

**AMENDMENT TO H.R. 3746**  
**OFFERED BY MR. WILLIAMS OF NEW YORK**

At the appropriate place in the bill, insert the following:

1 **SEC. \_\_\_\_ . SEMICONDUCTOR PROGRAM.**

2 Section 9909 of the William M. (Mac) Thornberry  
3 National Defense Authorization Act for Fiscal Year 2021  
4 (15 U.S.C. 4659) is amended by adding at the end the  
5 following:

6 “(c) **AUTHORITY RELATING TO ENVIRONMENTAL**  
7 **REVIEW.**—

8 “(1) **IN GENERAL.**—Notwithstanding any other  
9 provision of law, none of the following shall be con-  
10 sidered to be a major Federal action under NEPA:

11 “(A) The review and approval by the Sec-  
12 retary of any application for Federal financial  
13 assistance for a project relating to the construc-  
14 tion, expansion, or modernization of a facility  
15 described in section 9902, if—

16 “(i) the covered entity to which Fed-  
17 eral financial assistance is provided for  
18 that project has received all applicable en-  
19 vironmental permits necessary to enable

1 that construction, expansion, or moderniza-  
2 tion to begin; or

3 “(ii) the facility is on or adjacent to  
4 a site—

5 “(I) that is owned by the covered  
6 entity to which Federal financial as-  
7 sistance is provided for that project;  
8 and

9 “(II) on which the covered entity  
10 described in subclause (I) has carried  
11 out substantially similar construction,  
12 expansion, or modernization such that  
13 the facility would not more than dou-  
14 ble existing developed acreage or sup-  
15 porting infrastructure; or

16 “(iii) the Secretary determines, in the  
17 sole discretion of the Secretary, that—

18 “(I) the laws and regulations of  
19 the State in which the facility is or  
20 will be located are functionally equiva-  
21 lent to the requirements under  
22 NEPA; or

23 “(II) if the Federal financial as-  
24 sistance provided is Direct Funding,  
25 as defined in the Notice of Funding

1 Opportunity issued by the National  
2 Institute of Standards and Tech-  
3 nology entitled ‘CHIPS Incentives  
4 Program – Commercial Fabrication  
5 Facilities’ (2023–NIST–CHIPS–  
6 CFF–01)—

7 “(aa) the Federal financial  
8 assistance would constitute less  
9 than 15 percent of the total esti-  
10 mated cost of that construction,  
11 expansion, or modernization; and

12 “(bb) the Secretary does not  
13 exercise sufficient control and re-  
14 sponsibility to affect the outcome  
15 of the construction, expansion, or  
16 modernization.

17 “(B) The review and approval by the Sec-  
18 retary of Defense of any activity relating to—

19 “(i) the creation, expansion, or mod-  
20 ernization of one or more facilities de-  
21 scribed in the second sentence of section  
22 9903(a)(1); or

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

24 “(C) Any activity relating to the construc-  
25 tion, expansion, or modernization of a facility

1           for the national semiconductor technology cen-  
2           ter described in section 9906(c).

3           “(D) Any activity relating to the construc-  
4           tion, expansion, or modernization of a facility  
5           used to carry out the National Advanced Pack-  
6           aging Manufacturing Program under section  
7           9906(d).

8           “(2) SAVINGS CLAUSE.—Nothing in this sub-  
9           section may be construed as altering whether an ac-  
10          tivity described in any of subparagraphs (A) through  
11          (D) of paragraph (1) is considered to be a major  
12          Federal action under NEPA for a reason other than  
13          that the activity is eligible for funding provided  
14          under this title.

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

17                 “(1) IN GENERAL.—With respect to a covered  
18                 activity that is a major Federal action under NEPA,  
19                 the Department of Commerce shall serve as the lead  
20                 Federal agency with respect to that covered activity  
21                 under NEPA.

22                 “(2) COOPERATING AGENCY.—The Secretary  
23                 may designate any Federal, State, Tribal, or local  
24                 agency as a cooperating agency with respect to a

1 covered activity described in paragraph (1), if the  
2 applicable agency has—

3 “(A) the jurisdiction to issue an authoriza-  
4 tion or take action for or relating to that cov-  
5 ered activity; or

6 “(B) special expertise with respect to that  
7 covered activity.

