

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 224 (Hurtado)
Version: March 20, 2023
Hearing Date: April 11, 2023
Fiscal: Yes
Urgency: Yes
TSG

SUBJECT

Agricultural land: foreign ownership and interests: foreign governments

DIGEST

This bill prohibits foreign governments and their state-controlled enterprises from newly acquiring a controlling interest, as defined, in agricultural land in California after January 1, 2024. The bill also requires the California Office of Emergency Services (CalOES) to compile an annual report on the extent of, and any recent changes in, foreign ownership over agricultural land, water rights, water desalination facilities, energy production, energy storage, and energy distribution in California, including any possible impacts on Californians' food security.

EXECUTIVE SUMMARY

Government data appears to show that over the past decade, there has been a small increase in foreign ownership of agricultural land in California. The author of this bill is concerned that this trend, coupled with the possibility that foreign countries might gain some control over California water supplies and energy production, could eventually contribute to local food insecurity and might make it more difficult for local residents to be able to afford agricultural land in the state for themselves. In an effort to address these concerns, this bill would prohibit foreign governments and any enterprises they control from newly acquiring a controlling interest in any agricultural land in California. At the same time, the bill directs CalOES to begin producing an annual report about the extent of, and any recent changes in, foreign ownership over agricultural land, water rights, water desalination facilities, energy production, energy storage, and energy distribution in California. The idea is to identify any possible emerging foreign government threats to Californians' food security.

The bill is author-sponsored and contains an urgency clause. Support comes from organizations who contend the bill will help keep scarce agricultural resources in the hands of Californians. Opposition comes from agricultural trade associations, who view foreign investment in California's agricultural sector as a positive thing and who worry about the possibility of retaliation against California agricultural enterprises operating abroad. If the bill passes out of this Committee, it will next be heard by the Senate

Agriculture Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes that noncitizens have the same property rights as citizens. (Cal. Const., art. I, § 20.)
- 2) Provides that any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this State. (Civ. Code § 671.)
- 3) Establishes the U.S. Agricultural Foreign Investment Disclosure Act (the “Act”). (7 U.S.C. §§ 3501 – 3508.)
- 4) Defines “foreign person,” for purposes of the Act, to include foreign governments as well as specified foreign individuals and legal entities. (7 U.S.C. § 3508(3).)
- 5) Defines “agricultural land,” for purposes of the Act, to include any land used for agricultural, forestry, or timber production purposes as prescribed by USDA regulations. (7 U.S.C. 3508(1).)
- 6) Requires foreign persons, as part of the Act, to report information regarding current and future acquisitions of U.S. agricultural land, including the name of the owner, the total acreage, and the intended use of the land, among other specified things. (7 U.S.C. § 3501.)
- 7) Directs the U.S. Department of Agriculture (USDA) to transmit the reports generated pursuant to (6), above, to the corresponding State department of agriculture, or such other appropriate State agency as the Secretary considers advisable, at six month intervals. (7 U.S.C. § 3505.)
- 8) Provides that any report submitted to the Secretary under (6), above, shall be available for public inspection at the USDA in the District of Columbia not later than 10 days after the date on which such report is received. (7 U.S.C. 3506.)

This bill:

- 1) Defines “agricultural land” to mean:
 - a) Land currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, or timber production, except land not exceeding ten acres in the aggregate, if the annual gross receipts from the sale of the farm, ranch, or timber products produced thereon do not exceed \$1,000; or

