



Legislative Bulletin.....February 28, 2007

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H.R. 556—National Security Foreign Investment Reform and Strengthened Transparency Act

Summary of the Bills under Consideration Today:

Total Number of New Government Programs: 0

Total Cost of Discretionary Authorizations: \$40 million over four years

Effect on Revenue: \$0

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 0

Total New Private Sector Mandates: 0

Number of *Bills* without Committee Reports: 0

Number of *Reported Bills* that Don't Cite Specific Clauses of Constitutional Authority: 0

**H.R. 556—National Security Foreign Investment Reform and Strengthened
Transparency Act (*Maloney, D-NY*)**

Order of Business: The bill is scheduled to be considered on Wednesday, February 28th, subject to a modified open rule, which will allow any germane amendment to be offered, as long as it is pre-printed in the *Congressional Record* by close of business on Tuesday, February 27th. For instructions on how to pre-print an amendment, visit this Rules Committee webpage: http://www.rules.house.gov/announcement_details.aspx?NewsID=2516.

H.R. 556 is nearly identical to H.R. 5337 from the 109th Congress, a Rep. Roy Blunt bill that passed 424-0 on July 26, 2006: <http://clerk.house.gov/cgi-bin/vote.asp?year=2006&rollnumber=404>.

Summary: H.R. 556 would establish in law the Committee on Foreign Investment in the United States (CFIUS), by amending the Defense Production Act of 1950 (50 U.S.C App. 2170). CFIUS, established by Executive Order 11858 in 1975 by President Ford, is the federal committee that governs foreign direct investment (FDI) in the U.S., including acquisitions of U.S. companies by foreign entities. H.R. 556 would formalize and expand the review and investigation process under which CFIUS currently operates. The specific provisions of H.R. 556 are summarized below:

- Defines various terms in law relating to the operation of CFIUS and foreign investments, such as: covered transaction (any merger, acquisition, or takeover by or with a foreign person that could result in foreign control of any person engaged in U.S. interstate commerce), foreign government-controlled transaction (a covered transaction involving a foreign government or entity controlled by a foreign government), and national security (construed to include homeland security and its application to critical infrastructure);
- Directs CFIUS to review any proposed foreign merger or acquisition (covered transaction) of a U.S. entity, upon written notification or a motion made by a CFIUS member (discussed below), to determine the effects of the transaction on the national security of the United States;
- Requires CFIUS to conduct an investigation of the relevant transaction, if it is determined that a covered transaction is foreign government-controlled;
- Authorizes any party to a covered transaction to initiate a review of the transaction by submitting a written notice to the CFIUS chairman;
- Authorizes the President or any CFIUS member to initiate a review of any covered transaction (including transactions that have previously been reviewed, under certain circumstances); requires a review to be completed within 30 days of receipt of the written notice;
- Requires the President, acting through CFIUS, to conduct an investigation of the effects of a transaction on the national security of the U.S. ***if during a covered transaction review it is determined that:***
 - the transaction threatens to impair the national security of the U.S. and the threat has not been mitigated prior to completion of the review (or if the transaction is foreign-government-controlled);
 - a roll-call vote within CFIUS on a covered transaction results in at least one vote by a CFIUS member against approving the transaction; or
 - the National Intelligence Director identifies “particularly complex intelligence concerns that could threaten to impair the national security of the U.S.” and CFIUS members were not able to agree upon satisfactory measures to mitigate those threats;

- Requires the above investigation to be completed within 45 days, with certain exceptions and requirements;
- Requires that a covered transaction may not be approved (i.e. review or investigation treated as final or complete) until the review/investigation report and findings are approved by a majority of CFIUS members in a roll-call vote and are signed by the Secretary of the Treasury, Homeland Security, and Commerce Departments; the President, as well as the CFIUS Chair and Vice-Chair would have to sign the findings and report regarding any foreign-government-controlled transaction for which a roll-call vote yields at least one CFIUS member against approval;
- Prevents a covered transaction involving a person of a country that has repeatedly provided support for international terrorism (or the government of such country) from being approved;
- States that the National Intelligence Director may neither be a member of CFIUS nor serve any policy role, other than to provide analysis on covered transactions;
- Defines CFIUS membership to be comprised of the following 14 people (or their designees): the Secretaries of the Treasury, Homeland Security, Commerce, Energy, State, and Defense Departments, the Attorney General, Chairman of the Council of Economic Advisors, the U.S. Trade Representative, Director of the Office of Management and Budget, Director of the National Economic Council, Director of the Office of Science and Technology Policy, the President's Assistant for National Security Affairs, and any other designee of the President from the Executive Office of the President; requires consultation with other federal departments, agencies, and independent entities, as appropriate;
- Designates the Treasury Secretary as the Chairperson of CFIUS, and the Commerce and Homeland Security Secretaries as the Vice Chairpersons;
- Authorizes \$10 million for each of fiscal years 2008-2011 for the Secretary of the Treasury to operate CFIUS;
- Implements a non-waiver of U.S. sovereign immunity, declaring that the U.S. is not liable for losses or expenses incurred by a party to a covered transaction, if the party did not comply with the defined CFIUS review process, including failure to submit a written notice of the transaction, or failure to wait until the completion of a review or investigation before consummating the transaction; that is, submitting notice to CFIUS remains voluntary, but if the U.S. has to take action to dissolve, suspend, or modify a transaction, the U.S. is not liable for costs incurred by the affected parties;
- Allows CFIUS to negotiate, enter into or impose, and enforce any agreement or condition with any party to a covered transaction in order to mitigate any threat to national security;

