

HOUSE BILL NO. 658
INTRODUCED BY SWYSGOOD

IN THE HOUSE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION.
FEBRUARY 13, 1989	FIRST READING.
FEBRUARY 16, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 20, 1989	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 97; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON FINANCE & CLAIMS.
	FIRST READING.
MARCH 2, 1989	ON MOTION, REREFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION.
MARCH 4, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 6, 1989	SECOND READING, CONCURRED IN.
MARCH 8, 1989	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 10, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 11, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 658
2 INTRODUCED BY Shirley
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
5 AGRICULTURAL DEVELOPMENT LOAN PROGRAM CONSISTING OF SEED
6 CAPITAL AND RESEARCH AND DEVELOPMENT PROJECTS; TO ESTABLISH
7 PRIORITIES AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM;
8 TO ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL
9 AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO ESTABLISH THE
10 REQUIREMENTS AND PAYBACK PROVISIONS OF SEED CAPITAL AND
11 RESEARCH AND DEVELOPMENT PROJECT LOAN AGREEMENTS; TO PROVIDE
12 FOR PAYBACK; TO PROVIDE RULEMAKING AUTHORITY FOR THE
13 AGRICULTURE DEVELOPMENT COUNCIL; AMENDING SECTIONS 90-9-103,
14 90-9-202, 90-9-301, 90-9-302, 90-9-306, 90-9-307, AND
15 90-9-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16
17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because
19 [section 9] grants rulemaking authority to the Montana
20 agriculture development council to implement the
21 agricultural development project loan program.

22 It is the legislature's intent that the council adopt
23 rules:

- 24 (1) governing the conduct of council business;
25 (2) establishing application procedures that, at a

1 minimum, require the submittal of an executive summary for
2 an agricultural development project loan, a business plan
3 for a seed capital project loan, a research and development
4 project proposal for a research and development project
5 loan, and other documents necessary to meet the criteria
6 established in the act;

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

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

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. **Section 1.** General criteria underlying
17 agricultural development project loans. The council may make
18 an agricultural development project loan only upon a
19 favorable determination that the proposed agricultural
20 development project:

21 (1) is consistent with the findings and purposes of
22 the act because it incorporates innovative agricultural
23 technology;

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



-2- INTRODUCED BILL

HB 658

(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.

NEW SECTION. Section 2. 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 meets the loan criteria established in [sections 1 and 3] and further determines that the project meets the goals established in subsection (2) and 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 a source of capital to

the 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.

NEW SECTION. Section 3. 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 [sections 1 and 2] and further determines that:

(1) the project develops or employs innovative agricultural products or processes that promise a significant competitive advantage;

(2) the project requires financing that is not available from 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.

NEW SECTION. Section 4. Research and development project -- program goals. (1) The council may make a research and development project loan if it determines that the project meets the loan criteria established in [sections 1 and 5] and further determines that the project meets the goals established in subsection (2).

(2) The goals of this program are:

(a) to significantly upgrade existing agricultural research capabilities within the state's research and development institutions and organizations;

(b) to provide financial support to individual research projects that have significant potential to advance

development of agricultural business in the state;

(c) to facilitate the process of transferring research from the laboratory to the commercial marketplace;

(d) to provide financial support for the development of advanced research capabilities within the state's university system through the acquisition of facilities, equipment, or personnel;

(e) to facilitate the flow of information to agricultural-based businesses in the state in order to assist those businesses in reaching their full commercial potential; or

(f) to improve the information and resources available to the state's agricultural businesses involved in commercialization of innovative agricultural products and processes.

NEW SECTION. Section 5. Specific criteria for research and development project loans. The council may make a research and development project loan only if it determines that the proposed project substantially complies with the criteria and goals set forth in [sections 1 and 4] and further determines that the project:

(1) has the potential to diversify or add value to the state's agricultural economy;

(2) demonstrates a clear path to commercial development of the research results within the state;

1 (3) involves university system research participation,
2 if appropriate;

3 (4) employs or otherwise takes advantage of existing
4 research and development strengths within the state's
5 university and private research establishment;

6 (5) involves a realistic and achievable research
7 project design;

8 (6) develops or employs innovative agricultural
9 products or processes; and

10 (7) is located within the state.

11 NEW SECTION. Section 6. Agricultural development
12 project loan agreement -- contents -- council decisions
13 final. (1) If the council determines that an agricultural
14 development project meets the criteria established in the
15 act and has complied with the applicable procedures and
16 review processes established by the council, the council may
17 enter into an agricultural development project loan
18 agreement with the company and authorize the disbursement of
19 funds to the company.

20 (2) The loan agreement, at a minimum, must contain the
21 following provisions:

22 (a) the project budget;

23 (b) the financing, marketing, and production
24 milestones for the project that describe project tasks to be
25 achieved at designated times in each area;

1 (c) the reporting requirements, including but not
2 limited to:

3 (i) financial statements to be submitted on at least
4 an annual basis as determined by the council;

5 (ii) quarterly commercialization progress reports;

6 (iii) annual reports; and

7 (iv) reports on any significant project transactions;

8 (d) the disbursement schedule for the loan;

9 (e) the payback to the council;

10 (f) the causes for loan revocation, suspension, or
11 termination; and

12 (g) the intellectual property provisions.

