

SENATE BILL NO. 296

Introduced: 01/27/83

Referred to Committee on Agriculture, Livestock, & Irrigation:
01/27/83

Hearing: 2/4/83

Died in Committee.

1 *Senate* BILL NO. *296*
2 INTRODUCED BY *Conover, O'Connor, Spauld*
3
4 A BILL FOR AN ACT ENTITLED: "THE MONTANA FARM PRESERVATION
5 ACT; PROHIBITING CERTAIN CORPORATIONS AND BUSINESS
6 ASSOCIATIONS FROM OWNING AGRICULTURAL LAND OR ENGAGING IN
7 AGRICULTURAL ACTIVITIES; AMENDING SECTIONS 35-1-107,
8 35-1-108, AND 35-12-509, MCA."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 NEW SECTION. Section 1. Short title. [Sections 1
12 through 8] may be cited as the "Montana Farm Preservation
13 Act".
14 NEW SECTION. Section 2. Purpose. It is the purpose of
15 [sections 1 through 8] to preserve free private enterprise,
16 to protect small business and prevent monopoly, to protect
17 opportunities for family farmers in the state, and to
18 protect consumers. Specifically, it is the purpose of
19 [sections 1 through 8] to preserve competition in the
20 agricultural industry and to provide for the continuance of
21 the family farm.
22 NEW SECTION. Section 3. Definitions. As used in
23 [sections 1 through 8], unless the context requires
24 otherwise, the following definitions apply:
25 (1) "Agricultural activity" means:

1 (a) the cultivation of land for the production of
2 agricultural crops, fruit, or other horticultural products;
3 or
4 (b) the keeping, breeding, or feeding of animals for
5 the production of livestock or poultry or livestock or
6 poultry products.
7 (2) "Agricultural land" means any rural real estate
8 that is used or usable for agricultural activity.
9 (3) "Corporation" means any corporation organized
10 under the laws of any state of the United States or of any
11 other country. The term includes partnerships in which a
12 corporation is a partner and limited partnerships organized
13 under the laws of any state or of any country, other than
14 limited partnerships in which all of the partners are
15 members of a family related to one another within the fourth
16 degree of consanguinity or affinity, at least one of whom is
17 a person residing on or actively engaged in the day-to-day
18 labor and management of the farm or ranch and none of whom
19 are nonresident aliens.
20 (4) (a) "Family farm corporation" means a corporation
21 owning agricultural land or engaged in agricultural
22 activity, in which the majority of the voting stock is held
23 by members of a family or by a trust created for the benefit
24 of a member of that family, related to one another within
25 the fourth degree of consanguinity or affinity.

(b) For purposes of this definition:

(i) at least one of the family members must be a person residing on or actively engaged in the day-to-day labor and management of the farm or ranch; and

(ii) no stockholder may be a nonresident alien.

NEW SECTION. Section 4. Restriction on corporate land ownership and agricultural activity. Except as provided in [section 5], no corporation may acquire or own agricultural land in this state or engage in any agricultural activity.

NEW SECTION. Section 5. Exemptions. The restrictions imposed by [section 4] do not apply to:

(1) family farm corporations as defined in [section 3];

(2) educational institutions engaged in research as a part of their academic and extension activities;

(3) nonprofit institutions engaged in agricultural activity solely for charitable or research purposes;

(4) grazing associations if membership is comprised solely of Montana residents;

(5) political subdivisions, including school districts, engaged in agricultural production or research;

(6) the production or harvesting of forest products;

(7) custom spraying, fertilizing, or harvesting operations;

(8) the purchase of livestock for slaughter or resale

within 2 weeks;

(9) agricultural land acquired by a corporation by bequest or devise or in the regular course of business in partial or full satisfaction of a mortgage, lien, or other encumbrance, provided the land is disposed of as provided in [section 6].

NEW SECTION. Section 6. Disposal of land. (1) Unless exempted by [section 5], all corporations owning agricultural land or engaging in agricultural activity as of [the effective date of this act] shall dispose of such land and cease such activity before January 1, 1988.

(2) A corporation acquiring agricultural land by bequest or devise or in satisfaction of a mortgage, lien, or encumbrance shall dispose of such land within 5 years and may not use the land for an agricultural purpose prior to disposal, except under a lease to a family farm corporation or to a noncorporate lessee.

(3) Any corporation ceasing to qualify as an exempted corporation under [section 5] shall dispose of its agricultural land and cease its agricultural activity within 5 years.

NEW SECTION. Section 7. Enforcement. (1) The secretary of state shall monitor corporate agricultural land purchases and corporate agricultural activities and shall notify the appropriate county attorney of any possible

1 violations.

2 (2) If a county attorney has reason to believe that a
3 corporation is in violation of [section 4], he shall bring
4 an action in district court to enjoin any pending illegal
5 land purchase or agricultural activity or to force
6 divestiture of land held in violation of [section 4], or
7 both.

8 (3) Except as provided in [section 6], land determined
9 to be held in violation of [section 4] must be divested
10 within 2 years, and if not so divested, the land escheats to
11 the state of Montana.

12 NEW SECTION. Section 8. Penalty. A corporation
13 violating [section 4] or an injunction or order issued under
14 [section 7] must be fined not more than \$1,000 for each day
15 of violation.

16 Section 9. Section 35-1-107, MCA, is amended to read:

17 "35-1-107. Permissible purposes for incorporation.
18 Corporations may be organized under this chapter for any
19 lawful purpose or purposes, except for the purpose of
20 banking or insurance and except as provided in [section 4]."

