

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.

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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

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## 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.

○