

House Committee on Commerce, Labor, and Economic Development
Testimony of Kansas Attorney General Kris Kobach
Regarding H.B. 2766

March 4th, 2024

Chairman Tarwater and Members of the Committee:

Thank you for the opportunity to provide testimony on the need to protect our national and economic security by restricting foreign land purchases in Kansas. The increasing acquisition of agricultural land by foreign nationals and by corporations based in foreign countries must be addressed, because it poses a growing threat to national security, to our food supply, and to our state's economic future. I'm providing neutral testimony on H.B. 2766 in order to raise some concerns with its structure and effectiveness, in the hope that it can be amended and improved. It is imperative that we get this statute right.

The Amount of Land Owned by Foreign Entities

Foreign land ownership in the United States doubled over the 10-year period from 2009 to 2019. According to USDA records, which dramatically understate foreign land ownership because they are based on self-reporting, foreign nationals own 43.4 million acres. That's about the size of the state of Missouri. Percentage-wise, that is 3.4%% of agricultural land. And the number is growing rapidly; it increased by 8% in 2022. Remember also that actual numbers are likely much higher due to the U.S. Department of Agriculture's inability to effectively track all land purchases.

Canada owns the largest share of foreign owned land in the country, but China's share is significant and growing. According to the USDA, Chinese landowners control approximately 383,000 acres of U.S. farmland. From 2010 to 2021, the dollar value of known Chinese-owned farmland increased from \$81 million to \$1.9 billion. China has several purposes: controlling a larger share of U.S. food production, being able to divert food to China, gaining economic leverage over the United States, and surveilling U.S.

military installations and activities. One example of Chinese efforts to control the food supply is Shuanghui International Holdings Limited's purchase of Smithfield Foods in 2013.

And its not just China. Mexican drug cartels and their operatives have been purchasing large amounts of land in Texas and Oklahoma. It is probable that they have acquired land in Kansas as well. More broadly, purchasers from any number of countries may have objectives that go against the public interest of Kansas. And at the end of the day, that is what all public officials in Kansas should put first: the interests of Kansans.

24 States Have Some Prohibition Against Foreign Nationals Purchasing Land

Most of our neighboring states—including Nebraska, Iowa, South Dakota, and Missouri have restrictions on foreign land purchases, leaving Kansas particularly vulnerable. We are the only state in America's breadbasket where there are no restrictions whatsoever.

Currently, 24 states have some prohibition on nonresident aliens, foreign businesses and corporations, and foreign governments from acquiring or owning an interest in agricultural land within their state. During the 2023 legislative session, the following states enacted new laws addressing foreign ownership of land: Alabama, Arkansas, Florida, Idaho, Louisiana, Montana, North Dakota, Ohio, Tennessee, Utah, and Virginia.¹

The scope and breadth of these new laws varied from state to state. In Idaho, the new statute would prohibit a foreign government or a foreign state-controlled enterprise from purchasing, acquiring, or holding any controlling interest in agricultural land, water rights, mining claims, or mineral rights in the state. The law in Idaho is more comprehensive compared to the weaker version adopted in Tennessee. In Tennessee, a nonresident alien, foreign business, or foreign government, or their agent is prohibited from purchasing real property in the state if the country where the person or organization

¹ Foreign Ownership of Agricultural Land: FAQs & Resource Library, NATIONAL AGRICULTURAL LAW CENTER, <https://nationalaglawcenter.org/foreign-investments-in-ag/> (last visited Sep 25, 2023).

resides or is located is on the U.S. Department of the Treasury's sanctions programs and country information list.

The law adopted in Florida, which includes residential homes and specifically targets citizens of countries on the foreign adversaries list, was recently sustained in federal court in *Shen v. Simpson* (N.D. Florida, Aug. 17, 2023) in a preliminary injunction ruling. The 11th Circuit partially reversed the preliminary injunction, and the case is back before the district court. The plaintiffs alleged that the Florida violates the Equal Protection Clause of the Fourteenth Amendment because it discriminates against home ownership by Chinese nationals and that it is preempted by federal law.

