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(Original Signature of Member)

118TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

To amend the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 to clarify the scope of a major Federal action under the National Environmental Policy Act of 1969 with respect to certain projects relating to the production of semiconductors, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mrs. KIGGANS of Virginia introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 to clarify the scope of a major Federal action under the National Environmental Policy Act of 1969 with respect to certain projects relating to the production of semiconductors, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Building Chips in  
3 America Act of 2023”.

4 **SEC. 2. SEMICONDUCTOR PROGRAM.**

5 Section 9909 of the William M. (Mac) Thornberry  
6 National Defense Authorization Act for Fiscal Year 2021  
7 (15 U.S.C. 4659) is amended by adding at the end the  
8 following:

9 “(c) **AUTHORITY RELATING TO ENVIRONMENTAL**  
10 **REVIEW.**—

11 “(1) **IN GENERAL.**—Notwithstanding any other  
12 provision of law, none of the following shall be con-  
13 sidered to be a major Federal action under NEPA  
14 or an undertaking for the purposes of division A of  
15 subtitle III of title 54, United States Code:

16 “(A) The provision by the Secretary of any  
17 Federal financial assistance for a project de-  
18 scribed in section 9902, if—

19 “(i) the covered activity described in  
20 the application for that project has com-  
21 menced before the date on which the Sec-  
22 retary provides that assistance;

23 “(ii) the facility that is the subject of  
24 the project is on or adjacent to a site—

25 “(I) that is owned or leased by  
26 the covered entity to which Federal fi-

1                   nancial assistance is provided for that  
2                   project; and

3                   “**(II)** on which substantially simi-  
4                   lar construction, expansion, or mod-  
5                   ernization has been carried out such  
6                   that the facility would not more than  
7                   double existing developed acreage or  
8                   supporting infrastructure;

9                   “(iii) the Secretary determines, in the  
10                  sole discretion of the Secretary, that the  
11                  laws and regulations governing environ-  
12                  mental reviews in the State in which the  
13                  facility that is the subject of the project is  
14                  or will be located are functionally equiva-  
15                  lent to the requirements under NEPA;

16                  “(iv) the Federal financial assistance  
17                  provided is in the form of a loan or loan  
18                  guarantee; or

19                  “(v) the Federal financial assistance  
20                  provided, excluding any loan or loan guar-  
21                  antee, comprises less than 15 percent of  
22                  the total estimated cost of the project.

23                  “(B) The provision by the Secretary of De-  
24                  fense of any Federal financial assistance relat-  
25                  ing to—

1                   “(i) the creation, expansion, or mod-  
2                   ernization of one or more facilities de-  
3                   scribed in the second sentence of section  
4                   9903(a)(1); or

5                   “(ii) carrying out section 9903(b).

6                   “(C) Any activity relating to carrying out  
7                   section 9906.

8                   “(2) SAVINGS CLAUSE.—Nothing in this sub-  
9                   section may be construed as altering whether an ac-  
10                  tivity described in subparagraph (A), (B), or (C) of  
11                  paragraph (1) is considered to be a major Federal  
12                  action under NEPA, or an undertaking under divi-  
13                  sion A of subtitle III of title 54, United States Code,  
14                  for a reason other than that the activity is eligible  
15                  for funding provided under this title.

16                  “(d) LEAD FEDERAL AGENCY AND COOPERATING  
17                  AGENCIES.—

18                  “(1) DEFINITION.—In this subsection, the term  
19                  ‘lead agency’ has the meaning given the term in sec-  
20                  tion 111 of NEPA.

21                  “(2) OPTION TO SERVE AS LEAD AGENCY.—  
22                  With respect to a covered activity that is a major  
23                  Federal action under NEPA, the Department of  
24                  Commerce shall have the first right to serve as the

1 lead agency with respect to that covered activity  
2 under NEPA.

3 “(3) COOPERATING AGENCY.—The Secretary  
4 may designate any Federal, State, Tribal, or local  
5 agency as a cooperating agency with respect to a  
6 covered activity for which the Department of Com-  
7 merce serves as the lead agency under paragraph  
8 (1), if the applicable agency has—

9 “(A) the jurisdiction to issue an authoriza-  
10 tion or take action for or relating to that cov-  
11 ered activity; or

12 “(B) special expertise with respect to that  
13 covered activity.

