

BILL ANALYSIS

C.S.S.B. 2116
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been calls to ban certain governments from connecting physically or remotely into Texas critical infrastructure due to acts of aggression towards the United States, human rights abuses, intellectual property theft, previous critical infrastructure attacks, and ties to other hostile actions performed against the State of Texas and the United States. C.S.S.B. 2116 seeks to provide for that ban with respect to China, Iran, North Korea, Russia, and any other country designated by the governor by prohibiting business and governmental entities from entering into agreements that grant access to critical infrastructure to companies that have specified ties to those countries.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 2116 amends the Business & Commerce Code and Government Code to prohibit a business entity or a governmental entity from entering into an agreement relating to critical infrastructure in Texas with a company under the following conditions:

- the company under the agreement would be granted direct or remote access or control critical infrastructure in Texas, excluding access specifically allowed by the business or governmental entity for product warranty and support purposes; and
- the business or governmental entity knows that any of the following apply:
 - the company is owned by, or the majority of stock or other ownership interest of the company is held or controlled by, individuals who are citizens of China, Iran, North Korea, Russia, or a country designated as a threat to critical infrastructure by the governor;
 - the company is owned by, or the majority of stock or other ownership interest of the company is held or controlled by, a company or other entity that is owned or controlled by citizens of or is directly controlled by the government of an applicable country; or
 - the company is headquartered in an applicable country.

C.S.S.B. 2116 authorizes the governor, after consultation with the public safety director of DPS, to designate a country as a threat to critical infrastructure for purposes of the bill's provisions. The bill authorizes the governor to consult the Homeland Security Council to assess a threat to critical infrastructure for purposes of making such a designation.

C.S.S.B. 2116 establishes that the bill's prohibitions apply regardless of whether the company's or its parent company's securities are publicly traded or whether the company or its parent company is listed on a public stock exchange as a Chinese, Iranian, North Korean, or Russian company or a company of a designated country.

C.S.S.B. 2116 defines the following, among other terms:

- "company" as a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit; and
- "critical infrastructure" as a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 2116 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute, with regard to an agreement that would grant prohibited access to or control of critical infrastructure, includes an exception that did not appear in the engrossed for access specifically allowed by the business entity or governmental entity for product warranty and support purposes.

The substitute revises the conditions in the engrossed establishing certain ownership characteristics and headquarters locations as grounds for a foreign company's disqualification for applicable agreements by specifying that such disqualification is based on the business or governmental entity's knowledge of that ownership or headquarters location.