8 “(3) ENVIRONMENTAL DOCUMENTS.—

9 “(A) SINGLE DOCUMENT.—All authoriza-  
10 tions relating to a covered activity may rely on  
11 a single environmental document and joint  
12 record of decision prepared by the Department  
13 of Commerce for the purposes of NEPA.

14 “(B) INCLUSION.—An environmental docu-  
15 ment and joint record of decision described in  
16 subparagraph (A) shall—

17 “(i) rely on any comments, analysis,  
18 proposals, or documentation developed by  
19 cooperating agencies designated under  
20 paragraph (2); and

21 “(ii) provide all authorizations nec-  
22 essary for the applicable covered activity as  
23 if any cooperating agency designated under  
24 paragraph (2) had issued an environmental  
25 document and joint record of decision.

1 “(e) ADOPTION OF CATEGORICAL EXCLUSIONS.—

2 “(1) DEFINITION.—In this subsection, the term  
3 ‘covered agencies’ means—

4 “(A) the Department of Agriculture;

5 “(B) the Department of Defense;

6 “(C) the Department of Energy;

7 “(D) the Department of the Interior;

8 “(E) the Department of Transportation;

9 “(F) the National Science Foundation; and

10 “(G) any other Federal agency that has  
11 participated in an environmental review process  
12 for an activity that is eligible for financial as-  
13 sistance under this title (or for any similar ac-  
14 tivity).

15 “(2) INCORPORATION OF CATEGORICAL EXCLU-  
16 SIONS.—The Secretary shall incorporate each of the  
17 following categorical exclusions as if the categorical  
18 exclusion had been adopted by the Secretary pursu-  
19 ant to section 1507.3 of title 40, Code of Federal  
20 Regulations, or any successor regulation:

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          “(G) Any other categorical exclusion  
23          adopted by the head of one of the covered agen-  
24          cies that the Secretary determines—

1 “(i) designates an activity that is  
2 similar to a covered activity as categori-  
3 cally excluded from the requirements of  
4 NEPA; and

5 “(ii) would accelerate the completion  
6 of a covered activity if the categorical ex-  
7 clusion were available to the Secretary.

8 “(3) SCOPE OF REVIEW.—The application of  
9 any categorical exclusion incorporated under para-  
10 graph (2) shall not be subject to review for extraor-  
11 dinary circumstances under section 1507.3(e)(2)(ii)  
12 of title 40, Code of Federal Regulations, or any suc-  
13 cessor regulation.

14 “(f) PROGRAMMATIC ENVIRONMENTAL REVIEWS.—

15 “(1) IDENTIFICATION AND DEVELOPMENT OF  
16 ENVIRONMENTAL REVIEWS.—Not later than 1 year  
17 after the date of enactment of this subsection, the  
18 Secretary, in consultation with the Chair of the  
19 Council on Environmental Quality, shall—

20 “(A) identify covered activities that may be  
21 subject to environmental reviews under NEPA;  
22 and

23 “(B) where appropriate, develop pro-  
24 grammatic environmental reviews under NEPA



1 with respect to the covered activities described  
2 in subparagraph (A).

3 “(2) AUTHORITY.—In providing Federal finan-  
4 cial assistance to a covered entity under this title,  
5 the Secretary shall rely on relevant decisions, anal-  
6 yses, commitments, and procedures identified in any  
7 final programmatic environmental review developed  
8 under paragraph (1), without the need for further  
9 analysis or public review under NEPA.

10 “(g) 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          “(h) NEPA ASSIGNMENT.—

19          “(1) ASSUMPTION OF RESPONSIBILITY.—

20                  “(A) WRITTEN AGREEMENT.—

21                          “(i) IN GENERAL.—Subject to the  
22                          other provisions of this section, with the  
23                          written agreement of the Secretary and a  
24                          State, which may be in the form of a  
25                          memorandum of understanding, the Sec-

1           retary may assign, and the State may as-  
2           sume, the responsibilities of the Secretary  
3           with respect to one or more covered activi-  
4           ties within the State under NEPA.

