

118TH CONGRESS
1ST SESSION

S. RES. _____

Relating to the establishment of a means for the Senate to provide advice and consent regarding the form of an international agreement relating to pandemic prevention, preparedness, and response.

IN THE SENATE OF THE UNITED STATES

Mr. RISCH submitted the following resolution; which was referred to the Committee on _____

RESOLUTION

Relating to the establishment of a means for the Senate to provide advice and consent regarding the form of an international agreement relating to pandemic prevention, preparedness, and response.

Whereas clause 2 of section 2 of article II of the Constitution of the United States empowers the President “by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur”;

Whereas without appropriate and meaningful consultation with the Senate—

(1) the requirement for Senate advice and consent to treaties remains unfulfilled; and

(2) in some cases, executive agreements, political agreements, and other arrangements have been improperly used by the Executive branch to circumvent the appropriate review of significant agreements by Congress;

Whereas as an appropriate exercise of the advice and consent power entrusted to the Senate, the Senate may refuse to consider legislative measures intended to authorize or appropriate funds to implement international agreements which, in the opinion of the Senate, constitute treaties under the Constitution of the United States to which the Senate has not given its advice and consent to ratification;

Whereas clause 2 of section 5 of article I of the Constitution of the United States, grants plenary power to the Senate to “determine the Rules of its Proceedings”;

Whereas an international agreement should take the form of a treaty requiring Senate advice and consent and should be transmitted by the President to the Senate for the Senate’s consideration and approval if—

(1) the agreement involves commitments or risks affecting the nation as a whole;

(2) the agreement is intended to affect State laws;

(3) the agreement will not take effect until after subsequent legislation is enacted by Congress;

(4) similar agreements were subjected to the advice and consent of the Senate;

(5) similar agreements are typically subject to the approval of national legislatures in other countries;

(6) Congress has expressed a preference regarding its involvement in such type of agreement;

(7) the agreement involves a high degree of formality;

(8) the agreement is not routine, is not expected to have a short duration, and does not need to be promptly concluded; or

(9) if the agreement is intended to implement an existing treaty or make technical amendments to an existing treaty, the relevant Senate committee has previously indicated that such implementation or amendments are significant enough to require submission to the Senate for its advice and consent:

Now, therefore, be it

1 *Resolved,*

2 **SECTION 1. SHORT TITLE.**

3 This Resolution may be cited as the “World Health
4 Organization Pandemic Treaty Implementation Resolu-
5 tion”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Resolution is for the Senate, as
8 the Article I branch of the United States Government that
9 is entrusted with the Advice and Consent power under
10 clause 2 of section 2 of article II of the Constitution of
11 the United States, to establish, through the use of the
12 rulemaking authority of the Senate, a means for deter-
13 mining the form that an international agreement, protocol,
14 legal instrument or agreed outcome with legal force,
15 signed by the President or by his designee, shall take and
16 to which the President intends the United States to be-

1 come a Party or to otherwise be bound under international
2 law, in whole or in part.

3 **SEC. 3. DECLARATIONS.**

4 (a) IN GENERAL.—Exercising the rulemaking au-
5 thority of the Senate, the Senate declares, under clause
6 2 of section 2 of article II of the Constitution of the
7 United States, that any international convention, agree-
8 ment, protocol, legal instrument, or agreed outcome with
9 legal force relating to pandemic prevention, preparedness,
10 and response drafted by the intergovernmental negotiating
11 body of the World Health Assembly that—

12 (1) is intended to be adopted pursuant to Arti-
13 cle 19 or any other provision of the Constitution of
14 the World Health Organization; and

15 (2) establishes significant international commit-
16 ments by the United States under the authority of
17 World Health Assembly Decision SSA2(5) or any re-
18 lated decision,

19 meets 1 or more of the factors set forth in the last clause
20 of the preamble, indicating that such agreement should
21 take the form of a treaty requiring Senate approval.

22 (b) LIMITATION OF AGREEMENT.—The Senate de-
23 clares that any agreement described in subsection (a)—

1 (1) involves a significant political and economic
2 commitment of the United States to foreign coun-
3 tries; and

4 (2) does not legally bind the United States until
5 after—

6 (A) the President transmits such agree-
7 ment to the Senate for its consideration as a
8 treaty, subject to the applicable constitutional
9 advice and consent procedures; and

10 (B) the Senate provides its consent to such
11 treaty through a resolution of ratification.

12 **SEC. 4. ADVICE.**

13 (a) REFERRAL.—Any agreement described in section
14 3(a) that is transmitted to the Senate pursuant to section
15 3(b)(2)(A) shall be referred to the Committee on Foreign
16 Relations of the Senate for its consideration.

