

2023 HOUSE AGRICULTURE

HB 1135

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1135
2/3/2023

Relating to exceptions to the acquisition of agricultural land by foreign governments.

Chairman Thomas called the meeting to order 9:03 AM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Christy, Finley-DeVille, Fisher, Headland, Henderson, Olson, Prichard, Schreiber-Beck, Tveit, VanWinkle. Member absent: Representative Kiefert

Discussion Topics:

- Ownership vs lease holding
- Foreign friends
- Future agribusiness
- Crop research

In favor:

Representative Larry Klemin, District 47, Primary sponsor, #19000, #19597, #19598, #19599
Samuel Wagner, Ag and Food Field Organizer, Dakota Resource Council, #18908
Michael Coachman, Larimore, ND (no written testimony)
Jason Peirce, Devils Lake City Commissioner (no written testimony)
Kerry Dockter, IBAND, (no written testimony)

Opposed:

Travis Zabloutney, Minot farmer (no written testimony)
Doug Goehring, Commissioner, ND Agricultural Department, #19592 and proposed amendment #19654

Additional written testimony:

Mike Beltz, #21052
Frank Tomac, President of IBAND, #18946
Harley Leake, #18956
Matt Perdue, ND Farmers Union, #19010
Julie Ellingson ND Stockmen's Association, #19594

Chairman Thomas adjourned the meeting 9:43 AM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1135
2/16/2023

Relating to exceptions to the acquisition of agricultural land by foreign government.

Chairman Thomas called the meeting to order 10:38 AM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Christy, Finley-DeVille, Fisher, Headland, Henderson, Keifert, Olson, Pritchard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Committee action

Representative Headland moved to adopt the amendment LC #23.0215.01001
Representative Beltz seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	Y
Representative Craig Headland	AB
Representative Donna Henderson	Y
Representative Dwight Kiefert	Y
Representative SuAnn Olson	Y
Representative Brandon Prichard	Y
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	N

Motion passed 11-1-1

Representative Schreiber-Beck moved to further amend, #19654
Representative Fisher seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y

Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	N
Representative Craig Headland	Y
Representative Donna Henderson	N
Representative Dwight Kiefert	Y
Representative SuAnn Olson	N
Representative Brandon Prichard	N
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	N
Representative Lori VanWinkle	N

Motion passed 7-6-0

Chairman Thomas adjourned the meeting 11:17 AM

Diane Lillis, Committee Clerk

DR
191
2-16-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1135

Page 1, line 24, after "possessions" insert "or the government of Canada or its provinces or territories"

Page 2, line 1, after "4." insert "Foreign governmental interest in agricultural land" includes the purchase, acquisition, or possession of any absolute or qualified ownership of land by a foreign government, except does not include a leasehold interest.

5."

Page 2, line 2, replace "5." with "6."

Page 3, line 26, remove "lease."

Page 3, line 26, after "any" insert "foreign governmental"

Page 3, line 28, insert:

9. Notwithstanding the provisions of this chapter, the prohibition on ownership of agricultural land does not apply to the following:
 - a. Agricultural land used for research or experimental purposes, including testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock.
 - b. The acquisition of agricultural land or an interest in agricultural land by a foreign business entity which is not more than three hundred twenty acres [129.5 hectares].

Renumber accordingly

2023 HOUSE STANDING COMMITTEE MINUTES

Agriculture Committee
Room JW327C, State Capitol

HB 1135
2/16/2023

Relating to exceptions to the acquisition of agricultural land by foreign government.

Chairman Thomas called the meeting to order 4:11 PM

Members present: Chairman Thomas, Vice Chairman Beltz, Representatives Christy, Finley-DeVille, Fisher, Headland, Henderson, Keifert, Olson, Pritchard, Schreiber-Beck, Tveit, VanWinkle.

Discussion Topics:

- Committee action

Representative Beltz proposed a do pass as amended.
Representative Kiefert seconded.

Roll call vote:

Representatives	Vote
Representative Paul J. Thomas	Y
Representative Mike Beltz	Y
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	Y
Representative Jay Fisher	N
Representative Craig Headland	Y
Representative Donna Henderson	N
Representative Dwight Kiefert	Y
Representative SuAnn Olson	N
Representative Brandon Prichard	N
Representative Cynthia Schreiber-Beck	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	N

Motion passed 7-6-0

Representative Beltz will carry the bill.

Chairman Thomas adjourned the meeting 4:27 PM

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1135: Agriculture Committee (Rep. Thomas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1135 was placed on the Sixth order on the calendar.

Page 1, line 24, after "possessions" insert "or the government of Canada or its provinces or territories"

Page 2, line 1, after "4." insert "Foreign governmental interest in agricultural land" includes the purchase, acquisition, or possession of any absolute or qualified ownership of land by a foreign government, except does not include a leasehold interest.

5."

Page 2, line 2, replace "5." with "6."

Page 3, line 26, remove "lease."

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Page 3, line 28, insert:

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 - a. Agricultural land used for research or experimental purposes, including testing, developing, or producing seeds or plants for sale or resale to farmers as seed stock.
 - b. The acquisition of agricultural land or an interest in agricultural land by a foreign business entity which is not more than three hundred twenty acres [129.5 hectares].

Re-number accordingly

2023 SENATE ENERGY AND NATURAL RESOURCES

HB 1135

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1135
3/17/2023

A bill relating to exceptions to the acquisition of agricultural land by foreign governments.

11:19 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Beard, Boehm and Magrum are present.

Discussion Topics:

- Land ownership
- United States agricultural land
- Corporations
- Court records

11:20 AM Representative Klemin introduced the bill and provided written testimony #25732, 25733, 25734.

11:37 AM Matt Perdue, North Dakota Farmer's Union, testified in favor. #25659.

11:39 AM Julie Ellingson, Executive Vice President, North Dakota Stockman's Association, spoke in favor of the bill.

11:41 AM Travis Zabloutney spoke opposed to the bill.

11:44 AM Blaine Johnson, Chair, Real Property Section, State Bar Association of North Dakota spoke neutral on the bill.

11:47 AM Carrie Krause, Wells County Recorder, spoke neutral on the bill.

11:52 AM John Ward, Lobbyist, introduced Nick Hacker.

11:52 AM Nick Hacker, Legislative Chair, North Dakota Land Title Association spoke neutral on the bill.

Additional written testimony:

Samuel Wagner #25620

Lisa Feldner #25665

11:53 Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1135
3/24/2023

A bill relating to exceptions to the acquisition of agricultural land by foreign governments.

9:24 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

Discussion Topics:

- Acre carveout
- Amendments
- Canadian land

9:24 AM The committee has discussion on the bill.

9:26 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1135
3/30/2023

A bill relating to exceptions to the acquisition of agricultural land by foreign governments.

9:28 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum are present.

Discussion Topics:

- Amendments

9:28 AM The committee discussed proposed amendments to the bill #27060.

9:32 AM Matt Purdue, North Dakota Farmer's Union, spoke to proposed amendments #27060.

Additional Written Testimony:

Michael Howe #27061

9:32 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1135
3/30/2023

A bill relating to exceptions to the acquisition of agricultural land by foreign governments.

9:49 AM Chairman Patten opened the meeting.

Chairman Patten and Senators Kessel, Kannianen, Boehm, Beard and Magrum were present.

Discussion Topics:

- Amendments

9:53 AM Senator Kannianen moved to adopt amendment #27066.
Senator Kessel seconded the motion.

9:54 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	N
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passed 5-1-0.

10:01 AM Senator Magrum moved to adopt amendment LC 23.0215.02001, "reduce 320 acres to 160 acres".

Motion seconded by Senator Beard.

10:04 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	N
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	N
Senator Greg Kessel	Y

Motion passes 4-2-0.

10:05 AM Senator Magrum moved to Do Pass the bill as Amended.
Motion seconded by Senator Beard.

10:06 AM Roll call vote was taken.

Senators	Vote
Senator Dale Patten	Y
Senator Jeffery J. Magrum	Y
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Jordan L. Kannianen	Y
Senator Greg Kessel	Y

Motion passes 6-0-0.

Senator Beard will carry the bill.

This bill does not affect workforce development.

10:06 AM Chairman Patten closed the meeting.

Rick Schuchard, Committee Clerk

JA
3-30-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1135

Page 4, line 6, replace "following" with "acquisition of agricultural land or an interest in agricultural land by a state-controlled enterprise if the agricultural land"

Page 4, line 7, replace "Agricultural land that is" with "Is"

Page 4, line 7, after "for" insert "agricultural"

Page 4, line 7, after "research" insert "and development."

Page 4, line 8, remove "seeds or plants for sale or resale to farmers as"

Page 4, replace line 9 with "crop production inputs, including seed, fertilizer, pesticides, soil amendments, plants, or biologicals; and"

Page 4, line 10, remove "The acquisition of agricultural land or an interest in agricultural land that is"

Page 4, remove line 11

Page 4, line 12, replace "hundred twenty acres [129.5 hectares]" with "Does not exceed one hundred sixty acres [64.75 hectares]"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1135, as engrossed: Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1135 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 4, line 6, replace "following" with "acquisition of agricultural land or an interest in agricultural land by a state-controlled enterprise if the agricultural land"

Page 4, line 7, replace "Agricultural land that is" with "Is"

Page 4, line 7, after "for" insert "agricultural"

Page 4, line 7, after "research" insert "and development."

