

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1355 Interests of Foreign Countries

**SPONSOR(S):** State Affairs Committee, Judiciary Committee, Borrero, Waldron and others

**TIED BILLS:** IDEN./SIM. **BILLS:** CS/CS/SB 264

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee	22 Y, 0 N, As CS	Mathews	Kramer
2) Appropriations Committee	27 Y, 0 N	Willson	Pridgeon
3) State Affairs Committee	16 Y, 4 N, As CS	Villa	Williamson

### SUMMARY ANALYSIS

Foreign ownership and investment in United States agricultural land has generated significant interest in recent years. Several high-profile incidents have prompted lawmakers to evaluate and respond to the potential impacts of foreign ownership and investment on national security and trade.

Additionally, there is growing concern regarding the impact of foreign land ownership on national food security. A recent letter from 130 lawmakers to the U.S. Government Accountability Office expressed concern that “foreign investment in U.S. farmland could result in foreign control of available U.S. farmland, especially prime agricultural lands, and possibly lead to foreign control over food production and food prices.”

The bill generally restricts the role certain foreign countries may take with respect to land ownership in the state. The bill restricts a governmental entity’s ability to contract with certain foreign countries of concern and further prohibits foreign countries of concern, including China, from purchasing or otherwise acquiring real property in the state. The bill places specific limitations on the type and location of real property that may be owned or acquired by a foreign country of concern. Notably, the bill prohibits a foreign principal from owning real property on or within 20 miles of a military installation and further prohibits the foreign ownership of agricultural land.

The bill also amends the Florida Electronic Health Records Act and Florida Health Care Licensing Procedures Act to require that any offsite storage of medical information and patient records be physically maintained at a location within the United States, a territory of the United States, or Canada.

The bill may have a significant indeterminate fiscal impact relating to property ownership in the state, as the bill allows for the state to seize and sell illegally owned property.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Foreign Ownership of United States Real Property

Foreign ownership and investment in U.S. agricultural land has generated significant interest in recent years.<sup>1</sup> Several high-profile incidents have prompted lawmakers to evaluate and respond to the potential impacts of foreign ownership and investment on national security, trade, and food security.<sup>2</sup>

For example, in 2022, Fufeng Group Limited, a Chinese food manufacturer, acquired 300 acres of land 12 miles from the Grand Forks Air Force Base (AFB) in North Dakota in order to build a production plant.<sup>3</sup> Grand Forks AFB reportedly houses a significant amount of the nation's sophisticated military drone technology.<sup>4</sup> As such, the proximity of the Fufeng Group's land purchase to the base could make it conveniently situated to monitor air traffic flow in and out of the base as well as other business patterns and security-related concerns.<sup>5</sup>

In January 2023, Andrew P. Hunter, the Assistant Secretary of the Air Force for Acquisition, Technology and Logistics,<sup>6</sup> sent U.S. Senator John Hoeven a letter providing the Air Force's official position on the project. The letter confirmed that the AFB is the center of military activities related to both air and space operations and that the Air Force's position was that the proposed Fufeng project presented a significant threat to national security with risks of significant impacts to military operations in that area.<sup>7</sup>

Additionally, there is growing concern regarding the impact of foreign land ownership on national food security. A recent letter from 130 lawmakers to the U.S. Government Accountability Office expressed concern that "foreign investment in U.S. farmland could result in foreign control of available U.S. farmland, especially prime agricultural lands, and possibly lead to foreign control over food production and food prices."<sup>8,9</sup>

In 2021, foreign individuals and entities held an interest in 40.8 million acres of the nation's agricultural land.<sup>10</sup> Foreign land holdings have increased by an average of 2.2 million acres per year since 2015.<sup>11</sup>

As of 2021, the states with the most foreign-owned agricultural acreage were Texas (5.3 million acres), Maine (3.6 million acres), Colorado (1.9 million acres), Alabama (1.8 million acres), and Oklahoma (1.7

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<sup>1</sup> See Aleks Phillips, *What the U.S. Is Doing to Curtail Chinese Land Ownership*, Newsweek, Feb. 13, 2023, <https://www.newsweek.com/chinese-land-ownership-investment-us-military-bases-1780886> (last visited April 14, 2023).