- b) Land exceeding 10 acres in which 10 percent is stocked by trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated.
- 2) Defines “foreign government” to mean a government and any state-controlled enterprises of that government but does not include the government of the United States, its states, territories, or possessions, or federally recognized tribes or their government units and enterprises.
- 3) Defines “state-controlled enterprises” to mean a business enterprise, however denominated, in which the government has a controlling interest.
- 4) Defines “controlling interest” to mean either of the following:
 - a) possession of 51 percent or more of the ownership interests in an entity; or
 - b) a percentage ownership interest in an entity of less than 51 percent, if the foreign government actually directs the business and affairs of the entity without the requirement or consent of any other party.
- 5) Defines “interest” to mean any estate, remainder, or reversion, as specified, or portion thereof, or an option pursuant to which one party has a right to cause legal or equitable title to agricultural land to be transferred.
- 6) Prohibits a foreign government or its state-controlled enterprises from newly purchasing, acquiring, leasing, or holding any controlling interest in agricultural land in California beginning January 1, 2024, except where application of the prohibition would violate a treaty between the U.S. and another country. Does not apply to federally-recognized Indian tribes.
- 7) Voids any transfer of an interest in land that violates (6), above.
- 8) Directs CalOES to compile an annual report addressing all of the following:
 - a) the total amount of California agricultural land that is under foreign ownership;
 - b) the percentage change in foreign ownership of California agricultural land by year, over the past 10 years;
 - c) the purpose for which foreign-owned or foreign-leased agricultural land is being used currently, including any significant recent changes or trends in the use of foreign-owned agricultural land;
 - d) the extent of and recent changes in foreign ownership of water rights;
 - e) the extent of and recent changes in foreign ownership or leasing of water desalination facilities;
 - f) the extent of and any recent changes in foreign ownership or leasing of energy production, storage, or distribution facilities in California;

- g) CalOES's assessment of the impact of any recent changes in foreign ownership or leasing of agricultural land, water rights, or water desalination facilities on Californians' food security; and
 - h) any legislative, regulatory, or administrative policy changes CalOES recommends in light of the information in the report.
- 9) Instructs CalOES to publish the inaugural report on its website by December 31, 2024, and on March 31 of each following year.
- 10) Directs CalOES to deliver copies of those recommendations to the Governor and the Assembly and Senate Committees on Agriculture if the report contains legislative or policy recommendations.
- 11) Becomes operative only upon appropriation of the necessary funding by the Legislature.
- 12) Contains an urgency clause.

COMMENTS

1. The problem the bill is intended to address

According to the author, "California as the nation's largest agricultural producer has witnessed a steady increase in foreign ownership of its highly productive agricultural land." As evidence to support this assertion, the author cites a California Research Bureau (CRB) report requested by the author. The report finds that:

Foreign-held land in California represents 2.7 percent of the state's total privately held agricultural land. This is close to the national average of 2.9 percent. The percentage of California agricultural land that is foreign held has increased steadily, yet is small compared with other states. Maine is the highest percentage of foreign-held agricultural land (19.5 percent), followed by Hawaii (9.2 percent) and Washington (7.1 percent).¹

The extent of this steady increase in foreign ownership of agricultural land in California should not be overstated. The CRB report includes a table showing that the proportion of California agricultural land that is foreign-owned increased *by less than one-third of a single percentage point over the past decade*. That represents only a tiny fraction of the total agricultural land in California. Moreover, for purposes of this reporting, the term "agricultural land" includes forested land used for harvesting timber. Thus, even the

¹ Memorandum from California Research Bureau to Ibarra Re: Request for Information: Foreign Farmland Ownership in California (Mar. 30, 2022). On file with the Committee.

small reported increase in foreign ownership of agricultural land may not have as much of a direct relation to food production as it appears at first.

Still, the author views any increase in foreign ownership of agricultural land as economically detrimental to local farming communities as well as a potential threat to the security of the state's food supply. As such, the author believes that foreign ownership of California agricultural land should be monitored and deterred.

2. The proposed solutions

Much like the author's 2022 bill, SB 1084, this bill proposes two measures designed to respond to the concern that foreign control over resources in California's agricultural sector could harm local farming economies and undermine local food security. SB 1084 passed out of the Legislature but was ultimately vetoed by the Governor.

a. Prospective prohibition on foreign government control over California agricultural lands

Beginning January 1, 2024, this bill would prohibit foreign governments and any business enterprises that those foreign governments control from newly purchasing, acquiring, leasing, or holding a controlling ownership interest in agricultural land in California. Existing property ownership would be unaffected.

As this bill was introduced, this component was identical to SB 1084. Some critics argued that that version of the bill would have cut off California agricultural production from nearly all foreign investment. These critics noted that the bill as introduced could perhaps have been interpreted to exclude foreign governments or their state-controlled enterprises from acquiring *any* interest in agricultural land whatsoever, no matter how small or indirect that interest was.

