

TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE BILL NO. 1135
HOUSE AGRICULTURE COMMITTEE
FEBRUARY 3, 2023

Mr. Chairman and Members of the House Agriculture Committee. I am Lawrence R. Klemin, Representative for District 47 in Bismarck. I am here to testify in support of House Bill 1135, relating to the acquisition of agricultural land in North Dakota by a foreign government or by a state-controlled enterprise of a foreign government.

This bill originated as a result of concerns by several constituents and other citizens of North Dakota about the acquisition of agricultural land in Grand Forks County near the USAF Strategic Air Command Base by an individual or enterprise that might be under the control of China. This bill is prospective only, so it wouldn't affect that situation, but could prevent a similar situation in the future. I also understand that the land near the airbase was rezoned industrial a couple of weeks before the closing of that purchase. I have no evidence that the rezoning was intended to evade current restrictions on the acquisition of agricultural land by aliens, but there is that implication from the circumstances.

North Dakota law in Chapter 47-10.1 of the North Dakota Century Code restricts the purchase of agricultural land by aliens subject to several exceptions. A copy of that short chapter is attached for your ease of reference. The main focus of this chapter applies to "individuals" who are not citizens of the United States or Canada, or who are not permanent resident aliens of the United States. Business organizations are not allowed to acquire any interest in agricultural land unless the ultimate beneficial interest is held by citizens of the United States or by permanent resident aliens of the United States.

This law does not apply to foreign corporations or foreign limited liability companies who acquire agricultural land for use as an industrial site if construction contracts are entered into within 150 days after the acquisition. The foreign corporation or foreign limited liability company must dispose of the land within one year after acquisition if the contracts are not entered into within 150 days after acquisition.

However, there is nothing in North Dakota law that currently prohibits the acquisition of agricultural land by a foreign government or by a state-controlled enterprise of a foreign government. HB 1135 corrects this omission and provides in Section 2 at the bottom of page 3 of the bill that:

"A foreign government may not purchase, acquire, lease, or hold any interest in agricultural land in the state."

This prohibition is effective July 1, 2023, and does not apply to lands in North Dakota currently held by a foreign government.

Three new definitions are contained in Section 1 of the bill. A “foreign government” is defined as a “government” or a “state-controlled enterprise” of a foreign government. A “state-controlled enterprise” is defined as a business enterprise in which a foreign government has a “controlling interest”. A “controlling interest” is defined as either possession of 51% or more of the ownership interest, or if less than 51%, if the foreign government actually directs the business and affairs of the entity.

Current law authorizes the Attorney General to enforce violations of the law, who can require the foreign entity to divest itself of the land. The Commissioner of Agriculture is required to monitor for compliance with this law. Reports transmitted to the Commissioner from the U.S. Department of Agriculture pursuant to the Agricultural Foreign Investment Disclosure Act of 1978 are required to be made available to the public.

The federal law does not prohibit the acquisition of agricultural land or other property by foreign governments. It only requires disclosure. I have obtained the federal reports for the past year and have copies if you would like to review them. These reports do not include the acquisition of the land in Grand Forks County that has been of recent concern. They relate to acquisition of leasehold interests in North Dakota land for use as sites for wind turbine operations. The only foreign government directly named is Canada, which apparently owns a business entity for wind turbines. The other reports show a series of several business entities starting with foreign companies that have organized business entities in the United States to be the entity that holds the leasehold interests in North Dakota.

There is no information available from the North Dakota Commissioner of Agriculture about how much land in North Dakota is currently owned by foreign governments. Attached is a report from the Congressional Research Service dated January 24, 2023, which contains data on foreign ownership of U.S. agricultural land. According to the chart on page 2, Figure 2 shows foreign holdings of agricultural land in 2021 in North Dakota of between 250,000 and 500,000 acres.

Mr. Chairman and Members of the Committee, it is time for North Dakota to put a stop to the direct and indirect ownership of agricultural land in our State. We should stop the acquisition of agricultural land by countries who are not our friends, especially near strategic defense sites in our country.

