

BILL ANALYSIS

C.S.S.B. 17
By: Kolkhorst
Homeland Security, Public Safety & Veterans' Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that the acquisition of real property by hostile foreign entities in Texas poses threats relating to espionage, surveillance, and undue hostile foreign influence, all of which risk state security. C.S.S.B. 17 seeks to protect the state and its citizens from these threats by prohibiting hostile foreign actors from owning land in Texas. This prohibition extends to governmental entities of certain countries that pose a risk to national security and to certain companies, organizations, and individuals connected to those countries.

CRIMINAL JUSTICE IMPACT

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

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the attorney general in SECTION 4 of this bill.

ANALYSIS

C.S.S.B. 17 amends the Property Code to prohibit the following entities and individuals connected to a designated country from purchasing or otherwise acquiring an interest in real property in Texas:

- a governmental entity of a designated country;
- a company or organization that meets any of the following criteria:
 - is headquartered in a designated country;
 - is directly or indirectly held or controlled by the government of a designated country; or
 - is owned by or the majority of stock or other ownership interest of which is held or controlled by individuals who are covered by this prohibition;
- a company or organization that is owned by or the majority of stock or other ownership interest of which is held or controlled by a company or organization meeting the aforementioned criteria; or
- an individual who meets the following criteria:
 - is domiciled in a designated country;
 - is a citizen of a designated country and is domiciled outside of the United States in a country other than a designated country and for which the individual has not completed the naturalization process for becoming a citizen of that country;
 - is a citizen of a designated country who is unlawfully present in the United States; or
 - is a citizen of a country other than the United States and is acting as an agent or on behalf of a designated country.

The bill defines "designated country" as a country identified by the U.S. Director of National Intelligence as a country that poses a risk to the national security of the United States in at least one of the three most recent Annual Threat Assessments of the U.S. Intelligence Community issued pursuant to the federal National Security Act of 1947. The bill excepts the following from the application of its provisions:

- an individual who is a citizen or lawful permanent resident of the United States;
- a company or organization that is owned by or under the control of one or more such individuals and no individual subject to the prohibition; or
- a leasehold interest in land or improvements constructed on a leasehold if the duration of the interest is less than 100 years.

C.S.S.B. 17 requires the attorney general to establish procedures to examine a purchase or acquisition of an interest in real property and determine whether an investigation of a possible violation of the bill's provisions is warranted. If the attorney general determines that an investigation of a purchase or acquisition of an interest in real property is warranted, the attorney general is required to investigate the purchase or acquisition and determine whether a violation occurred and, if the attorney general determines that a violation occurred, is authorized to do the following:

- bring an in rem action against real property to enforce the bill's provisions in a district court in the county where all or part of the real property that is the subject of the violation is located; and
- refer the matter to the appropriate local, state, or federal law enforcement agency.

The bill requires the attorney general to record notice of an action brought under the bill's provisions in the real property records of each county where any part of the real property subject to the action is located. Except for an acquisition of a leasehold interest, a purchase or acquisition of an interest in real property in violation of the bill's prohibition is not void because of the violation, and the validity or enforceability by any person of a purchase contract for or the conveyance of an interest in the real property is not otherwise affected by the violation.

C.S.S.B. 17 authorizes the attorney general to conduct discovery to investigate a potential action or in an action brought under the bill's provisions, including by doing the following:

- petitioning for an order authorizing the taking of a deposition under Rule 202, Texas Rules of Civil Procedure; or
- if the attorney general has reason to believe that a person may be in possession, custody, or control of any documentary material or other evidence or may have any information relevant to an investigation of a suspected violation, issuing in writing and serving on the person a civil investigative demand requiring the person to produce any of the documentary material for inspection and copying, answer in writing any written interrogatories, give oral testimony, or provide any combination of those civil investigative demands.

The bill requires the secretary of state, on request by the attorney general, to serve interrogatories on an individual or entity as necessary to determine the ownership or control of an organization that is the subject of such an action and provide to the attorney general all records held by the secretary relating to the ownership or control of an organization that is the subject of such an action.

C.S.S.B. 17 requires a district court, if it finds in an action brought by the attorney general that the real property subject to the action was purchased or an interest in the real property was otherwise acquired in violation of the bill's prohibition, to refer the matter to the appropriate prosecuting attorney for criminal prosecution of any appropriate criminal offense in connection with the transaction and to enter an order that does the following:

- states the court's finding;
- orders the divestment of the individual's or entity's interest in the real property; and
- appoints a receiver to divest the individual's or entity's interest in the real property through sale, termination of a leasehold, or other disposition of the interest and to

manage and control the real property pending the sale or other disposition of the interest in the real property.