Recent amendments to this bill depart from SB 1084 and seek to assuage this concern by making it clear that the bill only prohibits foreign governments or their state-controlled enterprises from obtaining a *controlling* interest over the land, defined as a greater than 51 percent ownership stake in the property, or a lesser stake if the foreign government or its state-controlled enterprise has the power to direct how the property is used without the consent of any other party. In other words, financing, investment, or other support to agricultural activities on California land are not precluded, so long as the foreign government does not exercise exclusive control over the land.

As some of the opposition to the bill point out, however, the bill might still interfere with foreign financing or investment, even as proposed to be amended, in scenarios in which the land itself serves as collateral. As explained by a coalition of agricultural trade organizations writing in opposition to the bill:

Because many agricultural operations cannot offer investors an immediate or assured return on investment, as is possible in other industries, landholders may choose to collateralize their land assets, which is within their right and privilege. While a cursory glance may interpret these situations as nefarious, many are in fact symbiotic. Investors, both foreign and domestic, put capital to good use, allowing farms to enhance infrastructure, provide for greater risk management, diversify commodities, adapt management practices, and adequately address operational needs in a growing regulatory environment and hypercompetitive global market.

If foreign governments or their state-controlled enterprises cannot accept California agricultural land as collateral, the foreign entities will have to find alternative ways to secure their investments or avoid investment in California agriculture altogether. Assuming the bill passes out of this Committee, the author may wish to consider future amendments to try to address this concern.

b. Annual report on foreign influence in California's agricultural production

The author's primary impetus for this bill is the concern that foreign government influence over key components of California's agricultural sector could eventually undermine food security. To monitor against this possibility, the second component of the bill establishes a mechanism for documenting and tracking the extent of potential foreign government influence over agricultural production, not just in terms of land ownership, but also in the areas of water and energy supply. Specifically, the bill mandates CalOES to compile an annual report addressing the extent of and changes in foreign control over agricultural lands, water rights, water desalination facilities, energy production, energy storage, and energy distribution.

This aspect of the bill differs slightly from SB 1084 as well. Whereas SB 1084 assigned the task of compiling this report to the California Department of Food & Agriculture (CDFA), this bill directs CalOES to undertake the work. In one way, this change makes sense. CDFA obviously has general subject matter expertise in the area covered by the report, but in its letter opposing SB 1084, CDFA made clear that it does not have ready access to the required data. Moreover, CDFA noted, water and energy supply issues are generally outside of its bailiwick. CalOES, by contrast, has a more cross-cutting jurisdiction.

At the same time, the Committee may wish to explore with the author whether CalOES is the right place for this assignment. The mission of CalOES is, as its name suggests, to prepare for and respond to emergencies, such as earthquakes, flooding, wildfires, and drought. Foreign government influence over agricultural production, while arguably important, could be viewed as less immediately threatening to Californians' safety and welfare. Accordingly, production of an annual report on foreign government influence

in the agricultural sector might not be the best use of CalOES's time and resources and runs some risk of detracting from CalOES's performance of its core mission.

3. Constitutional considerations

Though it probably stands on solid constitutional footing, it is worth noting that this bill brushes up against three constitutional doctrines: the foreign affairs doctrine, the dormant foreign commerce clause, and statutory preemption. All three are, in essence, related variations of the same question: can a state legislate in this area, or is it preempted from doing so by the federal government? U.S. Supreme Court precedent identifies three types of federal pre-emption: express, field, and conflict. Express pre-emption applies where Congress explicitly states that a federal statute is intended to pre-empt state legislation. Field pre-emption occurs when federal legislation is so pervasive in an area of law that Congress has left no room for the states to supplement it. Conflict pre-emption takes place when a state and federal statute are so at odds that it is impossible to comply with both at once. (Chemmerinsky, *Constitutional Law Principles and Policy*, Fifth Edition, p. 414.)