<sup>2</sup> See Letter from Congressmen Glenn "GT" Thompson & James Comer to Gene L. Dodaro, Comptroller General of the U.S. Government Accountability Office (Oct. 1, 2022), [https://oversight.house.gov/wp-content/uploads/2022/10/20221001\\_GAO\\_foreignlandownership.pdf](https://oversight.house.gov/wp-content/uploads/2022/10/20221001_GAO_foreignlandownership.pdf) (last visited Mar. 18, 2023).

<sup>3</sup> Congressional Research Service (CRS), *Foreign Ownership and Holdings of U.S. Agricultural Land* (version 4, updated Jan. 24, 2023), <https://crsreports.congress.gov/product/pdf/IF/IF11977> (last visited Mar. 18, 2023).

<sup>4</sup> Ariel Zilber, *Chinese Firm Bought North Dakota Farm Near U.S. Air Force Drone Base: Report*, New York Post, Jul. 1, 2022, <https://nypost.com/2022/07/01/chinese-firm-bought-farm-near-us-air-force-drone-base-report/> (last visited Mar. 20, 2023); see also Letter from Thompson & Comer, *supra* note 2; see also Lauren Greenwood, U.S.-China Economic and Security Review Commission, *China's Interests in U.S. Agriculture: Augmenting Food Security through Investment Abroad* (May 26, 2022) [https://www.uscc.gov/sites/default/files/2022-05/Chinas\\_Interests\\_in\\_U.S.\\_Agriculture.pdf](https://www.uscc.gov/sites/default/files/2022-05/Chinas_Interests_in_U.S._Agriculture.pdf) (last visited Mar. 18, 2023).

<sup>5</sup> Greenwood, *supra* note 4.

<sup>6</sup> U.S. Air Force, *Andrew P. Hunter* (Sept. 2022), <https://www.af.mil/About-Us/Biographies/Display/Article/3154079/andrew-p-hunter/> (last visited Mar. 18, 2023).

<sup>7</sup> Letter from Andrew P. Hunter, Office of the Assistant Secretary, to U.S. Senator John Hoeven (Jan. 27, 2023), <https://www.hoeven.senate.gov/imo/media/doc/USAIRFORCE-FUFENG-LETTER-HOEVEN.pdf> (last visited Mar. 20, 2023).

<sup>8</sup> Letter from Thompson & Comer, *supra* note 2.

<sup>9</sup> Rachel Treisman, NPR, *China is Buying Up More U.S. Farmland. Some Lawmakers Consider That a Security Threat* (Mar. 1, 2023), <https://www.npr.org/2023/03/01/1160297853/china-farmland-purchases-house-hearing-competition> (last visited Mar. 20, 2023).

<sup>10</sup> CRS, *supra* note 3, at 2.

<sup>11</sup> *Id.*

million acres). Other states with more than 1 million foreign-owned acres include Arkansas, California, Florida, Georgia, Kansas, Louisiana, Michigan, New Mexico, Oregon, and Washington.<sup>12</sup>

According to the U.S. Department of Agriculture, of the 21,849,568 acres of privately held agricultural land in Florida, 1,382,284 acres (6.3 percent) are held by foreign nationals, which is among the highest proportions in the U.S.<sup>13</sup>

## Government Procurement

### *In General*

Chapter 287, F.S., sets forth the procurement and contracting procedures for most state agencies.<sup>14</sup> In general, the law requires a competitive solicitation process when state agencies wish to procure commodities or contractual services that cost more than \$35,000.<sup>15</sup> A “competitive solicitation” is the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors.<sup>16</sup> Depending on the type of contract and scope of work or goods sought, an agency may use one of three procurement methods:

- Invitation to bid (ITB) – An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.<sup>17</sup>
- Request for proposals (RFP) – An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.<sup>18</sup>
- Invitation to negotiate (ITN) – An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.<sup>19</sup>

Contracts for commodities or services may be renewed for the term of the original contract or for up to three years, whichever is longer. Renewals must be in writing, are contingent upon satisfactory performance evaluations by the agency and the availability of funds, and may not include compensation for costs associated with the renewal.<sup>20</sup>

The Department of Management Services (DMS) oversees state purchasing activity and registers vendors that wish to provide goods or services to the state.<sup>21</sup> DMS also maintains lists of vendors who may not submit bids, proposals, or replies to agency requests for proposals. These include companies identified on the following lists:

- Suspended vendor list, which includes vendors who are in default on a contract or have repeatedly failed to fulfill the terms of state contracts. Contracts cannot be awarded to such

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<sup>12</sup> *Id.*

<sup>13</sup> Farm Service Agency, U.S. Department of Agriculture, *Foreign Holdings of U.S. Agricultural Land Through Dec. 31, 2021*, <https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/annual-reports/index> (last visited Mar. 20, 2023).

