2025 SENATE STATE AND LOCAL GOVERNMENT

SB 2337

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Peace Garden Room, State Capitol

SB 2337
1/31/2025

Relating to the powers of a board of county commissioners, a board of city commissioners, and a city council regarding development by a foreign country of concern or foreign organization of concern, prohibiting ownership of real property by a foreign country of concern or a foreign organization of concern, and required filings for foreign persons investing in agricultural lands; to provide a legislative management report, to provide a penalty, to provide a contingent effective date and to provide for an expiration date.

10:30 a.m. Vice Chairman Castaneda called the meeting to order.

Members Present: Chair Roers, Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

Discussion Topics:

- Federal law effects
- Protect and promote business
- Real property ownership

10:31 a.m. Senator Walen, District 4, testified in favor and submitted testimony #33191.

10:35 a.m. Blaine Johnson, Chairman, Real Property section of State Bar Association of ND, testified in opposition and submitted testimony #33294.

11:00 a.m. Andrea Pfennig, Vice President Government Affairs Greater ND Chamber, testified in opposition and submitted testimony #33086.

Additional written testimony:

Cale Dunwoody, Vice President of Public Policy FMWF Chamber of Commerce, submitted testimony in opposition #33139.

11:02 a.m. Chair Roers closed the hearing.

Susan Helbling, Committee Clerk

GREATER NORTH DAKOTA CHAMBER
SB 2337
Senate State & Local Government Committee
Chair Kristin Roers
January 31, 2025

Chair Roers and members of the Committee, my name is Andrea Pfennig, and I am the Vice President of Government Affairs for the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization, with membership represented by small and large businesses, local chambers, and trade and industry associations across the state. We stand in **opposition** of Senate Bill 2337.

Our members recognize that North Dakota businesses are competing in a global economy. Because of this, it is important that we have a policy framework that helps the state attract capital investment. By lowering the threshold from 50% of total controlling interests or total ownership interests to 25% ownership interest, it is unclear how publicly traded corporations would be affected. The policy framework of at least 50% ownership that was established last session was a compromise aimed at balancing security concerns with our ability to attract investment.

We'd like to note that other states that have made similar efforts have been challenged in the courts. The federal government's Corporate Transparency Act has also been challenged. It may be beneficial to pause further action until those court cases have been determined.

THE CHAMBER
FARGO MOORHEAD WEST FARGO

Letter of Opposition – SB 2337

Friday, January 31th, 2025

Chairwoman Roers and Members of the Senate State and Local Government Committee,

For the record, my name is Cale Dunwoody, and I have the distinct pleasure of serving as the Vice President of Public Policy for the Fargo Moorhead West Fargo Chamber of Commerce (FMWF Chamber). On behalf of our more than 1,700 members, I respectfully offer testimony in opposition to Senate Bill 2337.

At the FMWF Chamber, our mission is to protect and promote business, inspire individuals, cultivate communities, and influence action. While we deeply respect and support efforts to safeguard national security, we believe this bill, as currently written, would hinder North Dakota's business climate, economic growth, and international partnerships. Specifically, our concerns center on the inadvertent financial and regulatory burdens this bill may place on businesses operating in good faith, as well as the possibility of deterring valuable economic development across the state.

As the committee considers this legislation, we encourage a judicious analysis of its impacts and urge pragmatic modifications that protect national security interests and minimize the negative effects on the business community, thereby safeguarding legitimate economic development opportunities. For these reasons we urge the committee to give this bill a DO NOT PASS.

Thank you for your attention to this matter and your commitment to North Dakota's business environment.

Sincerely,

Cale Dunwoody
Vice President of Public Policy
Fargo Moorhead West Fargo Chamber of Commerce

Legislative Assembly

North Dakota Senate

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Senator Chuck Walen
District 4
422 Eagle Drive
New Town, ND 58763-4041
cwalen@ndlegis.gov

COMMITTEES:
Finance and Taxation
State and Local Government

1/31/2025

Senate State and Local Government

SB 2337

Chairman Roers and Committee members:

SB 2337 is a rework of SB 2026 that we recommend a Do Not Pass and on the Senate Floor was not Passed.

Throughout the bill I retained the change of dates from July 31, 2025 to July 31, 2026, retained all the language of "country of concern or a foreign organization of concern and the definitions of same.

Page 3 line 14: Changed the zero percent ownership to 25%, this reduces from current law of 50%.

Left Section 5 as presented to us in SB2026.

And removed section 6 on Secretary of State and filing requirements

We need to continue with some legislative action as Sen Cramer has stated we cannot wait for the federal government to act.

Please vote to do pass on SB 2337

I stand for any questions

Blaine T. Johnson
100 West Broadway, Suite 250
PO Box 2798
Bismarck, ND 58502-2798
701.223.6585

January 31, 2025

Chair Kristin Roers
Vice-Chairman Jose Castaneda
North Dakota Senate State and Local Government Committee

RE: Senate Bills 2337 and 2361

Chair Roers and members of the Senate State and Local Government Committee:

My name is Blaine Johnson, and I am here today to express concern with Senate Bills 2337 and 2361, which seeks to prohibit the ownership of real property by foreign adversaries of the United States. While I understand the intent to protect national security, this bill raises serious constitutional and legal concerns that merit your careful consideration.

