

ONE HUNDRED EIGHTH LEGISLATURE - SECOND SESSION - 2024
COMMITTEE STATEMENT
LB1301

Hearing Date: Tuesday February 06, 2024
Committee On: Agriculture
Introducer: DeKay
One Liner: Adopt the Foreign-owned Real Estate National Security Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	6	Senators Brewer, Halloran, Hansen, Holdcroft, Hughes, Ibach
Nay:		
Absent:	1	Senator Raybould
Present Not Voting:	1	Senator Riepe

Testimony:

Proponents:

Senator Barry DeKay
Jim Pillen
Jon Cannon
John Hansen

Representing:

Opening Presenter
Governor
NACO
Nebraska Farmers Union

Opponents:

Sam Cooper
Dylan Severino

Representing:

Nebraska Land Title Association
ACLU of Nebraska

Neutral:

Scott Merritt
Todd Barlow
Bruce Rieker

Representing:

Nebraska Agri-Business
Syngenta
Nebraska Farm Bureau, Nebraska Pork Producers Association, Nebraska Corn Growers Association, Nebraska Soybean Association

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

LB 1301 consolidates and revises provisions of Chapter 76-Article 4 under the Foreign-owned Real Estate National Security Act. The bill would redefine conditions under which aliens and foreign corporations may acquire or hold interests in real estate in Nebraska and prohibit certain restricted entities from acquiring property in proximity to military installations. The bill establishes duties for the Department of Agriculture and the Attorney General to enforce the Act, including to investigate potential violations and to initiate proceedings to divest property interests held in violation. The purpose and mechanisms of the bill are described in more detail in the section-by-section summary.



Section-by-section:

Sec 1: Amends §4-107 which recognizes the right of non-resident aliens to inherit real or personal property subject to the restriction that American citizens have a reciprocal right to inherit property in the non-resident alien's country. LB 1301 would add an additional restriction that the inheritance is not in conflict with the Foreign-owned Real Estate National Security Act and directs that any disposition of agricultural land is subject to the divestiture procedures of that Act.

Sec 2: Amends §25-1081 which authorizes a district court to appoint a receiver to take custody of property in certain situations described and enumerated. LB 1301 adds that the authority to appoint a receiver applies in actions under the Foreign-owned Real Estate National Security Act.

Sec 3: Amends §30-2312 which states that a person is not disqualified as an heir because their claim of inheritance is through an alien except as restricted under §4-107 and Chapter 76-Article 4. LB 1301 conforms the external reference to Chapter 76-Article 4 to changes elsewhere in the bill.

Sec 4: Names sections 4-12 as the Foreign-owned Real Estate National Security Act

Sec 5: Inserts a wholly new section defining the terms "military installation," "restricted area", and "restricted entity" for purposes of the Act.

Sec 6: Amends §76-402 which currently prohibits aliens and certain corporations from acquiring title to or taking or holding land or real estate, leasehold interests lasting greater than 5 years, or other types of interests in land or real estate except as permitted under existing sections 76-403 to 76-406.

Subsection (1) substantially rewrites this section to provide that non-resident aliens, foreign corporations or foreign governments, or agents, trustees or fiduciaries of such entities, may not purchase or otherwise acquire or hold interests in real property except as provided in the Act.

Subsection (2) assigns a duty to the Dept. of Agriculture to investigate violations of the Act and to refer violations to the Attorney General or to retain outside counsel to initiate divestment actions.

Subsection (3) provides that any person may report violations of the Act to the Department of Agriculture or the Attorney General.

Subsection (4) authorizes the Attorney General or the Department through retained counsel to file an action for divestment and assigns jurisdiction to district courts of the county where the property is located or Lancaster County district court. Directs that a copy of the petition be served upon owners or residents of the property, secured parties ascertained by registered lien or financing statements or as ascertained by the petition filer's diligence.

Subsection (5) Assigns a duty to engage in discovery to determine the record owner and the filing party for financial statements filed under law.

