

## SENATE BILL NO. 165

INTRODUCED BY M. COLE, T. BECK, W. MCNUTT

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING THE MONTANA GROWTH THROUGH AGRICULTURE ACT; CLARIFYING THE COMPENSATION FOR COUNCIL MEMBERS; CLARIFYING CONFLICT OF INTEREST PROVISIONS FOR COUNCIL MEMBERS; CLARIFYING THE USE OF INVESTMENTS FOR MARKETING AND BUSINESS DEVELOPMENT; ~~ELIMINATING THE USE OF FUNDS FOR RESEARCH AND DEVELOPMENT PROJECTS~~; PROVIDING PRIORITY FOR INVESTMENTS IN PROJECTS USING INNOVATIVE AGRICULTURAL TECHNOLOGY; PROVIDING FOR PARTNERSHIPS WITH CONVENTIONAL LENDING SOURCES; AMENDING SECTIONS 90-9-103, 90-9-201, 90-9-202, 90-9-203, 90-9-301, 90-9-303, 90-9-306, 90-9-311, 90-9-312, 90-9-313, AND 90-9-316, MCA; REPEALING SECTIONS ~~90-9-314, 90-9-315, AND SECTION~~ 90-9-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 90-9-103, MCA, is amended to read:

**"90-9-103. Definitions.** As used in this chapter, the following definitions apply:

- (1) "Act" means the Montana Growth Through Agriculture Act.
- (2) "Agricultural business" means an enterprise engaged in the production, processing, marketing, distribution, or exporting of agricultural products. The term includes any related business the primary function of which is providing goods or services to an agricultural enterprise.
- (3) "Agricultural development project" means ~~either a~~ marketing, agribusiness development, or seed capital, OR RESEARCH AND DEVELOPMENT ~~or research and development~~ project designed to discover, develop, transfer, market, use, or commercialize existing or new agricultural products or processes in order to strengthen and enhance agricultural economic development in the state.
- (4) ~~"Agricultural development project loan agreement" or "loan" means an agreement entered into between the council and the loan recipient of a seed capital project loan or a research and development project loan that:~~
  - ~~(a) creates a debt relationship between the parties;~~
  - ~~(b) provides for a financial return to the council;~~

- ~~(c) provides economic development potential to the state; and~~  
~~(d) contains various provisions and terms as required by the act.~~

(4) "AGRICULTURAL DEVELOPMENT PROJECT LOAN AGREEMENT" OR "LOAN" MEANS AN AGREEMENT ENTERED INTO BETWEEN THE COUNCIL AND THE LOAN RECIPIENT OF A SEED CAPITAL PROJECT LOAN OR A RESEARCH AND DEVELOPMENT PROJECT LOAN THAT:

- (A) CREATES A DEBT RELATIONSHIP BETWEEN THE PARTIES;  
(B) PROVIDES FOR A FINANCIAL RETURN TO THE COUNCIL;  
(C) PROVIDES ECONOMIC DEVELOPMENT POTENTIAL TO THE STATE; AND  
(D) CONTAINS VARIOUS PROVISIONS AND TERMS AS REQUIRED BY THE ACT.

~~(5)(4)(5)~~ "Company" means a natural person, firm, partnership, corporation, association, or other entity authorized to conduct business in the state.

~~(6)(5)(6)~~ "Convertible debenture" means a debenture convertible into stock under certain conditions by an individual or company, but not by the council.

~~(7)(6)(7)~~ "Council" means the Montana agriculture development council established in 2-15-3015.

~~(8)(7)(8)~~ "Debenture" or "note" means a writing or certificate issued as evidence of debt.

~~(9)(8)(9)~~ "Department" means the department of agriculture established in 2-15-3001.

