

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4929

To amend section 721 of the Defense Production Act of 1950 to enhance the effectiveness of the investigations of certain mergers, acquisitions, and takeovers for national security implications, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2006

Mr. SABO introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Energy and Commerce, International Relations, and Select Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend section 721 of the Defense Production Act of 1950 to enhance the effectiveness of the investigations of certain mergers, acquisitions, and takeovers for national security implications, 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 “Foreign Investment  
5 National Security Review Act of 2006”.

1 **SEC. 2. INVESTIGATION OF CERTAIN TRANSACTIONS FOR**  
2 **NATIONAL SECURITY IMPLICATIONS.**

3 (a) IN GENERAL.—Section 721 of the Defense Pro-  
4 duction Act of 1950 (50 U.S.C. App. 2170) is amended  
5 to read as follows:

6 **“SEC. 721. INVESTIGATION OF CERTAIN TRANSACTIONS**  
7 **FOR NATIONAL SECURITY IMPLICATIONS.**

8 “(a) INVESTIGATIONS.—

9 “(1) IN GENERAL.—Upon receiving written no-  
10 tification, as prescribed by regulations under this  
11 section, of any merger, acquisition, or takeover pro-  
12 posed or pending on or after the date of the enact-  
13 ment of this section by or with any foreign person  
14 which could result in foreign control of any person  
15 engaged in interstate commerce in the United  
16 States, the President, acting through the President’s  
17 designee and the Committee on Foreign Investment  
18 in the United States shall conduct an investigation  
19 to determine the effects, if any, of the proposed or  
20 pending merger, acquisition, or takeover on the na-  
21 tional security of the United States.

22 “(2) TIMING.—Any investigation required  
23 under paragraph (1) shall be completed before the  
24 end of the 75-day period beginning on the date of  
25 the receipt by the President or the President’s des-

1       ignee of written notification of the proposed or pend-  
2       ing merger, acquisition, or takeover.

3       “(b) CONFIDENTIALITY OF INFORMATION.—

4               “(1) IN GENERAL.—Any information or docu-  
5       mentary material filed with the President or the  
6       President’s designee pursuant to this section shall be  
7       exempt from disclosure under section 552 of title 5,  
8       United States Code, and no such information or docu-  
9       mentary material may be made public, except as  
10      may be relevant to any administrative or judicial ac-  
11      tion or proceeding.

12              “(2) AVAILABILITY TO THE CONGRESS.—No  
13      provision of paragraph (1) shall be construed as pre-  
14      venting the disclosure of any information or docu-  
15      mentary material to either House of Congress or to  
16      any duly authorized committee or subcommittee of  
17      the Congress.

18      “(c) COMMITTEE ON FOREIGN INVESTMENT IN THE  
19      UNITED STATES.—

20              “(1) ESTABLISHMENT.—The Committee on  
21      Foreign Investment in the United States established  
22      pursuant to Executive Order No. 11858 (hereafter  
23      in this section referred to as the ‘Committee’) shall  
24      be a multi-agency committee to carry out this sec-

1 tion and such other assignments as the President  
2 may designate.

3 “(2) MEMBERSHIP.—The Committee shall be  
4 comprised of the following members:

5 “(A) The Secretary of the Treasury.

6 “(B) The Secretary of State.

7 “(C) The Secretary of Defense.

8 “(D) The Secretary of Homeland Security.

9 “(E) The Attorney General.

10 “(F) The Secretary of Commerce.

11 “(G) The Director of the Office of Man-  
12 agement and Budget.

13 “(H) The United States Trade Represent-  
14 ative.

15 “(I) The Chairman of the Council of Eco-  
16 nomic Advisors.

17 “(J) The Director of the Office of Science  
18 and Technology Policy.

19 “(3) CHAIRPERSON.—The Secretary of the  
20 Treasury shall be the Chairperson of the Committee.

21 “(4) OTHER MEMBERS.—The Chairperson of  
22 the Committee shall involve the heads of such other  
23 Federal agencies, the Assistant to the President for  
24 National Security Affairs, and the Assistant to the  
25 President for Domestic Policy in any investigation

1 under subsection (a) as the Chairperson determines  
2 to be appropriate on the basis of the facts and cir-  
3 cumstances of the transaction under investigation.

4 “(5) ROLE OF THE DIRECTOR OF NATIONAL IN-  
5 TELLIGENCE.—The Director of National Intelligence  
6 shall provide appropriate intelligence analysis and  
7 intelligence briefings to the Committee.

