

required by this section for fiscal years 2007 through 2012.

(2) AVAILABILITY.—Amounts available under paragraph (1) shall remain available until expended.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition and Forestry be authorized to conduct a hearing during the session of the Senate on July 26, 2006, at 9:30 a.m. in SR-328A, Russell Senate Office Building. The purpose of this committee hearing will be to consider the following nominations: Nancy Johnner to be under Secretary of Agriculture for Food, Nutrition, and Consumer Services for the Department of Agriculture and to be a Member of the Board of Directors of the Commodity Credit Corporation; Bruce Knight to be under Secretary of Agriculture for Marketing and Regulatory Programs for the Department of Agriculture and to be a Member of the Board of Directors of the Commodity Credit Corporation; Margo McKay to be an Assistant Secretary of Agriculture for Civil Rights for the Department of Agriculture; and Michael Dunn to be a Commissioner of the Commodity Futures Trading Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, July 26, 2006, at 2 p.m., in 215 Dirksen Senate Office Building, to hear testimony on "A Closer Look at the Size and Sources of the Tax Gap."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 26, 2006, at 2:30 p.m. to hold a nominations hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet to conduct a hearing on "FISA for the 21st Century" on Wednesday, July 26, 2006, at 9 a.m. in Dirksen Senate Office Building Room 226.

Witness list

Panel I: LTG Michael V. Hayden, Director of Central Intelligence Agency, Office of the Director of National Intelligence, Langley, VA; LTG Keith B. Alexander, Director of the National Security Agency, Chief of the Central Security Service, Washington, DC; Steven

Bradbury, Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, Washington, DC.

Panel II: Bryan Cunningham, Partner, Morgan & Cunningham LLC, Denver, CO; Jim Dempsey, Policy Director, Center for Democracy & Technology, Washington, DC; John Schmidt, Partner, Mayer, Brown, Rowe & Maw LLP, Chicago, IL; Mary DeRosa, Senior Fellow, Johns Hopkins Center for Strategic and International Studies, Technology and Public Policy Program, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on July 26, 2006, at 10 a.m. to hold a closed meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs' Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia be authorized to meet on Wednesday, July 26, 2006, at 3:30 p.m. for a hearing entitled, STOP!: A Progress Report on Protecting and Enforcing Intellectual Property Rights Here and Abroad.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. BINGAMAN. On behalf of Senator BAUCUS, I ask unanimous consent that John Schiltz and Tara Rose, interns with the Committee on Finance, be granted floor privileges for the consideration of this Energy bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BINGAMAN. I ask unanimous consent Lauren Guidice and Marcus Williams, interns with the Energy and Natural Resources Committee staff, be granted floor privileges during the remainder of the debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

FOREIGN INVESTMENT AND NATIONAL SECURITY ACT OF 2006

Mr. SHELBY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 474, S. 3549.

The PRESIDING OFFICER. The clerk will report the bill by title.

The bill clerk read as follows:

A bill (S. 3549) to amend the Defense Production Act of 1950, to strengthen Government review and oversight of foreign investment in the United States, to provide for enhanced Congressional oversight with respect thereto, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCAIN. Mr. President, today the Senate will pass S. 3549, the Foreign Investment and National Security Act of 2006. While I have reservations over the legislation as currently drafted, I have agreed to allow the bill to proceed to conference, given the assurances by the Chairman of the Senate Banking Committee, Senator SHELBY, that he will work to address the concerns that I have raised.

The Committee on Foreign Investment in the United States—known as CFIUS—was established 30 years ago to placate concerns in Congress over investments by Middle Eastern countries in American assets. Three decades later, it is once again concern over the Middle East that is driving Congress to overhaul the CFIUS process. This time, the outrage has revolved around the proposed acquisition of port terminal operations in the U.S. by Dubai Ports World, a corporation owned by the government of Dubai, one of the seven emirates that make up the United Arab Emirates.

In the war on terror, the UAE has provided American and Coalition military forces unprecedented access to its ports and territory, overflight clearances, and other critical and important logistical assistance. The UAE has played host to over 700 U.S. Navy ships at its ports, including the Port of Jebel Ali—which is managed by Dubai Ports World—and to the Air Force at al Dhafra Air Base. The country also hosts the UAE Air Warfare Center, the leading fighter training center in the Middle East. The UAE has worked with us to stop terrorist financing and money laundering. Moreover, Dubai was the first Middle Eastern entity to join the Container Security Initiative and the Department of Energy's Megaports Initiative, a program aimed at stopping illicit shipments of nuclear and other radioactive material. But all of these details seem to have been lost in the rush to stop a corporate transaction with a key ally in the war on terror.

