

2023 South Dakota Legislature

Senate Bill 185**AMENDMENT 185D
FOR THE SENATE AGRICULTURE AND NATURAL
RESOURCES ENGROSSED BILL**

1 **An Act to establish the Committee on Foreign Investment in the United States –**
 2 **South Dakota and revise provisions related to the foreign ownership or**
 3 **control of agricultural land.**

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 **Section 1. That § 43-2A-1 be AMENDED:**

6 **43-2A-1.** ~~For purposes of this chapter, the term~~ Terms used in this chapter mean:

- 7 (1) "agricultural land" means "Agricultural land," land capable of use in the production
 8 of agricultural crops, timber, livestock or livestock products, poultry or poultry
 9 products, milk or dairy products, or fruit and other horticultural products but does
 10 not include any royalty interest, any oil, gas, or other mineral interest, ~~or any lease,~~
 11 ~~right of way, option, or easement relating thereto,~~ or any land zoned by a local
 12 governmental unit for a use other than and nonconforming with agricultural use;
- 13 (2) "Applicant," a foreign person, foreign entity, or ultimate beneficial owner who
 14 purchases or leases agricultural land;
- 15 (3) "Benefit," something that:
 16 (a) Constitutes a business advantage to an applicant;
 17 (b) Enhances the value of an asset, action, or process owned or controlled by
 18 an applicant; or
 19 (c) Confers a right or obligation on the part of an ultimate beneficial owner;
- 20 (4) "CFIUS," the Committee on Foreign Investment in the United States;
- 21 (5) "Critical infrastructure facility," as defined in § 22-1-2;
- 22 (6) "Foreign entity," any partnership organized under the laws of a foreign state if its
 23 principal place of business is outside of the United States, or any partnership,
 24 corporation, or any other business form, regardless of its principal place of
 25 business, if its ownership is comprised of five percent or more of foreign persons;
 26 (7) "Foreign government," a government not of the United States or its constituencies;

1 (8) "Foreign person," any of the following:

2 (a) A natural foreign person or natural foreign national;

3 (b) A foreign entity, including any foreign partnership, foreign association,
 4 foreign cooperative corporation, foreign limited liability company, foreign
 5 private equity vehicle, foreign venture capital vehicle, foreign special
 6 purpose acquisition company, or foreign corporation;

7 (c) Foreign government; and

8 (d) Any entity over which control is exercised or exercisable, whether directly
 9 or indirectly, by a foreign national, foreign entity, or foreign government;
 10 and

11 (9) "Ultimate beneficial owner," a person or entity that ultimately owns or controls a
 12 foreign entity or that derives a benefit associated with ownership or control of a
 13 foreign entity.

14 **Section 2. That § 43-2A-2 be AMENDED:**

15 **43-2A-2.** No alien, who is not a resident of this state, of some state or territory of
 16 the United States or of the District of Columbia, ~~and no foreign person~~ foreign
 17 ~~government shall hereafter may~~ acquire agricultural ~~lands~~ land, or any interest therein in
 18 ~~agricultural land, exceeding one hundred sixty acres unless the nonresident alien or~~
 19 ~~foreign person obtains an approval letter pursuant to section 13 of this Act and then such~~
 20 ~~acquisition may not exceed one hundred sixty acres, except such as may be~~ agricultural
 21 ~~land that is~~ acquired by devise or inheritance, and such as may be held as security for
 22 indebtedness. The provisions of this section do not apply to citizens, foreign governments,
 23 or subjects of a foreign country whose right to hold land are secured by treaty.

24 **Section 3. That § 43-2A-6 be AMENDED:**

25 **43-2A-6.** ~~All agricultural lands~~ Agricultural land acquired or held in violation of
 26 ~~§§ 43-2A-2 and 43-2A-3 shall be~~ this chapter is forfeited to the state. Any lease of
 27 agricultural land in violation of this chapter is terminated. Nothing in this chapter limits
 28 the lessor's adequate relief available under law or equity against a lessee who violates this
 29 chapter. The attorney general shall enforce such forfeiture. However, no such forfeiture
 30 may be adjudged unless the action to enforce is brought within ~~three~~ twenty ten years
 31 after such property has been acquired or held by ~~such alien~~ a foreign person in violation
 32 of this Act. No title to land is invalid or liable to forfeiture by reason of the alienage of any
 33 former owner or person interested therein.