Page 4, line 8, remove "seeds or plants for sale or resale to farmers as"

Page 4, replace line 9 with "crop production inputs, including seed, fertilizer, pesticides, soil amendments, plants, or biologicals; and"

Page 4, line 10, remove "The acquisition of agricultural land or an interest in agricultural land that is"

Page 4, remove line 11

Page 4, line 12, replace "hundred twenty acres [129.5 hectares]" with "Does not exceed one hundred sixty acres [64.75 hectares]"

Renumber accordingly

TESTIMONY

HB 1135

Testimony HB1135

Sam Wagner
Ag and Food Field Organizer
Dakota Resource Council
1720 Burnt Boat Dr. Ste 104
Bismarck ND 58503
Testimony in Support for HB1135

To the Honorable Chairman and the members of the Committee, we submit these remarks on behalf of DRC.

Mr. Chairman,

We at DRC favor local control and support keeping foreign ownership out of agriculture in North Dakota. But we would also like to ensure that we take this a step further and make sure that value added agriculture is considered when writing these bills. After reviewing this with HB1503 we believe that these bills should be passed together in order to ensure the most protection for our local farmers and grain elevators.

North Dakota will have to confront foreign governments that have state held interests coming to our state more than ever. We have to be mindful that these organizations and governments, much like out of state corporate interests, do not have our best interests in mind and will often serve their own agenda. Often the goal is similar to the Walmart strategy, drive out the local competition by operating at a loss that they can afford to take and then make the local economy dependent on their company. It's also not uncommon for these companies to take our water rights and resources to operate their operations. When they have them, they will not willingly give them back to us. It's a strategy that has been used for hundreds of years and this law can stop it by not allowing them in to begin with.

We recommend a DO PASS as long as it is passed with HB1503. Thank you for your time and consideration.

Chairman Thomas and House Ag Committee,

IBAND is in favor of HB 1135.

Thank you for bringing this to light. It has been policy of ours to not allow any foreign entity to own land in North Dakota.

Thank You,

Frank Tomac
President of IBAND

I support the passage of HB 1135.

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 and within one year after acquisition if the contracts are not entered into with 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;

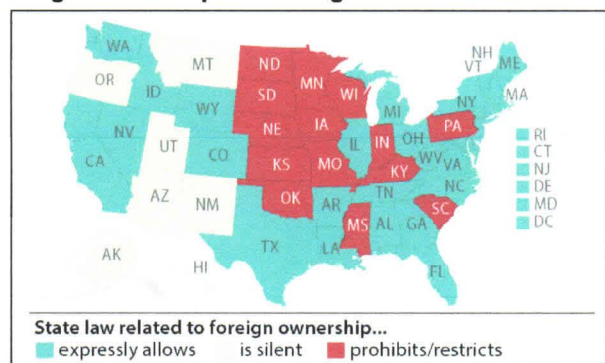
the Noninsured Crop Disaster Assistance Program explicitly prohibits payments to foreign entities other than resident aliens. See CRS Report R46248, *U.S. Farm Programs: Eligibility and Payment Limits* and USDA’s fact sheet, *Payment Eligibility and Payment Limitations*.

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)	(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).

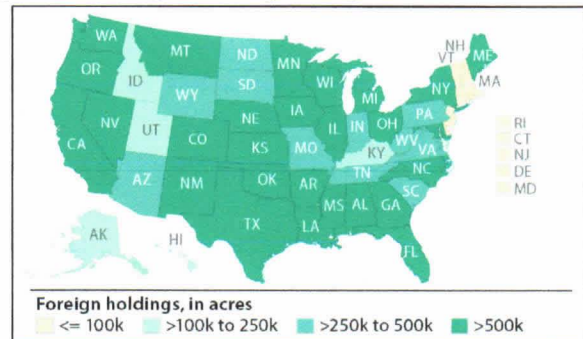
All U.S. states report foreign investment/ownership in U.S. land (Figure 2). As of year-end 2021, according to USDA, the states with the most foreign-owned agricultural acreage were Texas (5.3 million acres), Maine (3.6 million acres), Colorado (1.9 million acres), Alabama (1.8 million acres), and Oklahoma (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*.

Disclaimer

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Contact:
Matt Perdue, Lobbyist
mperdue@ndfu.org | 701.641.3303

**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
House Agriculture Committee
February 3, 2023**

Chairman Thomas and members of the committee,

Thank you for the opportunity to testify on House Bill No. 1135. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union's (NDFU) members.

NDFU supports HB 1135, which would prevent foreign governments or state-controlled enterprises from acquiring agricultural land in North Dakota. NDFU's member-driven Policy & Action supports "restricting foreign individuals and entities from owning land in North Dakota."

As of December 2021, foreign investors' holdings of U.S. agricultural land totaled 40.8 million acres – nearly the size of North Dakota. Since 2012, foreign ownership of U.S. agricultural land has increased by 14 million acres. Most of that increase – 47 percent – was due to growth in cropland ownership by foreign entities. In fact, foreign ownership of U.S. cropland has nearly doubled since 2012.¹

In North Dakota, 356,490 acres are currently owned by foreign owners. That number has increased by nearly 240% over the last 10 years. While nationally, forest makes up the largest percentage of U.S. ownership, in North Dakota, the vast majority of foreign-owned lands are cropland and pastureland.²

It is clear that foreign individuals and entities have a growing interest in acquiring U.S. agricultural land. We believe foreign ownership of agricultural land presents a threat to food security. That threat is compounded by foreign ownership of some of our country's largest food processors, especially in the meat processing industry. Food security threats are greatest when foreign governments acquire U.S. land directly or through state-owned enterprises. HB 1135 addresses that concern.

We respectfully request a "Do Pass" on HB 1135. I will stand for any questions.

¹ Estep, M., et. al. (n.d.) *Foreign Holdings of U.S. Agricultural Land Through December 31, 2021*. United States Department of Agriculture, Farm Service Agency. Retrieved from https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2021_afida_annual_report_through_12_31_2021.pdf; Johnson, L. A., Feather, C. A., & Schultz, L. (n.d.) *Foreign Holdings of U.S. Agricultural Land Through December 31, 2021*. United States Department of Agriculture, Farm Service Agency. Retrieved from <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/afida2012report.pdf>.

² *Id.*

COMMISSIONER
DOUG GOEHRING



ndda@nd.gov
www.agdepartment.com

**Testimony of Doug Goehring
Agriculture Commissioner
House Agriculture Committee
327C
February 3, 2023**

Chairman Thomas and members of the House Agriculture Committee, I am Agriculture Commissioner Doug Goehring. I am here today in opposition of HB 1135.

This bill may severely hinder current and future agribusiness opportunities in our state. Limiting outside ownership regardless if the business would have foreign government involvement will have an impact on agribusiness especially with seed and chemical industries. It is not to say that ownership should not be scrutinized but there is already federal oversight through CFIUS (Committee on Foreign Investment in the United States). Research and development of new seed and chemical products has to happen in the United States and must be done where the crops are managed, produced, registered and licensed. The majority of developing, testing, evaluation, seed breeding, and seed proliferation are performed by multi national companies that may likely not be owned or headquartered in the United States.

Other states have dealt with this issues by allowing exceptions for research and development companies and also limit there land ownership amounts. I can share the committee language if needed.

Chairman Thomas and committee members, thank you for your time. I urge a do not pass on HB 1135. I would be happy to answer any questions you may have.

North Dakota Stockmen's Association
Testimony to the House Agriculture Committee on HB 1135

Feb. 3, 2023

Good morning, Chairman Thomas and members of the House Agriculture Committee. My name is Julie Ellingson and I represent the North Dakota Stockmen's Association, a 93-year-old beef cattle trade organization comprised of more than 3,100 cattle-ranching members.

The North Dakota Stockmen's Association supports HB 1135, which would prohibit foreign governments from purchasing, acquiring, leasing or holding any interest in agricultural land in the state moving forward. (This bill is our favorite amongst the trio of foreign ownership bills you will be hearing this morning. It is the cleanest-cut of the options and does not have the same potential to possibly impact dual-citizens who farm and ranch near the border, as just one example.)

Our organization has long-standing policy on land ownership, opposing all state, federal or non-profit tax-exempt organization's ownership of agricultural lands. We can extend that sentiment to foreign ownership as well. Not only is this a philosophical tenet of our group, but a potential matter of national security.

There are countries that are threats to American democracy, and the state should not allow people to sell our farmland to them. Instead, we should protect our farmland and food supply chain from these entities. HB 1135 helps ensure that.

According to the U.S. Department of Agriculture, China, as one example, has increased its American agricultural land holdings more than tenfold in the last decade and spent as much as \$2 billion in American agricultural land ownership at the beginning of 2020.

Thank you for the opportunity to provide testimony.

23.0215.01001
Title.

Prepared by the Legislative Council staff for
Representative Klemin
February 1, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1135

Page 1, line 24, after "possessions" insert "or the government of Canada or its provinces or territories"

Page 2, line 1, after "4." insert "Foreign governmental interest in agricultural land" includes the purchase, acquisition, or possession of any absolute or qualified ownership of land by a foreign government, except does not include a leasehold interest.

