

109TH CONGRESS
2^D SESSION

H. R. 4881

To promote the national defense by establishing requirements for the ownership, management, and operation of critical infrastructure in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2006

Mr. HUNTER (for himself, Mr. SAXTON, Mr. SKELTON, Mr. DAVIS of Kentucky, Mrs. JO ANN DAVIS of Virginia, Mr. JONES of North Carolina, Mr. LOBIONDO, Mr. MILLER of Florida, Mr. SMITH of New Jersey, Mr. POE, Mr. BACHUS, Mr. HEFLEY, Mr. NEY, Mr. TURNER, and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on Armed Services, Energy and Commerce, International Relations, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote the national defense by establishing requirements for the ownership, management, and operation of critical infrastructure in the United States, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Defense Crit-
3 ical Infrastructure Protection Act of 2006”.

4 **SEC. 2. CITIZENSHIP AND OTHER REQUIREMENTS FOR**
5 **OWNERSHIP, MANAGEMENT, AND OPERATION**
6 **OF UNITED STATES CRITICAL INFRASTRUC-**
7 **TURE.**

8 (a) **LIMITATION ON CORPORATE OWNERSHIP AND**
9 **MANAGEMENT AND OPERATION.**—A corporation may not
10 own, or be authorized (by contract or otherwise) to man-
11 age or operate, any system or asset that is included on
12 the national defense critical infrastructure list unless the
13 corporation meets the critical infrastructure national secu-
14 rity management requirements.

15 (b) **CRITICAL INFRASTRUCTURE NATIONAL SECUR-**
16 **ITY MANAGEMENT REQUIREMENTS.**—A corporation
17 meets the critical infrastructure national security manage-
18 ment requirements for purposes of subsection (a) only if
19 each of the following applies to the corporation:

20 (1) The corporation is organized under the laws
21 of the United States.

22 (2) The corporation has a board of directors the
23 majority of whom are citizens of the United States.

24 (3) The corporation has a chief executive officer
25 and chairman of the board of directors who are citi-
26 zens of the United States.

1 (4) A majority of the voting shares of the cor-
2 poration, and a majority of nonvoting shares of the
3 corporation, are owned by citizens of the United
4 States.

5 (5) More than 50 percent of the members of
6 the board of directors of the corporation have been
7 approved by the Secretary of Defense, in consulta-
8 tion with the Secretary of Homeland Security, for
9 membership on the board.

10 (6) Not less than 20 percent of the members of
11 the board of directors are independent directors.

12 (7) All of the independent directors have been
13 approved by the Secretary of Defense, in consulta-
14 tion with the Secretary of Homeland Security, for
15 membership on the board.

16 (8) The board of directors has a government se-
17 curity committee, all of whose members are ap-
18 proved by the Secretary of Defense, in consultation
19 with the Secretary of Homeland Security, for mem-
20 bership on the committee.

21 (9) The board of directors has a compensation
22 committee that—

23 (A) is comprised of citizens of the United
24 States; and

1 (B) includes the independent directors ap-
2 proved under paragraph (7).

3 (10) The corporation has agreed to allow, and
4 has instituted procedures to authorize, the Secretary
5 of Defense, in consultation with the Secretary of
6 Homeland Security, to annually inspect the proce-
7 dures of the corporation for handling classified infor-
8 mation and, based on such an annual inspection, the
9 procedures of the corporation for handling classified
10 information have been approved by the Secretary of
11 Defense.

12 In the case of a corporation that as of the effective date
13 of subsection (a) owns, or is authorized by contract (or
14 otherwise) to manage or operate, a system or asset that
15 is included on the national defense critical infrastructure
16 list, the provisions of paragraph (4) of this subsection take
17 effect with respect to that corporation as of the date that
18 is five years after the date of the enactment of this Act.

19 (c) NOTIFICATION REQUIREMENTS.—Any corpora-
20 tion that has met the requirements of subsection (b) and
21 that owns, or manages or operates, a system or asset on
22 the national defense critical infrastructure list shall
23 promptly submit notice to the Secretary in the event any
24 of the following occurs:

1 (1) Acquisition of ownership or beneficial own-
2 ership, direct or indirect, of five percent or more of
3 the corporation's voting securities by a foreign per-
4 son.

5 (2) Acquisition of ownership or beneficial own-
6 ership, direct or indirect, of 25 percent or more of
7 any class of the corporation's nonvoting securities by
8 a foreign person.

9 (3) Authority or ability of a foreign person to
10 have power, direct or indirect, to control the election,
11 appointment, or tenure of directors, officers, or execu-
12 tive personnel of the corporation and the power to
13 control other decisions or activities of the corpora-
14 tion.

