

**OFFICIAL FINDINGS OF THE
MISSISSIPPI STUDY COMMITTEE
ON
FOREIGN PURCHASE OF FARMLAND**

Pursuant to House Bill 280, 2023 Regular Session



REPORT TO THE LEGISLATURE

By:

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Representative Angela Cockerham

Representative Bill Pigott

Senator Brice Wiggins

Senator Chuck Younger

Mr. Meredith Allen

Mr. David Hall

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Background

House Bill 280, 2023 Regular Session, was signed into Mississippi law by Governor Tate Reeves on March 21, 2023. This new law established a Study Committee for the purpose of studying the purchasing, acquiring, leasing, or holding an interest in agricultural land by foreign governments. The Study Committee was comprised of the following nine members:

- The Commissioner of Department of Agriculture and Commerce, or his or her designee (Commissioner Andy Gipson);
- The Attorney General, or his or her designee (designee Whitney Lipscomb);
- The Chairman of the House Judiciary A Committee (Representative Angela Cockerham);
- The Chairman of the Senate Judiciary A Committee (Senator Brice Wiggins);
- The Chairman of the House Agriculture Committee (Representative Bill Pigott);
- The Chairman of the Senate Agriculture Committee (Senator Chuck Younger);
- One person to be appointed by the Governor (Mr. David Hall);
- One person to be appointed by the Lieutenant Governor (Mr. Meredith Allen); and
- One person to be appointed by the Speaker of the House of Representatives, who shall be a representative of Farm Bureau (Mr. Ted Kendall IV).

At its initial meeting, the Study Committee elected the following members as its officers:

- Commissioner Andy Gipson, Chairman;
- Representative Bill Pigott, Vice Chairman; and
- Representative Angela Cockerham, Secretary.

House Bill 280 required the Study Committee to develop and report its findings to the Mississippi Legislature on or before December 1, 2023. This report details the official findings of the Study Committee. This report contains information collected during committee meetings held on August 24, September 27, October 19, and November 9. All meetings were open to the public, and video recordings of those meetings were archived and may be viewed at www.mdac.ms.gov/farmland.

State of Mississippi Legal Authority

Under existing state law, one provision of the Mississippi Constitution of 1890 and two statutory provisions govern the ownership of land in the state by resident aliens and nonresident aliens. Article 4, Section 84 of the Mississippi Constitution requires the Legislature to enact laws to limit, restrict, or prevent the acquiring and holding of land in this State by nonresident aliens, and may limit or restrict the acquiring or holding of lands by corporations. Likewise, Mississippi Code Annotated Sections 89-1-23 and 29-1-75 provide additional oversight related to foreign ownership of land, including agricultural land, in Mississippi.

Currently, Miss. Code Ann. § 89-1-23 provides as follows:

- Resident aliens may acquire and hold land and may dispose of it and transmit it by descent, as citizens of the state may.
- Any person who was or is a citizen of the United States and became or becomes an alien by reason of marriage to a citizen of a foreign country, may inherit, may hold, own, transmit by descent or transfer land free from any escheat to the State of Mississippi.
- Nonresident aliens shall not hereafter acquire or hold land. However, they may have or take a lien on land to secure a debt, and at any sale thereof to enforce payment of the debt may purchase the same, and thereafter hold it, not longer than twenty (20) years, with full power during said time to sell the land, in fee, to a citizen; or he may retain it by becoming a citizen within that time.
- Nonresident aliens who are citizens of Syria or the Lebanese Republic may inherit property from citizens or residents of the State of Mississippi.
- Nonresident aliens may acquire and hold not to exceed three hundred twenty (320) acres of land in this state for the purpose of industrial development thereon.
- Nonresident aliens may acquire and hold not to exceed five (5) acres of land for residential purposes.