5."

Page 2, line 2, replace "5." with "6."

Page 3, line 26, remove "lease."

Page 3, line 26, after "any" insert "foreign governmental"

Renumber accordingly

This form is available electronically.

AMENDED

Form Approved - OMB No. 0560-0097

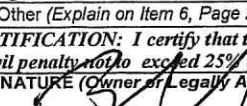
FSA-153
(10-13-10)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

1. TYPE ACTIVITY (See Instructions on Page 2) (check one)
 A. Land Holding B. Land Acquisition C. Land Disposition
 D. Land Use Change to Agriculture E. Land Use Change to Non-Agriculture

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT REPORT

Read Instructions on Page 2 Before Filing in Any Data Below. (If Additional Space is Needed, Add information in Item 6, Page 2, or attach an additional sheet.)

ITEM		ITEM													
2. Tract Location and Description A. Legal Description or FSA Tract Number See attached Exhibit A B. County or Parish Williams C. Number of Acres 320 D. State North Dakota		5. Type of Interest Held in the Agricultural Land (Check one) <table border="1"> <tr><td>A. Fee Interest (Ownership) Whole</td><td>Check</td></tr> <tr><td>B. Fee Interest (Ownership) Partial What Percent</td><td></td></tr> <tr><td>C. Life Estate</td><td></td></tr> <tr><td>D. Trust Beneficiary</td><td></td></tr> <tr><td>E. Purchase Contract</td><td></td></tr> <tr><td>F. Other (Check Box and Explain Below:)</td><td>X</td></tr> </table> Long-term leasehold interest		A. Fee Interest (Ownership) Whole	Check	B. Fee Interest (Ownership) Partial What Percent		C. Life Estate		D. Trust Beneficiary		E. Purchase Contract		F. Other (Check Box and Explain Below:)	X
A. Fee Interest (Ownership) Whole	Check														
B. Fee Interest (Ownership) Partial What Percent															
C. Life Estate															
D. Trust Beneficiary															
E. Purchase Contract															
F. Other (Check Box and Explain Below:)	X														
3. Owner or Lessee of Tract (In Item 2A) (See Page 2) A. Name: Mountrail Wind Project, LLC B. Tax ID No. (Nine Digits) 36-4880435 C. Legal Address (Street, City, State/Province, Country) Tradewind Energy, Inc. 16105 W. 113th Street, Suite 105 Lenexa, Kansas 66219 D. Type of Owner (If Item D1 is checked, skip Items D2 and D3.)		6. How was this Tract Acquired or Transferred? <table border="1"> <tr><td>A. Cash Transaction</td><td>Check</td></tr> <tr><td>B. Credit or Installment Transaction</td><td></td></tr> <tr><td>C. Trade</td><td></td></tr> <tr><td>D. Gift or Inheritance</td><td></td></tr> <tr><td>E. Foreclosure</td><td></td></tr> <tr><td>F. Other (Check Box and Explain Below:)</td><td>X</td></tr> </table> Long-term leasehold interest		A. Cash Transaction	Check	B. Credit or Installment Transaction		C. Trade		D. Gift or Inheritance		E. Foreclosure		F. Other (Check Box and Explain Below:)	X
A. Cash Transaction	Check														
B. Credit or Installment Transaction															
C. Trade															
D. Gift or Inheritance															
E. Foreclosure															
F. Other (Check Box and Explain Below:)	X														
1. Individual. (Indicate citizenship of husband and/or wife if applicable). a. Citizenship of individual(s)		7. Value of Agricultural Land: A. Purchase Price of Land or if a land disposition, the original price paid by seller. \$ B. Non-Purchase, Estimated Value at the Time of Acquisition \$ 308,160.00 C. What is the estimated current value or if a land disposition, the selling price of the tract of land? \$ 308,160.00 <input checked="" type="checkbox"/> D. How much of purchase price in Item 7A remains to be paid? \$													
2. Government (Country)		8. Date of Acquisition or Transfer (See Instructions, Item 8, Page 2.) Month 12 Day 15 Year 2021													
3. Organization a. Type 1) Corporation 2) Partnership 3) Estate 4) Trust 5) Institution 6) Association 7) Other (Check box and Explain): <input checked="" type="checkbox"/>		9. Current Land Use (Usual use of land for idle land, report as Other Agriculture). A. Crop 252.00 B. Pasture 37.00 C. Forest or Timber D. Other Agriculture 31.00 E. Non-Agriculture F. Total Acres (Should equal Item 2C) 320.00													
b. Government or country under whose law the organization is created U.S.A. c. Principal place of business (For organizations only) Lenexa, KS d. List on separate sheet, the Name, Address and Country of all foreign persons who individually or in the aggregate hold significant interest or substantial control 1/ in the person owning the land.		10. Intended Use as of This Date. Check one or more or enter "NA" if Item 1C or 1E above is checked. A. No change. <input checked="" type="checkbox"/> B. Other Agriculture C. Non-Agriculture													
E. Complete only if Item 1C, Land Disposition, is checked. 1. Name of Person Receiving Tract 2. Address (Street, City, State/Province, Country)		11. Relationship of Owner to Producer. Check one or more items if applicable. Enter "NA" if Item 1C or 1E is checked. A. Producer is: 1. Owner <input checked="" type="checkbox"/> 2. Manager 3. Tenant or sharecropper (Item 11B must be completed.) B. Rental agreement is: (Not applicable if Item 1C or 1E above is checked.) 1. A crop share NA 2. Cash or fixed rent													
3. Citizenship: USA <input type="checkbox"/> Foreign <input type="checkbox"/> Unknown <input type="checkbox"/>		12. The Producer on This Tract is: Check one or more. If not applicable for Item 11A, then enter "NA". (Not applicable if Item 1C or 1E above is checked.) A. The same person as when the tract was acquired. <input checked="" type="checkbox"/> B. A new person.													
4. Representative of Foreign Person (Completing form, if applicable) A. Name Brian Doherty B. Address (Street, City, State/Province, Country) 16105 W. 113th Street, Suite 105 Lenexa, Kansas 66219 C. Telephone No. (Area Code): (913) 888-9463 D. Relationship of Representative to Foreign Person 1. Attorney 2. Manager <input checked="" type="checkbox"/> 3. Agent 4. Other (Explain on Item 6, Page 2)		14C. DATE (MM-DD-YYYY) 03/02/2022													
CERTIFICATION: I certify that the information entered in this report is complete and correct. I understand that falsification of reporting is subject to a civil penalty not to exceed 25% of the fair market value of the interest held in the tract of land.															
14A. SIGNATURE (Owner or Legally Authorized Representative) 		14B. TITLE Mountrail Wind Project, LLC Brian Doherty, Authorized Representative													

1/ Significant interest or substantial control as defined in 7 CFR Part 781.2(k)

NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a – as amended). The authority for requesting the information identified on this form is 7 CFR Part 781 and the Agricultural Foreign Investment Disclosure Act of 1978 (Pub. L. 95-460). The information will be used to ensure that a foreign person who acquires, disposes of, or holds an interest in United States agricultural land discloses such transactions and holdings to the Secretary of Agriculture and to determine the effects of such transactions and holdings on family farms and rural communities. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is mandatory. Failure to furnish the requested information or falsification of reporting will result in a determination of non-compliance with the program which is subject to a civil penalty not to exceed 25 percent of the fair market value, as determined by the Farm Service Agency on the date of the assessment of such penalty, of the foreign person's interest in the agricultural land with respect to which such violation occurred.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0097. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.**

DETERMINATION OF "FOREIGN PERSON" STATUS

DEFINITION: "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity.

You are an "individual/foreign person" under the provisions of Pub. L. 95-460 and must complete the front side of this form (FSA-153) if your answer is "NO" to all the statements in Items 1, 2 and 3 below:

	YES	NO
1. I AM a citizen of the United States.		X
2. I AM a citizen of the Northern Mariana Islands or the Trust Territories of the Pacific Islands.		X
3. I AM lawfully admitted to the United States for permanent residence, or paroled into the United States, under the Immigration and Nationality Act.		X

You are a "foreign person, organization or government," under the provisions of Pub. L. 95-460 and must complete the front side of this form (FSA-153) if your answer is "YES" to any of the statements in Items 4a, 4b and 5 below:

	YES	NO
4. I AM a "person" other than an individual or government, which is created or organized under the laws of:		
a. A foreign government of which has its principal place of business located outside the United States.		X
b. Any State of the United States, and in which significant interest or substantial control <u>1/</u> is held directly or indirectly by any foreign individual, government, or person.	X	
5. I AM a foreign government.		X

GENERAL INSTRUCTIONS

Complete this form for each tract of land. Report as a tract all acreages under the same ownership in each county or parish acquired or transferred on the same date. Land in different counties or parishes and land acquired or transferred on different dates must be reported as separate tracts.

Return the original and two (2) copies to the County Farm Service Agency (FSA) Office where the tract of land is located. Retain a copy for your records.

the original disclosure on FSA-153 on the tract(s) of land owned by the same person within a county or parish, each subsequent change of ownership or use must be reported by filing another FSA-153.

ITEMS 1 AND 8 BELOW ARE TO BE USED AS INSTRUCTIONS ONLY. THESE INSTRUCTIONS ARE TO BE USED FOR INFORMATION AS YOU COMPLETE ITEMS 1 AND 8 ON PAGE 1.