15 (4) Total revenues or net income in excess of
16 five percent from a single foreign person or in excess
17 of 30 percent from foreign persons in the aggregate
18 in any fiscal year of the corporation.

19 (5) Ten percent or more of any class of the cor-
20 poration's voting securities held in "nominee
21 shares", "street names", or in some other method
22 that does not disclose the beneficial owner of equi-
23 table title.

24 (6) Interlocking directors with foreign persons
25 and any officer or management official of the appli-

1 cant company who is also employed by a foreign per-
2 son.

3 (7) Any other factor that indicates or dem-
4 onstrates a capability on the part of foreign persons
5 to control or influence the operations or manage-
6 ment of the corporation.

7 (8) Acquisition by the corporation of ownership
8 of 10 percent or more of any foreign interest.

9 (d) NATIONAL DEFENSE CRITICAL INFRASTRUC-
10 TURE LIST.—

11 (1) IN GENERAL.—For purposes of this section,
12 the Secretary of Defense, in consultation with the
13 Secretary of Homeland Security, shall prepare and
14 maintain a list, to be known as the “national defense
15 critical infrastructure list”, of critical infrastructure
16 in the United States. The list shall include both mili-
17 tary installations and non-military installations.

18 (2) SUBMISSION TO CONGRESSIONAL COMMIT-
19 TEES.—Whenever the national defense critical infra-
20 structure list is revised, the Secretary of Defense
21 shall, not later than 15 days after the date of the
22 revision, submit notice of the revision in writing to
23 the following:

24 (A) The Committee on Armed Services of
25 the Senate.

1 (B) The Committee on Armed Services of
2 the House of Representatives.

3 (3) CRITICAL INFRASTRUCTURE DEFINED.—In
4 this section, the term “critical infrastructure” means
5 any system or asset, whether physical or virtual,
6 that is so vital to the United States that the inca-
7 pacity or destruction of such system or asset would
8 have a debilitating effect on national security, on na-
9 tional economic security, on national public health or
10 safety, or on any combination of those matters.

11 (e) CITIZEN OF THE UNITED STATES DEFINED.—

12 In this section:

13 (1) CITIZEN OF THE UNITED STATES.—The
14 term “citizen of the United States” includes—

15 (A) a person that is a citizen of the United
16 States under section 2 of the Shipping Act,
17 1916 (46 U.S.C. App. 802); and

18 (B) a United States citizen trust.

19 (2) UNITED STATES CITIZEN TRUST.—

20 (A) Subject to subparagraph (C), the term
21 “United States citizen trust” means a trust
22 that is qualified under this paragraph.

23 (B) A trust is qualified under this para-
24 graph with respect to critical infrastructure
25 only if—

1 (i) each of the trustees is a citizen of
2 the United States; and

3 (ii) the trust submits to the Secretary
4 of Defense an affidavit of each trustee
5 stating that the trustee is not aware of any
6 reason involving a beneficiary of the trust
7 that is not a citizen of the United States,
8 or involving any other person that is not a
9 citizen of the United States, as a result of
10 which the beneficiary or other person
11 would hold more than 25 percent of the
12 aggregate power to influence or limit the
13 exercise of the authority of the trustee with
14 respect to matters involving any ownership
15 or operation of the critical infrastructure
16 that may adversely affect the interests of
17 the United States.

18 (C) If any person that is not a citizen of
19 the United States has authority to direct or
20 participate in directing a trustee for a trust in
21 matters involving any ownership or operation of
22 the critical infrastructure that may adversely
23 affect the interests of the United States or in
24 removing a trustee for a trust without cause, ei-
25 ther directly or indirectly through the control of

1 another person, the trust is not qualified under
2 this paragraph unless the trust instrument pro-
3 vides that persons who are not citizens of the
4 United States may not hold more than 25 per-
5 cent of the aggregate authority to so direct or
6 remove a trustee.

7 (D) This paragraph shall not be considered
8 to prohibit a person who is not a citizen of the
9 United States from holding more than 25 per-
10 cent of the beneficial interest in a trust.

11 (f) EFFECTIVE DATES.—

12 (1) IN GENERAL.—Subsection (a) shall take ef-
13 fect on the date on which the national defense crit-
14 ical infrastructure list is submitted to Congress pur-
15 suant to paragraph (2) and shall apply to any cor-
16 poration covered by that subsection as of that date
17 or thereafter.

