN TRIBES.—

20 (1) IN GENERAL.—Of the amount appropriated
 21 under subsection (a), \$9,000,000,000 shall be allo-
 22 cated to States and Indian Tribes for contact trac-
 23 ing personnel, \$4,000,000,000 shall be allocated to
 24 States and Indian Tribes for voluntary self-isolation,
 25 income support for individuals in isolation, or other

1 isolation supports, \$4,500,000,000 shall be allocated
2 to States for Tribal and local health offices, and
3 \$500,000,000 shall be allocated to States and Indian
4 Tribes for data modernization in Tribal and local
5 health offices. States and Indian Tribes may apply
6 for a waiver from the Federal Government to use
7 amounts received under this paragraph for a dif-
8 ferent purpose than as originally disbursed, provided
9 that any such other use is consistent with the pur-
10 poses of this section. States and Indian Tribes shall
11 take all possible steps to distribute funding received
12 under this subsection to Tribal and local health of-
13 fices as promptly as possible.

14 (2) ALLOCATIONS TO STATES.—Amounts ap-
15 propriated under subsection (a)(1) and not reserved
16 under subsection (a)(2) shall be allotted to each
17 State in an amount that bears the same relationship
18 to the total amount appropriated under subsection
19 (a)(1) and not so reserved that the amount that the
20 State received pursuant to the Public Health Emer-
21 gency Preparedness cooperative agreement in fiscal
22 year 2019 bears to the total amount appropriated
23 under such cooperative agreement for such fiscal
24 year.

1 (3) STATE PLANS.—To be eligible for an alloca-
2 tion under paragraph (1), a State or Indian Tribe
3 shall submit to the Secretary a testing, tracing, and
4 supported isolation plan it intends to follow to
5 achieve suppression of COVID–19 to levels at or
6 below the low incidence plateau set forth by the Cen-
7 ters for Disease Control and Prevention. Such plan
8 shall be developed in consultation with State, local,
9 and Tribal public health departments, include key
10 performance indicators tied to field best practices for
11 contact tracing and supported isolation as well as
12 testing, and be submitted as an addendum to any
13 similar plan a State or Indian Tribe previously sub-
14 mitted to the Secretary, as required pursuant to the
15 Paycheck Protection Program and Health Care En-
16 hancement Act (Public Law 116–139). The Sec-
17 retary shall make each plan submitted under this
18 paragraph publicly available 60 days after submis-
19 sion.

20 (c) EXPIRATION.—Amounts appropriated under this
21 section and made available to States and Indian Tribes
22 for testing procurement shall remain available until the
23 later of December 31, 2021, or the date that is 90 days
24 after the public health emergency declared by the Sec-
25 retary of Health and Human Services under section 319

1 of the Public Health Service Act (42 U.S.C. 247d), on
 2 January 31, 2020, with respect to COVID–19 expires,
 3 and, on such applicable date, any such funds that remain
 4 unobligated shall be remitted to the Treasury of the
 5 United States.

6 (d) COORDINATION.—The Secretary shall develop a
 7 plan to coordinate and provide guidance to States and In-
 8 dian Tribes in drafting their testing plans described in this
 9 section and seek to support the development of shared in-
 10 dicators for all States and Indian Tribes.

11 **SEC. 4. DEFINITIONS.**

12 For purposes of this Act:

13 (1) The terms “COVID–19 test”, “COVID–19
 14 testing”, and “testing” mean a viral or serological in
 15 vitro diagnostic test defined in section 809.3 of title
 16 21, Code of Federal Regulations (or successor regu-
 17 lations) for the detection of SARS–CoV–2 or the di-
 18 agnosis of the virus that causes COVID–19, and the
 19 administration of such test, that—

20 (A) is approved, cleared, or authorized
 21 under section 510(k), 513, 515, or 564 of the
 22 Federal Food, Drug, and Cosmetic Act (21
 23 U.S.C. 360(k), 360c, 360e, 360bbb–3);

24 (B) the developer has requested, or intends
 25 to request, emergency use authorization under

1 section 564 of the Federal Food, Drug, and
 2 Cosmetic Act (21 U.S.C. 360bbb–3), unless and
 3 until the emergency use authorization request
 4 under such section 564 has been denied or the
 5 developer of such test does not submit a request
 6 under such section within a reasonable time-
 7 frame;

8 (C) is developed in and authorized by a
 9 State that has notified the Secretary of Health
 10 and Human Services of its intention to review
 11 tests intended to diagnose COVID–19; or

12 (D) is another test that the Secretary de-
 13 termines appropriate in guidance.

14 (2) The term “Indian Tribe” means an Indian
 15 tribe or a tribal organization, as such terms are de-
 16 fined in section 4 of the Indian Self-Determination
 17 and Education Assistance Act (25 U.S.C. 5304).

18 (3) The term “Secretary” means the Secretary
 19 of Health and Human Services.

20 (4) The term “State” has the meaning given
 21 such term in section 2 of the Public Health Service
 22 Act (42 U.S.C. 201).

23 **SEC. 5. USE OF OTHER APPROPRIATED AMOUNTS.**

24 (a) IN GENERAL.—Out of any amounts remaining
 25 unobligated on the date of enactment of this Act of the

1 additional amount of \$25,000,000,000 appropriated to the
2 Public Health and Social Services Emergency Fund under
3 the heading “Public Health and Social Services Emer-
4 gency Fund” under the heading “Office of the Secretary”
5 under the heading “Department of Health and Human
6 Services” in division B of the Paycheck Protection Pro-
7 gram and Health Care Enhancement Act (Public Law
8 116–139) for the purpose of developing, purchasing, ad-
9 ministering, processing, and analyzing COVID–19 tests,
10 including support for workforce, epidemiology, use by em-
11 ployers or in other settings, scale up of testing by public
12 health, academic, commercial, and hospital laboratories,
13 and community-based testing sites, health care facilities,
14 and other entities engaged in COVID–19 testing, conduct
15 surveillance, trace contacts, and other related activities re-
16 lated to COVID–19 testing, \$7,000,000,000 shall be allo-
17 cated for the purposes described in subsection (b).

18 (b) ALLOCATIONS.—Of the \$7,000,000,000 reallo-
19 cated under subsection (a), \$234,000,000 shall be propor-
20 tionately allocated to Indian Tribes, and \$6,766,000,000
21 shall be proportionately allocated to States, together with
22 other amounts allocated to such Indian Tribes and States
23 under section 3, for the same purposes described in such
24 sections and in accordance with the same requirements ap-

1 plicable with respect to allocations of amounts appro-
2 priated under such sections.

3 **SEC. 6. REPORT TO CONGRESS.**

4 The Secretary shall report to Congress not later than
5 30 days after the date of enactment of this Act on how
6 the Secretary intends to distribute funds provided under
7 this Act, including a timeline of distribution of such funds.

○