118TH CONGRESS
1ST SESSION

S.

To ban new corporate ownership of agricultural land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Booker introduced the following bill; which was read twice and referred to the Committee on ____________________

A BILL

To ban new corporate ownership of agricultural land, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Farmland for Farmers Act of 2023”.

5 SEC. 2. FINDINGS.

6 Congress finds that—

7 (1) it is the longstanding policy of the United States to foster and encourage the family farm sys-
8 tem of agriculture in the United States;
(2) the maintenance of the family farm system of agriculture is essential to the social and economic wellbeing and national security of the United States;

(3) agricultural land is—

(A) a critical and limited resource of the United States that provides needed food and fiber for the people of the United States and others throughout the world; and

(B) a source of wealth, including generational wealth, for the people of the United States;

(4) since the 2008 financial crisis, corporations and, in particular, pension funds, have increasingly turned to farmland investment;

(5) from 2009 to 2022—

(A) the number of institutionally-owned farm properties rose three-fold; and

(B) the market value of that property increased from less than $2,000,000,000 to more than $14,000,000,000;

(6) large corporate investors that own farmland—

(A) are more focused on short-term profits than long-term land conservation; and
(B) have less interest than independent family farmers in ensuring that agricultural land is used in a way that most benefits the local community;

(7) since 2005, farmland prices in the United States have nearly doubled;

(8) higher farmland prices provide an advantage to well-capitalized corporate interests who can often outbid independent family farmers;

(9) continued expansion of ownership and control of agricultural land by corporate owners, especially institutional investors—

(A) threatens the future use of the agricultural land for the benefit of the people of the United States; and

(B) is detrimental to the welfare and national security of the United States;

(10) the operational scope and economic impacts of corporate ownership of agricultural land—

(A) is increasingly interstate; and

(B) directly affects the continued wellbeing and security of millions of residents of rural communities; and

(11) there is a national public interest in regulating corporate ownership of agricultural land.
SEC. 3. DEFINITIONS.

In this Act:

(1) Actively engaged in farming.—

(A) In general.—The term “actively engaged in farming”, with respect to a natural person who is a shareholder in an authorized legal entity, an officer, a director, or an employee of an authorized legal entity, a member or manager of an authorized legal entity, a partner in an authorized legal entity, a beneficiary or trustee of an authorized legal entity, or any other individual, means—

(i) regularly and frequently making or taking an important part in making management decisions substantially contributing to or affecting the operation of a farm or forest; or

(ii) performing physical work, which significantly contributes to cultivation, stewardship, crop or livestock production, or food production.

(B) Exclusion.—The term “actively engaged in farming” does not include solely providing capital.

(2) Agricultural land.—The term “agricultural land” means land located in a State that—
(A) is cropland, grassland, rangeland, pasture, forestland or other agricultural land on which agricultural or forest-related products or livestock are produced; or

(B) if the land is idle as of the date of transfer of an ownership interest in the land, was used within the 10-year period preceding the date of that transfer for production of agricultural or forest-related products or livestock.

(3) AUTHORIZED FARMER OR RANCHER COOPERATIVE.—The term “authorized farmer or rancher cooperative” means a farmer-controlled or rancher-controlled entity—

(A) with bylaws requiring 1 vote per member;

(B) from which benefits are derived and distributed equitably by each of the farmer or rancher owners;

(C) the members of which are actively engaged in farming; and

(D) that is not a subsidiary of, or owned in any part by, a multilayer subsidiary entity.

(4) AUTHORIZED LEGAL ENTITY.—The term “authorized legal entity” means a legal entity that meets each of the following requirements:
(A) The legal entity is not a subsidiary of, or owned in any part by, a multilayered subsidiary entity.

(B) The shareholders, partners, members, or beneficial owners of the legal entity do not exceed 25.

(C) The shareholders, partners, members, or beneficial owners of the legal entity are all natural persons who are actively engaged in farming.

(5) BENEFICIAL OWNER.—The term “beneficial owner”, with respect to a legal entity, means any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares—

(A) voting power, including the power to vote for, or to direct the voting of, the legal entity; or

(B) investment power, including the power to dispose, or to direct the disposition, of an interest in the legal entity.

(6) CORPORATION.—The term “corporation” means—

(A) a domestic corporation organized pursuant to the laws of a State; and
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(B) a foreign corporation.

(7) FIDUCIARY CAPACITY.—The term “fiduciary capacity” means an undertaking to act as executor, administrator, personal representative, guardian, conservator, or receiver.

