



Kansas Agribusiness Retailers Association
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To: House Committee on Commerce, Labor, and Economic Development
From: Randy Stookey, Senior Vice President of Government Affairs and General Counsel
Date: March 4, 2024
RE: **Opponent Testimony on HB 2766, creating the Kansas land and military installation protection act to prohibit foreign principals from countries of concern from holding any interest in certain real property in this state**

Chairman Tarwater and members of the committee, thank you for the opportunity to provide testimony on House Bill 2766. This testimony is submitted on behalf of the Kansas Agribusiness Retailers Association (KARA).

KARA is a state-wide agribusiness industry trade association comprising over 700 member companies that supply agricultural input products to Kansas farmers, including pesticides, herbicides, seed, fertilizer, fuel, and agronomic services.

We understand House Bill 2766 is intended to protect certain real property and military installations in the state by prohibiting "countries of concern", as defined in the bill, or agent thereof, from acquiring any interest in such real property. Specifically, the bill would prohibit foreign principals in countries of concern from owning any interest in real property located within 150 miles of the boundary of any military installation located in this state or any adjacent state. We understand that this issue has become one of significance in this state and others.

One key consideration in this, and similar, legislation is whether impacted companies should be required to divest from currently held properties. Such retroactivity, which is included in section 3 of this bill, would directly and negatively affect one KARA member that has owned an important agricultural research and development plot in our state for nearly a quarter of a century. For this reason, KARA stands in opposition to this bill.

Our member company, *Syngenta*, is a world leader in seed and crop protection products. *Syngenta* was previously a Swiss-owned company that, in 2017, was purchased by ChemChina. While under Chinese ownership, the company operates globally and continues to maintain its global headquarters in Basel, Switzerland, where it has been located for more than one hundred years.

In addition, *Syngenta* is globally managed by an American CEO that is from the state of Illinois, and most of its management team is American or European. *Syngenta* operates in more than 90 countries and its products are sold throughout the world.

For more than 24 years, *Syngenta* has owned and operated an agricultural research and development plot (approximately 100 acres) located just outside Junction City, Kansas. The company uses this property for product testing and demonstrating the efficacy of newly developed wheat seed varieties – including the "Bob Dole wheat seed" variety. The company grows new seed varieties at the facility in order to utilize Kansas' soils, climate, moisture levels, and insect and weed pressure.

Regarding this specific research and development property, *Syngenta* originally acquired the site in 2000 when *Novartis* & *Zeneca* merged to form the company *Syngenta*. Before that, *Zeneca* had acquired the R&D site from a company named *Garst*.

To move from opposition to a neutral position, KARA would request that the bill be amended to include language that would allow *Syngenta* to continue operating its agricultural research and development property. Our proposed amendment (set out below) recognizes *Syngenta's* agreement with and ongoing oversight from the federal **Committee on Foreign Investment in the United States** (CFIUS).

Section 6 of the bill refers to the Committee on Foreign Investment in the United States and requires the state attorney general to prepare and submit a report to CFIUS on any identified non-notified transactions.

So, what is CFIUS? CFIUS is a standing U.S. government interagency committee tasked with identifying and mitigating U.S. national security risks in foreign investments in U.S. businesses or purchases of U.S. real estate. I have attached to this testimony a one-page explainer on who CFIUS is and what they do.

CFIUS reviews and considers the following in their oversight of real estate transactions:

- **The location of real estate to sites that may have national security sensitivities (e.g., military bases).**
- The transaction's effect on supply chain resilience and security, including the agriculture industrial base as it relates to food security.
- The transaction's effect on critical infrastructure such as major energy assets or the defense industrial base.
- How the transaction may affect the long-term projection of U.S. requirements for sources of energy, critical resources, and material.

In order to complete ChemChina's purchase of *Syngenta* in 2017 and continue the operation of its facilities in the United States, CFIUS vetted the purchase and *Syngenta* entered into an on-going agreement under 50 U.S.C. § 4565. Notwithstanding the proximity of the *Syngenta* property to Fort Riley, CFIUS authorized the transaction.

Under the agreement, *Syngenta* is subject to unannounced physical inspections by the Dept. of Defense and other federal agencies. These inspections can, and do, occur.

