

117TH CONGRESS
1ST SESSION

S. 3208

To establish the Office of Supply Chain Resiliency within the Department of Commerce to provide expansion support to companies and supply chains in the United States that are vulnerable to shortages and price increases, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2021

Ms. BALDWIN (for herself, Mr. BROWN, Mr. COONS, Ms. CORTEZ MASTO, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. PADILLA, Ms. ROSEN, Mr. VAN HOLLEN, Mr. WARNOCK, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To establish the Office of Supply Chain Resiliency within the Department of Commerce to provide expansion support to companies and supply chains in the United States that are vulnerable to shortages and price increases, 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 “Supply Chain Resil-

5 iency Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ASSISTANT SECRETARY.—The term “Assist-
4 ant Secretary” means the Assistant Secretary of
5 Commerce for Supply Chain Resiliency.

6 (2) CRITICAL PRODUCT.—The term “critical
7 product” means a product that is critical to the na-
8 tional security, economic security, or public health of
9 the United States.

10 (3) ELIGIBLE ENTITY.—The term “eligible enti-
11 ty”—

12 (A) means a manufacturer that—

13 (i) produces not less than 1 good at a
14 facility in the United States; and

15 (ii) is a small business concern; and

16 (B) may include a manufacturer that is
17 not a small business concern if the Secretary
18 determines that providing expansion support to
19 the manufacturer under section 4 would be in
20 the public interest.

21 (4) OFFICE.—The term “Office” means the Of-
22 fice of Supply Chain Resiliency.

23 (5) PROGRAM.—The term “Program” means
24 the Supply Chain Monitoring and Resiliency Pro-
25 gram established under section 4(a).

1 (6) SECRETARY.—The term “Secretary” means
2 the Secretary of Commerce.

3 (7) SMALL BUSINESS CONCERN.—The term
4 “small business concern” has the meaning given the
5 term in section 3 of the Small Business Act (15
6 U.S.C. 632).

7 **SEC. 3. OFFICE OF SUPPLY CHAIN RESILIENCY.**

8 (a) ESTABLISHMENT.—The Secretary shall establish
9 within the Department of Commerce the Office of Supply
10 Chain Resiliency.

11 (b) ASSISTANT SECRETARY.—The Office shall be
12 headed by the Assistant Secretary of Commerce for Sup-
13 ply Chain Resiliency, who shall be appointed by the Sec-
14 retary.

15 (c) RESPONSIBILITIES OF THE ASSISTANT SEC-
16 RETARY.—The Assistant Secretary shall—

17 (1) administer the Supply Chain Monitoring
18 and Resiliency Program;

19 (2) hire each employee of the Office; and

20 (3) issue regulations necessary to carry out this
21 Act.

1 **SEC. 4. SUPPLY CHAIN MONITORING AND RESILIENCY PRO-**
2 **GRAM.**

3 (a) ESTABLISHMENT.—The Assistant Secretary shall
4 establish within the Office the Supply Chain Resiliency
5 Program.

6 (b) OBJECTIVES.—The objectives of the Program
7 shall be to—

8 (1) monitor and research interstate commerce
9 and supply chains in the United States to identify
10 vulnerabilities in supply chains that—

11 (A) produce products that are critical to
12 the national security, economic security, and
13 public health of the United States; and

14 (B) produce products in emerging tech-
15 nologies; and

16 (2) improve the supply in the United States of
17 critical products in supply chains identified under
18 paragraph (1) by providing expansion support to eli-
19 gible entities.

20 (c) SUPPLY CHAIN RESEARCH.—

21 (1) IN GENERAL.—Under the Program, the As-
22 sistant Secretary shall conduct research and analysis
23 to identify supply chains that are—

24 (A) experiencing supply shortages; or

25 (B) vulnerable to experiencing supply
26 shortages.