Currently, Miss. Code Ann. § 29-1-75 provides as follows (repeals on July 1, 2026):

- Except as otherwise provided in this section, neither a corporation nor a nonresident alien, nor any association of persons composed in whole or in part of nonresident aliens, shall directly or indirectly purchase or become the owner of any of the public lands; and every patent issued in contravention hereof shall be void.
- A banking corporation owning such tax-forfeited lands or holding a mortgage or deed of trust thereon at the time of the sale to the state, and whose mortgage

or deed of trust is still in force and effect, may purchase such lands, regardless of acreage, owned by it as aforesaid or on which it held a mortgage or deed of trust. In event of a purchase by such corporation as a mortgagee, such lands shall be held for the benefit of the mortgagor subject to all the terms and conditions of the mortgage or deed of trust held by the purchasing banking corporation and, upon payment of the debt secured by such mortgage or deed of trust, together with interest and incidents, such banking corporation shall in that event reconvey such lands to the original mortgagor, his heirs or assigns.

- Any other nonbanking corporation may purchase lands sold or forfeited to the state for delinquent taxes under any section of Chapter 1, Title 29, specifically relating to the sale of such tax-forfeited lands by the Secretary of State. A nonbanking corporation purchasing land sold or forfeited to the state shall be subject to the acreage limitations of Section 29-1-73.
- Nonresident aliens may acquire and hold not to exceed three hundred twenty (320) acres of public lands in this state for the purpose of industrial development thereon. In addition, any nonresident alien may acquire and hold not to exceed five (5) acres of public lands for residential purposes. If any land acquired by a nonresident alien for the purpose of industrial development ceases to be used for industrial development, it shall escheat to the public body that sold such land to the nonresident alien.

On May 9, 2023, Attorney General Lynn Fitch provided an official opinion at the request of Commissioner of Agriculture and Commerce Andy Gipson related to restrictions imposed in Miss. Code Ann. § 89-1-23. In light of existing state law, the question posed was “Specifically, is the transfer of title in land to any single investor in excess of 320 acres null and void?” The official opinion in short states as follows:

Regarding the consequence of violating Section 89-1-23, the statute does not provide that any transfers in title made contrary to the limitations therein shall be null and void. *Compare* Miss. Code Ann. § 89-1-23, *with* Miss. Code Ann. § 29-1-75(1) (“[E]very patent issued in contravention hereof shall be void.”). Rather, Section 89-1-23 only states that “[a]ll land held or acquired contrary to this section shall escheat to the state.

Beyond this, we cannot by official opinion address whether the terms or provisions of a specific contract would be unlawful and therefore null and void.

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Miss. AG Op., Gipson (May 9, 2023).

See Appendix A for the full official opinion.

Agriculture and Commerce Commissioner Andy Gipson is currently requesting a follow-up opinion regarding the possible application of the laws of escheatment as currently enacted. This opinion will be provided to the legislature when received.

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Federal Legal Authority

The Agricultural Foreign Investment Disclosure Act (AFIDA) became federal law in 1978. Under this law, the U.S. Department of Agriculture (USDA) adopted 7 C.F.R Part 781 – Disclosure of Foreign Investment in Agricultural Land as regulations to implement the AFIDA. In particular, the regulations were created to establish a nationwide system for the collection of information pertaining to foreign ownership of U.S. agricultural land. The regulations require foreign investors who acquire, transfer, or hold an interest in U.S. agricultural land to report such holdings and transactions to the U.S. Secretary of Agriculture on AFIDA Report Form FSA-153. Current federal law imposes no restrictions on the amount of private U.S. agricultural land that can be foreign-owned.

The USDA Farm Service Agency (FSA) and USDA Business Center are responsible for the implementation of AFIDA law and regulations as they relate to foreign ownership of U.S. agricultural land. The data gained from AFIDA disclosures are used in the preparation of an annual report to Congress, which is published on the FSA website <https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/index>. Reports are available currently for 1978 – 2021.

Below are some highlights for Mississippi taken from the most recent December 31, 2021, FSA “Foreign Holdings of U.S. Agricultural Land” report. The full FSA report is included in Appendix B of this report.

- 777,176 acres of land in Mississippi was held by foreign interest in 2021 (2.6%). This is an increase from 618,752 acres in 2011 (2.1%)
- 757,816 agricultural acres was held by foreign interest in 2021 (2.5%). This is an increase from 600,456 acres in 2011 (2.0%). The use of the 2021 agricultural acres included:
 - 177,139 Cropland
 - 11,060 Pasture
 - 550,265 Forest
 - 19,352 Other Agriculture
- The Netherlands has the largest agricultural and non-agricultural landholdings by country of foreign investor in Mississippi (357,582 acres) followed by Germany (60,352 acres). China is reported by the USDA to hold some 88 acres of agricultural land.