ITEM 1. ONLY ONE BOX MAY BE CHECKED

If the tract of land to be listed under Item 2 on the front side of this document was:

- Owned on February 1, 1979, check **A. Land Holding** Reporting Date: *This document is required to be completed and returned by August 1, 1979.*

If the tract of land to be listed under Item 2 on the front page of this document was, on or after February 2, 1979:

- Acquired, check **B. Land Acquisition**
- Disposed of, check **C. Land Disposition**
- Changed from non-agricultural to agricultural use, check **D. Land Use Change to Agriculture**
- Changed from agricultural to non-agricultural, use check **E. Land Use Change to Non-Agriculture**

NOTE: REPORT DATE. If activity B, C, D or E is checked in Item 1 above, then return the completed FSA-153 within ninety (90) days from the date of the transaction.

ITEM 8. The date entered would be as follows for the activity checked in Item 1 above:

- Box A or B** – Date acquired.
- Box C** – Date disposed of.
- Box D or E** – Date land use changed.

6. Additional Information (Use additional sheets if more space is needed).

1/ Significant interest or substantial control as defined in 7 CFR Part 781.2(k)

U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF WILLIAMS, STATE OF NORTH DAKOTA:

Tract 1:

The Southeast Quarter (SE¼) of Section Ten (10), Township One Hundred Fifty-Eight (158) North, of Range Ninety-Six (96) West, Williams County, North Dakota

Tract 2:

The Southwest Quarter (SW¼) of Section 11, in Township 158 North, Range 96 West, Williams County, North Dakota

Exhibit B

Information required pursuant to Question 3 D.(3)(d) –

Mountrail Wind Project, LLC, a Delaware limited liability company
c/o Tradewind Energy, Inc.
16105 W. 113th Street, Suite 105
Lenexa, Kansas 66219

Tradewind Energy, Inc., a Kansas corporation
16105 W. 113th Street, Suite 105
Lenexa, Kansas 66219

Enel Kansas, LLC, a Delaware limited liability company
c/o Enel North America, Inc. f/k/a Enel Green Power North America, Inc.
Attn.: General Counsel
100 Brickstone Square, Suite 300
Andover, Massachusetts 01810

Enel North America, Inc., a Delaware corporation f/k/a Enel Green Power North America, Inc.
Attn.: General Counsel
100 Brickstone Square, Suite 300
Andover, Massachusetts 01810

Enel Green Power S.p.A.
Viale Regina Margherita 125
00198 Rome, Italy

ENEL S.p.A.
Segretaria Societaria
Viale Regina Margherita 137
00198 Rome, Italy

ENEL S.p.A. is organized and was created pursuant to the laws of Italy.

This form is available electronically.

AMENDED

Form Approved – OMB No. 0560-0097

FSA-153
(10-13-10)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

1. TYPE ACTIVITY (See Instructions on Page 2) (check one)
 A. Land Holding B. Land Acquisition C. Land Disposition
 D. Land Use Change to Agriculture E. Land Use Change to Non-Agriculture

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT REPORT

Read Instructions on Page 2 Before Filing in Any Data Below. (If Additional Space is Needed, Add information in Item 6, Page 2, or attach an additional sheet.)

ITEM		ITEM	
2. Tract Location and Description		5. Type of Interest Held in the Agricultural Land (Check one)	
A. Legal Description or FSA Tract Number		A. Fee Interest (Ownership) Whole	
See Attached Exhibit A		B. Fee Interest (Ownership) Partial What Percent	
B. County or Parish		C. Life Estate	
Stutsman		D. Trust Beneficiary	
C. Number of Acres		E. Purchase Contract	
157.49		F. Other (Check Box and Explain Below:)	
D. State		Long-term leasehold interest	
North Dakota		<input checked="" type="checkbox"/>	
3. Owner or Lessee of Tract (In Item 2A) (See Page 2)		6. How was this Tract Acquired or Transferred?	
A. Name: Dakota Thunder Wind LLC		A. Cash Transaction	
B. Tax ID No. (Nine Digits) 85-3873531		B. Credit or Installment Transaction	
C. Legal Address (Street, City, State/Province, Country)		C. Trade	
1 S. Wacker Drive Ste. 1800		D. Gift or Inheritance	
Chicago, Illinois 60606		E. Foreclosure	
D. Type of Owner (If Item D1 is checked, skip Items D2 and D3.)		F. Other (Check Box and Explain Below:)	
1. Individual. (Indicate citizenship of husband and/or wife if applicable).		Long-term leasehold interest	
a. Citizenship of individual(s)		<input checked="" type="checkbox"/>	
2. Government (Country)		7. Value of Agricultural Land:	
Canada		A. Purchase Price of Land or if a land disposition, the original price paid by seller.	
3. Organization		B. Non-Purchase, Estimated Value at the Time of Acquisition	
a. Type		C. What is the estimated current value or if a land disposition, the selling price of the tract of land?	
1) Corporation		\$ 1,260.00	
2) Partnership		D. How much of purchase price in Item 7A remains to be paid?	
3) Estate		\$	
4) Trust		8. Date of Acquisition or Transfer (See Instructions, Item 8, Page 2.)	
5) Institution		Month: March	
6) Association		Day: 24	
7) Other (Check box and Explain):		Year: 2021	
<input checked="" type="checkbox"/>		9. Current Land Use (Usual use of land for idle land, report as Other Agriculture).	
b. Government or country under whose law the organization is created		A. Crop	
U.S.A.		B. Pasture	
c. Principal place of business (For organizations only)		C. Forest or Timber	
Chicago, Illinois		D. Other Agriculture	
d. List on separate sheet, the Name, Address and Country of all foreign persons who individually or in the aggregate hold significant interest or substantial control 1/ in the person owning the land.		E. Non-Agriculture	
E. Complete only if Item 1C, Land Disposition, is checked.		F. Total Acres (Should equal Item 2C)	
1. Name of Person Receiving Tract		157.49	
2. Address (Street, City, State/Province, Country)		10. Intended Use as of This Date.	
3. Citizenship: USA <input type="checkbox"/> Foreign <input type="checkbox"/> Unknown <input type="checkbox"/>		Check one or more or enter "NA" if Item 1C or 1E above is checked.	
4. Representative of Foreign Person (Completing form, if applicable)		A. No change.	
A. Name		B. Other Agriculture	
Matthew C. Luzadder		C. Non-Agriculture	
B. Address (Street, City, State/Province, Country)		11. Relationship of Owner to Producer. Check one or more items if applicable. Enter "NA" if Item 1C or 1E is checked.	
Kelley Drye & Warren LLP		A. Producer is:	
333 West Wacker Drive 26th Floor		1. Owner	
Chicago, Illinois 60606		2. Manager	
C. Telephone No. (Area Code): (312) 857-2623		3. Tenant or sharecropper (Item 11B must be completed.)	
D. Relationship of Representative to Foreign Person		<input checked="" type="checkbox"/>	
1. Attorney		B. Rental agreement is: (Not applicable if Item 1C or 1E above is checked.)	
2. Manager		1. A crop share	
3. Agent		2. Cash or fixed rent	
4. Other (Explain on Item 6, Page 2)		<input checked="" type="checkbox"/>	
CERTIFICATION: I certify that the information entered in this report is complete and correct. I understand that falsification of reporting is subject to a civil penalty not to exceed 25% of the fair market value of the interest held in the tract of land.		12. The Producer on This Tract is:	
14A. SIGNATURE (Owner or Legally Authorized Representative)		Check one or more. If not applicable for Item 11A, then enter "NA". (Not applicable if Item 1C or 1E above is checked.)	
Matthew C. Luzadder		A. The same person as when the tract was acquired.	
14B. TITLE		B. A new person.	
Attorney		<input checked="" type="checkbox"/>	
14C. DATE (MM-DD-YYYY)			
05/27/2021			

1/ Significant interest or substantial control as defined in 7 CFR Part 781.2(k)

NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a – as amended). The authority for requesting the information identified on this form is 7 CFR Part 781 and the Agricultural Foreign Investment Disclosure Act of 1978 (Pub. L. 95-460). The information will be used to ensure that a foreign person who acquires, disposes of, or holds an interest in United States agricultural land discloses such transactions and holdings to the Secretary of Agriculture and to determine the effects of such transactions and holdings on family farms and rural communities. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is mandatory. Failure to furnish the requested information or falsification of reporting will result in a determination of non-compliance with the program which is subject to a civil penalty not to exceed 25 percent of the fair market value, as determined by the Farm Service Agency on the date of the assessment of such penalty, of the foreign person's interest in the agricultural land with respect to which such violation occurred.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0097. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.**

DETERMINATION OF "FOREIGN PERSON" STATUS

DEFINITION: "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity.

