

# Big State, Big Scrutiny: Texas Steps into the Foreign Investment Review Arena

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On March 13, the Texas House of Representatives introduced HB 5007, along with its companion bill SB 2117. The legislation—“Relating to the establishment of the Texas Committee on Foreign Investment to review certain transactions involving certain foreign entities; creating a civil penalty”—is currently under committee review. If enacted, the Lone Star State would become the first state to establish its own interagency committee to screen foreign investments, modeled in part on the federal Committee on Foreign Investment in the United States (CFIUS).

From our experience navigating CFIUS risks and filing obligations, preparing and submitting notices, negotiating Committee mitigation agreements, and authoring *The CFIUS Book*, 2nd Edition, we are preparing to support clients should they face a new layer of state-level scrutiny when the proposed Texas Committee on Foreign Investment (TCFI) become law.

## A New Sheriff in Town: Texas Proposes Its Own CFIUS

The TCFI would be structured similarly to CFIUS. Just as the CFIUS Committee includes the heads of federal agencies, the TCFI would comprise senior officials from various Texas agencies—including the Attorney General (paralleling DOJ), the Comptroller (Treasury), and the heads of the Department of Public Safety and the Department of Information Resources (Defense analogues). In a move that reflects Texas-specific concerns, the Commissioner of Agriculture would also sit on the committee, highlighting growing attention to foreign ownership of farmland and food security.

## Not Their First Rodeo: Texas Tweaks the Rules on Covered Transactions

Like CFIUS, the TCFI would apply to transactions that meet two criteria: (1) a governance threshold and (2) involvement in a sensitive sector. But Texas approaches both criteria differently:

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- *Governance Threshold*. While CFIUS uses a qualitative test (focusing on control or access rights rather than ownership percentage), HB 5007 would impose a quantitative test. A transaction would be subject to review if it exceeds a minimum dollar value or ownership percentage—thresholds to be set by the Governor.
  - *Sensitive Sectors*. The TCFI would apply to investments in “critical infrastructure” and “sensitive personal data.” These terms are borrowed from federal terminology but redefined under Texas law.
    - *Critical infrastructure* would cover a broader range than under CFIUS—extending to commercial facilities, emergency services, dams, food and agriculture, health care, and government buildings. This is significantly wider than both CFIUS definitions and Texas’s existing Lone Star Infrastructure Protection Act.
    - *Sensitive personal data* is defined not in terms of identifiability, but in terms of potential risks to public safety if accessed by a foreign entity. Though narrower in scope than CFIUS in some respects, this standard could be applied broadly in practice.

The bill would also add two new categories of covered sectors: Texas agricultural land and any “strategic industry or asset” identified by the Governor, allowing for future expansion.

## **Filing Deadlines and Legal Spurs: The Process and Enforcement Landscape**

The process outlined in HB 5007 differs notably from the federal model. While CFIUS allows for voluntary and mandatory filings and may initiate its own reviews, HB 5007 would require mandatory pre-closing notification to the Texas Attorney General at least 90 days before closing. The Attorney General would then conduct an initial review within 30 days and, if needed, a secondary investigation within 45 days.

The TCFI would not conduct the review itself, but would receive findings and proposed mitigation terms from the Attorney General. If the committee rejects a proposed agreement, the Attorney General would be responsible for presenting a revised version. The Attorney General would also have enforcement authority—including injunctive relief and divestment—though the bill limits civil penalties to \$50,000 per violation.

Foreign investors unfamiliar with Texas procedure may find the process deceptively straightforward—but, as any traveler making their way across the state knows, it pays to plan ahead, double-check the route, and occasionally pull off at the beaver for fuel, supplies, and a quick reset. The logistics of navigating parallel state and federal reviews may call for similar recalibration—especially when timelines, procedures, and enforcement mechanisms diverge.

## **Two-Lane Traffic: CFIUS, TCFI, and the Potential for Overlap**

HB 5007 does not address how TCFI and CFIUS might coordinate when both claim jurisdiction—raising practical concerns for investors facing parallel notice and review processes. Navigating two regimes, potentially with different mitigation expectations, could introduce delays, friction, and uncertainty.

It remains to be seen whether future amendments will clarify jurisdictional boundaries, establish coordination mechanisms, or provide safe harbors. In the meantime, companies should be prepared to address both state and federal review obligations—requiring careful planning, aligned timelines, and coordinated strategy.

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