Mr. President, there are at least two details in S. 3549 that cannot be ignored because they will not help protect our homeland. Instead, they will only harm America's economy, the strength of which is critical to our national security.

One provision that I believe merits closer scrutiny would require CFIUS to notify several congressional committees, as well as individual members of Congress, of each and every transaction submitted to CFIUS's review. This notification would be required well before CFIUS made any determination about the national security implications, if any, of the proposed transaction.

On its face, this provision would appear to be a reasonable effort to achieve transparency and accountability in the CFIUS process. However,

if this provision were enacted, a process that is meant to be a sober analysis of the national security implications of a transaction would become a politically charged debacle. What other goal would be accomplished by providing notice to the members of Congress whose States and districts are impacted by the transaction before any determination is made by CFIUS? The politicization of the CFIUS review process would discourage transactions that might be reviewed by CFIUS for fear of financial or reputational harm. This, in turn, could reduce foreign direct investment or impose a risk premium on such investment that would be detrimental to U.S. businesses seeking investment capital.

A second provision that I believe needs further clarification would require CFIUS to investigate a proposed transaction whenever the matter involves "any possible impairment to national security" resulting from the acquisition of critical infrastructure or "the possibility of an impairment to national security" arising out of any transaction reviewed by CFIUS. Under these standards, many transactions that pose negligible or no risk to national security will nonetheless be forced into an extended 45-day investigation in addition to the initial 30-day review period. According to the Department of Treasury, these standards will lead to a significant increase in the number of investigations conducted by CFIUS. I strongly support a full and fair review of each transaction submitted to CFIUS, and I believe that a transaction that poses a risk to our national security should not be approved, but that is not what the mandatory 45-day investigation provisions would accomplish. In my view, it would be better to use CFIUS resources to investigate transactions that raise genuine national security concerns.

I appreciate the interest of Senator SHELBY and others to modify the CFIUS process, and I certainly do not doubt the sincerity of their desire to protect our Nation from threats abroad. That is why I am confident that my concerns with the legislation will be addressed in conference. If they are not, then I will be forced to object to the conference report.

Mr. SHELBY. Mr. President, I ask unanimous consent that the amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4703) was agreed to, as follows:

On page 3, line 8, strike "written notification" and insert the following: "a written request for review by a person involved in the transaction, or by one or more members of CFIUS."

On page 3, line 10, strike "under this section" and insert "in accordance with paragraph (1)(A)".

On page 3, line 24, strike "entity" and insert "person".

On page 4, beginning on line 19, strike "additional assurances" and insert "assurances provided or renewed with the approval of CFIUS".

On page 4, line 22, strike "and" and insert "or".

On page 5, line 2, insert before the period the following: ", and the issues that could result in an impairment to national security are not resolved through negotiation of assurances between one or more members of CFIUS and the entities involved in the transaction".

On page 5, strike line 22 and all that follows through page 6, line 6 and insert the following:

"(4) MONITORING OF WITHDRAWN TRANSACTIONS.—If the notification or filing with respect to a proposed transaction is withdrawn or rescinded, CFIUS shall continue to monitor such transaction, unless the transaction is terminated by agreement of the parties to the transaction. If CFIUS has reason to believe that the proposed transaction has not been so terminated, CFIUS shall initiate a review or investigation under this section if the parties do not resubmit the notification or filing within an appropriate period of time."

On page 6, strike lines 7 through 23 and insert the following:

"(5) MANDATORY NOTIFICATION RELATED TO CERTAIN TRANSACTIONS AFFECTING NATIONAL SECURITY.—The chairperson and vice chairperson of CFIUS shall, not later than 90 days after the date of enactment of the Foreign Investment and National Security Act of 2006, issue rules, including the imposition of appropriate penalties for failure to comply with this paragraph, that require each person controlled by or acting on behalf of a foreign government to notify the chairperson of CFIUS in writing of any proposed transaction involving such person and United States critical infrastructure relating to United States national security."

