

116TH CONGRESS
2D SESSION

S. 3858

To authorize the Administrator of the Federal Emergency Management Agency to become the sole owner and distributor of certain medical equipment in the event of a covered emergency; to establish a Joint Congressional Committee on Defense Production; and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 1, 2020

Ms. WARREN introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To authorize the Administrator of the Federal Emergency Management Agency to become the sole owner and distributor of certain medical equipment in the event of a covered emergency; to establish a Joint Congressional Committee on Defense Production; 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 Response
5 and Interstate Cost Equity Act” or the “PRICE Act”.

1 **SEC. 2. ADMINISTRATOR AS OWNER AND DISTRIBUTER OF**
2 **CERTAIN MEDICAL EQUIPMENT.**

3 (a) IN GENERAL.—In the event of a covered emer-
4 gency, the Administrator shall become the sole owner and
5 distributor of medical equipment obtained by the Federal
6 government pursuant to this Act for which the prevailing
7 market price exceeds the fair market price by more than
8 15 percent and is required to address the covered emer-
9 gency.

10 (b) ASSESSMENT OF MEDICAL EQUIPMENT.—To
11 carry out subsection (a), the Secretary of Health and
12 Human Services, in consultation with the Administrator
13 and other Federal agencies or departments as considered
14 necessary, shall conduct an assessment of available med-
15 ical equipment, including—

16 (1) identifying the medical equipment required
17 to address the covered emergency for which the pre-
18 vailing market price exceeds the fair market price by
19 more than 15 percent;

20 (2) assessing the amount of such medical equip-
21 ment available to respond to the covered emergency,
22 including the amount of such medical equipment
23 available in the Strategic National Stockpile; and

24 (3) determining the amount of such medical
25 equipment still needed to respond to the covered
26 emergency.

1 (c) CONTRACT TO PRODUCE MEDICAL EQUIP-
2 MENT.—Following the assessment under subsection (b),
3 the Administrator, in consultation with the Secretary of
4 Health and Human Services and the Secretary of Defense,
5 shall—

6 (1) create and execute an indefinite delivery-in-
7 definite quantity contract with all persons capable of
8 producing such medical equipment to—

9 (A) respond to the covered emergency; and

10 (B) following the covered emergency, re-
11 plenish the Strategic National Stockpile to a
12 level acceptable to respond to a future public
13 health emergency or other covered emergency;

14 (2) require that all contracts created and exe-
15 cuted under this section supersede any existing con-
16 tracts such persons have already created or exe-
17 cuted; and

18 (3) establish a price for such medical equipment
19 to be resold to the States or other persons.

20 (d) SALE OR DISTRIBUTION OF CERTAIN MEDICAL
21 EQUIPMENT.—The Administrator shall sell or otherwise
22 distribute medical equipment to the States or to persons
23 that request such medical equipment, giving consideration
24 to—

1 (1) requests for medical equipment under sub-
2 sections (e) and (f);

3 (2) the continuity of operations of the Federal
4 government; and

5 (3) consultation with public health officials, as
6 may be necessary.

7 (e) STATE REQUEST FOR MEDICAL EQUIPMENT.—

8 To request an allocation of medical equipment, a State
9 shall submit to the Administrator a request for medical
10 equipment, including—

11 (1) the number of impacted individuals in each
12 State, disaggregated by condition and the severity of
13 such condition—

14 (A) on the date the request is submitted to
15 the Administrator;

16 (B) as projected at 14 days from the date
17 the request is submitted to the Administrator;
18 and

19 (C) as projected at 60 days from the date
20 the request is submitted to the Administrator;

21 (2) existing health system medical equipment;

22 (3) medical equipment possessed by the State;

23 (4) an estimate of the quantity of medical
24 equipment required to diagnose and treat the condi-

1 tion for which the covered emergency is in effect;
2 and

3 (5) any additional information as determined
4 necessary by the Administrator.

5 (f) OTHER REQUESTS FOR MEDICAL EQUIPMENT.—

6 The Administrator shall establish a process under which
7 a person may request medical equipment to respond to the
8 covered emergency.

9 (g) POST-EMERGENCY DISTRIBUTION OF MEDICAL
10 EQUIPMENT.—Upon the termination of the covered emer-
11 gency, the Administrator shall distribute any medical sup-
12 plies not sold or otherwise distributed to the States or any
13 person to the Strategic National Stockpile.

14 **SEC. 3. REPORTS TO THE CONGRESS.**

15 (a) BIWEEKLY REPORT.—

16 (1) IN GENERAL.—Not less than 14 days after
17 the date a covered emergency is in effect, and not
18 less than every 14 days thereafter until the date that
19 is 30 days after the date on which the covered emer-
20 gency is terminated, the Administrator shall submit
21 to the Congress a report on the activities carried out
22 under this Act.