<sup>14</sup> “Agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges. S. 287.012(1), F.S.

<sup>15</sup> Ss. 287.057 and 287.017, F.S.

<sup>16</sup> S. 287.012(6), F.S.

<sup>17</sup> S. 287.057(1)(a), F.S.

<sup>18</sup> S. 287.057(1)(b), F.S.

<sup>19</sup> S. 287.057(1)(c), F.S.

<sup>20</sup> S. 287.057(14), F.S.

<sup>21</sup> Ss. 287.032 and 287.042, F.S.; see also Department of Management Services, *Vendor Registration and Vendor Lists*, [https://www.dms.myflorida.com/business\\_operations/state\\_purchasing/state\\_agency\\_resources/vendor\\_registration\\_and\\_vendor\\_lists](https://www.dms.myflorida.com/business_operations/state_purchasing/state_agency_resources/vendor_registration_and_vendor_lists) (last visited Mar. 20, 2023).

vendors until the vendor reimburses the agency for the costs of re-procurement and the agency is satisfied that further default will not occur.<sup>22</sup>

- Convicted vendor list, which includes vendors who have been disqualified due to conviction of a public entity crime, which includes fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation related to a contract for services to be provided to a public entity.<sup>23</sup>
- Discriminatory vendor list, which includes vendors who have been disqualified for violating any state or federal law prohibiting discrimination based on race, gender, national origin, disability, or religion.<sup>24</sup>
- Antitrust violator vendor list, which includes vendors who have been disqualified due to being convicted or held civilly liable for an antitrust violation.<sup>25</sup>

### *Scrutinized List of Prohibited Companies*

Companies on the Scrutinized Companies with Activities in Sudan list, on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector list, or engaged in business operations<sup>26</sup> in Syria are prohibited from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or a local governmental entity<sup>27</sup> for goods or services of \$1 million or more.<sup>28</sup> Similarly, a company on the Scrutinized Companies that Boycott Israel list or engaged in a boycott of Israel may not bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of any amount.<sup>29</sup> The State Board of Administration is charged with maintaining a complete list of scrutinized companies based on criteria outlined in statute.<sup>30</sup>

### Accessibility of Florida Medical and Health Care Records

#### *The Florida Electronic Health Records Exchange Act*

The Florida Electronic Health Records Exchange Act<sup>31</sup> (Act) authorizes a health care provider to release or access an identifiable health record of a patient without his or her consent for use in treating an emergency medical condition, when consent cannot be obtained from the patient or the patient's representative due to the patient's condition.<sup>32</sup> Under current law, an "identifiable health record" means any health record<sup>33</sup> that identifies the patient with respect to which there is a reasonable basis to believe the information can be used to identify the patient.<sup>34</sup> The Act provides immunity from civil liability for a health care provider who accesses or releases an identifiable health record in good faith under s. 408.051, F.S. It also directs the Agency for Health Care Administration (AHCA) to create a form to document patient authorization for the use or release of an identifiable health record.<sup>35</sup>

#### *The Health Care Licensing Procedures Act*

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<sup>22</sup> S. 287.1351, F.S.

<sup>23</sup> S. 287.133, F.S.

<sup>24</sup> S. 287.134, F.S.

<sup>25</sup> S. 287.137, F.S.

<sup>26</sup> "Business operations" means, for purposes specifically related to Syria, engaging in commerce in any form in Syria, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce. S. 287.135(1)(c), F.S.

<sup>27</sup> "Local governmental entity" means a county, municipality, special district, or other political subdivision of the state. S. 287.135(1)(d), F.S.

<sup>28</sup> S. 287.135(2)(b), F.S.

<sup>29</sup> S. 287.135(2)(a), F.S.

<sup>30</sup> Ss. 215.4725, and 215.473, F.S.

<sup>31</sup> S. 408.051, F.S.

<sup>32</sup> S. 408.051(3), F.S.

