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S.B. 226
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Johnson

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SUMMARY

- Modifies a law, enacted by H.B. 33 of the 135th General Assembly, which prohibits certain foreign countries, businesses, individuals, and organizations from acquiring agricultural land in Ohio.
- Extends the restrictions to real property located within 25 miles of any installation under the jurisdiction of the U.S. armed forces, including a military base, camp, or airport.
- Extends the restrictions to real property located within 25 miles of a critical infrastructure facility.
- Clarifies that the restrictions apply to both direct and indirect acquisitions of protected property.
- Broadens the definition of “persons” to which the restrictions apply to include criminal enterprises, gangs, and cartels.
- Requires the Secretary of State to update the registry of restricted persons at least one time every six months and to consider potential threats to critical infrastructure, security, and military defense.
- Specifies that a country listed on the registry is a “foreign adversary,” and that the restrictions apply to the country’s government; citizens; headquartered businesses; businesses owned or controlled by such governments, citizens, and headquartered businesses; and agents, fiduciaries, or trustees of any of the foregoing.
- Applies all restrictions under the bill and current law to acquisitions of protected property on or after the bill’s effective date.
- Exempts protected property acquired by an agent, fiduciary, or trustee of a restricted person that is not, themselves, a restricted person and that is not an attempt to circumvent the bill’s restrictions.

- Requires the statement filed with the county auditor in connection with the conveyance of protected property to include affirmations by the buyer and seller as to whether they are subject to the restrictions prescribed by the bill and, in the case of the seller, whether the real property that is the subject of the conveyance was acquired before the bill's effective date.
- Prohibits the county auditor from indorsing a conveyance of protected property without the required affirmations but prohibits the auditor from refusing to indorse a conveyance merely because the buyer or seller are prohibited from acquiring protected property.
- Requires the county auditor to refer a conveyance of protected property that the buyer or seller affirms, or the auditor has reason to believe, violates the bill's restrictions to county sheriff for investigation.
- Shifts enforcement of the bill's requirements from the Attorney General to county sheriffs and county prosecutors.
- Eliminates references in current law to land "escheating to the state."
- Changes the distribution of the proceeds from a court ordered sale of protected property.
- Specifies that no person is required to determine or inquire about whether another person is subject to the bill's restrictions other than a restricted person or a county auditor, county sheriff, county prosecutor, or trier of fact acting in that person's official capacity as required by the bill.
- Specifies that no title to an interest in real property is invalid or subject to divestment by reason of a violation by a former owner of the protected property.
- Names the bill the "Ohio Property Protection Act."

DETAILED ANALYSIS

The bill modifies a law, enacted by H.B. 33 of the 135th General Assembly, which prohibits certain foreign countries, businesses, individuals, and organizations from acquiring agricultural land in Ohio. The bill expands the restrictions to other "protected property" that is located within 25 miles of a military installation or critical infrastructure facility; modifies the process by which the Ohio Secretary of State (SOS) compiles the registry of persons subject to those restrictions; applies the restrictions to certain individuals, businesses, and agents associated with listed countries (referred to by the bill as "foreign adversaries"); shifts enforcement responsibilities from state to local officials; requires certain affirmations to be submitted to the county auditor whenever an interest in protected property is conveyed; changes the manner in which proceeds of property sold by court order are distributed; and makes other miscellaneous changes to the law.

Background

H.B. 33 of the 135th General Assembly prohibits persons determined by the SOS to constitute a threat to the agricultural production of Ohio or the U.S. from acquiring agricultural land, i.e., land suitable for use in agriculture, including any water, air space, and natural products and deposits in, on, or over the land. The prohibition applies to persons listed on a registry compiled by the SOS, and to agents, trustees, and fiduciaries of such persons (collectively referred to in this analysis as “restricted persons”). Registered persons are not required to divest of agricultural land acquired before October 3, 2023, but are prohibited from acquiring additional agricultural land or transferring agricultural land holdings to another restricted person, unless an exception applies.

