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Bill Analysis

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Primary Sponsors: Reps. King and Klopfenstein

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SUMMARY

- Prohibits all individuals and governments determined by the U.S. Secretary of Commerce to constitute a foreign adversary or subject to economic sanctions administered by the U.S. Office of Foreign Assets Control (OFAC), and certain associated businesses, from acquiring real property in Ohio.
- Requires the Ohio Secretary of State to periodically update the list of foreign adversaries.
- Requires foreign adversaries and associated businesses to divest of all current real property holdings in Ohio within 36 months of the bill's effective date.
- Requires all real property conveyance forms to include a statement as to whether the grantee is a foreign adversary or associated business, and whether the grantor is required to divest of the real property.
- Prohibits the county auditor from endorsing a conveyance of real property to a grantee that does not affirm their eligibility to acquire real property in Ohio.
- Stipulates that any transfer of an interest in real property to a foreign adversary or associated business is void.
- Requires the county auditor to refer grantors required to divest of real property holdings to the county prosecutor for investigation.
- Allows the county prosecutor to initiate a civil action against a property owner alleged to have violated the bill in a court of common pleas of the county in which the property is located.
- Allows the court, in response to such an action, to issue an order for divestment.

- Requires the county prosecutor to impose a \$25,000 civil penalty on a person that does not comply with a court order for divestment and requires that the property escheat to the state.
- Requires escheated property to be sold at public auction in the same manner as real property that is foreclosed upon for the payment of a debt.
- Stipulates that proceeds from such a sale first are used to pay the costs of the civil action, then deposited to the General Revenue Fund (GRF).

DETAILED ANALYSIS

Prohibition on acquisition or ownership of real property

The bill prohibits all individuals and governments determined to be “foreign adversaries” and certain associated businesses from purchasing or acquiring any interest in real property in Ohio. It also requires foreign adversaries and associated businesses that currently own an interest in real property in Ohio to divest of that interest within 36 months after the bill’s effective date. Transfers of real property in violation of the bill are void. Real property held by a foreign adversary or associated business in violation of the bill may escheat to the state and be sold at public auction.¹

Application of restrictions

Foreign adversaries

The bill’s prohibitions apply to individuals and governments designated as foreign adversaries by the U.S. Secretary of Commerce or that are subject to economic sanctions administered by the Office of Foreign Assets Control (OFAC) within the U.S. Department of the Treasury.² Under federal law, the U.S. Secretary of Commerce designates as a foreign adversary any person or government that has “engaged in a long-term pattern of serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons. . . .”³ The current list of foreign adversaries is as follows:

¹ R.C. 5301.256.

² R.C. 5301.256(A)(3).

³ 15 Code of Federal Regulations (C.F.R.) 7.4.

China (including Hong Kong)	Russia
Cuba	Venezuelan politician Nicolas Maduro
Iran	
North Korea	

A broader list of individuals and governments are subject to economic sanctions by the OFAC, including the following:

Afghanistan	Lebanon
Balkans	Libya
Belarus	Nicaragua
Burma	Somalia
Central African Republic	South Sudan
Cuba	Syria
Congo	West Bank
Ethiopia	Yemen
Iran	Zimbabwe
Iraq	

Some of the OFAC sanctions are comprehensive, while others are selective. The bill does not differentiate between the two for the purposes of its prohibitions. It appears that an individual or government that is subject to any OFAC sanction is considered a foreign adversary under the bill.⁴

The bill requires the Ohio Secretary of State to periodically review the list of individuals and governments determined to be foreign adversaries and allows for revisions provided that they do not result in less stringent protection to real property.⁵

Associated businesses

The bill's restrictions also apply to certain businesses associated with foreign adversaries. A business that is directly or indirectly owned or controlled by a foreign adversary is subject to the bill unless the business is operating lawfully in the U.S. as of the bill's effective date. For the purposes of the bill, a business is "owned" by a foreign adversary if the foreign adversary has possession of more than half of the stock, equity, or other ownership interest of

⁴ See [Sanctions Programs and Country Information](#), which is available on OFAC's website: ofac.treasury.gov.