13 (3) All decisions of the council are final and are not
14 subject to the contested case provisions of Title 2, chapter
15 4.

16 NEW SECTION. Section 7. Seed capital project loan
17 agreement -- specific loan requirements -- payback. (1) In
18 addition to the loan requirements of [section 6], a seed
19 capital project loan must be structured as contracted debt,
20 including but not limited to the following terms:

21 (a) an interest rate set at a level that provides for
22 a return to the council, from paybacks by all of its
23 portfolio companies, an amount at least equal to the
24 principal amount of the loan and that provides for a market
25 rate of return when considering the overall benefit to the

1 state derived from the projects;

2 (b) a provision in the note that may defer debt
3 service until maturity of the note, the term of which may
4 not exceed 8 years;

5 (c) a loan amount that may not exceed \$50,000 in any
6 one round of financing. Successive rounds of financing in
7 which the council participates for any one company may not
8 occur within a 9-month period. The total amount that may be
9 loaned to any one company may not exceed \$150,000.

10 (d) a provision that the note becomes due in full upon
11 dissolution or liquidation of the company;

12 (e) a provision that the company will provide the
13 lender with a second priority security interest in all of
14 the equipment used in the company's business, accounts
15 receivable, and inventory to secure repayment of the loan;

16 (f) a provision that the priority security interest in
17 the company's assets referred to in subsection (1)(e) will
18 be evidenced by appropriate forms required to secure the
19 assets as provided in Title 30, chapter 9.

20 (2) In addition to the provisions in [section 6] and
21 subsection (1) of this section, a seed capital project loan
22 agreement may provide for any of the following:

23 (a) a convertible debenture;

24 (b) a warrant held by the council; or

25 (c) a warrant held by a third party for the benefit of

1 the council.

2 NEW SECTION. Section 8. Research and development
3 project loan agreement -- specific loan requirements --
4 payback. In addition to the loan requirements of [section
5 6], a research and development project loan agreement must
6 be structured as contracted debt, including but not limited
7 to the following terms:

8 (1) The agreement must include provisions calling for
9 a payback of two times the original loan amount, paid as a
10 percentage of the income stream derived from the sale or
11 other commercialization of products or processes developed
12 with the council's financing. This percentage rate may not
13 exceed 5%.

14 (2) The payback for an agricultural technology
15 transfer and assistance project loan may be made pursuant to
16 subsection (1) or may be realized in terms of indirect
17 benefits related to the goals and criteria of the act. No
18 more than 10% of the council's funds designated for research
19 and development in any one fiscal year may be used for
20 agricultural technology transfer and assistance loans.

21 NEW SECTION. Section 9. Rulemaking. The council shall
22 adopt rules necessary to implement the provisions of this
23 chapter, including but not limited to rules:

24 (1) governing the conduct of council business;

25 (2) establishing application procedures that, at a

1 minimum, require the submittal of an executive summary for
 2 an agricultural development project loan, a business plan
 3 for a seed capital project loan, a research and development
 4 project proposal for a research and development project
 5 loan, and other documents necessary to meet the criteria
 6 established in the act;

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

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

14 **Section 10.** Section 90-9-103, MCA, is amended to read:

15 "90-9-103. Definitions. As used in this chapter, the
 16 following definitions apply:

17 (1) "Act" means the Montana Growth Through Agriculture
 18 Act.

19 (2) "Agricultural business" means an enterprise
 20 engaged in the production, processing, marketing,
 21 distribution, or exporting of agricultural products. The
 22 term includes any related business the primary function of
 23 which is providing goods or services to such an agricultural
 24 enterprise.

25 (3) "Agricultural development project" means either a

1 seed capital or research and development project designed to
 2 discover, develop, transfer, use, or commercialize existing
 3 or new agricultural products or processes in order to
 4 strengthen and enhance agricultural economic development in
 5 the state.

6 (4) "Agricultural development project loan agreement"
 7 or "loan" means an agreement entered into between the
 8 council and the loan recipient of a seed capital project
 9 loan or a research and development project loan that:

10 (a) creates a debt relationship between the parties;

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

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

14 (d) contains various provisions and terms as required
 15 by the act.

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

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

22 (7) "Council" means the Montana agriculture
 23 development council established in 2-15-1817.

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

1 (9) "Department" means the department of commerce
 2 established in 2-15-1801.

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

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

15 (12) "Investment" means an award of money, with or
 16 without repayment requirements, for the purposes provided
 17 for in this chapter 90-9-302 and 90-9-401.

18 (13) "Matching funds" means the funds received in cash
 19 by the agricultural development project loan recipient from
 20 nonstate appropriated sources and contributed by the loan
 21 recipient to the project in an amount that is at least equal
 22 to the funds loaned to the recipient by the council for use
 23 in the agricultural development project.

24 (14) "Portfolio company" means a startup or expansion
 25 stage company that has received a seed capital project loan

1 from the council.

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

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

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

14 (18) "Seed capital project" means a startup or
 15 expansion capital project.

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

19 (20) "State" means the state of Montana.

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

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

24 (b) provides better access and exposure to business
 25 development assistance or information for researchers or

1 early-stage agricultural businesses that commercialize
2 agricultural technology products.

