

BILL ANALYSIS

C.S.S.B. 2117
By: Parker
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that the federal Committee on Foreign Investment in the United States (CFIUS) is responsible for reviewing inbound foreign investments for national security concerns and mitigating risks and that, established in 1975, CFIUS has evolved over time, most recently expanding its authority through the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). Additionally, the 87th Texas Legislature passed the Lone Star Infrastructure Protection Act, which prohibited contracts or other agreements with certain foreign-owned companies in connection with critical infrastructure in Texas. However, the bill sponsor has informed the committee that recent concerns have arisen regarding a potential issue with federal law preempting these state efforts to regulate foreign investment on security grounds. C.S.S.B. 2117 seeks to safeguard the state's critical infrastructure, agricultural land, sensitive personal data, and strategic industries from potential foreign threats by establishing the Texas Committee on Foreign Investment to review and regulate certain transactions involving foreign entities.

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 rulemaking authority is expressly granted to the secretary of state and the Texas Committee on Foreign Investment in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 2117 amends the Government Code to establish the Texas Committee on Foreign Investment to facilitate the review of certain foreign transactions, defined by the bill as a merger or acquisition, including a merger or acquisition carried out through a joint venture, by or with a scrutinized foreign entity that results in control of a business, real property, or another asset located in Texas by the scrutinized foreign entity, as provided by the bill's provisions. The bill sets out the committee's composition as follows:

- a representative from the office of the secretary of state appointed by the secretary of state, who must serve as chair;
- the following officers or their designees:
 - the attorney general;
 - the land commissioner;
 - the comptroller of public accounts; and
 - the commissioner of agriculture; and
- the heads of the following agencies or their designees:
 - the Department of Public Safety;
 - the Public Utility Commission of Texas;

- the Department of Information Resources, or its successor in functions relating to cybersecurity; and
- the Railroad Commission of Texas.

C.S.S.B. 2117 establishes that its provisions do not apply to the following:

- a transaction governed exclusively by federal law, including an international agreement between the United States and a foreign nation;
- a transaction for which notice has been submitted to the federal Committee on Foreign Investment in the United States in the manner provided by federal law to review certain mergers, acquisitions, and takeovers;
- a foreign transaction consisting solely of a passive ownership interest in an entity that does not result in control of the entity by a scrutinized foreign entity;
- the sale, transfer, or other acquisition of real property intended for residential use; or
- the creation, transfer, sale, or other acquisition of a public security interest that does not grant rights to a scrutinized foreign entity exceeding those held by other shareholders.

The bill subjects the committee to the Texas Sunset Act and establishes that, unless continued in existence by that Act, the committee is abolished and the bill's provisions expire September 1, 2035.

C.S.S.B. 2117 requires the secretary of state, in consultation with the committee and by rule, to adopt criteria for determining whether a foreign transaction is subject to the bill's provisions. The bill requires the criteria to be consistent with criteria established under federal law relating to the authority to review certain mergers, acquisitions, and takeovers, and to provide that a foreign transaction is subject to the bill's provisions if the transaction does the following:

- exceeds the minimum dollar value or the minimum ownership percentage as determined by the secretary of state; and
- affects at least one of the following concerns:
 - critical infrastructure in Texas;
 - agricultural land in Texas; or
 - sensitive personal data of Texas residents.

The bill authorizes the secretary of state, in consultation with the committee and by rule, to exempt certain transactions from the bill's requirements. The bill requires the secretary of state, as soon as practicable after adopting the required criteria or making such an exemption, to publish and maintain the criteria and exemptions on the secretary of state's website. The bill requires the secretary of state, in consultation with the committee, to adopt the criteria required by the bill not later than December 1, 2025.

C.S.S.B. 2117 requires a person who intends to enter into such a covered transaction, not later than the 45th day before the date of the closing or other settlement of the transaction, to notify the attorney general in the form and manner prescribed by the attorney general. The bill requires the attorney general to do the following:

- not later than the 15th day after the date the attorney general receives that notice, complete an initial review of the information provided in the notice and determine whether further investigation is warranted;
- if the attorney general determines that further investigation is warranted, conduct a secondary investigation;
- conclude a secondary investigation not later than the 10th day after the date the attorney general concludes the initial review; and
- on completion of an initial review and, if applicable, secondary investigation, and not later than the 25th day after the date the attorney general receives notice, submit a report containing the results of the review and investigation to the committee.

