

HOUSE BILL NO. 459

INTRODUCED BY L. JENT

A BILL FOR AN ACT ENTITLED: "AN ACT REESTABLISHING THE MONTANA AGRICULTURAL HERITAGE PROGRAM; CREATING A 12-MEMBER MONTANA AGRICULTURAL HERITAGE COMMISSION; AUTHORIZING THE STATE TO ACQUIRE AND HOLD AGRICULTURAL EASEMENTS; PROVIDING AGRICULTURAL EASEMENT ACQUISITION CRITERIA; REQUIRING NINE MEMBERS OF THE COMMISSION TO APPROVE AGRICULTURAL EASEMENT ACQUISITIONS; PROVIDING FOR PERPETUAL AND RENEWABLE-TERM AGRICULTURAL EASEMENTS AND AGRICULTURAL EASEMENT ENFORCEMENT; PROVIDING THAT STATE FUNDS MAY BE USED TO PURCHASE AND ADMINISTER AGRICULTURAL EASEMENT AGREEMENTS; ALLOWING PRIVATE, NONPROFIT ENTITIES AND LAND TRUSTS TO SUBMIT PROPOSALS TO THE COMMISSION AND TO ENFORCE EASEMENTS IF AUTHORIZED; PROVIDING FOR DONATIONS, GRANTS, GIFTS, AND OTHER FINANCIAL SUPPORT; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, Montana has a rich heritage of family-based agricultural enterprises that foster and promote economic and cultural values, open space, diversity of wild species, and important natural and aesthetic qualities; and

WHEREAS, a diverse group of Montanans concerned about threats to the viability of the state's family-based agricultural heritage and the natural and public values sustained by that heritage have continued a policy dialogue that establishes a set of core values and a series of principles to expand the available alternatives to preserve Montana's agricultural land and heritage; and

WHEREAS, the Legislature seeks to reestablish a successful program that protects the values and principles recognized by Montanans who are concerned about the future viability of the state's family-based agricultural tradition and the values contained within that tradition to secure the long-term conservation and productive use of the agricultural lands in this state for future generations.

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

1 **NEW SECTION. Section 1. Short title.** [Sections 1 through 3 and 5 through 12] may be cited as the
2 "Montana Agricultural Heritage Act".

3
4 **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 3 and 5 through 12], the
5 following definitions apply:

6 (1) "Agricultural easement" means a conservation easement, as defined in 76-6-104, that is created
7 to satisfy the core values established in [section 5].

8 (2) "Commission" means the Montana agricultural heritage commission established in [section 3].

9 (3) "Department" means the department of natural resources and conservation provided for in
10 2-15-3301.

11 (4) "Native wild species" means the diversity of native wild plant and animal species and the ecological
12 and management processes that sustain them.

13
14 **NEW SECTION. Section 3. Montana agricultural heritage commission -- membership --**
15 **administration.** (1) There is a Montana agricultural heritage commission. The commission consists of 12
16 members. Ten members must be appointed by the governor, one member must be appointed by the president
17 of the senate, and one member must be appointed by the speaker of the house.

18 (2) Of the members appointed by the governor:

19 (a) two members shall operate family farms or ranches in the state and must be active in regional or
20 local agricultural organizations;

21 (b) one member shall own and manage land taxed as forest land and must be active in and represent
22 a state or local forestry organization or business;

23 (c) one member must be active in and represent a statewide real estate or building industry organization
24 that has been in operation for at least 10 years;

25 (d) two members shall represent regional or statewide conservation organizations that have been in
26 operation for at least 10 years;

27 (e) one member shall represent a regional or statewide land trust that has been in operation for at least
28 5 years;

29 (f) one member must be a county commissioner or a member of a conservation district board of
30 supervisors;

(g) one member must be active in and represent a statewide agricultural organization that has been in existence for at least 10 years; and

(h) one member must be an enrolled member of a Montana tribe.

(3) Except for the initial appointments, members appointed by the governor shall serve 3-year terms. Members appointed by the legislature shall serve 2-year terms. A presiding officer must be elected from among the members of the commission at an annual election. The presiding officer may be reelected. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.

(4) The commission is allocated to the department for administrative purposes only as provided in 2-15-121.

NEW SECTION. Section 4. Montana agricultural heritage commission -- initial appointments. The initial appointments to the commission must be for the following terms:

(1) the two members operating family farms or ranches, 4 years;

(2) the member owning and managing forest land, 4 years;

(3) the member representing a statewide real estate or building industry organization, 3 years;

(4) the two members representing regional or statewide conservation organizations, 4 years;

(5) the member representing a regional or statewide land trust, 4 years;

(6) the member who is a county commissioner or a member of a conservation district board of supervisors, 4 years;

(7) the member representing a statewide agricultural organization, 4 years;

(8) the member who is a tribal member, 3 years; and

(9) the members appointed by the legislature, 2 years.

NEW SECTION. Section 5. Purpose -- core values. (1) The commission shall approve the acquisition of an agricultural easement from a willing seller or donor for the objective of conserving rural landscapes while providing for the continued working of family farms, ranches, and forest lands and maintenance of natural and public values.

(2) The type of activities that are permitted or prohibited by any given acquired agricultural easement must be determined on a case-by-case basis and must be consistent with the following core values:

(a) conservation of family farms, ranches, and forest lands;

1 (b) conservation of rural landscapes; and

2 (c) conservation of native wild species and their habitat.

3 (3) Easements held by the state of Montana may, if authorized by the state, be enforced by a private,
4 nonprofit entity or a land trust.

5
6 **NEW SECTION. Section 6. Executive director -- administration -- powers -- decisions.** (1) The
7 executive director of the commission must be hired by a joint, mutual decision of the presiding officer of the
8 commission and the director of the department. The department shall provide additional staff as necessary.