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

7 **Section 11.** Section 90-9-202, MCA, is amended to read:

8 "90-9-202. Powers and duties of the council. The
9 council shall:

10 (1) establish policies and priorities to enhance the
11 future development of agriculture in Montana;

12 (2) make investments or loans in agricultural
13 development projects that have a short- or long-term ability
14 to stimulate agriculture development and diversification in
15 Montana, including but not limited to:

16 (a) seed capital awards loans for development and
17 commercialization of new products and processes;

18 (b) agricultural business incubators;

19 (c) foreign and domestic market development
20 activities;

21 (d) applied technological research; and

22 (e) agricultural technology assistance and transfer;

23 and

24 (3) accept grants or receive devises of money or
25 property for use in making the investments described-in or

1 loans authorized by this chapter;

2 {4}--adopt-rules-necessary-to-implement-the--provisions
3 of-this-chapter,-including-but-not-limited-to-rules:

4 {a}--governing-the-conduct-of-council-business;

5 {b}--establishing--matching--fund-requirements-for-seed
6 capital-investment-programs;

7 {c}--establishing---criteria---for---determining---the
8 eligibility-of-projects-and-programs-for-investments;-and

9 {d}--establishing--methods--of--committing-funds;-types
10 and-amounts-of-fees;-return-on--investments;-and--types--of
11 investments-to-be-made:"

12 **Section 12.** Section 90-9-301, MCA, is amended to read:

13 "90-9-301. Agriculture seed capital account --
14 matching funds ---preference. (1) There is an agriculture
15 seed capital account administered by the council.

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

22 {3}--Investments-from-the-account-must-be-matched-by-at
23 least-an-equal-amount-raised-by-the-applicant--from--sources
24 that-are-not-state-appropriated:

25 {4}--Preference-must-be-given-to-applications-that;

1 ~~{a}--can--be-reasonably-expected-to-provide-an-economic~~
 2 ~~return-to-the-applicant-within-a-reasonable-time;~~
 3 ~~{b}--demonstrate-a-potential-commercial-value-to--other~~
 4 ~~entrepreneurs-in-Montana;~~
 5 ~~{c}--require--such-a-grant-to-obtain-additional-private~~
 6 ~~capital;~~
 7 ~~{d}--involve-processing-or-adding-value-to-agricultural~~
 8 ~~commodities-produced-in-Montana;-or~~
 9 ~~{e}--provide-jobs-that-will-be-substantially-filled--by~~
 10 ~~current-Montana-residents.~~
 11 (3) The council may not make a loan to an agricultural
 12 development project for which the matching funds have not
 13 been received. Matching funds are required prior to any
 14 expenditure of state funds for research and development or
 15 seed capital projects. The council may accept as matching
 16 funds those funds received by the loan recipient within 1
 17 year prior to the execution of the loan agreement."

18 **Section 13.** Section 90-9-302, MCA, is amended to read:
 19 **"90-9-302.** Agricultural business incubator program --
 20 **criteria -- limitations.** (1) There is an agricultural
 21 business incubator program account in the state special
 22 revenue fund. The council may invest from the account an
 23 amount not to exceed \$100,000 each in each agricultural
 24 business ~~incubators~~ incubator. The ~~incubators~~ incubator must
 25 operate as a self-financing business development ~~entities~~

1 entity, providing such services as training, management
 2 consultation, accounting, and office space, if necessary, to
 3 eligible agricultural businesses. Such Eligible
 4 agricultural businesses may include but are not limited to
 5 marketing cooperatives and associations.
 6 (2) Investments under this section must be awarded by
 7 the council, based upon its review of the following
 8 criteria:
 9 (a) the potential ability of the applicant to be
 10 financially self-sufficient;
 11 (b) identification of businesses or industries
 12 targeted for development assistance;
 13 (c) community support for the incubator program; and
 14 (d) a plan to address business development needs of
 15 specific user groups, such-as including but not limited to
 16 displaced farmers.
 17 (3) Investments may be made only in agricultural
 18 business incubators that are located in different geographic
 19 areas of the state and that are not located in a
 20 municipality with a population in excess of 15,000 people.
 21 The municipality or community in which the incubator is
 22 located must provide funding or contributions ~~of-a-value--at~~
 23 ~~least--three--times--the-amount-of-the-investment-under-this~~
 24 ~~section~~ on at least a dollar-to-dollar basis. Contributions
 25 by applicants may include land, buildings, or professional

services."

Section 14. Section 90-9-306, MCA, is amended to read:

"90-9-306. Appropriation authority and funding -- prohibited investments. (1) The council has authority to 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.

~~{2}--No-investment-may-be-made-in--projects--for--which matching--funds-or-participation-of-financial-intermediaries is-required-until-such-funds-have-been-committed-~~

~~{3}{2}~~ Council members may not personally apply for or receive council investment funds. If an organization with which a member is affiliated applies for council funds, the member must disclose the nature of the affiliation and may not participate in the decision of the council regarding the application."

Section 15. Section 90-9-307, MCA, is amended to read:

"90-9-307. Accountability. ~~{1}~~ The council shall develop independent review and audit procedures to ensure that investments and loans made by it are used for the purposes identified in its investment and loan agreements.