1 The Committee on Foreign Investment in the United States – South Dakota may
 2 review an agricultural land transaction after the transaction is closed if any owner or
 3 investor in the agricultural land has taken on a second citizenship other than a United
 4 States citizenship.

5 **Section 4. That § 43-2A-8 be AMENDED:**

6 **43-2A-8.** The restrictions of ~~this chapter~~ §§ 43A-2A-1 to 43A-2A-7, inclusive do
 7 not apply to agricultural land owned by a corporation for immediate or potential use in
 8 nonfarming purposes. A corporation may hold such agricultural land in such acreage as
 9 may be necessary to its nonfarm business operations. However, pending the development
 10 of agricultural land for nonfarm purposes, such land may not be used for farming except
 11 under lease to a family farm unit, a family farm corporation, or an authorized farm
 12 corporation.

13 All real property owned or held by the State of South Dakota by and through the
 14 South Dakota State Cement Plant Commission as of December 28, 2000, is owned or held
 15 by it and its successors in title for immediate or potential use for nonfarming purposes
 16 and the real property is necessary for nonfarming business operations.

17 **Section 5. That chapter 43-2A be amended with a NEW SECTION:**

18 The Committee on Foreign Investment in the United States – South Dakota consists
 19 of ~~five~~ ~~seven~~ members as follows:

- 20 (1) The secretary of the Department of Agriculture and Natural Resources;
 21 (2) The director of the South Dakota Office of Homeland Security;
 22 (3) A designee of the Governor, who shall serve as chairperson;
 23 (4) A member of the Senate appointed by the president pro tempore to a two-year
 24 term;
 25 (5) A member of the House of Representatives appointed by the speaker of the house
 26 to a two-year term;
 27 ~~(4)~~(6) An individual who owns at least one hundred sixty acres of agricultural land in the
 28 state and who, in the opinion of the Governor, has expertise in the agriculture
 29 industry; and
 30 ~~(5)~~(7) An individual who, in the opinion of the Governor, has expertise in national or state
 31 security.

1 The Governor shall appoint the two members listed in subdivisions ~~(4)~~ (6) and ~~(5)~~
2 (7) to two-year terms. ~~The appointed members who shall~~ serve at the pleasure of the
3 Governor.

4 No member may receive salary solely for serving on the committee. A member
5 shall receive per diem at the rate provided by law and be reimbursed for necessary travel
6 and other expenses incurred while performing or on official committee business.

7 **Section 6. That chapter 43-2A be amended with a NEW SECTION:**

8 The Committee on Foreign Investment in the United States – South Dakota shall
9 investigate and review agricultural land transactions to prevent aliens and foreign persons,
10 including foreign governments, from gaining undue control or influence, whether direct or
11 indirect, over the state’s food supply, from gaining access or proximity to any critical
12 infrastructure facility, or from impairing the security or prosperity of the state.

13 **Section 7. That chapter 43-2A be amended with a NEW SECTION:**

14 The Committee on Foreign Investment in the United States – South Dakota shall
15 have jurisdiction:

16 (1) To investigate, review, and make recommendations to the Governor for approval
17 or denial under section 15 of this Act of any transaction occurring on or after July
18 1, 2023, involving the transfer of agricultural land by any means, including,
19 purchase, investment regardless of the percentage interest, grant, devise, descent,
20 or inheritance, to any foreign person, foreign entity, or ultimate beneficial owner
21 of such foreign person or foreign entity;

22 (2) To investigate, review, and make recommendations to the Governor for approval
23 or denial under section 15 of this Act of the initial leasing of agricultural land
24 beginning on or after July 1, 2023, used for an agricultural purpose for a period of
25 one year or longer to any foreign person, foreign entity, or ultimate beneficial
26 owner, but not for any subsequent renewal of that lease involving the same lessee;
27 and

28 (3) To investigate, review, and make recommendations to the Governor for approval
29 or denial under section 15 of this Act of any transaction involving real property
30 within the state previously considered by the CFIUS on or after July 1, 2023. The
31 committee shall not review a transaction involving agricultural land under CFIUS
32 jurisdiction until after the CFIUS renders final action.