~~(10) "Expansion capital project" means an agricultural technology development project undertaken to enable an individual or a company to expand its manufacturing and marketing activities in order to move its agricultural products or services into new markets or to expand existing markets.~~

~~(11)(9)(10)~~ "Innovative agricultural technology" means the involvement of an agricultural product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

~~(12)(10)(11)~~ "Investment" means an award of money, with or without repayment requirements, for the purposes provided for in ~~90-9-401~~ this chapter.

~~(13)(11)(12)~~ (a) "Matching funds" means the funds received ~~in cash~~ by the agricultural development project loan or investment recipient from ~~nonstate appropriated sources~~ private, federal, state, or commodity checkoff funds and contributed by the loan or investment recipient to the project in an amount that is at least equal to the funds ~~loaned~~ disbursed to the recipient by the council for use in the agricultural development project.

(b) Matching funds may not include other state grants.

~~(14)(12)(13)~~ "Portfolio company" means a startup or expansion stage company that has received a seed

capital project loan from the council.

~~(15)(13)(14)~~ "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, ~~that is associated with or involved in commercial activity.~~

~~(16)~~ "Research and development project" means an agricultural development project that falls into the category of applied technology research or agricultural technology transfer and assistance.

~~(17)~~ "Research and development project loan" means an agricultural development project loan agreement entered into between the council and a loan recipient for a research and development project.

(15) "RESEARCH AND DEVELOPMENT PROJECT" MEANS AN AGRICULTURAL DEVELOPMENT PROJECT THAT FALLS INTO THE CATEGORY OF APPLIED TECHNOLOGY RESEARCH OR AGRICULTURAL TECHNOLOGY TRANSFER AND ASSISTANCE.

(16) "RESEARCH AND DEVELOPMENT PROJECT LOAN" MEANS AN AGRICULTURAL DEVELOPMENT PROJECT LOAN AGREEMENT ENTERED INTO BETWEEN THE COUNCIL AND A LOAN RECIPIENT FOR A RESEARCH AND DEVELOPMENT PROJECT.

~~(18)(14)(17)~~ (a) "Seed capital project" means ~~a~~ an agricultural development project loan entered into between the council and a loan recipient for the purposes of providing the recipient with startup or expansion capital project.

(b) The term does not include an investment.

~~(19)~~ "Seed capital project loan" means an agricultural development project loan entered into between the council and a loan recipient for a seed capital project.

~~(20)(15)(18)~~ "State" means the state of Montana.

~~(21)~~ "Technology transfer and assistance project" means an agricultural development project that:

~~(a) transfers technology research from the laboratory to the marketplace; or~~

~~(b) provides better access and exposure to business development assistance or information for researchers or early-stage agricultural businesses that commercialize agricultural technology products.~~

~~(22)(16)(19)~~ "Warrant" means an instrument issued by a corporation giving a holder other than the council the right to purchase stock of a corporation at a fixed price, either for a limited time or perpetually."

**Section 2.** Section 90-9-201, MCA, is amended to read:

**"90-9-201. Council organization -- meetings.** (1) The members of the council shall select a member as ~~chairman presiding officer. In addition to the chairmanship, the~~ The council may establish other offices and select council members to fill these offices.

(2) The council shall meet quarterly and at other times as determined by the ~~chairman presiding officer~~

or a majority of the council.

(3) Each committee member, except the director of the department and the director of the department of commerce, is entitled to:

(a) \$50 compensation for each day that the member is engaged in the transaction of official business, including travel to and from official business; and

(b) necessary travel expenses as provided for in 2-18-501 through 2-18-503."

**Section 3.** Section 90-9-202, MCA, is amended to read:

**"90-9-202. Powers and duties of the council.** The council shall:

(1) establish policies and priorities to enhance the future development of agriculture in Montana[, including the Indian reservations in the state];

(2) make investments or loans in agricultural development projects that have a short- or long-term ability to stimulate agriculture development and diversification in [rural, urban, and tribal settings in] Montana, including but not limited to:

(a) seed capital ~~loans~~ projects for development and commercialization of new products and processes;

~~(b) agricultural business incubators;~~

~~(c)~~(b) foreign and domestic market development activities;

(C) APPLIED TECHNOLOGICAL RESEARCH;

~~(d)~~(D) ~~applied technological research~~ agricultural development projects; and

~~(e)~~(E) agricultural technology assistance and transfer; and

(3) accept grants or receive devises of money or property for use in making the investments or loans authorized by this chapter. (Bracketed language terminates June 30, 2001--sec. 19, Ch. 512, L. 1999.)"

