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Crunch Time for BIOSECURE Act

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Over the weekend, leaders of the House and Senate Armed Services Committees released the final negotiated **text** of the National Defense Authorization Act. Notably, the BIOSECURE Act is not included in the bill.

While the defense bill was widely viewed as the most appropriate legislative vehicle for the legislation, champions of the BIOSECURE Act will continue to push to include it in an end-of-year spending bill. Given the opposition to the bill described in last week's blog post (below), passing the BIOSECURE Act as drafted seems unlikely. Moreover, rewriting the legislation to address the concerns of all of its critics will be exceedingly difficult given the time limitations.

The ML Strategies Insights blog will continue to provide updates through the waning days of this Congress and into 2025, when Republicans will control the White House and both houses of Congress.

As the 118th Congress winds down, the House and Senate are in the throes of negotiating several packages of legislation before leaving Washington for Christmas recess. A bill to fund the government beyond December 20, a series of health care-related laws set to expire at the end of 2025, the Farm Bill, and the annual National Defense Authorization Act (NDAA) are all critical priorities. Champions of the BIOSECURE Act are seeking to attach that legislation to the defense bill to achieve final passage this month.

The BIOSECURE Act, as **passed by the House**, would prohibit federal agencies from contracting for or procuring biotechnology equipment or services from a “biotechnology company of concern,” defined as biotechnology companies owned by foreign adversaries that pose a risk to US national security. The House version of the Act specifically identifies five Chinese companies, WuXi AppTec, WuXi Biologics, Complete Genomics, BGI, and MGI, as companies of concern. The bill also directs the Office of Management and Budget to publish a complete list of biotechnology companies of concern within a year. Agencies would be allowed to request to waive the prohibition of a particular company of concern on a case-by-case basis for one year. The **Senate version** of the BIOSECURE Act contains the same substantive provisions as the House version but does not name WuXi Biologics.

The NDAA is the annual act of Congress that authorizes appropriations for the Department of Defense (DOD), establishes or makes changes to defense policy, and addresses certain administrative issues at the Pentagon. Congress has passed the NDAA in 63 consecutive years. As a reliable legislative vehicle, legislation unrelated to the DOD is often included in the defense bill to ensure its passage and enactment. Traditionally, extraneous add-ons to the NDAA require the unanimous approval of the Republican and Democratic leaders of the bill’s committees of jurisdiction in the House and Senate, the so-called “Four Corners.” In the case of the BIOSECURE Act, the Four Corners are Chairman Jim Comer (R-KY) and Ranking Member Jamie Raskin (D-MD) of the House Oversight Committee, and Chairman Gary Peters (D-MI) and Ranking Member Rand Paul (R-KY) of the Senate Homeland Security and Governmental Affairs Committee. Far from unanimous, Rep. Raskin voted against the House version of the bill when it came to the floor in September, and Sen. Paul was the only committee member to vote against reporting the Senate version to the floor.

Many House Democrats are concerned a law that specifically names certain companies violates those organizations’ due process. Under this argument, the BIOSECURE Act is a bill of attainder and therefore unconstitutional. Possibly, a version of the BIOSECURE Act that does not include the names of those companies of concern would pass muster. For Sen. Paul, though, the solution may not be so simple. His outspoken criticism of the bill is grounded in his belief that the legislation is protectionist by design and uses an unsubstantiated security threat to justify disadvantaging certain companies. And while removing the company names from the bill may satisfy some criticisms, it would also delegate even more enforcement responsibility to the incoming Trump administration, which many Democrats have reservations about.

Champions of the BIOSECURE Act, including the retiring Rep. Brad Wenstrup (R-OH) and Rep. Raja Krishnamoorthi (D-IL), are pushing congressional leaders, including Speaker Mike Johnson (R-LA) and Majority Leader Steve Scalise (R-LA), to include the bill in the NDAA, potentially even over objections from Rep. Raskin and Sen. Paul. The text of the defense bill should be released this week or next. Once it is, we will know what, if any, version of the BIOSECURE Act is included. In the meantime, biotechnology

interests opposing the bill should be making a final push with congressional leadership to keep it out of the NDAA in favor of revisiting the legislation in the next Congress.

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