Regardless of what happens in Florida, neither one of those challenges could be brought successfully against SB 446, because SB 446 applies to all countries and does not affect residential housing. It is important to point out that the laws in the other states that apply to all countries (rather than just the foreign adversaries list) are on legally sound footing and have never even been challenged. It should also be noted that the U.S. Supreme Court has held that “each state, in the absence of any treaty provision to the contrary, has power to deny to aliens the right to own land within its borders.” *Terrace v. Thompson*, 263 US. 197, 217 (1923)

National Security Threat

It is no secret that China uses nontraditional means to gather intelligence within the boundaries of the United States. In fact, the U.S. Department of Justice calls Chinese espionage the FBI’s greatest counterintelligence priority.² The nation was shocked when a Chinese spy balloon brazenly crossed over the United States in late January and early February of 2023.³ The United States Department of Defense later confirmed the balloon was capable of capturing images and collecting signals from United States military sites.⁴

² The China Threat, FBI, <https://www.fbi.gov/investigate/counterintelligence/the-china-threat#:~:text=The%20counterintelligence%20and%20economic%20espionage,the%20FBI’s%20top%20counterintelligence%20priority>. (last visited Sep 25, 2023).

³ Natasha Bertrand, Chinese spy balloon was able to transmit information back to Beijing | CNN politics CNN (2023), <https://www.cnn.com/2023/04/03/politics/chinese-spy-balloon/index.html> (last visited Sep 20, 2023).

⁴ *Id.*

This incident helped to trigger a larger national debate on foreign adversaries spying on the American homeland. This is concerning for the State of Kansas due to the fact that there are three major military installations located in the State (McConnell Air Force Base and the U.S. Army bases located at Fort Leavenworth and Fort Riley), in addition to a significant Air National Guard presence at Forbes Field.

There are also several institutions within Kansas that handle and research sensitive technologies and dangerous pathogens that could be vulnerable to spying by foreign adversaries. One of these institutions is the the National Bio and Agro-Defense Facility (NBAF). The NBAF is a 574,000 square-foot facility located on a secure federally-owned site in Manhattan, Kansas.⁵ It is a state-of-the-art facility that was built by the United States Department of Homeland Security Science and Technology Directorate to fulfill the research mission of the United States Department of Agriculture.⁶

The NBAF is the first facility in the United States with biosafety level-4 containment that is also capable of housing large livestock.⁷ Biosafety levels range from level-1 to level-4. Biosafety level-4 is the highest level of biological safety. The microbes in a biosafety level-4 laboratory are dangerous and pose a high risk of aerosol-transmitted infections. Without treatment, infections caused by these microbes are fatal. In biosafety level-4 laboratories, staff must change clothing before entering and shower upon exiting. All work with these microbes must be performed while the microbe is completely sealed and with the staff likely wearing a full-body, air-supplied suit.⁸

Another institution of note that could be a target of spying by foreign adversaries is the Aircraft Structural Test and Evaluation Center (ASTECC). The ASTECC is a component of the National Institute for Aviation Research located at Wichita State University and encompasses 250,000 square feet of space. The ASTECC is a secure site designed to accommodate proprietary defense and industry research and certification

⁵ National Bio and Agro-Defense Facility, USDA, <https://www.usda.gov/nbaf> (last visited Sep 19, 2023).

⁶ *Id.*

⁷ CDC LC Quick Learn: Recognize the four Biosafety Levels, Centers for Disease Control and Prevention, <https://www.cdc.gov/training/quicklearns/biosafety/> (last visited Sep 19, 2023).