On page 8, line 17, strike "(or longer)".

On page 9, line 3, strike "AND CLASSIFICATIONS".

On page 9, line 15, strike "and classifying".
On page 10, line 17, strike "and classification".

On page 15, line 1, strike "ranking" and insert "assessments".

On page 16, line 5, strike "ADDITIONAL".

On page 17, line 6, insert "of CFIUS" after "vice chairperson".

On page 19, line 12, strike "transaction" and all that follows through line 16 and insert "transaction; and".

On page 20, line 3, insert "does or" before "does not".

On page 23, strike lines 21 through 24.

On page 24, line 1, strike "(vi)" and insert "(v)".

On page 24, line 10, strike "(vii)" and insert "(vi)".

On page 24, line 17, strike "(vii)" and insert "(vi)".

On page 27, line 4, strike "the term" and insert the following: "the term 'assurances' means any term, understanding, commitment, agreement, or limitation, however described, that relates to ameliorating in any way the potential effect of a transaction on the national security;

"(2) the term".

On page 27, line 12, strike "(2)" and insert "(3)".

On page 27, line 19, strike "(3)" and insert "(4)".

On page 27, line 22, strike "(4)" and insert "(5)".

On page 27, line 25, strike the period and all that follows through "The term includes" on page 28, line 1 and insert ", and includes".

On page 28, line 5, strike "(5)" and insert "(6)".

On page 28, line 11, strike "(6)" and insert "(7)".

On page 28, line 14, strike "(7)" and insert "(8)".

The bill (S. 3549), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3549

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Foreign Investment and National Security Act of 2006".

SEC. 2. AMENDMENTS TO THE DEFENSE PRODUCTION ACT OF 1950.

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended to read as follows:

"SEC. 721. REVIEW AND INVESTIGATION OF TRANSACTIONS INVOLVING FOREIGN PERSONS AND GOVERNMENTS.

"(a) REVIEW OF TRANSACTIONS INVOLVING FOREIGN PERSONS AND GOVERNMENTS.—

"(1) REVIEWS REQUIRED.—

"(A) IN GENERAL.—CFIUS shall review any transaction proposed or pending on or after the date of enactment of this section by, with, or on behalf of a foreign person or foreign government which could result in foreign control of a person engaged in interstate commerce in the United States, for which a review is requested, in the manner prescribed by regulations promulgated under this section.

"(B) PURPOSES.—The purpose of such review shall be to determine the effect on national security of such transaction, whether an investigation of such transaction is required under subsection (b), or both.

"(2) TIMING OF REVIEWS.—

"(A) IN GENERAL.—A review of a proposed or pending transaction described in paragraph (1) shall be completed not later than 30 days after the date of receipt by CFIUS of a written request for review by a person involved in the transaction, or by one or more members of CFIUS, of the proposed or pending transaction, as prescribed by regulations promulgated in accordance with paragraph (1)(A).

"(B) EXTENSIONS UPON REQUEST.—Upon written request by the Secretary, Deputy Secretary, or Under Secretary, or the equivalent thereof, of one or more of the agencies that make up CFIUS (including any agency described in subsection (c)(4)(I) for additional time to review a case, the 30-day period described in subparagraph (A) shall be extended by not longer than an additional 30 days, if the Secretary, Deputy Secretary, or Under Secretary, or the equivalent thereof, concludes that there is credible evidence to believe that if permitted to proceed with the transaction, the foreign acquiring person may take action that threatens to impair the national security.

"(b) INVESTIGATIONS OF CERTAIN TRANSACTIONS.—

"(1) IN GENERAL.—CFIUS shall undertake an investigation to determine the effects on national security of any transaction described in subsection (a)(1) proposed or pending on or after the date of enactment of this section—

"(A) which would—

"(i) result in control of any person engaged in interstate commerce in the United States by a foreign government, or a person acting by, with, or on behalf of a foreign government; or

"(ii) result in control of any critical infrastructure of or within the United States by,

with, or on behalf of any foreign person, if CFIUS determines that any possible impairment to national security has not been mitigated by assurances provided or renewed with the approval of CFIUS, as described in subsection (i), during the review period under subsection (a); or

“(B) if the review by CFIUS under subsection (a) produces sufficient information to indicate the possibility of an impairment to national security, after consideration of the factors listed in subsection (g), and the issues that could result in an impairment to national security are not resolved through negotiation of assurances between one or more members of CFIUS and the entities involved in the transaction.

