
SENATE COMMITTEE ON AGRICULTURE
Senator Andreas Borgeas, Chair
2021 - 2022 Regular

Bill No: SB 1084 **Hearing Date:** 4/27/22
Author: Hurtado
Version: 4/18/22
Urgency: No **Fiscal:** Yes
Consultant: Reichel Everhart

Subject: Property ownership: foreign ownership: foreign governments

SUMMARY:

This bill, beginning January 1, 2023, prohibits a foreign government from purchasing, acquiring, or holding an interest, as defined, in agricultural land within the state of California. The bill exempts land that has been held by foreign governments before January 1, 2023. This bill requires the California Department of Food and Agriculture (CDFA) to compile data from the United States Secretary of Agriculture pertaining to foreign governments that acquire or transfer any interest in agricultural land in California. This bill, additionally, requires CDFA to compile data on foreign ownership of water rights, foreign ownership of water desalination facilities, and foreign ownership of energy production, storage, or distribution facilities in California, and to annually report this information to the governor and the Assembly and Senate committees on agriculture. Finally, this bill requires the inaugural report to be posted on CDFA’s website by March 31, 2023, and every year after on the same date.

BACKGROUND AND EXISTING LAW:

Existing federal law:

- 1) Establishes the United States Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) and federal regulations, implemented by USDA. AFIDA establishes a nationwide system for the collection of information pertaining to foreign ownership of U.S. agricultural land. The regulations require foreign persons who buy, sell, or gain interest in U.S. agricultural land to disclose their holdings and transactions to USDA directly or to the Farm Service Agency county office where the land is located. Failure to disclose this information may result in penalties and fines. After the original disclosure (Form FSA-153), each subsequent change of ownership or use must be reported. USDA compiles these data, with the most recent AFIDA report covering 2019 (*AFIDA; P.L. 95-460, 7 U.S.C. §§3501-3508, (7 C.F.R. Part 781).*

- 2) Requires foreign persons, as part of the AFIDA, to report information on current and future acquisitions of U.S. agricultural land, including, but not limited to, the name of the owner, the total acreage, and the intended use of the land. (7 U.S.C. § 3501.)
- 3) Directs the USDA to transmit information on agricultural land acquisitions by foreign persons every six months to the appropriate (7 U.S.C., §3505).

PROPOSED LAW:

This bill:

- 1) Defines “agricultural land” to mean any land located in one or more States and used for agricultural, forestry, or timber production purposes as determined by the United States Secretary of Agriculture under regulations to be prescribed by the Secretary. This definition mirrors the federal definition under section 3508 of Title 7 of the United States Code.
- 2) Defines “controlling interest” to mean either of the following:
 - a. Possession of 51% or more of the ownership interests in an entity.
 - b. A percentage ownership interest in an entity of less than 51% if the foreign government actually directs the business and affairs of the entity without the requirement or consent of any other party.
- 3) Defines “foreign government” to mean a government other than the government of the United States, its states, territories, or possessions, and includes state-controlled enterprises.
- 4) Defines “interest” to mean any estate, remainder, or reversion enumerated in Chapter.
- 5) Defines “state-controlled enterprises” to mean business enterprises, however denominated, in which the government has a controlling interest.
- 6) Exempts any interest in agricultural land held by a foreign government before January 1, 2023.
- 7) Specifies the exemption does not apply if a transfer in interest in land has occurred.
- 8) States the provisions of the bill do not apply if they are inconsistent with any treaty between the United States and any other country.
- 9) Requires CDFA, if it deems appropriate, to compile annual reports each calendar year from the United States Department of Food and Agriculture the following:
 - a. Total amount of agricultural land that is under foreign ownership
 - b. Percentage change in foreign ownership of agricultural land by year, over the past 10 years
 - c. Top 10 nationalities of the foreign owners of agricultural land, by total acreage owned

- d. Purpose for which foreign-owned agricultural land is being used currently, including any significant recent changes or trends in the use of foreign-owned agricultural land
 - e. Extent of and recent changes in foreign ownership of water rights
 - f. Extent of and recent changes in foreign ownership of water desalination facilities
 - g. Extent of and any recent changes in foreign ownership of energy production, storage, or distribution facilities in California
 - h. CDFA's assessment of the impact of any recent changes in foreign ownership of agricultural land, water rights, or water desalination facilities on Californians' food security
 - i. Any legislative, regulatory, or administrative policy changes CDFA recommends in light of the information in the report
- 10) CDFA shall publish the inaugural report on its website by March 31, 2023, and on the 31st day of March of each following year.
- 11) If the report contains legislative or policy recommendations, CDFA shall deliver copies of those recommendations to the governor and the Assembly and Senate committees on agriculture.

ARGUMENTS IN SUPPORT:

According to the author:

In the past few years, foreign ownership of California's own agricultural lands 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 also 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.

Recent events have shown how globally interconnected we are and has 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.