**Section 4.** Section 90-9-203, MCA, is amended to read:

**"90-9-203. Rulemaking.** The council shall adopt rules necessary to implement the provisions of this chapter, including but not limited to rules:

(1) governing the conduct of council business;

(2) establishing application procedures that, at a minimum, require the submittal of an executive summary for an agricultural development project loan or investment, a business plan for a seed capital project ~~loan~~, A RESEARCH AND DEVELOPMENT PROJECT PROPOSAL FOR A RESEARCH AND DEVELOPMENT PROJECT LOAN, ~~a research and development project proposal for a research and development project loan~~, and other documents

necessary to meet the criteria established in the act;

(3) establishing procedures to be followed by the council in its review process prior to making an agricultural development project loan or investment;

(4) establishing postdisbursement activities that describe the ongoing involvement or follow-along management of the council that may be required in an agricultural development project loan or investment agreement."

**Section 5.** Section 90-9-301, MCA, is amended to read:

**"90-9-301. Agriculture seed capital account -- matching funds.** (1) There is an agriculture seed capital account administered by the council.

(2) The council may loan or invest money from the agriculture seed capital account to support agricultural development projects and research relating to innovative organizational improvements in agricultural businesses and to the commercialization and marketing of new agricultural products or agricultural production processes.

(3) The council may not make a loan or investment to an agricultural development project ~~for which the~~ unless the recipient provides matching funds ~~have not been received~~. Matching funds are required prior to any expenditure of state funds ~~for research and development or seed capital projects~~. The council may accept as matching funds those funds received by the loan recipient within 1 year prior to the execution of the loan agreement."

**Section 6.** Section 90-9-303, MCA, is amended to read:

**"90-9-303. Return-on-investment agreements.** The council ~~shall~~ may enter into return-on-investment agreements for those products or processes that are to be developed and commercialized as a result of an investment under this chapter. As a part of ~~such~~ an agreement, the council shall require payment of a return that it considers commensurate with the risk of its original investment."

**Section 7.** Section 90-9-306, MCA, is amended to read:

**"90-9-306. Appropriation authority and funding -- prohibited investments.** (1) The council ~~has~~ authority to may accept and expend all funds received by it as grants, donations, or other private or public income, including amounts repaid as principal and interest on investments made by the council. These funds are statutorily appropriated to the council, as provided in 17-7-502, for the purposes of this chapter, except that expenditures for actual and necessary expenses required for the efficient administration of this chapter must be

made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(2) Council members may not personally apply for or receive council funds. If an organization with which a member is affiliated applies for council funds, the member ~~must~~ shall disclose the nature of the affiliation and, if the council member is a board member or officer of the organization, may not participate in the decision of the council regarding the application."

**Section 8.** Section 90-9-311, MCA, is amended to read:

**"90-9-311. General criteria underlying agricultural development project loans and investments.**

The council may make an agricultural development project loan or investment only upon a favorable determination that the proposed agricultural development project:

(1) is consistent with the findings and purposes of the act because it adds value to Montana's agricultural products. Priority must be given to projects that ~~incorporates~~ incorporate innovative agricultural technology; ~~;~~

(2) has prospects for collaboration between the public and private sectors of the state's economy;

(3) has prospects for achieving commercial success and for creating new jobs in the state;

(4) has potential for commercial success related to the specific product, process, or business development methodology proposed;

(5) can provide matching funds;

(6) has potential to benefit existing agricultural business;

(7) can be reasonably expected to provide an economic return within a reasonable period of time;

(8) involves processing or adding value to agricultural products produced in the state; and

(9) has a management structure that allows ongoing postdisbursement involvement by the council."