Table 1. Mississippi Agricultural Landholdings of Foreign Investors 2012 – 2021.*

Year	Foreign Held Agricultural Land (Acres)	% Change from Previous Year
2021	757,816	4.11
2020	727,906	1.04
2019	720,412	9.66
2018	656,942	0.54
2017	653,403	0.46
2016	650,435	0.76
2015	645,509	-0.77
2014	650,488	0.99
2013	644,128	3.27
2012	623,716	

*This table is responsive to Section 1(5)(a) through (c) of House Bill 280.

National Overview and State Legislation

As of December 2021, 3.1% (40,031,308 acres) of all private agricultural land in the U.S. had foreign ownership. This was an increase of 2.4 million acres from Dec. 31, 2020, and an increase of 14.3 million acres since 2011. Of the 40,031,308 acres, 47% was forestland, 29% was cropland, and 22% was pasture/other ag purposes. The top countries of foreign investments were Canada (31%), Netherlands (12%), Italy (7%), and United Kingdom/Germany (6%). China reported 0.9% ownership interest in agricultural and non-agricultural land. The states with the most foreign held agricultural land acres were Texas (5.2 million), Maine (3.6 million), Colorado (1.9 million), Alabama (1.8 million), Oklahoma (1.67 million), and Washington (1.58 million). Four states do not restrict foreign ownership, 24 states restrict foreign ownership, and 22 states expressly allow for foreign investment. See “Foreign Ownership of Land: Legislative Review” in Appendix C for the detailed review. An in depth review of current statutes related to foreign ownership of agricultural land can be viewed at <https://nationalaglawcenter.org/resources-at-a-glance-foreign-ownership-of-ag-land/>.

On October 17, 2023, Arkansas became the first known state in the U.S. to force a Chinese state-owned company to sell its farmland. Arkansas ordered Syngenta, a large crop protection and seed company, to sell 160 acres of farmland within two years because the company is Chinese-owned. The order is Arkansas’ first enforcement action under a recent state law passed in 2023 (Act 636) that prohibits certain foreign parties from acquiring or holding land. China is among the prohibited parties due to it being subject to U.S. arms export regulations under the International Traffic in Arms Regulations (22 C.F.R §126.1). The land in question is actually owned by Northrup King Seed Co., a subsidiary of Syngenta Seeds, LLC, which is ultimately owned by China National Chemical Company (ChemChina), a state-owned enterprise. The Arkansas Attorney General ordered the company to divest the land within two years and also imposed a civil penalty of \$280,000 for failing to file documents in a timely manner that are required by Arkansas state law. See Appendix D for documents related to the Arkansas order (press release, summary of Act 636, Act 636 as engrossed).

The Study Committee heard an overview of this development by Arkansas Secretary of Agriculture Wes Ward at the Committee’s meeting held on October 19, 2023.

Foreign Ownership of Water Rights

Section 1(5)(d) of House Bill 280 requires information on water rights in Mississippi. Surface water and groundwater use in Mississippi is regulated by the Mississippi Department of Environmental Quality (MDEQ). All water, whether occurring on the surface of the ground or underneath the surface of the ground, has been declared by statute to be among the basic resources of the state and subject to regulation governing control, development, and use of water for all beneficial purposes. No person shall initiate the drilling of a groundwater well or the placement of a surface water intake until an appropriate groundwater or surface water use permit has been issued by the MDEQ Permit Board, or its designee, as required by Miss. Code Ann. Sections 51-3-5 and 51-3-7. Currently, MDEQ does not prohibit or limit any surface water permits or groundwater use permits based on foreign ownership of land. As a result, MDEQ does not currently maintain any information reflecting foreign ownership of water rights in Mississippi.

