

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2371

Introduced by

Senators Paulson, Larsen, Wobbema

Representatives Fisher, Hoverson, Louser

1 A BILL for an Act to create and enact a new section to chapter 11-11 and a new section to
2 chapter 40-05 of the North Dakota Century Code, relating to the power of counties and
3 municipalities to prohibit local development by a foreign adversary; to amend and reenact
4 section 47-01-09 of the North Dakota Century Code, relating to the prohibition on ownership of
5 real property by a foreign adversary; ~~and to declare an emergency~~ to provide for a legislative
6 management study; and to provide an expiration date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1.** A new section to chapter 11-11 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Development by a foreign adversary - Prohibition.**

- 11 1. A board of county commissioners, including a board in a home rule county, may not
12 procure, authorize, or approve a development agreement, building plan, or proposal
13 relating to county development with an individual or government identified as a foreign
14 adversary under 15 CFR 7.4(a) or a person identified on the office of the foreign
15 assets control sanctions list.
- 16 2. This section does not apply to a foreign adversary defined under subsection 1
17 possessing an interest in real property if the foreign adversary:
- 18 a. Is a duly registered business and has maintained a status of good standing with
19 the secretary of state for seven years or longer before the effective date of this
20 Act;
- 21 b. Has been approved by the committee for on foreign direct investment in the
22 United States; and
- 23 c. Maintains an active national security agreement with the federal government.

1 **SECTION 2.** A new section to chapter 40-05 of the North Dakota Century Code is created
2 and enacted as follows:

3 **Development by a foreign adversary - Prohibition.**

4 1. A board of city commissioners or city council, including a board or council in a home
5 rule city, may not procure, authorize, or approve a development agreement, building
6 plan, or proposal relating to city development with an individual or government
7 identified as a foreign adversary under 15 CFR 7.4(a) or a person identified on the
8 office of the foreign assets control sanctions list.

9 2. This section does not apply to a foreign adversary as defined in subsection 1
10 possessing an interest in real property if the foreign adversary:

11 a. Is a duly registered business and has maintained a status of good standing with
12 the secretary of state for seven years or longer before the effective date of this
13 Act;

14 b. Has been approved by the committee foron foreign direct investment in the
15 United States; and

16 c. Maintains an active national security agreement with the federal government.

17 **SECTION 3. AMENDMENT.** Section 47-01-09 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **47-01-09. Public or private ownership - All property subject to - Foreign ownership**
20 **prohibited.**

21 1. All property in this state has an owner, whether that owner is the United States or the
22 state, and the property public, or the owner an individual, and the property private. The
23 state also may hold property as a private proprietor.

24 2. Notwithstanding any other provision of law, the following governments or entities may
25 not purchase, ~~hold,~~ or otherwise acquire title to real property in this state after the
26 effective date of this Act:

27 a. A foreign ~~government listed as a foreign~~ adversary.

28 b. A foreign business entity ~~that is:~~

29 ~~———— (1) ~~Headquartered~~with a principal executive office located in a country that is~~
30 ~~identified as a foreign adversary;~~

31 ~~———— (2) ~~Directly or indirectly held or controlled by a foreign adversary;~~~~

1 ~~_____ (3) Owned by the majority of stock or other ownership interests of which is held~~
2 ~~_____ or controlled by individuals who are citizens of a foreign adversary; or~~

3 ~~_____ (4) A company owned by, or the majority of stock or other ownership interest of~~
4 ~~_____ which is held or controlled by, a company or entity described in paragraph 3.~~

5 c. A foreign business entity in which a foreign adversary owns:

6 (1) More than fifty percent of the total controlling interests or total ownership
7 interests, as defined under section 10-19.1-01, in the foreign business
8 entity, unless the foreign business entity was operating lawfully in the United
9 States on the effective date of this Act; or

10 (2) Fifty percent or less of the total controlling interests or total ownership
11 interests, as defined under section 10-19.1-01, in the foreign business
12 entity, if the foreign adversary directs the business operations and affairs of
13 the foreign business entity without the requirement of consent of any
14 nonforeign adversary, unless the foreign business entity was operating
15 lawfully in the United States on the effective date of this Act.

16 3. The attorney general shall complete a review of security concerns relating to any-
17 foreign business entity acquiring real property under subdivision c of subsection 2.

18 4. This section does not apply to an entity possessing an interest in real property under
19 subsection 2 if the entity:

20 a. Is a duly registered business and has maintained a status of good standing with
21 the secretary of state for seven years or longer before the effective date of this
22 Act;

23 b. Has been approved by the committee ~~for~~on foreign ~~direct~~ investment in the
24 United States; and

25 c. Maintains an active national security agreement with the federal government.