“(2) TIMING OF INVESTIGATIONS.—An investigation required to be undertaken under this subsection—

“(A) shall commence at such time as CFIUS determines under subsection (a) that such investigation is required, as prescribed by regulations promulgated pursuant to this section; and

“(B) shall be completed not later than 45 days after the date of its commencement.

“(3) RESUBMITTED FILINGS.—An investigation of a transaction under this subsection which is interrupted because the notification or filing is withdrawn by the applicant, and which is subsequently resubmitted, shall require up to a 45-day investigation from the date on which CFIUS receives the new submission. The investigation shall include a review of the rationale for the withdrawal and resubmission of the proposed transaction to CFIUS.

“(4) MONITORING OF WITHDRAWN TRANSACTIONS.—If the notification or filing with respect to a proposed transaction is withdrawn or rescinded, CFIUS shall continue to monitor such transaction, unless the transaction is terminated by agreement of the parties to the transaction. If CFIUS has reason to believe that the proposed transaction has not been so terminated, CFIUS shall initiate a review or investigation under this section if the parties do not resubmit the notification or filing within an appropriate period of time.”

“(5) MANDATORY NOTIFICATION RELATED TO CERTAIN TRANSACTIONS AFFECTING NATIONAL SECURITY.—The chairperson and vice chairperson of CFIUS shall, not later than 90 days after the date of enactment of the Foreign Investment and National Security Act of 2006, issue rules, including the imposition of appropriate penalties for failure to comply with this paragraph, that require each person controlled by or acting on behalf of a foreign government to notify the chairperson of CFIUS in writing of any proposed transaction involving such person and United States critical infrastructure relating to United States national security.”

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

“(1) ESTABLISHMENT.—There is established the Committee on Foreign Investment in the United States, which shall serve as the President's designee for all purposes under this section.

“(2) CHAIRPERSON.—The Secretary of the Treasury shall serve as the chairperson of CFIUS.

“(3) VICE CHAIRPERSON.—The Secretary of Defense shall serve as the vice chairperson of CFIUS.

“(4) MEMBERSHIP.—The members of CFIUS shall include—

“(A) the Secretary of the Treasury;

“(B) the Secretary of State;

“(C) the Secretary of Defense;

“(D) the Secretary of Commerce;

“(E) the Secretary of Homeland Security;

“(F) the Attorney General of the United States;

“(G) the Director of the Office of Management and Budget;

“(H) the Director of National Intelligence; and

“(I) the heads of those other executive departments or agencies as the President determines appropriate, on a case-by-case basis.

“(5) REFERRAL TO APPROPRIATE MEMBERS OF CFIUS.—Upon receipt of notification of a proposed or pending transaction under this section, the chairperson of CFIUS shall assign the appropriate member of CFIUS to lead the review and investigation of such proposed or pending transaction under this section.

“(6) INTELLIGENCE REVIEWS.—The Director of National Intelligence shall—

“(A) direct the intelligence community, to collect and analyze information related to any proposed or pending transaction pursuant to this section, and to prepare a report of its findings, which the Director shall make available to members of CFIUS not later than 15 days after the date of the commencement by CFIUS of a 30-day review of any such transaction under subsection (a), and before the commencement of any investigation under subsection (b); and

“(B) ensure that the intelligence community remains engaged in the collection, analysis, and dissemination to CFIUS of any additional relevant information that may become available during the course of any investigation conducted under subsection (b) with respect to a transaction.

“(7) ASSESSMENTS OF FOREIGN COUNTRIES FOR USE IN REVIEWS AND INVESTIGATIONS.—

“(A) IN GENERAL.—Not later than 120 days after the date of enactment of the Foreign Investment and National Security Act of 2006, the chairperson and vice chairperson of CFIUS, in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, and the Director of National Intelligence, shall develop and implement a system for assessing individual countries, including—

“(i) an assessment of the adherence of the country to nonproliferation control regimes, including treaties and multilateral supply guidelines, which shall draw on, but not be limited to, the annual report on Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Commitments required by section 403 of the Arms Control and Disarmament Act;

“(ii) an assessment of the relationship of such country with the United States, specifically on its record on cooperating in counter-terrorism efforts, which shall draw on, but not be limited to, the report of the President to Congress under section 7120 of the Intelligence Reform and Terrorism Prevention Act of 2004; and

“(iii) an assessment of the potential for transshipment or diversion of technologies with military applications, including an analysis of national export control laws and regulations.