Subsection (6) Respondents to an action for divestment filed under this section shall have 30 days from the date of service to file an answer. If a respondent agrees that the property is subject to divestment, the respondent shall have 180 days to divest any interest in real estate tolling from the date of the deadline for filing an answer. The action for divestiture shall be dismissed if voluntary divestiture occurs. If the respondent does not file an answer or fails to voluntarily divest, the court may enter default judgment.



Subsection (7) provides that if a court finds after hearing that real property is held in violation of the Act, the court shall enter an order 1) stating the findings of the court, 2) ordering the divestment of the violating interest in the property, 3) notifying the Governor that title to such real estate is divested, 4) appointing a receiver, and 5) authorizing the disposition of any proceeds of the sale of the property to be distributed to a) reimburse the costs of preparing the property for sale, b) reimburse the costs of investigation and litigation, c) of remaining funds, 30% to the informant notifying of violation of the Act, and d) any remaining funds remitted to the State Treasurer for distribution pursuant to Article VII, Sec 5.

Subsection (8) provides that if the interest is less than title, the court shall declare the interest terminated.

Subsection (9) requires real estate escheated to the state to be sold within a reasonable time.

Sec 7: Amends §76-405 which authorizes resident aliens to acquire title to lands through devise or descent but requires divestiture of such title within 5 years and declares land held in violation escheated to the State. LB 1301 provides that failure of divestiture as required under this section is a violation of the Act and that the process of divestment is pursuant to Section 6.

Sec 8: Amends §76-406 which prohibits domestic corporations holding real estate from having a majority of aliens on its board directors, having an alien as an executive officer, or having a majority of its stock owned by aliens, except for real estate holdings permitted by sections 76-404 and 76-412 to 76-414. LB 1301 continues the prohibition except as permitted in the Act.

Sec 9: Amends §76-407 which declares corporations in violation of existing §76-406 to be an alien person for purposes of Chapter 76, Art 4 and to forfeit the corporation's charter and authority to do business in the state. LB 1301 provides that corporations in violation of §76-406 as amended to be in violation of the Act and subject to the remedies of this section.

Sec 10: Amends §76-413 which permits foreign corporations from acquiring or leasing property for manufacturing purposes. LB 1301 expands the exception for holding property for manufacturing purposes to foreign governments unless the corporate or government entity is a restricted entity and the property is located within a restricted area, in which case the property interest is subject to divestment pursuant to section 6.

Sec 11: Amends §76-414 which exempts ownership of real estate within, or within 3 miles of, the corporate limits of cities and villages from the restrictions on foreign ownership in existing Chapter 76 – Art 4. LB 1301 provides that the restrictions on foreign ownership of the Act do not apply.

Sec 12: Inserts a wholly new section assigning duties and authorities to the Attorney General including:

- Establishing a process for reporting non-notified real estate transactions
- Submitting reports regarding non-notified real estate transactions to the Committee on Foreign Investment in the United States and retain copies of documents included with such submission, and to notify the Legislature and Governor of any such submission
- Rule and reg authority to implement this section

Sec 13. Assigns a duty to the State Real Estate Commission to compile a map identifying restricted areas of the state on or before January 2025, with annual updates thereafter. The map is to be published on the Commission's website. A restricted area is defined as an area within a 10-mile radius of a military installation as defined by the section.



Sec. 14: Amends §81-201 to insert enforcement of the Foreign Owned Real Estate National Security Act as an authority of the Department of Agriculture.

Sec 15: Amends §84-205 to insert enforcement of the Foreign Owned Real Estate National Security Act as an authority of the Attorney General

Sec 16: Specifies operative dates. Sections 1-12, 14-15 & 18-19 become effective January 1, 2025 and remaining sections upon the effective date of the bill.

Sec 17: Severability clause

Sec 18: Repealers

Sec 19: Outright repealed sections.

§76-403 – Widows and heirs may inherit property owned by an alien acquired before 1886 subject to divestiture within 10 years

§76-404 – Authorizes foreign corporations to acquire leases for oil & gas exploration and extraction

§76-408 – Authorizes county attorney to initiate forfeiture actions in appropriate district courts for lands escheated to the state under the provisions of Chapter 76, Art 4.