1 (2) SUPPLY CHAIN VULNERABILITIES.—For the
2 purpose of paragraph (1), a supply chain that is ex-
3 periencing a supply shortage or vulnerable to experi-
4 encing a supply shortage shall include a supply chain
5 within which there is—

6 (A) a critical product—

7 (i) of which there is a supply shortage
8 or price spike due to a limited supply of
9 the critical product; or

10 (ii) that is in danger of experiencing
11 a supply shortage or price spike due to a
12 limited supply of the product;

13 (B) a manufacturer in the United States
14 that is the sole supplier, or that is in danger of
15 becoming the sole supplier, in the supply chain
16 of a critical product;

17 (C) a manufacturer in the United States of
18 a critical product that cannot make investments
19 in property, a plant, and equipment necessary
20 to expand the production of the critical product
21 due to a lack of access to low-cost, long-term
22 capital;

23 (D) a manufacturer in the United States
24 that has reduced output of a critical product
25 because—

1 (i) the necessary inputs to manufac-
2 ture the critical product are unavailable
3 due to a supply shortage or transportation
4 disruption;

5 (ii) the cost of necessary inputs to
6 manufacture the critical product have in-
7 creased because of a supply shortage; or

8 (iii) the critical product cannot be de-
9 livered due to a transportation disruption;
10 and

11 (E) any other supply chain disruption
12 identified by the Assistant Secretary that re-
13 sults in, or could result in, increased prices and
14 supply shortages for a critical product.

15 (3) METHODS.—In conducting the research and
16 analysis required under paragraph (1), the Assistant
17 Secretary may—

18 (A) conduct surveys of industry;

19 (B) analyze market data, including con-
20 sumer price indices and the components of
21 those indices; and

22 (C) convene meetings with manufacturers,
23 suppliers, consumers, retailers, labor organiza-
24 tions, and other constituents of supply chains in
25 the United States.

1 (4) SUPPLY SHOCK STRESS TESTS.—The As-
 2 sistant Secretary may conduct stress tests to simu-
 3 late the impact of hypothetical supply chain shocks
 4 on—

5 (A) supply chains for critical products in
 6 the United States; and

7 (B) manufacturers in the United States
 8 that comprise the supply chains described in
 9 subparagraph (A) by—

10 (i) producing critical products;

11 (ii) supplying inputs to critical prod-
 12 ucts; or

13 (iii) buying critical products as an
 14 input for the manufactured goods of the
 15 manufacturer.

16 (5) ELIGIBILITY FOR EXPANSION SUPPORT.—In
 17 identifying entities that may be eligible to receive ex-
 18 pansion support under subsection (d)(1), the Assist-
 19 ant Secretary—

20 (A) shall use data gathered from the re-
 21 search conducted under paragraph (1); and

22 (B) may use results of the stress tests con-
 23 ducted under paragraph (4).

24 (d) SUPPLY CHAIN RESILIENCY EXPANSION SUP-
 25 PORT.—

1 (1) IN GENERAL.—Under the Program, the As-
2 sistant Secretary shall provide expansion support to
3 eligible entities in the form of—

4 (A) loans;

5 (B) loan guaranties on private markets;

6 and

7 (C) grants.

8 (2) USE OF EXPANSION SUPPORT.—An eligible
9 entity that receives expansion support under para-
10 graph (1) shall use the expansion support to expand
11 production of a product that is part of a supply
12 chain identified under subsection (c)(1).

13 (3) TERMS AND CONDITIONS OF EXPANSION
14 SUPPORT.—

15 (A) IN GENERAL.—An eligible entity that
16 receives expansion support under paragraph (1)
17 shall agree to—

18 (i) maintain production of a critical
19 product in the United States;

20 (ii) comply with the labor standards
21 required under subparagraph (B); and

22 (iii) any other terms or conditions the
23 Assistant Secretary may require in order
24 to achieve the objectives of the Program.

