



February 15, 2022

ENGROSSED SENATE BILL No. 388

DIGEST OF SB 388 (Updated February 14, 2022 2:29 pm - DI 77)

Citations Affected: IC 21-49; IC 32-22.

Synopsis: Foreign gifts and ownership of agricultural land. Requires a postsecondary educational institution (institution) to file a disclosure report with the legislative council and the attorney general whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 (as opposed to \$50,000) or more. Provides that whenever it appears that an institution has failed to comply with gift disclosure requirements, a civil action may be brought by the attorney
(Continued next page)

Effective: July 1, 2022.

**Messmer, Tomes, Leising, Raatz,
Koch, Alting, Doriot, Garten, Kruse**
(HOUSE SPONSORS — LINDAUER, MOED)

January 11, 2022, read first time and referred to Committee on Agriculture.

January 20, 2022, reported favorably — Do Pass.

January 27, 2022, read second time, amended, ordered engrossed.

January 28, 2022, engrossed.

February 1, 2022, read third time, passed. Yeas 47, nays 2.

HOUSE ACTION

February 8, 2022, read first time and referred to Committee on Agriculture and Rural Development.

February 14, 2022, amended, reported — Do Pass.

February 15, 2022, referred to Committee on Education pursuant to Rule 84.

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Digest Continued

general or at the request of: (1) a member of the general assembly; (2) the governor; (3) a member of the commission for higher education; (4) a member of the state board of education; or (5) an Indiana taxpayer; to compel compliance with the gift disclosure requirements. Provides that beginning July 1, 2022, a foreign business entity may not acquire agricultural land located within Indiana for the purposes of farming. Specifies exceptions. Prohibits a foreign business entity that owns agricultural land located within Indiana from transferring the agricultural land to another foreign business entity after June 30, 2022. Requires a foreign business entity to report the acquisition, sale, or transfer of agricultural land located within Indiana to the secretary of state. Provides that agricultural land acquired, sold, or transferred in violation of law is subject to forfeiture to the state.

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February 15, 2022

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 388

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 21-49 IS ADDED TO THE INDIANA CODE AS
2 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2022]:
4 **ARTICLE 49. POSTSECONDARY EDUCATIONAL**
5 **INSTITUTION TRANSPARENCY**
6 **Chapter 1. Disclosures by Postsecondary Educational**
7 **Institutions of Foreign Gifts and Contracts**
8 **Sec. 1. The following definitions apply throughout this chapter:**
9 (1) "Contract" means any agreement for the acquisition by
10 purchase, lease, or barter of property or services by the
11 foreign source, for the direct benefit or use of either of the
12 parties.
13 (2) "Foreign source" means:
14 (A) a foreign government, including an agency of a foreign
15 government;
16 (B) a legal entity, governmental or otherwise, created
17 solely under the laws of a foreign state or states;

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- 1 (C) an individual who is not a citizen or national of the
 2 United States or a trust territory or protectorate thereof;
 3 or
 4 (D) an agent, including a subsidiary or an affiliate of a
 5 foreign legal entity, acting on behalf of a foreign source.
 6 (3) "Gift" means money or property provided without
 7 payment in return.
 8 (4) "Institution" means any institution, public or private, or,
 9 if a multicampus institution, any single campus of the
 10 institution, in Indiana that:
 11 (A) is legally authorized within Indiana to provide a
 12 program of education for a postsecondary school;
 13 (B) is accredited by a nationally recognized accrediting
 14 agency or association and to which institution state
 15 financial assistance is extended (directly or indirectly
 16 through another entity or person), or which the institution
 17 receives support from the extension of state financial
 18 assistance to any of the institution's subunits; or
 19 (C) is an institutionally related:
 20 (i) foundation;
 21 (ii) alumni association;
 22 (iii) real estate foundation;
 23 (iv) university hospital or health center;
 24 (v) athletic foundation or club; or
 25 (vi) research organization.
 26 (5) "Restricted or conditional gift or contract" means any
 27 endowment, gift, grant, contract, award, present, or property
 28 of any kind that includes provisions:
 29 (A) regarding the employment, assignment, or termination
 30 of faculty or staff;
 31 (B) regarding the establishment of departments, centers,
 32 research or lecture programs, or new faculty positions;
 33 (C) that influence or direct any institutional policy, or the
 34 materials, activities, or curriculum used in a course or
 35 program of study;
 36 (D) regarding the selection or admission of students; or
 37 (E) regarding the awarding of grants, loans, scholarships,
 38 fellowships, or other forms of financial aid restricted to
 39 students of a specified country, religion, sex, ethnic origin,
 40 or political opinion.
 41 Sec. 2. (a) Whenever any institution is owned or controlled by
 42 a foreign source or receives a gift from or enters into a contract