a. Foreign affairs doctrine analysis

The U.S. Constitution vests in the federal government the power to conduct the foreign affairs of the nation. As a result, "at some point an exercise of state power that touches on foreign relations must yield to the National Government's policy [...]." (*American Ins. Assn. v. Garamendi* (2003) 539 U.S. 396, 413.) It remains something of an open question whether field preemption generally prohibits states from conducting anything resembling foreign policy or if only conflict preemption applies. If only conflict preemption applies, then states are only barred from enacting laws that conflict with foreign policy that the federal government has expressed through some act or agreement. (*Id.* at 419-20.) According to precedent in the Ninth Circuit Court of Appeals, however, state laws must clear both tests in order to be upheld. (*Movsesian v. Victoria Versicherung AG* (9th Cir. 2012) 670 F.3d 1067, 1071-1072.)

As there is no federal law that sets any limitations on foreign ownership of agricultural land, the bill in print does not appear to conflict with any expressed federal policy. Whether the bill could be said to intrude on the broader authority of the federal government to conduct foreign affairs is a harder question. Comment 4, below, discusses the possibility that foreign governments might retaliate against California businesses. Legally speaking, however, the bill may be distinguishable from some other instances in which the courts found a state statute preempted. Most notably, in *Zschernig v. Miller* (1968) 389 U.S. 429, the U.S. Supreme Court struck down an Oregon statute that denied foreigners the right to inherit land in Oregon if the foreigner's country of origin did not allow for the inheritance of private property. The *Zschernig* court ruled that, although probate laws are generally the province of state law, the Oregon statute effectively expressed a policy view about how foreign countries should

conduct their internal affairs and, accordingly, constituted an attempt to conduct the foreign affairs of the U.S. In the *Movsesian* Ninth Circuit case, similarly, the court focused on the fact that the state law at issue required the California Insurance Commissioner to make a determination about whether foreign governments had engaged in persecution. This, the Ninth Circuit concluded, was more properly the role of the federal government. (*Movsesian, supra*, 670 F.3d at 1075-1076.) In contrast to the statute at issue in *Movsesian*, this bill treats all foreign governments equally and has an inward focus. Its purpose is not to change the policies of foreign governments, but to ensure domestic control over food security.

In their letters to the Committee, some of the opponents of this bill urge an amendment that would limit the ban on foreign government ownership of California agricultural land to a subset of countries that the federal government has designated as non-market economies or identified as a security risk to the United States. Though such an amendment has the appeal of focusing the bill's prohibition on foreign government ownership of California agricultural land on those foreign governments most likely to pose a threat to domestic food supply, courts might well view it as crossing over into the unconstitutional conduct of foreign affairs.

b. Dormant foreign commerce clause analysis

The U.S. Constitution vests in Congress the power to regulate commerce with foreign nations. (Art. I, § 8, cl. 3.) From this power, courts have inferred the existence of its corollary, known as the foreign dormant commerce clause, which restricts the power of states or municipalities to regulate foreign commerce, since it is "pre-eminently a matter of national concern." (*Japan Line, Ltd. v. Cty. of Los Angeles*, 441 U.S. 434, 448.) To prevail on a foreign Commerce Clause claim, a plaintiff must allege that a state or local law contravenes "specific indications of congressional intent." (*Barclays Bank PLC v. Franchise Tax Bd.* (1994) 512 U.S. 298, 324.)

As mentioned, there is no federal law setting limitations on foreign ownership of agricultural land in the U.S. Accordingly, this bill does not appear to conflict with any expressed federal policy and likely would be found not to violate the dormant foreign commerce clause.

c. Statutory preemption analysis

Finally, whenever federal and state laws conflict, the federal law governs. (U.S. Const., art. VI.) "Under the Supremacy Clause, from which our pre-emption doctrine is derived, any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." (*Gade v. National Solid Waste Management Association* (1992) 505 U.S. 88, 108.)

There is no federal law restricting foreign ownership of agricultural lands within the U.S., so there is no direct conflict between federal law and this bill. The only exception would be a treaty that governs reciprocal land ownership rights. The bill anticipates this possibility, however, and expressly declares that the bill's prohibition on foreign ownership of California agricultural lands yields to any treaty to the contrary.