21 Section 10. Section 35-1-108, MCA, is amended to read:

22 "35-1-108. General powers. Each corporation shall have
23 power to:

24 (1) have perpetual existence by its corporate name
25 unless a limited period of duration is stated in its

1 articles of incorporation;

2 (2) sue and be sued, complain and defend, in its
3 corporate name;

4 (3) have a corporate seal which may be altered at
5 pleasure and to use the same by causing it or a facsimile
6 thereof to be impressed or affixed or in any other manner
7 reproduced;

8 (4) except as provided in [section 4], purchase, take,
9 receive, lease, or otherwise acquire, own, hold, improve,
10 use, and otherwise deal in and with real or personal
11 property or any interest therein, wherever situated, and to
12 acquire property by proceedings in eminent domain;

13 (5) sell, convey, mortgage, pledge, lease, exchange,
14 transfer, and otherwise dispose of all or any part of its
15 property and assets;

16 (6) lend money and use its credit to assist its
17 employees;

18 (7) purchase, take, receive, subscribe for, or
19 otherwise acquire, own, hold, vote, use, employ, sell,
20 mortgage, lend, pledge, or otherwise dispose of and
21 otherwise use and deal in and with shares or other interests
22 in or obligations of other domestic or foreign corporations,
23 associations, partnerships, joint ventures, cooperatives, or
24 individuals or direct or indirect obligations of the United
25 States or of any other government, state, territory,

1 governmental district, or municipality or of any
2 instrumentality thereof;

3 (8) make contracts and guarantees and incur
4 liabilities, borrow money at such rates of interest as the
5 corporation may determine, issue its notes, bonds, and other
6 obligations, and secure any of its obligations by mortgage
7 or pledge of all or any of its property, franchises, and
8 income;

9 (9) lend money for its corporate purposes, invest and
10 reinvest its funds, and take and hold real and personal
11 property as security for the payment of funds so loaned or
12 invested;

13 (10) conduct its business, carry on its operations, and
14 have offices and exercise the powers granted by this chapter
15 in any state, territory, district, or possession of the
16 United States, or in any foreign country;

17 (11) elect or appoint officers and agents of the
18 corporation and define their duties and fix their
19 compensation;

20 (12) make and alter bylaws, not inconsistent with its
21 articles of incorporation or with the laws of this state,
22 for the administration and regulation of the affairs of the
23 corporation;

24 (13) make donations for the public welfare or for
25 charitable, religious, scientific, or educational purposes

1 and in time of war to make donations in aid of war
2 activities;

3 (14) transact any lawful business in aid of
4 governmental policy;

5 (15) pay pensions and retirement benefits and establish
6 pension plans, pension trusts, profit-sharing plans, stock
7 bonus plans, stock option plans, insurance plans, and
8 incentive plans for any or all of its directors, officers,
9 and employees;

10 (16) cease its corporate activities and surrender its
11 corporate franchise;

12 (17) be a promoter, partner, member, associate, or
13 manager of any partnership, joint venture, trust, or other
14 enterprise;

15 (18) have and exercise all powers necessary or
16 convenient to effect any or all of the purposes for which
17 the corporation is organized."

18 Section 11. Section 35-12-509, MCA, is amended to
19 read:

20 "35-12-509. Nature of business. A limited partnership
21 may carry on any business that a partnership without limited
22 partners may carry on, except as provided in [sections 1
23 through 8]."

24 NEW SECTION. Section 12. Severability. If a part of
25 this act is invalid, all valid parts that are severable from

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1 the invalid part remain in effect. If a part of this act is
2 invalid in one or more of its applications, the part remains
3 in effect in all valid applications that are severable from
4 the invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 270-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 28, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 296 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 296 prohibits corporations, except family farm corporations as defined by proposed legislation, from owning agricultural land or engaging in agricultural activities.

ASSUMPTIONS:

- 1) Enforcement activity required by Section 7 will increase workload in the corporate bureau by approximately 50%.
- 2) County clerks and recorders will provide data on agricultural land transfers to Secretary of State's office at no charge.

FISCAL IMPACT:

	FY 84	FY 85
FTE	4.00	4.00
Personal Services	\$ 78,692	\$ 78,692
Operating Services	48,500	48,500
Capital Equipment	3,480	-0-
Increase in Expenditures	<u>\$ 130,672</u>	<u>\$ 97,582</u>

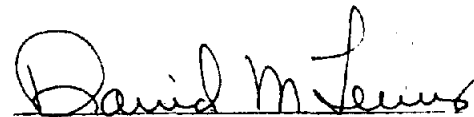
AFFECT ON LOCAL GOVERNMENT:

Enforcement activity required by Section 7 will require notification of all agricultural land transfers from county clerks and recorders to Secretary of State. Costs of this notification not quantifiable but potentially significant.

TECHNICAL DEFECT:

Secretary of State does not currently have statutory authority to require disclosure of stockholders. Hence section 3(4)(b)(ii) essentially unenforceable.

FISCAL NOTE 10:C/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-2-83

Revised

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. 270-83
Corrected Fiscal Note

Form BD-15

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Operating Services	48,500	<u>18,890</u> - Corrected
Capital Equipment	<u>3,480</u>	<u>-0-</u>
Increase In Expenditures	<u>\$ 103,672</u>	<u>\$ 97,582</u>

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FISCAL NOTE 10:N/1

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-3-83

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. 270-83

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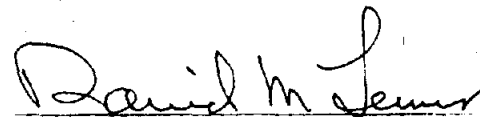
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FISCAL NOTE 10:N/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-8-83

SECOND PRINTING