

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 271**

As Agreed to April 5, 2024

Brief*

House Sub. for SB 271 would prohibit government agencies from purchasing or acquiring drones whose critical components were produced in a country of concern, or whose critical components were produced or owned by a foreign principal.

The bill would also prohibit state agencies from entering into a contract or agreement to procure final or finished goods or services from certain foreign principal. [*Note:* This prohibition applies only to state agencies, not all governmental agencies, as applies to the drone portion of the bill.]

Drone Procurement and Usage

The bill would prohibit government agencies from purchasing and acquiring drones whose critical components were produced in a country of concern, or whose critical components were produced or owned by any foreign principal. The prohibition would not apply to any drone or replacement component contract or agreement entered into prior to July 1, 2024.

Component Replacement

When a government agency determines a critical component must be replaced, the agency would be allowed to use any replacement component acquired prior to July 1, 2027, but no new replacement component could be acquired from any foreign principal unless:

- There is no other reasonable means to acquire such critical components or of addressing the needs of the agency necessitating the purchase;
- An agreement for such acquisition is approved by the Secretary of Administration after consulting with the Adjutant General; and
- Failing to acquire such components or otherwise address the agency's need would pose a greater threat to state safety and security than the risk posed by acquiring the component.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kIRD>

Definitions

Drone

The bill would define “drone” as an unmanned aircraft that is controlled remotely by a human operator or that operates autonomously through computer software or other programming.

Critical Components

The bill would define “critical components” as meaning a component or subcomponent that is a distinct and serviceable article and the primary component of an identifiable process or subprocess necessary to the recording, storing, or transmitting of data or any other form of information.

Country of Concern

The bill would define “country of concern” as meaning the following countries:

- People’s Republic of China, including the Hong Kong Special Administrative Region;
- Republic of Cuba;
- Islamic Republic of Iran;
- Democratic People’s Republic of Korea (North Korea);
- Russian Federation; and
- Bolivarian Republic of Venezuela.

The bill would exclude the Republic of China (Taiwan) from the countries of concern definition.

Foreign Principal

The bill would define “foreign principal” to mean:

- The government or any official of the government of a country of concern;
- Any political party, or subdivision, or any member of a political party of a country of concern;
- Any corporation, partnership, association, organization, or other combination of persons organized under the laws of or having its principal place of business in a country of concern. The definition would also include any subsidiary owned or wholly controlled by any such entity;

- Any agent of or any entity otherwise under the control of a country of concern;
- Any individual whose residence is in a country of concern and who is not a citizen or lawful permanent resident of the United States; or
- Any individual, entity, or combination described above that has a controlling interest in any company formed for the purpose of manufacturing, distributing, transporting or selling critical components for drones and related services and equipment.

Governmental Agency

The bill would define “governmental agency” as the State or any political or taxing subdivision of the State, or any related office, agency, or instrumentality. State-Level Agency

The bill would define “state-level agency” as any department, authority, bureau, division, office, or other governmental agency of the State.

Procurement of Goods and Services

The bill would prohibit any state-level agency from entering into a contract or agreement to procure final or finished goods or services from a foreign principal except as described below.

The bill would permit a state agency to enter into a contract or agreement to procure final or finished goods or services from a foreign principal if such foreign principal:

- 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 was made; or
- Has a national security agreement in effect on July 1, 2024, with CFIUS, or the U.S. Department of Defense, under 50 U.S.C. § 4565, as in effect on July 1, 2024, and maintains such national security agreement.

The bill would specify this prohibition would not apply to any contract or agreement entered into prior to July 1, 2024.

Conference Committee Action

The second Conference Committee agreed to the provisions of House Sub. for SB 271, as amended by the House Committee of the Whole, and further amended the bill to:

- Remove authority for the use of restricted components by governmental agencies;
- Remove authority for the transfer of restricted drones;
- Remove provisions regarding reimbursement for restricted drones;

- Exempt from the prohibition contracts and agreements to purchase a restricted drone or component entered into prior to July 1, 2024; and
- Insert provisions from House Sub. for SB 37 related to the prohibition of state-level agencies from procuring final or finished goods or services from a foreign principal unless the principal is approved by CFIUS or has a national security agreement with CFIUS or the U.S. Department of Defense. This prohibition would apply only to state contracts and, unlike portions of the bill regarding drones, would not apply to other governmental agencies.