4. The possibility of retaliation by foreign governments

Modern food production and supply is a global phenomenon. Produce grown in California ends up on tables throughout the world. Agricultural producers in California also venture abroad to produce food there. For example, the California fruit growers that sell to South American markets during summer in the northern hemisphere are also sometimes involved in the production of South American fruit that show up in California supermarkets during summer in the southern hemisphere.²

This bill seeks to monitor and prevent foreign governments from meddling in the production of food in California. As the opposition to this bill point out, however, foreign governments may not take kindly to being treated in this manner. They could, in response, retaliate by limiting the ways in which U.S. or Californian companies are allowed to operate in their agricultural sectors as well.

5. Avoiding clouding title on agricultural lands

A separate branch of opposition to the bill in print comes from some of the main players in agricultural real estate: realtors, lenders, and title insurance companies. While not opposed to the bill's goal of preventing foreign governments from interfering with California's agricultural lands, these entities believe that the structure of the bill in print would sow confusion around title to agricultural land. They point out that because the bill in print would render void any transaction in which a foreign government or its state-controlled enterprise gains a controlling interest in the land, it creates the possibility of clouded chain of title. As the opponents explain:

The difficulty of compliance with SB 224 is two-fold, and stems from both an inability to ever truly know whether an entity actually meets the definition of one that is prohibited from purchasing agricultural land, as well as the fact that – could such determinations even be made with real certainty – transfers of real property could presumably still be rendered void after the fact if there were a post-transfer change in the ownership or direction of an entity that thus triggers a prohibition under the bill. Due to this

² See, e.g., Linden, *McDaniel Fruit Adds Summer Peruvian Avocado Production* (Jun. 10, 2021) The Produce News <https://theproducenews.com/avocados/mcdaniel-fruit-adds-summer-peruvian-avocado-production> (as of Apr. 4, 2023).

latter complication, eliminating the risk of becoming involved in a voided transfer under SB 224 is truly impossible. As a result of these difficulties, title insurance and credit will be far less available, and/or far more expensive, for properties subject to the bill.

To address this issue, the author proposes to offer amendments in Committee that would replace the provision in the bill that voids any property transfer that violates the prohibition on foreign government ownership. Instead, the amendments establish a forced divestiture procedure to be carried out by the Attorney General. In response to receiving satisfactory evidence that a foreign government or its state-controlled enterprise has obtained a controlling interest in a piece of agricultural land in California, the Attorney General would give that foreign government or its state-controlled entity 90 days to divest itself of the controlling interest. If the foreign government fails to comply, the Attorney General would be empowered to seek a forced sale of the property through the courts. The proceeds would then be distributed according to a specified prioritization, but in no event would the foreign government be able to turn a profit from its ownership of the land.

With the inclusion of these amendments, the entities that raised concerns over clouded title have indicated they are prepared to support the bill.

6. Cautionary lessons from California's past

Both the U.S. and the California constitutions demand equal protection under the law. (U.S. Const., art. XIV, Sec. 1.; Cal. Const., art. 1, Sec. 7(a).) The California Constitution is also definitive in its rule that, in California, “[n]oncitizens have the same property rights as citizens.” (Cal. Const., art. 1, Sec. 20.)

To be crystal clear, as it appears in print and under the amendments proposed by the author, this bill does not discriminate against anyone on the basis of race or national origin, nor does it deny noncitizens any property rights that are available to citizens. Its prohibitions on the future acquisition of controlling interests in agricultural land are directed at foreign *governments* and their affiliated state-controlled enterprises only.

Nonetheless, California's shameful history in relation to restrictions on foreign ownership of agricultural land should serve as a cautionary lesson. The Alien Land Law Act, approved by wide margins in this Legislature in 1913, prohibited “aliens ineligible for citizenship” from owning agricultural land or possessing long-term leases over it. (SB 5, Haney and Webb, Ch. 113, Stats. 1913.) In practice, the law was a thinly disguised tool for preventing Californians of Japanese origin from buying farmland, something that an increasing number of Japanese-Californians had been doing at the time in order

to support their families and community.³ Among other rationalizations for its racist and xenophobic effects, supporters of the Alien Land Act justified the law on the proposition that non-citizens lacked affinity for the nation in the same way that citizens do and therefore could not be trusted to safeguard the food supply.⁴

Keeping this history in mind may help to ensure that this bill avoids slipping into xenophobic tropes that presume foreign people and things are deserving of suspicion and exclusion merely because they are foreign and instead stays focused on ensuring that all Californians – especially those who live on and work the land – reap the benefits of this bountiful state.

7. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- strike the provision voiding property transactions that violate the prohibition on foreign government ownership of California agricultural land and replace it with a forced divestiture procedure.

A mock-up of the amendments in context is attached to this analysis.

8. Arguments in support of the bill

According to the author:

Presently foreign investors hold an interest in approximately 40 million acres of U.S. agricultural land, a number which has doubled in the past two decades. California as the nation's largest agricultural producer has witnessed a steady increase in foreign ownership of its highly productive agricultural land. California's agricultural industry produces one-third of our country's vegetables and two-thirds of our country's fruits and nuts, and provides food to those in need all over the world. The agricultural land to produce these crops is valuable to our state GDP, as well as to feeding the State, the Nation and the entire world.

Recent events have shown how globally interconnected we are, and have highlighted the importance of understanding exactly who is in control of the resources we depend on, including the resources within our own state. During the last economic recession, foreign investors began buying large swaths of American farmland and

³ Keith Aoki, No Right to Own? The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment, 19 B.C. Third World L.J. 37 (1998) at p. 45.

⁴ *Id.* at p. 47. See also, *Sei Fujii v. State of California* (1952) 38 Cal.2d 718, 735-736.

because there are no federal restrictions on the amount of land that can be foreign owned, it's been left to individual states to decide on any limitations.

SB 224 is a crucial first step towards addressing this growing issue. SB 224 limits foreign ownership of California's land by banning foreign governments from purchasing, acquiring, leasing, or holding any controlling interest in agricultural land in the State of California. Additionally, SB 224 directs the California Office of Emergency Services to compile an annual report highlighting various trends relating to foreign ownership of agricultural land, water rights, water desalination facilities, and energy facilities. This will ensure California has up-to-date information on trends of foreign ownership of California's important resources. Granting our state more insight into this allows us to prioritize the stewardship of these lands, while continuing to direct resources and spending towards local economies

In support of the bill, the California State Grange writes:

[...] From an economic perspective, land like other resources, is subject to scarcity. With the rapid urbanization of California, agricultural lands will only become scarcer. The negative impacts of climate change coupled with water insecurity are already forcing farmers to fallow land, remove orchards and sell off portions of farmland. This scarcity increases the value of productive agricultural lands and creates a barrier to entry for young and beginning farmers and ranchers. We desire to see agriculture prosper in California and that a new generation of agriculturalists be able to step up and take their place as owners. To accomplish this end, we must ensure that agricultural lands are accessible to Californians.

9. Arguments in opposition to the bill

In opposition to the bill, a coalition of 14 agricultural trade associations writes:

[...] This coalition recognizes the importance of self-determination for the agricultural community and those it services. However, the data reported does not substantiate the need for the draconian policy response provided in SB 224. SB 224 also has the potential to prove disruptive to California's agro-economics and may result in adverse impacts to the State's agricultural sector on a farm-by-farm basis. While most agricultural operations in California are wholly

owned or exist with American investment, as provided above, it is undeniable that California operates in a globalized food system. This means there are instances wherein foreign investment is an important lifeline for California's farms and ranches. [...] Beyond the potential impacts on the state's agricultural land holders, this policy or an iteration of it may prompt reciprocal actions by other foreign nations, barring state or California-based business investment. Nearly 40 million Californians' food security is predicated upon an inter-dependent food system where diplomacy and prudence are essential.

