

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON AGRICULTURE

Robert Rivas, Chair

SB 1084 (Hurtado) – As Amended June 15, 2022

SENATE VOTE: 31-0

SUBJECT: Property ownership: foreign ownership: foreign governments

SUMMARY: This bill prohibits foreign governments from owning agricultural land in California, as specified and requires the Department of Food and Agriculture (CDFA) to publish an annual report regarding the foreign ownership of agricultural land in California. Specifically, **this bill:**

- 1) Prohibits, commencing January 1, 2023, a foreign government from purchasing, acquiring, or holding any interest in agricultural land in the State of California.
- 2) Provides that the prohibition in 1) does not apply to any federally recognized Indian tribe or its government units and enterprises.
- 3) Provides that nothing in 1) supersedes or be applied in a manner inconsistent with any provision of any treaty between the United States and another country.
- 4) Requires CDFA to compile an annual report in consultation with the appropriate boards or departments for each calendar year, based on the data contained in a biannual report released by USDA, containing all of the following:
 - a) The total amount of agricultural land that is under foreign ownership;
 - b) The percentage change in foreign ownership of agricultural land in California, by year, over the past 10 years;
 - c) The purpose to which foreign-owned agricultural land in California is being put to use currently, including any significant recent changes or trends in the use to which foreign-owned agricultural land in California is being put to use.
 - d) Information regarding the extent of, and any recent changes in, foreign ownership of water rights in California;
 - e) Information regarding the extent of, and any recent changes in, foreign ownership of water desalination facilities in California;
 - f) Information regarding the extent of, and any recent changes in, foreign ownership of energy production, storage, or distribution facilities in California;
 - g) An 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; and

- h) Any legislative, regulatory, or administrative policy changes the Department of Food and Agriculture recommends in light of the information in the report.
- 5) Requires CDFA to publish the first report required pursuant to 4) on March 31, 2023 and annually thereafter.
- 6) Requires, if the report developed pursuant to 4), contains recommendations for legislative policy changes then the report must be delivered to the Governor and the Assembly and Senate Committees on Agriculture.
- 7) Provides that CDFA is to be reimbursed in an amount to cover the costs incurred for compiling data, printing, and mailing the report.
- 8) Defines the following terms:
 - a) “Agricultural land” means any land used for agricultural, forestry, or timber production purposes as prescribed by regulations adopted by USDA;
 - b) “Controlling interest” means either possession of 51 percent or more of the ownership interests in an entity, or 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;
 - d) “Interest” means any estate, remainder, or reversion, as specified, 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; and
 - e) “State-controlled enterprises” means business enterprises, however denominated, in which the government has a controlling interest.
- 9) Stipulates that this bill become operative upon appropriation by the Legislature for the purpose of implementing the provisions of the bill.

EXISTING LAW:

STATE LAW

- 1) Provides that all property has an owner, whether that owner is the state, and the property is public, or the owner is an individual, and the property is private.
- 2) Requires CDFA to promote and protect the agricultural industry of the state. Existing law requires the department to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state.

FEDERAL LAW

- 1) Requires any foreign person, defined to include foreign governments, who acquires or transfers any interest, other than a security interest, in agricultural land to submit to the

United States Secretary of Agriculture (USDA) a report containing specified information relating to, among other things, the type of interest the foreign person acquired or transferred and their legal name, address, and citizenship or country in which they are created or organized.

- 2) Requires USDA every 6 months to transmit to each state department of agriculture a copy of each report that was submitted to USDA in the most recent 6-month period and that involved agricultural land located in that state.

FISCAL EFFECT: Unknown.

COMMENTS: According to a California Research Bureau information request, asked for by the author, reported that in 1978, a report by the Government Accountability Office found that no reliable data existed on the amount of U.S. farmland held by foreign investors. As a result, Congress passed the Agricultural Foreign Investment Disclosure Act (AFIDA) in 1978. Its corresponding federal regulations require foreign investors who acquire, transfer, or hold an interest in U.S. agricultural land to report such holdings and transactions to the Secretary of Agriculture.

A foreign investor is defined in AFIDA as any individual who is not a citizen or national of the United States or its territories and is not a lawful permanent resident. Individuals and corporations that have their principal place of business in a foreign country (even if in partnership with a U.S. corporation) file an annual AFIDA report. USDA publishes these holdings in an annual report.

State laws vary regarding ownership by foreign entities. Most states, including California, place little to no prohibitions on such ownership. The California Constitution states: “Noncitizens have the same property rights as citizen. Current California law states “any person, whether citizen or alien, may take, hold, and dispose of property, real or personal, within this State.”

How much California agricultural land is foreign owned and who owns it?

California has a total land area of 99,813,760 acres. As of 2020, less than half (41,823,058 acres) is privately held agricultural land. Of this acreage, foreign investors held an interest in 1,136,206 acres. 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). Foreign ownership has increase from 2.4% of farmland in 2010 to 2.7% as of 2020.

As of 2020, United Kingdom investors own the most agricultural acreage in California (340,980 acres), followed by Canada (118,063 acres), the Netherlands (158,054 acres), Germany (73,652 acres), and Italy (8,736 acres). The rest of the foreign-held acreage (554,333 acres) is held by various other countries. China, Iran, and the Russian Federation account for a combined total of 8,383 acres in 2016, which is less than 1% of the total foreign-held agricultural acreage in California. Most of this acreage belongs to China, with cropland parcels located primarily in Fresno, Kern, and Tulare Counties.

According to the author:

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 our own. The Russian invasion of Ukraine has triggered uncertainty around the world in a multitude of ways, including in global physical security, as well as in food security. Between them, Ukraine and Russia produce thirty percent of the world's wheat supply, twenty percent of its corn supply and seventy-five to eighty percent of the world's sunflower seed oil. The World Food Program buys fifty percent of its grain from Ukraine.

In the past few years, foreign ownership of California's own agricultural land has steadily increased. 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 invaluable to our state GDP, as well as to feeding the State and the Nation.

This bill is a crucial first step towards addressing this growing issue. This bill prevents foreign governments from purchasing agricultural land in California. Additionally, this bill directs the California Department of Food and Agriculture 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.

Supporters state, this bill will allow California to gather more information and assess the impact of the ownership of agricultural land in California by foreign governments and foreign government-controlled entities. Despite the small percentage of land currently owned by foreign governments in California, the bill is valuable because of the knowledge it will provide to lawmakers regarding our scarce resources.

The California Department of Food and Agriculture has an oppose position on this bill. CDFA states:

“CDFA's concerns stem from the information SB 1084 requires the department to collect. The referenced USDA report does not provide the level of specificity of information as mandated by SB 1084, and the USDA classification of a “foreign entity” is much broader than the definition provided in SB 1084. Foreign government ownership of agricultural resources is likely not tracked by any other state agency or board. Accordingly, my staff have no feasible way of collecting required information from existing sources and would be required to seek out the data in unknown other ways, resulting in an arduous, costly, and incredibly laborious undertaking. Moreover, the reporting requirements for water rights, water desalination facilities, and energy production facilities are beyond CDFA's purview and mission. At this time, CDFA does not see a need for the extraordinary additional reporting requirements beyond what is already enumerated annually and publicly by the USDA.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors

Oppose

California Department of Food and Agriculture

Oppose Unless Amended

Cahuilla Band of Indians

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