

109TH CONGRESS
2^D SESSION

S. 2335

To clarify the role of the Director of National Intelligence, amend the Defense Production Act of 1950 to clarify the notification and investigation requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2006

Mr. BAYH introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To clarify the role of the Director of National Intelligence, amend the Defense Production Act of 1950 to clarify the notification and investigation requirements, 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 “Smart and Secure For-
5 eign Investment Act”.

1 **SEC. 2. DIRECTOR OF NATIONAL INTELLIGENCE.**

2 Section 102A(a) of the National Security Act of 1947
3 (50 U.S.C 403–1(a)) is amended by adding at the end
4 the following:

5 “(3) The Director of National Intelligence shall—

6 “(A) assist the President in conducting inves-
7 tigations under section 721(b) of the Defense Pro-
8 duction Act of 1950 (50 U.S.C. App. 2170(b);

9 “(B) serve as a member of the Committee on
10 Foreign Investment in the United States (or any
11 successor committee); and

12 “(C) certify to the President and the Com-
13 mittee that there are no national security implica-
14 tions in connection with a proposed merger, acquisi-
15 tion, or takeover described in section 721(b) of the
16 Defense Production Act of 1950 before the proposed
17 merger, acquisition, or takeover is reviewed by the
18 Committee.”.

19 **SEC. 3. DEFENSE PRODUCTION ACT.**

20 (a) IN GENERAL.—Section 721 of the Defense Pro-
21 duction Act of 1950 (50 U.S.C. App. 2170) is amended—

22 (1) by redesignating subsections (g) through (k)
23 as subsections (i) and (m), respectively; and

24 (2) by inserting after subsection (f) the fol-
25 lowing:

26 “(g) NOTIFICATION AND INVESTIGATION.—

1 “(1) NOTIFICATION.—

2 “(A) IN GENERAL.—Any entity described
3 in subparagraph (B) shall notify the President
4 at least 60 days before a proposed merger, ac-
5 quisition, or takeover described in subparagraph
6 (B)(ii).

7 “(B) ENTITY DESCRIBED.—An entity de-
8 scribed in this subparagraph is an entity that—

9 “(i) is controlled by, or acting on be-
10 half of, a foreign government; and

11 “(ii) seeks to engage in a merger, ac-
12 quisition, or takeover of a United States
13 entity or any other entity that has energy
14 assets valued at \$1,000,000,000 or more
15 or that operates a critical infrastructure, if
16 that merger, acquisition, or takeover could
17 result in control of a person engaged in
18 interstate commerce in the United States
19 that could affect the national security of
20 the United States.

21 “(2) INVESTIGATION.—A mandatory investiga-
22 tion under subsection (b) shall be required in the
23 case of a merger, acquisition, or takeover described
24 in paragraph (1)(B)(ii) by an entity described in
25 paragraph (1)(B).

1 “(h) PRESIDENT’S DESIGNEE DEFINED.—In this
2 section, the term ‘President’s designee’ means the Sec-
3 retary of Commerce, the Secretary of Defense, the Sec-
4 retary of Homeland Security, the Secretary of State, the
5 Secretary of the Treasury, the Attorney General, the Di-
6 rector of National Intelligence, and appropriate employees
7 of the Executive Office of the President.”.

8 (b) NOTIFICATION.—Section 721(i) of the Defense
9 Production Act of 1950 (50 U.S. C. App. 2170(i)), as re-
10 designated by subsection (a)(1), is amended—

11 (1) by striking “The President” and inserting
12 the following: “(1) REPORT ON ACTION.—The Presi-
13 dent”; and

14 (2) by adding at the end the following:

15 “(2) REPORT ON NOTIFICATION.—The Presi-
16 dent shall immediately transmit to the Secretary of
17 the Senate and the Clerk of the House of Represent-
18 atives and to appropriate State officials written noti-
19 fication as soon as the President receives a notifica-
20 tion under subsection (b) or (g).

21 “(3) PUBLIC HEARINGS.—The President shall
22 hold public hearings on any proposed merger, acqui-
23 sition, or takeover described in subsection (b) or
24 (g)(1).”.

1 (c) FACTORS TO BE CONSIDERED.—Section 721(f)
2 of the Defense Production Act of 1950 (50 U.S.C. App.
3 2170(f)) is amended—

4 (1) by striking “and” at end of paragraph (4);

5 (2) by striking the period at the end of para-
6 graph (5) and inserting “;”; and

7 (3) by adding at the end the following:

8 “(6) the robust and expanding defense capabili-
9 ties of the country in which the acquiring entity is
10 located; and

11 “(7) the nature of the bilateral relationship of
12 the United states with the country in which the ac-
13 quiring entity is located.”.

○