<sup>33</sup> S. 408.051(2)(d), F.S., defines a "health record" as any information, recorded in any form or medium, which relates to the past, present, or future health of an individual for the primary purpose of providing health care and health-related services.

<sup>34</sup> S. 408.051(2)(f), F.S., defines a "patient" as an individual who has sought, is seeking, is undergoing, or has undergone care or treatment in a health care facility or by a health care provider.

<sup>35</sup> S. 408.051(4), F.S.

The Health Care Licensing Procedures Act<sup>36</sup> (Act) provides a streamlined and consistent set of basic licensing requirements for health care providers.<sup>37</sup> The Act is intended to minimize confusion, standardize terminology, and address issues relating to specific providers.<sup>38</sup> The Act provides minimum licensure requirements, with which applicants and licensees must comply to obtain and maintain a license.<sup>39</sup>

## Effect of Proposed Changes

### Contracts and Personal Identifying Information

The bill creates s. 287.138, F.S., to prohibit a governmental entity from entering into a contract with an entity which would give access to an individual's personal identifying information under certain situations. The bill provides the following definitions for the section:

- “Controlling interest” means the possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest.
- “Department” means the Florida Department of Management Services (DMS).
- “Foreign country of concern” means:
  - The People’s Republic of China.
  - The Russian Federation.
  - The Islamic Republic of Iran.
  - The Democratic People’s Republic of Korea.
  - The Republic of Cuba.
  - The Venezuelan regime of Nicolás Maduro.
  - The Syrian Arab Republic.
  - Any agency of, or any other entity under the significant control of, one of the above-listed foreign countries of concern.
- “Governmental entity” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, but not limited to, the Commission on Ethics, the Public Service Commission, the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Under the bill, a governmental entity is prohibited from entering into a contract with an entity which would give access to an individual's personal identifying information (PII) if:

- The entity is owned by the government of a foreign country of concern;
- The government of a foreign country of concern has a controlling interest in the entity; or
- The entity is organized under the laws of or has its principal place of business in a foreign country of concern.

Beginning January 1, 2024, a governmental entity may not accept a bid on, a proposal for, or a reply to, or enter into, a contract with an entity which would grant the entity access to PII unless the entity provides the governmental entity with a signed affidavit. The affidavit must provide that the entity is not owned by the government of a foreign country of concern, is not owned by a foreign country of concern, and is not organized under the laws of or is headquartered in a foreign country of concern.

Beginning July 1, 2025, a governmental entity may not extend or renew a contract with a foreign country of concern entity if continuing such a contract would grant the entity access to PII. An entity extending or renewing a contract with a governmental entity must provide a sworn affidavit that the entity is not owned by the government of a foreign country of concern, is not owned by a foreign

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<sup>36</sup> Ch. 408, Part II, F.S.; see also s. 408.801(1), F.S. (providing a short title).

<sup>37</sup> S. 408.801(2), F.S.

<sup>38</sup> *Id.*

<sup>39</sup> See generally s. 408.810, F.S.

country of concern, and is not organized under the laws of or is headquartered in a foreign country of concern.

The bill authorizes the Florida Attorney General to bring a civil action against any entity that violates the provisions of the bill. A violation is punishable by civil penalties including monetary penalties, prohibitions on conducting business, ineligibility to renew licensing, or being placed on the suspended vendor list. Any penalties must be deposited into the General Revenue Fund. The bill grants DMS rulemaking authority to create the correlating affidavit form and otherwise implement the bill.

#### Prohibition on Contracting for Economic Incentives

The bill creates s. 288.007, F.S., to prohibit governmental entities from entering into contracts for an economic incentive with a foreign entity. Prior to providing any economic incentive, a governmental entity must obtain a sworn affidavit attesting that the recipient or applicant is not a foreign entity. The bill also requires the Department of Economic Opportunity (DEO) to adopt rules to administer the new statute, including rules establishing the form for the required affidavit. The bill defines the following terms for purposes of the section:

- “Controlled by” means having possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company, or that is entitled to 25 percent or more of its profits, is presumed to control the foreign entity.
- “Economic incentive” means all programs administered by, or for which an applicant for the program must seek certification, approval, or other action by, the DEO under ch. 288, F.S. (governing commercial development and capital improvements), ch. 212, F.S. (governing tax on sales, use, and other transactions), or ch. 220, F.S. (the income tax code), and all local economic development programs, grants, or financial benefits administered by a political subdivision or an agent thereof.
- “Foreign country of concern” means:
  - The People’s Republic of China.
  - The Russian Federation.
  - The Islamic Republic of Iran.
  - The Democratic People’s Republic of Korea.
  - The Republic of Cuba.
  - The Venezuelan regime of Nicolás Maduro.
  - The Syrian Arab Republic.
  - Any agency of, or any other entity under the significant control of, one of the above-listed foreign countries of concern.
- “Foreign entity” means an entity that is:
  - Owned or controlled by the government of a foreign country of concern; or
  - A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, or a subsidiary of such entity.
- “Government entity” means a state agency, a political subdivision, or any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

#### Prohibition on the Ownership of Certain Real Property

The bill creates ss. 692.202, 692.203, 692.204, and 692.205, F.S., to prohibit the purchase of different types of real property by foreign principals. Specifically, the bill restricts:

- The purchase of agricultural land;
- The purchase of land on or within 20 miles of a U.S. military installation or critical infrastructure facility;<sup>40</sup> and

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<sup>40</sup> Lines 259-279 of the bill define a critical infrastructure facility as any of the specifically enumerated facilities, if they employ measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons.

- Ownership of real property by the People’s Republic of China.<sup>41</sup>

Under the bill, a “foreign principal” means:

- The government or any official of the government of a foreign country of concern;
- A political party or member of a political party or any subdivision of a political party in a foreign country of concern;
- A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern or a subsidiary of such entity; or
- Any person who is domiciled in a foreign country of concern and is not a citizen of the United States or lawful permanent resident of the United States.

The bill prohibits a foreign principal from directly or indirectly owning or acquiring such enumerated real property in Florida except for a de minimus indirect interest. A foreign principal has a de minimus indirect interest if any ownership in such land is the result of the foreign principal's ownership of registered equities in a publicly traded company owning the land and if the foreign principal's ownership interest in the company is less than 5 percent of any class of registered equities or less than 5 percent in the aggregate in multiple classes of registered equities.

A foreign principal that directly or indirectly owns or acquires such land or any interest in such land in the state before July 1, 2023:

- May continue to own or hold such land or interest, but is prohibited from purchasing or otherwise acquiring any additional land or interest in such land in the state.
- Must register with the corresponding department<sup>42</sup> by January 1, 2024. The corresponding department must establish a form for such registration, which, at minimum, must include:
  - The name of the owner of the land or the owner of the interest in such land.
  - The address of the property, the property appraiser’s parcel identification number, and the property’s legal description.
  - In the case of agricultural land, the number of acres of the subject property.

A foreign principal that fails to timely file such a registration with the corresponding department is subject to a civil penalty of \$1,000 for each day that the registration is overdue. The department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed pursuant to the bill.

The bill clarifies that a foreign principal may still acquire real property on or after July 1, 2023, by devise or descent, through the enforcement of security interests, or through the collection of debts, but must sell, transfer, or otherwise divest itself of such land within 2 years after acquisition.

At the time of purchase, a buyer of such real property, or an interest holder in such land, must provide a sworn affidavit attesting to compliance with the provisions outlined in the bill. The Florida Real Estate Commission is authorized to adopt rules to implement this provision, including creating the correlating affidavit form. The failure to obtain or maintain the required affidavit of compliance with the provisions established under the bill does not affect the title or insurability of the title to the property. Additionally, the failure to obtain or maintain the required affidavit does not subject the closing agent to criminal or civil liability unless he or she had actual knowledge of the violation.

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<sup>41</sup> Under the bill, ownership by the People’s Republic of China includes:

- The Chinese Communist Party, or any official or member of the People’s Republic of China or the Chinese Communist Party;
- Any other political party or member of a political party in the People’s Republic of China;
- Any partnership, association, corporation, organization or any other combination of persons organized under the laws of or having its principal place of business in the People’s Republic of China, or a subsidiary of such an entity;
- Any person who is domiciled in the People’s Republic of China and who is not a citizen or lawful permanent resident of the U.S.