⁵ R.C. 5301.256(F).

the business. A business is “controlled” by a foreign adversary if the foreign adversary has authority, by contract or by law, to direct the affairs and day-to-day operations of the business without the consent of any other person.⁶

Furthermore, a business with a principal executive office located in a country governed by a foreign adversary is subject to the bill unless the business meets all of the following requirements:

- Has filed articles of incorporation or any other documents or applications as a condition precedent to engage in business at least seven years before the bill’s effective date;
- Is in good standing, full force and effect, or registered with the Ohio Secretary of State and has maintained that status for at least seven years before the bill’s effective date;
- Has been approved to purchase or acquire real property by the U.S. Committee on Foreign Investment pursuant to the “Defense Production Act of 1950”;
- Is a party to an active national security agreement with the U.S. government;
- Is operating lawfully in the U.S. as of the bill’s effective date.⁷

Real property conveyances

Under continuing law, whenever real property or a manufactured or mobile home is transferred, the grantee is required to file a statement with the county auditor attesting to the property’s value and acknowledging that certain information related to the property’s eligibility for the homestead exemption or current agricultural use valuation (CAUV) status has been considered as part of the transfer. The statement must be accompanied by any required property transfer tax. The bill requires statements involving the transfer of real property to include an affirmation from the grantee as to whether the grantee is prohibited from acquiring real property in Ohio under the bill. Additionally, the grantor must submit an affirmation as to whether the grantor is required to divest of the real property that is the subject of the transfer.

The bill prohibits the county auditor from indorsing a conveyance of real property if the required affirmations are not submitted, or if the grantee confirms or the auditor has reason to believe that the grantee is prohibited from purchasing or acquiring real property. The auditor cannot refuse to indorse a conveyance merely because the grantor is prohibited from holding the real property that is the subject of the transfer. In either case, the auditor must refer the transfer to the county prosecutor, who is then required to investigate the allegation. If it is found that the grantee is prohibited from purchasing or acquiring real property, the transfer is void. An aggrieved party may appeal the county prosecutor’s determination in the court of common pleas in the county in which the real property is located.⁸

⁶ R.C. 5301.256(A)(2), (A)(4), and (B)(3).

⁷ R.C. 2105.16 and 5301.256(B).

⁸ R.C. 319.202 and 5301.256(C); conforming change in R.C. 5323.02.

Divestment

The bill requires a foreign adversary or associated business to divest of all real property holdings in Ohio within 36 months after the bill's effective date. If the county auditor has reason to believe that a foreign adversary or associated business has not divested of its real property interests, the county auditor must report the violation to the county prosecutor. The county prosecutor is required to investigate the allegation and may subpoena witnesses and documents as part of that investigation. If the real property that is the subject of the investigation is located in more than one county, the county prosecutors of those counties may investigate the allegation collaboratively.

If the prosecutor's investigation indicates a violation of the bill's divestment requirement, the prosecutor is required to initiate an action in the court of common pleas in the county where the real property is located. If the land is located in more than one county, the prosecutor may initiate a single action in the county in which the majority of the real property is located. After the action is commenced, the county prosecutor must file a notice of pendency of the action with the county. If the court finds that a violation has occurred, it must issue an order for divestment and the foreign adversary or business must comply fully within six months after the date of the final entry of judgment.

If a foreign adversary or associated business fails to timely comply with a court ordered divestment, the county prosecutor is required to impose a \$25,000 civil penalty. Furthermore, the property subject to the order escheats to the state. The clerk of the court must notify the Governor that the title to the land is vested in the state by the court. The escheated real property must be sold at public auction in the same manner as real property foreclosed upon due to the owner's failure to pay a debt, except that there is no right of redemption. After the sale of the property, the proceeds are first used to pay court costs related to the action. The remaining proceeds, if any, are distributed to the General Revenue Fund (GRF).⁹

Third party duties

The bill specifies that no person other than a foreign adversary or associated business is required to inquire or determine whether another person is subject to the bill's restrictions on acquiring or holding an interest in real property in Ohio.¹⁰

Interaction with current law

The bill was introduced before the enactment of H.B. 33 of the 135th General Assembly, which prohibits persons determined by the Ohio Secretary of State to constitute a threat to the agricultural production of Ohio or the U.S. from acquiring agricultural land.¹¹ The bill is, in many

⁹ R.C. 5301.256(D); conforming change in R.C. 2105.16.

¹⁰ R.C. 5301.256(E).