The bill establishes that, if the attorney general fails to submit a report to the committee in that manner, the attorney general is considered to have determined that a mitigation agreement is not necessary to protect the state's interests.

C.S.S.B. 2117 requires the attorney general, if the attorney general determines that a mitigation agreement is necessary to protect the state's interests and as soon as practicable after submitting the report but not later than the 30th day after the date the attorney general receives notice regarding an applicable covered transaction, to submit a proposed mitigation agreement to the committee. The agreement must address concerns raised in the report and may require a party to a covered transaction to comply with certain requirements proposed by the attorney general, including the following:

- data protection protocols;
- security clearance requirements;
- restrictions on access by scrutinized foreign entities to assets that are a part of a covered transaction; and
- compliance reporting.

The bill requires the committee, not later than the fifth business day after the date the committee receives a mitigation agreement from the attorney general, to adopt or reject the agreement and, if the committee adopts the mitigation agreement, to deliver the agreement to each party to the covered transaction. The bill requires the attorney general, if the committee rejects the mitigation agreement and not later than the fifth day after the date the committee rejects the initial mitigation agreement, to prepare an amended mitigation agreement that addresses the committee's concerns with the initial agreement. The bill requires a mitigation agreement, if a provision of the mitigation agreement affects title to a real property interest, to do the following:

- require the attorney general to record notice of the mitigation agreement in each county in which any part of the real property subject to the provision is located; and
- provide that the mitigation agreement has no effect if the attorney general does not record notice in that manner.

The bill requires the committee to adopt rules providing procedures to implement these provisions.

C.S.S.B. 2117 establishes that its provisions may not be construed to impose a duty or liability on a person, including a title insurance company, lender, or real estate professional, who is not a party to a covered transaction or a governmental entity on which the bill's provisions explicitly impose a duty.

C.S.S.B. 2117 establishes that a person violates the bill's provisions if the attorney general determines that a covered transaction involving the person requires a mitigation agreement and the person knowingly or intentionally either executes a covered transaction without entering into a mitigation agreement or violates a provision of a mitigation agreement. The bill establishes that information the committee obtains during a review under the bill or includes in a mitigation agreement under the bill's provisions is confidential and excepted from disclosure under state public information law. The information may be used in a proceeding under the bill's enforcement provisions at the attorney general's discretion.

C.S.S.B. 2117 makes a person who violates the bill's provisions liable to the state for a civil penalty in an amount not to exceed \$50,000 for each violation. The bill authorizes the attorney general to bring an action to recover the civil penalty and restrain or enjoin a person from violating the bill's provisions. The bill authorizes the attorney general to recover reasonable attorney's fees and other reasonable expenses incurred in bringing such an action. The bill authorizes the attorney general to bring such an action in the county where all or a substantial part of the assets that are the subject of the covered transaction are located.

C.S.S.B. 2117 establishes that it is a defense to an action brought under the bill's provisions that, as follows:

- a good-faith dispute exists between the parties to the mitigation agreement relating to whether an activity by a party to a mitigation agreement violates a provision of the agreement;
- the party performing the activity provides notice to the attorney general before performing the activity; and

- the attorney general provides a response to that notice consenting to the activity described in the notice.

C.S.S.B. 2117 requires the committee, not later than September 1 of each year, to prepare and submit to the governor, secretary of state, lieutenant governor, and speaker of the house of representatives a report that includes the following:

- the number of transactions reviewed by the attorney general during the preceding fiscal year;
- an analysis of the measures imposed by the committee in mitigation agreements entered into under the bill's provisions; and
- a summary of recommendations for legislative changes the committee considers appropriate to promote state and national security.

C.S.S.B. 2117 defines the following terms:

