

116TH CONGRESS
2D SESSION

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-
25 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 TO CONGRESS OF SHORT-
2 FALL.—

3 (A) IN GENERAL.—Except as provided in
4 paragraph (4), the Secretary shall provide writ-
5 ten notice to the Committee on Banking, Hous-
6 ing, and Urban Affairs of the Senate and the
7 Committee on Financial Services of the House
8 of Representatives of a domestic industrial base
9 shortfall prior to taking action under this sub-
10 section to remedy the shortfall. The notice shall
11 include the determinations made by the Sec-
12 retary under paragraph (2).

13 (B) AGGREGATE AMOUNTS.—If the taking
14 of any action under this subsection to correct a
15 domestic industrial base shortfall would cause
16 the aggregate outstanding amount of all such
17 actions for such shortfall to exceed \$5,000,000
18 within a five year period, the action or actions
19 may be taken only after the 30-day period fol-
20 lowing the date on which the Committee on
21 Banking, Housing, and Urban Affairs of the
22 Senate and the Committee on Financial Serv-
23 ices of the House of Representatives have been
24 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
4 by an Act of Congress or the President.

5 (b) SECRETARIAL FINDINGS.—

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
21 finding under paragraph (1), the Secretary may
22 make provision for subsidy payments on any such
23 domestically produced material in such amounts and
24 in such manner (including purchases of such mate-
25 rial and its resale at a loss), and on such terms and

1 conditions, as the Secretary determines to be nec-
2 essary to ensure that supplies from such high-cost
3 sources are continued, or that maximum production
4 or supply in such area at stable prices of such mate-
5 rials 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—

14 (1) to procure and install additional equipment,
15 facilities, processes, or improvements to plants, fac-
16 tories, and other industrial facilities owned by the
17 Federal Government;

18 (2) to procure and install equipment owned by
19 the Federal Government in plants, factories, and
20 other industrial facilities owned by private persons;

21 (3) to provide for the modification or expansion
22 of privately owned facilities, including the modifica-
23 tion or improvement of production processes; and

24 (4) to sell or otherwise transfer equipment
25 owned by the Federal Government and installed

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-
22 tablished in the Treasury of the United States a sep-
23 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
16 authorized to be appropriated such sums as may be nec-
17 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:

22 (1) CRITICAL COMPONENT.—The term “critical
23 component” includes such components, subsystems,
24 systems, and related special tooling and test equip-
25 ment essential to the production, repair, mainte-

1 nance, or operation of biological, chemical, and radi-
2 ological security program applications or other items
3 of equipment identified by the Secretary as being es-
4 sential to the execution of a pandemic response
5 strategy of the United States.

6 (2) CRITICAL TECHNOLOGY.—The term “crit-
7 ical technology” includes any technology designated
8 by the Secretary to be essential to the execution of
9 a pandemic response strategy of the United States.

10 (3) CRITICAL TECHNOLOGY ITEM.—The term
11 “critical technology item” means materials directly
12 employing, derived from, or utilizing a critical tech-
13 nology.

14 (4) DOMESTIC INDUSTRIAL BASE.—The term
15 “domestic industrial base” means domestic sources
16 which are providing, or which would be reasonably
17 expected to provide, materials or services to meet
18 national pandemic response requirements during
19 peacetime or national emergency.

20 (5) DOMESTIC SOURCE.—The term “domestic
21 source” means a business concern—

22 (A) that performs in the United States
23 substantially all of the research and develop-
24 ment, engineering, manufacturing, and produc-
25 tion activities required of such business concern

1 under a contract with the United States relat-
2 ing to a critical component or a critical tech-
3 nology item; and

4 (B) that procures from business concerns
5 described in subparagraph (A) substantially all
6 of any components and assemblies required
7 under a contract with the United States relat-
8 ing to a critical component or critical tech-
9 nology item.

10 (6) FACILITIES.—The term “facilities” includes
11 all types of buildings, structures, or other improve-
12 ments to real property (but excluding farms, church-
13 es or other places of worship, and private dwelling
14 houses), and services relating to the use of any such
15 building, structure, or other improvement.

16 (7) INDUSTRIAL RESOURCES.—The term “in-
17 dustrial resources” means materials, services, proc-
18 esses, or manufacturing equipment (including the
19 processes, technologies, and ancillary services for the
20 use of such equipment) needed to establish or main-
21 tain an efficient and modern national pandemic re-
22 sponse 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.

○