~~{2}--The--council's--investment-agreements-must-contain provisions-considered-necessary-by-the-council-to-ensure-the~~

~~proper-inspection-and-review-of-projects, the-attainment--of project-goals,--and--the--maintenance-of-adequate-financial records-by-recipients-of-council-funds."~~

Section 16. Section 90-9-401, MCA, is amended to read:

"90-9-401. Agricultural marketing enhancement. The council shall assist in identification and development of new domestic and foreign markets for Montana agricultural products. The council shall:

(1) place assist 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 assistance for appropriate trade missions of Montana producers, processors, or distributors of agricultural products on a cost-share basis; and

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

NEW SECTION. Section 17. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 18. Codification instruction. (1) [Sections 1 through 8] 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

1 [sections 1 through 8].

2 (2) [Section 9] is intended to be codified as an
3 integral part of Title 90, chapter 9, part 2, and the
4 provisions of Title 90, chapter 9, part 2, apply to [section
5 9].

6 NEW SECTION. **Section 19. Severability.** If a part of
7 [this act] is invalid, all valid parts that are severable
8 from the invalid part remain in effect. If a part of [this
9 act] is invalid in one or more of its applications, the part
10 remains in effect in all valid applications that are
11 severable from the invalid applications.

12 NEW SECTION. **Section 20. Effective date.** [This act]
13 is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB658, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB658 would generally revise the Growth Through Agriculture Act, including establishing the agricultural development loan program by statute rather than by rule, based primarily on the Montana Supreme Court case of Whites v. the State of Montana and the Montana Science and Technology Alliance.

ASSUMPTIONS:

1. There is no fiscal impact to the Dept. of Commerce or to the Dept. of Agriculture under the proposed law.
2. The appropriated program budget and the statutory appropriation remain unchanged.



RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE

2/17/89

CHUCK SWYSGOOD, PRIMARY SPONSOR

DATE

2/18/89

Fiscal Note for HB658, as introduced

HB 658

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
& IRRIGATION

HOUSE BILL NO. 658

INTRODUCED BY SWYSGGOD

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN AGRICULTURAL DEVELOPMENT LOAN PROGRAM CONSISTING OF SEED CAPITAL AND RESEARCH AND DEVELOPMENT PROJECTS; TO ESTABLISH PRIORITIES AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM; TO ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO ESTABLISH THE REQUIREMENTS AND PAYBACK PROVISIONS OF SEED CAPITAL AND RESEARCH AND DEVELOPMENT PROJECT LOAN AGREEMENTS; TO PROVIDE FOR PAYBACK; TO PROVIDE RULEMAKING AUTHORITY FOR THE AGRICULTURE DEVELOPMENT COUNCIL; AMENDING SECTIONS 90-9-103, 90-9-202, 90-9-301, 90-9-302, 90-9-306, 90-9-307, AND 90-9-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 9] grants rulemaking authority to the Montana agriculture development council to implement the agricultural development project loan program.

It is the legislature's intent that the council adopt 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, a business plan for a seed capital 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;

(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 agreement.

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

NEW SECTION. **Section 1.** General criteria underlying agricultural development project loans. The council may make an agricultural development project loan only upon a favorable determination that the proposed agricultural development project:

(1) is consistent with the findings and purposes of the act because it incorporates 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.

NEW SECTION. Section 2. 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 meets the loan criteria established in [sections 1 and 3] and further determines that the project meets the goals established in subsection (2) and 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 a source of capital to

the 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.

NEW SECTION. Section 3. 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 [sections 1 and 2] and further determines that:

(1) the project develops or employs innovative agricultural products or processes that promise a significant competitive advantage;

(2) the project requires financing that is not available from 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

1 or add value to the state's agricultural businesses;

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

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

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

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

11 (10) if applicable, the company's business plan is
12 designed to provide financing, marketing, and production
13 milestones to accomplish the proposed commercialization.

14 **NEW SECTION. Section 4. Research and development**
15 **project -- program goals.** (1) The council may make a
16 research and development project loan if it determines that
17 the project meets the loan criteria established in [sections
18 1 and 5] and further determines that the project meets the
19 goals established in subsection (2).

20 (2) The goals of this program are:

21 (a) to significantly upgrade existing agricultural
22 research capabilities within the state's research and
23 development institutions and organizations;

24 (b) to provide financial support to individual
25 research projects that have significant potential to advance

1 development of agricultural business in the state;

2 (c) to facilitate the process of transferring research
3 from the laboratory to the commercial marketplace;

4 (d) to provide financial support for the development
5 of advanced research capabilities within the state's
6 university system through the acquisition of facilities,
7 equipment, or personnel;

8 (e) to facilitate the flow of information to
9 agricultural-based businesses in the state in order to
10 assist those businesses in reaching their full commercial
11 potential; or

12 (f) to improve the information and resources available
13 to the state's agricultural businesses involved in
14 commercialization of innovative agricultural products and
15 processes.