Protected property

The bill restores a provision of H.B. 33, vetoed by the Governor, which prohibits restricted persons from acquiring real property located within 25 miles of any installation under the jurisdiction of the U.S. armed forces, such as a military base, camp, or airport. Under continuing law, “armed forces” includes all of the following:

- The Army, Navy, Air Force, Marine Corps, Coast Guard, or any reserve components of those forces;
- The national guard of any state;
- The commissioned corps of the U.S. Public Health Service;
- The merchant marine service during wartime;
- The Ohio organized militia when engaged in full-time National Guard duty for a period exceeding 30 days;
- Other services that may be designated by Congress.¹

The bill also extends the same protections to real property located within 25 miles of a critical infrastructure facility. Under continuing law, a “critical infrastructure facility” includes certain petroleum or alumina refineries; electric generating facilities; chemical, polymer, or rubber manufacturing facilities; water intake structures and treatment facilities; natural gas facilities; telecommunications facilities and associated infrastructure; ports, trucking terminals, and freight transportation facilities; gas processing plants; railroads; and several other types of facilities.²

The bill clarifies throughout the law that the restrictions apply to both direct and indirect acquisitions of protected property.³

¹ R.C. 5301.256(A)(7)(b); R.C. 5903.01, not in the bill.

² R.C. 5301.256(A)(7)(c); R.C. 2911.21, not in the bill.

³ R.C. 5301.256.

Registry of restricted persons

The bill also modifies the compilation of the registry of restricted persons by the SOS and the application of the restrictions in relation to those persons. H.B. 33 requires the SOS to compile and publish a registry of “persons” – which current law, changed in part by the act, defines broadly to include individuals, businesses, organizations, legal or commercial entities, and governments other than the U.S. government, its states, subdivisions, territories, or possessions – that pose a threat to the agricultural products of Ohio or the U.S. In compiling this registry, the SOS must consult all of the following:

- The list of governments and other persons determined to be foreign adversaries by the U.S. Secretary of Commerce;
- The terrorist exclusion list compiled by the U.S. Secretary of State;
- The state sponsors of terrorism determined by the U.S. Secretary of State to have repeatedly provided support for acts of international terrorism;
- The list of individuals and entities designated by, or in accordance with Executive Order 13224, issued by the U.S. President on September 23, 2001, or Executive Order 13268, issued on July 2, 2002.

Broaden “persons”

The bill broadens the definition of “persons” which may be included on the SOS’s registry to include criminal enterprises, gangs, and cartels.⁴ The bill also broadens the definition of “business,” which is included in the definition of “persons,” to include both legal and commercial entities.⁵

Updating the registry

The bill requires the SOS to update the registry at least one time every six months, rather than “periodically” under current law. In addition to the agricultural production of the state and the U.S., the bill requires the SOS to consider potential threats to critical infrastructure, security, and military defense.⁶

Inclusion of countries

Under current law, when the SOS lists a country on the registry, the restrictions on acquiring real property apply only to the government of that country. If the SOS determines that the restrictions should also apply to certain other persons associated with that country, the SOS must identify those persons. Conversely, under the bill, when the SOS lists a country on the

⁴ R.C. 5301.256(A)(3).

⁵ R.C. 5301.256(A)(4).

⁶ R.C. 5301.256(H).

registry, the country is deemed a “foreign adversary” and the restrictions apply automatically to all of the following:

- The government of the country;
- Citizens of the country, regardless of whether they are dual citizens;
- Businesses headquartered in the country;
- Businesses owned or controlled by any of the foregoing;
- An agent, fiduciary, or trustee of any of the foregoing.

Under the bill, a business is “owned” by any person that possesses more than half of the stock, equity, or other ownership interest of that business. A business is “controlled” by any persons with contractual or legal authority to direct the affairs and day-to-day operations of the business without the consent of any other person.⁷

Exemptions

Protected property acquired before the bill’s effective date is expressly exempt from the bill’s restrictions. The same exemption applies to agricultural land under current law, but it is based on the 90-day effective date for H.B. 33; October 3, 2023. As a result, the bill would extend the exemption to agricultural land acquired between October 3, 2023, and the bill’s effective date.⁸

The bill also adds a new exemption for protected property acquired by an agent, fiduciary, or trustee of a restricted person if both of the following apply:

- The agent, fiduciary, or trustee is not themselves a restricted person;
- The agent, fiduciary, or trustee is not acquiring the property to circumvent the bill’s restrictions.⁹

Conveyance procedures

Under continuing law, whenever real property or a manufactured or mobile home is transferred, the buyer 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 protected property to include affirmations from the buyer and seller as to whether they are prohibited from acquiring

⁷ R.C. 5301.256(A), (B), and (H).