33 Any applicant consents to in rem jurisdiction of the State of South Dakota.

1 **Section 8. That chapter 43-2A be amended with a NEW SECTION:**

2 Any applicant subject to the Committee on Foreign Investment in the United States
3 – South Dakota’s jurisdiction shall notify the committee in writing of its intent to acquire
4 agricultural land and apply for approval of the subject agricultural land transaction. The
5 application must be on a form as prescribed by the secretary of the Department of
6 Agriculture and Natural Resources. The application must include copies of any or all of the
7 following documents in support of the transaction:

8 (1) Relevant titles;

9 (2) Proposed deeds;

10 (3) Real estate transaction documents;

11 (4) Financing or financial documentation related to the funding of the agricultural land
12 transaction;

13 (5) Documentation showing and confirming the identity of the applicant, all owners or
14 investors affiliated with the applicant, and any ultimate beneficial owner or investor
15 that exercises control or influence over the applicant, if it is an entity and not a
16 natural person;

17 (6) Proposed closing documentation required in regular course; and

18 (7) Documents provided in a prior CFIUS review of the same transaction.

19 The committee retains the discretion to request any documents relevant to the
20 committee’s investigation, review, and ultimate recommendations reasonably related to
21 the subject transaction.

22 The committee may request supplemental documentation it deems necessary to
23 implement this chapter. A failure to receive such documentation within ~~one hundred eighty~~
24 ~~ninety~~ days of the committee's request is deemed a voluntary withdrawal of the
25 application.

26 Upon receipt of a written request for review, the committee shall confirm in writing
27 its receipt of the notification, application, and supporting documentation to the applicant.

28 The date set forth in the committee’s written confirmation commences the review period.

29 **Section 9. That chapter 43-2A be amended with a NEW SECTION:**

30 The review period is ~~one hundred eighty ninety~~ calendar days. The Committee on
31 Foreign Investment in the United States – South Dakota may reserve an additional ~~one~~
32 ~~hundred eighty~~ ~~ninety~~ calendar days but shall not exceed ~~three hundred sixty five one~~
33 ~~hundred eighty~~ calendar days.

1 **Section 10. That chapter 43-2A be amended with a NEW SECTION:**

2 Upon written request from an applicant specifying the need for an accelerated
3 review, the Committee on Foreign Investment in the United States – South Dakota may
4 expedite its review.

5 **Section 11. That chapter 43-2A be amended with a NEW SECTION:**

6 The Committee on Foreign Investment in the United States – South Dakota may
7 request, in writing, from the applicant any document relevant to the committee’s
8 investigation, review, or recommendation, including:

9 (1) Titles;

10 (2) Deeds;

11 (3) Real estate transaction documents;

12 (4) Financing or other financial documents related to the transaction;

13 (5) Documents provided during any prior CFIUS review of the same transaction on or
14 after July 1, 2023; and

15 (6) Any other document reasonably related to the agricultural land transaction.

16 During the review period, the applicant shall respond to any follow-up request
17 made by the committee in writing for documents.

18 **Section 12. That chapter 43-2A be amended with a NEW SECTION:**

19 In determining whether to recommend approval or denial of an agricultural land
20 transaction to the Governor, the Committee on Foreign Investment in the United States –
21 South Dakota shall consider:

22 (1) The ownership or controlling interests of the applicant;

23 (2) The continued classification of the real property as agricultural land;

24 (3) The impact the subject agricultural land transaction would have on domestic
25 security and public safety;

26 (4) The proximity of the subject agricultural land to any public utility facility or
27 appurtenance; any local, state, or federal government facility; or any critical
28 infrastructure facility;

29 (5) Whether the CFIUS issued a safe harbor letter, as described in 31 C.F.R.
30 § 800.508(d) and section 7(f) of Presidential Executive Order 11858, as amended,
31 for the same transaction; and

1 (6) Any other factor reasonably and demonstrably related to public security that is
2 deemed relevant by the committee.