Background

The second Conference Committee agreed to the provisions of House Sub. for SB 271, as amended by the House Committee of the Whole, and further amended the bill by adding the above-described provisions regarding drones. The second Conference Committee also agree to add provisions from House Sub. for SB 37 related to procurement of goods and services from a foreign principal. [Note: The remaining provisions of House Sub. for SB 37, pertaining to countries of concern and divestiture, are included in the conference committee report for HB 2711.]

House Sub. for SB 271

The House Committee on Commerce, Labor and Economic Development amended the provisions of HB 2820 pertaining to drone technology. The House Committee removed the contents of SB 271 and inserted the contents of HB 2820 as amended. The House Committee then recommended a substitute bill, House Sub. for SB 271.

SB 271, as amended by the Senate Committee of the Whole, would have added law regarding the maximum length of a train, distances between railroad crossings and rail cars stored on sidings, and enforcement of those provisions. [Note: Provisions regarding rail cars on sidings are included in the conference committee report for HB 2501.]

[Note: The provisions of SB 271, as amended by the Senate Committee of the Whole, were not retained in the House substitute bill.]

Background information for SB 271 is contained in the supplemental note for that bill.

HB 2820 (Drone Technology)

HB 2820 was introduced by the House Committee on Appropriations at the request of Representative Croft.

House Committee on Commerce, Labor and Economic Development

In the House Committee hearing, **proponent** testimony was provided by Representative Croft, and a representative of State Armor Action. The proponents generally stated the bill would address national security risks within the state.

Neutral testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and the Kansas Sheriffs Association. The testimony generally stated the bill addresses a security risk but it is non-funded and would be costly to implement.

Written-only proponent testimony was provided by a representative of American Global Strategies.

Written-only neutral testimony was provided by a representative of the Kansas Legislative Policy group.

No other testimony was provided.

The House Committee amended the bill to:

- Insert provisions that would prohibit an agency from selling or discarding any critical drone component not in compliance with the bill and require a transfer of such component to Wichita State University or Kansas State University for research and rehabilitation purposes;
- Create a fund to reimbursement agencies transferring their drone for research and rehabilitation and purchasing a new drone of like kind and quality to the transferred drone; and
- Update the drone definition to include only unmanned aircraft.

House Committee of the Whole

The House Committee of the Whole amended the bill to:

- Establish the reimbursement certification requirement [*Note: The second Conference Committee did not retain this amendment.*];
- Authorize the Director of Accounts and Reports to transfer funds to agencies receiving a reimbursement certification [*Note: The second Conference Committee did not retain this amendment.*];
- Allow agencies to continue using previously procured components until July 1, 2027 [*Note: The second Conference Committee retained this amendment.*];
- Exempt the Attorney General and postsecondary institutions from the Act when acquiring or using drones for research or refurbishing for future use [*Note: The second Conference Committee did not retain this amendment.*];
- Allow agencies who do not receive reimbursement to destroy, trade-in, or sell their restricted drone to a private party [*Note: The second Conference Committee did not retain this amendment.*];
- Provide a claim against the state for agencies who receive a reimbursement certification but do not receive the reimbursement funds [*Note: second The Conference Committee did not retain this amendment.*];

- Eliminate a \$2.5 million transfer from the State General Fund to the KDREF [*Note:* The second Conference Committee did not retain this amendment.]; and
- Transfer any KDREF funds to the State General Fund on July 1, 2029 [*Note:* The second Conference Committee did not retain this amendment.].

SB 37 (Procurement Prohibition)

The House Committee on Financial Institutions and Pensions recommended a substitute bill incorporating provisions that would create the Countries of Concern Divestment and Procurement Protection Act (HB 2739). The House Committee removed the contents of SB 37, pertaining to amendments to the Kansas Housing Investor Tax Credit Act and expansion of the transferability of tax credits issued under that act. [*Note:* The original contents of SB 37, as amended by the Senate Committee on Financial Institutions and Insurance, were included in SB 34, as amended by the House Committee on Financial Institutions and Pensions. The contents of SB 34, as amended by House Committee and modified by the Conference Committee, were enacted in the 2023 Conference Committee Report for SB 17.]

HB 2739 (Countries of Concern Divestment and Procurement Protection Act)

HB 2739 was introduced by the House Committee on Financial Institutions and Pensions at the request of Representative Hoheisel.

On February 14, 2024, the bill was withdrawn from the House Committee on Financial Institutions and Pensions and referred to the House Committee on Appropriations. On February 15, 2024, the bill was then withdrawn from the House Committee on Appropriations and re-referred to the House Committee on Financial Institutions and Pensions.

