

117TH CONGRESS  
2D SESSION

# S. 4888

To require the President to supplement disaster response plans to account for catastrophic incidents disabling 1 or more critical infrastructure sectors or significantly disrupting the critical functions of modern society, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2022

Mr. CORNYN (for himself and Mr. PADILLA) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To require the President to supplement disaster response plans to account for catastrophic incidents disabling 1 or more critical infrastructure sectors or significantly disrupting the critical functions of modern society, 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 “Keeping Everyone Safe  
5 and Securing Lives by Emergency Readiness Act” or the  
6 “KESSLER Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the integration of connected technologies  
4 has become essential to the operation of modern crit-  
5 ical infrastructure;

6 (2) reliance on connected technologies and  
7 interoperability across critical infrastructure sectors  
8 create new vulnerabilities that may be used against  
9 the United States;

10 (3) adversaries of the United States have tar-  
11 geted critical infrastructure and are likely to in-  
12 crease attacks on essential services in the United  
13 States should global conflicts escalate;

14 (4) while strong defenses and mitigation meas-  
15 ures are essential to the safety of the United States,  
16 no strategy can stop all catastrophic events;

17 (5) the Federal Government must prepare Fed-  
18 eral, State, and local governments, along with the  
19 people of the United States, to promote the general  
20 welfare of the civilian population of the United  
21 States even if most or all critical infrastructure sec-  
22 tors are impacted by catastrophic events; and

23 (6) such preparations must include coordination  
24 with State, local, and Tribal governments, private  
25 sector entities, and individual citizens.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) **BASIC NEED.**—The term “basic need”—

4 (A) means any good, service, or activity  
5 necessary to protect the health, safety, and gen-  
6 eral welfare of the civilian population of the  
7 United States; and

8 (B) includes—

9 (i) food;

10 (ii) water;

11 (iii) shelter;

12 (iv) basic communication services;

13 (v) basic sanitation and health serv-  
14 ices; and

15 (vi) public safety.

16 (2) **CATASTROPHIC INCIDENT.**—The term “cat-  
17 astrophic incident”—

18 (A) means any natural or man-made dis-  
19 aster that results in extraordinary levels of cas-  
20 ualties or damage, mass evacuations, or disrup-  
21 tion severely affecting the population, infra-  
22 structure, environment, economy, national mo-  
23 rale, or government functions in an area; and

24 (B) may include an incident—

25 (i) with a sustained national impact  
26 over a prolonged period of time;

1 (ii) that may rapidly exceed resources  
2 available to State and local government  
3 and private sector authorities in the im-  
4 pacted area; or

5 (iii) that may significantly interrupt  
6 governmental operations and emergency  
7 services to such an extent that national se-  
8 curity could be threatened.

9 (3) CRITICAL INFRASTRUCTURE.—The term  
10 “critical infrastructure” has the meaning given the  
11 term in section 1016(e) of the Critical Infrastruc-  
12 ture Protection Act of 2001 (42 U.S.C. 5195c(e)).

13 (4) NATIONAL EXERCISE PROGRAM.—The term  
14 “national exercise program” means activities carried  
15 out to test and evaluate the national preparedness  
16 goal and related plans and strategies as described in  
17 section 648(b) of the Post-Katrina Emergency Man-  
18 agement Reform Act of 2006 (6 U.S.C. 748(b)).

19 (5) TRIBAL GOVERNMENT.—The term “Tribal  
20 government” means the recognized governing body  
21 of any Indian or Alaska Native Tribe, band, nation,  
22 pueblo, village, community, component band, or com-  
23 ponent reservation, that is individually identified (in-  
24 cluding parenthetically) in the most recent list pub-  
25 lished pursuant to section 104 of the Federally Rec-

1       ognized Indian Tribe List Act of 1994 (25 U.S.C.  
2       5131).

3       **SEC. 4. ENHANCED CATASTROPHIC INCIDENT ANNEX.**

4       (a) IN GENERAL.—The President, with support from  
5       the committee, shall supplement each Federal Interagency  
6       Operational Plan to include an annex containing a strat-  
7       egy to ensure the health, safety, and general welfare of  
8       the civilian population affected by catastrophic incidents  
9       by—

10               (1) providing for the basic needs of the civilian  
11               population of the United States that is impacted by  
12               catastrophic incidents in the United States;

13               (2) coordinating response efforts with State and  
14               local governments, the private sector, and nonprofit  
15               relief organizations;

16               (3) promoting personal and local readiness and  
17               non-reliance on government relief during periods of  
18               heightened tension or after catastrophic incidents;  
19               and

20               (4) developing international partnerships with  
21               allied nations for the provision of relief services and  
22               goods.

