

Mark Kelly

AMENDMENT NO. _____ Calendar No. _____

Purpose: 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.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

S. 2226

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GPO: 2022 50-123 (mac)

AMENDMENT intended to be proposed by Mr. KELLY (for himself, Mr. CRUZ, Mr. YOUNG, Mr. HAGERTY, Mr. BROWN, Mr. BUDD, Ms. SINEMA, and Mr. HEINRICH)

Viz:

- 1 At the appropriate place, insert the following:
- 2 **SEC. ____ . SEMICONDUCTOR PROGRAM.**
- 3 Title XCIX of division H of the William M. (Mac)
- 4 Thornberry National Defense Authorization Act for Fiscal
- 5 Year 2021 (15 U.S.C. 4651 et seq.) is amended—
- 6 (1) in section 9902 (15 U.S.C. 4652)—
- 7 (A) by redesignating subsections (h) and
- 8 (i) as subsections (i) and (j), respectively; and

1 (B) by inserting after subsection (g) the
2 following:

3 “(h) AUTHORITY RELATING TO ENVIRONMENTAL
4 REVIEW.—

5 “(1) IN GENERAL.—Notwithstanding any other
6 provision of law, the provision by the Secretary of
7 Federal financial assistance for a project described
8 in this section that satisfies the requirements under
9 subsection (a)(2)(C)(i) of this section shall not be
10 considered to be a major Federal action under
11 NEPA or an undertaking for the purposes of divi-
12 sion A of subtitle III of title 54, United States Code,
13 if—

14 “(A) the activity described in the applica-
15 tion for that project has commenced not later
16 than 1 year after the date of enactment of the
17 National Defense Authorization Act for Fiscal
18 Year 2024;

19 “(B) the Federal financial assistance pro-
20 vided is in the form of a loan or loan guarantee;
21 or

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

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

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

12 “(e) LEAD FEDERAL AGENCY AND COOPERATING
13 AGENCIES.—

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

17 “(2) OPTION TO SERVE AS LEAD AGENCY.—
18 With respect to a covered activity that is a major
19 Federal action under NEPA, and with respect to
20 which the Department of Commerce is authorized or
21 required by law to issue an authorization or take ac-
22 tion for or relating to that covered activity, the De-
23 partment of Commerce shall have the first right to
24 serve as the lead agency with respect to that covered
25 activity under NEPA.

1 “(d) CATEGORICAL EXCLUSIONS.—

2 “(1) ESTABLISHMENT OF CATEGORICAL EXCLU-
3 SIONS.—Each of the following categorical exclusions
4 is established for the National Institute of Standards
5 and Technology with respect to a covered activity
6 and, beginning on the date of enactment of this sub-
7 section, is available for use by the Secretary with re-
8 spect to a covered activity:

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

16 “(B) Categorical exclusion A9 in Appendix
17 A to subpart D of part 1021 of title 10, Code
18 of Federal Regulations, or any successor regula-
19 tion.

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

24 “(D) The categorical exclusions described
25 in paragraphs (4) and (13) of section 50.19(b)

1 of title 24, Code of Federal Regulations, or any
2 successor regulation.

3 “(E) Categorical exclusion (e)(1) in Appen-
4 dix B to part 651 of title 32, Code of Federal
5 Regulations, or any successor regulation.

6 “(F) Categorical exclusions A2.3.8 and
7 A2.3.14 in Appendix B to part 989 of title 32,
8 Code of Federal Regulations, or any successor
9 regulation.

10 “(2) ADDITIONAL CATEGORICAL EXCLU-
11 SIONS.—Notwithstanding any other provision of law,
12 each of the following shall be treated as a category
13 of action categorically excluded from the require-
14 ments relating to environmental assessments and en-
15 vironmental impact statements under section 1501.4
16 of title 40, Code of Federal Regulations, or any suc-
17 cessor regulation:

18 “(A) The provision by the Secretary of any
19 Federal financial assistance for a project de-
20 scribed in section 9902, if the facility that is
21 the subject of the project is on or adjacent to
22 a site—

23 “(i) that is owned or leased by the
24 covered entity to which Federal financial
25 assistance is provided for that project; and

1 “(ii) on which, as of the date on which
2 the Secretary provides that Federal finan-
3 cial assistance, substantially similar con-
4 struction, expansion, or modernization is
5 being or has been carried out, such that
6 the facility would not more than double ex-
7 isting developed acreage or on-site sup-
8 porting infrastructure.

9 “(B) The provision by the Secretary of De-
10 fense of any Federal financial assistance relat-
11 ing to—

12 “(i) the creation, expansion, or mod-
13 ernization of one or more facilities de-
14 scribed in the second sentence of section
15 9903(a)(1); or

16 “(ii) carrying out section 9903(b), as
17 in effect on the date of enactment of this
18 subsection.

19 “(C) Any activity undertaken by the Sec-
20 retary relating to carrying out section 9906, as
21 in effect on the date of enactment of this sub-
22 section.

23 “(e) INCORPORATION OF PRIOR PLANNING DECI-
24 SIONS.—

1 “(1) DEFINITION.—In this subsection, the term
2 ‘prior studies and decisions’ means baseline data,
3 planning documents, studies, analyses, decisions,
4 and documentation that a Federal agency has com-
5 pleted for a project (or that have been completed
6 under the laws and procedures of a State or Indian
7 Tribe), including for determining the reasonable
8 range of alternatives for that project.

9 “(2) RELIANCE ON PRIOR STUDIES AND DECI-
10 SIONS.—In completing an environmental review
11 under NEPA for a covered activity, the Secretary
12 may consider and, as appropriate, rely on or adopt
13 prior studies and decisions, if the Secretary deter-
14 mines that—

15 “(A) those prior studies and decisions meet
16 the standards for an adequate statement, as-
17 sessment, or determination under applicable
18 procedures of the Department of Commerce im-
19 plementing the requirements of NEPA;

20 “(B) in the case of prior studies and deci-
21 sions completed under the laws and procedures
22 of a State or Indian Tribe, those laws and pro-
23 cedures are of equal or greater rigor than those
24 of each applicable Federal law, including

1 NEPA, implementing procedures of the Depart-
2 ment of Commerce; or

3 “(C) if applicable, the prior studies and de-
4 cisions are informed by other analysis or docu-
5 mentation that would have been prepared if the
6 prior studies and decisions were prepared by
7 the Secretary under NEPA.

8 “(f) DEFINITIONS.—In this section:

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

14 “(2) NEPA.—The term ‘NEPA’ means the Na-
15 tional Environmental Policy Act of 1969 (42 U.S.C.
16 4321 et seq.).”