8 “(d) ACTION BY THE PRESIDENT.—

9 “(1) IN GENERAL.—No proposed or pending ac-  
10 quisition, merger, or takeover, of a person engaged  
11 in interstate commerce in the United States by or  
12 with foreign persons may occur unless the President,  
13 on the basis of an investigation and report by the  
14 Committee, finds that such acquisition, merger or  
15 takeover, will not threaten to impair the national se-  
16 curity of the United States, as defined by regula-  
17 tions prescribed pursuant to this section, and ap-  
18 proves the transaction.

19 “(2) ENFORCEMENT.—The President shall di-  
20 rect the Attorney General to seek appropriate relief,  
21 including divestment relief, in the district courts of  
22 the United States in order to implement and en-  
23 force—

1           “(A) any finding, action, or determination  
2           under this section of disapproval of an acquisi-  
3           tion, merger, or takeover; or

4           “(B) any conditions imposed on any ap-  
5           proval of any acquisition, merger, or takeover.

6           “(3) FINALITY OF DETERMINATIONS.—All ac-  
7           tions and determinations under this section shall be  
8           final and not subject to judicial review.

9           “(e) FINDINGS BY THE PRESIDENT.—

10           “(1) IN GENERAL.—A finding under this sec-  
11           tion of impairment or threatened impairment to na-  
12           tional security shall be based on credible evidence  
13           that leads the President to believe that—

14           “(A) the foreign interest exercising control  
15           might take action that threatens to impair the  
16           national security; and

17           “(B) other provisions of law do not provide  
18           adequate and appropriate authority for the  
19           President to protect the national security.

20           “(2) FACTORS TO BE CONSIDERED.—Any inves-  
21           tigation under this section shall take into account  
22           the following factors:

23           “(A) Domestic production needed for pro-  
24           jected national defense requirements.

1           “(B) The capability and capacity of domes-  
2           tic industries to meet national defense require-  
3           ments, including the availability of human re-  
4           sources, products, technology, materials, and  
5           other supplies and services.

6           “(C) The control of domestic industries  
7           and commercial activity by foreign citizens as it  
8           affect the capability and capacity of the United  
9           States to meet the requirements of national se-  
10          curity.

11          “(D) The potential effects of the proposed  
12          or pending transaction on sales of military  
13          goods, equipment, or technology to any coun-  
14          try—

15                 “(i) identified by the Secretary of  
16                 State—

17                         “(I) under section 6(j) of the Ex-  
18                         port Administration Act of 1979, as a  
19                         country that supports terrorism;

20                         “(II) under section 6(l) of the  
21                         Export Administration Act of 1979,  
22                         as a country of concern regarding  
23                         missile proliferation; or

24                         “(III) under section 6(m) of the  
25                         Export Administration Act of 1979,

1 as a country of concern regarding the  
2 proliferation of chemical and biologi-  
3 cal weapons; or

4 “(ii) listed under section 309(c) of the  
5 Nuclear Non-Proliferation Act of 1978 on  
6 the ‘Nuclear Non-Proliferation-Special  
7 Country List’ (15 C.F.R. Part 778, Sup-  
8 plement No. 4) or any successor list.

9 “(E) The potential effects on the proposed  
10 or pending transaction on United States inter-  
11 national technological leadership in areas affect-  
12 ing United States national security.

13 “(f) REPORT TO THE CONGRESS.—Upon making any  
14 determination to approve or disapprove any merger, acqui-  
15 sition, or takeover by or with any foreign person which  
16 could result in foreign control of any person engaged in  
17 interstate commerce in the United States, the President  
18 shall immediately transmit to the Secretary of the Senate  
19 and the Clerk of the House of Representatives a written  
20 report of the President’s determination under this section  
21 to approve or disapprove such merger, acquisition, or take-  
22 over, including a detailed explanation of the finding made  
23 and factors considered.

24 “(g) CONGRESSIONAL ACTION.—

1           “(1) IN GENERAL.—If the determination of the  
2           President contained in the report transmitted to the  
3           Congress under subsection (f) is that the President  
4           will approve any merger, acquisition, or takeover  
5           under subsection (d) and not later than 30 days  
6           after the date on which Congress receives the report,  
7           a joint resolution described in paragraph (2) is en-  
8           acted into law, then the President shall take such  
9           action under subsection (d) as is necessary to pro-  
10          hibit the merger, acquisition, or takeover, including,  
11          if such acquisition has been completed, directing the  
12          Attorney General to seek divestment or other appro-  
13          priate relief in the district courts of the United  
14          States.