You are an "individual/foreign person" under the provisions of Pub. L. 95-460 and must complete the front side of this form (FSA-153) if your answer is "NO" to all the statements in Items 1, 2 and 3 below:		YES	NO
1. I AM a citizen of the United States.			X
2. I AM a citizen of the Northern Mariana Islands or the Trust Territories of the Pacific Islands.			X
3. I AM lawfully admitted to the United States for permanent residence, or paroled into the United States, under the Immigration and Nationality Act.			X
You are a "foreign person, organization or government," under the provisions of Pub. L. 95-460 and must complete the front side of this form (FSA-153) if your answer is "YES" to any of the statements in Items 4a, 4b and 5 below:		YES	NO
4. I AM a "person" other than an individual or government, which is created or organized under the laws of:			
a. A foreign government of which has its principal place of business located outside the United States.			X
b. Any State of the United States, and in which significant interest or substantial control <u>1/</u> is held directly or indirectly by any foreign individual, government, or person.		X	
5. I AM a foreign government.			X

GENERAL INSTRUCTIONS

Complete this form for each tract of land. Report as a tract all acreages under the same ownership in each county or parish acquired or transferred on the same date. Land in different counties or parishes and land acquired or transferred on different dates must be reported as separate tracts.

Return the original and two (2) copies to the County Farm Service Agency (FSA) Office where the tract of land is located. Retain a copy for your records.

After the original disclosure on FSA-153 on the tract(s) of land owned by the same person within a county or parish, each subsequent change of ownership or use must be reported by filing another FSA-153.

ITEMS 1 AND 8 BELOW ARE TO BE USED AS INSTRUCTIONS ONLY. THESE INSTRUCTIONS ARE TO BE USED FOR INFORMATION AS YOU COMPLETE ITEMS 1 AND 8 ON PAGE 1.

ITEM 1. ONLY ONE BOX MAY BE CHECKED

If the tract of land to be listed under Item 2 on the front side of this document was:

- Owned on February 1, 1979, check **A. Land Holding** Reporting Date: *This document is required to be completed and returned by August 1, 1979.*

If the tract of land to be listed under Item 2 on the front page of this document was, on or after February 2, 1979:

- Acquired, check **B. Land Acquisition**

- Disposed of, check **C. Land Disposition**

- Changed from non-agricultural to agricultural use, check **D. Land Use Change to Agriculture**

- Changed from agricultural to non-agricultural, use check **E. Land Use Change to Non-Agriculture**

NOTE: REPORT DATE. If activity B, C, D or E is checked in Item 1 above, then return the completed FSA-153 within ninety (90) days from the date of the transaction.

ITEM 8. The date entered would be as follows for the activity checked in Item 1 above:

Box A or B – Date acquired.

Box C – Date disposed of.

Box D or E – Date land use changed.

6. Additional Information (Use additional sheets if more space is needed).

4/ Significant interest or substantial control as defined in 7 CFR Part 781.2(k)

1/ U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

EXHIBIT A
Description of the Property
Barry N. Kramer and Judy L. Kramer, husband and wife
All located in Stutsman County, North Dakota

01-3520000	S35, T137, R66, ACRES 157.49, NW14 LESS HY
TOTAL ACRES:	157.49

**Northwest Quarter of Section 35, Township 137, Range 66,
Stutsman County, North Dakota**

Less Highway

Form FSA 153
Structure Chart
Exhibit B

Information required pursuant to Question 3D.(3)(d)

Lessee: Dakota Thunder Wind LLC

Address: One North Wacker Drive, Suite 1800, Chicago, IL 60606

State and Country of Organization: Delaware, USA

Principle Place of Business: Chicago, IL

100% Owner of Lessee: Invenergy Wind Development North America LLC

Address: One North Wacker Drive, Suite 1800, Chicago, IL 60606

State and Country of Organization: Delaware, USA

Principle Place of Business: Chicago, IL

100% Owner of Invenergy Wind Development North America LLC: Invenergy Renewables LLC:

Address: One North Wacker Drive, Suite 1800, Chicago, IL 60606

State and Country of Organization: Delaware, USA

Principle Place of Business: Chicago, IL

100% Owner of Invenergy Renewables LLC: Invenergy Renewables Holdings LLC

Address: One North Wacker Drive, Suite 1800, Chicago, IL 60606

State and Country of Organization: Delaware, USA

Principle Place of Business: Chicago, IL

35.60% Owner of Invenergy Renewables Holdings LLC: Invenergy IRH Holdings LLC

Address: One North Wacker Drive, Suite 1800, Chicago, IL 60606

State and Country of Organization: Delaware, USA

Principal Place of Business: Chicago, IL

32.17% Owner of Invenergy Renewables Holdings LLC: CDPQ Renewables Holdings Inc.

Address: 2915 Ogletown Road

State and Country of Organization: Delaware, USA

Principal Place of Business: Montreal, Canada

32.23% Owner of Invenergy Renewables Holdings LLC: CDPQ INVESTMENTS (U.S.) INC

Address: 2915 Ogletown Road

State and Country of Organization: Delaware, USA

Principal Place of Business: Montreal, Canada

100% Owner of CDPQ Renewable Holdings Inc.: CDP Infrastructure Fund G. P.

Address: 1000 place Jean-Paul- Riopelle bureau 12e

City and Country of Organization: Montreal, Canada

Principal Place of Business: Montreal, Canada

Form FSA 153
Structure Chart
Exhibit B
Information required pursuant to Question 3D.(3)(d)

100% Owner of CDPQ INVESTMENTS (U.S.) INC. : Capital d'Amérique CDPQ Inc.

Address: 1000 place Jean-Paul- Riopelle bureau 12e

City and Country of Organization: Montreal, Canada

Principal Place of Business: Montreal, Canada

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1135

Page 3, after line 28, insert:

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 North Dakota by a foreign business entity that is not more than three hundred twenty (320) acres.

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1135

Page 3, after line 28, insert:

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.
2. The acquisition of agricultural land or an interest in agricultural land that is located within North Dakota by a foreign government that is not more than one hundred sixty (160) acres.

Renumber accordingly

Testimony HB1135

Sam Wagner
Ag and Food Field Organizer
Dakota Resource Council
1720 Burnt Boat Dr. Ste 104
Bismarck ND 58503
Testimony in Support for HB1135

To the Honorable Chairman and the members of the Committee, we submit these remarks on behalf of DRC.

Mr. Chairman,

We at DRC favor local control and support keeping foreign ownership out of agriculture in North Dakota. But we would also like to ensure that we take this a step further and make sure that value added agriculture is considered when writing these bills. After reviewing this with HB1503 and SB2371 we believe that these bills should be passed together in order to ensure the most protection for our local farmers and grain elevators.

You'll probably hear enough about the dangers of foreign adversaries from other testimony. We share many of their concerns and much like out of state corporate interests, foreign governments do not have our best interests in mind and will often serve their own agenda. The dangers of a foreign government controlling our water rights and resources for their operations is a real concern to our organization and our members. If we give them away to other countries, they will not willingly give them back to us.

There are a few discrepancies on this bill, if you look on page 2 line 23 section d. We noticed that the exemption for agricultural land holding does not exceed 640 acres. In page 4 line 10 section b. The law states that acquisition of land that is located by a foreign business that is not more than three hundred and twenty acres. This bill seems to contradict itself. Ultimately we as an organization would like no exemptions under any acreage but if it's being lowered from 640 to 320 we can accept it as a reasonable compromise.

We recommend a DO PASS as long as it is passed with HB1503 and 2371. Thank you for your time and consideration.



Contact:
Matt Perdue, Lobbyist
mperdue@ndfu.org | 701.641.3303

**Testimony of
Matt Perdue
North Dakota Farmers Union
Before the
Senate Energy and Natural Resources
March 17, 2023**

Chairman Patten and members of the committee,

Thank you for the opportunity to testify on House Bill No. 1135. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union's (NDFU) members.

NDFU supports HB 1135, which would prevent foreign governments or state-controlled enterprises from acquiring agricultural land in North Dakota. NDFU's member-driven Policy & Action supports "restricting foreign individuals and entities from owning land in North Dakota."

As of December 2021, foreign investors' holdings of U.S. agricultural land totaled 40.8 million acres – an acreage nearly equal to the size of North Dakota. Since 2012, foreign ownership of U.S. agricultural land has increased by 14 million acres. Most of that increase – 47 percent – was due to growth in cropland ownership by foreign entities. In fact, foreign ownership of U.S. cropland has nearly doubled since 2012.¹

In North Dakota, 356,490 acres are currently held by foreign owners. That number has increased by nearly 240% over the last 10 years. While nationally, forest makes up the largest percentage of U.S. ownership, in North Dakota, the vast majority of foreign-owned lands are cropland and pastureland.²

It is clear that foreign individuals and entities have a growing interest in acquiring U.S. agricultural land. We believe foreign ownership of agricultural land presents a threat to food security. That threat is compounded by foreign ownership of some of our country's largest food processors, especially in the meat processing industry. Food security threats are greatest when foreign governments acquire U.S. land directly or through state-owned enterprises. HB 1135 addresses that concern.

We respectfully request a "Do Pass" on HB 1135. I will stand for any questions.

¹ Estep, M., et. al. (n.d.) *Foreign Holdings of U.S. Agricultural Land Through December 31, 2021*. United States Department of Agriculture, Farm Service Agency. Retrieved from https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2021_afida_annual_report_through_12_31_2021.pdf; Johnson, L. A., Feather, C. A., & Schultz, L. (n.d.) *Foreign Holdings of U.S. Agricultural Land Through December 31, 2021*. United States Department of Agriculture, Farm Service Agency. Retrieved from <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/afida2012report.pdf>.