1 with a foreign source, the value of which is two hundred and fifty
 2 thousand dollars (\$250,000) or more, considered alone or in
 3 combination with all other gifts from or contracts with that foreign
 4 source within a calendar year, the institution shall file a disclosure
 5 report with the legislative council in an electronic format under
 6 IC 5-14-6 and the attorney general in a manner prescribed by the
 7 attorney general. If an institution is required to file a disclosure
 8 report under this subsection, the disclosure report must be filed not
 9 later than:

10 (1) January 31; or

11 (2) July 31;

12 that next follows the date in which the school entity receives a gift
 13 that requires the filing of a disclosure report.

14 (b) Each report to the legislative council and attorney general
 15 required by this section shall contain the following:

16 (1) For each gift received from or contract entered into with
 17 a foreign source other than a foreign government, the report
 18 shall disclose:

19 (A) the name and primary address of the foreign source;

20 (B) the total amount, the date, and a description of any
 21 conditions or restrictions for each grant or contract;

22 (C) the country of citizenship, or if unknown, the principal
 23 residence for a foreign source who is a natural person, and
 24 the country of incorporation, or if unknown, the principal
 25 place of business for a foreign source that is a legal entity;
 26 and

27 (D) the aggregate amount of such gifts and contracts
 28 attributable to a particular country.

29 (2) For gifts received from or contracts entered into with a
 30 foreign government, the amount, the date, a description of the
 31 conditions or restrictions for each grant of gift, and the name
 32 of the foreign government, government agency, and any
 33 individual signatories to any contracts or agreements signed.

34 (c) Notwithstanding subsection (b), whenever any institution
 35 receives a restricted or conditional gift or contract from a foreign
 36 source, the institution shall disclose the following:

37 (1) For gifts received from or contracts entered into with a
 38 foreign source other than a foreign government, the amount,
 39 the date, and a description of the conditions or restrictions.
 40 The report shall also disclose the country of citizenship, or if
 41 unknown, the principal residence for a foreign source who is
 42 a natural person, and the country of incorporation, or if



1 unknown, the principal place of business for a foreign source
2 that is a legal entity. An electronic copy of any agreements or
3 documents relative to the gifts or contracts shall also be
4 included in the disclosure.

5 (2) For gifts received from or contracts entered into with a
6 foreign government, the amount, the date, a description of the
7 conditions or restrictions, and the name of the foreign
8 government. An electronic copy of any agreements or
9 documents relative to the gifts or contracts shall also be
10 included in the disclosure.

11 (3) In the case of an institution that is owned or controlled by
12 a foreign source, information required under subsection (b)(1)
13 and the identity of the foreign source, the date on which the
14 foreign source assumed ownership or control, and any
15 changes in program or structure resulting from the change in
16 ownership or control.

17 **Sec. 3.** All disclosure reports required by this chapter are public
18 records that may be inspected and copied under IC 5-14-3.

19 **Sec. 4. (a)** If it appears that an institution has failed to comply
20 with the requirements of this chapter, including any rule adopted
21 under section 6 of this chapter, a civil action may be brought by the
22 attorney general or at the request of:

- 23 (1) a member of the general assembly;
- 24 (2) the governor;
- 25 (3) a member of the commission;
- 26 (4) a member of the state board of education; or
- 27 (5) an Indiana taxpayer;

28 in a circuit or superior court to request such court to compel
29 compliance with the requirements of this chapter.