16 **NEW SECTION. Section 5. Specific criteria for**
17 **research and development project loans.** The council may make
18 a research and development project loan only if it
19 determines that the proposed project substantially complies
20 with the criteria and goals set forth in [sections 1 and 4]
21 and further determines that the project:

22 (1) has the potential to diversify or add value to the
23 state's agricultural economy;

24 (2) demonstrates a clear path to commercial
25 development of the research results within the state;

(3) involves university system research participation,
if appropriate;

(4) employs or otherwise takes advantage of existing
research and development strengths within the state's
university and private research establishment;

(5) involves a realistic and achievable research
project design;

(6) develops or employs innovative agricultural
products or processes; and

(7) is located within the state.

**NEW SECTION. Section 6. Agricultural development
project loan agreement -- contents -- council decisions
final.** (1) If the council determines that an agricultural
development project meets the criteria established in the
act and has complied with the applicable procedures and
review processes established by the council, the council may
enter into an agricultural development project loan
agreement with the company and authorize the disbursement of
funds to the company.

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

(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;

(e) the payback to the council;

(f) the causes for loan 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 7. Seed capital project loan
agreement -- specific loan requirements -- payback.** (1) In
addition to the loan requirements of [section 6], a seed
capital project loan must be structured as contracted debt,
including but not limited to the following terms:

(a) an interest rate set at a level that provides for
a return to the council, from paybacks by all of its
portfolio companies, an amount at least equal to the
principal amount of the loan and that provides for a market
rate of return when considering the overall benefit to the

1 state derived from the projects;

2 (b) a provision in the note that may defer debt
3 service until maturity of the note, the term of which may
4 not exceed 8 years;

5 (c) a loan amount that may not exceed \$50,000 in any
6 one round of financing. Successive rounds of financing in
7 which the council participates for any one company may not
8 occur within a 9-month period. The total amount that may be
9 loaned to any one company may not exceed \$150,000.

10 (d) a provision that the note becomes due in full upon
11 dissolution or liquidation of the company;

12 (e) a provision that the company will provide the
13 lender with a second priority security interest in all of
14 the equipment used in the company's business, accounts
15 receivable, and inventory to secure repayment of the loan;

16 (f) a provision that the priority security interest in
17 the company's assets referred to in subsection (1)(e) will
18 be evidenced by appropriate forms required to secure the
19 assets as provided in Title 30, chapter 9.

20 (2) In addition to the provisions in [section 6] and
21 subsection (1) of this section, a seed capital project loan
22 agreement may provide for any of the following:

23 (a) a convertible debenture;

24 (b) a warrant held by the council; or

25 (c) a warrant held by a third party for the benefit of

1 the council.

2 NEW SECTION. Section 8. Research and development
3 project loan agreement -- specific loan requirements --
4 payback. In addition to the loan requirements of [section
5 6], a research and development project loan agreement must
6 be structured as contracted debt, including but not limited
7 to the following terms:

8 (1) The agreement must include provisions calling for
9 a payback of two times the original loan amount, paid as a
10 percentage of the income stream derived from the sale or
11 other commercialization of products or processes developed
12 with the council's financing. This percentage rate may not
13 exceed 5%.

14 (2) The payback for an agricultural technology
15 transfer and assistance project loan may be made pursuant to
16 subsection (1) or may be realized in terms of indirect
17 benefits related to the goals and criteria of the act. No
18 more than 10% of the council's funds designated for research
19 and development in any one fiscal year may be used for
20 agricultural technology transfer and assistance loans.

21 NEW SECTION. Section 9. Rulemaking. The council shall
22 adopt rules necessary to implement the provisions of this
23 chapter, including but not limited to rules:

24 (1) governing the conduct of council business;

25 (2) establishing application procedures that, at a

minimum, require the submittal of an executive summary for an agricultural development project loan, a business plan for a seed capital 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;

(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 agreement.

Section 10. 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.

~~{1}~~(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 ~~such an agricultural~~ enterprise.

(3) "Agricultural development project" means either a

seed capital or research and development project designed to discover, develop, transfer, 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) "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.

~~{2}~~(7) "Council" means the Montana agriculture development council established in 2-15-1817.

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

(9) "Department" means the department of commerce AGRICULTURE established in ~~2-15-1981~~ 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) "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.

~~(3)~~(12) "Investment" means an award of money, with or without repayment requirements, for the purposes provided for in ~~this chapter~~ 90-9-302 and 90-9-401.

(13) "Matching funds" means the funds received in cash by the agricultural development project loan recipient from nonstate appropriated sources and contributed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the council for use in the agricultural development project.

(14) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan

from the council.

(15) "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.

(18) "Seed capital project" means a startup or expansion capital project.

