

HOUSE BILL NO. 48
INTRODUCED BY P. BECK
BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE GROWTH THROUGH AGRICULTURE ACT; REVISING ELIGIBILITY AND DISBURSEMENT GUIDELINES; ALLOWING THE USE OF GRANTS; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 90-9-102, 90-9-103, 90-9-202, 90-9-203, 90-9-301, 90-9-306, 90-9-307, 90-9-311, 90-9-401, AND 90-9-402, MCA; REPEALING SECTIONS 90-9-303, 90-9-312, 90-9-313, 90-9-314, 90-9-315, 90-9-316, AND 90-9-317, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 90-9-102, MCA, is amended to read:

"90-9-102. Purpose. It is the purpose of this chapter to strengthen and diversify Montana's agricultural industry ~~by establishing a public-private sector partnership~~ through loans and grants to assist the development of innovative agricultural business organizational improvements and the commercialization and marketing of new agricultural products in order to keep pace with a transforming agricultural industry and to create new jobs and expand small business opportunities."

Section 2. 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 a marketing, agribusiness development, seed capital, 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.~~

~~(5)(3) "Company" means a natural person, firm, partnership, corporation, association, or other entity authorized to conduct business in the state.~~

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

~~(7)(4) "Council" means the Montana agriculture development council established in 2-15-3015.~~

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

~~(9)(5) "Department" means the department of agriculture established in 2-15-3001.~~

~~(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.~~

~~_____ (11) "Investment" means an award of money, with or without repayment requirements, for the purposes provided for in this chapter.~~

~~(12)(6) (a) "Matching funds" means the funds received by the agricultural development project loan or investment grant recipient from private, federal, state, or commodity checkoff funds and contributed by the loan or investment recipient to the project in support of a loan or grant application in an amount that is at least equal to the funds disbursed to the recipient by the council for use in the agricultural development project.~~

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

~~(13) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the council.~~

~~_____ (14) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit.~~

~~_____ (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.~~

~~(17) (a) "Seed capital project" means 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.~~

~~(b) The term does not include an investment.~~

~~(18)(7) "State" means the state of Montana.~~

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

"90-9-202. Powers and duties of council. (1) The council shall:

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

~~(2)(b)~~ (2)(b) make ~~investments or loans or grants, pursuant to the provisions of Title 90, chapter 9, part 3, in agricultural development projects that have a short-~~ short-term 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 projects for development and commercialization of new products and processes;~~

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

~~(c) applied technological research;~~

~~(d) agricultural development projects; and~~

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

~~(3)(c)~~ (3)(c) accept grants or receive devises of money or property for use in making the ~~investments or loans or grants~~ authorized by this chapter.

(2) The council may:

(a) defer or forgive any loan in whole or in part; and

(b) forgive any accrued interest in whole or in part."

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,~~

~~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 for loans and grants authorized in 90-9-202;~~

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

(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 to monitor the use of a loan or investment agreement grant by its recipient, including:~~

~~(a) any reporting requirements; and~~

~~(b) procedures for repayment of a loan or grant upon failure of a recipient to meet the terms and conditions of that loan or grant;~~

~~(5) establishing interest rates for loans in accordance with market factors and the purposes of this chapter;~~

~~(6) limiting the amount of loans or grants that any company may receive or apply for over a given period of time;~~

~~(7) governing the deferral or forgiveness of loans and any accrued interest; and~~

~~(8) establishing other terms and conditions of loans and grants, as necessary, within the requirements and purposes of this chapter."~~

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. Money received by the council under 90-9-306 must be deposited in this account.

(2) The council may loan or ~~invest grant~~ money from the agriculture seed capital account, pursuant to the provisions of 90-9-311 and [sections 11 through 13] ~~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 unless the recipient provides matching funds. Matching funds are required prior to any expenditure of state funds. 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 90-9-306, MCA, is amended to read:

"90-9-306. Appropriation authority and funding -- ~~prohibited investments prohibitions~~. (1) The council may accept and expend ~~all the funds received by that it as~~ receives from grants, donations, or other private or public income, including amounts repaid as principal and interest on ~~investments loans~~ 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 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 7. Section 90-9-307, MCA, is amended to read:

"90-9-307. Accountability. The council shall develop independent review and audit procedures to ensure that ~~investments and loans and~~ grants made by it are used for the ~~purposes identified in its investment and loan agreements~~ specified purposes."