⁸ CDC LC Quick Learn: Recognize the four Biosafety Levels, Centers for Disease Control and Prevention, <https://www.cdc.gov/training/quicklearns/biosafety/> (last visited Sep 19, 2023).

testing. The lab has performed research and structural testing on aircraft such as the Learjet 85, MQ-9 Reaper, B-52, KC-135, F-35 Joint Strike Fighter, B1-B Lancer, and UH-60 Black Hawk.⁹

In recent years, Chinese nationals have succeeded in gaining access to military bases and other sensitive sites in the United States as many as 100 times, according to federal officials. These incidents appear to be part of an organized effort by the Chinese government to test U.S. security practices. Examples of these unorthodox breaches include instances of Chinese nationals in scuba gear swimming near a U.S. government rocket-launch site in Florida and a group of Chinese nationals taking photos at a U.S. Army range.¹⁰

Federal officials have been particularly concerned about recent attempts by Chinese-owned companies to acquire land near sensitive United States military sites. In 2020, questions were raised when a Chinese-owned company moved forward with plans to build wind turbines near the Laughlin Air Force Base in Texas. This project prompted concerns that the wind turbines could interfere with low-level flight training routes and be used to spy on American troops.¹¹

In another instance, plans were ultimately scrapped for a Chinese owned food manufacturer to acquire more than 300 acres of farmland after the company attempted to make the purchase in North Dakota in 2022. The land in question was just twenty minutes away from Grand Forks Air Force Base, which is described as “the backbone of all U.S. military communications across the globe.” Experts believed that the U.S. Air Force would have had little ability to detect surveillance being conducted by the Chinese

⁹ Aircraft Structural Test and Evaluation Center (ASTEC), Wichita State University, https://www.wichita.edu/industry_and_defense/NIAR/Laboratories/astec/astec.php (last visited Sep 20, 2023).

¹⁰ Gordon Lubold, Warren P. Strobel & Aruna Viswanatha, WSJ News Exclusive | Chinese gate-crashers at U.S. Bases Spark espionage concerns The Wall Street Journal (2023), <https://www.wsj.com/politics/national-security/chinese-gate-crashers-at-u-s-bases-spark-espionage-concerns-cdef8187> (last visited Sep 20, 2023).

¹¹ Robbie Gramer, Deep in the Heart of Texas, a Chinese Wind Farm Raises Eyebrows Foreign Policy (2020), https://foreignpolicy.com/2020/06/25/texas-chinese-wind-farm-national-security-espionage-electrical-grid/#cookie_message_anchor (last visited Sep 21, 2023).

government from the property due to the simplicity of the antennas that the Chinese could use to collect the information.¹²

Because Kansas is home to several military installations and research institutions that contain sensitive information, preventing aliens and foreign corporations from purchasing land is essential to reducing the risk that these facilities face from unauthorized intrusions and spying by foreign nationals and governments.

Threat to Food Supply

As of 2019, 49% of foreign-owned land was forest land, 25% was crop land, and 24% was for pasture and other agricultural uses. Thus, approximately half of foreign owned land is agricultural in nature. Currently, the United States produces adequate food to feed U.S. citizens, even after adjusting for food waste. Still, large scale ownership of U.S. land by foreign nationals poses security risks to the food supply chain.¹³

In 2013, Shuanghui International Holdings Limited, a subsidiary of the Chinese WH Group, purchased Smithfield Foods. It marked the largest Chinese purchase of a U.S. asset in history. Though the WH Group is privately owned, the state-owned Bank of China provided approximately half of the financing for the \$7.1 billion purchase. The purchase included more than 146,000 acres, mostly in Missouri, Colorado, Oklahoma, North Carolina, Utah, and Virginia. It accounts for 25% of the U.S. pork industry and gives the foreign-owned company significant control over the entire U.S. pork supply chain. It's control the CCP exercised during the COVID-19 pandemic. Despite U.S. meat shortages at the time, Chinese-owned Smithfield increased its pork exports and closed U.S. plants during the pandemic.¹⁴

¹² Eamon Javers, Chinese Company's Purchase of North Dakota Farmland Raises National Security Concerns in Washington CNBC (2022), <https://www.cnbc.com/2022/07/01/chinese-purchase-of-north-dakota-farmland-raises-national-security-concerns-in-washington.html> (last visited Sep 21, 2023).