(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) "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) "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 11. 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;

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

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

(b) agricultural business incubators;

(c) foreign and domestic market development activities;

(d) applied technological research; and

(e) agricultural technology assistance and transfer; and

(3) accept grants or receive devises of money or property for use in making the investments described-in or

loans authorized by this chapter;

~~{4}--adopt-rules-necessary-to-implement-the-provisions of-this-chapter,-including-but-not-limited-to-rules-~~

~~{a}--governing-the-conduct-of-council-business;~~

~~{b}--establishing--matching--fund-requirements-for-seed capital-investment-programs;~~

~~{c}--establishing---criteria---for---determining---the eligibility-of-projects-and-programs-for-investments;-and~~

~~{d}--establishing--methods--of--committing-funds;-types and-amounts-of-fees;-return-on--investments;-and--types--of investments-to-be-made;"~~

Section 12. Section 90-9-301, MCA, is amended to read:

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

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

~~{3}--Investments-from-the-account-must-be-matched-by-at least-an-equal-amount-raised-by-the-applicant--from--sources that-are-not-state-appropriated-~~

~~{4}--Preference-must-be-given-to-applications-that-~~

~~(a) can be reasonably expected to provide an economic return to the applicant within a reasonable time;~~

~~(b) demonstrate a potential commercial value to other entrepreneurs in Montana;~~

~~(c) require such a grant to obtain additional private capital;~~

~~(d) involve processing or adding value to agricultural commodities produced in Montana; or~~

~~(e) provide jobs that will be substantially filled by current Montana residents;~~

(3) The council may not make a loan to an agricultural development project for which the 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 13. Section 90-9-302, MCA, is amended to read:

"90-9-302. Agricultural business incubator program -- criteria -- limitations. (1) There is an agricultural business incubator program account in the state special revenue fund. The council may invest from the account an amount not to exceed \$100,000 each in each agricultural business incubators incubator. The incubators incubator must operate as a self-financing business development entities

entity, providing such services as training, management consultation, accounting, and office space, if necessary, to eligible agricultural businesses. Such Eligible agricultural businesses may include but are not limited to marketing cooperatives and associations.

(2) Investments under this section must be awarded by the council, based upon its review of the following criteria:

(a) the potential ability of the applicant to be financially self-sufficient;

(b) identification of businesses or industries targeted for development assistance;

(c) community support for the incubator program; and

(d) a plan to address business development needs of specific user groups, such as including but not limited to displaced farmers.

(3) Investments may be made only in agricultural business incubators that are located in different geographic areas of the state and that are not located in a municipality with a population in excess of 15,000 people. The municipality or community in which the incubator is located must provide funding or contributions ~~of a value at least three times the amount of the investment under this section~~ on at least a dollar-to-dollar basis. Contributions by applicants may include land, buildings, or professional

services."

Section 14. Section 90-9-306, MCA, is amended to read:

"90-9-306. Appropriation authority and funding -- prohibited investments. (1) The council has authority to 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.

~~(2)--No investment may be made in projects for which matching funds or participation of financial intermediaries is required until such funds have been committed.~~

~~(3)~~(2) Council members may not personally apply for or receive council investment funds. If an organization with which a member is affiliated applies for council funds, the member must disclose the nature of the affiliation and may not participate in the decision of the council regarding the application."

Section 15. Section 90-9-307, MCA, is amended to read:

"90-9-307. Accountability. (1) The council shall develop independent review and audit procedures to ensure that investments and loans made by it are used for the purposes identified in its investment and loan agreements.

~~(2)--The council's investment agreements must contain provisions considered necessary by the council to ensure the~~

~~proper inspection and review of projects, the attainment of project goals, and the maintenance of adequate financial records by recipients of council funds.~~

Section 16. Section 90-9-401, MCA, is amended to read:

"90-9-401. Agricultural marketing enhancement. The council shall assist in identification and development of new domestic and foreign markets for Montana agricultural products. The council shall:

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

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

NEW SECTION. Section 17. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 18. Codification instruction. (1) [Sections 1 through 8] 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

1 [sections 1 through 8].

2 (2) [Section 9] is intended to be codified as an
3 integral part of Title 90, chapter 9, part 2, and the
4 provisions of Title 90, chapter 9, part 2, apply to [section
5 9].

6 NEW SECTION. **Section 19.** Severability. If a part of
7 [this act] is invalid, all valid parts that are severable
8 from the invalid part remain in effect. If a part of [this
9 act] is invalid in one or more of its applications, the part
10 remains in effect in all valid applications that are
11 severable from the invalid applications.

12 NEW SECTION. **Section 20.** Effective date. [This act]
13 is effective on passage and approval.

-End-

1 HOUSE BILL NO. 658

2 INTRODUCED BY SWYSGGOD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
5 AGRICULTURAL DEVELOPMENT LOAN PROGRAM CONSISTING OF SEED
6 CAPITAL AND RESEARCH AND DEVELOPMENT PROJECTS; TO ESTABLISH
7 PRIORITIES AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM;
8 TO ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL
9 AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO ESTABLISH THE
10 REQUIREMENTS AND PAYBACK PROVISIONS OF SEED CAPITAL AND
11 RESEARCH AND DEVELOPMENT PROJECT LOAN AGREEMENTS; TO PROVIDE
12 FOR PAYBACK; TO PROVIDE RULEMAKING AUTHORITY FOR THE
13 AGRICULTURE DEVELOPMENT COUNCIL; AMENDING SECTIONS 90-9-103,
14 90-9-202, 90-9-301, 90-9-302, 90-9-306, 90-9-307, AND
15 90-9-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16 STATEMENT OF INTENT

17
18 A statement of intent is required for this bill because
19 [section 9] grants rulemaking authority to the Montana
20 agriculture development council to implement the
21 agricultural development project loan program.