“(B) CONFIDENTIALITY.—The assessment system required by subparagraph (A) and any information or documentary material maintained or developed thereunder—

“(i) shall be used solely by those agencies involved in reviewing and investigating acquisitions, mergers, and takeovers pursuant to this section;

“(ii) may not be made available to the public; and

“(iii) shall be exempt from disclosure under section 552 of title 5, United States Code.

“(8) STAFF OF CFIUS.—Employees of the Department of the Treasury who serve as staff for CFIUS shall report directly to the Deputy Secretary of the Treasury, and shall per-

form no official functions other than as CFIUS staff.

“(d) ACTION BY THE PRESIDENT.—

“(1) IN GENERAL.—Subject to subsection (e), the President may take such action for such time as the President considers appropriate to suspend or prohibit any transaction which would result in control of any critical infrastructure or person engaged in interstate commerce in the United States, proposed or pending on or after the date of enactment of this section, by or with a foreign person or government, so that such control will not threaten to impair the national security.

“(2) ANNOUNCEMENT BY THE PRESIDENT.—The President shall announce the decision on whether or not to take action pursuant to this subsection not later than 15 days after an investigation described in subsection (b) is completed.

“(3) ENFORCEMENT.—The President may direct the Attorney General to seek appropriate relief, including divestment relief, in the district courts of the United States in order to implement and enforce this subsection.

“(e) FINDINGS OF THE PRESIDENT.—The President may exercise the authority conferred by subsection (d) only if the President finds that—

“(1) there is credible evidence that leads the President to believe that the foreign interest exercising control might take action that threatens to impair the national security; and

“(2) provisions of law, other than this section and the International Emergency Economic Powers Act, do not, in the judgment of the President, provide adequate and appropriate authority for the President to protect the national security in the matter before the President.

“(f) ACTIONS AND FINDINGS NONREVIEWABLE.—The actions of the President under subsection (d) and the findings of the President under subsection (e) shall not be subject to judicial review.

“(g) FACTORS TO BE CONSIDERED.—For purposes of determining whether to take action under subsection (d) and for purposes of reviews and investigations under this section, the President and CFIUS, respectively, shall consider, among other factors—

“(1) potential effects on United States critical infrastructure, including major energy assets;

“(2) potential effects on United States critical technologies;

“(3) domestic production needed for projected national defense requirements;

“(4) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services;

“(5) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security;

“(6) the potential effects of the proposed or pending transaction on sales of military goods, equipment, or technology to any country—

“(A) identified by the Secretary of State—

“(i) under section 6(j) of the Export Administration Act of 1979, as a country that supports terrorism;

“(ii) under section 6(l) of the Export Administration Act of 1979, as a country of concern regarding missile proliferation; or

“(iii) under section 6(m) of the Export Administration Act of 1979, as a country of concern regarding the proliferation of chemical and biological weapons;

“(B) identified by the Secretary of Defense as posing a potential regional military

threat to the interests of the United States; or

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

“(7) the potential effects of the proposed or pending transaction on United States international technological leadership in areas affecting United States national security;

“(8) the long term projection of United States requirements for sources of energy and other critical resources and materials; and

“(9) the assessments developed under subsection (c)(7) of the country in which the foreign persons acquiring United States entities are based.

“(h) CONFIDENTIALITY OF INFORMATION.—

“(1) IN GENERAL.—Any information or documentary material filed with CFIUS pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding.

“(2) NOTIFICATION TO GOVERNOR.—Notwithstanding paragraph (1), CFIUS shall notify the Governor of any State regarding a transaction involving critical infrastructure in that State for the purpose of discussing any security concerns that arise or may arise from that transaction. Information or documentary material made available to a Governor under this paragraph may not be made public, including under any law of a State pertaining to freedom of information or otherwise, but the exception in paragraph (3) for disclosures to either House of Congress or Congressional Committees shall not apply to Governors who receive information under this paragraph.

“(3) DISCLOSURE.—Nothing in this subsection shall be construed to prevent disclosure to either House of Congress or to any duly authorized committee or subcommittee of Congress.