¹³ Jamie Lutz & Caitlin Welsh, FOREIGN PURCHASES OF U.S. AGRICULTURAL LAND: FACTS, FIGURES, AND AN ASSESSMENT OF REAL THREATS CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (2021), <https://www.csis.org/analysis/foreign-purchases-us-agricultural-land-facts-figures-and-assessment-real-threats> (last visited Sep 25, 2023).

¹⁴ Jamie Lutz & Caitlin Welsh, FOREIGN PURCHASES OF U.S. AGRICULTURAL LAND: FACTS, FIGURES, AND AN ASSESSMENT OF REAL THREATS CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (2021),

China’s ability to utilize global supply chains as leverage to advance its political and military might is a concern, according to the “Annual Threat Assessment” issued by the U.S. Director of National Intelligence. Specifically, Avril Haines, Director of National Intelligence, told the U.S. Senate Select Committee on Intelligence earlier this year that China intends “to increase global supply chain dependencies...with the aim of using such technologies and dependencies, rather, to threaten and cut-off foreign countries during crisis.”¹⁵

The solution to this threat is an obvious one. U.S. citizens and companies must control our own land. It is a hedge against the threat China and other foreign bad actors pose to our supply chain and our food security. It also provides leverage to the United States in future crises. As long as China remains dependent on other nations to feed its population, the ability of the Chinese government to extract concessions from the United States is at least somewhat limited.

Land Acquisition Opportunities for Young Kansans

According to a survey conducted by the National Young Farmers Coalition and analyzed by the University of Wisconsin, 59% of young farmers identified finding affordable land to buy as very or extremely challenging.¹⁶ It is the number one barrier to young farmers continuing in the footsteps of their parents. Allowing foreign nationals and foreign corporations to bid for and purchase this land only makes the problem worse. Prices rise above the reach of young Americans trying to start a career in agriculture.

<https://www.csis.org/analysis/foreign-purchases-us-agricultural-land-facts-figures-and-assessment-real-threats> (last visited Sep 25, 2023). 15 C.F.R. 7.4

¹⁵ ODNI Office of Strategic Communications, ODNI HOME HOME (2023), <https://www.dni.gov/index.php/newsroom/congressional-testimonies/congressional-testimonies-2023/3685-dni-haines-opening-statement-on-the-2023-annual-threat-assessment-of-the-u-s-intelligence-community> (last visited Sep 25, 2023).

¹⁶ Ximena Bustillo, THERE AREN’T ENOUGH YOUNG FARMERS. CONGRESS IS LOOKING TO CHANGE THAT NPR (2022), <https://www.npr.org/2022/09/01/1120100449/farm-bill-not-enough-young-farmers-congress#:~:text=According%20to%20the%20survey%2C%2059,%25%20%E2%80%94%20among%20farmers%20of%20color.> (last visited Sep 25, 2023).

U.S. Senator Chuck Grassley, a farmer from Iowa, observed in an interview that “[t]here’s an entire generation of ownership waiting in the wings. If deep-pocketed investors come in, foreign or not, it drives up prices and makes it harder for new and beginning farmers to get started.”¹⁷ It is expected that over 40% of America’s agricultural land will change ownership in the next 20 years.¹⁸ It will be up to us to decide whether it goes to young farmers and ranchers, or to foreign interests that do not share the same interest in the preservation of American national and food security.

Problems in the Way H.B. 2766 Operates

1. China Can Easily Circumvent H.B. 2766 by Using Proxy Countries

H.B. 2766 would bar the sale of land to persons and companies associated with the six nations on the U.S. foreign adversaries list: (1) The People's Republic of China (China); (2) Republic of Cuba; (3) Islamic Republic of Iran; (4) Democratic People's Republic of Korea (North Korea); (5) Russian Federation; and (6) the Regime of Venezuelan politician Nicolás Maduro.¹⁹

The Chinese are able to easily circumvent any law that only prevents purchases from the six countries on the list. The CCP often operates through shell companies in third countries. And China has purchased the allegiance of multiple developing countries through the expenditure of hundreds of billions of dollars in each. For example, a Vietnamese-owned company could purchase the land in compliance with the law; but the actual control of the land would be exercised by the CCP.

