

**THIRD CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 172**

As Agreed to April 26, 2024

Brief*

House Sub. for SB 172 would create the Kansas Land and Military Installation Protection Act (Act). The bill would prohibit foreign principals from countries of concern from acquiring any interest in non-residential real property located within 100 miles of the boundary of any military installation located in Kansas or an adjacent state.

The Act would not apply to a *de minimis* interest in such real property; transactions approved by the Committee of Foreign Investment in the United States (CFIUS); and foreign principals who hold a national security agreement with CFIUS or the U.S. Department of Defense.

Real Property Interest Limitation

The bill would generally prohibit any foreign principal from owning or acquiring any interest in real property located within 100 miles of any military installation's boundary in Kansas or any adjacent state. Foreign principals would be permitted to acquire such interests by devise or bequest, through the enforcement of a security interest, or through the collection of a debt.

Any foreign principal that owns or acquires any interest in real property within the 100-mile radius would be required to file registration of their ownership with the Attorney General no later than 90 days after July 1, 2024, or the date the interest is acquired; whichever is later. Registration of such property would need to include the:

- Name of the individual or entity holding such interest;
- Date of acquisition;
- Address and legal description of the real property; and
- Number of acres composing the real property.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kIRD>

Limitation Exceptions

The bill would provide a *de minimis* interest exception in such real property. The Act would also not apply to a foreign principal who registers such interest in real property in accordance with the Act, and:

- CFIUS has concluded any action related to the transaction, and the foreign principal has received a determination that the transaction does not pose an unresolved national security concern and there has been no change in control since that determination has taken place; or
- The foreign principal has a national security agreement with either CFIUS or the U.S. Department of Defense.

Divestiture of Property

All registered property would be required to be divested. A copy of all documentation showing the required divestiture would be required to be submitted to the Attorney General no later than 30 days after the divestiture's effective date.

The bill would permit a foreign principal who is subject to the Act to enter into an agreement with the Attorney General to divest such foreign principal's interest in real property no later than 360 days from entering into such agreement.

Property obtained by a foreign principal through devise or bequest, security interest enforcement, or the collection of debt would still be subject to the property limitation, reporting, and divestiture provisions of this Act.

Reporting and Enforcement

The bill would require the Attorney General to establish policies and procedures for reporting non-notified transactions. The bill would define "non-notified transactions" as any transaction involving foreign investment that is not voluntarily submitted to CFIUS for review.

The Attorney General would be required to investigate any suspected violation of the Act. The Attorney General would be allowed to commence an action in a court of competent jurisdiction to enforce the Act. In any such action, the Attorney General could seek:

- A court order directing the defendant's divestiture of the real property;
- Injunctive relief;
- Civil forfeiture of the defendant's interest in the real property; and
- Reasonable attorney fees and court costs.

Upon a determination by a court of competent jurisdiction that the defendant violated the requirements of the Act, the bill would require the defendant to divest their interest in the real property or to otherwise come into compliance with the provisions of the Act within no more than 180 days from the date of such determination. If the defendant is ordered by the court to divest their interest in the real property and the defendant acquired such interest prior to July 1, 2024, the defendant would be permitted to file a claim against the state for any reduction in sales price

of the real property caused by such court-ordered divestiture. [Note: The procedure for filing claims against the state is found in continuing law and is overseen by the Joint Committee on Special Claims Against the State.]

The bill would also update current civil asset forfeiture law to allow such property to be eligible for forfeiture.

Reporting on Foreign Investment

The bill would require the Attorney General to prepare and submit a report on any identified, non-notified transactions to CFIUS. The report would also be required to be submitted to the:

- Governor;
- Adjutant General;
- Standing Committee on Federal and State Affairs of the Senate; and
- Standing Committee on Federal and State Affairs of the House of Representatives.

On or before February 1 of each year, the Attorney General would be required to submit a report detailing the implementation of the Act and including the Attorney General's recommended amendments to the definition of any country of concern to the:

- Governor;
- Adjutant General;
- Standing Committee on Commerce, Labor and Economic Development of the House of Representatives; and
- Standing Committee on Commerce of the Senate;
- Standing Committee on Federal and State Affairs of the Senate; and
- Standing Committee on Federal and State Affairs of the House of Representatives.