23 (2) CONTENT.—The report required under
24 paragraph (1) shall include—

1 (A) information on the number of im-
2 pacted individuals, disaggregated by State, con-
3 dition, and severity of such condition—

4 (i) on the date the report is submitted
5 to the Congress;

6 (ii) as projected at 14 days from the
7 date the report is submitted to the Con-
8 gress; and

9 (iii) as projected at 60 days from the
10 date the report is submitted to the Con-
11 gress;

12 (B) the amount of medical equipment still
13 needed to diagnose and treat the condition for
14 which the covered emergency is in effect,
15 disaggregated by State;

16 (C) requests submitted by the States or by
17 persons under section 2;

18 (D) information on the contracts created
19 and executed under section 2;

20 (E) the amount of medical equipment re-
21 sold or distributed by the Federal Government,
22 including the allocation and projected allocation
23 of government and existing health system med-
24 ical equipment, disaggregated by State—

1 (i) on the date the report is submitted
2 to the Congress;

3 (ii) as projected at 14 days from the
4 date the report is submitted to the Con-
5 gress; and

6 (iii) as projected at 60 days from the
7 date the report is submitted to the Con-
8 gress; and

9 (F) other Federal contracts for medical
10 equipment entered into outside of section 2.

11 (b) FINAL REPORT.—

12 (1) IN GENERAL.—Not later than 60 days after
13 the termination of the covered emergency, the Ad-
14 ministrator shall submit to the Congress a report on
15 the activities carried out under this Act.

16 (2) CONTENT.—The report required under
17 paragraph (1) shall include—

18 (A) the content from the biweekly reports
19 submitted to the Congress under subsection (a);

20 (B) the current status of the Strategic Na-
21 tional Stockpile, including the inventory of med-
22 ical equipment and the projected quantity of
23 medical equipment required to mitigate a future
24 public health emergency or other covered emer-
25 gency; and

1 (C) an assessment of actions that Federal,
2 State, and local governments should take to
3 build resiliency to prevent, detect, treat, and
4 mitigate a public health emergency or other
5 covered emergency.

6 **SEC. 4. FUNDING.**

7 Amounts available in the Defense Production Act
8 Fund under section 304 of the Defense Production Act
9 of 1950 (50 U.S.C. 4534) may be made available for pur-
10 chases made under this section.

11 **SEC. 5. ESTABLISHMENT OF JOINT CONGRESSIONAL COM-
12 MITTEE.**

13 (a) ESTABLISHMENT AND MEMBERSHIP.—

14 (1) IN GENERAL.—There is established a Joint
15 Committee on Defense Production (referred to in
16 this section as the “Committee”), to be composed
17 of—

18 (A) five members of the Committee on Fi-
19 nancial Services of the House of Representa-
20 tives, with three members from the majority
21 party and two from the minority party, to be
22 appointed by the chairman of the Committee on
23 Financial Services; and

24 (B) five members of the Committee on
25 Banking, Housing, and Urban Affairs of the

1 Senate, with three members from the majority
2 party and two from the minority party, to be
3 appointed by the chairman of the Committee on
4 Banking, Housing, and Urban Affairs.

5 (2) CHAIRMAN AND VICE CHAIRMAN.—The
6 Committee shall elect a chairman and a vice chair-
7 man from among its members, one of whom shall be
8 a member of the House of Representatives and the
9 other a member of the Senate.

10 (3) VACANCY.—A vacancy in the membership of
11 the Committee shall be filled in the same manner as
12 the original selection.

13 (b) POWERS.—The Committee, or any duly author-
14 ized subcommittee thereof, is authorized to hold such
15 hearings, to sit and act at such times and such places,
16 to require by subpoena (to be issued under the signature
17 of the chairman or vice chairman of the Committee) or
18 otherwise the attendance of such witnesses and the pro-
19 duction of such books, papers, and documents, to admin-
20 ister such oaths, to take such testimony, to procure such
21 printing and binding, and to make such expenditures as
22 it considers advisable.

23 (c) DUTIES.—The Committee shall be responsible for
24 the continuous study of the programs authorized by this
25 Act, and to review the progress achieved in the execution

1 and administration of such programs. Upon request, the
2 Committee shall aid the standing committees of the Con-
3 gress having legislative jurisdiction over any part of the
4 programs authorized by this Act; and it shall make a re-
5 port to the House of Representatives and the Senate, from
6 time to time, concerning the results of its studies, together
7 with such recommendations as it may consider desirable.

