

109TH CONGRESS  
2D SESSION

# S. 2335

To clarify the role of the Director of National Intelligence, amend the Defense Production Act of 1950 to clarify the notification and investigation requirements, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2006

Mr. BAYH introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To clarify the role of the Director of National Intelligence, amend the Defense Production Act of 1950 to clarify the notification and investigation requirements, 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 “Smart and Secure For-  
5       eign Investment Act”.

1 **SEC. 2. DIRECTOR OF NATIONAL INTELLIGENCE.**

2 Section 102A(a) of the National Security Act of 1947  
 3 (50 U.S.C 403–1(a)) is amended by adding at the end  
 4 the following:

5 “(3) The Director of National Intelligence shall—

6 “(A) assist the President in conducting inves-  
 7 tigations under section 721(b) of the Defense Pro-  
 8 duction Act of 1950 (50 U.S.C. App. 2170(b);

9 “(B) serve as a member of the Committee on  
 10 Foreign Investment in the United States (or any  
 11 successor committee); and

12 “(C) certify to the President and the Com-  
 13 mittee that there are no national security implica-  
 14 tions in connection with a proposed merger, acquisi-  
 15 tion, or takeover described in section 721(b) of the  
 16 Defense Production Act of 1950 before the proposed  
 17 merger, acquisition, or takeover is reviewed by the  
 18 Committee.”.

19 **SEC. 3. DEFENSE PRODUCTION ACT.**

20 (a) IN GENERAL.—Section 721 of the Defense Pro-  
 21 duction Act of 1950 (50 U.S.C. App. 2170) is amended—

22 (1) by redesignating subsections (g) through (k)  
 23 as subsections (i) and (m), respectively; and

24 (2) by inserting after subsection (f) the fol-  
 25 lowing:

26 “(g) NOTIFICATION AND INVESTIGATION.—

1 “(1) NOTIFICATION.—

2 “(A) IN GENERAL.—Any entity described  
3 in subparagraph (B) shall notify the President  
4 at least 60 days before a proposed merger, ac-  
5 quisition, or takeover described in subparagraph  
6 (B)(ii).

7 “(B) ENTITY DESCRIBED.—An entity de-  
8 scribed in this subparagraph is an entity that—

9 “(i) is controlled by, or acting on be-  
10 half of, a foreign government; and

11 “(ii) seeks to engage in a merger, ac-  
12 quisition, or takeover of a United States  
13 entity or any other entity that has energy  
14 assets valued at \$1,000,000,000 or more  
15 or that operates a critical infrastructure, if  
16 that merger, acquisition, or takeover could  
17 result in control of a person engaged in  
18 interstate commerce in the United States  
19 that could affect the national security of  
20 the United States.

21 “(2) INVESTIGATION.—A mandatory investiga-  
22 tion under subsection (b) shall be required in the  
23 case of a merger, acquisition, or takeover described  
24 in paragraph (1)(B)(ii) by an entity described in  
25 paragraph (1)(B).

1       “(h) PRESIDENT’S DESIGNEE DEFINED.—In this  
 2 section, the term ‘President’s designee’ means the Sec-  
 3 retary of Commerce, the Secretary of Defense, the Sec-  
 4 retary of Homeland Security, the Secretary of State, the  
 5 Secretary of the Treasury, the Attorney General, the Di-  
 6 rector of National Intelligence, and appropriate employees  
 7 of the Executive Office of the President.”.

8       (b) NOTIFICATION.—Section 721(i) of the Defense  
 9 Production Act of 1950 (50 U.S. C. App. 2170(i)), as re-  
 10 designated by subsection (a)(1), is amended—

11           (1) by striking “The President” and inserting  
 12 the following: “(1) REPORT ON ACTION.—The Presi-  
 13 dent”; and

14           (2) by adding at the end the following:

15           “(2) REPORT ON NOTIFICATION.—The Presi-  
 16 dent shall immediately transmit to the Secretary of  
 17 the Senate and the Clerk of the House of Represent-  
 18 atives and to appropriate State officials written noti-  
 19 fication as soon as the President receives a notifica-  
 20 tion under subsection (b) or (g).

21           “(3) PUBLIC HEARINGS.—The President shall  
 22 hold public hearings on any proposed merger, acqui-  
 23 sition, or takeover described in subsection (b) or  
 24 (g)(1).”.

1       (c) FACTORS TO BE CONSIDERED.—Section 721(f)  
2 of the Defense Production Act of 1950 (50 U.S.C. App.  
3 2170(f)) is amended—

4           (1) by striking “and” at end of paragraph (4);

5           (2) by striking the period at the end of para-  
6 graph (5) and inserting “;”; and

7           (3) by adding at the end the following:

8           “(6) the robust and expanding defense capabili-  
9 ties of the country in which the acquiring entity is  
10 located; and

11           “(7) the nature of the bilateral relationship of  
12 the United states with the country in which the ac-  
13 quiring entity is located.”.

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