23       (b) ELEMENTS OF THE STRATEGY.—The strategy re-  
24       quired under subsection (a) shall include a description  
25       of—

1           (1) actions the President will take to ensure the  
2 basic needs of the civilian population of the United  
3 States in a catastrophic incident are met;

4           (2) how the President will coordinate with non-  
5 Federal entities to multiply resources and enhance  
6 relief capabilities, including—

7                   (A) State and local governments;

8                   (B) Tribal governments;

9                   (C) State disaster relief agencies;

10                  (D) State and local disaster relief man-  
11 agers;

12                  (E) State National Guards;

13                  (F) law enforcement and first response en-  
14 tities; and

15                  (G) nonprofit relief services;

16           (3) actions the President will take to enhance  
17 individual resiliency to the effects of a catastrophic  
18 incident, which actions shall include—

19                   (A) readiness alerts to the public during  
20 periods of elevated threat;

21                   (B) efforts to enhance domestic supply and  
22 availability of critical goods and basic neces-  
23 sities; and

1           (C) information campaigns to ensure the  
2           public is aware of response plans and services  
3           that will be activated when necessary;

4           (4) efforts the President will undertake and  
5           agreements the President will seek with inter-  
6           national allies to enhance the readiness of the  
7           United States to provide for the general welfare;

8           (5) how the strategy will be implemented should  
9           multiple levels of critical infrastructure be destroyed  
10          or taken offline entirely for an extended period of  
11          time; and

12          (6) the authorities the President would impli-  
13          cate in responding to a catastrophic incident.

14          (c) ASSUMPTIONS.—In designing the strategy under  
15          subsection (a), the President shall account for certain fac-  
16          tors to make the strategy operationally viable, including  
17          the assumption that—

18               (1) multiple levels of critical infrastructure have  
19               been taken offline or destroyed by catastrophic inci-  
20               dents or the effects of catastrophic incidents;

21               (2) impacted sectors may include—

22                       (A) the transportation sector;

23                       (B) the communication sector;

24                       (C) the energy sector;

1 (D) the healthcare and public health sec-  
2 tor;

3 (E) the water and wastewater sector; and

4 (F) the financial sector;

5 (3) State, local, Tribal, and territorial govern-  
6 ments have been equally affected or made largely in-  
7 operable by catastrophic incidents or the effects of  
8 catastrophic incidents;

9 (4) the emergency has exceeded the response  
10 capabilities of State and local governments under  
11 the Robert T. Stafford Disaster Relief and Emer-  
12 gency Assistance Act (42 U.S.C. 5121 et seq.) and  
13 other relevant disaster response laws; and

14 (5) the United States military is sufficiently en-  
15 gaged in armed or cyber conflict with State or non-  
16 State adversaries, or is otherwise unable to augment  
17 domestic response capabilities in a significant man-  
18 ner due to a catastrophic incident.

19 (d) EXISTING PLANS.—The President may incor-  
20 porate existing contingency plans in the strategy developed  
21 under subsection (a) so long as those contingency plans  
22 are amended to be operational in accordance with the re-  
23 quirements under this section.

24 (e) AVAILABILITY.—The strategy developed under  
25 subsection (a) shall be available to the public but may in-

1 clude a classified, or other restricted, annex to be made  
2 available to the appropriate committees of Congress and  
3 appropriate government entities.

4 **SEC. 5. VALIDATION OF THE STRATEGY THROUGH AN EX-**  
5 **ERCISE.**

6 Not later than 1 year after the addition of the annex  
7 required under section 4, the Department of Homeland  
8 Security shall lead an exercise as part of the national exer-  
9 cise program, in coordination with the committee, to test  
10 and enhance the operationalization of the strategy.

11 **SEC. 6. RECOMMENDATIONS.**

12 (a) IN GENERAL.—The President shall provide rec-  
13 ommendations to Congress for—

14 (1) actions that should be taken to prepare the  
15 United States to implement the strategy required  
16 under section 4, increase readiness, and address pre-  
17 paredness gaps for responding to the impacts of cat-  
18 astrophic incidents on citizens of the United States;  
19 and

20 (2) additional authorities that should be consid-  
21 ered for Federal agencies and the President to more  
22 effectively implement the strategy required under  
23 section 4.

1 (b) INCLUSION IN REPORTS.—The President may in-  
2 clude the recommendations required under subsection (a)  
3 in a report submitted under section 7.

4 **SEC. 7. REPORTING REQUIREMENTS.**

5 Not later than 1 year after the date on which the  
6 Department of Homeland Security leads the exercise  
7 under section 5, the President shall submit to Congress  
8 a report that includes—

9 (1) a description of the efforts of the President  
10 to develop and update the strategy required under  
11 section 4; and

12 (2) an after-action report following the conduct  
13 of the exercise described in section 5.

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