

2371 Specific Requests for Amendment from T.Zablotney

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Chairman Paul Thomas and House Ag Committee Members:

Many stakeholders have come to a consensus concerning two of the bills (HB1503 and SB2371) dealing with Real Property Ownership in North Dakota by Foreign Adversaries. As we expect one bill to emerge in the end, we are suggesting that one bill be created at this point. Keep in mind SB2371 passed unanimously in the Senate 47-0 and 1503 passed unanimously in the House 93-0. In order accomplish a bill merge, the following suggestions are made by many of the stakeholders interested in seeing a final passage of the bills. The current language in 1503 should serve as the foundation of the merged bills with the following adoptions, additions and changes. This single bill should serve to accomplish numerous essentials to prevent foreign adversaries from controlling our precious real property assets in North Dakota and threatening our National Security.

1. Adopt the language from 2371 Section 1 Lines 9 thru 21 page 1 and Section 2 Lines 22-23 page 1 and lines 1-13 page 2 and move it to the current version of 1503. The language in both sections addresses the prohibition of development by a foreign adversary. Section 1 restricts a board of county commissioners and Section 2 restricts city commissioners or a city council. FYI, there has been written testimony on this bill requesting that this language extends down to the township level.
2. Adopt the language from 2371 Section 4. Emergency
3. I also understand that there has been a request to Chairman Thomas to remove the time from of seven years or longer in Section 1.2.a. line 17, page 1 and Section

2.2.a line 9 page 2 from language in 2371. This is not really concerning as the review process in 1503 should cover the foreign ownership concerns. However, I understand that this request is coming from an entity that is not likely a covered person anyway.

The remaining amendments below are to the current version of 1503 and are as follows:

1. MODIFICATION TO HB1503 SECTION 1.2.1.A Lines 22 and 23 page 1
Capitalize Committee on Foreign Investment in the United States (CFIUS).

2. MODIFICATION TO HB1503 SECTION 1.2.1.B

“Foreign adversary” shall mean:

- a. An individual or a government identified as a foreign adversary in 15 CFR 7.4(a); or,
- b. An individual or entity (or subsidiaries, affiliates, or agents thereof) specifically named in any of the following United States Government-maintained lists or databases:
 - a. International Trade Administration Consolidated Screening List
 - b. Section 1260H of the National Defense Authorization Act
 - c. UFLPA Entity List

3. Change the following language in HB1503 Section 2.4.b line 4 page 3 from "thirty-six" to "twenty-four" - effectively reducing the amount of time to divest illegally owned real property.

4. Add the following language to HB1503 immediately after Section 2.4.b line 5 page 3 and then renumber below.

The following divestiture language was derived from existing language under Agricultural Land Ownership by Aliens Section 47-10.1 in ND Century Code. This is the language suggested by Nick Hacker from the Title Team and was developed to address concerns stemming from the banking community, the real estate community, entities holding easements and other property encumbrances and from others.

1. If the covered person fails to divest itself of the real property within the required time, the attorney general shall take action under subsection d.

2. The attorney general shall commence an action in the district court of the county in which the substantial portion of the land owned in violation of this section is situated if the attorney general has reason to believe a covered person is violating this section. The attorney general shall file for record with the recorder of each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this section, the court shall enter an order so declaring. The attorney general shall file any such order for record with the recorder of each county in which any portion of the land is located. Thereafter, the covered person shall, within the time set by the court not to exceed [6 months] from the date of the court's final order, divest itself of any land owned in violation of this section. Any covered person that fails to comply with the court's order is subject to a civil penalty not to exceed twenty-five thousand dollars.

3. Any land not divested within the divestment period prescribed must be sold at a public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action brought by the attorney general [as prescribed in chapter 32-19]; provided, however, that proceeds shall be disbursed as follows: first, for authorized costs, including costs borne by the attorney general in an amount approved by the court; second, to lien holders in their order of priority; and all remaining proceeds to the covered person. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law, including from completing performance on the remainder of any leasehold which is in violation of this section. No title to land shall be invalid or subject to forfeiture by reason of the alienage of any former owner or person having a former interest therein.

4. No individual, person, or entity not subject to this section shall be required to:

a. determine whether another individual, person, or entity is a covered person under this section; or

b. inquire into the status of another individual, person, or entity as a covered person under this section.

ADDITIONAL CONSIDERATIONS:

1. It has been suggested that language is created and amended into this bill that would provide subpoena and investigative power to the Attorney General in order to effectively review, conclude and/or prosecute a case of illegal real property ownership

by covered persons.

2.Consider and so amend if water and mineral rights are not considered as or covered under real property. We want to make sure these important real property components are covered and are restricted from ownership by covered persons in this bill.

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