9 (2) The commission may expend funds to acquire agricultural easements under [sections 1 through 3
10 and 5 through 12] on behalf of the state without the approval of the state land board.

11 (3) An affirmative vote of at least nine members is required for approval of an agricultural easement
12 acquisition. However, if three members vote against an acquisition, the acquisition may not be approved.

13 (4) For each agricultural easement acquisition approved, the commission shall use the acquisition
14 criteria provided in [section 7].

15 (5) The terms of an agricultural easement acquired under this section must be designed to conserve
16 the core values set forth in [section 5] and must specify the manner in which the agricultural easement will
17 conserve the values.

18
19 **NEW SECTION. Section 7. Criteria for agricultural easement -- rulemaking.** (1) The commission
20 may adopt rules that establish the criteria and policies for acquiring agricultural easements. With respect to each
21 proposed acquisition, the criteria and policies adopted by the commission must consider:

22 (a) important natural or public values found within family farms, ranches, and forest lands;

23 (b) the threat of conversion of the property from traditional agricultural use;

24 (c) cooperation and support among neighboring property owners and protection of individual property
25 rights;

26 (d) positive impacts on long-term agricultural productivity and perpetuation both within and beyond the
27 boundaries of the proposed agricultural easement;

28 (e) landscape and watershed integrity to conserve water quality and natural resources;

29 (f) habitats for native wild species, including habitats for important, rare, or sensitive species;

30 (g) potential social and economic impacts on affected local governments and the state;

1 (h) regional balance of approved agricultural easements;

2 (i) potential for leveraging state funds allocated to the Montana agricultural heritage program with
3 additional public or private funds;

4 (j) provisions for compensating landowners who agree to allow public access on the agricultural
5 easement. The agreement to allow public access may not be a requirement for any proposed agricultural
6 easement acquisition and may not result in a higher funding priority for any agricultural easement acquisition.

7 (2) In order to receive commission approval, a proposal is not required to meet all of the criteria set forth
8 in this section.

9 (3) The commission may adopt rules that it considers necessary to implement [sections 1 through 3 and
10 5 through 12].

11
12 **NEW SECTION. Section 8. Agricultural easement acquisition procedure -- enforcement.** (1) Any
13 interested landowner may seek to establish an agricultural easement under the provisions of [sections 1 through
14 3 and 5 through 12].

15 (2) Before an agricultural easement acquisition proposal may be considered for approval by the
16 commission, an interested landowner shall file an application with the commission. The application must include:

17 (a) the name of the titleholder of the land;

18 (b) a description of the land proposed for the agricultural easement acquisition;

19 (c) the total amount of compensation requested for the proposed agricultural easement;

20 (d) the source and nature of any nonstate funds, including donations, grants, or gifts, to be used for the
21 agricultural easement acquisition;

22 (e) a description of how the proposed agricultural easement meets the core values identified in [section
23 5];

24 (f) a description of the criteria specified in [section 7] that the proposed agricultural easement
25 addresses; and

26 (g) other noncriteria information that the commission determines is necessary to adequately process
27 the request.

28 (3) A private, nonprofit entity or land trust may bring proposals to the commission for consideration.

29 (4) In addition to filing the application, an interested landowner or a private, nonprofit entity or land trust
30 shall also submit to the commission the proposed easement document created pursuant to Title 76, chapter 6.

1

2 **NEW SECTION. Section 9. Program fund uses -- state funds.** State funds allocated to the Montana
3 agricultural heritage program may be used for:

- 4 (1) the purchase of agricultural easements;
- 5 (2) the payment of agricultural easement transaction costs;
- 6 (3) contributions to secure additional nonstate funding, donations, grants, or gifts for agricultural
7 easement acquisition; and
- 8 (4) any program administration costs borne by the state.

9

10 **NEW SECTION. Section 10. Landowner considerations.** The following considerations may be
11 negotiated with landowners in return for establishing agricultural easements:

- 12 (1) lump-sum or annual cash payments;
- 13 (2) perpetual or renewable-term agricultural easements, as provided in 76-6-202;
- 14 (3) provisions for long-term contract security; and
- 15 (4) retention of limited residential development rights by the landowner. The nature and extent of the
16 retained limited residential development rights must be consistent with the specific conditions of the agricultural
17 easement agreement and with the core values specified in [section 5].

18

19 **NEW SECTION. Section 11. Donations -- specifying locations.** (1) The commission may accept
20 donations, grants, gifts, or other private or public funds for the purpose of agricultural easement acquisition,
21 pursuant to [section 9], and for other purposes determined necessary. Money received must be deposited in the
22 account established in [section 12].

23 (2) An organization or individual offering a donation, grant, gift, or other source of financial support to
24 the Montana agricultural heritage program may specify a geographic area for the use of the donation.

25

26 **NEW SECTION. Section 12. Account -- Montana agricultural heritage program.** (1) There is an
27 account within the state special revenue fund.

- 28 (2) Money deposited in the account must be used for:
- 29 (a) the purchase of agricultural easements by a qualified easement holder;
- 30 (b) payment of easement transaction costs; and

1 (c) administrative costs borne by the commission.

2
3 **NEW SECTION.** **Section 13. Codification instruction.** [Sections 1 through 3 and 5 through 12] are
4 intended to be codified as an integral part of Title 2, chapter 15, part 33, and the provisions of Title 2, chapter
5 15, part 33, apply to [sections 1 through 3 and 5 through 12].

6
7 **NEW SECTION.** **Section 14. Effective date.** [This act] is effective July 1, 2005.

8 - END -