I urge you to recommend “do pass” on HB 1135. Thank you.

CHAPTER 47-10.1 Agricultural Land Ownership by Aliens

- 47-10.1-01. Definitions.
- 47-10.1-02. Restriction on acquisition — Exceptions.
- 47-10.1-03. Recording. [Repealed]
- 47-10.1-04. Enforcement.
- 47-10.1-05. Reports.
- 47-10.1-06. Penalty.

47-10.1-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. “Agricultural land” means land capable of use in the production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but does not include any land zoned by a local governmental unit for a use other than, and nonconforming with, agricultural use, but does not include any oil, gas, coal, or other minerals underlying the land, any interest in minerals, separate from the surface, whether acquired by lease or otherwise, or any easements or tracts of land acquired in connection with the extraction, refining, processing, or transportation of minerals.

2. “Interest in agricultural land” includes any leasehold interest.

Source:

S.L. 1979, ch. 484, § 1.

Collateral References.

Construction and application of terms “agricultural,” “farm,” “farming,” or the like, in zoning regulations, 38 A.L.R.5th 357.

47-10.1-02. Restriction on acquisition — Exceptions.

1. An individual who is not a citizen of the United States, a citizen of Canada, or a permanent resident alien of the United States may not acquire directly or indirectly any interest in agricultural land unless:

a. The individual is an alien entitled to enter the United States under the provisions of a treaty of commerce and navigation between the United States and the foreign state of which the individual is a national, solely to develop and direct the operations of an enterprise in which the

individual has invested or to direct the operations of an enterprise in which the individual is actively in the process of investing a substantial amount of capital;

b. The individual resides in this state for at least ten months out of every year;

c. The individual actively participates in the operation of the agricultural land;

d. The agricultural landholding does not exceed six hundred forty acres [258.99 hectares];

and

e. The agricultural landholding includes a dairy operation.

2. An individual who is permitted to acquire an interest in agricultural land under subsection 1 shall:

a. Notify the agriculture commissioner of any land acquisition within thirty days of the acquisition; and

b. Annually provide the agriculture commissioner with a list of all addresses at which the individual resided during the previous year and the dates during which the individual resided at each address.

3. If an individual ceases to meet the exceptions provided for in subsection 1, the individual shall dispose of the agricultural land within twenty-four months.

4. A partnership, limited partnership, limited liability company, trustee, or other business entity may not, directly or indirectly, acquire or otherwise obtain any interest, whether legal, beneficial, or otherwise, in any title to agricultural land unless the ultimate beneficial interest of the entity is held directly or indirectly by citizens of the United States or permanent resident aliens of the United States.

5. This section does not apply to agricultural land that may be acquired by devise, inheritance, as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; provided, that all agricultural land acquired in the collection of debts or by the enforcement of a lien or claim must be disposed of within three years after acquiring ownership if the acquisition would otherwise violate this section.

6. This section does not apply to a foreign corporation or a foreign limited liability company which acquires agricultural land for use as an industrial site when construction contracts are entered into by the corporation or limited liability company within one hundred fifty days after acquisition of the land; provided, that this exception applies only to so much agricultural land as is reasonably necessary for industrial purposes. A foreign corporation or a foreign limited liability company which owns agricultural land for industrial purposes but which discontinues

using the land for industrial purposes shall dispose of the land as provided by chapter 10-06.1. A foreign corporation or foreign limited liability company shall dispose of agricultural land acquired for industrial purposes within one year after acquisition if construction contracts are not entered into within one hundred fifty days after acquisition of the land.

7. This section does not apply to citizens or subjects of a foreign country whose rights to hold land are secured by treaty or to common carriers by railroad subject to the jurisdiction of the interstate commerce commission.

Source:

S.L. 1979, ch. 484, § 2; 1981, ch. 460, § 1; 1993, ch. 54, § 106; 1999, ch. 50, § 66; 2005, ch. 387, § 1.

47-10.1-03. Recording. [Repealed]

Repealed by S.L. 2005, ch. 388, § 1.