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

"90-9-311. General criteria underlying ~~agricultural development project loans and investments grants~~. The council may make ~~an agricultural development project a~~ loan or investment grant only ~~upon a favorable determination that the proposed agricultural development project~~ if the council determines that:

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

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

~~(3)~~ (2) the project for which the loan or grant is made has prospects for achieving commercial success given the current personnel, experience, and resources of the applicant;

(3) and for creating the project for which the loan or grant is made is anticipated to create new jobs or retain existing 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)(4) the loan or grant is primarily intended to be used for ~~involves~~ processing or adding value to agricultural products produced or potentially produced in the state; and

(9)(5) the applicant has a management structure that allows the council to reasonably conclude that the applicant will comply with ongoing reporting requirements and postdisbursement involvement monitoring activities established by the council."

Section 9. Section 90-9-401, MCA, is amended to read:

"90-9-401. Agricultural marketing enhancement. ~~The~~ As directed by the council, the department shall assist in identification and development of new domestic and foreign markets for Montana agricultural products. ~~The council shall~~ This includes:

(1) ~~assist~~ assisting in placing one full-time professional marketing person in Japan or another Pacific Rim country to develop export marketing opportunities in the Pacific region;

(2) ~~provide~~ providing assistance for appropriate trade missions of Montana producers, processors, or distributors of agricultural products on a cost-share basis; and

(3) ~~assist~~ assisting in other appropriate means of enhancing domestic markets for Montana agricultural products."

Section 10. Section 90-9-402, MCA, is amended to read:

"90-9-402. Export finance assistance. ~~The~~ As directed by the council, the department shall provide professional assistance to persons who apply for financial assistance for the purpose of developing export sales of Montana agricultural products."

NEW SECTION. **Section 11. Application for loans and grants -- additional criteria.** (1) All applicants shall complete an application and provide financial information as established by rule.

(2) The council may not make a loan or grant unless the recipient provides matching funds prior to the expenditure of any state funds. The council may accept as matching funds those funds expended by the recipient within 1 year prior to the execution of the loan or grant.

(3) The department may provide assistance to applicants during the application process.

NEW SECTION. Section 12. Terms and conditions of loans. (1) The term of any loan may not exceed 8 years.

(2) The amount of any loan may not exceed \$100,000 in any 9-month period.

(3) Repayment of a loan is due in full upon dissolution or liquidation of the recipient company.

(4) The council may make a low-interest loan, at a rate established by rule, only if it determines that the applicant meets the criteria set forth in 90-9-311 and [section 11] and the applicant:

(a) has unencumbered collateral to secure the full amount of the loan; or

(b) meets other requirements established by rule.

(5) The council may make a high-interest loan, at a rate established by rule, only if it determines that the applicant meets the criteria set forth in 90-9-311 and [section 11].

(6) The council may establish other terms and conditions by rule.

NEW SECTION. Section 13. Terms and conditions of grants. (1) A grant does not accrue interest, but is contingent on the funds being used for the specified purpose.

(2) The council may make a grant of up to \$50,000 if an application meets all of the criteria set forth in 90-9-311 and [section 11] and one of the following applies:

(a) the proposal will benefit agricultural companies in addition to the applicant;

(b) the proposal will accomplish research that benefits agriculture as a whole; or

(c) the applicant is a nonprofit entity.

(3) The council may award a grant of up to \$2,500 for educational, promotional, marketing, travel, or other business expenses related to agricultural development. These grants are not subject to the criteria set forth in 90-9-311 or [section 11].

NEW SECTION. Section 14. Repealer. Sections 90-9-303, 90-9-312, 90-9-313, 90-9-314, 90-9-315, 90-9-316, and 90-9-317, MCA, are repealed.

NEW SECTION. Section 15. Codification instruction. [Sections 11 through 13] are intended to be codified as an integral part of Title 90, chapter 9, part 3, and the provisions of Title 90, chapter 9, part 3, apply to [sections 11 through 13].

NEW SECTION. **Section 16. 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 17. Effective date.** [This act] is effective July 1, 2009.

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