(8) INDIRECT.—The term “indirect” means to act, or attempt to accomplish an act, through an interest in a business association, through 1 or more affiliates or intermediaries, or by any method other than a direct approach, including by any circuitous or oblique method.

(9) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(10) LEGAL ENTITY.—The term “legal entity” means any corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, cooperative, pension or investment fund, or any other legal or commercial entity organized or created under the laws of any State or country.

(11) MULTILAYER SUBSIDIARY ENTITY.—The term “multilayer subsidiary entity” means—
(A) A privately held or publicly traded legal entity that exists within a hierarchy of legal entities that includes 2 or more levels of subsidiary entities;

(B) A privately held or publicly traded legal entity that has as its parent or subsidiary a management or holding company; or

(C) A privately held or publicly traded legal entity that engages in intramarket transfers using special purpose vehicles.

(12) Natural Person.—The term “natural person” means a human being.

(13) Ownership Interest.—

(A) In General.—The term “ownership interest”, with respect to agricultural land, means all interest acquired, transferred, or held in the agricultural land.

(B) Exclusions.—The term “ownership interest”, with respect to agricultural land, does not include—

(i) security interests;

(ii) contingent future interests;

(iii) noncontingent future interests that do not become possessory on the termination of the present possessory estate;
(iv) surface or subsurface easements and rights-of-way used for a purpose unrelated to agricultural production; and

(v) an interest solely in mineral rights.

(14) PENSION OR INVESTMENT FUND.—The term “pension or investment fund” means—

(A) a pension or employee welfare benefit fund (however organized);

(B) a mutual fund;

(C) a life insurance company separate account;

(D) a common trust of a bank or other trustee established for the investment and reinvestment of money contributed to the common trust;

(E) a real estate investment trust; and

(F) an investment company (as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a))).

(15) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(16) STATE.—The term “State” means—

(A) each of the 50 States;

(B) the District of Columbia;
(C) the Commonwealth of Puerto Rico;
(D) the United States Virgin Islands; and
(E) any territory or insular possession subject to the jurisdiction of the United States.

(17) TRUST.—

(A) IN GENERAL.—The term “trust”, with respect to property, means a fiduciary relationship that subjects the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create the fiduciary relationship.

(B) INCLUSIONS.—The term “trust” includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact, or in any similar capacity.

(C) EXCLUSIONS.—The term “trust” does not include—

(i) a person acting in a fiduciary capacity; or
(ii) a revocable trust.

(18) UNAUTHORIZED LEGAL ENTITY.—The term “unauthorized legal entity” means a legal entity that is not an authorized legal entity.
SEC. 4. RESTRICTIONS ON AGRICULTURAL LAND HOLDINGS AND EXCEPTIONS.

(a) In General.—Except as provided in subsection (b), an unauthorized legal entity shall not, directly or indirectly, acquire or otherwise hold an ownership interest in any agricultural land.

(b) Exceptions.—

(1) In General.—Subsection (a) shall not apply to the following:

(A) A bona fide encumbrance taken for purposes of security.

(B) Agricultural land acquired for research or experimental purposes.

(C) Agricultural land acquired and operated—

(i) by or for a public institution of higher education for research, experimental, demonstration, or test purposes; or

(ii) by or for a nonprofit corporation organized specifically for research, experimental, demonstration, or test purposes in support of or in conjunction with an institution of higher education.

(D) Agricultural land acquired by a legal entity for immediate use in non-agricultural
purposes, subject to the condition that the land remain in use for non-agricultural purposes.

(E) Agricultural land acquired by a legal entity by process of law in the collection of debts, pursuant to a contract for deed executed prior to the date of enactment of this Act, or by any procedure for the enforcement of a lien or claim on the agricultural land, whether created by mortgage or otherwise, if all agricultural land acquired is disposed of not later than 5 years after the date on which the legal entity acquires the title to the agricultural land.

(F) Agricultural land acquired or owned by a municipal corporation.

(G) Agricultural land acquired or owned by a nonprofit legal entity that—

(i) is organized under the laws of any State as a nonprofit legal entity; and

(ii) qualifies as tax exempt under section 501 of the Internal Revenue Code of 1986.

(H) Agricultural land that is acquired or owned by a legal entity in a fiduciary capacity.

(I) Agricultural land that is acquired or owned by a legal entity formed by owners of
heirs’ property (as defined in section 761.2(b) of title 7, Code of Federal Regulations (or a successor regulation)).

(J) Agricultural land that is acquired or owned by an authorized farmer or rancher cooperative.

(K) Agricultural land owned by a legal entity on the date of enactment of this Act, subject to the condition that the legal entity owning the land on that date of enactment continues to own the agricultural land.