The Attorney General would be required to retain copies of any documents that are submitted to CFIUS along with the required report.

On or before January 1, 2025, the Attorney General would be required to adopt rules and regulations to implement the reporting requirements listed above.

Report on Foreign Land Holdings of Real Property

On or before March 1 of each year, the bill would require Kansas State University to use available data and resources to prepare and submit a report to the Legislature and the Attorney General detailing the status and trends of all foreign land holdings of real property within the State of Kansas.

Other Provisions

The bill would allow the Fusion Center Oversight Board to adopt rules and regulations to reflect new designations or removals of foreign terrorist organizations on the federal terrorist organization list. The bill would not allow the Board to adopt any rules or regulations that would designate an organization as a foreign terrorist organization if that organization is not on the federal terrorist organization list.

[*Note:* The Fusion Center Oversight Board was established in KSA 2023 Supp. 48-3705. The Board consists of the Attorney General, Adjutant General, and an appointee of the Attorney General with expertise in critical infrastructure protection.]

The bill would prevent any foreign principal from receiving any direct benefit related to any economic development program.

The bill would also declare any provision severable from the other provisions in the event one or more provisions are held to be unconstitutional or invalid.

Definitions

Military Installation

The bill would define “military installation” as any land, buildings, or other structures owned or controlled by any division of the U.S. Department of Defense, Kansas National Guard, or any other federal or state agency that is critical to the safety and security of Kansas or the United States.

Country of Concern

The bill would define “country of concern” to mean:

- Any foreign adversary, as such term is defined by 15 CFR § 7.4, as in effect on April 1, 2024; and
- Any organization listed on the federal foreign terrorist list, except as otherwise provided by the Fusion Center Oversight Board’s rules and regulations.

The bill would exclude the Republic of China (Taiwan) from the definition.

[*Note:* Excluding terrorist organizations, the list of countries of concern would not be subject to modification by the Fusion Center Oversight Board.]

Foreign Principal

The bill would define a “foreign principal” as:

- The government or any official of the government of a country of concern;

- Any political party or any subdivision thereof, or any member of a political party of a country of concern;
- Any corporation, partnership, association, organization, or other combination of persons organized under the laws of or having its principal place of business in a country of concern. The definition would also include any subsidiary owned or wholly controlled by any such entity;
- Any agent of or any entity otherwise under the control of a country of concern;
- Any individual who is a citizen or resident in a country of concern and who is not a citizen or lawful permanent resident of the United States; or
- Any individual, entity, or combination described above that has a controlling interest in any company formed for the purpose of holding any interest in real property.

Real Property; Interest in Real Property

The bill would define “real property” as any real estate located within Kansas except real property used exclusively as a place of residence for human habitation.

The bill would define an “interest in real property” as:

- Ownership interest in any parcel of real property acquired by purchase, gift, grant, devise, bequest, or other transfer of such interest;
- Ownership or other interest in any easement or other right of egress onto or across any parcel of real property;
- Ownership or other interest in any right to any oil, gas, minerals, or water located on or under any parcel of real property; and
- Any interest or right to possess or use any parcel of real property acquired by the execution of a lease, lease-purchase, or any other form of rental agreement.

De minimis Interest in Real Property

A “*de minimis* interest” would mean any interest in real property that is:

- The result of ownership of registered securities in a publicly traded company; and
- Such ownership is:
 - Less than 10 percent of any class of registered securities or less than 10 percent of the aggregate registered securities of multiple classes of securities; or
 - A non-controlling interest in an entity that is controlled by a company that is registered with the U.S. Securities and Exchange Commission as an investment adviser under the federal Investment Advisers Act of 1940 and is not a foreign entity.

Conference Committee Action

On April 26, 2024, the third Conference Committee agreed to the provisions of House Sub. for SB 172, as amended by the House Committee on Commerce, Labor and Economic Development, and the amendments made in the second Conference Committee Report, as described below. The third Conference Committee did not further modify the provisions.