Foreign Ownership of Water Desalination Facilities

The Mississippi Department of Environmental Quality (MDEQ) is the environmental regulatory agency for water desalination facilities in Mississippi. MDEQ is not aware of any such facility in the state based on the agency's knowledge of permitting history. If a water desalination facility was to be constructed, standard environmental permits would have to be obtained (if required) regardless of ownership. This information is intended to meet the requirements of Section 1(5)(e) of House Bill 280.

Foreign Ownership of Energy Production, Storage, or Distribution Facilities

Information to be submitted by the Mississippi Public Service Commission. This information is intended to meet the requirements of Section 1(5)(f) of House Bill 280.

Public Comments and Public Testimony

The Study Committee invited public comments and testimony from Mississippi residents and stakeholders regarding foreign ownership of land in Mississippi. An email address (farmland@mdac.ms.gov) was created for submission of comments and testimony. As of the date of this report, thirty comments were submitted to the Study Committee email address, all in opposition to foreign ownership of land.

Public testimony was received during the October 19, 2023, meeting of the Study Committee. Following are a list of testimonies given:

1. Wes Ward, Arkansas Secretary of Agriculture: Provided an overview regarding Arkansas becoming the first known state in the U.S. to force a Chinese state-owned company to sell its farmland.
2. Representative Becky Currie: As the primary author of House Bill 280, Representative Curry described the original intent of the bill.
3. Casey Anderson, Executive Director, MS Forestry Association: Warned of unintended consequences of limiting foreign investment and ownership in Mississippi's forestry community and the negative impact it could have on rural economics.
4. Adam Savit, Director, China Policy Initiative, America First Policy Institute: Described the threat from the Chinese Communist Party.
5. Lee McCoy, Resident of Mendenhall, MS: Provided comments in opposition to foreign ownership of agricultural land. See additional comments in Appendix E.
6. Owen McIntosh, Mississippi Realtor (Video Recording): Described his belief that the USDA FSA "Foreign Holdings of U.S. Agricultural Land" annual reports do not contain accurate acreage of foreign ownership (under reporting due to voluntary reporting).

Additionally, Attorney Otho E. Pettit, Jr., provided verbal testimony during the September 2023 meeting of the Study Committee in opposition to foreign ownership of agricultural land. See additional comments in Appendix E.

One additional comment letter was submitted by the Southern Crop Production Association (SCPA), a regional not-for-profit trade association representing pesticide registrants, agricultural retailers and distributors who supply farmers and ranchers with products and services. SCPA requested that any foreign ownership of land legislative proposals to include the following exemptions:

- Exemption for land that is used for agricultural research and development, experimental purposes, including testing, developing, and/or producing all crop production inputs for

sale or resale to farmers, including, but not limited to seeds, plants, pesticides, soil amendments, biologicals, and fertilizers.

- Allowance for the right to lease land for agricultural research and development, experimental purposes, including testing, developing, and/or producing all crop production inputs for sale or resale to farmers, including, but not limited to seeds, plants, pesticides, soil amendments, biologicals, and fertilizers. SCPA's

See Appendix E for letters, comments, and testimonies in their entirety in the order that they were received.

Mississippi Department of Agriculture and Commerce Assessment

Section 1(5)(g) of House Bill 280 requires the Mississippi Department of Agriculture to provide an assessment of the impact of recent changes in foreign ownership of agricultural land, water, and food security. In response to this, see the letter from Commissioner Andy Gipson attached in Appendix F.

Study Committee Recommendations

In response to its official findings, the Study Committee developed the following observations and recommendations:

1. It is clear that current Mississippi law restricts foreign ownership of land by “nonresident aliens” except for the purpose of industrial development. However, the law lacks a clear, workable enforcement mechanism.
2. Continued unrestricted foreign ownership of Mississippi’s agricultural land and water rights by foreign adversaries as defined in 15 CFR 7.4 presents a serious concern to Mississippi and to national security, including food security.
3. The Legislature should act to address these concerns. At a bare minimum, the Legislature should pass an enforcement mechanism with any appropriate reporting requirements and legal enforcement procedures, along with any exemptions as may be necessary or appropriate tailored to Mississippi needs and based on the experiences of other States. In order to accomplish this, the Study Committee highly recommends that the Legislature review and receive guidance from legal experts within the National Agricultural Law Center.