14 “(4) ENVIRONMENTAL DOCUMENTS.—

15 “(A) SINGLE DOCUMENT.—All authoriza-  
16 tions relating to a covered activity shall rely on  
17 a single environmental document and joint  
18 record of decision prepared by the lead agency  
19 with respect to that covered activity for the pur-  
20 poses of NEPA.

21 “(B) INCLUSION.—An environmental docu-  
22 ment and joint record of decision described in  
23 subparagraph (A) shall—

24 “(i) rely on any comments, analysis,  
25 proposals, or documentation developed by

1 cooperating agencies designated under  
2 paragraph (3); and

3 “(ii) provide all authorizations nec-  
4 essary for the applicable covered activity as  
5 if any cooperating agency designated under  
6 paragraph (3) had issued an environmental  
7 document and joint record of decision.

8 “(e) ADOPTION OF CATEGORICAL EXCLUSIONS.—

9 “(1) ESTABLISHMENT OF CATEGORICAL EXCLU-  
10 SIONS.—Each of the following categorical exclusions  
11 is established for the National Institute of Standards  
12 and Technology and, beginning on the date of enact-  
13 ment of this subsection, is available for use by the  
14 Secretary:

15 “(A) Categorical exclusion 17.04.d (relat-  
16 ing to the acquisition of machinery and equip-  
17 ment) in the document entitled ‘EDA Program  
18 to Implement the National Environmental Pol-  
19 icy Act of 1969 and Other Federal Environ-  
20 mental Mandates As Required’ (Directive No.  
21 17.02-2; effective date October 14, 1992).

22 “(B) Categorical exclusion A9 in Appendix  
23 A to subpart D of part 1021 of title 10, Code  
24 of Federal Regulations, or any successor regula-  
25 tion.

1           “(C) Categorical exclusions B1.24, B1.31,  
2           B2.5, and B5.1 in Appendix B to subpart D of  
3           part 1021 of title 10, Code of Federal Regula-  
4           tions, or any successor regulation.

5           “(D) The categorical exclusions described  
6           in paragraphs (4) and (13) of section 50.19(b)  
7           of title 24, Code of Federal Regulations, or any  
8           successor regulation.

9           “(E) Categorical exclusion (c)(1) in Appen-  
10          dix B to part 651 of title 32, Code of Federal  
11          Regulations, or any successor regulation.

12          “(F) Categorical exclusions A2.3.8 and  
13          A2.3.14 in Appendix B to part 989 of title 32,  
14          Code of Federal Regulations, or any successor  
15          regulation.

16          “(G) Any other categorical exclusion  
17          adopted by another Federal agency that the  
18          Secretary determines would accelerate the com-  
19          pletion of a covered activity if the categorical  
20          exclusion were available to the Secretary.

21          “(2) SUBSEQUENT CHANGES.—In any NEPA  
22          process that is ongoing (as of the date of enactment  
23          of this subsection), or that occurs on or after the  
24          date of enactment of this subsection, the Secretary

1       may update, amend, revise, or remove any categor-  
2       ical exclusion established under paragraph (1).

3           “(3) SCOPE OF REVIEW.—The application of  
4       any categorical exclusion established under para-  
5       graph (1), as the categorical exclusion may be up-  
6       dated, amended, or revised under paragraph (2),  
7       shall not be subject to evaluation for extraordinary  
8       circumstances under section 1501.4(b) of title 40,  
9       Code of Federal Regulations, or any successor regu-  
10      lation.

11       “(f) INCORPORATION OF PRIOR PLANNING DECI-  
12      SIONS.—

13           “(1) DEFINITION.—In this subsection, the term  
14       ‘prior studies and decisions’ means baseline data,  
15       planning documents, studies, analyses, decisions,  
16       and documentation that a Federal agency has com-  
17       pleted for a project (or that have been completed  
18       under the laws and procedures of a State or Indian  
19       Tribe), including for determining the reasonable  
20       range of alternatives for that project.

21           “(2) RELIANCE ON PRIOR STUDIES AND DECI-  
22      SIONS.—In completing an environmental review  
23      under NEPA for a covered activity, the Secretary  
24      may consider and, as appropriate, rely on or adopt

1 prior studies and decisions, if the Secretary deter-  
2 mines that—

3 “(A) those prior studies and decisions meet  
4 the standards for an adequate statement, as-  
5 sessment, or determination under applicable  
6 procedures of the Department of Commerce im-  
7 plementing the requirements of NEPA;

8 “(B) in the case of prior studies and deci-  
9 sions completed under the laws and procedures  
10 of a State or Indian Tribe, those laws and pro-  
11 cedures are of equal or greater rigor than those  
12 of each applicable Federal law, including  
13 NEPA, implementing procedures of the Depart-  
14 ment of Commerce; or

15 “(C) if applicable, the prior studies and de-  
16 cisions are informed by other analysis or docu-  
17 mentation that would have been prepared if the  
18 prior studies and decisions were prepared by  
19 the Secretary under NEPA.