<sup>42</sup> Under the bill, the Department of Agriculture and Consumer Services (DACCS) is the corresponding department over the agricultural land ownership prohibition; DEO is the corresponding department over the military proximity and critical infrastructure land ownership prohibition; and DEO is the corresponding department over prohibition against the ownership of real property by the People’s Republic of China.

The bill provides that ownership of such real property, or any interest in such land, that is owned or acquired in violation of the provisions of the bill may be forfeited to the state. In connection with such forfeitures, the bill provides that:

- The corresponding department (DACS or DEO) may initiate a civil action in the circuit court of the county in which the property is located.
- Upon filing such action, the clerk must record a lis pendens in accordance with state law. The court must advance the cause on the calendar. The defendant may at any time petition to modify or discharge the lis pendens based upon a finding that there is no probable cause to believe that the real property, or any portion thereof, is owned or held in violation of the law.
- Upon finding that a violation has occurred, the court must enter a final judgment of forfeiture vesting title to the land in the state, subject only to the rights and interests of bona fide lienholders, and such final judgment relates back to the date of the lis pendens.
- The corresponding department may sell the land subject to a final judgment of forfeiture. Any proceeds from the sale must first be paid to any lienholders of the land, followed by payment of any outstanding fines assessed pursuant to the bill, after which the corresponding department must be reimbursed for all costs related to the forfeiture civil action and any costs related to the sale of the land. Any remaining proceeds must be paid to the property owner.
- At any time during the forfeiture proceeding the corresponding department may seek an ex parte order of seizure of the land upon a showing that the defendant's control of the land constitutes a clear and present danger to the state.

The bill also provides criminal penalties for certain violations, as follows:

- A foreign principal that purchases or acquires agricultural land or land on or within 20 miles of a military installation in violation of the prohibition commits a second-degree misdemeanor, punishable by a term of imprisonment not exceeding 60 days and a \$500 fine.
- A person who knowingly sells agricultural land or land on or within 20 miles of a military installation or critical infrastructure facility, or any interest therein, in violation of the prohibition commits a misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a \$500 fine.
- An applicable person or entity related to the People's Republic of China who owns or acquires real property in violation of the bill commits a third-degree felony, punishable by a term of imprisonment up to five years and a \$5,000 fine.
- A person who knowingly sells real property or any interest therein to the People's Republic of China, as provided in the bill, in violation of the prohibition commits a first-degree misdemeanor punishable by a term of imprisonment not to exceed one year and a \$1,000 fine.

The bill authorizes DACS and DEO to adopt rules to implement the provisions established by the bill.

The bill provides that its prohibitions and requirements do not apply to a foreign principal that acquires such real property for a diplomatic purpose that is recognized, acknowledged, or allowed by the Federal Government.

### Health Care Records and Licensing

The bill amends s. 408.051, F.S., the Florida Electronic Health Records Exchange Act, to provide additional definitions and to require that the offsite storage of certain personal medical information must be physically maintained in the continental United States, a territory of the United States, or Canada.

The bill incorporates the definition for "cloud computing" found in ch. 282, part I, F.S., which governs information technology management. As such, cloud computing has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology, which reads as follows:

Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider

interaction. This cloud model is composed of five essential characteristics, three service models, and four deployment models.<sup>43</sup>

The bill defines a “health care provider” as:

- Any provider as defined in the Health Care Licensing Procedures Act;<sup>44</sup>
- Any health care practitioner as defined in ch. 456, F.S., which governs health professions and occupations;<sup>45</sup>
- Any health care professional certified under the Radiological Personnel Certification Act;<sup>46</sup>
- Any home health aide as defined in the Home Health Services Act;<sup>47</sup>
- Any service provider as defined in the Florida Mental Health Act,<sup>48</sup> and the service provider’s clinical and nonclinical staff who provide inpatient or outpatient services;
- Any licensed continuing care facility;<sup>49</sup> and
- Any pharmacy permitted under the Florida Pharmacy Act.<sup>50</sup>

The bill requires a health care provider that utilizes certified electronic health record technology to ensure that all patient information stored in an offsite physical or virtual environment, including through a third-party or subcontracted computing facility or an entity providing cloud computing services, is physically maintained in the continental United States, a territory of the United States, or Canada. The bill applies this provision to all qualified electronic health records that are stored using any technology that can allow information to be electronically retrieved, accessed, or transmitted.