47-10.1-04. Enforcement.

If the attorney general has reason to believe that any person is violating section 47-10.1-02, the attorney general shall commence an action in the district court in which any agricultural land relative to the violation is situated, or if situated in two or more counties, in the district court for that county in which a substantial part of the land is situated. The attorney general shall file for record with the recorder in each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of section 47-10.1-02, it shall enter an order so declaring. The attorney general shall file for record any such order with the recorder of each county in which any portion of the land is located. Thereafter, the person, partnership, limited partnership, limited liability company, trustee, or other business entity owning the land has a period of one year from the date of the order to divest itself of the lands. The one-year limitation period is deemed a covenant running with the title to the land against any grantee or assignee. Any land not divested within the time prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of a real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law. No title to land shall be invalid or subject to forfeiture by reason of the alienage of any former owner or person having a former interest therein.

Source:

S.L. 1979, ch. 484, § 4; 1993, ch. 54, § 106; 2001, ch. 120, § 1.

47-10.1-05. Reports.

The commissioner shall monitor for compliance with this chapter all reports transmitted to the commissioner pursuant to the Agricultural Foreign Investment Disclosure Act of 1978 [7 U.S.C. 3501 et seq.]. The commissioner shall make the reports available to the public.

Source:

S.L. 1979, ch. 484, § 5; 1993, ch. 54, § 106; 2011, ch. 339, § 1.

47-10.1-06. Penalty.

Any person violating section 47-10.1-02 is guilty of a class A misdemeanor.

Source:

S.L. 1979, ch. 484, § 6; 2011, ch. 339, § 2.



Updated January 24, 2023

Foreign Ownership and Holdings of U.S. Agricultural Land

The 117th Congress introduced a range of proposals to restrict foreign investment and ownership in the U.S. food and agriculture sector and enacted certain new reporting requirements for the U.S. Department of Agriculture (USDA) related to disclosure of foreign ownership of U.S. agricultural lands. The 118th Congress might consider these or related proposals during the next farm bill debate.

Existing Federal Requirements

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; P.L. 95-460, 7 U.S.C. §§3501-3508), as 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 (7 U.S.C. 3508; 7 C.F.R. §781.2). AFIDA 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. The regulations require foreign persons who buy, sell, or gain interest in U.S. agricultural land to disclose their holdings and transactions to USDA directly or to the Farm Service Agency county office where the land is located. Failure to disclose this information may result in penalties and fines. After the original disclosure (Form FSA-153), each subsequent change of ownership or use must be reported. USDA compiles these data, with the most recent AFIDA report covering 2021.

Foreign persons or entities may be eligible for certain USDA farm program benefits if they meet the same requirements as domestic persons or entities. Specifically, they must be considered *actively engaged in farming* (7 U.S.C. §1308-1), meaning they are either farming the land or landlords renting land under a crop-share agreement. They also must have the requisite U.S. taxpayer ID and meet the program’s eligibility requirements. Other criteria may apply, such as limits on the entity’s adjusted gross income. Current law imposes no restrictions on foreign persons or entities with respect to eligibility for crop and livestock insurance premium subsidies. Some programs make no distinction about a producer’s or owner’s citizenship (e.g., the Dairy Margin Coverage program), and other programs have no explicit citizenship requirement (e.g., the U.S. sugar program). Foreign persons or entities are not eligible for permanent disaster assistance programs;

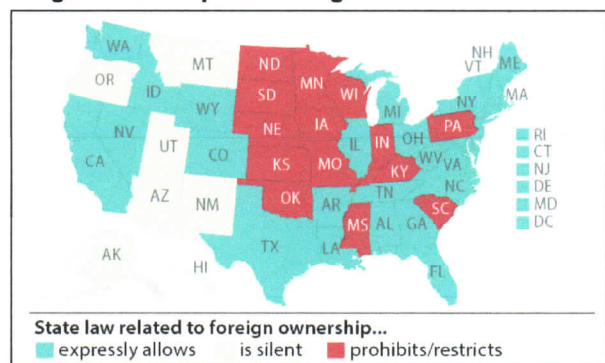
the Noninsured Crop Disaster Assistance Program explicitly prohibits payments to foreign entities other than resident aliens. See CRS Report R46248, *U.S. Farm Programs: Eligibility and Payment Limits* and USDA’s fact sheet, *Payment Eligibility and Payment Limitations*.