On April 5, 2024, the second Conference Committee agreed to the provisions of House Sub. for SB 172, as amended by the House Committee on Commerce, Labor and Economic Development and further agreed to amend the bill as follows:

- Modify the definition of “country of concern” to mean any foreign adversary, as such term is defined by 15 CFR § 7.4, as in effect on April 1, 2024, and any organization listed on the federal foreign terrorist list, except as otherwise provided by the Fusion Center Oversight Board’s rules and regulations;
- Change the location prohibition on any foreign principal owning or acquiring any interest in a real property located near a military installation’s boundary in Kansas or any adjacent state from within 150 miles to within 100 miles of such military installation;
- Remove a provision allowing any person to report a suspected violation of the Act to the Attorney General;
- Clarify the Attorney General must investigate any suspected violation of the Act;
- Permit a foreign principal who is subject to the Act to enter into an agreement with the Attorney General to divest such foreign principal’s interest in real property no later than 360 days from entering into such agreement;
- Upon a determination by a court that the defendant has violated the requirements of the Act, require the defendant to divest or otherwise come into compliance with the provisions of the Act within no more than 180 days from the date of such determination;
- Permit any defendant who acquired interest in real property and is ordered by the court to divest such interest in the real property to file a claim against the state for any reduction in sales price of the real property caused by such court-ordered divestiture;
- Add the Senate and House Standing Committees on Federal and State Affairs to the list of committees and persons who are to receive a report from the Attorney General on or before February 1 of each year;
- Specify the report prepared and submitted by the Attorney General on or before February 1 of each year must detail the implementation of the Act and include the Attorney General’s recommended amendments to the definition of “country of concern,” if any; and
- Require that on or before March 1 of each year, Kansas State University use available data and resources to prepare and submit a report to the Legislature and the Attorney General detailing the status and trends of all foreign land holdings of real property in Kansas.

Background

The third Conference Committee agreed to the provisions of House Sub. for SB 172, as amended by the House Committee on Commerce, Labor and Economic Development, and the above-described amendments made in the second Conference Committee Report.

[*Note:* SB 172, as recommended by the Senate Committee on Ways and Means, would have increased the KPERS lump-sum death benefit from \$4,000 to \$6,000.]

The House Committee on Commerce, Labor and Economic Development removed the contents of SB 172 and inserted the contents of HB 2766, as amended. The background for HB 2766 follows below.

HB 2766

HB 2766 was introduced by the House Committee on Appropriations at the request of Representative Croft.

House Committee on Commerce, Labor and Economic Development

In the House Committee hearing, **proponent** testimony was provided by Representative Croft and representatives of American Global Strategies and State Armor Action. The proponents generally stated the bill would address national security risks related to select countries and does so similar to some neighboring states.

Written-only proponent testimony was provided by two private citizens.

Opponent testimony was provided by representatives of the Advance Power Alliance, CNano USA, Kansas Agribusiness Retailers Association, Kansas Farm Bureau, Kansas Livestock Association, and Syngenta. The opponents generally stated the bill could force divestitures of Kansas employers. They also noted other states' laws and bills are more confined in their distance radius around military installations.

Written-only opponent testimony was provided by representatives of the Kansas Chamber and Kansas Corn Growers Association and a private citizen.

Neutral testimony was provided by representatives of the Kansas Bureau of Investigation and the Office of the Attorney General. The testimony generally stated the bill addresses a relevant security risk but needs to be amended to most effectively accomplish its intent.

The House Committee amended the bill to:

- Add foreign terrorist organizations to the country of concern definition;
- Authorize the Fusion Center Oversight Board to adopt rules and regulations related to the listing of foreign terrorist organizations;
- Add citizen or resident to the foreign principal definition;

- Allow transactions that CFIUS concluded were not an unresolved national security concern;
- Allow foreign principals with a national security agreement with CFIUS or the U.S. Department of Defense; and
- Allow such property to be subject to civil asset forfeiture.

[*Note:* The third Conference Committee retained these amendments.]

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2766, as introduced, the Office of the Attorney General states it would require 5.0 FTE positions at a total cost of \$440,000 in FY 2025 and \$462,000 in FY 2026 from the State General Fund to receive filings and notices, investigate reports, take legal action, and prepare annual reports and court documents, as required by the bill. In addition, the Office states the bill would likely be challenged in court, which would require additional expenditures for litigation costs. However, an estimate for litigation costs cannot be determined. Any fiscal effect associated with enactment of HB 2766 is not reflected in *The FY 2025 Governor's Budget Report*.

Real property; military installation; countries of concerns; foreign principal; economic development

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