

## **Incorporated into Substitute Amendment:**

\* The Shelby-Sarbanes Amendment as modified to reflect changes from other amendments incorporated in the substitute.

- Changes “Entities” to “Persons”: The effect of this change is simply to ensure that no category of person, government or company is inadvertently excluded from the scope of the law.
- Clarifies that CFIUS review should commence when documentation is submitted by the parties to a transaction. The reason for this addition is to address concerns that the underlying bill was establishing a system of mandatory filing for all transactions. That was not the intention.
- Of particular importance, amended the 30-day extension provision to require that the Secretary, Deputy Secretary or Under Secretary of an agency involved in a review conclude that credible evidence exists that the transaction in question threatens to impair national security. Worked very closely with Senator Hagel on modifying this provision to ensure that national security issues could be resolved in sufficient time while avoiding unnecessary or undue bureaucratic delays.
- Inserted the phrase “or within” into the provision to ensure that term “critical infrastructure” referred to all critical infrastructure in the United States, whether government-owned or privately-owned, which most of it is.
- The amendment clarifies as is current law that an investigations should occur if a review finds sufficient evidence that the transaction could impair national security.
- The bill includes a provision that ensures that withdrawn transactions other than those that have been terminated by agreement of the parties must continue to be investigated. under paragraph (b)(3) titled “completion of investigations required.”
- The next change involves Senator Dodd’s intelligence review proposal, which is incorporated into the underlying bill. . The added language will ensure that input from all members of the intelligence community is included in the assessments produced as a result of Senator Dodd’s provision. In addition, the amendment adds a requirement that the intelligence community continue to provide information and analysis throughout the course of a review and investigation.
- The amendment next addresses concerns regarding the country ranking system in the bill. The amendment, on which we worked very closely with Senator Menendez, clarifies what was intended to be a tiered system of categorizing countries similar to what is

currently done by the Commerce Department's Bureau of Industry and Security in determining licensing requirements for the export of high performance computers. In addition to clarifying the structure that is intended, the amendment protects the assessment and classification system from public disclosure, including from Freedom of Information Act requests. Senator Menendez was very helpful in crafting this language, and it could not have been done without him.

- The amendment replaces the phrase “protection of” in referencing critical infrastructure and critical technologies with the phrase “potential effects on.” This is intended as a simple clarifying amendment.
- Senator Menendez was also very instrumental in the resolution of one of the more difficult issues we faced in preparing this legislation, that pertaining to notification of state governors. We have worked out language that I believe is acceptable and helps improve the process. The amendment specifies that CFIUS shall notify the governor of any state regarding critical infrastructure related transactions in his or her state that may have security implications. .
- Working with Senator Dodd and Senator Sununu, the amendment strikes language in subparagraph (4) specifying certain federal agencies and replaces it with a requirement that the Chairman of CFIUS, in consultation with the Vice Chairman and the Attorney General, shall designate an agency to monitor and enforce agreements reached between parties to a transaction and the federal government.
- The amendment clarifies that the certification required upon completion of an investigation does not apply to transactions sent to the President for a decision.
- Restates verbatim the existing definition of “critical infrastructure” from Section 702 of the Defense Production Act for the purpose of clarifying intent, and require the chair and vice chair of CFIUS to issue implementing regulations.
- The amendment provides a definition of “foreign government,” once again for purposes of clarification.

Other amendments included in the substituted:

\* The substitute also includes an amendment filed by Senator Hagel that would ensure that critical infrastructure transactions that CFIUS determines do not raise any possible impairment to national security through additional assurances would not trigger a full investigation.

The substitute also ensures that nothing in the bill is intended to alter any existing legislative authority of congress as well as presidential executive authority.

The substitute also includes a Dodd amendment that would require mandatory notice to CFIUS

of foreign state owned or controlled critical infrastructure transactions and Treasury would write regulations to implement.

The substitute also includes an amendment by Senator Dodd clarifying the treatment of withdrawn and resubmitted transactions.

The substitute also includes a provision by Senator Dodd ensuring adequate protection of sensitive information.

In an effort to address concerns by Senator Schumer and Senator Menendez, the substitute includes a provision that would allow the majority or minority leader of the Senate and House of Representatives to notify members of the House and Senate of a transaction involving critical infrastructure in the state or congressional district of that member, for purposes of discussing any security concerns that may arise from the transaction.

**THE UNITED STATES SENATE**  
**Committee on Banking, Housing, and Urban Affairs**  
**109th Congress**

Mark-up of "Foreign Investment and National Security Act of 2006"  
 March 30, 2006

-Amendments-

#	SPONSOR	Description	Disposition
1	Shelby and Sarbanes	Corrections and clarifications.	With modifications to reflect changes adopted by modified amendments
2	Menendez	CFIUS must notify Gov. if transaction involves his/her state.	Modified to narrow scope to notice only and take confidentiality language
3	Sununu	Allows agency flexibility to monitor foreign persons or govts.	Dodd 11 accepted
4	Bunning 4	To address extensions of transaction review periods.	See Hagel 5
5	Hagel	To address extensions of transaction review periods.	Modified Hagel 5 that allows undersecretary, deputy secretary, or secretary may request up to an additional 30 days to review a transaction if a determination is made that there is credible evidence to believe that if permitted to proceed with the proposed or pending transaction, the foreign entity may take action that threatens to impair the national security.
6	Hagel	To address transaction investigations involving foreigners.	modified, drops "prior to."
7	Schumer	Requires notification of BHUA Comm, and House Fin. Services.	Addressed in Menendez 2

<b>8</b>	<b>Schumer</b>	To clarify the continuing legislative authority of the Congress.	adds the word “or Congress.”
<b>9</b>	<b>Dodd</b>	Mandatory reporting of highly critical infrastructure transactions.	modified amendment requiring mandatory notice to CFIUS of foreign state owned or controlled critical infrastructure transactions. Treasury regulations to implement.
<b>10</b>	<b>Dodd</b>	Related to intelligence reviews of proposed takeovers.	Accepted
<b>11</b>	<b>Dodd</b>	To ensure accountability of agreements related to foreign transactions.	Accepted
<b>12</b>	<b>Dodd</b>	CFIUS to seek periodic economic and foreign policy guidance.	Not offered
<b>13</b>	<b>Dodd</b>	Expedite the investigation phase of applications with time to CFIUS.	Not offered See Hagel 5
<b>14</b>	<b>Dodd</b>	Require full investigation of withdrawn/resubmitted transactions.	modified: “up to 45 days”
<b>15</b>	<b>Dodd</b>	To allow for withholding business sensitive data from public release.	Accepted
<b>16</b>	<b>Menendez</b>	Terrorism included in assessment of relations with a foreign country.	Modified amendment