² *Id.*



**Senate Energy & Natural Resources Committee
Testimony in Opposition to HB 1135
March 17, 2023**

Chairman Patton & Members of the Senate Energy & Natural Resources,

My name is Lisa Feldner and I am here today on behalf of Enel North America. Enel North America is an energy company based in Andover, Massachusetts with an Italian minority interest. The company operates in 14 states and has had a presence in North Dakota since 2017. It has 2 operating wind farms near Tioga and 2 projects under development.

Most of our concerns with this bill were addressed by the engrossed version but we have one more. Enel leases agricultural land to place its wind tower structures on and that was addressed with the amendments. However, they tend to purchase land for their electrical substations. They are not in the practice of buying up large tracts of land for this purpose, typically under 40 acres. Our concern with this bill is on page 4, 9 (b). which limits the purchase of agricultural land to not more than 320 acres. If 320 acres is a cumulative number, that would limit the projects we can bring to North Dakota.

Thank you.

Lisa Feldner

lisa@olsoneffertz.com

701-214-3709

This form is available electronically.

AMENDED

Form Approved - OMB No. 0560-0097

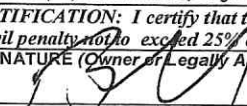
FSA-153
(10-13-10)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

1. TYPE ACTIVITY (See Instructions on Page 2) (check one)
 A. Land Holding
 B. Land Acquisition
 C. Land Disposition
 D. Land Use Change to Agriculture
 E. Land Use Change to Non-Agriculture

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT REPORT

Read Instructions on Page 2 Before Filing in Any Data Below. (If Additional Space is Needed, Add information in Item 6, Page 2, or attach an additional sheet.)

ITEM		ITEM	
2. Tract Location and Description A. Legal Description or FSA Tract Number See attached Exhibit A B. County or Parish Williams C. Number of Acres 320 D. State North Dakota		5. Type of Interest Held in the Agricultural Land (Check one) A. Fee Interest (Ownership) Whole B. Fee Interest (Ownership) Partial What Percent C. Life Estate D. Trust Beneficiary E. Purchase Contract F. Other (Check Box and Explain Below:) X Long-term leasehold interest	
3. Owner or Lessee of Tract (In Item 2A) (See Page 2) A. Name: Mountrail Wind Project, LLC B. Tax ID No. (Nine Digits) 36-4880435 C. Legal Address (Street, City, State/Province, Country) Tradewind Energy, Inc. 16105 W. 113th Street, Suite 105 Lenexa, Kansas 66219 D. Type of Owner (If Item D1 is checked, skip Items D2 and D3.) 1. Individual. (Indicate citizenship of husband and/or wife if applicable). a. Citizenship of individual(s) 2. Government (Country) 3. Organization a. Type 1) Corporation 2) Partnership 3) Estate 4) Trust 5) Institution 6) Association 7) Other (Check box and Explain): X b. Government or country under whose law the organization is created U.S.A. c. Principal place of business (For organizations only) Lenexa, KS d. List on separate sheet, the Name, Address and Country of all foreign persons who individually or in the aggregate hold significant interest or substantial control 1/ in the person owning the land.		6. How was this Tract Acquired or Transferred? A. Cash Transaction B. Credit or Installment Transaction C. Trade D. Gift or Inheritance E. Foreclosure F. Other (Check Box and Explain Below:) X Long-term leasehold interest	
E. Complete only if Item 1C, Land Disposition, is checked. 1. Name of Person Receiving Tract 2. Address (Street, City, State/Province, Country) 3. Citizenship: USA <input type="checkbox"/> Foreign <input type="checkbox"/> Unknown <input type="checkbox"/> 4. Representative of Foreign Person (Completing form, if applicable) A. Name Brian Doherty B. Address (Street, City, State/Province, Country) 16105 W. 113th Street, Suite 105 Lenexa, Kansas 66219 C. Telephone No. (Area Code): (913) 888-9463 D. Relationship of Representative to Foreign Person 1. Attorney 2. Manager X 3. Agent 4. Other (Explain on Item 6, Page 2)		7. Value of Agricultural Land: A. Purchase Price of Land or if a land disposition, the original price paid by seller. \$ B. Non-Purchase, Estimated Value at the Time of Acquisition \$ 308,160.00 C. What is the estimated current value or if a land disposition, the selling price of the tract of land? \$ 308,160.00 D. How much of purchase price in Item 7A remains to be paid? \$ 8. Date of Acquisition or Transfer (See Instructions, Item 8, Page 2.) Month 12 Day 15 Year 2021 9. Current Land Use (Usual use of land for idle land, report as Other Agriculture). A. Crop 252.00 B. Pasture 37.00 C. Forest or Timber D. Other Agriculture 31.00 E. Non-Agriculture F. Total Acres (Should equal Item 2C) 320.00	
		10. Intended Use as of This Date. Check one or more or enter "NA" if Item 1C or 1E above is checked. A. No change. X B. Other Agriculture C. Non-Agriculture	
		11. Relationship of Owner to Producer. Check one or more items if applicable. Enter "NA" if Item 1C or 1E is checked. A. Producer is: 1. Owner X 2. Manager 3. Tenant or sharecropper (Item 11B must be completed.) B. Rental agreement is: (Not applicable if Item 1C or 1E above is checked.) 1. A crop share NA 2. Cash or fixed rent	
		12. The Producer on This Tract is: Check one or more. If not applicable for Item 11A, then enter "NA". (Not applicable if Item 1C or 1E above is checked.) A. The same person as when the tract was acquired. X B. A new person.	
CERTIFICATION: I certify that the information entered in this report is complete and correct. I understand that falsification of reporting is subject to a civil penalty not to exceed 25% of the fair market value of the interest held in the tract of land.		14B. TITLE Mountrail Wind Project, LLC Brian Doherty, Authorized Representative	
A. SIGNATURE (Owner or Legally Authorized Representative) 		14C. DATE (MM-DD-YYYY) 03/02/2022	

1/ Significant interest or substantial control as defined in 7 CFR Part 781.2(k)

NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a – as amended). The authority for requesting the information identified on this form is 7 CFR Part 781 and the Agricultural Foreign Investment Disclosure Act of 1978 (Pub. L. 95-460). The information will be used to ensure that a foreign person who acquires, disposes of, or holds an interest in United States agricultural land discloses such transactions and holdings to the Secretary of Agriculture and to determine the effects of such transactions and holdings on family farms and rural communities. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is mandatory. Failure to furnish the requested information or falsification of reporting will result in a determination of non-compliance with the program which is subject to a civil penalty not to exceed 25 percent of the fair market value, as determined by the Farm Service Agency on the date of the assessment of such penalty, of the foreign person's interest in the agricultural land with respect to which such violation occurred.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0097. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.**

DETERMINATION OF "FOREIGN PERSON" STATUS

DEFINITION: "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity.

You are an "individual/foreign person" under the provisions of Pub. L. 95-460 and must complete the front side of this form (FSA-153) if your answer is "NO" to all the statements in Items 1, 2 and 3 below:		YES	NO
1. I AM a citizen of the United States.			X
2. I AM a citizen of the Northern Mariana Islands or the Trust Territories of the Pacific Islands.			X
3. I AM lawfully admitted to the United States for permanent residence, or paroled into the United States, under the Immigration and Nationality Act.			X
You are a "foreign person, organization or government," under the provisions of Pub. L. 95-460 and must complete the front side of this form (FSA-153) if your answer is "YES" to any of the statements in Items 4a, 4b and 5 below:		YES	NO
4. I AM a "person" other than an individual or government, which is created or organized under the laws of:			
a. A foreign government of which has its principal place of business located outside the United States.			X
b. Any State of the United States, and in which significant interest or substantial control <u>1/</u> is held directly or indirectly by any foreign individual, government, or person.	X		
5. I AM a foreign government.			X

GENERAL INSTRUCTIONS

Complete this form for each tract of land. Report as a tract all acreages under the same ownership in each county or parish acquired or transferred on the same date. Land in different counties or parishes and land acquired or transferred on different dates must be reported as separate tracts.

Return the original and two (2) copies to the County Farm Service Agency (FSA) Office where the tract of land is located. Retain a copy for your records.

For the original disclosure on FSA-153 on the tract(s) of land owned by the same person within a county or parish, each subsequent change of ownership or use must be reported by filing another FSA-153.

ITEMS 1 AND 8 BELOW ARE TO BE USED AS INSTRUCTIONS ONLY. THESE INSTRUCTIONS ARE TO BE USED FOR INFORMATION AS YOU COMPLETE ITEMS 1 AND 8 ON PAGE 1.

ITEM 1. ONLY ONE BOX MAY BE CHECKED

If the tract of land to be listed under Item 2 on the front side of this document was:

- Owned on February 1, 1979, check **A. Land Holding** Reporting Date: *This document is required to be completed and returned by August 1, 1979.*

If the tract of land to be listed under Item 2 on the front page of this document was, on or after February 2, 1979:

- Acquired, check **B. Land Acquisition**

- Disposed of, check **C. Land Disposition**

- Changed from non-agricultural to agricultural use, check **D. Land Use Change to Agriculture**

- Changed from agricultural to non-agricultural, use check **E. Land Use Change to Non-Agriculture**

NOTE: REPORT DATE. If activity B, C, D or E is checked in Item 1 above, then return the completed FSA-153 within ninety (90) days from the date of the transaction.