The bill also amends s. 408.810, F.S., to provide certain minimum licensure requirements for health care providers.<sup>51</sup> The bill provides that a licensee must sign an affidavit at the time of his or her initial application for a license, and on any renewal applications thereafter, that attests under penalty of perjury that he or she is in compliance with the bill, specifically the requirement in the bill that health care providers using certified electronic health record technology ensure that all patient information stored in an offsite physical or virtual environment is physically maintained in the continental United States, a territory of the United States, or Canada. The licensee must remain in compliance with this requirement or be subject to disciplinary action by AHCA.

The licensee must also ensure that a person or entity who possesses a controlling interest in the licensee does not also hold, either directly or indirectly, regardless of ownership structure, an interest in an entity that has a business relationship<sup>52</sup> with a foreign country of concern or that is subject to the statute prohibiting contracting with scrutinized companies.<sup>53</sup>

### Criminal Threats and Extortion

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<sup>43</sup> U.S. Department of Commerce, National Institute of Standards and Technology, *Special Publication 800-145 (The NIST Definition of Cloud Computing)* (Sept. 2011) <https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf> (last visited Mar. 20, 2023).

<sup>44</sup> See s. 408.803(12), F.S. (defining “provider” as any activity, service, agency, or facility regulated by Agency for Health Care Administration and listed in s. 408.802, F.S.).

<sup>45</sup> See s. 456.001(4), F.S. (defining “health care practitioner” as any person licensed under one of the listed statutes).

<sup>46</sup> Ch. 468, part IV, F.S.

<sup>47</sup> See s. 400.462, F.S. (defining “home health aide” as a person who is trained or qualified, as provided by rule, and who provides hands-on personal care, performs simple procedures as an extension of therapy or nursing services, assists in ambulation or exercises, assists in administering medications as permitted in rule and for which the person has received training established by the agency under part III (regulating home health services), or performs tasks delegated to him or her under ch. 464, F.S. (regulating nursing)).

<sup>48</sup> See s. 394.455(45), F.S. (defining “service provider” as a receiving facility, a facility licensed under ch. 397, F.S. (governing substance abuse services), a treatment facility, an entity under contract with the department to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced practice registered nurse, a psychiatric nurse, or a qualified professional as defined in s. 39.01, F.S. (referencing licensed physicians, physician assistants, psychiatrists, psychologists, and psychiatric nurses)).

<sup>49</sup> See ch. 651, F.S. (governing continuing care contracts).

<sup>50</sup> Ch. 465, F.S.

<sup>51</sup> See *supra* note 44 (defining providers); see also s. 408.802, F.S. (listing regulated providers).

<sup>52</sup> The bill defines “business relationship” to mean engaging in commerce in any form, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, military equipment, or any other apparatus of business or commerce.

<sup>53</sup> S. 287.135, F.S.

Lastly, the bill amends s. 836.05, F.S., to raise the criminal penalty when a criminal threat is made or an extortion is committed by certain foreign agents. Specifically, a person who commits a violation and, at the time of the violation is acting as a foreign agent with the intent of benefitting a foreign country of concern, commits a felony of the first degree, punishable by a term of imprisonment not to exceed 30 years<sup>54</sup> and a \$10,000 fine,<sup>55</sup> or possibly more under the habitual offender statute.<sup>56</sup>

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 287.138, F.S., relating to contracting with entities of foreign countries of concern prohibited.

**Section 2:** Creates s. 288.007, F.S., relating to economic incentives to foreign countries of concern prohibited.

**Section 3:** Directs the Division of Law Revision to create part III of ch. 692, F.S.

**Section 4:** Creates s. 692.201, F.S., relating to definitions.

**Section 5:** Creates s. 692.202, F.S., relating to purchase of agricultural land by foreign principals prohibited.

**Section 6:** Creates s. 692.203, F.S., relating to purchase of real property around military installations and critical infrastructure facilities by foreign principals prohibited.

**Section 7:** Creates s. 692.204, F.S., relating to purchase or acquisition of real property by the People's Republic of China prohibited.

**Section 8:** Creates s. 692.205, F.S., relating to inapplicability of this part III of ch. 692, F.S., to real property for diplomatic purposes.