§76-409 – Authorizes widows and heirs to bring an action to allow divestiture of escheated properties by sale rather than forfeiture

§76-410 – Requires aliens owning land prior to 1886 to divest properties during their lifetimes

§76-411 – Exempts foreign entities with liens securing debts who acquire property through lien enforcement

§76-412 – Provides the restrictions on foreign held interests in real estate does not apply to interests held for purposes of common carriers, public utilities, and railroads

§76-415 – Exempts property acquired by aliens prior to 1889 while in the alien's possession.

Explanation of amendments:

The committee amendment (AM2594) is a white copy amendment which replaces and substantially rewrites the bill. The significant changes between the bill as introduced and as amended are noted in the section-by-section summary of the amendment

Sec 1: Amends §4-107. No substantive change from section 1 of the bill as introduced.

Sec 2: Amends §25-1081. No substantive change from section 2 of the bill as introduced

Sec 3: Amends §30-2312. No substantive change from section 3 of the bill as introduced.

Sec 4: Includes section 4 – 20 of the amendment within the Foreign-owned Real Estate National Security Act.

Sec 5: Inserts a wholly new section defining the term “restricted entity” for purposes of the Act as defined under section 5 of the bill as introduced. AM2594 omits defined terms for “military installation” and “restricted area” that were defined under section 5 as introduced. AM259 also omits original section 13 which would have assigned a duty to the State Real Estate Commission to compile a map identifying restricted areas of the state.

Sec 6: Amends §76-402. AM2594 rewrites this section to provide that the prohibition on foreign persons, corporations or government acquisitions of real estate apply only to properties acquired after the effective date of the



act and that any holdings by these entities comply with registration with the federal Agricultural Foreign Investment Disclosure Act if applicable. The amendment inserts a new subsection (2) providing that acquisitions of property interests by foreign entities in conflict with Subsection (1) and any restricted entity that acquires a property interest after the operative date of the Act is subject to divestment under Section 15 of the Act.

The purposes/provisions of original subsections (2) through (9) of this section as introduced are stricken and relocated elsewhere as new sections of the Act.

Sec 7: Inserts a new section amending 76-404 which currently authorizes any domestic corporation or foreign corporation or alien to acquire leasehold interests for purposes of developing oil, gas and other hydrocarbons for 10 years or as long as these substances can be produced commercially. AM2594 would narrow this authorization to exclude any leasehold interests held by restricted entities or fiduciaries, agents or trustees of a restricted entity.

As introduced, LB 1301 would have outright repealed S76-404 thereby eliminating the authorization of existing law allowing foreign holdings of oil and gas leases.

Sec 8: Amends §76-405 which was amended by section 7 of the bill as introduced. AM2594 conforms an internal reference to divestiture provisions pertaining to property held in violation of this section.

Sec 9: Amends 76-406 which is amended by Section 8 of the bill as introduced. AM2594 retains the original revisions to this section.

Sec 10: Amends §76-407 which is amended by Section 9 of the bill as introduced. AM2594 retains the original revisions to this section.

Sec. 11: Inserts a new section amending 76-412 which currently provides that the existing prohibitions on foreign entity ownership do not apply to acquisitions of real estate necessary for operations of railroads, public utilities, and common carriers. AM2594 would exclude such holding from the prohibitions of the Act but exclude such real estate holdings by restricted entities.

As introduced, LB 1301 would have outright repealed 76-412 thereby eliminating the authorization of existing law allowing foreign holdings for these economic purposes.

Sec 12: Rewrites the revisions to §76-413, amended by section 10 of the bill as introduced, so that the general permission for foreign entities holding title or lease interests permitted under this section does not permit expansions of facilities or acquisition of new facilities if a restricted entity. Additionally, any restricted entity currently holding property may continue to retain ownership or lease interest only if they have a national security agreement with the Committee on Foreign Investment in the U.S. and annually certifies the agreement to the Department of Agriculture.

Sec 13: Amends §76-414 which is amended by section 11 of the bill as introduced. This section exempts ownership of real estate within, or within 3 miles of, the corporate limits of cities and villages from the restrictions on foreign ownership in existing Chapter 76 – Art 4. LB 1301 provides that the exemption applies to any restrictions under the Act. AM2594 further revises this section to provide that the exemption is not available to restricted entities except as permitted in Sections 6 and 13.