The bill establishes that, on appointment and qualification, the appointed receiver has the powers and duties of a receiver under the Civil Practice and Remedies Code. The bill requires proceeds from the sale or other disposition of an interest in real property under the order to be applied first to satisfy any existing liens on the property and then to pay the reasonable costs incurred by the state in enforcing the bill's provisions. The bill requires the remaining proceeds to be remitted to the individual or entity that purchased or otherwise acquired the interest in violation of the bill's provisions.

C.S.S.B. 17 amends the Civil Practice and Remedies Code to authorize a court of competent jurisdiction to appoint a receiver in an action brought by the attorney general under the bill's provisions.

C.S.S.B. 17 requires the attorney general to adopt rules for the implementation of the bill's provisions as soon as practicable after the bill's effective date. The bill applies only to the purchase or acquisition of an interest in real property on or after the bill's effective date. The purchase or acquisition of an interest in real property before the bill's effective date is governed by the law in effect immediately before the bill's effective date, and that law is continued in effect for that purpose.

C.S.S.B. 17 establishes that it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in the bill, and every application of the bill's provisions to each person or entity, is severable from each other. If any application of any bill provision to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. The bill requires the court, if it finds invalid, for any reason, a prohibition under the bill's provisions on the purchase or acquisition of an interest in real property in Texas by an individual described by the bill, notwithstanding the finding, to construe the bill to prohibit the purchase or acquisition of an interest in real property in Texas by an individual who is a citizen of a country other than the United States and is domiciled in a designated country described by the bill's provisions.

C.S.S.B. 17 defines the following terms:

- "agricultural land" as land that is located in Texas and that is suitable for the following:
 - use in the production of plants and fruits grown for human or animal consumption, or plants grown for the production of fibers, floriculture, silviculture, viticulture, horticulture, or planting seed; or
 - domestic or native farm or ranch animals kept for use or profit;
- "company" as a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit;
- "domiciled" as having established a place as an individual's true, fixed, and permanent home and principal residence to which the individual intends to return whenever absent;
- "organization" by reference to the Business Organizations Code as a corporation, limited or general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization, regardless of whether the organization is for-profit, nonprofit, domestic, or foreign; and
- "real property" as agricultural land, an improvement located on agricultural land, commercial property, industrial property, groundwater, residential property, a mine, a quarry, a mineral in place, standing timber, or water rights.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 17 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.

Whereas the engrossed prohibited certain entities and individuals from purchasing or otherwise acquiring real property, the substitute prohibits certain entities or individuals from purchasing or otherwise acquiring an interest in real property. The engrossed and the substitute differ with respect to the entities and individuals subject to the prohibition as follows:

- while both versions include an organization headquartered in a designated country, the substitute also includes a company headquartered in such a country;
- whereas the engrossed included an organization that is directly or indirectly under the control of the government of a designated country, the substitute includes a company or organization that is directly or indirectly held or controlled by such a government;
- whereas the engrossed included an organization that is owned by or under the control of one or more individuals who are domiciled in a designated country, the substitute includes a company or organization that is owned by or the majority of stock or other ownership interest of which is held or controlled by individuals covered by the prohibition;
- whereas the engrossed included an organization that is owned by or under the control of an organization described by the engrossed version's provisions, the substitute includes a company or organization that is owned by or the majority of stock or other ownership interest of which is held or controlled by a company or organization described by the substitute's provisions; and
- whereas the engrossed included an individual who is domiciled in a designated country or who is a member of, associated with, or acting on behalf of the government of such a country, the substitute includes an individual who meets any of the following criteria:
 - is domiciled in a designated country;
 - is a citizen of a designated country and is domiciled outside of the United States in a country other than a designated country and for which the individual has not completed the naturalization process for becoming a citizen of that country;
 - is a citizen of a designated country who is unlawfully present in the United States; or
 - is a citizen of a country other than the United States and is acting as an agent or on behalf of a designated country.

The substitute includes provisions not in the engrossed establishing definitions for the terms "company" and "domiciled." The substitute omits provisions present in the engrossed that established the definitions of "governing authority" and "governing person" by reference to Business Organizations Code provisions.

Whereas the engrossed defined "designated country" to include a country identified as a country that poses a risk to national security in each of the three most recent Annual Threat Assessments of the U.S. Intelligence Community issued pursuant to applicable federal law, the substitute defines that term to include a country identified as such a country in at least one of the three most recent of those assessments.

