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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2023 - 2024 Regular Session

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### **SB 224 (Hurtado) - Agricultural land: foreign ownership and interests: foreign governments**

**Version:** April 13, 2023

**Urgency:** Yes

**Hearing Date:** May 1, 2023

**Policy Vote:** JUD. 6 - 2, AGRI. 3 - 0

**Mandate:** No

**Consultant:** Matthew Fleming

**Bill Summary:** SB 224, an urgency measure, would prohibit a foreign government from purchasing, acquiring, leasing, or holding a controlling interest in agricultural land within the State of California, exempting any land held by foreign governments, before January 1, 2024. The bill would also require the Office of Emergency Services (OES) to compile an annual report on the total amount of, and recent changes to, foreign-owned agricultural land, water rights, water desalination facilities, energy production, energy storage, and energy distribution in California.

#### **Fiscal Impact:**

- **OES:** Costs in the high hundreds of thousands to low millions for OES to gather the data necessary and generate a report as required by the bill (General Fund). See Staff Comments for additional detail.
- **DOJ:** Unknown costs to the Department of Justice, likely in the hundreds of thousands for additional staff, including 1.0 deputy attorney general and 1.0 legal secretary to conduct the enforcement actions required by this bill (General Fund).
- **Courts:** Unknown court workload cost pressures to conduct evidentiary hearings and issue orders pertaining to the sale of property that is owned by foreign interests, in violation of the bill's provisions (Trial Court trust Fund, General Fund).

**Background:** Government data appears to show that over the past decade, there has been a noticeable increase in foreign ownership of agricultural land in California. There is some concern that this trend, coupled with the possibility that foreign countries might gain some control over California water supplies and energy production, could eventually contribute to local food insecurity and might make it more difficult for local residents to be able to afford agricultural land in the state for themselves. In an effort to address these concerns, this bill would prohibit foreign governments and any enterprises they control from newly acquiring a controlling interest in any agricultural land in California. At the same time, the bill directs CalOES to begin producing an annual report about the extent of, and any recent changes in, foreign ownership over agricultural land, water rights, water desalination facilities, energy production, energy storage, and energy distribution in California. The idea is to identify any possible emerging foreign government threats to Californians' food security.

**Proposed Law:**

- Prohibits a foreign government from purchasing, acquiring, leasing, or holding a controlling interest, as defined, in agricultural land within the State of California, exempting any land held by foreign governments before January 1, 2024.
- Requires the Attorney General, upon the request of any person or upon receipt of any information which leads the Attorney General to believe that a violation of the prohibition may have occurred, may issue subpoenas requiring the appearance of witnesses, the production of relevant records, and the giving of relevant testimony.
- Provides that if the Attorney General concludes that a violation of the prohibition has occurred, the Attorney General shall order the prohibited foreign government to divest itself of all interests in the land within 90 days after service of the order upon the foreign government.
- Provides that the order of divestiture shall be served personally or by mail and that the holder may submit a written request for a judicial determination to the Attorney General.
- Provides that the written request for a judicial determination shall be delivered to the Attorney General within 60 days after service of the order of divestiture and that if no written request is received within this time, the determination of the Attorney General shall become final.
- Provides that if the foreign government fails to divest itself of all interests, or if a holder of the interest submits a written request for judicial review, the Attorney General must bring an action in superior court to divest the interest.
- Provides that the venue for the action) shall either be the County of Sacramento or a county in which a portion of the subject land is located, as determined by the Attorney General.
- Requires the Attorney General to promptly record with the county recorder of each county in which any portion of the land is located a notice of pendency of the action pursuant to specified provisions of the Code of Civil Procedure.
- Provides that if the holder of the interest has submitted a written request for judicial review, the court shall conduct an evidentiary hearing to determine, by a preponderance of the evidence, if a violation has occurred, prior to taking any other action. If the court determines that there has been no violation, the court shall dismiss the action and expunge the notice of pending action. If the court determines that a violation has occurred, the court shall order that the land be sold according to specified procedures.
- Specifies a transfer of an interest in land is in violation of this bill and shall be subject to divestiture.
- Requires the Office of Emergency Services (OES), in consultation with the appropriate boards or departments, to compile an annual report containing specified

information, including the total amount of agricultural land that is under foreign ownership and the percentage change in foreign ownership of agricultural land in California, by year, over the past 10 years.

- Requires OES to publish the inaugural annual report on its website by December 31, 2024 and by March 31 every year thereafter.
- Requires OES to deliver copies of any recommendations for legislative policy changes contained in the report to the Governor and the Assembly and Senate agriculture committees.
- States OES shall be reimbursed for costs associated with compiling data, printing, and mailing the report.
- Contains an urgency clause.

**Related Legislation:** SB 1084 (Hurtado, 2022) was similar to this bill, except that SB 1084 could be interpreted to prohibit foreign governments and the enterprises they control from holding any interest in agricultural land in California, while this bill only prohibits the holding of a controlling interest. This bill also assigns the production of a report on foreign influence in California's agricultural sector to CalOES, whereas SB 1084 gave this task to CDFA. In his message vetoing SB 1084, Governor Newsom wrote: "Federal law requires foreign governments to report interests in agricultural land to the United States Department of Agriculture (USDA), and USDA compiles this information annually into a public report. The additional data reporting required by this bill is beyond CDFA's purview and would create new and arduous responsibilities for the department."

**Staff Comments:** The Assmebly Appropriations analysis of SB 1084 (Hurtado, 2022) reflects that the California Department of Food and Agriculture (CDFA) reported costs of \$815,000 in fiscal year (FY) 2022-23: \$624,000 for three additional program analysts and \$191,000 for a special assistant position) and \$780,000 annually thereafter to to tabulate the appropriate data on foreign government ownership and leases of agriculture land, water rights, desalination facilities and energy production facilities in California, assess the impact of this foreign ownership and produce the annual report, coordinate with relevant state agencies, boards, the United States Department of Agriculture, and other stakeholders in an effort to collect the required information, and determine any recommended legislative, regulatory, or administrative policy changes. This bill would require OES, rather than CDFA, to conduct the required data collection and submit a report. OES reports that it does not currently have an agriculture program and would need to create one.

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