- "committee" as the Texas Committee on Foreign Investment;
- "control" as, with respect to an entity, the direct or indirect power, whether or not exercised, to:
 - direct the activities of the entity;
 - make or direct others to make legal commitments on behalf of the entity; or
 - hire or fire a principal decision-maker of the entity;
- "covered transaction" as a foreign transaction that is subject to the bill's provisions in accordance with rules adopted under those provisions;
- "critical infrastructure" as infrastructure in one of the following categories:
 - chemical;
 - commercial facilities;
 - communications;
 - critical manufacturing;
 - dams;
 - defense industrial bases;
 - emergency services;
 - energy;
 - financial services;
 - food and agriculture;
 - government facilities;
 - health care and public health;
 - information technology;
 - nuclear reactors, materials, and waste;
 - transportation systems; or
 - water and wastewater systems;
- "mitigation agreement" as an agreement proposed by the attorney general in the manner provided by the bill's provisions to mitigate a national security risk arising from a covered transaction, including an amended mitigation agreement proposed by the attorney general under those provisions;
- "scrutinized foreign entity" as:
 - a person who is not either of the following:
 - a citizen or national of the United States; or
 - an alien who is lawfully admitted for residence in the United States under the federal Immigration and Nationality Act;
 - a foreign government; or
 - a business entity:
 - organized in a foreign country that is not listed by the Office of the United States Trade Representative as a signatory to a trade agreement with the United States or under the laws of a foreign government of a country that is not listed as such;
 - that has its principal place of business in such a foreign country; or
 - controlled by a formerly described foreign entity;

- "sensitive personal data" as information, including health, financial, or biometric information, that may pose a threat to public safety if obtained by a scrutinized foreign entity, including by exploiting the information to cause harm or coerce an individual to perform an act on behalf of the entity; and
- "trade agreement" as any of the following bilateral, multilateral, or plurilateral trade agreements, as negotiated by the Office of the United States Trade Representative and entered into by the United States:
 - a trade and investment agreement;
 - a trade in services agreement; or
 - an environmental goods agreement.

C.S.S.B. 2117 applies only to a transaction governed by a contract entered into on or after January 1, 2026, in accordance with the prohibition in the Texas Constitution against any bill of attainder, ex post facto or retroactive law, or any law impairing the obligation of contracts. A transaction governed by a contract entered into before that date is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 2117 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 includes definitions absent from the engrossed for the terms "control," "mitigation agreement," and "trade agreement."

Whereas the engrossed defined "foreign transaction" as a merger, acquisition, lease, sale, or other transfer by or to a scrutinized foreign entity of the direct or indirect control of or an interest in a business, real property, or other asset located in Texas, not including the creation or transfer of a security interest in the property of a transmission and distribution utility, the substitute defines the term as a merger or acquisition, including a merger or acquisition carried out through a joint venture, by or with a scrutinized foreign entity that results in control of a business, real property, or another asset located in Texas by the scrutinized foreign entity. The substitute omits the engrossed version's specification that the term does not include the creation or transfer of a security interest in the property of a transmission and distribution utility.

Whereas the engrossed included in the definition of "scrutinized foreign entity" a person who is not a citizen or national of the United States or an alien who is lawfully admitted for permanent residence in the United States under the federal Immigration and Nationality Act, the substitute instead includes in the definition a person who is not such a citizen or national or an alien who is lawfully admitted for residence in the United States under that act.

While both versions establish that the bill's provisions do not apply to a transaction governed exclusively by federal law, including an international agreement between the United States and a foreign nation, the substitute extends the inapplicability of the bill's provisions to the following:

- a transaction for which notice has been submitted to the federal Committee on Foreign Investment in the United States in the manner provided by federal law;
- a foreign transaction consisting solely of a passive ownership interest in an entity that does not result in control of the entity by a scrutinized foreign entity;
- the sale, transfer, or other acquisition of real property intended for residential use; or

- the creation, transfer, sale, or other acquisition of a public security interest that does not grant rights to a scrutinized foreign entity exceeding those held by other shareholders.

The substitute replaces the member of the committee who serves as chair from a representative from the office of the governor appointed by the governor, as in the engrossed, with a representative from the office of the secretary of state appointed by the secretary of state. The substitute also redesignates the duties of the governor set out in the engrossed to the secretary of state.

The substitute includes provisions absent from the engrossed that do the following:

- subject the committee to the Texas Sunset Act; and
- establish that the committee is abolished and the bill's provisions expire September 1, 2035, unless continued in existence as provided by that act.

The substitute requires the criteria adopted by the secretary of state, in consultation with the committee and by rule, for determining whether a foreign transaction is subject to the bill's provisions to be consistent with criteria established under federal law relating to the authority to review certain mergers, acquisitions, and takeovers, whereas the engrossed did not. The substitute omits the following provisions in the engrossed:

- the requirement for the criteria to provide that a foreign transaction is subject to the bill's provisions if the transaction affects a strategic industry or asset identified by the governor, in consultation with the committee; and
- the requirement for the governor to submit to the secretary of state the criteria and exemptions adopted under the bill's provisions.