The substitute omits provisions present in the engrossed that established the following:

- that, for the purposes of the bill's provisions, an organization is under the control of an individual or another organization if the controlling individual or organization is authorized to do the following:
 - direct the activities of the controlled organization;
 - make or direct others to make legal commitments on behalf of the controlled organization; or
 - hire and fire a principal decision maker of the controlled organization; and
- that the authority of the controlling individual or organization may derive from the following:
 - exercise of a voting ownership interest of the controlled organization sufficient to elect a governing person or governing authority of the controlled organization to exercise on the controlling individual's or organization's behalf the authority; or
 - a financial, legal, practical, contractual, or other arrangement that functionally enables the controlling individual or organization to exercise the authority.

While both versions provide exceptions to the bill's provisions, the versions differ in the following manner:

- while both versions apply the exception to an individual who is a citizen or lawful permanent resident of the United States, the substitute omits the specification from the engrossed that this includes an individual who is a citizen of a foreign country;
- whereas the engrossed included as an excepted entity an organization that is owned by or under the control of one or more individuals who are citizens or lawful permanent residents of the United States, the substitute includes as an excepted entity a company or organization that is owned by or under the control of one or more such individuals and no individual subject to the bill's prohibition; and
- the substitute omits an exception present in the engrossed for real property that is intended for use as an individual's residence homestead.

Both the engrossed and the substitute include provisions establishing the authority of the attorney general to bring an in rem action against real property to enforce the bill's provisions. However, those provisions differ as follows:

- the substitute includes a provision absent from the engrossed requiring the attorney general to establish procedures to examine a purchase or acquisition of an interest in real property and determine whether an investigation of a possible violation of the bill's provisions is warranted;
- the substitute includes a provision absent from the engrossed requiring the attorney general, if an investigation is determined to be warranted, to investigate the purchase or acquisition and determine whether a violation occurred;
- while both versions authorize the attorney general to bring an in rem action against real property to enforce the bill's provisions, the engrossed conditioned this action on the attorney general having a reasonable suspicion that an individual, organization, or governmental entity has purchased or otherwise acquired real property in Texas in violation of the bill's provisions, whereas the substitute conditions the action on the attorney general determining that a violation of the bill's provisions occurred; and
- the substitute additionally includes an authorization not in the engrossed for the attorney general to refer the matter to the appropriate local, state, or federal law enforcement agency if the attorney general determines that such a violation has occurred.

Both the engrossed and the substitute set out provisions requiring a court, if it finds a violation of the bill's provisions, to enter an order that states the court's findings and appoints a receiver to take certain actions, but those provisions differ as follows:

- whereas the requirement for the court in the engrossed version is triggered by the finding that real property was purchased or otherwise acquired by an individual, organization, or governmental entity in violation of the bill's prohibition, the

substitute's requirement is triggered by the finding that the real property was purchased or an interest in the real property was otherwise acquired in violation of the bill's prohibition;

- the substitute includes among elements that must be included in the order an order that requires the divestment of the individual's or entity's interest in the real property;
- whereas the engrossed included as a role of the receiver the return to the individual, organization, or governmental entity that purchased or otherwise acquired the property in violation of the bill's provisions of any proceeds of the sale or other disposition of the real property after satisfying any existing liens on the property and recovery of any reasonable costs incurred by the state in enforcing the bill's provisions, the substitute does not include that role but includes as a role of the receiver, which the engrossed did not include, divesting the individual's or entity's interest in the real property through sale, termination of a leasehold, or other disposition of the interest;
- whereas the engrossed included as a role of the receiver the management and control of the real property pending the sale or other disposition of the real property, the substitute specifies that the role of the receiver is management and control of the real property pending the sale or other disposition of the interest in the real property; and
- the substitute includes the following provisions absent from the engrossed:
 - a requirement for the court to refer the matter to the appropriate prosecuting attorney for criminal prosecution of any appropriate criminal offense in connection with the transaction;
 - a requirement for the proceeds from the sale or other disposition of an interest in real property under the court's order to be applied first to satisfy any existing liens on the property and then to pay the reasonable costs incurred by the state in enforcing the bill's provisions; and
 - a requirement for the remaining proceeds to be remitted to the individual or entity that purchased or otherwise acquired the interest in violation of the bill's provisions.

While both versions include provisions establishing that the bill's changes to law apply only to the purchase or other acquisition of real property on or after the bill's effective date, the substitute specifies that such purchase or acquisition applies to an interest in real property.

The substitute includes the following provisions not present in the engrossed:

- a requirement for the attorney general to adopt rules for the implementation of the bill's provisions as soon as practicable after the bill's effective date;
- a severability clause; and
- a requirement for a court, if it finds invalid, for any reason, a prohibition under the bill's provisions on the purchase or acquisition of an interest in real property by an applicable individual, notwithstanding the finding, to construe the bill to prohibit the purchase or acquisition of an interest in real property by an individual who is not a citizen and is domiciled in a designated country described by the bill's provisions.