

SESSION OF 2023

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2069**

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for HB 2069 would restrict ownership interests in, and prohibit the conveyance of, certain real property located in Kansas to foreign adversaries, as defined by federal regulation.

Definitions

The bill would define the following terms:

- “Entity” would mean a partnership, association, trust, joint venture, corporation, group, subgroup, or other non-United States governmental organization;
- “Foreign adversary” would mean any government or non-government person determined to be a foreign adversary pursuant to 15 CFR § 7.4, as in effect on July 1, 2023, except as otherwise provided [*Note:* The current federal list of foreign adversaries as provided by the Office of the Secretary of Commerce includes The People’s Republic of China, including the Hong Kong Special Administrative Region (China); Republic of Cuba (Cuba); Islamic Republic of Iran (Iran); Democratic People’s Republic of Korea (North Korea); Russian Federation (Russia); and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Venezuelan politician Nicolás Maduro (Maduro Regime).];

- “Person” would mean an individual or entity;
- “Person owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary” would mean:
 - Any person, wherever located, who acts as an agent, representative, or employee, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign adversary or of a person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in majority part by a foreign adversary;
 - Any person, wherever located, who is a citizen or resident of a nation-state controlled by a foreign adversary, unless such person is a dual citizen of the United States and a foreign adversary;
 - Any corporation, partnership, association, or other organization organized under the laws of a nation-state controlled by a foreign adversary; or
 - Any corporation, partnership, association, or other organization, wherever organized or doing business, that is owned or controlled by a foreign adversary.

Updates to the Foreign Adversary List by the Secretary of Agriculture

The bill would allow, when 15 CFR § 7.4 is amended after July 1, 2023, the Secretary of Agriculture, in the Secretary’s sole discretion, to adopt rules and regulations that would add or remove a government or non-government

person from the definition of “foreign adversary,” but only after giving due consideration to the risks to state and national security and economic costs and benefits of such action.

Restrictions on Interest in Real Property After July 1, 2023

The bill would not permit any person who is owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary (foreign adversary) to purchase, acquire by grant, devise, or descent or otherwise obtain ownership in real property located in Kansas on or after July 1, 2023.

Such restrictions would not apply to residential real property acquired for the purpose of the owner establishing a personal residence or to land acquired by:

- A process of law in the collection of debts;
- A deed in lieu of foreclosure pursuant to a forfeiture of a contract for deed; or
- Any procedure for the enforcement of a lien or claim on the land, whether created by mortgage or otherwise.

If land, other than residential property, was acquired by any of the above-mentioned manners, such land would be required to be sold or otherwise disposed of within two years after title is transferred.

Conveyance of Real Property to Foreign Adversary

The bill would allow a foreign adversary to sell or convey all or a portion of an ownership interest in Kansas property acquired prior to July 1, 2023, or residential real property located in Kansas that was acquired after July 1, 2023,

unless such sale or conveyance is to another foreign adversary.

Inheritance of Real Property by Foreign Adversary

The bill would allow a foreign adversary who inherits real property on or after July 1, 2023, twelve months to divest such property once the violation is known. The divestiture of real property would be an affirmative defense to such violation.

Duty of the Attorney General to Investigate Violations

The bill would require the Attorney General to investigate any sale, transfer, or other conveyance of title to real property located in Kansas if the Attorney General has reason to believe the transaction is a violation of the bill's provisions.

Forfeiture of Real Property

The bill would make real property that is the subject matter of a transaction in violation of the bill's provisions subject to the Kansas Standard Asset Seizure and Forfeiture Act.

Severability

The bill would contain a severability clause stating if any provision of the bill is held invalid, such invalidity would not effect any other provision of the bill that can be given effect without the invalid provision.

Background

The Senate Committee of Judiciary recommended a substitute bill be passed incorporating modified provisions contained in SB 283, concerning conveyance of property to foreign adversaries. [Note: The provisions of HB 2069, as passed by the House, concerning the tolling of postrelease supervision time, were not retained in the substitute bill but are included in Senate Sub. for HB 2010, as recommended by the Senate Committee.]

SB 283

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator Thompson. It was withdrawn from the Committee on Federal and State Affairs on March 7, 2023, and referred to the Senate Committee on Judiciary.

Senate Committee on Judiciary

In the Senate Committee hearing on March 21, 2023, **proponent** testimony was provided by a representative of the Office of Attorney General, who generally stated the bill would target those entities that pose a threat to the United States and noted there are safeguards for non-citizens who are legally in the United States to purchase land. An amendment was also requested by the representative.

Written-only proponent testimony was provided by three private citizens.

Opponent testimony was provided by a representative of the Kansas Livestock Association, who requested an amendment to the bill and expressed concerns that the bill is unconstitutional and does not take into account the free market and modern agricultural financing. Additional opponent testimony was provided by a representative of the

Kansas Land Title Association, who requested an amendment and stated the bill is too broad and would subject an unknown number of Kansas property owners to forfeiture; clarification is needed for title companies to effectively assist with land transfers in the state.

Neutral testimony was provided by a representative of the Kansas Farm Bureau, who inquired as to the public policy the bill seeks to address. Neutral testimony was also provided by a representative of the Kansas Power Alliance, who provided testimony that much of the data showing foreign land ownership in Kansas land is flawed, as this data includes foreign entities with wind leases in the state, and wind leases do not constitute an ownership interest.

Written-only neutral testimony was provided by a representative of the Kansas Bar Association.

The Senate Committee amended the bill to:

- Remove a reference to parcels of land of 10 or more acres;
- Add that the provisions limiting ownership interests would not apply to residential real property acquired for the purpose of the owner establishing a person residence; and
- Add that the provisions of the bill restricting the sale and conveyance of property would not apply to the sale or conveyance of residential real property acquired after July 1, 2023.

Fiscal Information

SB 283

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of the Attorney General states the bill could increase its caseload, but any increase could be absorbed within existing resources. The Judicial Branch states the bill could have a fiscal effect, but an estimate cannot be determined. The Department of Agriculture states the bill would not have a fiscal effect on its operating expenditures. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Real property; conveyance of real property; Attorney General; foreign adversary;
Secretary of Agriculture