20 “(g) NEPA ASSIGNMENT.—

21 “(1) ASSUMPTION OF RESPONSIBILITY.—

22 “(A) WRITTEN AGREEMENT.—

23 “(i) IN GENERAL.—Subject to the  
24 other provisions of this section, with the  
25 written agreement of the Secretary and a

1 State, which may be in the form of a  
2 memorandum of understanding, the Sec-  
3 retary may assign, and the State may as-  
4 sume, the responsibilities of the Secretary  
5 with respect to 1 or more covered activities  
6 within the State under NEPA.

7 “(ii) REQUIREMENTS.—A written  
8 agreement between the Secretary and a  
9 State under clause (i) shall—

10 “(I) be executed by the governor  
11 of the State;

12 “(II) provide that the State—

13 “(aa) agrees to assume all  
14 or part of the responsibilities of  
15 the Secretary described in that  
16 clause;

17 “(bb) expressly consents, on  
18 behalf of the State, to accept the  
19 jurisdiction of the courts of the  
20 United States with respect to  
21 compliance with, the discharge  
22 of, and the enforcement of any  
23 responsibility of the Secretary as-  
24 sumed by the State;

1                   “(cc) certifies that there are  
2 laws of the State, including regu-  
3 lations, in effect that—

4                   “(AA) authorize the  
5 State to take the actions  
6 necessary to carry out the  
7 responsibilities being as-  
8 sumed by the State; and

9                   “(BB) are comparable  
10 to section 552 of title 5,  
11 United States Code, includ-  
12 ing by providing that any  
13 decision regarding the public  
14 availability of a document  
15 under those laws of the  
16 State may be reviewed by a  
17 court of competent jurisdic-  
18 tion; and

19                   “(dd) agrees to make avail-  
20 able the financial resources nec-  
21 essary to carry out the respon-  
22 sibilities being assumed by the  
23 State;

24                   “(III) require the State to pro-  
25 vide to the Secretary any information

1           that the Secretary reasonably con-  
2           siders necessary to ensure that the  
3           State is adequately carrying out the  
4           responsibilities being assumed by the  
5           State; and

6                           “(IV) be renewable.

7                           “(B) ADDITIONAL RESPONSIBILITY.—If a  
8           State assumes responsibility under subpara-  
9           graph (A), the Secretary may assign to the  
10          State, and the State may assume, all or part of  
11          the responsibilities of the Secretary for environ-  
12          mental review, consultation, or other action re-  
13          quired under any Federal environmental law  
14          pertaining to the review or approval of a cov-  
15          ered activity.

16                          “(C) PROCEDURAL AND SUBSTANTIVE RE-  
17          QUIREMENTS.—A State shall assume responsi-  
18          bility under this subsection subject to the same  
19          procedural and substantive requirements as  
20          would apply if that responsibility were carried  
21          out by the Secretary.

22                          “(D) FEDERAL RESPONSIBILITY.—Any re-  
23          sponsibility of the Secretary not explicitly as-  
24          sumed by a State by written agreement under

1           this subsection shall remain the responsibility of  
2           the Secretary.

3           “(E) NO EFFECT ON AUTHORITY.—Noth-  
4           ing in this subsection preempts or interferes  
5           with any power, jurisdiction, responsibility, or  
6           authority of an agency, other than the Depart-  
7           ment of Commerce, under applicable law (in-  
8           cluding regulations) with respect to a project.

9           “(2) STATE PARTICIPATION.—The Secretary  
10          may develop an application for a State to assume re-  
11          sponsibility under paragraph (1), at such a time and  
12          containing such information as the Secretary deter-  
13          mines appropriate.

14          “(3) SELECTION CRITERIA.—The Secretary  
15          may approve the application of a State to assume re-  
16          sponsibility under this subsection only if—

17                 “(A) the Secretary determines that the  
18                 State has the capability, including financial and  
19                 with respect to personnel, to assume the respon-  
20                 sibility; and

21                 “(B) the governor of the State has entered  
22                 into the written agreement with the Secretary  
23                 required under paragraph (1)(A).