18 (2) NATIONAL DEFENSE CRITICAL INFRA-
19 STRUCTURE LIST.—The national defense critical in-
20 frastructure list required by subsection (c) shall be
21 established, and the initial list under that subsection
22 shall be submitted in writing to the Congress, not
23 later than three months after the date of the enact-
24 ment of this Act.

1 (g) SPECIAL RULE FOR CERTAIN PORT TERMI-
2 NALS.—

3 (1) SPECIAL RULE.—The port terminals speci-
4 fied in paragraph (2) are deemed to be on the na-
5 tional defense critical infrastructure list, and the
6 provisions of subsection (a) apply with respect to
7 those terminals effective as of February 28, 2006.

8 (2) SPECIFIED PORT TERMINALS.—The port
9 terminals specified in this paragraph are the fol-
10 lowing:

11 (A) The terminals that as of February 28,
12 2006, were operated by the United Kingdom
13 company, Peninsular and Oriental Steam Navi-
14 gation Company (P & O), at the following
15 United States ports:

16 (i) Baltimore, Maryland.

17 (ii) Philadelphia, Pennsylvania.

18 (iii) Miami, Florida.

19 (iv) New Orleans, Louisiana.

20 (v) Houston, Texas.

21 (vi) Newark and Elizabeth, New Jer-
22 sey.

23 (B) Any terminal at a port in the United
24 States other than a port listed in subparagraph

25 (A) that as of February 28, 2006, was operated

1 in part, or with the contribution of, the com-
2 pany named in subparagraph (A).

3 **SEC. 3. ENHANCED AUTHORITY TO REVIEW CERTAIN FOR-**
4 **EIGN MERGERS, ACQUISITIONS, AND TAKE-**
5 **OVERS.**

6 (a) CONFIDENTIALITY OF INFORMATION.—Sub-
7 section (e) of section 721 of the Defense Production Act
8 of 1950 (50 U.S.C. App. 2170(c)) is amended—

9 (1) by inserting “during the process of inves-
10 tigation” after “prevent disclosure”; and

11 (2) by inserting “of any information considered
12 during the process of investigation” before the pe-
13 riod at the end.

14 (b) FINDINGS OF THE PRESIDENT.—Subsection (e)
15 of such section (50 U.S.C. App. 2170(e)) is amended—

16 (1) in the matter preceding paragraph (1)—

17 (A) by striking “may” and inserting
18 “shall”;

19 (B) by striking “subsection (c)” and in-
20 serting “subsection (d)”; and

21 (C) by striking “only”; and

22 (2) by striking paragraph (1) and inserting the
23 following:

24 “(1) there is either—

1 “(A) credible evidence that leads the Presi-
2 dent to believe that the foreign interest exer-
3 cising control might take action that threatens
4 to impair the national security; or

5 “(B) a reasonable expectation that the for-
6 eign interest exercising control would use such
7 control—

8 “(i) to adversely affect the ability of
9 domestic industries to meet existing pro-
10 duction requirements for defense or home-
11 land security;

12 “(ii) to acquire advanced technology
13 illicitly; or

14 “(iii) to increase its ability to affect
15 United States critical infrastructure; and”.

16 (c) FACTORS TO BE CONSIDERED.—Subsection (f) of
17 such section (50 U.S.C. App. 2170(f)) is amended—

18 (1) in the matter preceding paragraph (1)—

19 (A) by striking “may” and inserting
20 “shall”; and

21 (B) by striking “factors—” and inserting
22 “factors the following:”;

23 (2) by capitalizing the first letter of the first
24 word of paragraphs (1), (2), (3), (4), and (5);

1 (3) at the end of paragraphs (1), (2), and (3),
2 by striking the comma and inserting a period;

3 (4) at the end of paragraph (4), by striking “;
4 and” and inserting a period;

5 (5) by redesignating paragraph (5) as para-
6 graph (8); and

7 (6) by inserting after paragraph (4) the fol-
8 lowing new paragraphs:

9 “(5) Domestic production needed to meet the
10 needs of homeland security.

11 “(6) The potential effects of the proposed or
12 pending transaction on control of critical infrastruc-
13 ture, such as energy, telecommunications, transpor-
14 tation, or information.

15 “(7) The potential effects of the proposed or
16 pending transaction on secure United States access
17 to strategic natural resources, including energy sup-
18 plies and critical minerals.”.