“(i) ASSURANCES.—

“(1) IN GENERAL.—This subsection shall govern the provision of any assurances to one or more agencies of the United States in connection with the review or investigation of, or any Presidential decision concerning, any transaction under this section.

“(2) CONDITION TO DETERMINATION.—Any such assurances shall be deemed to be a continuing covenant of the persons on whose behalf such review is sought (and of all persons controlling such person), the observance of which shall be a condition of the determination of CFIUS, the President, or both, on whether to take any action with respect to such transaction.

“(3) CONTRACT WITH THE UNITED STATES.—Such assurances shall be embodied in an agreement executed by the foreign person or foreign government on whose behalf a review of a transaction is sought under this section and the chairperson or vice chairperson of CFIUS, on behalf of the United States.

“(4) MONITORING OF AGREEMENT.—Compliance with assurances provided under this subsection shall be monitored, and may be investigated, in the same manner as a violation of a civil statute, by the agency designated by the chairperson of CFIUS, in consultation with the vice chairperson of CFIUS and the Attorney General of the United States.

“(5) GRANT OF JURISDICTION; REMEDIES.—The United States District Court for the District of Columbia shall have jurisdiction to enforce an agreement referred to in this subsection upon application by the Attorney General. Available remedies shall include divestiture, injunctive relief, enforcing the

terms of such agreement, and monetary damages, as appropriate.

“(j) NOTICE AND REPORTS TO CONGRESS.—

“(1) NOTICE REGARDING REVIEWS.—

“(A) NOTICE AT INITIATION OF REVIEW.—CFIUS shall transmit written notice of a proposed or pending transaction subject to this section to the members of Congress specified in paragraph (3)(C), not later than 10 days after the date of receipt of a notice of such proposed or pending transaction, including the identities of all parties involved and any foreign government ownership or control of any such party.

“(B) CERTIFICATION AT COMPLETION OF REVIEW.—Upon completion of a review under subsection (a), the chairperson and vice chairperson of CFIUS and the head of the lead agency assigned under subsection (c)(5), shall transmit a certified notice to the members of Congress specified in paragraph (3)(C).

“(2) NOTICE REGARDING INVESTIGATIONS.—

“(A) NOTICE AT INITIATION OF INVESTIGATIONS.—Upon commencement of an investigation under subsection (b), CFIUS shall notify in writing the members of Congress specified in paragraph (3)(C).

“(B) CERTIFICATION AT COMPLETION OF INVESTIGATIONS.—As soon as practicable after completion of an investigation under subsection (b), the chairperson and vice chairperson of CFIUS and the head of the lead agency assigned under subsection (c)(5), shall transmit to the members of Congress specified in paragraph (3)(C) a certified written report (consistent with the requirements of subsection (h)) on the results of the investigation, unless the matter under investigation has been sent to the President for decision.

“(3) CERTIFICATIONS.—

“(A) IN GENERAL.—Each certified notice and report required by this subsection shall be submitted to the members of Congress specified in subparagraph (C), and shall include—

“(i) information on whether or not an investigation occurred under subsection (b) and has been completed;

“(ii) a description of the actions taken by CFIUS with respect to the transaction; and

“(iii) identification of the determinative factors considered under subsection (g).

“(B) CONTENT OF CERTIFICATION.—Each notice required to be certified by this subsection shall be signed by the chairperson and vice chairperson of CFIUS and the head of the lead agency assigned under subsection (c)(5), and shall contain a specific attestation of each such person that, in the determination of CFIUS, the transaction that is the subject of the notice does or does not impair the national security.

“(C) MEMBERS OF CONGRESS.—The notices and reports required by this subsection shall be transmitted to—

“(i) the Majority Leader and the Minority Leader of the Senate;

“(ii) the chair and ranking member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of any committee of the Senate having oversight over the agency assigned to lead a review or investigation under subsection (c)(5);

“(iii) the Speaker and the Minority Leader of the House of Representatives; and

“(iv) the chair and ranking member of the Committee on Financial Services of the House of Representatives and of any committee of the House of Representatives having oversight over the agency assigned to lead a review or investigation under subsection (c)(5).