30 (b) An institution shall pay to the attorney general the full costs
31 to the state of obtaining compliance, including all associated costs
32 of investigation and enforcement if the institution is found to have
33 knowingly or willingly failed to comply with the requirements of
34 this chapter, including any rule or regulation promulgated
35 thereunder.

36 **Sec. 5.** The provisions of this chapter are severable in the
37 manner provided in IC 1-1-1-8(b).

38 **Sec. 6.** The attorney general may adopt rules under IC 4-22-2 to
39 carry out this chapter.

40 SECTION 2. IC 32-22-3 IS ADDED TO THE INDIANA CODE AS
41 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2022]:



1 **Chapter 3. Rights of a Foreign Business Entity to Hold and**
 2 **Convey Agricultural Land**

3 **Sec. 0.5. (a) The prohibition on ownership of agricultural land**
 4 **established by this chapter does not apply to the following:**

5 (1) **Agricultural land that is used for research or experimental**
 6 **purposes, including testing, developing, or producing seeds or**
 7 **plants for sale or resale to farmers as seed stock.**

8 (2) **The acquisition by a foreign business entity of agricultural**
 9 **land or an interest in agricultural land that is located within**
 10 **Indiana and that is not more than three hundred twenty (320)**
 11 **acres.**

12 (3) **As used in this subdivision "confined feeding operation"**
 13 **has the meaning set forth in IC 13-11-2-40. The acquisition by**
 14 **a foreign business entity of a confined feeding operation or**
 15 **agricultural land on which to construct a confined feeding**
 16 **operation.**

17 **(b) This chapter does not affect the ability of a foreign business**
 18 **entity to hold or acquire by grant, purchase, devise, descent, or**
 19 **otherwise agricultural land in such acreage as may be necessary to**
 20 **its business operations for purposes other than farming.**

21 **Sec. 1. As used in this chapter, "agricultural land" means land**
 22 **for use in farming.**

23 **Sec. 2. (a) As used in this chapter, "foreign business entity"**
 24 **means:**

25 (1) **a corporation, professional corporation, nonprofit**
 26 **corporation, limited liability company, partnership, or limited**
 27 **partnership that is organized under the laws of another**
 28 **country; or**

29 (2) **the equivalent of any entity described in subdivision (1).**

30 **(b) The term includes an agent, trustee, or fiduciary of the**
 31 **foreign business entity.**

32 **Sec. 3. (a) Except as provided in section 0.5 of this chapter, after**
 33 **June 30, 2022, a foreign business entity may not acquire by grant,**
 34 **purchase, devise, descent, or otherwise any agricultural land**
 35 **located within Indiana for the purposes of farming.**

36 **(b) Except as provided in section 0.5 of this chapter, a foreign**
 37 **business entity that acquired agricultural land located within**
 38 **Indiana before July 1, 2022, may not grant, sell, or otherwise**
 39 **transfer the agricultural land to any other foreign business entity**
 40 **after June 30, 2022.**

41 **Sec. 4. In the case of agricultural land for which development of**
 42 **the agricultural land for a purpose other than farming is pending,**



1 the agricultural land may be leased to a person who is not subject
2 to this chapter for farming.

3 Sec. 5. (a) A foreign business entity that acquires, sells, or
4 transfers agricultural land located within Indiana for the purposes
5 of farming after June 30, 2022, must report the acquisition, sale, or
6 transfer to the secretary of state not later than thirty (30) days
7 after the acquisition, sale, or transfer of the agricultural land is
8 finalized. The report must be made in the form and manner
9 prescribed by the secretary of state. The secretary of state shall
10 report an acquisition, sale, or transfer of agricultural land that
11 violates section 3 of this chapter to the attorney general.

12 (b) All agricultural land acquired, sold, or transferred in
13 violation of section 3 of this chapter is subject to forfeiture to the
14 state. The attorney general shall enforce a forfeiture under this
15 subsection.



COMMITTEE REPORT

Madam President: The Senate Committee on Agriculture, to which was referred Senate Bill No. 388, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 388 as introduced.)

LEISING, Chairperson

Committee Vote: Yeas 8, Nays 1

 SENATE MOTION

Madam President: I move that Senate Bill 388 be amended to read as follows:

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"Sec. 0.5. (a) The prohibition on ownership of agricultural land established by this chapter does not apply to the following:

(1) Agricultural land that is used for research or experimental purposes, including testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock.