(2) Research or experimental purposes.—For purposes of paragraph (1)(B), agricultural land is acquired for research or experimental purposes if the agricultural land is used in accordance with any of the following:

(A) Research and experimental activities.—

(i) In general.—Research and experimental activities are carried out on the agricultural land and commercial sales of products produced from farming the agricultural land do not occur or are incidental to those research or experimental activities.
(ii) INCIDENTAL SALES.—For purposes of clause (i), commercial sales are sales that are incidental to the research or experimental purposes of the legal entity when the sales are less than 25 percent of the gross sales of the primary product of the research and experimental activities carried out on the agricultural land.

(B) PUBLIC SEED VARIETIES.—

(i) IN GENERAL.—The agricultural land is used for the primary purpose of testing, developing, or producing public seed varieties or plants for sale or resale to farmers as seed stock and commercial sales of other products produced from farming the agricultural land do not occur or are incidental.

(ii) INCIDENTAL SALES.—For purposes of clause (i), commercial sales described in that clause are incidental if the sales are less than 25 percent of the gross sales of the primary product of the testing, development, or production of public seed varieties or plants for sale or resale to
farmers as seed stock carried out on the agricultural land.

(3) LAND ACQUIRED BY LAW.—For purposes of paragraph (1)(E)—

(A) the 5-year period described in that paragraph shall be a covenant running with the title to the agricultural land against any grantee, assignee, or successor of the legal entity; and

(B) any agricultural land acquired shall not be used for farming during the 5-year period described in that paragraph, except under a lease to an authorized legal entity in accordance with this Act.

SEC. 5. COMPLIANCE.

(a) CERTIFYING AFFIDAVIT.—For any acquisition of an ownership interest in agricultural land by a legal entity after the date of enactment of this Act, at the time of acquisition, the legal entity purchasing the agricultural land shall sign, and submit to the Secretary, an affidavit, under penalty of perjury, certifying compliance with this Act.

(b) FEDERAL TAX RETURN AFFIDAVIT.—Beginning with the first taxable year after the date of enactment of this Act, any legal entity with an ownership interest in
agricultural land shall file an affidavit along with the Federal tax return submitted by the legal entity, under penalty of perjury, certifying compliance with this Act.

(c) USDA Programs and Farm Credit System.—Any legal entity applying to participate in any program of the Department of Agriculture or the Farm Credit System after the date of enactment of this Act shall provide documentation that demonstrates compliance with this Act as a condition of eligibility for the program.

(d) Ineligibility.—Any unauthorized legal entity that holds an ownership interest in agricultural land described in section 4(b)(1)(K) shall not be eligible to participate in any program of the Department of Agriculture or the Farm Credit System after the date of enactment of this Act.

(e) Reports to Congress.—Each calendar year, the Secretary shall submit to Congress, and make publicly available on the website of the Department of Agriculture, a report on violations of this Act discovered through affidavits received under subsections (a) and (b) and documentation received under subsection (c).

SEC. 6. ENFORCEMENT.

(a) Referral.—If the Secretary determines that a legal entity has acquired, or holds title to or interest in, agricultural land in violation of this Act, the Secretary
shall report that violation to the Attorney General for enforcement in accordance with subsection (b).

(b) ENFORCEMENT BY ATTORNEY GENERAL.—

(1) IN GENERAL.—On receipt of a referral of a violation of this Act reported by the Secretary pursuant to subsection (a), the Attorney General—

(A) shall conduct an investigation relating to that referral; and

(B) may initiate an action in the district court of the United States with jurisdiction over the county in which the applicable agricultural land is located to require divestiture of the agricultural land by the legal entity.

(2) NOTICE; ORDER.—

(A) IN GENERAL.—The Attorney General shall file notice of the pendency of an action brought under paragraph (1)(B) with the recorder of deeds of each county in which the applicable agricultural land is located.

(B) ORDER REQUIRED.—If the applicable district court of the United States finds that the agricultural land subject to an action brought under paragraph (1)(B) was acquired, or held, in violation of this Act, the court shall—
(i) enter an order declaring that violation; and

(ii) file a copy of the order with the recorder of deeds in each county in which any portion of the agricultural land is located.

(3) DIVESTMENT OF AGRICULTURAL LAND.—

(A) IN GENERAL.—On issuance of an order described in paragraph (2)(B), the unauthorized legal entity owning or having an ownership interest in the agricultural land subject to that order shall have a period of 1 year from the date on which the order was issued to divest the agricultural land.