3 **Section 13. That chapter 43-2A be amended with a NEW SECTION:**

4 The Committee on Foreign Investment in the United States – South Dakota shall
5 provide the applicant at least fourteen days' written notice to the applicant of the date,
6 time, and place of the meeting where the committee will render a final decision regarding
7 the agricultural land transaction.

8 If, after weighing the factors in section 12 of this Act, the committee finds the
9 transaction supports the purpose described in section 6 of this Act, the committee may
10 recommend to the Governor approval of the transaction. If the Governor approves of the
11 transaction, the committee shall issue the applicant an approval letter stating the
12 committee recommended approval of the transaction and that the Governor approves the
13 transaction.

14 A transaction is no longer under the committee's jurisdiction upon the issuance of
15 an approval letter, unless the parties provided false information to the committee or
16 omitted material information in its application, responses to any committee questions, or
17 documentation. The committee retains its jurisdiction over a transaction if any party to
18 the agricultural land transaction provided false information or omitted material information
19 during the committee's review process or in its submissions.

20 No agricultural land transaction subject to this Act may occur in contravention of
21 the procedures of the Act or without an approval letter issued by the committee. Any
22 transaction that occurs in violation of this section is subject to forfeiture pursuant to § 43-
23 2A-6.

24 If, after weighing the factors in section 12 of this Act, the committee finds the
25 transaction undermines the purpose described in section 6 of this Act or discovers material
26 information that contradicts the information provided by the applicant, the committee may
27 recommend in writing that the Governor deny the transaction. The committee shall include
28 findings of fact, the factors weighed in reaching those findings, and the reason the
29 transaction should be denied.

30 Any applicant may, within ten calendar days of the notification that the committee
31 recommends that the Governor deny the application, but before the Governor renders a
32 final decision, submit any arguments in writing to the Governor disputing or otherwise
33 setting forth the applicant's reasons why the Governor should disagree with the
34 committee's recommendations.

1 **Section 14. That chapter 43-2A be amended with a NEW SECTION:**

2 Upon receipt of the Committee on Foreign Investment in the United States – South
3 Dakota’s written recommendation that the subject agricultural land transaction be
4 approved or denied and giving due consideration to any submission in response by the
5 applicant, the Governor shall review the agricultural land transaction for a period not
6 exceeding thirty calendar days beginning on the day of the Governor's receipt of the
7 committee's recommendation.

8 During the Governor’s review period, the Governor may seek clarification in writing
9 of the information and recommendations provided or request further information as part
10 of the review process. The committee shall respond to the Governor's request within three
11 business days of the request.

12 **Section 15. That chapter 43-2A be amended with a NEW SECTION:**

13 After completing the review, the Governor may either approve or deny the subject
14 agricultural land transaction by notifying the Committee on Foreign Investment in the
15 United States – South Dakota in writing of the decision within the review period.

16 If the Governor approves the agricultural land transaction, the committee shall
17 hold a public hearing within ten days of receiving notice from the Governor and issue an
18 approval letter for the agricultural land transaction.

19 If the Governor denies the agricultural land transaction, the committee shall hold
20 a public hearing within ten days of receiving notice from the Governor of the decision. Any
21 transaction denied by the Governor is a prohibited transaction as a matter of law.

22 If the Governor fails to act within the review period prescribed in section 14 of this
23 Act, the committee’s recommendation is deemed final action.

24 For any hearing required by this section, the committee shall provide notice of the
25 hearing to the applicant at least ten days before the scheduled hearing.

26 **Section 16. That chapter 43-2A be amended with a NEW SECTION:**

27 An applicant may withdraw an application during the Committee on Foreign
28 Investment in the United States – South Dakota’s review period. Any withdrawal must be
29 made in writing to the committee, except as provided in section 8 of this Act. If the
30 committee receives a written withdrawal request during its review period, the committee
31 must permit the party to withdraw.

1 Withdrawal is not permitted after the committee transmits its recommendation to
2 approve or deny the subject agricultural land transaction to the Governor or during the
3 Governor's review period.