¹¹ See pages 552-554 of the [LSC Final Analysis for H.B. 33 \(PDF\)](#), which is available on the General Assembly's website: legislature.ohio.gov.

ways, more stringent than the prohibition enacted by H.B. 33. For example, the bill applies to all real property, whereas H.B. 33 applies only to agricultural land. Furthermore, the bill requires foreign adversaries and associated businesses to divest of current land holdings, whereas H.B. 33 allows for retention of land acquired before the provision's effective date. The bill also prescribes a different method for determining which countries and businesses are subject to its restrictions. It does not include the exceptions, like those in H.B. 33, for property acquired by devise or descent or through process of law in the collection of debts.

If enacted in its current form, the bill would supplement rather than replace the prohibitions in H.B. 33. One area where harmonization may prove to be difficult is in the enforcement mechanisms. H.B. 33 requires enforcement by the Attorney General rather than county prosecutors. Furthermore, under H.B. 33, when real property escheats to the state and is sold at public auction, the proceeds are distributed differently. After court costs, the former land owner is reimbursed an amount not exceeding the amount paid for the escheated real property. Then, if any proceeds remain, they are distributed to the general fund of the county in which the property is located (rather than the GRF). It is not clear which procedure would apply in cases where real property is acquired or held in violation of both H.B. 33 and the bill.

State authority to regulate foreign ownership

A similar Florida law is the subject of an ongoing legal challenge. A federal judge recently enjoined enforcement of the Florida law against the plaintiffs in that challenge.¹² If the bill were challenged after enactment, a court might examine the following:

- Whether depriving certain individuals and businesses of the right to acquire and hold real property and, further, potentially seizing real property without providing compensation to the owner, violates substantive and procedural due process rights guaranteed by the Fifth Amendment of the U.S. Constitution or real property rights protected by Article I, Section 1 of the Ohio Constitution;
- Whether the bill is prohibited by the Supremacy Clause of the U.S. Constitution by “interfering” with the federal government’s “plenary” power respecting foreign affairs, requiring the state to make “minute inquiries concerning the actual administration of foreign law,” or conflicting with a treaty (such as a “nationals clause” or a “most favored nations” clause of U.S. trade treaties);¹³

¹² See [Eleventh Circuit Narrowly Blocks Florida from Enforcing Foreign Ownership Law](#), Micah Brown, which is available on The National Agricultural Law Center’s website: <https://nationalaglawcenter.org/>.

¹³ U.S. Const., Article VI, Clause 2; *Arizona v. United States*, 567 U.S. 387 (2012); *Wickard v. Filburn*, 317 U.S. 111 (1942); *Missouri v. Holland*, 252 U.S. 416 (1920); and *Zschernig v. Miller*, 389 U.S. 429(1968); see also [Foreign Ownership of Property in the United States: Federal and State Restrictions](#), Howard Zaritsky, Congressional Research Service, pgs. 14-16, updated June 23, 1980, which is available on the University of North Texas Digital Library website: digital.library.unt.edu.

- Whether the bill infringes on the right of certain individuals and businesses to “equal protection of the laws,” guaranteed by the U.S. Constitution;¹⁴
- Whether the bill discriminates against foreign commerce without a “compelling justification” based on legitimate, nondiscriminatory goals;¹⁵
- Whether the General Assembly, by allowing the U.S. government and the Ohio Secretary of State to designate foreign adversaries that are subject to the bill, unlawfully delegates its power without a clear determination of policy and provide adequate guidance.¹⁶

HISTORY

Action	Date
Introduced	06-13-23

ANHB0212IN-135/ts

¹⁴ U.S. Const., Amendment 14, Sec. 1.

¹⁵ U.S. Const., Art. I, Sec. 8, cl. 3; *Emerson Elec. Co. v. Tracy*, 90 Ohio St.3d 157 at 159-160 (2000); *Kraft Gen. Foods v. Iowa Dep’t of Revenue & Fin.*, 505 U.S. 71 at 79 (1992); and *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 at 445-446 and 448-451 (1979).

¹⁶ Ohio Const., Art. II, Secs. 1 and 26; *Williams v. Spitzer Autoworld Canton, L.L.C.*, 122 Ohio St.3d 546, 2009-Ohio-3554; *Blue Cross of Northeast Ohio v. Ratchford*, 64 Ohio St.2d 256 (1980); *In re Adoption of Uniform Rules & Regulations, etc.*, 169 Ohio St. 445 (1959); and *State ex rel. Bryant v. Akron Metropolitan Park Dist.*, 120 Ohio St. 464, 478-480 (1929).