As the Legislature moves forward with meaningful legislation on land ownership by defined countries of concern, we would ask that House Bill 2766 be amended to recognize, and exempt, those entities that have been vetted by the appropriate federal authorities and agencies pursuant to an agreement with CFIUS.

KARA has worked with other stakeholders on this issue and would support the adoption of the proposed amendment that would exempt from this bill foreign principals that report their holdings and that have either previously received a determination that there are no unresolved national security concerns and action or has entered into a national security agreement with CFIUS in effect by July 1, 2024.

Thank you for considering our testimony on House Bill 2766. We would ask that the committee adopt our proposed amendment before passing the bill out of committee, and we will stand for questions at the appropriate time.

Proposed Amendment:

On page 4, following line 12, by inserting:

“(g) “Covered transaction” shall have the meaning as defined in 31 C.F.R. § 800.213, as in effect on July 1, 2024.

“(r) “Covered control transaction” shall have the meaning as defined in 31 C.F.R. § 800.210, as in effect on July 1, 2024.”

On page 4, line 13, by inserting the following after “subsection (d)”:

“and (e)”.

On page 5, following line 2, by inserting:

“(e) A foreign principal may own, acquire, or hold an interest in real property notwithstanding the provisions hereof if the foreign principal reports such interest in real property in accordance with the provisions of subsection (b), and either:

(1) previously received a determination that there are no unresolved national security concerns and action under 50 U.S.C. § 4565, as in effect on July 1, 2024, has concluded with respect to a covered transaction, provided that such foreign principal has not undergone a change in control constituting a covered control transaction, since such determination to conclude action; or

(2) has a national security agreement in effect on July 1, 2024, with the Committee on Foreign Investment in the United States, under 50 U.S.C. § 4565, as in effect on July 1, 2024, and maintains such national security agreement.”

CFIUS

The Committee on Foreign Investment in the United States & Real Estate

What does CFIUS do with respect to Real Estate?

CFIUS is a standing U.S. government interagency committee tasked with identifying and mitigating U.S. national security risks in foreign investments in U.S. businesses or purchases of U.S. real estate. With respect to real estate, CFIUS generally considers:

- The location of real estate to other sites that may have national security sensitivities (e.g., military bases).
- The transaction's effect on supply chain resilience and security, including the agriculture industrial base as it relates to food security.
- The transaction's effect on critical infrastructure such as major energy assets or the defense industrial base.
- How the transaction may affect the long-term projection of U.S. requirements for sources of energy, critical resources, and material.

CFIUS Real Estate jurisdiction

CFIUS has jurisdiction to review certain real estate transactions involving the purchase or lease by (or concession to) foreign persons that are:

- Located within or functioning as part of certain air or maritime ports;
- Depending on a site's specific sensitivities, either "close proximity" (1 mile) or "extended range" (100 miles) to listed military installations; or
- Within certain counties or geographic areas identified in connection with specified military installations.

The purchase/lease/concession must provide at least three of four rights:

1. Physical access to real estate
2. The right to exclude others
3. The right to develop the property; or
4. The right to attach fixed or immovable objects to the property.

Real estate in urbanized areas are generally excluded from CFIUS's jurisdiction.

When must a foreign party notify CFIUS?

For real estate, CFIUS filings are purely voluntary. If parties do not file with CFIUS, then CFIUS may—at any point in the future—launch an inquiry. There is no statute of limitations on CFIUS' power to review transactions.

CFIUS's powers

If CFIUS identifies a national security risk arising from the transaction, it may require mitigation measures or prohibit the transaction. "Mitigation" may take many forms, including limiting a foreign purchaser's access to property, reviewing the types of equipment (e.g., wind turbines) that are placed on the property, or limiting the uses to which land can be put.

Potential CFIUS and related Real Estate Reform

- Expand CFIUS jurisdiction to all real estate transactions involving more than 320 acres or \$5 MM in value. *Syngenta **supports** expanded jurisdiction to cover real estate purchases independent of proximity to military installations.*
- Expand the existing CFIUS annual report to include dedicated reporting on agribusiness, with review by the Secretary of the Agriculture for greater interagency transparency. *Syngenta **supports** this expanded reporting.*
- Leverage AFIDA to better highlight transactions that might still fall outside of CFIUS' expanded jurisdiction. *Syngenta **supports** this expanded reporting and transparency for all agricultural land purchases.*