22 It is the legislature's intent that the council adopt
23 rules:

- 24 (1) governing the conduct of council business;
25 (2) establishing application procedures that, at a

1 minimum, require the submittal of an executive summary for
2 an agricultural development project loan, a business plan
3 for a seed capital project loan, a research and development
4 project proposal for a research and development project
5 loan, and other documents necessary to meet the criteria
6 established in the act;

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

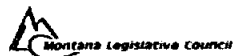
10 (4) establishing postdisbursement activities that
11 describe the ongoing involvement or follow-along management
12 of the council that may be required in an agricultural
13 development project loan agreement.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. **Section 1.** General criteria underlying
17 agricultural development project loans. The council may make
18 an agricultural development project loan only upon a
19 favorable determination that the proposed agricultural
20 development project:

21 (1) is consistent with the findings and purposes of
22 the act because it incorporates innovative agricultural
23 technology;

24 (2) has prospects for collaboration between the public
25 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.

NEW SECTION. Section 2. 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 meets the loan criteria established in [sections 1 and 3] and further determines that the project meets the goals established in subsection (2) and 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 a source of capital to

the 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.

NEW SECTION. Section 3. 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 [sections 1 and 2] and further determines that:

(1) the project develops or employs innovative agricultural products or processes that promise a significant competitive advantage;

(2) the project requires financing that is not available from 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

1 or add value to the state's agricultural businesses;

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

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

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

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

11 (10) if applicable, the company's business plan is
12 designed to provide financing, marketing, and production
13 milestones to accomplish the proposed commercialization.

14 **NEW SECTION. Section 4. Research and development**
15 **project -- program goals.** (1) The council may make a
16 research and development project loan if it determines that
17 the project meets the loan criteria established in [sections
18 1 and 5] and further determines that the project meets the
19 goals established in subsection (2).

20 (2) The goals of this program are:

21 (a) to significantly upgrade existing agricultural
22 research capabilities within the state's research and
23 development institutions and organizations;

24 (b) to provide financial support to individual
25 research projects that have significant potential to advance

1 development of agricultural business in the state;

2 (c) to facilitate the process of transferring research
3 from the laboratory to the commercial marketplace;

4 (d) to provide financial support for the development
5 of advanced research capabilities within the state's
6 university system through the acquisition of facilities,
7 equipment, or personnel;

8 (e) to facilitate the flow of information to
9 agricultural-based businesses in the state in order to
10 assist those businesses in reaching their full commercial
11 potential; or

12 (f) to improve the information and resources available
13 to the state's agricultural businesses involved in
14 commercialization of innovative agricultural products and
15 processes.

16 **NEW SECTION. Section 5. Specific criteria for**
17 **research and development project loans.** The council may make
18 a research and development project loan only if it
19 determines that the proposed project substantially complies
20 with the criteria and goals set forth in [sections 1 and 4]
21 and further determines that the project:

22 (1) has the potential to diversify or add value to the
23 state's agricultural economy;

24 (2) demonstrates a clear path to commercial
25 development of the research results within the state;

1 (3) involves university system research participation,
2 if appropriate;

3 (4) employs or otherwise takes advantage of existing
4 research and development strengths within the state's
5 university and private research establishment;

6 (5) involves a realistic and achievable research
7 project design;

8 (6) develops or employs innovative agricultural
9 products or processes; and

10 (7) is located within the state.

11 **NEW SECTION. Section 6. Agricultural development**
12 **project loan agreement -- contents -- council decisions**
13 **final.** (1) If the council determines that an agricultural
14 development project meets the criteria established in the
15 act and has complied with the applicable procedures and
16 review processes established by the council, the council may
17 enter into an agricultural development project loan
18 agreement with the company and authorize the disbursement of
19 funds to the company.

20 (2) The loan agreement, at a minimum, must contain the
21 following provisions:

22 (a) the project budget;

23 (b) the financing, marketing, and production
24 milestones for the project that describe project tasks to be
25 achieved at designated times in each area;

1 (c) the reporting requirements, including but not
2 limited to:

3 (i) financial statements to be submitted on at least
4 an annual basis as determined by the council;

5 (ii) quarterly commercialization progress reports;

6 (iii) annual reports; and

7 (iv) reports on any significant project transactions;

8 (d) the disbursement schedule for the loan;

9 (e) the payback to the council;

10 (f) the causes for loan revocation, suspension, or
11 termination; and

12 (g) the intellectual property provisions.

13 (3) All decisions of the council are final and are not
14 subject to the contested case provisions of Title 2, chapter
15 4.

16 **NEW SECTION. Section 7. Seed capital project loan**
17 **agreement -- specific loan requirements -- payback.** (1) In
18 addition to the loan requirements of [section 6], a seed
19 capital project loan must be structured as contracted debt,
20 including but not limited to the following terms:

21 (a) an interest rate set at a level that provides for
22 a return to the council, from paybacks by all of its
23 portfolio companies, an amount at least equal to the
24 principal amount of the loan and that provides for a market
25 rate of return when considering the overall benefit to the

1 state derived from the projects;

2 (b) a provision in the note that may defer debt
3 service until maturity of the note, the term of which may
4 not exceed 8 years;

5 (c) a loan amount that may not exceed \$50,000 in any
6 one round of financing. Successive rounds of financing in
7 which the council participates for any one company may not
8 occur within a 9-month period. The total amount that may be
9 loaned to any one company may not exceed \$150,000.