“(D) TRANSMITTAL TO OTHER MEMBERS OF CONGRESS.—The Majority Leader or the Minority Leader, in the case of the Senate, and the Speaker or the Minority Leader, in the

case of the House of Representatives, may provide the notices and reports required by this paragraph regarding a proposed or pending transaction involving critical infrastructure—

“(i) in the case of the Senate, to members of the Senate from the State in which such critical infrastructure is located; and

“(ii) in the case of the House of Representatives, to a member from a Congressional District in which such critical infrastructure is located.

“(E) LIMITATION ON DELEGATION OF CERTIFICATIONS.—Notices and reports required to be certified under this subsection shall be signed by the chairperson and vice chairperson of CFIUS, and such certification requirement may not be delegated.

“(4) ANNUAL REPORTS.—

“(A) REPORT REQUIRED.—The Secretary of the Treasury, on behalf of and after consultation with the members of CFIUS, shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on or before March 15 of each year, a written report on the policy of the United States with respect to the preservation of the Nation’s defense production and critical infrastructure. The Secretary shall appear before both committees to provide testimony on such reports.

“(B) CONTENTS OF REPORT.—Each report submitted under subparagraph (A) shall contain—

“(i) an analysis of each transaction involving a foreign person or foreign government affecting national security that has occurred during the preceding year to which the report relates, including the nature of the acquisitions and the effect or potential impact of such acquisitions on the United States defense industrial base and critical infrastructure;

“(ii) a similar updated analysis for any transaction that occurred during the 4 years immediately preceding the year dealt with in the report in clause (i), including a separate section discussing the impact of transactions involving foreign governments or persons acting on behalf of or in concert with foreign governments;

“(iii) a detailed discussion of all perceived risks to national security or United States critical infrastructure that CFIUS will take into account in its deliberations during the year in which the report is delivered to the committees;

“(iv) a table showing on a cumulative basis, by sector, product, and country of foreign ownership, the number of acquisitions reviewed, investigated, or both, by CFIUS, to provide a census of production potentially relevant to the Nation’s defense industrial base owned or controlled by foreign persons or foreign governments;

“(v) an evaluation of whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire critical infrastructure of or within the United States or United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer;

“(vi) an evaluation of whether there are industrial espionage activities directed or directly assisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies or critical infrastructure; and

“(vii) such other matters as are necessary to give a complete disclosure and analysis of the work of CFIUS during the year to which the report relates.

“(C) CLASSIFIED REPORTS.—The evaluations required by clauses (v) and (vi) of subparagraph (B) may be classified. If they are submitted in classified form, an unclassified version of such evaluations shall be made available to the public.

“(D) OTHER INFORMATION WITHHELD FROM PUBLIC REPORTS.—

“(i) PROPRIETARY INFORMATION.—The chairperson of CFIUS, in consultation with the vice chairperson of CFIUS, may withhold from public release other such information as the chairperson determines is proprietary information.

“(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall prohibit such information from being provided to relevant Committees of Congress.

“(5) APPEARANCES BEFORE CONGRESS.—The chairperson and vice chairperson of CFIUS, and the heads of such additional CFIUS member agencies specified in a written request by the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate shall annually appear before the Committee on Banking, Housing, and Urban Affairs and the Committee on Financial Services of the House of Representatives to provide testimony on the activities of CFIUS.

“(k) REGULATIONS.—

“(1) IN GENERAL.—The Secretary shall issue regulations to carry out this section. Such regulations shall, to the extent possible, minimize paperwork burdens and shall, to the extent possible, coordinate reporting requirements under this section with reporting requirements under any other provision of Federal law.

“(2) REGULATIONS RELATING TO DEFINITIONS.—Not later than 30 days after the date of enactment of the Foreign Investment and National Security Act of 2006, the Secretary of the Treasury and the Secretary of Defense shall jointly agree to and issue rules concerning the manner in which the definition of the term ‘critical infrastructure’ in subsection (m)(2) shall be applied to particular acquisitions, mergers, and takeovers, for purposes of the mandatory investigation requirement of subsection (b)(1)(A), except that, until such rules are issued in final form and become effective, such definition shall be applied without regard to any such rules (whether proposed or otherwise).

“(1) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to alter or affect any existing power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law, including the International Emergency Economic Powers Act, or of the President or Congress.