1 (B) LABOR-MANAGEMENT COOPERA-
2 TION.—

3 (i) IN GENERAL.—Notwithstanding
4 any other provision of law, including the
5 National Labor Relations Act (29 U.S.C.
6 151 et seq.), this subparagraph shall apply
7 with respect to any recipient of funding
8 under this section who is an employer and
9 any labor organization who represents or
10 seeks to represent any employees or only
11 those employees who perform or will per-
12 form work funded under this section.

13 (ii) RECOGNITION.—Any employer re-
14 ceiving funds under this section shall rec-
15 ognize for purposes of collective bargaining
16 a labor organization that demonstrates
17 that a majority of the employees in a unit
18 appropriate for such purposes and who
19 perform or will perform work funded under
20 this section have signed valid authoriza-
21 tions designating the labor organization as
22 their collective bargaining representative
23 and that no other labor organization is cer-
24 tified or recognized pursuant to section 9
25 of the National Labor Relations Act (29

1 U.S.C. 159) as the exclusive representative
2 of any of the employees in the unit who
3 perform or will perform such work. Upon
4 such showing of majority status, the em-
5 ployer shall notify the labor organization
6 and the National Labor Relations Board
7 that the employer—

8 (I) has determined that the labor
9 organization represents a majority of
10 the employees in such unit who per-
11 form or will perform such work; and

12 (II) is recognizing the labor orga-
13 nization as the exclusive representa-
14 tive of the employees in such unit who
15 perform or will perform such work for
16 the purposes of collective bargaining
17 pursuant to that section.

18 (iii) DISPUTE RESOLUTION AND UNIT
19 CERTIFICATION.—If a dispute over major-
20 ity status or the appropriateness of the
21 unit described in clause (ii) arise between
22 the employer and the labor organization,
23 either party may request that the National
24 Labor Relations Board investigate and re-
25 solve the dispute. If the Board finds that

1 a majority of the employees in a unit ap-
2 propriate for purposes of collective bar-
3 gaining who perform or will perform work
4 funded under this section has signed valid
5 authorizations designating the labor orga-
6 nization as their representative for such
7 purposes and that no other individual or
8 labor organization is certified or recognized
9 as the exclusive representative of any of
10 the employees in the unit who perform or
11 will perform such work for such purposes,
12 the Board shall not direct an election but
13 shall certify the labor organization as the
14 representative described in section 9(a) of
15 the National Labor Relations Act (29
16 U.S.C. 159(a)).

17 (iv) MEETINGS AND COLLECTIVE BAR-
18 GAINING AGREEMENTS.—Not later than 10
19 days after an employer receiving funding
20 under this section receives a written re-
21 quest for collective bargaining from a rec-
22 ognized or certified labor organization rep-
23 resenting employees who perform or will
24 perform work funded under this section, or
25 within such period as the parties agree

1 upon, the labor organization and employer
 2 shall meet and commence to bargain collec-
 3 tively and shall make every reasonable ef-
 4 fort to conclude and sign a collective bar-
 5 gaining agreement.

6 (v) MEDIATION AND CONCILIATION.—

7 If, after the expiration of the 90-day pe-
 8 riod beginning on the date on which collec-
 9 tive bargaining is commenced under clause
 10 (iv), or such additional period as the par-
 11 ties may agree upon, the parties have
 12 failed to reach an agreement, either party
 13 may notify the Federal Mediation and
 14 Conciliation Service (referred to in this
 15 subparagraph as the “Service”) of the ex-
 16 istence of a dispute and request mediation.
 17 Whenever such a request is received, it
 18 shall be the duty of the Service promptly
 19 to put itself in communication with the
 20 parties and to use its best efforts, by medi-
 21 ation and conciliation, to bring them to
 22 agreement.

23 (vi) TRIPARTITE ARBITRATION.—

24 (I) IN GENERAL.—If, after the
 25 expiration of the 30-day period begin-

1 ning on the date on which the request
2 for mediation is made under clause
3 (v), or such additional period as the
4 parties may agree upon, the Service is
5 not able to bring the parties to agree-
6 ment by mediation and conciliation,
7 the Service shall refer the dispute to
8 a tripartite arbitration panel estab-
9 lished in accordance with such regula-
10 tions as may be prescribed by the
11 Service.