(2) The acquisition of agricultural land or an interest in agricultural land that is located within Indiana by a foreign business entity that is not more than three hundred twenty (320) acres.

(b) This chapter does not affect the ability of a foreign business entity to hold agricultural land in such acreage as may be necessary to its business operations for purposes other than farming."

Page 1, line 6, delete "refers to land".

Page 1, delete lines 7 through 12 and insert **"means land suitable for use in farming.**

Sec. 2. (a) As used in this chapter, "farming" means the cultivation of land for the production of agricultural crops.

(b) The term does not include the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, or the production of livestock.

Sec. 3. (a) As used in this chapter, "foreign business entity" means:

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(1) a corporation, professional corporation, nonprofit corporation, limited liability company, partnership, or limited partnership that is organized under the laws of another country; or

(2) the equivalent of any entity described in subdivision (1).

(b) The term includes an agent, trustee, or fiduciary of the foreign business entity."

Page 1, line 13, delete "Sec. 3. (a) Beginning July 1, 2022," and insert "**Sec. 4. (a) After June 30, 2022,**".

Page 1, line 17, delete "on or before June 30, 2022," and insert "**before July 1, 2022,**".

Page 2, line 2, delete "on or after July 1, 2022." and insert "**after June 30, 2022.**".

Page 2, delete lines 3 through 10, begin a new paragraph and insert: "**Sec. 5. In the case of agricultural land for which development of the agricultural land for a purpose other than farming is pending, the agricultural land may be leased to a person who is not subject to this chapter for farming.**".

Page 2, line 11, delete "Sec. 4." and insert "**Sec. 6.**".

Page 2, line 12, delete "on or after July".

Page 2, line 13, delete "1, 2022," and insert "**after June 30, 2022,**".

Page 2, line 19, delete "section 3" and insert "**section 4**".

Page 2, line 21, delete "section 3" and insert "**section 4**".

(Reference is to SB 388 as printed January 21, 2022.)

MESSMER

COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture and Rural Development, to which was referred Senate Bill 388, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 21-49 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

ARTICLE 49. POSTSECONDARY EDUCATIONAL INSTITUTION TRANSPARENCY

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Chapter 1. Disclosures by Postsecondary Educational Institutions of Foreign Gifts and Contracts

Sec. 1. The following definitions apply throughout this chapter:

(1) "Contract" means any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties.

(2) "Foreign source" means:

(A) a foreign government, including an agency of a foreign government;

(B) a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states;

(C) an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof; or

(D) an agent, including a subsidiary or an affiliate of a foreign legal entity, acting on behalf of a foreign source.

(3) "Gift" means money or property provided without payment in return.

(4) "Institution" means any institution, public or private, or, if a multicampus institution, any single campus of the institution, in Indiana that:

(A) is legally authorized within Indiana to provide a program of education for a postsecondary school;

(B) is accredited by a nationally recognized accrediting agency or association and to which institution state financial assistance is extended (directly or indirectly through another entity or person), or which the institution receives support from the extension of state financial assistance to any of the institution's subunits; or

(C) is an institutionally related:

(i) foundation;

(ii) alumni association;

(iii) real estate foundation;

(iv) university hospital or health center;

(v) athletic foundation or club; or

(vi) research organization.

(5) "Restricted or conditional gift or contract" means any endowment, gift, grant, contract, award, present, or property of any kind that includes provisions:

(A) regarding the employment, assignment, or termination of faculty or staff;



- (B) regarding the establishment of departments, centers, research or lecture programs, or new faculty positions;
- (C) that influence or direct any institutional policy, or the materials, activities, or curriculum used in a course or program of study;
- (D) regarding the selection or admission of students; or
- (E) regarding the awarding of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

Sec. 2. (a) Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is two hundred and fifty thousand dollars (\$250,000) or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the legislative council in an electronic format under IC 5-14-6 and the attorney general in a manner prescribed by the attorney general. If an institution is required to file a disclosure report under this subsection, the disclosure report must be filed not later than:

- (1) January 31; or
- (2) July 31;

that next follows the date in which the school entity receives a gift that requires the filing of a disclosure report.

