

# Bill Leaves Renewable Cos. In Dark On Farmland Reporting

By **Evan Anderson and Elizabeth Holden** (June 30, 2025)

On June 5, Sen. Pete Ricketts, R-Neb., introduced a new bill that would modernize the Agricultural Foreign Investments Disclosure Act, and add more teeth to its enforcement.

The AFIDA Improvements Act, co-sponsored by Sens. Tommy Tuberville, R-Ala., Roger Wicker, R-Miss., John Cornyn, R-Texas, Katie Britt, R-Ala., and John Fetterman, D-Pa., seeks to provide additional support to the U.S. Department of Agriculture in addressing the large uptick in foreign acquisition of U.S. farmland, specifically by China.

Unfortunately, the proposal does not appear to provide any additional guidance on the types of uses of agricultural property that are specific to energy development, or the methodology on how such uses should be reported.

Congress enacted AFIDA in 1978 to monitor foreign ownership of U.S. agricultural lands. AFIDA requires foreign persons — including both individuals and entities — to declare ownership, acquisitions, changes and dispositions of agricultural property to the USDA's Farm Service Agency by filing an FSA-153 form within 90 days of the transaction.

AFIDA requires reporting of holdings, purchases, sales or changes in the use of such land, including long-term leases. It also imposes penalties for late or absent reports.

The issue of foreign ownership of agricultural land has received increased attention over the last few years, particularly in the context of acquisitions by foreign investors, with foreign ownership currently sitting at over 40 million acres.

In response to this concern, Ricketts' proposal seeks to bolster the federal government's ability to monitor compliance with AFIDA, and dole out punishments for those who fail to comply in a timely manner.

While keeping almost all the substance of the original statute, the proposal would add several new requirements.

Among other things, it would add a category of persons and entities required to report. And it would further increase the digitization of foreign ownership records by creating a streamlined process for electronic submission and retention of disclosures.

The proposal would then bring in the Farm Production and Conservation Business Center to assist the secretary of agriculture with investigative actions and data collection. Additionally, the proposal would amend the AFIDA handbook with new updates from the secretary of agriculture and additional recommendations from the U.S. Government Accountability Office.

For renewable energy companies owned by foreign persons, the bill does not readily offer



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support on the issues highlighted in the USDA's recent call for comments from the industry.

To many, the USDA's Dec. 18, 2023, call for foreign-owned wind and solar energy companies to weigh in on the FSA-153 form was a signal that the USDA was looking to modernize AFIDA's disclosure process in a manner that would clarify the application of AFIDA to the specific uses of renewable energy developers and operators.

Many in the industry thought it showed a desire by the USDA to properly reflect the practices common in renewable projects, which are sometimes able to coexist with farming — thereby negating the proposition that farmland is being taken out of production, or that foreign individuals are taking control of production on a particular property.

Specifically, the call requested feedback from the solar and wind community regarding the applicability of the FSA-153 form to the long-term leaseholds commonly used in renewable energy projects.

For example, the FSA-153 form requires foreign persons to disclose how many acres they have under lease. Many developers do not know what acreage they will be using until nearly the commencement of construction, causing companies to over-report the breadth of their property usage.

A wind developer may only use a handful out of a hundred acres of a parcel, leaving the majority of the acreage to be continued to be used by the U.S. landowner for agriculture purposes. Because the FSA-153 is due soon after acquisition of the leasehold interest, while due diligence and project planning is still occurring, the total acreage is reported on the form, and the USDA is thereafter relying on inaccurate information.

The call also addressed similar problems arising from the declaration of property values on the FSA-153. The form is presently set up to list the purchase price of the property.

Since solar and wind projects typically operate on the basis of easements or leasehold interests, rather than fee interests, developers are tasked with deciding whether the value of the property is the fair market value of the property or the cumulative rent to be paid under the lease over the course development and operations.

This, again, leads to over-reporting, under-reporting and generally unreliable information. The fair market value of the property is not a reliable figure, and the value of the lease is typically far more than what anyone would have paid for the property, as it is paid over decades.

An ownership structure problem addressed by the call is left unsolved by the bill as well. The disclosure requirements embodied in the FSA-153 are limited to disclosure of ownership interests held up to and including the third tier above the filing entity — i.e., the entity holding site control to the agricultural land.

This disclosure limitation is outlined primarily in the FSA-153 handbook, and has resulted in significant ambiguity regarding the reporting obligations of U.S. domestic entities when no foreign person is identified within the third tier of ownership.

The use of holding and project companies in the form of LLCs creates organizational structures that may be outside of the three-tier reporting requirement — and this raises important questions regarding who is required to report.

Adding clarity on these points would support the purpose of AFIDA: tracking foreign ownership of agricultural properties to prevent large-scale disruption of the U.S. food supply chain.

But by leaving room for inconsistency and inaccuracy in reporting by renewable energy developers, the USDA risks both over- and under-calculating the total acreage of agricultural land owned by foreign persons. The bill could provide further benefit by giving developers a clear pathway to understanding the who, how, what and when for FSA-153 filings.

Many energy companies are left wondering whether they are required to report their lease and easement interests, and how they can accurately fill out the FSA-153 form.

Questions remain regarding who needs to report, when during development a company needs to report, how much land needs to be reported and what payment should be listed on each form. Without seeing any clarity on the horizon, risk minimization may be the best course forward.

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