- Directs CFIUS to designate a lead agency to monitor each approved transaction (such lead agency would have to periodically report to CFIUS on the implementation of the transaction and any modifications thereto);
- Increases congressional oversight of CFIUS, including requiring CFIUS to submit reports to Senate and House leadership and the relevant congressional committees on each completed review/investigation of a covered transaction, directing CFIUS to provide classified briefings to Congress as requested, and instructing CFIUS to submit to Congress an annual report containing:
 - A list of all notices filed and all reviews or investigations completed during the period with basic information on each party to the transaction, the nature of the business activities or products of all pertinent persons, along with information about the status of the review or investigation, information on any withdrawal from the process, any roll-call votes by CFIUS, any extension of time for any investigation, and any presidential decision or action under this section;
 - Specific, cumulative, and, as appropriate, trend information on the numbers of filings, investigations, withdrawals, and presidential decisions or actions under this section;
 - Cumulative and, as appropriate, trend information on the business sectors involved in the filings which have been made, and the countries from which the investments have originated;
 - Information on whether companies that withdrew notices from CFIUS have later re-filed such notices, or, alternatively, abandoned the transaction;
 - The types of security arrangements and conditions CFIUS has used to mitigate national security concerns about a transaction; and
 - A detailed discussion of all perceived adverse effects of covered transactions on the national security or critical infrastructure of the United States that CFIUS will take into account in its deliberations during the period before delivery of the next such report, to the extent possible;
- Directs the President to include, as part of the annual CFIUS report to Congress, an evaluation of whether:
 - there is credible evidence of a coordinated strategy by one or more countries or companies to acquire U.S. companies involved in research, development, or production of critical technologies (technologies essential to for which the U.S. is a leading producer; and
 - there are industrial espionage activities directed or directly assisted by foreign governments against private U.S. companies aimed at obtaining commercial secrets related to critical technologies;
- Directs the Secretary of the Treasury, in consultation with the Secretaries of State and Commerce, to study and report to Congress within 150 days of this bill's enactment on investments in U.S. critical infrastructure and industries affecting national security by:
 - foreign governments, entities controlled by or acting on behalf of a foreign government, or persons of foreign countries which comply with any boycott of Israel; or

--foreign governments, entities controlled by or acting on behalf of a foreign government, or persons of foreign countries which do not ban organizations designated by the Secretary of State as foreign terrorist organizations;

- Clarifies that parties to a covered transaction must certify that the information they file with CFIUS is complete and correct;
- Directs the President to issue regulations to carry out this legislation and specifies that, to the extent possible, the regulations minimize paperwork burdens and be made to coordinate with existing reporting requirements;
- Clarifies that no portion of this bill should be construed as affecting or altering other existing law, regulation, authority, process, investigation, enforcement measure, or review; and
- Makes the provisions of this legislation effective 90 days after enactment.

Additional Information: CFIUS is a federal interagency committee currently comprised of 12 members representing major agencies and departments (including Treasury, Justice, Commerce and Homeland Security Departments) within the federal executive branch. As defined by the Treasury Department website, CFIUS serves the President in overseeing the national security implications of foreign investment in the economy. For summary information on the role of CFIUS, please visit this Treasury website: <http://www.treasury.gov/offices/international-affairs/exon-florio/>. For additional information on the history of CFIUS, please view this recent CRS Report: <http://www.congress.gov/erp/rl/pdf/RL33388.pdf>.

RSC Bonus Fact: Four transactions submitted to CFIUS have required investigations since September 11, 2001—more than the previous 10 years combined.
http://www.ofii.org/facts_figures/cfius.cfm

Committee Action: On January 18, 2007, H.R. 556 was referred to the Financial Services, the Energy & Commerce, and the Foreign Affairs Committees. On February 14, 2007, the Financial Services Committee marked up and ordered the bill reported to the full House by voice vote. The other two committees discharged the bill.

Administration Position: A Statement of Administration Policy is unavailable.

Cost to Taxpayers: CBO confirms that H.R. 556 would authorize \$40 million over the FY2008-FY2011 period. In addition, CBO “expects that complying with the bill’s provisions would increase the administrative expenses of some federal agencies, but because of the confidential nature of the CFIUS review process, the number of agencies involved, and the confidential information needed to prepare an estimate for some provisions of the legislation, CBO cannot determine a precise estimate of the likely total costs of this bill.”

Does the Bill Expand the Size and Scope of the Federal Government?: CFIUS currently exists and operates under an Executive Order. This bill codifies its functions into law and expands its reach and Congress' oversight function.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: An earmarks/revenue benefits statement required under House Rule XXI, Clause 9(a) was not available at press time.

Constitutional Authority: The Financial Services Committee, in House Report 110-24, cites constitutional authority in Article 1, Section 8, Clauses 1 (the congressional power to promote the general welfare of the United States) and 3 (the congressional power to regulate interstate commerce).

Outside Organizations: A variety of business organizations have encouraged the passage of this bill without amendment.

RSC Staff Contact: Paul S. Teller, paul.teller@mail.house.gov, (202) 226-9718