**Section 9.** Section 90-9-312, MCA, is amended to read:

**"90-9-312. Seed capital projects -- program goals.** (1) The council may make a ~~seed capital project~~ loan to a seed capital project if it determines that the project:

(a) meets the loan criteria established in 90-9-311 and 90-9-313; ~~and further determines that the project~~

(b) meets the goals established in subsection (2); and

(c) involves development and commercialization of innovative agricultural products or processes.

(2) The goals of this program are:

(a) ~~to assist in the development of innovative technology in the state by providing~~ provide a source of capital to the value-added agricultural-based sector of the state's economy;

(b) to provide financing and follow-along management support for agricultural businesses in the state that are attempting to develop agricultural products or processes based on innovative technologies; and

(c) to provide a liaison between agricultural businesses in the state and investors in an effort to enhance the pool of capital available to agricultural businesses in the state.

(3) On approval of a seed capital project, a loan agreement must be entered into between the council and the loan recipient that:

(a) creates a debt relationship between the parties;

(b) provides for a financial return to the council;

(c) provides economic development potential to the state; and

(d) contains various provisions and terms as required by this chapter."

**Section 10.** Section 90-9-313, MCA, is amended to read:

**"90-9-313. Specific criteria for seed capital project loans.** The council may make a seed capital project loan only if it determines that the proposed project complies with the criteria and goals set forth in 90-9-311 and 90-9-312 and further determines that:

(1) the project adds value to Montana's agricultural products. Priority must be given to projects that ~~develops~~ develop or ~~employs~~ employ innovative agricultural products or processes that promise a significant competitive advantage;

(2) the project requires financing that:

(a) is not available from conventional lending sources; or

(b) will be made in partnership with conventional lending sources;

(3) the project provides an opportunity to preserve the principal of the loan amount and to earn a monetary return;

(4) the company is located or preparing to locate within the state;

(5) the project demonstrates a capacity to diversify or add value to the state's agricultural businesses;

(6) the company's management team possesses sufficient agricultural business experience;

(7) the company has potential for creating and retaining jobs and stimulating tax revenue growth in the state;

(8) the company's agricultural product or process is targeted for a commercial market;

(9) the company's product or process is of sufficient quality to significantly impact the target market; and

(10) if applicable, the company's business plan is designed to provide financing, marketing, and

production milestones to accomplish the proposed commercialization."

**Section 11.** Section 90-9-316, MCA, is amended to read:

**"90-9-316. Agricultural development project loan or investment agreement -- contents -- council decisions final.** (1) If the council determines that an agricultural development project meets the criteria established in this chapter and has complied with the applicable procedures and review processes established by the council, the council may enter into an agricultural development project loan or investment agreement with the company and authorize the disbursement of funds to the company.

(2) The loan or investment agreement, at a minimum, must contain the following provisions, when applicable:

- (a) the project budget;
- (b) the financing, marketing, and production milestones for the project that describe project tasks to be achieved at designated times in each area;
- (c) the reporting requirements, including but not limited to:
  - (i) financial statements to be submitted on at least an annual basis as determined by the council;
  - (ii) quarterly commercialization progress reports;
  - (iii) annual reports; and
  - (iv) reports on any significant project transactions;
- (d) the disbursement schedule for the loan or investment;
- (e) the payback to the council;
- (f) the causes for loan or investment revocation, suspension, or termination; and
- (g) the intellectual property provisions.

(3) All decisions of the council are final and are not subject to the contested case provisions of Title 2, chapter 4."

**NEW SECTION. Section 12. Repealer.** ~~Sections 90-9-314, 90-9-315, and SECTION 90-9-318, MCA,~~ are ~~is~~ repealed.

**NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.



NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

- END -