I. Violation of the Supremacy Clause and Foreign Affairs Powers

The regulation of foreign relations and national security is an exclusive power of the federal government under the U.S. Constitution. The Supremacy Clause (Article VI, Clause 2) establishes that federal law prevails over state or local laws that interfere with national policy. Additionally, the Foreign Commerce Clause (Article I, Section 8, Clause 3) grants Congress exclusive authority to regulate foreign commerce, including foreign investment. The Supreme Court has consistently held that states cannot intrude upon foreign affairs. Power over external affairs is not shared by the States; it is vested in the national government exclusively." *United States v. Pink*, 315 U.S. 203, 233, 62 S. Ct. 552, 86 L. Ed. 796 (1942). The legal implications of this federal exclusivity are straightforward. In the words of the Supreme Court, "[o]ur system of government . . . imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference." *Hines v. Davidowitz*, 312 U.S. 52, 63, 61 S. Ct. 399, 85 L. Ed. 581 (1941). "[C]omplete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states." *American Ins. Assn. v. Garamendi*, 539 U.S. 396, 418, 123 S. Ct. 2374, 156 L. Ed. 2d 376 (2003). In *Zschernig v. Miller*, 389 U.S. 429 (1968), the Court struck down an Oregon law restricting inheritance by foreign nationals, holding that such laws impermissibly interfered with federal foreign policy. This bill similarly seeks to regulate foreign property ownership in a manner that conflicts with federal jurisdiction.

II. Violation of the Equal Protection Clause

The bill's restrictions target property ownership based on national origin and citizenship status, raising significant Equal Protection concerns under the Fourteenth Amendment. In *Graham v. Richardson*, 403 U.S. 365 (1971), the Supreme Court held that laws discriminating against non-citizens are subject to strict scrutiny, the highest level of judicial review. This bill does not appear to be narrowly tailored to achieve a compelling government interest and would likely fail constitutional scrutiny. Note that the federal regulations identified in both bills relies upon 15 CFR 791.4(a) which is not an outright prohibition but requires additional safeguards and caution.

III. Vagueness and Overbreadth

The bill relies on the designation of "foreign adversaries," a term that is subject to change at the discretion of federal agencies. The lack of clear and objective criteria creates a risk of arbitrary enforcement, violating the constitutional requirement that laws be clear and not overly broad. The Supreme Court has repeatedly ruled against vague laws, as seen in *Kolender v. Lawson*, 461 U.S. 352 (1983), where the Court struck down a statute that granted excessive discretion to law enforcement.

IV. Defined Terms

SB 2337 attempts to define foreign county of concern and foreign organization of concern. The prior use of foreign adversary was consistent with defined terms under federal regulations, the proposed language in SB 2337 deviates and results in the unnatural interpretation of commonly understood definitions and language. A "country" is not ever an individual on the OFAC list. This definition leads to an absurd result. SB 2337 further lowers the ownership threshold to 25% and disregards whether such ownership has control over the entity or not. Passive investors may not have voting rights or other managerial control.

V. Misunderstanding of CFIUS

SB 2337 provides for exceptions when "consent" is granted by the Committee on Foreign Investment in the United States. The CFIUS review is confidential, and if no threat is determined the review process is concluded. A decision not to exercise authority over the transaction results in a "safe harbor" for the proposed investment. Furthermore, the CFIUS review process is designed for covered transactions where a foreign government is acquiring a "substantial interest" in certain U.S. businesses and certain covered transactions that involve critical technologies. It does not apply to every minor circumstance in which foreign investment is involved.

Conclusion

While national security is a legitimate concern, SB 2337 and 2361 raise significant constitutional and legal issues that make it both overreaching and vulnerable to legal challenges. Instead of

enacting broad and constitutionally suspect prohibitions, I urge the legislature to consider alternative approaches that respect both national security interests and constitutional principles.

I appreciate your time and consideration and respectfully urge you to vote against this bill. I welcome any questions from the Committee.

Thank you.

Sincerely,

Blaine T. Johnson
N.D. Atty. Lic. No. 07080

2025 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee
Room JW216, State Capitol

SB 2337
2/13/2025

Relating to the powers of a board of county commissioners, a board of city commissioners, and a city council regarding development by a foreign country of concern or foreign organization of concern, prohibiting ownership of real property by a foreign country of concern or a foreign organization of concern, and required filings for foreign persons investing in agricultural lands; to provide a legislative management report, to provide a penalty, to provide a contingent effective date and to provide for an expiration date.

8:34 a.m. Chair Roers called the meeting to order.

Members Present: Chair Roers, Vice Chair Castaneda; Senators: Barta, Braunberger, Lee and Walen.

Discussion Topics:

- Resources and jurisdiction

8:34 a.m. Senator Castaneda gave a summary of the information Mr. Dorman provided to him regarding HB 1209.

8:37 a.m. Senator Walen moved a Do Not Pass.

8:37 a.m. Senator Barta seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jose L. Castaneda	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Judy Lee	Y
Senator Chuck Walen	Y

Motion Passed 6-0-0

Senator Walen will carry the bill.

8:39 a.m. Chair Roers closed the hearing.

Susan Helbling, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2337 (25.1327.01000)

State and Local Government Committee (Sen. Roers, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2337 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.