15          “(2) JOINT RESOLUTION DESCRIBED.—For  
16          purposes of paragraph (1), the term ‘joint resolu-  
17          tion’ means a joint resolution of the Congress, the  
18          sole matter after the resolving clause of which is as  
19          follows: ‘That the Congress disapproves the deter-  
20          mination of approval of the President contained in  
21          the report submitted to Congress pursuant to section  
22          721(f) of the Defense Production Act of 1950 on  
23          \_\_\_\_\_.’, with the blank space being filled with  
24          the appropriate date.

1           “(3) COMPUTATION OF REVIEW PERIOD.—In  
2           computing the 30-day period referred to in para-  
3           graph (1), there shall be excluded any day described  
4           in section 154(b) of the Trade Act of 1974.

5           “(h) REGULATIONS.—The President shall direct the  
6           issuance of regulations to carry out this section. Such reg-  
7           ulations shall, to the extent possible, minimize paperwork  
8           burdens and shall to the extent possible coordinate report-  
9           ing requirements under this section with reporting re-  
10          quirements under any other provision of Federal law.

11          “(i) EFFECT ON OTHER LAW.—No provision of this  
12          section shall be construed as altering or affecting any ex-  
13          isting authority, power, process, regulation, investigation,  
14          enforcement measure, or review provided by any other pro-  
15          vision of law.

16          “(j) TECHNOLOGY RISK ASSESSMENTS.—In any case  
17          in which an assessment of the risk of diversion of defense  
18          critical technology is performed by the Committee or any  
19          other designee of the President, a copy of such assessment  
20          shall be provided to any other designee of the President  
21          responsible for reviewing or investigating a merger, acqui-  
22          sition, or takeover under this section.

23          “(k) BIENNIAL REPORT ON CRITICAL TECH-  
24          NOLOGIES.—

1           “(1) IN GENERAL.—In order to assist the Con-  
2           gress in its oversight responsibilities with respect to  
3           this section, the President and such agencies as the  
4           President shall designate shall complete and furnish  
5           to the Congress, not later than May 1, 2007, and  
6           upon the expiration of every 2 years thereafter, a re-  
7           port, both in classified and unclassified form,  
8           which—

9                   “(A) evaluates whether there is credible  
10                  evidence of a coordinated strategy by 1 or more  
11                  countries or companies to acquire United States  
12                  companies involved in research, development, or  
13                  production of critical technologies for which the  
14                  United States is a leading producer; and

15                  “(B) evaluates whether there are industrial  
16                  espionage activities directed or directly assisted  
17                  by foreign governments against private United  
18                  States companies aimed at obtaining commer-  
19                  cial secrets related to critical technology.

20           “(2) DEFINITION.—For the purposes of this  
21           subsection, the term ‘critical technologies’ means  
22           technologies identified under title VI of the National  
23           Science and Technology Policy, Organization, and  
24           Priorities Act of 1976 or other critical technology,  
25           critical components, or critical technology items es-

1       sential to national defense or security identified pur-  
2       suant to this section.

3       “(1) BIENNIAL REPORT ON CRITICAL INFRASTRUC-  
4       TURE.—In order to assist the Congress in its oversight  
5       responsibilities, the President and such agencies as the  
6       President shall designate shall complete and furnish to the  
7       Congress, not later than 90 days after the date of enact-  
8       ment of this subsection and upon the expiration of every  
9       2 years thereafter, a report, both in classified and unclas-  
10      sified form, which—

11             “(1) lists all critical infrastructure, as defined  
12             under subtitle B of title II of Public Law 107–296,  
13             that is owned, controlled or dominated by an alien,  
14             a foreign corporation, or a foreign government;

15             “(2) evaluates whether there is credible evi-  
16             dence of a coordinated strategy by 1 or more coun-  
17             tries or companies to acquire United States critical  
18             infrastructure; and

19             “(3) evaluates whether there are industrial espi-  
20             onage activities directed or directly assisted by for-  
21             eign governments against private United States com-  
22             panies controlling critical infrastructure.”.

23       (b) EFFECTIVE DATE.—The amendments made by  
24       subsection (a) shall apply to the review and investigation  
25       of any acquisition, merger, or takeover which is or be-

1 comes subject to section 721 of the Defense Production  
2 Act of 1950 (50 U.S.C. App. 2170) (as in effect imme-  
3 diately before the date of the enactment of this Act or  
4 on or after such date) that has not become final before  
5 the date of the enactment of this Act.

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