ITEM 8. The date entered would be as follows for the activity checked in Item 1 above:

Box A or B – Date acquired.

Box C – Date disposed of.

Box D or E – Date land use changed.

6. Additional Information (Use additional sheets if more space is needed).

1/ Significant interest or substantial control as defined in 7 CFR Part 781.2(k)

U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, marital status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTY OF WILLIAMS, STATE OF NORTH DAKOTA:

Tract 1:

The Southeast Quarter (SE $\frac{1}{4}$) of Section Ten (10), Township One Hundred Fifty-Eight (158) North, of Range Ninety-Six (96) West, Williams County, North Dakota

Tract 2:

The Southwest Quarter (SW $\frac{1}{4}$) of Section 11, in Township 158 North, Range 96 West, Williams County, North Dakota

Exhibit B

Information required pursuant to Question 3 D.(3)(d) –

Mountrail Wind Project, LLC, a Delaware limited liability company
c/o Tradewind Energy, Inc.
16105 W. 113th Street, Suite 105
Lenexa, Kansas 66219

Tradewind Energy, Inc., a Kansas corporation
16105 W. 113th Street, Suite 105
Lenexa, Kansas 66219

Enel Kansas, LLC, a Delaware limited liability company
c/o Enel North America, Inc. f/k/a Enel Green Power North America, Inc.
Attn.: General Counsel
100 Brickstone Square, Suite 300
Andover, Massachusetts 01810

Enel North America, Inc., a Delaware corporation f/k/a Enel Green Power North America, Inc.
Attn.: General Counsel
100 Brickstone Square, Suite 300
Andover, Massachusetts 01810

Enel Green Power S.p.A.
Viale Regina Margherita 125
00198 Rome, Italy

ENEL S.p.A.
Segretaria Societaria
Viale Regina Margherita 137
00198 Rome, Italy

ENEL S.p.A. is organized and was created pursuant to the laws of Italy.

This form is available electronically.

AMENDED

Form Approved - OMB No. 0560-0097

FSA-153
(10-13-10)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

1. TYPE ACTIVITY (See Instructions on Page 2) (check one)

- A. Land Holding B. Land Acquisition C. Land Disposition
 D. Land Use Change to Agriculture E. Land Use Change to Non-Agriculture

AGRICULTURAL FOREIGN INVESTMENT DISCLOSURE ACT REPORT

Read Instructions on Page 2 Before Filing in Any Data Below. (If Additional Space is Needed, Add information in Item 6, Page 2, or attach an additional sheet.)

ITEM		ITEM	
2. Tract Location and Description		5. Type of Interest Held in the Agricultural Land (Check one)	
A. Legal Description or FSA Tract Number See Attached Exhibit A		A. Fee Interest (Ownership) Whole	
B. County or Parish Stutsman		B. Fee Interest (Ownership) Partial What Percent	
C. Number of Acres 157.49		C. Life Estate	
D. State North Dakota		D. Trust Beneficiary	
3. Owner or Lessee of Tract (In Item 2A) (See Page 2)		E. Purchase Contract	
A. Name Dakota Thunder Wind LLC		F. Other (Check Box and Explain Below:) <input checked="" type="checkbox"/> Long-term leasehold interest	
B. Tax ID No. (Nine Digits) 85-3873531		6. How was this Tract Acquired or Transferred?	
C. Legal Address (Street, City, State/Province, Country) 1 S. Wacker Drive Ste. 1800 Chicago, Illinois 60606		A. Cash Transaction	
D. Type of Owner (If Item D1 is checked, skip Items D2 and D3.)		B. Credit or Installment Transaction	
1. Individual. (Indicate citizenship of husband and/or wife if applicable).		C. Trade	
a. Citizenship of individual(s)		D. Gift or Inheritance	
2. Government (Country) Canada		E. Foreclosure	
3. Organization		F. Other (Check Box and Explain Below:) <input checked="" type="checkbox"/> Long-term leasehold interest	
a. Type		7. Value of Agricultural Land:	
1) Corporation		A. Purchase Price of Land or if a land disposition, the original price paid by seller.	
2) Partnership		B. Non-Purchase, Estimated Value at the Time of Acquisition	
3) Estate		C. What is the estimated current value or if a land disposition, the selling price of the tract of land?	
4) Trust		D. How much of purchase price in Item 7A remains to be paid?	
5) Institution		8. Date of Acquisition or Transfer (See Instructions, Item 8, Page 2.)	
6) Association		Month: March	
7) Other (Check box and Explain): <input checked="" type="checkbox"/>		Day: 24	
b. Government or country under whose law the organization is created U.S.A.		Year: 2021	
c. Principal place of business (For organizations only) Chicago, Illinois		9. Current Land Use (Usual use of land for idle land, report as Other Agriculture).	
d. List on separate sheet, the Name, Address and Country of all foreign persons who individually or in the aggregate hold significant interest or substantial control 1/ in the person owning the land.		A. Crop	
E. Complete only if Item 1C, Land Disposition, is checked.		B. Pasture	
1. Name of Person Receiving Tract		C. Forest or Timber	
2. Address (Street, City, State/Province, Country)		D. Other Agriculture	
3. Citizenship: USA <input type="checkbox"/> Foreign <input type="checkbox"/> Unknown <input type="checkbox"/>		E. Non-Agriculture	
4. Representative of Foreign Person (Completing form, if applicable)		F. Total Acres (Should equal Item 2C)	
A. Name Matthew C. Luzadder		157.49	
B. Address (Street, City, State/Province, Country) Kelley Drye & Warren LLP 333 West Wacker Drive 26th Floor Chicago, Illinois 60606		10. Intended Use as of This Date. Check one or more or enter "NA" if Item 1C or 1E above is checked.	
C. Telephone No. (Area Code): (312) 857-2623		A. No change. <input checked="" type="checkbox"/>	
D. Relationship of Representative to Foreign Person		B. Other Agriculture	
1. Attorney <input checked="" type="checkbox"/>		C. Non-Agriculture	
2. Manager		11. Relationship of Owner to Producer. Check one or more items if applicable. Enter "NA" if Item 1C or 1E is checked.	
3. Agent		A. Producer is:	
4. Other (Explain on Item 6, Page 2)		1. Owner	
		2. Manager	
		3. Tenant or sharecropper (Item 11B must be completed.) <input checked="" type="checkbox"/>	
		B. Rental agreement is: (Not applicable if Item 1C or 1E above is checked.)	
		1. A crop share	
		2. Cash or fixed rent <input checked="" type="checkbox"/>	
		12. The Producer on This Tract is: Check one or more. If not applicable for Item 11A, then enter "NA". (Not applicable if Item 1C or 1E above is checked.)	
		A. The same person as when the tract was acquired. <input checked="" type="checkbox"/>	
		B. A new person.	
CERTIFICATION: I certify that the information entered in this report is complete and correct. I understand that falsification of reporting is subject to a civil penalty not to exceed 25% of the fair market value of the interest held in the tract of land.			
14A. SIGNATURE (Owner or Legally Authorized Representative) Matthew C. Luzadder		14B. TITLE Attorney	14C. DATE (MM-DD-YYYY) 05/27/2021

1/ Significant interest or substantial control as defined in 7 CFR Part 781.2(k)

NOTE: The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a - as amended). The authority for requesting the information identified on this form is 7 CFR Part 781 and the Agricultural Foreign Investment Disclosure Act of 1978 (Pub. L. 95-460). The information will be used to ensure that a foreign person who acquires, disposes of, or holds an interest in United States agricultural land discloses such transactions and holdings to the Secretary of Agriculture and to determine the effects of such transactions and holdings on family farms and rural communities. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is mandatory. Failure to furnish the requested information or falsification of reporting will result in a determination of non-compliance with the program which is subject to a civil penalty not to exceed 25 percent of the fair market value, as determined by the Farm Service Agency on the date of the assessment of such penalty, of the foreign person's interest in the agricultural land with respect to which such violation occurred.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0097. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.**

DETERMINATION OF "FOREIGN PERSON" STATUS

DEFINITION: "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity.

You are an "individual/foreign person" under the provisions of Pub. L. 95-460 and must complete the front side of this form (FSA-153) if your answer is "NO" to all the statements in Items 1, 2 and 3 below:	YES	NO
1. I AM a citizen of the United States.		X
2. I AM a citizen of the Northern Mariana Islands or the Trust Territories of the Pacific Islands.		X
3. I AM lawfully admitted to the United States for permanent residence, or paroled into the United States, under the Immigration and Nationality Act.		X
You are a "foreign person, organization or government," under the provisions of Pub. L. 95-460 and must complete the front side of this form (FSA-153) if your answer is "YES" to any of the statements in Items 4a, 4b and 5 below:	YES	NO
4. I AM a "person" other than an individual or government, which is created or organized under the laws of:		
a. A foreign government of which has its principal place of business located outside the United States.		X
b. Any State of the United States, and in which significant interest or substantial control <u>1</u> / is held directly or indirectly by any foreign individual, government, or person.	X	
5. I AM a foreign government.		X

GENERAL INSTRUCTIONS

Complete this form for each tract of land. Report as a tract all acreages under the same ownership in each county or parish acquired or transferred on the same date. Land in different counties or parishes and land acquired or transferred on different dates must be reported as separate tracts.