Existing State Requirements

Some states and localities have instituted restrictions on foreign ownership of farmland. An overview of state laws by researchers at the University of Arkansas’s National Agricultural Law Center shows that no U.S. state has instituted an absolute prohibition on foreign ownership. However, some states limit or have proposed to prohibit certain foreign persons and entities from acquiring or owning an interest in agricultural land within their state, and several states have separate disclosure requirements within their state (Figure 1). USDA has identified 339 counties in Iowa, Kansas, Pennsylvania, and Wisconsin as having the strictest prohibitions on foreign ownership of agricultural land and other nonagricultural real estate.

There is no single uniform approach under state laws to addressing foreign ownership. Some general categories include restrictions on the amount of land that can be owned or the duration of ownership; distinctions involving private versus public land or how *agricultural land* is defined; distinctions involving resident/nonresident aliens; inheritance considerations involving land ownership; restrictions on ownership by foreign corporations (e.g., corporate farming laws or requirements corporations are subject to in order to obtain license or register); and differences related to enforcement and penalties.

Figure 1. Overview of Selected State Laws Related to Foreign Ownership of U.S. Agricultural Land



Source: CRS using data from National Agricultural Law Center, at <https://nationalaglawcenter.org/state-compilations/aglandownership/>, as depicted at <https://nalcprowpenginepowered.com/wp-content/uploads/assets/Webinars/Foreign-Land-Ownership.pdf>.

USDA Data on Foreign Ownership

USDA reports that foreign persons and entities held an interest in 40.8 million acres of U.S. agricultural land in 2021, accounting for 3.1% of total privately owned land (Table 1). These data cover agricultural land and nonagricultural land. In 2021, forestland accounted for 47% of all foreign-owned land, cropland accounted for 29%, and pasture and other agricultural land for 22%. Nonagricultural land (such as homesteads and roads) accounted for 2%. USDA reports that foreign land holdings have increased by an average of 2.2 million acres per year since 2015. Data cover both foreign-owned (29.1 million acres) and U.S. subsidiary-owned land (11.7 million acres) (Table 1).

Five countries accounted for approximately 62% of all foreign-owned U.S. agricultural land in 2021. As a share of all foreign-owned acres, these were Canada (31%, mostly forestland), the Netherlands (12%), Italy (7%), the United Kingdom (6%), and Germany (6%). Other countries with holdings of more than 500,000 acres were Portugal, France, Denmark, Luxembourg, Mexico, Switzerland, the Cayman Islands, Japan, and Belgium.

Table 1. Foreign Holdings of Agricultural Land, 2021

Country	Total	U.S. Entities		% of U.S. Private Land
		Foreign Entities	w/ Foreign Shares	
		(million acres)		(percent)
Canada	12.8	9.7	3.2	1.0%
Netherlands	4.9	4.4	0.5	0.4%
Italy	2.7	2.6	0.1	0.2%
United Kingdom	2.5	1.5	1.0	0.2%
Germany	2.3	1.4	0.9	0.2%
Subtotal	25.2	19.6	5.7	2.0%
Other Countries	12.4	7.1	5.3	1.0%
Not Listed	3.2	2.4	0.8	0.3%
Total	40.8	29.1	11.7	3.1%

Source: CRS from USDA, *Foreign Holdings of U.S. Agricultural Land through December 31, 2021* (Report 6). Data cover sole foreign and joint U.S. ownership of privately held agricultural and nonagricultural land (1,290.5 million acres in 2021). May not add due to rounding.