(B) COVENANT.—The 1-year period described in subparagraph (A) shall be deemed to be a covenant running with the title to the agricultural land against any legal entity, grantee, assignee, or successor.

(C) VIOLATION.—Any agricultural land not divested in accordance with subparagraph (A) shall be sold at public sale in the manner prescribed by law for the foreclosure of a mortgage by action.
(4) ENJOINMENT.—Any prospective or threatened violation of this Act may be enjoined through an action brought by the Attorney General in a manner provided by law.

(5) PENALTIES.—

(A) CIVIL PENALTIES.—

(i) IN GENERAL.—Any natural person or legal entity that violates this Act may be assessed a civil penalty by the Secretary in an amount that is not more than 2 times the fair market value of the agricultural land at issue for each violation.

(ii) MULTIPLE VIOLATIONS.—Each violation of this Act shall constitute a separate offense.

(iii) NOTICE.—No penalty shall be assessed on any natural person or legal entity unless the natural person or legal entity is given notice and opportunity for a hearing with respect to the violation.

(iv) FAILURE TO PAY.—

(I) IN GENERAL.—On failure to pay the penalty assessed under clause (i), the Secretary may request the Attorney General institute a civil action
in a district court of the United States for any district in which the natural person or legal entity is found, resides, or transacts business to collect the penalty.

(II) DEFERENCE.—In any action commenced under subclause (I), the applicable district court of the United States shall sustain the issuance of a penalty by the Secretary under clause (i) if supported by substantial evidence.

(B) CRIMINAL PENALTIES.—

(i) IN GENERAL.—Any natural person who knowingly violates this Act as a shareholder, partner, member, or beneficial owner of an unauthorized legal entity with an ownership interest in the agricultural land at issue shall be imprisoned for not more than 5 years, fined in accordance with section 3571 of title 18, United States Code, or both.

(ii) MULTIPLE VIOLATIONS.—Each violation of this Act shall constitute a separate offense.
(c) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

(1) IN GENERAL.—If the attorney general of a State has reason to believe that an interest of the residents of the State has been, or is, threatened or adversely affected by the engagement of an unauthorized legal entity in a practice that violates this Act, or a regulation promulgated pursuant to this Act, the attorney general of the State may, as parens patriae, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States—

(A) to enjoin that practice;

(B) to compel divestiture of the agricultural land;

(C) to obtain damages, restitution, or other compensation on behalf of the residents of the State;

(D) to obtain such other relief as the court considers appropriate; or

(E) to obtain a civil penalty in an amount determined under paragraph (2).

(2) CIVIL PENALTIES.—

(A) CALCULATION.—Subject to subparagraph (B), for purposes of imposing a civil pen-
ality under paragraph (1)(E) with respect to an unauthorized legal entity that violates this Act, the amount determined under this paragraph is the amount obtained by multiplying—

(i) the number of days that the unauthorized legal entity is not in compliance with this Act; and

(ii) an amount not greater than $3,000, as determined by the appropriate district court of the United States.

(B) MAXIMUM TOTAL LIABILITY.—The total amount of civil penalties that may be imposed with respect to an unauthorized legal entity that violates this Act shall not exceed the greater of $1,000,000 and the fair market value of the ownership interest in agricultural land involved in the applicable action for all civil actions brought against that unauthorized legal entity under paragraph (1) for that violation.

(3) INVESTIGATORY POWERS.—Nothing in this paragraph prevents the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to
compel the attendance of witnesses or the production
of documentary or other evidence.

(4) ACTIONS BY OTHER STATE OFFICIALS.—In
addition to civil actions brought by State attorneys
general under paragraph (1), any other officer of a
State who is authorized by the State may bring a
civil action under that paragraph, subject to the
same requirements and limitations that apply under
that paragraph to civil actions brought by the attor-
ney general in the State.

(5) SAVINGS PROVISION.—Nothing in this sub-
section prohibits an attorney general or other au-
thorized official of a State from initiating or con-
tinuing any proceeding in a court of the State for
a violation of any civil or criminal law of the State.

SEC. 7. STATE AUTHORITY.

(a) IN GENERAL.—Pursuant to its powers under the
Commerce Clause of section 8 of article I of the Constitu-
tion of the United States, Congress hereby authorizes
States to regulate legal entities that are permitted to own
agricultural land within the State in a manner that is at
least as restrictive as the manner described in this Act.

(b) INCLUSIONS.—Regulation under subsection (a)
may include more restrictive requirements, including re-
strictions that provide more stringent definitions of “ac-
actively engaged in farming”, notwithstanding whether the requirements are more burdensome for owners of agricultural land in a certain State, who are residing in other States, to satisfy.