17 (b) CONSULTATION WITH THE COMMITTEE ON FOR-
18 EIGN RELATIONS OF THE SENATE.—

19 (1) CONSULTATIONS DURING NEGOTIATIONS.—
20 The Secretary of State, or the designee of the Sec-
21 retary, shall—

22 (A) at the request of the Chair or the
23 Ranking Member of the Committee on Foreign
24 Relations of the Senate, meet with any or all
25 Members of the Committee regarding—

- 1 (i) negotiating objectives;
- 2 (ii) the status of negotiations in
- 3 progress; and
- 4 (iii) the nature of any potential
- 5 changes to the laws of the United States
- 6 or the administration of such laws that
- 7 may be recommended to Congress to carry
- 8 out—

9 (I) an agreement described in

10 section 3(a); or

11 (II) any requirement of, amend-

12 ment to, or recommendation under,

13 such agreement; and

14 (B) consult closely and on a timely basis

15 with, and keep fully apprised of the negotia-

16 tions, the Committee on Foreign Relations of

17 the Senate;

18 (2) CONSULTATIONS BEFORE SIGNING AGREE-

19 MENT.—Before signing an agreement described in

20 section 3(a), the President shall—

21 (A) consult closely, and on a timely basis,

22 with the members of the Committee on Foreign

23 Relations of the Senate; and

24 (B) keep such members fully apprised of

25 the measures other nations have taken to com-

1 ply with the provisions of such agreement that
2 are to take effect on the date on which such
3 agreement enters into force.

4 (c) DESIGNATED SENATE ADVISORS.—

5 (1) DESIGNATION.—The Secretary of State—

6 (A) shall designate not fewer than 2 mem-
7 bers of the Committee on Foreign Relations of
8 the Senate, on a bipartisan basis, to serve as
9 Senate advisors to the negotiations regarding
10 an agreement described in section 3(a); and

11 (B) may designate additional members of
12 the Committee on Foreign Relations of the Sen-
13 ate as Senate advisors, after consultation with
14 the Chair and Ranking Member of the Com-
15 mittee.

16 (2) CONSULTATIONS WITH DESIGNATED CON-
17 GRESSIONAL ADVISORS.—During negotiations re-
18 garding an agreement described in section 3(a), the
19 Secretary of State or an officer of the Department
20 of State who has been confirmed to such position by
21 the Senate and designated by the Secretary, shall
22 consult closely and on a timely basis (including im-
23 mediately before initialing any agreement) with, and
24 keep fully apprised of the negotiations, the Senate
25 advisors designated pursuant to paragraph (1).

1 (3) ACCREDITATION.—Each Senator designated
2 as a Senate advisor pursuant to paragraph (1) shall
3 be accredited by the Secretary of State on behalf of
4 the President as an official advisor to the United
5 States delegation to any relevant international con-
6 ferences, meetings, and negotiating sessions relating
7 to an agreement described in section 3(a).

8 **SEC. 5. CONSENT.**

9 (a) SUBMISSION OF TREATY TO THE SENATE.—An
10 international convention, agreement, protocol, legal instru-
11 ment, or agreed outcome with legal force relating to pan-
12 demic prevention, preparedness, and response described in
13 section 3(a) shall not become effective with respect to the
14 United States until after the President, not later than 60
15 days after such agreement is signed, submits to the Sen-
16 ate—

17 (1) such agreement, including all related mate-
18 rials, annexes, and other relevant documents; and

19 (2) a certification that—

20 (A) the materials submitted pursuant to
21 paragraph (1) constitute the totality of such
22 agreement in question; and

23 (B) the adoption of the treaty is in the
24 vital national security interest of the United
25 States.

1 (b) DECLARATION.—Exercising the rulemaking au-
2 thority granted to the Senate under clause 2 of section
3 5 of article I of the Constitution of the United States,
4 the Senate declares that it shall not be in order for the
5 Senate to consider any bill, any joint or concurrent resolu-
6 tion, any amendment to such bill or amendment, or any
7 conference report authorizing or providing budget author-
8 ity to implement, in whole or in part, any international
9 pandemic preparedness, prevention, and response conven-
10 tion, agreement, protocol, legal instrument, or agreed out-
11 come with legal force of the World Health Assembly, the
12 purpose of which is to implement, in whole or in part, an
13 agreement described in section 3(a).

14 (c) SUNSET.—This section shall remain in effect until
15 the date on which the President submits the agreement
16 and certification required under subsection (a) to the Sen-
17 ate as a treaty for its constitutional advice and consent.