Notes: “Foreign Entities” refer to holdings by individual foreign investors or entities not created in the United States; “U.S. Entities w/ Foreign Shares” refer to interests of U.S. corporations with foreign shareholders. “Not Listed” covers AFIDA codes 998 (no foreign investor listed) and 999 (no predominant country code).

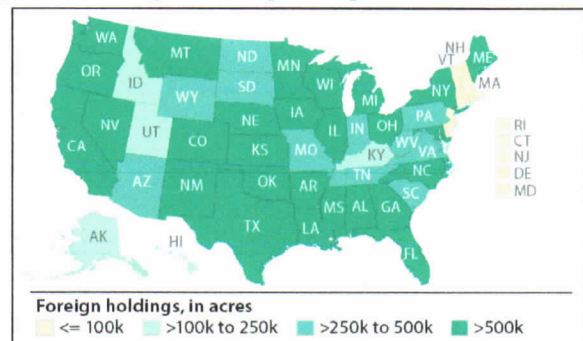
All U.S. states report foreign investment/ownership in U.S. land (Figure 2). As of year-end 2021, according to USDA, the states with the most foreign-owned agricultural acreage were Texas (5.3 million acres), Maine (3.6 million acres), Colorado (1.9 million acres), Alabama (1.8 million acres), and Oklahoma (1.7 million acres). Other states with more than 1 million foreign-owned acres were Arkansas, California, Florida, Georgia, Kansas, Louisiana, Michigan, New Mexico, Oregon, and Washington.

Users of USDA’s AFIDA data have noted inaccuracies and underreporting under current disclosure requirements. The Midwest Center for Investigative Reporting asserts that data collected under AFIDA are not complete, contain errors and omissions, do not track sales of foreign-held U.S. farmland, and may not accurately reflect changes over time. For

example, 7.5% of the AFIDA-reported foreign-held acres were for “Country Not Listed,” combining reporting codes 998 (no foreign investor listed) and 999 (no predominant country code) (Table 1). Limited information is available on AFIDA-reported data covering land held by certain countries known to provide certain tax-neutral jurisdictions for private equity firms, such as the Cayman Islands and the British Virgin Islands. Some House Members, including the Chairman of the House Agriculture Committee, have asked the Government Accountability Office (GAO) to conduct a review of AFIDA, including how USDA collects data under AFIDA, how its collection methods have changed over time, how USDA ensures accurate data disclosure, and how reporting requirements under AFIDA might be improved.

There also is increased attention on the possible impact of foreign investment in the U.S. food and agriculture sector, particularly focused on Chinese investment following high-profile acquisitions in the past decade. In 2013, the Chinese firm WH Group (formerly Shuanghui International) acquired U.S. company Smithfield Foods, the world’s largest pork producer. In 2022, Chinese food manufacturer Fufeng Group bought 300 acres of land near the Grand Forks Air Force Base in North Dakota with plans to build a wet corn milling and biofermentation plant. Not including the Fufeng Group purchase in 2022, USDA reports that China accounted for 383,935 acres, or 0.9% of total foreign-owned U.S. agricultural land as of year-end 2021.

Figure 2. Foreign Holdings of Agricultural Land, 2021



Source: CRS from USDA data, available at USDA, *Foreign Holdings of U.S. Agricultural Land Through December 31, 2021* (Report 1).

Proposed Legislative Options

The 117th Congress enacted certain changes and introduced a range of proposals to address concerns involving foreign purchases of U.S. agricultural lands and investment in the U.S. food and agriculture sector. Some of these proposals would have tightened USDA’s disclosure requirements, and others would have restricted USDA program eligibility to foreign entities. The 118th Congress might consider these types of proposals involving USDA during the next farm bill debate. Other congressional proposals reflected various national security concerns and sought to amend federal authorities other than those pertaining to USDA. Some of these proposals would have expanded federal review of foreign investment transactions in the U.S. food and agriculture sector, and others would have prohibited certain foreign adversaries from such investment transactions. See CRS In Focus IF12312, *Foreign Ownership of U.S. Agriculture: Selected Policy Options*.

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