“(m) DEFINITIONS.—As used in this section—

“(1) the term ‘assurances’ means any term, understanding, commitment, agreement, or limitation, however described, that relates to ameliorating in any way the potential effect of a transaction on the national security;

“(2) the term ‘critical infrastructure’ means, subject to rules issued under subsection (k)(2), any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems or assets would have a debilitating impact on national security, including national economic security and national public health or safety;

“(3) the term ‘critical technologies’ means technologies identified under title VI of the National Science and Technology Policy, Organization, and Priorities Act of 1976, or other critical technology, critical components, or critical technology items essential to national defense identified pursuant to this section;

“(4) the terms ‘Committee on Foreign Investment in the United States’ and ‘CFIUS’ mean the committee established under subsection (c);

“(5) the term ‘foreign government’ means any government or body exercising governmental functions, other than the Government of the United States or of a State or political subdivision thereof, and includes national, State, provincial, and municipal governments, including their respective departments, agencies, government-owned enterprises, and other agencies and instrumentalities;

“(6) the term ‘foreign person’ means any non-United States national, any organization owned or controlled by such a person, and any entity organized under the laws of a country other than the United States, and any entity owned or controlled by such entity;

“(7) the term ‘intelligence community’ has the same meaning as in section 3 of the National Security Act of 1947 (50 U.S.C. 401a); and

“(8) the term ‘transaction’ means a proposed or pending merger, acquisition, or takeover”.

FUNDING AUTHORITY FOR EVACUEES OF LEBANON

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3741 introduced earlier today.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3741) to provide funding authority to facilitate the evacuation of persons from Lebanon, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. BENNETT. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3741) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3741

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FUNDING AUTHORITY.

(a) TRANSFER AUTHORITY.—

(1) AUTHORITY.—

(A) IN GENERAL.—Upon a determination by the Secretary of State described in subparagraph (B), the Secretary may transfer to the “Emergencies in the Diplomatic and Consular Service” account from unobligated amounts in any account under the “Administration of Foreign Affairs” heading such sums as may be necessary—

(i) to cover the costs of facilitating the evacuation under section 4 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2671) of persons from Lebanon on or after July 16, 2006; and

(ii) to replenish the “Emergencies in the Diplomatic and Consular Service” account up to the level of funding that existed in such account on July 15, 2006.

(B) DETERMINATION.—A determination referred to in subparagraph (A) is a determina-

tion that additional funding for the “Emergencies in the Diplomatic and Consular Service” account is necessary as a result of the extraordinary costs of facilitating the evacuation under section 4 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2671) of persons from Lebanon on or after July 16, 2006.

(C) TREATMENT OF FUNDS.—Amounts transferred under subparagraph (A) shall be merged with amounts in the “Emergencies in the Diplomatic and Consular Service” account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such account.

(2) NOTIFICATION REQUIREMENT.—

(A) IN GENERAL.—Except as provided under subparagraph (B), not later than 5 days before transferring funds under paragraph (1), the Secretary of State shall notify the appropriate congressional committees of the proposed transfer.

(B) EXIGENT CIRCUMSTANCES WAIVER.—The Secretary may waive the requirement under subparagraph (A) if exigent circumstances exist. In the event of such a waiver, the Secretary shall provide notice of the transfer of funds to the appropriate congressional committees as early as practicable, but in no event later than 3 days after such transfer, including an explanation of the circumstances necessitating such waiver.

(C) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this paragraph, the term “appropriate congressional committees” means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives.

(b) USE OF CERTAIN FUNDS.—Amounts appropriated or otherwise made available by chapter 8 of title II of division B of Public Law 109-148 under the heading “EMERGENCIES IN THE DIPLOMATIC AND CONSULAR SERVICE” and any other unobligated amounts in the “Emergencies in the Diplomatic and Consular Service” account may be made available to cover the costs of facilitating the evacuation under section 4 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2671) of persons from Lebanon on or after July 16, 2006.

CARL D. PERKINS CAREER AND TECHNICAL EDUCATION IMPROVEMENT ACT OF 2005—CONFERENCE REPORT

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the conference report to accompany S. 250, the Carl D. Perkins vocational education bill.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 250) to amend the Carl D. Perkins Vocational and Technical Education Act of 1998 to improve the Act, having met, have agreed that the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment and the House agree to the same; that the House recede from its amendment to the title of the bill, signed by a majority of the conferees on the part of both Houses.

There being no objection, the Senate proceeded to consider the conference report.