SUPPORT

California Association of Realtors (as proposed to be amended)
California Credit Union League (as proposed to be amended)
California Escrow Association (as proposed to be amended)
California Land Title Association (as proposed to be amended)
California Mortgage Bankers Association (as proposed to be amended)
California State Grange
Climate Reality California Coalition

OPPOSITION

Agricultural Council of California
American Pistachio Growers
Association of California Egg Farmers
Biotechnology Innovation Organization
California Association of Winegrape Growers
California Chamber of Commerce
California Cotton Ginners and Growers Association
California Forestry Association
California Fresh Fruit Association
California Grain & Feed Association
California Seed Association
Nisei Farmers League
Pacific Egg & Poultry Association
Western Agricultural Processors Association
Western Plant Health Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 1084 (Hurtado, 2022) was similar to this bill, except that SB 1084 could be interpreted to prohibit foreign governments and the enterprises they control from holding any interest in agricultural land in California, while this bill only prohibits the holding of a controlling interest. This bill also assigns the production of a report on foreign influence in California’s agricultural sector to CalOES, whereas SB 1084 gave this task to CDFA. In his message vetoing SB 1084, Governor Newsom wrote: “Federal law requires foreign governments to report interests in agricultural land to the United States Department of Agriculture (USDA), and USDA compiles this information annually into a public report. The additional data reporting required by this bill is beyond CDFA’s purview and would create new and arduous responsibilities for the department.”

MOCKUP OF PROPOSED AMENDMENTS TO BE OFFERED IN COMMITTEE

The people of the State of California do enact as follows:

SECTION 1. Chapter 5 (commencing with Section 745) is added to Title 2 of Part 1 of Division 2 of the Civil Code, to read:

Chapter 5.

745. For purposes of this chapter, the following definitions apply:

(a) “Agricultural land” has the same meaning as defined in Section 3508 of Title 7 of the United States Code.

(b) “Controlling interest” means either of the following:

(1) Possession of 51 percent or more of the ownership interests in an entity.

(2) A percentage ownership interest in an entity of less than 51 percent, if the foreign government actually directs the business and affairs of the entity without the requirement or consent of any other party.

(c) “Foreign government” means a government or the state controlled-enterprise of a foreign government, except “foreign government” does not include the government of the United States, its states, territories, or possessions, or federally recognized tribes or their government units and enterprises.

(d) “Interest” means any estate, remainder, or reversion enumerated in Chapter 1 (commencing with Section 761) of Title 2 of Part 2, or portion of the estate, remainder, or reversion, or an option pursuant to which one party has a right to cause legal or equitable title to agricultural land to be transferred.

(e) “State-controlled enterprise” means a business enterprise, however denominated, in which the government has a controlling interest.

746. (a) Notwithstanding any other law, on and after January 1, 2024, a foreign government shall not purchase, acquire, lease, or hold any controlling interest in agricultural land in the State of California.

(b) This section does not apply to any controlling interest in agricultural land held by a foreign government before January 1, 2024.

(c) A transfer of an interest in land in violation of this section ~~is void.~~ *shall be subject to divestiture, as set forth in Section 746.5.*

(d) This section shall not be applied in a manner inconsistent with any provision of any treaty between the United States and another country.

746.5. (a) The Attorney General, upon the request of any person or upon receipt of any information which leads the Attorney General to believe that a violation of Section 746 may have occurred, may issue subpoenas requiring the appearance of witnesses, the production of relevant records, and the giving of relevant testimony.

(b) (1) If, after examining the evidence, the Attorney General concludes that a violation of Section 746 has occurred, the Attorney General shall order the prohibited foreign government to divest itself of all interests in the land within 90 days after service of the order upon the foreign government.

(2) The order of divestiture, described in paragraph (1), shall be served personally or by mail.

(c) (1) If the holder of the interest that is ordered to be divested disputes the determination of the Attorney General that a violation of Section 746 has occurred, the holder may submit a written request for a judicial determination to the Attorney General.

(2) The written request, described in paragraph (1), shall be delivered to the Attorney General within 60 days after service of the order of divestiture. If no written request is received within this time, the determination of the Attorney General shall become final.

(d) (1) If the foreign government fails to divest itself of all interests pursuant to subdivision (b), or if a holder of the interest submits a written request pursuant to subdivision (c), the Attorney General shall bring an action in superior court to divest the interest.

(2) Venue for the action described in paragraph (1) shall either be the County of Sacramento or a county in which a portion of the subject land is located, as determined by the Attorney General.