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

8                   “(I) be executed by the governor  
9                   of the State;

10                   “(II) provide that the State—

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

15                           “(bb) expressly consents, on  
16                           behalf of the State, to accept the  
17                           jurisdiction of the courts of the  
18                           United States for compliance  
19                           with, discharge of, and enforce-  
20                           ment of any responsibility of the  
21                           Secretary assumed by the State;

22                           “(cc) certifies that there are  
23                           laws of the State, including regu-  
24                           lations, in effect that—

1                   “(AA) authorize the  
2                   State to take the actions  
3                   necessary to carry out the  
4                   responsibilities being as-  
5                   sumed by the State; and

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

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

21                  “(III) require the State to pro-  
22                  vide to the Secretary any information  
23                  that the Secretary reasonably con-  
24                  siders necessary to ensure that the  
25                  State is adequately carrying out the

1 responsibilities being assumed by the  
2 State; and

3 “(IV) be renewable.

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

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

19 “(D) FEDERAL RESPONSIBILITY.—Any re-  
20 sponsibility of the Secretary not explicitly as-  
21 sumed by the State by written agreement under  
22 this subsection shall remain the responsibility of  
23 the Secretary.

24 “(E) NO EFFECT ON AUTHORITY.—Noth-  
25 ing in this subsection preempts or interferes

1 with any power, jurisdiction, responsibility, or  
2 authority of an agency, other than the Depart-  
3 ment of Commerce, under applicable law (in-  
4 cluding regulations) with respect to a project.

5 “(2) STATE PARTICIPATION.—The Secretary  
6 shall develop an application for a State to assume  
7 responsibility under paragraph (1), at such a time  
8 and containing such information as the Secretary  
9 determines appropriate.

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

13 “(A) the Secretary determines that the  
14 State has the capability, including financial and  
15 personnel, to assume the responsibility; and

16 “(B) the Secretary determines, in the sole  
17 discretion of the Secretary, that the laws and  
18 regulations of the State in which the applicable  
19 facility is or will be located are not less strin-  
20 gent than the requirements under NEPA.

21 “(4) LIMITATIONS ON AGREEMENTS.—Nothing  
22 in this subsection permits a State to assume any  
23 rulemaking authority of the Secretary under any  
24 Federal law.

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

7                   “(A) conduct annual audits for each year  
8                   of State participation;

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

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

19           “(i) JUDICIAL REVIEW.—

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

24                   “(2) EFFICIENCY OF CLAIMS.—

1           “(A) STATUTE OF LIMITATIONS.—Not-  
2           withstanding any other provision of law, and ex-  
3           cept as provided in subparagraph (B), a claim  
4           arising under Federal law seeking judicial re-  
5           view of Federal financial assistance provided  
6           under this title, or with respect to any author-  
7           ization issued or denied under NEPA by the  
8           Secretary for a covered activity, shall be barred  
9           unless the claim is filed not later than 150 days  
10          after the date on which the Secretary publishes  
11          a notice in the Federal Register announcing  
12          that, as applicable—

13                   “(i) the Secretary has approved the  
14                   application for such Federal financial as-  
15                   sistance;

16                   “(ii) the Secretary has issued that au-  
17                   thorization; or

18                   “(iii) the Secretary has denied that  
19                   authorization.

20          “(B) EXCEPTION.—Subparagraph (A)  
21          shall not apply if a shorter deadline than the  
22          applicable deadline under that subparagraph is  
23          specified in the Federal law under which judi-  
24          cial review is allowed.



1       “(j) USE OF APPROPRIATED FUNDS.—To carry out  
2 the activities under subsections (e) through (h), the Sec-  
3 retary may use the amounts made available to the Sec-  
4 retary under section 102(a)(2)(B)(ii) of the CHIPS Act  
5 of 2022 (15 U.S.C. 4651 note).

6       “(k) DEFINITIONS.—In this section:

7           “(1) COVERED ACTIVITY.—The term ‘covered  
8 activity’ means any activity relating to the construc-  
9 tion, expansion, or modernization of a facility, the  
10 investment in which is eligible for Federal financial  
11 assistance under section 9902.

12           “(2) NEPA.—The term ‘NEPA’ means the Na-  
13 tional Environmental Policy Act of 1969 (42 U.S.C.  
14 4321 et seq.).”.