⁸ R.C. 5301.256(C).

⁹ R.C. 5301.256(D)(3).

protected property in Ohio under the bill. Additionally, the seller must submit an affirmation as to whether the seller acquired the protected property that is the subject of the transfer before the bill's effective date. The bill prohibits the county auditor from indorsing a conveyance of protected property if the affirmations are not submitted. The auditor cannot refuse to indorse a conveyance merely because the seller is prohibited from holding the real property that is the subject of the transfer.

If the affirmations indicate or the auditor has reason to believe that either the buyer or the seller are prohibited from acquiring protected property, or that the protected property that is the subject of the transfer was acquired by the seller in violation of the bill, the auditor must refer the transfer to the county sheriff for investigation.¹⁰

Local enforcement

Under current law, if the SOS finds that a restricted person has illegally acquired agricultural land, the SOS must report the violation to the Attorney General. Upon receiving a report, the Attorney General is required to initiate an action in the court of common pleas in the county where the land is located. If the land is located in more than one county, the Attorney General may either initiate a single action in the county in which the majority of the land is located or initiate separate actions in each such county.

The bill retains a similar process, but transfers it to local government officials. It requires the county auditor to report suspected violations of the bill to the county sheriff of each county in which the protected property is located for investigation and enforcement. The county sheriff is required to investigate the alleged violation and may issue subpoenas to compel witnesses to appear to provide testimony or produce records. If the protected property is located in more than one county, the bill allows the county sheriffs of those counties to conduct the investigation collaboratively.

If the county sheriff, upon concluding the investigation, determines that a violation has occurred, the sheriff must refer the violation to the county prosecutor. The county prosecutor must then commence an action in the court of common pleas of the county. As under current law, if the protected property is located in more than one county, the county prosecutors of those counties may elect to pursue the violation as a consolidated action in the court of common pleas of the county in which the majority of the protected property is located.

Court ordered sale

Current law requires a court of common pleas, upon finding that agricultural land has been acquired or held in violation of state law, to enter and record a court order declaring the land escheated to the state and ordering it to be sold at public auction in the same manner as a foreclosure on a mortgage. The bill applies the same process to all protected property, but eliminates reference to the property "escheating to the state" and, instead, merely requires that the property be "sold by decree of the court."

¹⁰ R.C. 319.202.

Furthermore, the bill changes the manner in which the proceeds of the sale are distributed. Under current law, such proceeds are distributed as follows:

- First to pay for the court costs and other expenses related to the action;
- Second, to the property owner, but only up to the amount paid for the property;
- Third, to the general fund of each county in which the property is located in proportion to the percentage of the territory located in each such county.

The bill replaces the payment of proceeds to the property owner with a payment to bona fide lien holders, in their order of priority, except for liens that are to remain on the property under the terms of sale. The bill retains the first and third required payments in the same order prescribed by current law.¹¹

Third parties

The bill specifies that no person is required to determine or inquire as to whether another person is or may be subject to the bill unless that person is a restricted person or a county auditor, county sheriff, county prosecutor, or trier of fact acting in that person's official capacity as required by the bill. It also specifies that no person other than a restricted person bears any liability under the bill.

The bill further provides that no title to an interest in real property is invalid or subject to divestment by reason of a violation of the bill by a former owner or other person holding or owning a former interest in the property.¹²

Name of bill

The bill is named the "Ohio Property Protection Act."¹³

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.¹⁴ 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;

¹¹ R.C. 5301.256(G)(5).

¹² R.C. 5301.256(I).

¹³ Section 3 of the bill.

¹⁴ 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/>.

- 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);¹⁵
- Whether the bill infringes on the right of certain individuals and businesses to “equal protection of the laws,” guaranteed by the U.S. Constitution;¹⁶
- Whether the bill discriminates against foreign commerce without a “compelling justification” based on legitimate, nondiscriminatory goals;¹⁷
- 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.¹⁸

HISTORY

Action	Date
Introduced	02-21-24

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¹⁵ 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.

¹⁶ U.S. Const., Amendment 14, Sec. 1.

¹⁷ 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).

¹⁸ 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).