(b) Each report to the legislative council and attorney general required by this section shall contain the following:

- (1) For each gift received from or contract entered into with a foreign source other than a foreign government, the report shall disclose:
 - (A) the name and primary address of the foreign source;
 - (B) the total amount, the date, and a description of any conditions or restrictions for each grant or contract;
 - (C) the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source that is a legal entity; and
 - (D) the aggregate amount of such gifts and contracts attributable to a particular country.
- (2) For gifts received from or contracts entered into with a foreign government, the amount, the date, a description of the



conditions or restrictions for each grant of gift, and the name of the foreign government, government agency, and any individual signatories to any contracts or agreements signed.

(c) Notwithstanding subsection (b), whenever any institution receives a restricted or conditional gift or contract from a foreign source, the institution shall disclose the following:

(1) For gifts received from or contracts entered into with a foreign source other than a foreign government, the amount, the date, and a description of the conditions or restrictions. The report shall also disclose the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source that is a legal entity. An electronic copy of any agreements or documents relative to the gifts or contracts shall also be included in the disclosure.

(2) For gifts received from or contracts entered into with a foreign government, the amount, the date, a description of the conditions or restrictions, and the name of the foreign government. An electronic copy of any agreements or documents relative to the gifts or contracts shall also be included in the disclosure.

(3) In the case of an institution that is owned or controlled by a foreign source, information required under subsection (b)(1) and the identity of the foreign source, the date on which the foreign source assumed ownership or control, and any changes in program or structure resulting from the change in ownership or control.

Sec. 3. All disclosure reports required by this chapter are public records that may be inspected and copied under IC 5-14-3.

Sec. 4. (a) If it appears that an institution has failed to comply with the requirements of this chapter, including any rule adopted under section 6 of this chapter, a civil action may be brought by the attorney general or at the request of:

- (1) a member of the general assembly;
- (2) the governor;
- (3) a member of the commission;
- (4) a member of the state board of education; or
- (5) an Indiana taxpayer;

in a circuit or superior court to request such court to compel compliance with the requirements of this chapter.

(b) An institution shall pay to the attorney general the full costs



to the state of obtaining compliance, including all associated costs of investigation and enforcement if the institution is found to have knowingly or willingly failed to comply with the requirements of this chapter, including any rule or regulation promulgated thereunder.

Sec. 5. The provisions of this chapter are severable in the manner provided in IC 1-1-8(b).

Sec. 6. The attorney general may adopt rules under IC 4-22-2 to carry out this chapter."

Page 1, delete lines 11 through 14, begin a new line block indented and insert:

"(2) The acquisition by a foreign business entity of agricultural land or an interest in agricultural land that is located within Indiana and that is not more than three hundred twenty (320) acres.

(3) As used in this subdivision "confined feeding operation" has the meaning set forth in IC 13-11-2-40. The acquisition by a foreign business entity of a confined feeding operation or agricultural land on which to construct a confined feeding operation."

Page 1, line 16, after "hold" insert "**or acquire by grant, purchase, devise, descent, or otherwise**".

Page 2, line 3, delete "suitable".

Page 2, delete lines 4 through 9.

Page 2, line 10, delete "3." and insert "**2.**".

Page 2, line 19, delete "4." and insert "**3.**".

Page 2, line 19, delete "After" and insert "**Except as provided in section 0.5 of this chapter, after**".

Page 2, line 21, delete "Indiana." and insert "**Indiana for the purposes of farming.**".

Page 2, line 22, delete "A" and insert "**Except as provided in section 0.5 of this chapter, a**".

Page 2, line 26, delete "5." and insert "**4.**".

Page 2, line 30, delete "6." and insert "**5.**".

Page 2, line 31, after "Indiana" insert "**for the purposes of farming**".

Page 2, line 37, delete "4" and insert "**3**".



Page 2, line 40, delete "4" and insert "3".
Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to SB 388 as reprinted January 28, 2022.)

LEHE

Committee Vote: yeas 12, nays 0.