24          “(4) LIMITATIONS ON AGREEMENTS.—Nothing  
25          in this subsection permits a State to assume any

1 rulemaking authority of the Secretary under any  
2 Federal law.

3 “(5) AUDITS.—To ensure compliance by a  
4 State (including compliance by the State with all  
5 Federal laws for which responsibility is assumed  
6 under paragraph (1)(B)), for each State partici-  
7 pating in the program under this subsection, the  
8 Secretary shall—

9 “(A) conduct annual audits for each year  
10 of State participation;

11 “(B) not later than 180 days after the  
12 date on which the agreement between the Sec-  
13 retary and the State is executed, meet with the  
14 State to review implementation of the agree-  
15 ment and discuss plans for the first annual  
16 audit required under subparagraph (A); and

17 “(C) ensure that the time period for com-  
18 pleting an audit under subparagraph (A), from  
19 initiation to completion, does not exceed 180  
20 days.

21 “(6) TERMINATION.—

22 “(A) TERMINATION BY SECRETARY.—The  
23 Secretary may terminate the participation of  
24 any State in the program under this subsection,  
25 if—

1           “(i) the Secretary determines that the  
2           State is not adequately carrying out the re-  
3           sponsibilities assigned to the State;

4           “(ii) the Secretary provides the State  
5           with—

6                   “(I) a notification of the deter-  
7                   mination of noncompliance under  
8                   clause (i);

9                   “(II) a period of not less than  
10                  120 days to take corrective action as  
11                  the Secretary determines to be nec-  
12                  essary to comply with the applicable  
13                  agreement; and

14                  “(III) on request of the Governor  
15                  of the State, a detailed description of  
16                  each responsibility in need of correc-  
17                  tive action regarding an inadequacy  
18                  identified under clause (i); and

19                  “(iii) the State, after the period pro-  
20                  vided under clause (ii), fails to take satis-  
21                  factory corrective action, as determined by  
22                  the Secretary.

23                  “(B) TERMINATION BY THE STATE.—A  
24                  State, at any time, may terminate the participa-  
25                  tion of the State in the program under this sub-

1 section by providing to the Secretary notice not  
2 later than 90 days before the date on which  
3 that termination will take effect, subject to such  
4 terms and conditions as the Secretary may pro-  
5 vide.

6 “(h) JUDICIAL REVIEW.—

7 “(1) IN GENERAL.—Subject to paragraph (2),  
8 nothing in this section shall affect whether any final  
9 Federal agency action may be reviewed in a court of  
10 the United States or of any State.

11 “(2) EFFICIENCY OF CLAIMS.—

12 “(A) STATUTE OF LIMITATIONS.—Not-  
13 withstanding any other provision of law, and ex-  
14 cept as provided in subparagraph (B), a claim  
15 arising under Federal law seeking judicial re-  
16 view of Federal financial assistance provided  
17 under this title, or with respect to any author-  
18 ization issued or denied under NEPA by the  
19 Secretary for a covered activity, shall be barred  
20 unless the claim is filed not later than 150 days  
21 after the date on which the Secretary an-  
22 nounces that, as applicable—

23 “(i) the Secretary has approved the  
24 application for such Federal financial as-  
25 sistance;

1                   “(ii) the Secretary has issued that au-  
2                   thorization; or

3                   “(iii) the Secretary has denied that  
4                   authorization.

5                   “(B) EXCEPTION.—Subparagraph (A)  
6                   shall not apply if a shorter deadline than the  
7                   applicable deadline under that subparagraph is  
8                   specified in the Federal law under which judi-  
9                   cial review is allowed.

10                  “(i) USE OF APPROPRIATED FUNDS.—To carry out  
11 the activities under subsections (e) through (g), the Sec-  
12 retary may use amounts made available to the Secretary  
13 under section 102(a)(2)(B)(ii) of the CHIPS Act of 2022  
14 (15 U.S.C. 4651 note).

15                  “(j) DEFINITIONS.—In this section:

16                   “(1) COVERED ACTIVITY.—The term ‘covered  
17                   activity’ means any activity relating to the construc-  
18                   tion, expansion, or modernization of a facility, the  
19                   investment in which is eligible for Federal financial  
20                   assistance under section 9902 or 9906.

21                   “(2) NEPA.—The term ‘NEPA’ means the Na-  
22                   tional Environmental Policy Act of 1969 (42 U.S.C.  
23                   4321 et seq.).”.