And the number of Chinese vassal states willing to provide assistance in purchasing American agricultural land is increasing. Since 2013, China has made vast financial investments around the globe with its Belt and Road Initiative (BRI). This

¹⁷ Q&A: Foreign Ownership Of U.S. Farmland, U.S. Senator Chuck Grassley (2022), <https://www.grassley.senate.gov/news/news-releases/qanda-foreign-ownership-of-us-farmland> (last visited Sep 25, 2023).

¹⁸ Rose White, Young Michigan Growers Want to farm – but they can’t afford land mlive (2023), <https://www.mlive.com/public-interest/2023/04/why-young-michigan-farmers-are-fighting-for-land.html> (last visited Sep 25, 2023).

¹⁹ 15 C.F.R. 7.4

ambitious plan is designed to link East Asia and Europe through physical infrastructure. To date, 147 countries have signed on to BRI projects or expressed interests in partnering with China. In total, the Council on Foreign Relations (CFR) estimates China has spent an estimated \$1 trillion on the initiative so far. CFR's Belt and Road Tracker shows overall debt to China surpasses 20% in some countries.²⁰ China has made similar investments on other continents as well, buying the allegiance of numerous countries.

In 2023, for example, China invested billions of dollars in Honduras in return for the Central American country reversing its position on the Chinese-Taiwan issue and taking other steps to support China. It is beyond question that China could easily use multiple Honduran corporations and citizens to purchase as much land in Kansas as it wished. Consequently, the only law that can stop Chinese interests from controlling Kansas land is one that stops *all* foreign nationals and corporations from acquiring Kansas land. We should follow the examples of Iowa, Nebraska, Idaho, and other states, and not make it easy for Chinese interests to evade the law.

The solution is to place a blanket ban on all countries, but allow a Kansas Land Council to grant exceptions. This is the structure of a bill in the Senate (S.B. 446). This forces the foreign land purchaser (who has all of the information about true control and ownership of the company) to come to a state land commission and apply for an exception. They would be in possession of all information about ownership and control, and would have to convince the commission that they are not controlled by the Chinese. This would allow the KBI, the Adjutant General, and the Fusion center (who would have representatives on the commission) to assess available intelligence and specifically focus their attention on the applicant.

²⁰ James McBride, Noah Berman & Andrew Chatzky, CHINA'S MASSIVE BELT AND ROAD INITIATIVE COUNCIL ON FOREIGN RELATIONS (2023), <https://www.cfr.org/background/chinas-massive-belt-and-road-initiative> (last visited Sep 25, 2023).

Jamie Lutz & Caitlin Welsh, FOREIGN PURCHASES OF U.S. AGRICULTURAL LAND: FACTS, FIGURES, AND AN ASSESSMENT OF REAL THREATS CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (2021), <https://www.csis.org/analysis/foreign-purchases-us-agricultural-land-facts-figures-and-assessment-real-threats> (last visited Sep 25, 2023).

2. We Will Be Unable to Determine Foreign Ownership Accurately Unless the Buyer is Forced to Come to Us.

Another problem with H.B. 2766 is that there's no way for the attorney general's office to easily determine the specific nationality of a company. We can determine whether a company is based in the United States or not based in the United States relatively easily by looking at the corporate registrations of the 50 states (usually maintained by the relevant secretary of state). But all we would learn is that a company is not a U.S. company. We have no way of easily determining which country the company is from. There is no international database that contains that information.

Again, the solution is to force the foreign corporation to bring the information to us. By placing the obligation on the company to obtain an exception from the land commission, that brings the information forward. Otherwise it would be nearly impossible for the KBI to determine where the company was actually based.

3. Mexican Drug Cartels Are Not Covered.

Another limitation of H.B. 2766 as currently formulated is that it only includes nation states, and a very small number of them at that. Although the threat posed by Chinese land acquisition is great, it is not the only one. Mexican drug cartels, or their associates, have purchased significant amounts of land in the United States. They use the properties, which are typically in rural areas, for safe houses, drug trafficking drop locations, human trafficking drop locations, and for manufacturing drugs (such as pressing the fentanyl that came across the international border into pills, or lacing other drugs with fentanyl). H.B. 2766 does nothing to stop them from purchasing land in Kansas.