12 (II) MEMBERS.—A tripartite ar-
13 bitration panel established under this
14 clause with respect to a dispute shall
15 be composed of 1 member selected by
16 the labor organization, 1 member se-
17 lected by the employer, and 1 neutral
18 member mutually agreed to by the
19 labor organization and the employer.
20 Each such member shall be selected
21 not later than 14 days after the expi-
22 ration of the 30-day period described
23 in subclause (I) with respect to such
24 dispute. Any member not so selected
25 by the date that is 14 days after the

1 expiration of such period shall be se-
2 lected by the Service.

3 (III) DECISIONS.—A majority of
4 a tripartite arbitration panel estab-
5 lished under this clause with respect
6 to a dispute shall render a decision
7 settling the dispute as soon as prac-
8 ticable, and (absent extraordinary cir-
9 cumstances or by agreement or per-
10 mission of the parties) not later than
11 120 days after the establishment of
12 such panel. Such a decision shall be
13 binding upon the parties for a period
14 of 2 years, unless amended during
15 such period by written consent of the
16 parties. Such decision shall be based
17 on—

18 (aa) the financial status and
19 prospects of the employer;

20 (bb) the size and type of the
21 operations and business of the
22 employer;

23 (cc) the cost of living of the
24 employees;

1 (dd) the ability of the em-
 2 ployees to sustain themselves,
 3 their families, and their depend-
 4 ents on the wages and benefits
 5 they earn from the employer; and

6 (ee) the wages and benefits
 7 other employers in the same busi-
 8 ness provide their employees.

9 (vii) CONTRACTORS AND SUB-
 10 CONTRACTORS.—Any employer receiving
 11 funds under this section to procure goods
 12 or services shall require a contractor or
 13 subcontractor, whose employees perform or
 14 will perform work funded under this sec-
 15 tion, that contracts or subcontracts with
 16 the employer to comply with the require-
 17 ments set forth in clauses (i) through (vi).

18 (viii) DEFINITIONS.—In this subpara-
 19 graph, the terms “employee”, “employer”,
 20 and “labor organization” have the mean-
 21 ings given the terms in section 2 of the
 22 National Labor Relations Act (29 U.S.C.
 23 152).

24 (C) LIMITATION OF FUNDS.—Funds ap-
 25 propriated to carry out this Act shall not be

1 used to assist, promote, or deter organizing of
2 labor organizations.

3 (e) SUPPLY CHAIN RESILIENCY FUND.—

4 (1) ESTABLISHMENT.—There is established a
5 Supply Chain Resiliency Fund for the purpose of
6 funding loans, loan guaranties, and grants under the
7 Program.

8 (2) FINANCIAL OPERATIONS OF THE SUPPLY
9 CHAIN RESILIENCY FUND.—

10 (A) IN GENERAL.—The Assistant Sec-
11 retary shall use the funds in the Supply Chain
12 Resiliency Fund to finance loans, loan guaran-
13 ties, and grants to eligible entities under the
14 Program.

15 (B) RESERVE RATIO.—The Assistant Sec-
16 retary shall not lend in excess of 10 times the
17 capital in reserve in the Supply Chain Resil-
18 iency Fund.

19 (C) INTEREST RATE.—The Assistant Sec-
20 retary shall establish interest rates for loans,
21 loan guaranties, and other instruments as the
22 Secretary considers appropriate, taking into ac-
23 count—

24 (i) the objectives of the Program de-
25 scribed in section 3(b); and

1 (ii) the cost of capital experienced by
2 foreign competitors to the beneficiaries of
3 the support provided under this section.

4 (f) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Assistant Sec-
6 retary \$5,000,000,000 for each of fiscal years 2023
7 through 2027 to carry out the Program, of which
8 \$4,000,000,000 shall be deposited into the Supply Chain
9 Resiliency Fund established under subsection (e).

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