

HOUSE SUMMARY OF SENATE AMENDMENTS

HB 125

2023 Regular Session

Echols

AGRICULTURE: Provides relative to agriculture land protection against foreign adversaries

Synopsis of Senate Amendments

1. Removes provisions referencing corporate entities, retirement and investment accounts, trusts, and the person connected with a foreign adversary and makes proposed law applicable to prohibited foreign actors.
2. Removes the trigger dates applicable to the sale of agricultural land by foreign adversaries and instead authorizes prohibited foreign actors to sell their agricultural land.
3. Authorizes a person to rely upon an affidavit made by a person intending to acquire or holding an interest in immovable property as long as that person is not a foreign adversary nor a prohibited foreign actor.
4. Adds a definition of "prohibited foreign actor" and "controlling interest" as used in proposed law.
5. Removes a proposed law provision that provides for reporting requirements for a foreign business that acquires, sells, leases, or transfers agricultural land by July 30, 2023.
6. Modifies language applying a civil penalty to corporate entities that violate proposed law and instead specifies that a prohibited foreign actor would be subject to the civil penalty for any violation.
7. Provides an exception to the lease of land used for agricultural land for agricultural research and development, experimental purposes, including testing, developing, and producing crop protection inputs for sale or resale to farmers.
8. Adds a provision governing the attorney general serving a petition for injunctive relief on parties to a transaction and authorizes a party to rescind the contractual agreement. Additionally, authorizes the attorney general to file a notice of lis pendens in the mortgage records of the parish where the property is located and specifies that the filing has no effect on certain persons prior to the filing.
9. Adds language authorizing the redaction of nonpublic personal information from the report, deposition, or other testimony.
10. Adds leases, servitudes, usufructs, rights of use, bonds for deed, or other real rights to items in which an ownership interest shall not be affected by forfeiture, seizure, or divestiture provisions of proposed law.
11. Changes the time required for the attorney general to file a copy of a petition in the mortgage records from seven to three business days.
12. Removes a limitation of liability provision applicable to those parties involved in the property transaction and instead requires those parties affiliated with a property transaction investigate whether a party to a transaction involving immovable property is a foreign adversary or a prohibited foreign actor.

13. Requires the attorney general to provide notice of pending forfeiture, seizure, or divestiture to the holder of any interest in the immovable property.
14. Provides a process for the attorney general to cancel a mortgage and petition the court for proceeds from the sale of immovable property to be deposited in the registry of the Court.
15. Specifies that proposed law only applies to property acquired by a foreign adversary or prohibited foreign actor after August 1, 2023. Additionally, provides certain protections for ownership interests if the immovable property was previously held by a foreign adversary or prohibited foreign actor.
16. Makes technical changes.

Digest of Bill as Finally Passed by Senate

Proposed law restricts any foreign adversary or prohibited foreign actor from directly or indirectly, owning, acquiring, leasing, or otherwise obtaining any interest, in agricultural land as defined by present law (R.S. 3:3602).

Proposed law defines "foreign adversary" as an individual or a government identified as a foreign adversary pursuant to 15 CFR 7.4, including the People's Republic of China and the Hong Kong Special Administrative Region, Republic of Cuba, Islamic Republic of Iran, Democratic People's Republic of Korea, Russian Federation, and Venezuela under the leadership of Nicolas Maduro. Specifies that it does not include a person that is a legal permanent resident with lawful presence in the U.S.

Proposed law defines a "prohibited foreign actor" as a corporation, limited liability company, pension or investment fund, trust, or limited partnership in which a foreign adversary has a controlling interest.

Proposed law defines "controlling interest" as a possession of power to direct or cause the direction of the management or policies of a company.

Proposed law authorizes a prohibited foreign actor to sell or convey ownership interest in agricultural land in this state.

Proposed law authorizes a person to rely conclusively upon an affidavit made by a person intending to acquire or holding an interest in immovable property as long as that person is not a foreign adversary nor a prohibited foreign actor. Provides penalties for giving a false affidavit.

Proposed law exempts foreign business entities that might otherwise qualify as a foreign adversary from the ownership restrictions applicable to agricultural lands; under the following circumstances:

- (1) If the right is guaranteed by a treaty or if the person's country of origin affords certain real estate rights to U.S. citizens.
- (2) If a title to agricultural land is held as a security to indebtedness or real estate acquired upon collection of a debt.
- (3) If such foreign business entity is a religious, educational, charitable, and scientific corporation.
- (4) If inherited land, or land received by such foreign business entity as payment for a debt, is sold or transferred within five years.

Proposed law provides that a prohibited foreign actor who violates the provisions of proposed law is subject to a civil penalty of \$50,000 and forfeiture of the agricultural land if such person does not divest itself of land acquired in violation of proposed law within one year after judgment is entered in this action. Establishes requirements for rescinding contracts for violations of proposed law.

Proposed law establishes a process for the attorney general to bring an action for injunctive relief that involves discovery through investigative demands and depositions and to compel discovery through a rule to show cause if a party fails to comply. Authorizes the court to issue additional orders such as revocation, forfeiture, or suspension of licensure; to appoint a receiver; to dissolve a domestic corporation; to suspend or terminate a foreign company's right to do business in the state, to require restitution; and to require civil forfeiture or divestiture of immovable property.

Proposed law provides a process for the attorney general to cancel a mortgage and petition the court for proceeds from the sale of immovable property to be deposited in the registry of the Court.

Proposed law authorizes a foreign adversary or a prohibited foreign actor or any holder of interest to seek judicial review after the attorney general's final determination related to an order of divestiture.

Proposed law requires those parties affiliated with a property transaction investigate whether a party to a transaction involving immovable property is a foreign adversary or a prohibited foreign actor.

Proposed law applies only to property acquired by a foreign adversary or prohibited foreign actor after Aug. 1, 2023. Additionally, provides certain protections for ownership interests if the immovable property was previously held by a foreign adversary or prohibited foreign actor.

(Adds R.S. 3:3613)