



# **Foreign Purchase of Farmland Study Committee**

**August 24, 2023**

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# Purpose of Committee

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- **House Bill 280 Section 1, 2023 Legislative Session.**
  - There is created a study committee for the purpose of studying the purchasing, acquiring, leasing or holding an interest in agricultural land by foreign government.



# Issues to be Addressed

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- Total Amount of Agricultural Land Under Foreign Ownership
- Percentage Change in Foreign Ownership of Agricultural Land in Mississippi by Year for Ten Years
- Current Use of Foreign-Owned Agricultural Land (Including Recent Changes or Trends)
- The Extent of or Changes in Foreign Ownership of:
  - Water Rights in Mississippi
  - Water Desalination Facilities in Mississippi
  - Energy Production, Storage, Distribution Facilities in Mississippi

# Issues to be Addressed

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- MDAC Assessment of the Impact of Recent Changes in Foreign Ownership of Agricultural Land in Mississippi on Water Rights and Food Security
- Current Prohibitions on Foreign Ownership of Mississippi Land and Why Such Prohibitions Are Not Enforced
- Committee shall develop and report its findings to the Legislature on or before **December 1, 2023.**
- Make recommendations of any legislative, regulatory or administrative policy changes in light of the information in the report.



# Current State/Federal Laws

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- **MS Const. Art. 4, § 84. Acquisition of land by nonresident aliens and corporations.**
  - The Legislature shall 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.



# Current State/Federal Laws

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- **Miss. Code Ann. § 89-1-23**
  - **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 alien** may acquire and hold not to **exceed five (5) acres of land** for **residential purposes**.

# Current State/Federal Laws

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- Any treaty between the United States and another country becomes the “Supreme Law of the Lands” and preempts state law.
  - For example, the U.S. and the Netherlands operate under a treaty which provides rules and freedoms of owning and leasing lands in their respective countries by citizens of the other country.
    - Netherlands FCN, 8 U.S.T 2043 (U.S. Treaty), 1957 WL 52981 (U.S. Treaty)
- Committee on Foreign Investment in the United States (CFIUS)
  - Implemented pursuant to Executive Order No. 11858
  - Actions and membership define in Defense Production Act of 1950, § 721.
  - An interagency committee authorized to review certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on the national security of the United States.

# Current State/Federal Laws

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- Current **federal law** imposes no restrictions on the amount of private U.S. agricultural land that can be foreign-owned.
- Federal law, however, requires foreign persons and entities to disclose to USDA information related to foreign investment and ownership of U.S. agricultural land.
- The Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA)
  - Implemented by USDA
  - Established a nationwide system for collecting information pertaining to foreign ownership of U.S. agricultural land, defined as land used for forestry production, farming, ranching, or timber production.
  - Defines a foreign person to include “any individual, corporation, company, association, partnership, society, joint stock company, trust, estate, or any other legal entity” (including “any foreign government”) under the laws of a foreign government or with a principal place of business outside the United States.
- A number of proposals addressing Foreign Purchase of Farmland are under consideration in the U.S. House of Representatives and U.S. Senate. If any of these bills are signed into law, it would preempt any conflicts with state law.



# USDA Farm Service Agency Report

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- As of December 31, 2021
  - 777,176 acres of land in MS have foreign interest (2.6%).
  - 757,816 Ag acres have foreign interest (2.5%).
  - U.S. Agricultural and NonAgricultural Landholdings by Country of Foreign Investor (examples):
    - Netherlands Ag and NonAg Landholdings: 357,582 acres.
    - Germany Ag and NonAg Landholdings: 60,352 acres.
    - China Ag Landholdings: 88 acres.

# Attorney General Lynn Fitch Opinion

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- **Question Presented**

- Based on the restrictions imposed in Miss. Code Ann. § 89-1-23 is the transfer of title in land to any single foreign investor in excess of 320 acres null and void?



*Lynn Fitch*  
ATTORNEY GENERAL  
OPINIONS AND POLICY

May 9, 2023

Andy Gipson, Commissioner  
Mississippi Department of Agriculture & Commerce  
Post Office Box 1609  
Jackson, Mississippi 39215-1609

Re: Nonresident Aliens Owning Over 320 Acres of Land in Mississippi

Dear Commissioner Gipson:

The Office of the Attorney General has received your request for an official opinion.

**Question Presented**

Based on the restrictions imposed in Mississippi Code Annotated Section 89-1-23, is the transfer of title in land to any single foreign investor in excess of 320 acres null and void?

**Brief Response**

Section 89-1-23 places restrictions on nonresident aliens acquiring or holding land in Mississippi, including the 320-acre industrial development limitation you reference. However, regarding the consequence of violating Section 89-1-23, the statute only states that “[a]ll land held or acquired contrary to this section shall escheat to the state.”

**Applicable Law and Discussion**

Section 89-1-23 provides, in part:

Except as otherwise provided in this section, nonresident aliens shall not hereafter acquire or hold land, but a nonresident alien 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. *All land held or acquired contrary to this section shall escheat to the state*; but a title to real estate in the name of a citizen of the United States, or a person who has declared his intention of becoming a citizen, whether

resident or nonresident, if he be a purchaser or holder, shall not be forfeited or escheated by reason of the alienage of any former owner or other person.

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 hereafter inherit, or if he or she heretofore inherited or acquired or hereafter inherits, may hold, own, transmit by descent or transfer land free from any escheat to the State of Mississippi, if said land has not heretofore escheated by final valid order or decree of a court of competent jurisdiction.

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. In addition, any nonresident alien may acquire and hold not to exceed five (5) acres of land for residential purposes. The nonresident alien may dispose of any such land, but if any land acquired for industrial development ceases to be used for industrial development while owned by a nonresident alien, it shall escheat to the state. The limitation set forth in this paragraph shall not apply to corporations in which the stock thereof is partially or wholly owned by nonresident aliens.*

(Emphasis added).

As shown, Section 89-1-23 contains certain exceptions to the general prohibition of nonresident aliens acquiring or holding land in Mississippi, including the 320-acre industrial development limitation referenced in your request. Land acquired pursuant to national treaties is also exempt from this prohibition. *See De Tenorio v. McGowan*, 510 F.2d 92, 95 (5th Cir. 1975) (“This statutory provision yields, of course, to any applicable provision of any valid Treaty of the United States with a foreign country, constituting a part of the Supreme Law of the Land . . .”).

We note that although nonresident alien is not defined by statute, the language of Section 89-1-23 implies that the term only applies to individuals. Further, the statute explicitly provides that the 320-acre industrial development limitation “shall not apply to corporations in which the stock thereof is partially or wholly owned by nonresident aliens.” Miss. Code Ann. § 89-1-23.

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. Pursuant to Section 7-5-25, this office is authorized to issue official opinions upon questions of state law only.



Andy Gipson, Commissioner  
May 9, 2023  
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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Maggie Kate Bobo*

Maggie Kate Bobo  
Special Assistant Attorney General

OFFICIAL OPINION

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# Committee Discussion

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# Committee Business

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- Elect Chairman; Vice Chairman; Other Officers; Adopt Procedures
- Create a public comment policy for Committee
- MDAC website: [www.mdac.ms.gov/farmland](http://www.mdac.ms.gov/farmland)
- Public comments due November 9: [farmland@mdac.ms.gov](mailto:farmland@mdac.ms.gov)
- Maintain list of questions and information requested by Committee
- Next meetings:
  - September 27 - briefing by the National Agricultural Law Center
  - October 18 or 19
  - November 9

