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136th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Johnson

Austin C. Strohacker, Attorney

SUMMARY

- Extends the prohibition in current law against certain foreign countries, businesses, individuals, and organizations acquiring agricultural land to other real property located within 25 miles of a critical infrastructure facility or a U.S. military base, camp, or airport (collectively referred to as “protected property”).
- Clarifies that the prohibition applies to both direct and indirect acquisitions of protected property.
- Broadens the “persons” that may be subject to the protected property prohibition to include criminal enterprises, gangs, and cartels.
- Requires a person subject to the protected property prohibition to divest of all rights, titles, and interests in protected property, including those acquired before the bill’s effective date, within two years.
- Requires the Secretary of State to update the registry of persons subject to the protected property prohibition at least one time every six months and to consider potential threats to critical infrastructure, security, and military defense, in addition to threats to agricultural production.
- Specifies that a country listed on the registry is a “foreign adversary,” and that the protected property prohibition applies automatically 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.
- Exempts acquisitions by an agent, fiduciary, or trustee that is not, themselves, subject to the protected property prohibition so long as the acquisition is not an attempt to circumvent the law.

- Exempts individuals who are U.S. citizens or nationals from the protected property prohibition, so long as the individual is not acquiring the property as an agent, fiduciary, or trustee of a person subject to the prohibition.
- 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 protected property prohibition and, in the case of the seller, whether the property was acquired under an exception to that prohibition.
- 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 protected property prohibition to county sheriff for investigation.
- Shifts enforcement of the protected property prohibition 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 protected property prohibition other than a person subject to that prohibition 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 prohibition.
- Names the bill the “Ohio Property Protection Act.”

DETAILED ANALYSIS

The bill modifies a prohibition, enacted in 2023 by H.B. 33 of the 135th General Assembly, against certain foreign countries, businesses, individuals, and organizations acquiring agricultural land in Ohio. It expands the prohibition to other “protected property” that is located within 25 miles of a military installation or critical infrastructure facility; requires persons subject to the prohibition to divest of all rights, titles, and interests in protected property regardless of when those rights, titles, and interests are acquired; modifies the process by which the Ohio Secretary of State (SOS) compiles the registry of persons subject to the prohibition; applies the prohibition 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 protected property sold by court order are distributed; and makes other miscellaneous changes to the law.

Background

Continuing law 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. Under current law, persons subject to the prohibition 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 person subject to the prohibition, unless an exception applies.

Protected property

The bill restores a provision of H.B. 33, vetoed by the Governor, which prohibits the same persons, agents, trustees, and fiduciaries 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, the term “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 prohibition 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 that the prohibition applies 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, changes throughout.

Registry of threats

The bill also modifies the compilation of the registry of persons deemed to be threats by the SOS and the application of the protected property prohibition in relation to those persons. Current law 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.

Broaden “persons”

The bill broadens the definition of “persons” that may be included on the registry to include criminal enterprises, gangs, and cartels.⁴ It also broadens the definition of “business,” 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.” 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

Federal lists

In compiling this registry, the SOS is required to 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.

The bill updates the reference to the U.S. Secretary of Commerce’s list of foreign adversaries to account for the renumbering of the relevant provision of the Code of Federal Regulations. Furthermore, it prohibits the SOS from including any person on the registry that does not appear on at least one of the foregoing federal lists.⁷

⁴ R.C. 5301.256(A)(3).

⁵ R.C. 5301.256(A)(4).

⁶ R.C. 5301.256(G).

⁷ R.C. 5301.256(G)(3) and (4).

Inclusion of countries

Under current law, when the SOS lists a country on the registry, the protected property prohibition applies only to the government of that country. If the SOS determines that the prohibition should also apply to certain other persons associated with that country, the SOS must identify those persons and add them to the registry. Conversely, under the bill, when the SOS lists a country on the 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;
- 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.⁸

Divestment

Under current law, the protected property prohibition does not apply to land acquired before October 3, 2023. The bill extends the prohibition to all protected property, regardless of when it is acquired. A person subject to the protected property prohibition must divest of all rights, titles, and interests in protected property within two years after becoming subject to the prohibition, or within two years after the effective date of the bill, whichever is later.⁹

Exemptions

Agents, fiduciaries, and trustees acting in their personal capacity

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

- The agent, fiduciary, or trustee is not themselves subject to the prohibition;
- The agent, fiduciary, or trustee is not acquiring the property to circumvent the protected property prohibition.¹⁰

⁸ R.C. 5301.256(A), (B), and (G).

⁹ R.C. 5301.256(E).

¹⁰ R.C. 5301.256(C)(3).

U.S. citizens and nationals

The bill also exempts protected property acquired by individuals who are U.S. citizens or nationals, so long as the individual is not acquiring the property as an agent, fiduciary, or trustee of a person subject to the prohibition.¹¹

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 protected property. 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, before the seller became subject to the protected property prohibition, or under an exemption to that prohibition. The bill prohibits the county auditor from indorsing a conveyance of protected property if the affirmations are not submitted. However, the auditor cannot refuse to indorse a conveyance merely because the buyer or 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 protected property prohibition, the auditor must refer the transfer to the county sheriff for investigation.¹²

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 protected property prohibition to the county sheriff of each county in which the property is located for investigation and enforcement. The county sheriff is required to investigate the alleged violation. If the protected property is

¹¹ R.C. 5301.256(C)(4).

¹² R.C. 319.202.

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.¹³

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.” Instead, the bill requires that the property be “sold by decree of the court.”

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.¹⁴

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 protected property prohibition unless that person is, themselves, subject to the prohibition 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 person subject to the protected property prohibition bears any liability under the bill.

¹³ R.C. 5301.256(F)(1) through (4).

¹⁴ R.C. 5301.256(F)(5).

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.¹⁵

Name of bill

The bill is named the “Ohio Property Protection Act.”¹⁶

State authority to regulate foreign ownership

A similar Florida law is the subject of an ongoing legal challenge. Last year, a federal judge enjoined enforcement of the Florida law against the plaintiffs in that challenge.¹⁷ 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);¹⁸
- Whether the bill infringes on the right of certain individuals and businesses to “equal protection of the laws,” guaranteed by the U.S. Constitution;¹⁹
- Whether the bill discriminates against foreign commerce without a “compelling justification” based on legitimate, nondiscriminatory goals;²⁰

¹⁵ R.C. 5301.256(H).

¹⁶ Section 3.

¹⁷ See [Eleventh Circuit Narrowly Blocks Florida from Enforcing Foreign Ownership Law](https://nationalaglawcenter.org/), Micah Brown, which is available on The National Agricultural Law Center’s website: <https://nationalaglawcenter.org/>.

¹⁸ U.S. Constitution, 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](https://digital.library.unt.edu/), Howard Zaritsky, Congressional Research Service, pgs. 14-16, updated June 23, 1980, which is available on the University of North Texas Digital Library website: <https://digital.library.unt.edu/>.

¹⁹ U.S. Const., Amendment 14, Sec. 1.

²⁰ 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).

- 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.²¹

HISTORY

Action	Date
Introduced	02-10-25

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²¹ Ohio Constitution, Article II, Sections 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).