

118TH CONGRESS  
1ST SESSION

# S. 2228

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## AN ACT

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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. SEMICONDUCTOR PROGRAM.**

7       Title XCIX of division H of the William M. (Mac)  
8 Thornberry National Defense Authorization Act for Fiscal  
9 Year 2021 (15 U.S.C. 4651 et seq.) is amended—

10           (1) in section 9902 (15 U.S.C. 4652)—

11                   (A) by redesignating subsections (h) and  
12                   (i) as subsections (i) and (j), respectively; and

13                   (B) by inserting after subsection (g) the  
14           following:

15       “(h) **AUTHORITY RELATING TO ENVIRONMENTAL**  
16 **REVIEW.**—

17           “(1) **IN GENERAL.**—Notwithstanding any other  
18       provision of law, the provision by the Secretary of  
19       Federal financial assistance for a project described  
20       in this section that satisfies the requirements under  
21       subsection (a)(2)(C)(i) of this section shall not be  
22       considered to be a major Federal action under the  
23       National Environmental Policy Act of 1969 (42  
24       U.S.C. 4321 et seq.) (referred to in this subsection  
25       as ‘NEPA’) or an undertaking for the purposes of

1 division A of subtitle III of title 54, United States  
2 Code, if—

3 “(A) the activity described in the applica-  
4 tion for that project has commenced not later  
5 than December 31, 2024;

6 “(B) the Federal financial assistance pro-  
7 vided is in the form of a loan or loan guarantee;  
8 or

9 “(C) the Federal financial assistance pro-  
10 vided, excluding any loan or loan guarantee,  
11 comprises not more than 10 percent of the total  
12 estimated cost of the project.

13 “(2) SAVINGS CLAUSE.—Nothing in this sub-  
14 section may be construed as altering whether an ac-  
15 tivity described in subparagraph (A), (B), or (C) of  
16 paragraph (1) is considered to be a major Federal  
17 action under NEPA, or an undertaking under divi-  
18 sion A of subtitle III of title 54, United States Code,  
19 for a reason other than that the activity is eligible  
20 for Federal financial assistance provided under this  
21 section.”; and

22 (2) in section 9909 (15 U.S.C. 4659), by add-  
23 ing at the end the following:

24 “(c) LEAD FEDERAL AGENCY AND COOPERATING  
25 AGENCIES.—

1           “(1) DEFINITION.—In this subsection, the term  
2           ‘lead agency’ has the meaning given the term in sec-  
3           tion 111 of NEPA (42 U.S.C. 4336e).

4           “(2) OPTION TO SERVE AS LEAD AGENCY.—  
5           With respect to a covered activity that is a major  
6           Federal action under NEPA, and with respect to  
7           which the Department of Commerce is authorized or  
8           required by law to issue an authorization or take ac-  
9           tion for or relating to that covered activity, the De-  
10          partment of Commerce shall have the first right to  
11          serve as the lead agency with respect to that covered  
12          activity under NEPA.

13          “(d) CATEGORICAL EXCLUSIONS.—

14                 “(1) ESTABLISHMENT OF CATEGORICAL EXCLU-  
15                 SIONS.—Each of the following categorical exclusions  
16                 is established for the National Institute of Standards  
17                 and Technology with respect to a covered activity  
18                 and, beginning on the date of enactment of this sub-  
19                 section, is available for use by the Secretary with re-  
20                 spect to a covered activity:

21                         “(A) Categorical exclusion 17.04.d (relat-  
22                         ing to the acquisition of machinery and equip-  
23                         ment) in the document entitled ‘EDA Program  
24                         to Implement the National Environmental Pol-  
25                         icy Act of 1969 and Other Federal Environ-

1           mental Mandates As Required’ (Directive No.  
2           17.02–2; effective date October 14, 1992).

3           “(B) Categorical exclusion A9 in Appendix  
4           A to subpart D of part 1021 of title 10, Code  
5           of Federal Regulations, or any successor regula-  
6           tion.

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

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

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

18          “(F) Categorical exclusions A2.3.8 and  
19          A2.3.14 in Appendix B to part 989 of title 32,  
20          Code of Federal Regulations, or any successor  
21          regulation.

22          “(2)    ADDITIONAL    CATEGORICAL    EXCLU-  
23          SIONS.—Notwithstanding any other provision of law,  
24          each of the following shall be treated as a category  
25          of action categorically excluded from the require-

1       ments relating to environmental assessments and en-  
2       vironmental impact statements under section 1501.4  
3       of title 40, Code of Federal Regulations, or any suc-  
4       cessor regulation:

5               “(A) The provision by the Secretary of any  
6       Federal financial assistance for a project de-  
7       scribed in section 9902, if the facility that is  
8       the subject of the project is on or adjacent to  
9       a site—

10              “(i) that is owned or leased by the  
11       covered entity to which Federal financial  
12       assistance is provided for that project; and

13              “(ii) on which, as of the date on which  
14       the Secretary provides that Federal finan-  
15       cial assistance, substantially similar con-  
16       struction, expansion, or modernization is  
17       being or has been carried out, such that  
18       the facility would not more than double ex-  
19       isting developed acreage or on-site sup-  
20       porting infrastructure.

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

24              “(i) the creation, expansion, or mod-  
25       ernization of one or more facilities de-

1           scribed in the second sentence of section  
2           9903(a)(1); or

3           “(ii) carrying out section 9903(b), as  
4           in effect on the date of enactment of this  
5           subsection.

6           “(C) Any activity undertaken by the Sec-  
7           retary relating to carrying out section 9906, as  
8           in effect on the date of enactment of this sub-  
9           section.

10          “(e) INCORPORATION OF PRIOR PLANNING DECI-  
11          SIONS.—

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

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

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

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

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

18          “(f) DEFINITIONS.—In this section:

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



1           “(2) NEPA.—The term ‘NEPA’ means the Na-  
2           tional Environmental Policy Act of 1969 (42 U.S.C.  
3           4321 et seq.).”.

Passed the Senate December 14, 2023.

Attest:

*Secretary.*

118<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

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