The substitute revises the deadlines established by the engrossed with respect to notice provided to the attorney general by a person who intends to enter into a covered transaction as follows:

- changes from not later than the 90th day before the date of the closing or other settlement of the transaction to not later than the 45th day before that date the deadline by which the person must notify the attorney general of intent to enter into a covered transaction;
- changes from not later than the 30th day after the date the attorney general receives that notice to not later than the 15th day after that date the deadline by which the attorney general must complete an initial review of the information provided in the notice and determine whether further investigation is warranted; and
- changes from not later than the 45th day after the date the attorney general concludes the initial review to not later than the 10th day after that date the deadline by which the attorney general must conclude a secondary investigation.

The substitute specifies that the required report the attorney general must submit on completion of an initial review and, if applicable, a secondary investigation, must be submitted not later than the 25th day after the date the attorney general receives notice of the person's intent to enter into a covered transaction, whereas the engrossed did not. The substitute includes a provision absent from the engrossed establishing that, if the attorney general fails to submit a report to the committee in the manner provided by the bill's provisions, the attorney general is considered to have determined that a mitigation agreement is not necessary to protect the state's interests.

While both versions require the attorney general, if the attorney general determines that a mitigation agreement is necessary to protect the state's interests and as soon as practicable after submitting the required report, to submit a proposed mitigation agreement to the committee, the substitute specifies that the proposed mitigation agreement must be submitted not later than the 30th day after the date the attorney general receives notice of the person's intent to enter into a covered transaction, whereas the engrossed did not.

Whereas the engrossed required the committee to adopt or reject a mitigation agreement on receipt of the mitigation agreement from the attorney general, the substitute requires the committee to adopt or reject a mitigation agreement not later than the fifth business day after

the date the committee receives the mitigation agreement from the attorney general. Whereas the engrossed required the attorney general, if the committee rejects the agreement, to prepare a new mitigation agreement that addresses the committee's concerns with the initial agreement, the substitute requires the attorney general, if the committee rejects the agreement, to prepare an amended mitigation agreement that addresses the committee's concerns with the initial agreement not later than the fifth day after the date the committee rejects the initial mitigation agreement.

The substitute includes the following provisions absent from the engrossed:

- a requirement for a mitigation agreement, if a provision of the mitigation agreement affects title to a real property interest, to require the attorney general to record notice of the mitigation agreement in each county in which any part of the real property subject to the provision is located and to provide that the mitigation agreement has no effect if the attorney general does not record notice in that manner; and
- a provision establishing that the bill's provisions may not be construed to impose a duty or a liability on a person, including a title insurance company, lender, or real estate professional, who is not a party to a covered transaction or a governmental entity on which the bill's provisions explicitly impose a duty.

With respect to the provision in the engrossed that established that a person violates the bill's provisions if the attorney general determines that a covered transaction involving the person requires a mitigation agreement and the person executes a covered transaction without entering into a mitigation agreement or violates a provision of a mitigation agreement, the substitute specifies that violation applies if the person knowingly or intentionally executes a covered transaction or violates a provision of the agreement, whereas the engrossed did not. The engrossed authorized the attorney general to bring an action to restrain or enjoin a person from violating the bill's provisions and specified that authority included requiring a person to divest of an interest that is the subject of a mitigation agreement. The substitute includes that authorization, but omits that specification.

The substitute includes provisions absent from the engrossed establishing as a defense to an action brought under the bill's provisions that, as follows:

- a good-faith dispute exists between the parties to the mitigation agreement relating to whether an activity by a party to a mitigation agreement violates a provision of the agreement;
- the party performing the activity provides notice to the attorney general before performing the activity; and
- the attorney general provides a response to that notice consenting to the activity described in the notice.

While both the engrossed and substitute require the committee's annual report to be submitted to the governor, lieutenant governor, and speaker of the house, the substitute includes the secretary of state among those recipients.

Whereas the engrossed established that the bill applies only to a transaction governed by a contract entered into on or after January 1, 2026, the substitute includes a specification that the provision applies in accordance with the prohibition in the Texas Constitution against any bill of attainder, ex post facto or retroactive law, or any law impairing the obligation of contracts. The substitute includes a provision absent from the engrossed establishing that a transaction governed by a contract entered into before that date is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.