26 4.5. A foreign government or foreign business entity subject to and in violation of this
27 section shall divest itself of all real property in this state within thirty-six months after
28 the effective date of this Act.

29 6. If a foreign government or foreign business entity subject to this section fails to divest
30 itself of all real property in this state within the period specified under subsection 4, the
31 the state's attorney of the county in which the majority of the real property is situated

1 may issue subpoenas to compel witnesses to appear to provide testimony or produce
2 records.

3 7. Upon receiving testimony and records, if the state's attorney concludes a foreign
4 government or foreign business entity, in violation of this section, has failed to divest
5 ownership of real property as required under this section, the state's attorney shall
6 commence an action in the district court of the county in which the majority of the real
7 property is situated. Once the action is commenced, the state's attorney shall file a
8 notice pursuant to section 28-05-07 with the recorder of each county where the real
9 property subject to the action is situated. If the court finds divestment of real property
10 under this section is proper, the district court shall enter an order consistent with its
11 findings. As part of the order, the court shall cancel the notice pursuant to section
12 28-05-08.

13 8. Pursuant to an order for divestment, a foreign government or foreign business entity
14 subject to an order shall divest all real property within six months from the date of the
15 final entry of judgment. A foreign government or foreign business entity that fails to
16 comply with the court's order is subject to a civil penalty not to exceed twenty-five
17 thousand dollars.

18 9. Any real property not divested within the period prescribed by law may be sold at a
19 public sale in the manner provided under chapter 32-19 through an action brought by
20 the state's attorney. A title to real property or encumbrance on the real property may
21 not be deemed invalid by an order of divestiture under this section.

22 10. A person that is not subject to this section may not be required to:

23 a. Determine whether another person is subject to this section; or

24 b. Inquire if another person is subject to this section.

25 11. For purposes of this ~~subsection~~section, "foreign adversary" means an individual or a
26 government identified as a foreign adversary in 15 CFR 7.4(a) or a person identified
27 on the office of foreign assets control sanctions list.

28 ~~SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.~~

29 **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - REAL PROPERTY AND**
30 **COMMERCIAL ASSET OWNERSHIP AND OPERATION OF BUSINESS AND CHARITABLE**
31 **ENTITIES BY FOREIGN ADVERSARIES.**

- 1 1. During the 2023-24 interim, the legislative management shall study the number of
2 persons that own or control any real estate or commercial assets or operate a
3 business within this state which is owned by, controlled by, or subject to the jurisdiction
4 or direction of foreign adversaries or individuals acting on behalf of or in conjunction
5 with foreign adversaries or persons listed on the office of foreign assets control
6 sanctions list.
- 7 2. The study must attempt to craft a definition of foreign adversary and ascertain the
8 number of such persons residing in this state which operate a business or a charitable
9 enterprise or have obtained a beneficial interest in real estate, commercial assets, or a
10 business or charitable organization in this state.
- 11 3. The study must consider which federal foreign adversary list would be best suited for
12 use for the security of this state and the impact of implementing and using a federally
13 created list.
- 14 4. The study must determine how to define, create, and implement a security review
15 verification system that monitors and reviews the actions of foreign adversaries that
16 operate a business or a charitable enterprise or have obtained a beneficial interest in
17 real estate, commercial assets, or a business or charitable organization in this state.
- 18 5. The study must:
 - 19 a. Identify optimal methods for state officials to work and collaborate with national
20 intelligence agents at the state and federal level regarding background checks,
21 national security, and state security;
 - 22 b. Outline what constitutes a national security threat and which person or agency
23 has the authority to declare a national security threat and security threat to this
24 state;
 - 25 c. Identify which state agencies are best equipped to create, implement, and
26 operate a security review verification system that monitors and reviews foreign
27 adversaries operating a business or a charitable enterprise or that have obtained
28 a beneficial interest in real estate, commercial assets, or a business or charitable
29 organization in this state;
 - 30 d. Identify the proper structure and function of a security review verification system;

- 1 e. Identify the individuals and persons eligible to operate a business or a charitable
2 enterprise or that have obtained a beneficial interest in real estate, commercial
3 assets, or a business or charitable organization in this state, under the security
4 review verification system; and
- 5 f. Identify other necessary changes to current industry practices relating to
6 ownership of real property or commercial assets and the operation of business or
7 charitable entities by a foreign adversary.
- 8 5. The study must include under which circumstances, if any, foreign adversaries are
9 prohibited from owning real property in this state, and under which circumstances, if
10 any, foreign adversaries are permitted to own real property in this state.
- 11 6. The legislative management shall report its findings and recommendations, together
12 with any legislation required to implement the recommendations, to the sixty-ninth
13 legislative assembly.

14 **SECTION 5. EXPIRATION DATE.** This Act is effective through July 31, 2025, and after that
15 date is ineffective.