8 (d) INFORMATION FROM FEDERAL AGENCIES AND
9 DEPARTMENTS.—Any department, official, or agency ad-
10 ministering any of such programs shall, at the request of
11 the Committee, consult with the Committee, from time to
12 time, with respect to their activities under this Act.

13 (e) EXPENSES.—The expenses of the Committee,
14 which shall not exceed \$750,000 in any fiscal year, shall
15 be paid one-half from the contingent fund of the House
16 of Representatives and one-half from the contingent fund
17 of the Senate upon vouchers signed by the chairman or
18 vice chairman.

19 **SEC. 6. DEFINITIONS.**

20 In this Act:

21 (1) ADMINISTRATOR.—The term “Adminis-
22 trator” means the Administrator of the Federal
23 Emergency Management Agency.

24 (2) COVERED EMERGENCY.—The term “covered
25 emergency” means a national emergency in which

1 the President has declared a national emergency and
2 determined that—

3 (A) a disease or disorder presents an emer-
4 gency that affects the United States; or

5 (B) a public health emergency exists, in-
6 cluding a significant outbreak of an infectious
7 disease or a bioterrorist attack.

8 (3) EXISTING HEALTH SYSTEM MEDICAL
9 EQUIPMENT.—The term “existing health system
10 medical equipment” means medical equipment
11 owned by a hospital.

12 (4) FAIR MARKET PRICE.—The term “fair mar-
13 ket price” means the average market price of med-
14 ical equipment from the preceding calendar year.

15 (5) HOSPITAL.—The term “hospital” has the
16 meaning given the term under section 1861(e) of the
17 Social Security Act (42 U.S.C. 1395x(e)).

18 (6) IMPACTED INDIVIDUALS.—The term “im-
19 pacted individuals” means an individual—

20 (A) diagnosed with a condition for which
21 the public health emergency has been issued;

22 (B) that is experiencing symptoms con-
23 sistent with the condition for which the covered
24 emergency has been issued and is seeking a
25 medical diagnosis;

1 (C) that has been identified as having been
2 exposed to a bioterrorist attack; or

3 (D) otherwise meets criteria determined by
4 the Administrator during the covered emer-
5 gency period.

6 (7) INDEFINITE DELIVERY-INDEFINITE QUAN-
7 TITY CONTRACT.—The term “indefinite delivery-in-
8 definite quantity contract” means a contract to pro-
9 vide for an indefinite quantity of materials or serv-
10 ices for a fixed time.

11 (8) INDIAN TRIBE.—The term “Indian tribe”
12 has the meaning given the term in section 4 of the
13 Indian Self-Determination and Education Assistance
14 Act (25 U.S.C. 5304).

15 (9) MEDICAL EQUIPMENT.—The term “medical
16 equipment” means—

17 (A) N95 respirators;

18 (B) medical ventilators;

19 (C) face shields;

20 (D) medical exam gloves;

21 (E) surgical gowns;

22 (F) diagnostic tests; and

23 (G) such other medical equipment as the
24 Administrator determines to be necessary.

1 (10) NATIONAL EMERGENCY.—The term “na-
2 tional emergency” means a national emergency de-
3 clared by the President under the National Emer-
4 gencies Act (50 U.S.C. 1601 et seq.).

5 (11) OPERATIONS OF THE FEDERAL GOVERN-
6 MENT.—The term “operations of the Federal gov-
7 ernment” means—

8 (A) the activities and operations of any
9 Federal department or agency that is substan-
10 tially concerned with the operations or activities
11 required to respond to a public health emer-
12 gency; and

13 (B) the activities and operations of the
14 armed forces.

15 (12) PERSON.—The term “person” has the
16 meaning given such term in section 702 of the De-
17 fense Production Act of 1950 (50 U.S.C. 4552).

18 (13) PREVAILING MARKET PRICE.—The term
19 “prevailing market price” means the average market
20 price of medical equipment during the prior 30 days,
21 as determined by the Secretary of Health and
22 Human Services.

23 (14) PUBLIC HEALTH EMERGENCY.—The term
24 “public health emergency” means a public health

1 emergency declared under section 319 of the Public
2 Health Service Act (42 U.S.C. 247d).

3 (15) STATE.—The term “State” means each of
4 the 50 States and the District of Columbia, each of
5 the territories, and Indian tribes.

6 (16) STRATEGIC NATIONAL STOCKPILE.—The
7 term “Strategic National Stockpile” means the
8 stockpile established under section 319F–2 of the
9 Public Health Service Act (42 U.S.C. 247d–6b).

10 (17) TERRITORY.—The term “territory” means
11 the United States Virgin Islands, Puerto Rico,
12 Guam, American Samoa, and the Commonwealth of
13 the Northern Mariana Islands.

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