In Texas and Oklahoma, the cartels have been purchasing a significant amount of land. In 2012, federal agents raided a horse ranch in south Oklahoma. The ranch was being utilized as a front for the Los Zetas Drug Cartel to launder U.S. dollars obtained through illegal drug transactions into the United States under the guise of horse breeding

and racing.²¹ California is seeing similar land acquisition by the cartels. For example, in Riverside, California, Mexican drug cartels have been paying cash for land and setting up illegal marijuana farms. Other such land acquisitions have been identified around other cities in California including Anza, Twentynine Palms, East Lancaster, Lake Hughes, Neenach, Action, and Pinon Hills. Chad Bianco, the Sheriff of Riverdale, confirmed that these illegal farms are relying on human trafficking victims to support the farming operations of these illegal foreign owned enterprises.²²

As of July 2023, there are fourteen Kansas counties that have been identified as high intensity drug trafficking areas by the United States Drug Enforcement Administration (DEA).²³ Rural police departments in Kansas often lack the manpower or resources to combat these sophisticated drug trafficking operations.²⁴ With the accelerating availability of illegal drugs laced with fentanyl, the crisis is becoming all the more dangerous.

Again, the best solution is to bar all foreign ownership, forcing the foreign buyers to make their case to the Kansas Land Council. It is unlikely that the cartels would even attempt to pass scrutiny by the KBI and the Fusion Center. One other possible solution would be to add Mexico to the list in H.B. 2766, but without a council to grant exceptions, it would end up barring Mexican ownership that does not pose a significant threat.

4. Refugees Should Not be Denied Business Ownership

A final issue is the fact that there are refugees from China, Iran, and Russia in Kansas who do not pose a security threat. Although H.B. 2766 allows them to own

²¹ Nolan Clay, Oklahoma Horse Ranch called a Front for Mexican drug cartel The Oklahoman (2012), <https://www.oklahoman.com/story/news/columns/2012/06/12/oklahoma-horse-ranch-called-a-front-for-mexican-drug-cartel/61066031007/> (last visited Sep 25, 2023).

²² Jorge Ventura, “no-go” zones: Cartel-run illegal marijuana operations on US soil, NewsNation (2023), <https://www.newsnationnow.com/us-news/immigration/border-coverage/cartels/no-go-zones-cartels-setting-up-marijuana-farms-in-us/> (last visited Sep 25, 2023).

²³ High Intensity Drug trafficking Areas (HIDTA) Programs Counties July 2023, HIDTA Program, <https://www.hidtaprogram.org/> (last visited Sep 25, 2023).

²⁴ DEA and Kansas Law Enforcement Partners join together to find drug traffickers behind overdoses, United States Drug Enforcement Administration (2022), <https://www.dea.gov/press-releases/2022/04/07/dea-and-kansas-law-enforcement-partners-join-together-find-drug> (last visited Sep 25, 2023).

residential property, it does not allow them to acquire commercial property and contribute to the Kansas economy as entrepreneurs.

The solution is to ban foreign ownership of large commercial properties, but allow for exceptions to be granted by a body such as the Kansas Land Council. The Senate bill framework would allow large projects like Panasonic to go through after the Council reviewed them. But it also reduces the burden on the Council by permitting all foreign business purchases of small land parcels (less than three acres).

Conclusion

It is important that we act to protect Kansas' sensitive infrastructure from surveillance by America's enemies, to prevent Mexican drug cartels from controlling Kansas land, to protect our state's food security, to prevent the establishment of any dangerous foreign enterprises in our state, and to provide opportunities for young Kansans to compete for acquisition of agricultural land. There are many good elements in H.B. 2766, such as its reference to proximity to military assets. It is a good start. But unless it is restructured, any protection that it provided would be illusory. I am hopeful that this committee can make the necessary changes.