Sec 14: Contains the assignment to duties and authorities to the Attorney General originally contained in Section 12 of the bill as introduced. AM2594 retains the substantive duties and authorities of the Attorney General under this section but relocates rule and regulation authority to section 20. Eliminates the qualification that a property transaction is "non-notified" and provides that the reporting can be by any person regarding transactions of concern.



Sec. 15: Provide authorities to the Department of Agriculture and the Attorney General to investigate potential violations of the Act and to initiate processes for divesting interests held in violation. These provisions as revised were originally contained in subsections (2) – (9) of section 6 of the bill as introduced.

Subsection (1) provides that any person may notify the Department of Agriculture of suspected violations

Subsection (2) Assigns a duty to the Department of Agriculture to investigate suspected violations and if having reasonable suspicion of a violation to either refer the matter to the AG or to retain legal counsel for enforcement.

Subsection (3) Authorizes the AG or retained counsel to issue subpoenas for the appearance of witnesses, production of documents. Service of subpoenas is to be made in the manner of subpoenas issued by courts.

Subsection (4)(a) If after investigation, the AG or retained counsel believe a violation has occurred, they shall notify a restricted entity and notify that the entity may voluntarily divest any interest in real estate that is held in violation

Subsection (4)(b) A party notified shall respond within 30 days.

Subsection (4)(c)&(d) If the party agrees to divestment, any action to force divestment shall be stayed for 180 days from the 30-day response period.

Subsection (4)(e) The party in violation may not sell or transfer real estate to any other entity whose holding would be in violation. A person violating this prohibition is subject to a civil fine of \$50,000 per parcel transferred.

Subsection (5) Actions may be initiated by the Attorney General, or legal counsel retained by the Department of Agriculture, in the district court where the property is located if a restricted entity fails to respond to the notice or violation or fails to divest within 180 days.

Subsection (6) Upon commencement of an action for divestment, notice of the action is to be provided to registers of deeds of affected counties, the real estate owner, and any secured party or lienholders, and any person residing on the property.

Subsection (7) The court shall have power to determine questions presented and to declare the real estate to be divested enter an order stating findings, ordering divestment, notifies the Governor that any title to real estate is divested, ordering the notification of applicable registers of deeds, appoints a receiver as provided by sections 25-1081 to 25-1092 to manage and control the property until disposition.

Any proceeds of disposition of real estate shall be distributed to the payment of taxes or assessments, payment of court costs, payment of investment and litigation costs of the state, payment of lien holders, and finally to the state treasurer for distribution consistent with Art VII, Sec. 5.

Subsection (8) If the interest is a lease, easement or other than title, the order is that the interest is declared terminated.

Subsection (9) Authorizes default judgment if the respondent fails to answer or appear.

Sec. 16: Provides that the receiver shall sell real estate divested at public auction within 1 year from the date of the divestment order and execute the sale as provided under the Nebraska Trust Deeds Act. Purchasers shall receive the property free of any claims of the divested owner or others having claims through the divested party.

Sec 17: Inserts a new section declaring that title or interest in real estate of a current holder is not invalid due to the illegality of a previous owner in the chain of title.

Sec. 18: Inserts a new section that states that parties to real estate transactions have no duty to inquire or determine whether any person is subject to or in violation of the Act.

Sec. 19: Provides that any penalties are to be distributed according to Art. VII, Sec. 5.

Sec. 20: Assigns rule and reg authority to the AG and Department to promulgate rules and regs to carry out the Act.



Sec. 21: Relocates the provisions of section 14 of the bill as introduced.

Sec 22: Relocates the provisions of section 15 of the bill as introduced.

Sec. 23: Replaces section 16 of the bill as introduced. AM2594 provides an operative date of January 1, 2025 operative date for all sections.

Sec 24: Relocates the Severability Clause contained in section 17 of the bill as introduced.

Sec. 25: Repealer section. AM2594 revises repealers accordingly.

Sec 26: Outright repealed sections. AM 2594 revises outright repealed sections accordingly.

Steve Halloran, Chairperson