(3) The Attorney General shall promptly record with the county recorder of each county in which any portion of the land is located a notice of pendency of the action pursuant to Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure.

(e) If the holder of the interest has submitted a written request pursuant to subdivision (c), the court shall conduct an evidentiary hearing to determine, by a preponderance of the evidence, if a violation of Section 746 has occurred, prior to taking any other action. If the court determines that there has been no violation, the court shall dismiss the action and expunge the notice of pending action.

(f) (1) If the court determines that a violation of Section 746 occurred, the court shall order that the land be sold. Unless the court determines for good cause that another procedure for conducting the sale is appropriate, the court shall appoint a referee pursuant to Article 1 (commencing with Section 873.010) of Chapter 4 of Title 10.5 of Part 2 of the Code of Civil Procedure.

(2) The referee shall make a sale of the property and convey the interest to the purchaser.

(3) The proceeds from the sale shall be distributed in the following order:

(A) The payment of authorized costs of the sale, including all approved fees and expenses of the referee and any taxes and assessments due.

(B) The payment, in an amount approved by the court, to the Attorney General for reimbursement of investigation and litigation costs and expenses.

(C) The payment to lienholders who did not have actual knowledge of a violation of Section 746 in their order of priority, except for liens which under the terms of the sale are to remain on the property.

(D) The payment of a penalty, in an amount determined by the court, not to exceed 10 percent of the sales price of the property, to be paid to the fund designated by the Attorney General for enforcement of this chapter.

(E) The payment to any lienholders not included in subparagraph (C) in their order of priority.

(F) All remaining proceeds to the prohibited foreign government, in an amount that shall not exceed the original amount paid by the foreign government for the property, payable to the person or entity that held the interest.

747. (a) Based on the reports submitted to it pursuant to Section 3505 of Title 7 of the United States Code, and other information the Office of Emergency Services, at its discretion, deems appropriate, the office shall compile an annual report in consultation with the appropriate boards or departments for each calendar year containing all of the following:

(1) The total amount of agricultural land that is under foreign ownership.

(2) The percentage change in foreign ownership of agricultural land in California, by year, over the past 10 years.

(3) The purpose to which foreign-owned agricultural land in California is being put to use currently. The office shall also include any significant recent changes or trends in the use to which foreign-owned agricultural land in California is being put to use.

(4) Information regarding the extent of, and any recent changes in, foreign ownership of water rights in California.

(5) Information regarding the extent of, and any recent changes in, foreign ownership of water desalination facilities in California.

(6) Information regarding the extent of, and any recent changes in, foreign ownership of energy production, storage, or distribution facilities in California.

(7) The Office of Emergency Services' assessment of the impact of any recent changes in foreign ownership of agricultural land in California, water rights, or water desalination facilities on Californians' food security.

(8) Any legislative, regulatory, or administrative policy changes the Office of Emergency Services recommends in light of the information in the report.

(b) The report required by subdivision (a) shall also include information on agricultural land that is leased by a foreign government for each of the categories set forth in paragraphs (1) to (8), inclusive, of subdivision (a), as applicable.

(c) (1) The Office of Emergency Services shall publish the inaugural report described in subdivision (a) on its website by December 31, 2024, and by March 31 of each following year thereafter.

(2) The Office of Emergency Services shall publish each subsequent report described in subdivision (a) on its website by March 31 of each following year.

(3) If the report contains recommendations for legislative policy changes pursuant to paragraph (8) of subdivision (a), the Office of Emergency Services shall also deliver copies of those recommendations to the Governor and the Assembly and Senate Committees on Agriculture pursuant to Section 9795 of the Government Code.

(d) The Office of Emergency Services shall be reimbursed from the funds appropriated pursuant to Section 747.5 in an amount to cover the costs incurred for compiling data, printing, and mailing the report.

747.5. This chapter shall become operative upon appropriation by the Legislature for the purpose of implementing the provisions of this chapter.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to secure the integrity of California's agricultural land due to the effects it has on global food security, and in order to address the potential of foreign government control of California's agricultural land and natural resources, it is necessary for this act to take effect immediately.