4 **Section 17. That chapter 43-2A be amended with a NEW SECTION:**

5 A party may reapply for the Committee on Foreign Investment in the United States
6 – South Dakota's review after voluntarily withdrawing an application.

7 A withdrawn transaction may be resubmitted to the committee for review:

8 (1) If the applicant has new information related to the agricultural land transaction;

9 (2) If the applicant has added new parties to the agricultural land transaction, but the
10 structure of the transaction remains the same as the withdrawn transaction;

11 (3) If the funding or financing of the agricultural land transaction changed; or

12 (4) For any other reason the parties seek review of the agricultural land transaction.

13 Any review of an agricultural land transaction that was previously withdrawn is in
14 the committee's sole discretion. Should the committee deny review of a previously
15 withdrawn transaction, the committee shall notify the parties in writing. The committee
16 may consider the fact a transaction was previously withdrawn as a factor in its findings of
17 fact.

18 **Section 18. That chapter 43-2A be amended with a NEW SECTION:**

19 An official meeting of the Committee on Foreign Investment in the United States –
20 South Dakota is subject to chapter 1-25. The deliberations of the committee concerning
21 agricultural land transactions are confidential and are exempt from public disclosure,
22 including any documentary material or data made or received by the committee.

23 Any letter recommending approval or denial of an agricultural land transaction is a
24 public record, but any record or information contained therein that is exempt from public
25 disclosure pursuant to chapter 1-27 may be redacted.

26 **Section 19. That chapter 43-2A be amended with a NEW SECTION:**

27 The purchaser of transferred property subject to this act shall complete and file the
28 certificate of value required pursuant to § 7-9-7 at the time of the transfer of the property.

29 **Section 20. That § 7-9-7 be AMENDED:**

1 **7-9-7.** No register of deeds may accept for record in the office of the register of
2 deeds:

- 3 (1) Any deed, affidavit terminating joint tenancy or life estate interests, or oil, gas, or
4 other mineral lease, or affidavit for succession to real property pursuant to § 29A-
5 3-1203 that does not include the names of the grantor and the grantee or the
6 lessor and the lessee, the names of the joint tenant, the post office address of the
7 grantee or lessee, and a legal description of the property conveyed or leased;
- 8 (2) Any mortgage that does not include the names of the mortgagor and the
9 mortgagee, the post office address of the mortgagee, a legal description of the
10 property, and the amount of the mortgage and when it is due;
- 11 (3) Any assignment of mortgage or oil, gas, or other mineral lease that does not include
12 the names of the assignor and the assignee, the post office address of the assignee,
13 and a legal description of the property;
- 14 (4) Any deed or contract for deed dated after July 1, 1988 or affidavit for succession to
15 real property pursuant to § 29A-3-1203, used in the purchase, exchange, transfer,
16 or assignment of interest in real property that is not accompanied by a certificate
17 of value containing the name and address of the buyer and seller, the legal
18 description of the real property, the actual consideration exchanged for the real
19 property, the relationship of the seller and buyer, if any, ~~and~~ the terms of payment
20 if other than payment in full at the time of sale, a statement on the certificate of
21 value whether the buyer is a foreign person, as defined in § 43-2A-1, and if the
22 buyer is a foreign person, a copy of an approval letter pursuant to Section 13 of
23 this Act; or
- 24 (5) A transfer on death deed, pursuant to §§ 29A-6-401 to 29A-6-435, inclusive, is
25 exempt from completing and submitting the certificate of value as set forth in
26 subdivision (4) of this section. ~~;~~ or
- 27 ~~(6) Any deed for agricultural land, as defined in § 43-2A-1, that is subject to the~~
28 ~~jurisdiction of the Committee on Foreign Investment in the United States—South~~
29 ~~Dakota that is not accompanied by an approval letter issued under section 15 of~~
30 ~~this Act.~~

31 **Section 21. That § 7-9-7.2 be AMENDED:**

32 **7-9-7.2.** The form of the certificate of value required by §§ 7-9-7~~and~~, 10-13-40,
33 and section 19 of this Act shall be established by the secretary of revenue by rule
34 promulgated pursuant to chapter 1-26.