SB 1084 is a crucial first step towards addressing this ever-growing issue. SB 1084 prevents foreign governments from purchasing agricultural land in California. Additionally, SB 1084 directs the Department of Food and Agriculture to compile an annual report

highlighting various trends relating to foreign ownership on agricultural land, water rights, water desalination facilities, and energy facilities. This will ensure California has up-to-date information on trends on foreign ownership of many 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.

COMMENTS:

Availability of Information on foreign-owned agricultural land: According to the USDA Farm Service Agency's report titled "Agricultural Landholdings of Foreign Investors Through December 31, 2020," 2.7% of California's agricultural land is owned by foreign investors. Between December 31, 2019, and December 31, 2020, the amount of agricultural landholdings of foreign investors increased by 40,165 acres. The report also breaks down U.S. agricultural and non-agricultural landholdings by acre by country, by type of land use, and by state and county. The report is available at: https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/EPAS/PDF/2020_afida_annual_report.pdf.

This bill prohibits foreign entities from purchasing or having a controlling interest in agricultural land in California beginning on January 1, 2023. According to a November 18, 2021, report by the Congressional Research Service "*Foreign Farmland Ownership in the United States*," some states and localities have instituted restrictions but do not significantly limit foreign farmland ownership. An overview of state laws by researchers at the University of Arkansas's National Agricultural Law Center shows that no U.S. state has instituted an absolute prohibition on foreign ownership. However, several states have imposed certain prohibitions or restrictions on foreign ownership, while most states expressly allow foreign ownership. Several states require reporting or registration (Arkansas, Illinois, Iowa, Kansas, Maine, Minnesota, Missouri, Nebraska, North Carolina, North Dakota, Ohio, and Wisconsin) The report is available at: <https://crsreports.congress.gov/product/pdf/IF/IF11977>.

As amended on April 18, 2022, the bill requires CDFA to compile an annual report highlighting various trends relating to foreign ownership of agricultural land, water rights, water desalination facilities, and energy facilities. While the information on foreign-owned agricultural land is available (see above links) and could be compiled, requiring CDFA to compile data on foreign-owned water rights, water desalination facilities, and energy facilities presents a problem as CDFA does not have access to the data on these issues. There is a nexus between agriculture and

water and energy, and it would be beneficial to have the information requested. Therefore, the committee may wish to consider an amendment that states CDFA shall work jointly with the appropriate boards or departments to capture data on foreign-owned water rights, desalination facilities, energy production entities, and storage or distribution facilities in California.

Suggested Amendments:

Amendment One: Page 4, line 23, after “report” insert “in consultation with the appropriate board or department”

Amendment Two: Page 5, line 23, after “Government Code.” insert “(b) The department shall be reimbursed for costs incurred for the compiling data, printing and mailing the joint report.

Mock-up of suggested amendments:

P4 19 747. (a) Based on the reports submitted to it pursuant to
 20 Section 3505 of Title 7 of the United States Code, and other
 21 information the Department of Food and Agriculture, at its
 22 discretion, deems appropriate, the department shall compile an
 23 annual report *in consultation with the appropriate boards or departments*
 24 for each calendar year containing all of the following:
 25 (1) The total amount of agricultural land that is under foreign
 26 ownership.
 27 (2) The percentage change in foreign ownership of agricultural
 28 land in California, by year, over the past 10 years.
 29 (3) The top 10 nationalities of the foreign owners of agricultural
 30 land in California, by total acreage owned.
 31 (4) The purpose to which foreign-owned agricultural land in
 32 California is being put to use currently. The department shall also
 33 include any significant recent changes or trends in the use to which
 34 foreign-owned agricultural land in California is being put to use.
 35 (5) Information regarding the extent of, and any recent changes
 36 in, foreign ownership of water rights in California.
 37 (6) Information regarding the extent of, and any recent changes
 38 in, foreign ownership of water desalination facilities in California.

P5 1 (7) Information regarding the extent of, and any recent changes
 2 in, foreign ownership of energy production, storage, or distribution
 3 facilities in California.

4 (8) The Department of Food and Agriculture’s assessment of
5 the impact of any recent changes in foreign ownership of
6 agricultural land in California, the water rights, or water
7 desalination facilities on Californians’ food security.

8 (9) Any legislative, regulatory, or administrative policy changes
9 the Department of Food and Agriculture recommends in light of
10 the information in the report.

11 (b) (1) The Department of Food and Agriculture shall publish
12 the inaugural report described in subdivision (a) on its website by
13 March 31, 2023, and on the 31st day of March of each following
14 year.

15 (2) The Department of Food and Agriculture shall publish each
16 subsequent report described in subdivision (a) on its website by
17 the 31st day of March of each following year.

18 (3) If the report contains recommendations for legislative policy
19 changes pursuant to paragraph (9) of subdivision (a), the
20 Department of Food and Agriculture shall also deliver copies of
21 those recommendations to the Governor and the Assembly and
22 Senate Committees on Agriculture pursuant to Section 9795 of the
23 Government Code.

24 *(b) The department shall be reimbursed for costs incurred for compiling*
25 *data, printing, and mailing the joint report.*

SUPPORT:

None received

OPPOSITION:

None received

-- END --