Return the original and two (2) copies to the County Farm Service Agency (FSA) Office where the tract of land is located. Retain a copy for your records.

After the original disclosure on FSA-153 on the tract(s) of land owned by the same person within a county or parish, each subsequent change of ownership or use must be reported by filing another FSA-153.

ITEMS 1 AND 8 BELOW ARE TO BE USED AS INSTRUCTIONS ONLY. THESE INSTRUCTIONS ARE TO BE USED FOR INFORMATION AS YOU COMPLETE ITEMS 1 AND 8 ON PAGE 1.

ITEM 1. ONLY ONE BOX MAY BE CHECKED

If the tract of land to be listed under Item 2 on the front side of this document was:

- Owned on February 1, 1979, check **A. Land Holding** Reporting Date: *This document is required to be completed and returned by August 1, 1979.*

If the tract of land to be listed under Item 2 on the front page of this document was, on or after February 2, 1979:

- Acquired, check **B. Land Acquisition**
- Disposed of, check **C. Land Disposition**
- Changed from non-agricultural to agricultural use, check **D. Land Use Change to Agriculture**
- Changed from agricultural to non-agricultural, use check **E. Land Use Change to Non-Agriculture**

NOTE: REPORT DATE. If activity B, C, D or E is checked in Item 1 above, then return the completed FSA-153 within ninety (90) days from the date of the transaction.

ITEM 8. The date entered would be as follows for the activity checked in Item 1 above:

- Box A or B - Date acquired.
- Box C - Date disposed of.
- Box D or E - Date land use changed.

6. Additional Information (Use additional sheets if more space is needed).

Significant interest or substantial control as defined in 7 CFR Part 781.2(k)

U.S. Department of Agriculture (USDA) prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

EXHIBIT A
Description of the Property
Barry N. Kramer and Judy L. Kramer, husband and wife
All located in Stutsman County, North Dakota

01-3520000	S35, T137, R66, ACRES 157.49, NW14 LESS HY
TOTAL ACRES:	157.49

Northwest Quarter of Section 35, Township 137, Range 66,
Stutsman County, North Dakota
Less Highway

Form FSA 153
Structure Chart
Exhibit B
Information required pursuant to Question 3D.(3)(d)

Lessee: Dakota Thunder Wind LLC

Address: One North Wacker Drive, Suite 1800, Chicago, IL 60606

State and Country of Organization: Delaware, USA

Principle Place of Business: Chicago, IL

100% Owner of Lessee: Invenergy Wind Development North America LLC

Address: One North Wacker Drive, Suite 1800, Chicago, IL 60606

State and Country of Organization: Delaware, USA

Principle Place of Business: Chicago, IL

100% Owner of Invenergy Wind Development North America LLC: Invenergy Renewables LLC:

Address: One North Wacker Drive, Suite 1800, Chicago, IL 60606

State and Country of Organization: Delaware, USA

Principle Place of Business: Chicago, IL

100% Owner of Invenergy Renewables LLC: Invenergy Renewables Holdings LLC

Address: One North Wacker Drive, Suite 1800, Chicago, IL 60606

State and Country of Organization: Delaware, USA

Principle Place of Business: Chicago, IL

35.60% Owner of Invenergy Renewables Holdings LLC: Invenergy IRH Holdings LLC

Address: One North Wacker Drive, Suite 1800, Chicago, IL 60606

State and Country of Organization: Delaware, USA

Principal Place of Business: Chicago, IL

32.17% Owner of Invenergy Renewables Holdings LLC: CDPQ Renewables Holdings Inc.

Address: 2915 Ogletown Road

State and Country of Organization: Delaware, USA

Principal Place of Business: Montreal, Canada

32.23% Owner of Invenergy Renewables Holdings LLC: CDPQ INVESTMENTS (U.S.) INC

Address: 2915 Ogletown Road

State and Country of Organization: Delaware, USA

Principal Place of Business: Montreal, Canada

100% Owner of CDPQ Renewable Holdings Inc.: CDP Infrastructure Fund G. P.

Address: 1000 place Jean-Paul- Riopelle bureau 12e

City and Country of Organization: Montreal, Canada

Principal Place of Business: Montreal, Canada

Form FSA 153
Structure Chart
Exhibit B

Information required pursuant to Question 3D.(3)(d)

100% Owner of CDPQ INVESTMENTS (U.S.) INC. : Capital d'Amérique CDPQ Inc.

Address: 1000 place Jean-Paul- Riopelle bureau 12e

City and Country of Organization: Montreal, Canada

Principal Place of Business: Montreal, Canada



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Lawrence R. Klemin

District 47
3929 Valley Drive
Bismarck, ND 58503-1729

lklemin@ndlegis.gov

COMMITTEES:
Judiciary, Chairman
Political Subdivisions

TESTIMONY OF REP. LAWRENCE R. KLEMIN HOUSE BILL NO. 1135 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE MARCH 17, 2023

Mr. Chairman and Members of the Senate Energy and Natural Resources 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 300 acres of agricultural land in Grand Forks County between the USAF Strategic Air Command Base and the City of Grand Forks in 2022 by the Fufeng Group, an enterprise that might be under the control of China. That land was rezoned industrial a couple of weeks before the closing of that purchase. I understand that the USAF has objected to the proposed construction of a corn milling plant near the airbase by the Fufeng Group for security reasons, and that the City of Grand Forks has stated that it will not be issuing building permits for the project.

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 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.

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 subsection 8 of Section 2 at the top of page 4 of the bill that:

“Notwithstanding subsection 4 [restriction on business acquisition] and subsection 6 [industrial use], after June 30, 2023, a foreign government may not purchase, acquire, lease, or hold any interest in agricultural land in the state.”

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

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. The term “foreign government” does not include the government of the United States or its states, territories or possessions, or the government of Canada or its provinces or territories. The government of Canada is not prohibited because of existing law in Section 47-10.1-02 that allows citizens of Canada to buy agricultural land in North Dakota.

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 by the Fufeng Group that has been of recent concern. They all 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. I have given you copies of two of the reports, one showing ownership by Canada and the other showing ownership derived from a corporation in Italy.

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.

Subsection 8 of Section 2 on page 4 of the bill provides an exception for agricultural land used for research or experimental purposes or land acquired by a foreign business entity that is not more than 320 acres in size. This was added to the bill at the request of the Commissioner of Agriculture.

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 by foreign governments. 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.

Rep. Lawrence R. Klemin
District 47, Bismarck

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.

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%, mostly forestland), 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).

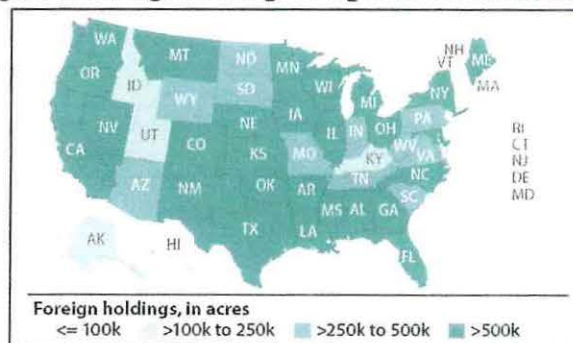
All U.S. states report foreign investment/ownership in U.S. land (Figure 2). As of year-end 2021, according to USDA, the states with the most foreign-owned agricultural acreage were Texas (5.3 million acres), Maine (3.6 million acres), Colorado (1.9 million acres), Alabama (1.8 million acres), and Oklahoma (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 agricultural 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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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1135

Page 4, after line 6, replace and insert:

9. Notwithstanding the provisions of this chapter, the prohibition on ownership of agricultural land does not apply to the acquisition of agricultural land or an interest in agricultural land that:
 - a) Is used for agricultural research and development, experimental purposes, including testing, developing, and/or producing all crop production inputs including, but not limited to, seed, fertilizer, pesticides, soil amendments, plants, or biologicals; and
 - b) Does not exceed three hundred twenty acres [129.5 hectares].

Page 4, line 11, replace "foreign business entity" with "state-controlled enterprise"

9. Notwithstanding the provisions of this chapter, the prohibition on ownership of agricultural land does not apply to the following:
 - a. 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.
 - b. The acquisition of agricultural land or an interest in agricultural land that is located within this state by a ~~foreign business entity~~ state-controlled enterprise that is not more than three hundred twenty acres [129.5 hectares].

Page 4, line 6, make the following changes

9. Notwithstanding the provisions of this chapter, the prohibition on ownership of agricultural land does not apply to the ~~following acquisition of agricultural land or an interest in agricultural land by a state-controlled enterprise that:~~
 - a. ~~Agricultural land that is~~ Is used for agricultural research and development, or experimental purposes, including testing, developing, or producing all crop production inputs including~~seeds or plants for sale or resale to farmers as seed stock.~~ seed, fertilizer, pesticides, soil amendments, plants, or biologicals; and
 - b. ~~The acquisition of agricultural land or an interest in agricultural land that is located within this state by a foreign business entity that is not more than~~ Does not exceed three hundred twenty acres [129.5 hectares].