House Committee on Financial Institutions and Pensions

In the House Committee hearing on March 4, 2024, representatives of American Global Strategies, LLC, and State Armor Action provided **proponent** testimony, generally stating the bill would protect Kansas’ and America’s security interests by divesting state funds and stopping new procurements by state agencies from countries of concern. The proponents outlined concerns with the countries identified in the bill and the interconnected global economy and threats seen in emerging technologies. Prior to the hearing, Representative Hoheisel commented on the intentions of the bill, indicating the sole policy question is whether it is appropriate to invest the State’s financial resources in countries of concern and entities linked to those ruling regimes.

Written-only neutral testimony was submitted by representatives of the American Council of Engineering Companies of Kansas and the Kansas Chamber. Both representatives requested consideration of removal of language pertaining to a “principal place of business” in provisions pertaining to procurement of goods or services.

The Executive Director of KPERS provided **opponent** testimony on behalf of the KPERS Board of Trustees, stating that the Board and its investment members are fiduciaries to its members and all investment decisions are made for the sole purpose of providing promised

benefits. The conferee indicated adding statutory restrictions to investments impedes the Board's ability to make investment decisions and manage risk with the sole purpose of funding benefits. The constraints on KPERS investments could also negatively impact the ultimate rate of return. The conferee noted the Board and its managers follow all federal laws regarding international investments and provided information regarding current holdings in countries of concern (only China, including Hong Kong).

The KPERS Board conferee requested consideration of an amendment to replace reference to "companies affiliated with a country of concern" with "a person owned or controlled by, or subject to the jurisdiction or direction of a country of concern."

The House Committee amended the bill to:

- Add definitions for the terms "covered transaction," "covered control transaction," and "foreign principal";
- Provide the sale, redemption, divestiture, or withdrawal requirements placed on state-managed funds (both publicly traded securities and indirect holdings in actively or passively managed fund containing such securities) would be subject to the law governing the Kansas Public Employees Retirement Fund (KPERS) and management and investment of this Trust Fund designated to the KPERS Board of Trustees (KSA 74-4921) or any other statute to the contrary;
- Remove reference to the principal place of business in provisions pertaining to an investment or deposit prohibition for state-managed funds;
- Remove reference to companies affiliated with a country of concern in an real estate or private equity investment prohibition provision to instead reference a person owned or controlled by or subject to the jurisdiction of a country of concern;
- Clarify the prohibition on state agencies contracting or agreeing to procure good or services to include final or finished goods or services and reference a foreign principal instead of a company domiciled or with a principal place of business in a country of concern; and
- Allow a state agency to enter into a contract or agreement with foreign principals that meet specified criteria regarding national security concerns or agreements.

[*Note:* The second Conference Committee did not consider the above-described House Committee amendments, except for the amendment clarifying the prohibition on state agencies contracting or agreeing to procure goods or services to include final or finished goods or services and referencing foreign principals which was retained by the Conference Committee.]

Fiscal Information

HB 2820 (Drone Technology)

According to the fiscal note prepared by the Division of Budget on HB 2820, as introduced, the Highway Patrol indicates enactment of the bill would require replacement of existing

equipment with authorized suppliers' equipment at an estimated one-time cost of \$258,708 in FY 2024. The agency states that the expenditures would be incurred in FY 2024 because it is currently in the process of replacing drone equipment and would accommodate the bill's provisions in its current purchasing plan.

The Department of Transportation indicates that most of the drones it currently uses comply with the provisions of the bill. However, enactment of the bill would require the agency to replace four drones, which would require an increase of \$50,996 to the expenditure limitation of the agency operations account in FY 2025.

The Adjutant General and the Kansas Bureau of Investigation indicate enactment of the bill would not have a fiscal effect on the agencies.

Any fiscal effect associated with enactment of HB 2820 is not reflected in *The FY 2025 Governor's Budget Report*.

The League of Kansas Municipalities states enactment of the bill could have a fiscal effect on cities if existing drones need to be upgraded. The Kansas Association of Counties indicates enactment of the bill could have a fiscal effect on counties that are required to replace drones that are currently owned.

HB 2739 (Procurement Prohibition)

According to the fiscal note prepared by the Division of the Budget on HB 2739, as introduced, the Office of Procurement and Contracts in the Department of Administration indicates that the enactment of the bill would have no fiscal effect.

Any fiscal effect associated with enactment of HB 2739 is not reflected in *The FY 2025 Governor's Budget Report*.

Country of concern; foreign principal; drone; critical infrastructure; Attorney General; governmental agency; procurement; state moneys; national security agreement

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