19 (d) NOTIFICATION TO GOVERNMENT.—

20 (1) REQUIRED NOTICE OF PROPOSED OR PEND-
21 ING TRANSACTIONS.—Such section is further amend-
22 ed—

23 (A) by redesignating subsections (g), (h),
24 (i), (j), and (k) as subsections (h), (i), (j), (k),
25 and (l), respectively; and

1 (B) by inserting after subsection (f) the
2 following new subsection:

3 “(g) NOTIFICATION TO GOVERNMENT.—

4 “(1) REQUIRED NOTICE.—The President shall
5 provide for the regulations issued pursuant to this
6 section to require that, in any case in which there
7 is a proposed or pending merger, acquisition, or
8 takeover that is or may be subject to an investiga-
9 tion under subsection (a), the President or the
10 President’s designee shall be provided written notifi-
11 cation of the proposed or pending merger, acquisi-
12 tion, or takeover, as referred to in the second sen-
13 tence of subsection (a), and that such written notifi-
14 cation shall be provided in sufficient time for the re-
15 view process under this section to be completed be-
16 fore the proposed or pending merger, acquisition, or
17 takeover is finalized.

18 “(2) PUBLICATION IN FEDERAL REGISTER.—
19 Any notification pursuant to paragraph (1) shall be
20 published in the Federal Register within five days of
21 such notification.”.

22 (2) INTERIM RULES.—The President or the
23 President’s designee may prescribe interim rules
24 necessary to carry out the responsibilities under sub-
25 section (g) of section 721 of the Defense Production

1 Act of 1950 as added by paragraph (1)(B). Any oth-
2 erwise applicable notice-and-comment requirement of
3 section 553 of title 5, United States Code, shall not
4 apply to such interim rules. Interim rules prescribed
5 under the authority of this subsection that are not
6 earlier superceded by final rules shall expire as spec-
7 ified in such interim rules, but not later than the
8 end of the one-year period beginning on the the date
9 of the enactment of this Act.

10 (e) ANNUAL REPORT.—Subsection (l) of such sec-
11 tion, as redesignated by subsection (d)(1), is amended—

12 (1) in the subsection heading, by striking
13 “QUADRENNIAL REPORT.—” and inserting “AN-
14 NUAL REPORT.—”; and

15 (2) in paragraph (1), by striking “not later
16 than 1 year” and all that follows through “every 4
17 years thereafter” and inserting “not later than No-
18 vember 1 each year”.

19 (f) TECHNICAL AMENDMENTS.—Such section is fur-
20 ther amended—

21 (1) in subsections (a) and (d), by striking “the
22 date of enactment of this section” and inserting
23 “August 23, 1988”;

24 (2) in subsection (d), by striking “subsection
25 (d)” and inserting “subsection (e)”; and

1 (3) in the last sentence of subsection (h), as re-
2 designated by subsection (d)(1), by striking “of this
3 Act”.

4 (g) EFFECTIVE DATES.—

5 (1) APPLICABILITY TO NEW INVESTIGATIONS.—

6 The amendments made by this section shall apply
7 with respect to any investigation under section 721
8 of the Defense Production Act of 1950 (50 U.S.C.
9 App. 2170) that is commenced after the date of the
10 enactment of this Act.

11 (2) TIME LIMIT FOR REQUIRED NEW REGULA-

12 TIONS.—Regulations required by subsection (g) of
13 such section, as added by the amendment made by
14 subsection (d)(1)(B), shall be prescribed not later
15 than the end of the one-year period beginning on the
16 date of the enactment of this Act.

17 **SEC. 4. MANDATORY INSPECTION OF CARGO.**

18 (a) MANDATORY INSPECTIONS.—No cargo trans-
19 ported by a commercial motor vehicle may enter the
20 United States from Canada or Mexico, and no cargo trans-
21 ported by vessel may be unloaded in the United States,
22 unless an appropriate officer or employee of the Direc-
23 torate of Border and Transportation Security or other ap-
24 propriate officer or employee of the United States has in-

1 spected the cargo to ensure that it complies with the laws
2 of the United States.

3 (b) DEFINITIONS.—In this section:

4 (1) CARGO.—The term “cargo” means prop-
5 erty, or mail, or both.

6 (2) COMMERCIAL MOTOR VEHICLE.—The term
7 “commercial motor vehicle” means a commercial
8 motor vehicle as defined in section 31101(1) of title
9 49, United States Code, that is used principally to
10 transport cargo.

11 (3) UNITED STATES; VESSEL.—The terms
12 “United States” and “vessel” have the meanings
13 given those terms in section 401 of the Tariff Act
14 of 1930 (19 U.S.C. 1401).

15 (c) EFFECTIVE DATE.—This section shall take effect
16 6 months after the date of the enactment of this Act.

○