**Section 9:** Amends s. 408.051, F.S., relating to Florida Electronic Health Records Exchange Act.

**Section 10:** Amends s. 408.810, F.S., relating to minimum licensure requirements.

**Section 11:** Amends s. 836.05, F.S., relating to threats; extortion.

**Section 12:** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill may result in large amounts of land being seized through forfeiture and sold by the state.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Under the bill, specified governmental entities are prohibited from knowingly entering into contracts for an economic incentive with a foreign entity. Accordingly, such foreign entities will no longer be able to avail themselves of such economic incentives in connection with their projects.

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<sup>54</sup> S. 775.082(3)(b)1., F.S.

<sup>55</sup> S. 775.083(1)(b), F.S.

<sup>56</sup> See *generally* s. 775.084, F.S.

The bill provides that foreign principals who acquired agricultural land or land on or within 20 miles of a military installation or critical infrastructure facility before July 1, 2023, may continue to own those lands, but may not expand upon their ownership after that date. Similarly, Chinese businesses, and persons who are domiciled in China and not citizens or lawful permanent residents of the U.S., who acquired real property before July 1, 2023, may continue to own those lands, but may not expand upon their ownership after that date. To the extent any of these foreign principals, businesses, or persons' business plans assumed future expansions of land ownership, those plans will be negatively impacted by the bill.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The United States Constitution grants the federal government various powers related to foreign affairs, such as entering into treaties and other international agreements.<sup>57</sup> These grants of power have been interpreted to grant the federal government the exclusive power to act in the area of foreign affairs.<sup>58</sup>

A state's power to apply its law exclusively to its alien inhabitants as a class is confined to narrow limits. The Florida Constitution requires aliens receive equal protection of the laws and the courts strictly scrutinize statutes discriminating on the basis of citizenship.<sup>59</sup> Absent a treaty provision to the contrary, a state may deny to aliens the right to own land within its border.<sup>60</sup>

B. RULE-MAKING AUTHORITY:

The bill grants rulemaking authority to the corresponding departments to create forms and enact rules to administer the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill authorizes the state to sell certain real property subject to a final judgement of forfeiture and directs how the proceeds must be paid: first to any lienholders, then to outstanding fines, then to the applicable department for certain costs. Any remaining proceeds must be paid to the "property owner;" however, as currently drafted, it is unclear whether the property owner is the foreign principal or the state.

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<sup>57</sup> S. 2, Art. II, U.S. Constitution.

<sup>58</sup> *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (stating that the "Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.").

<sup>59</sup> *Ayala v. Florida Farm Bureau Casualty Insurance Co.*, 543 So. 2d 204 (Fla. 1989).

<sup>60</sup> See *Graham v. Ramani*, 383 So. 2d 634, 635 (Fla. 1980) (recognizing that the U.S. Supreme Court has upheld statutes denying aliens the right to acquire land and citing in support *Terrace v. Thompson*, 263 U.S. 197 (1923); *Terrace* upheld a state of Washington statute prohibiting the ownership of land within the state by nondeclarant aliens, finding that the "privilege of owning or controlling agricultural land within the state" and the "allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the state itself" (*Id.* at 221)).

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 23, 2023, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies language to include subsidiaries of foreign entities, foreign principals, and of businesses organized under the laws of or having their principal place of business in the People's Republic of China (PRC).
- Fixes a glitch in the original bill that had two conflicting sections. One section prohibited the acquisition of property and another permitted property to be acquired but required it to be sold or transferred within 2 years.
- Clarifies that the term "foreign principal" does not include lawful, permanent residents of the U.S.
- Provides that a failure to obtain or maintain an affidavit that the buyer is not a foreign principal does not affect title or insurability of title to property and further clarifies that failure to obtain an affidavit does not subject the closing agent to criminal or civil liability, unless the closing agent was aware of the violation.
- Amends the section on electronic health records and expands the locations data may be stored to include not only the continental United States, but also any territories of the United States or the nation of Canada.

On April 19, 2023, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment differed from the bill in that it:

- Authorized a foreign principal to own a de minimus indirect interest in certain land in this state, defined as owning less than 5 percent of the registered equities in a publicly traded company that owns the land;
- Included airports within the definition of critical infrastructure;
- Expanded the definition of "agricultural land" to include land classified as agricultural under the applicable comprehensive plan; and
- Prevented a foreign principal from owning land on a military installation or critical infrastructure facility in this state.

This analysis is drafted to the committee substitute as passed by the State Affairs Committee.