10 (d) a provision that the note becomes due in full upon
11 dissolution or liquidation of the company;

12 (e) a provision that the company will provide the
13 lender with a second priority security interest in all of
14 the equipment used in the company's business, accounts
15 receivable, and inventory to secure repayment of the loan;

16 (f) a provision that the priority security interest in
17 the company's assets referred to in subsection (1)(e) will
18 be evidenced by appropriate forms required to secure the
19 assets as provided in Title 30, chapter 9.

20 (2) In addition to the provisions in [section 6] and
21 subsection (1) of this section, a seed capital project loan
22 agreement may provide for any of the following:

23 (a) a convertible debenture;

24 (b) a warrant held by the council; or

25 (c) a warrant held by a third party for the benefit of

1 the council.

2 NEW SECTION. **Section 8. Research and development**
3 **project loan agreement -- specific loan requirements --**
4 **payback.** In addition to the loan requirements of [section
5 6], a research and development project loan agreement must
6 be structured as contracted debt, including but not limited
7 to the following terms:

8 (1) The agreement must include provisions calling for
9 a payback of two times the original loan amount, paid as a
10 percentage of the income stream derived from the sale or
11 other commercialization of products or processes developed
12 with the council's financing. This percentage rate may not
13 exceed 5%.

14 (2) The payback for an agricultural technology
15 transfer and assistance project loan may be made pursuant to
16 subsection (1) or may be realized in terms of indirect
17 benefits related to the goals and criteria of the act. No
18 more than 10% of the council's funds designated for research
19 and development in any one fiscal year may be used for
20 agricultural technology transfer and assistance loans.

21 NEW SECTION. **Section 9. Rulemaking.** The council shall
22 adopt rules necessary to implement the provisions of this
23 chapter, including but not limited to rules:

24 (1) governing the conduct of council business;

25 (2) establishing application procedures that, at a

1 minimum, require the submittal of an executive summary for
2 an agricultural development project loan, a business plan
3 for a seed capital project loan, a research and development
4 project proposal for a research and development project
5 loan, and other documents necessary to meet the criteria
6 established in the act;

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

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

14 **Section 10.** Section 90-9-103, MCA, is amended to read:

15 **"90-9-103. Definitions.** As used in this chapter, the
16 following definitions apply:

17 (1) "Act" means the Montana Growth Through Agriculture
18 Act.

19 ~~{1}~~(2) "Agricultural business" means an enterprise
20 engaged in the production, processing, marketing,
21 distribution, or exporting of agricultural products. The
22 term includes any related business the primary function of
23 which is providing goods or services to such an agricultural
24 enterprise.

25 (3) "Agricultural development project" means either a

1 seed capital or research and development project designed to
2 discover, develop, transfer, use, or commercialize existing
3 or new agricultural products or processes in order to
4 strengthen and enhance agricultural economic development in
5 the state.

6 (4) "Agricultural development project loan agreement"
7 or "loan" means an agreement entered into between the
8 council and the loan recipient of a seed capital project
9 loan or a research and development project loan that:

10 (a) creates a debt relationship between the parties;

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

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

14 (d) contains various provisions and terms as required
15 by the act.

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

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

22 ~~{2}~~(7) "Council" means the Montana agriculture
23 development council established in 2-15-1817.

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

(9) "Department" means the department of commerce
AGRICULTURE established in ~~2-15-1801~~ 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) "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.

~~(3)~~(12) "Investment" means an award of money, with or
without repayment requirements, for the purposes provided
for in this chapter 90-9-302 and 90-9-401.

(13) "Matching funds" means the funds received in cash
by the agricultural development project loan recipient from
nonstate appropriated sources and contributed by the loan
recipient to the project in an amount that is at least equal
to the funds loaned to the recipient by the council for use
in the agricultural development project.

(14) "Portfolio company" means a startup or expansion
stage company that has received a seed capital project loan

from the council.

(15) "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.

(18) "Seed capital project" means a startup or
expansion capital project.

(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) "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) "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 11. 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;

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

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

(b) agricultural business incubators;

(c) foreign and domestic market development activities;

(d) applied technological research; and

(e) agricultural technology assistance and transfer; and

(3) accept grants or receive devises of money or property for use in making the investments described in or

loans authorized by this chapter?

~~(4)--adopt-rules-necessary-to-implement-the--provisions of-this-chapter?-including-but-not-limited-to-rules:~~

~~(a)--governing-the-conduct-of-council-business;~~

~~(b)--establishing--matching--fund-requirements-for-seed capital-investment-programs;~~

~~(c)--establishing---criteria---for---determining---the eligibility-of-projects-and-programs-for-investments;-and~~

~~(d)--establishing--methods--of--committing-funds;-types and-amounts-of-fees;-return-on--investments;-and--types--of investments-to-be-made."~~

Section 12. Section 90-9-301, MCA, is amended to read:

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

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

~~(3)--Investments-from-the-account-must-be-matched-by-at least-an-equal-amount-raised-by-the-applicant--from--sources that-are-not-state-appropriated;~~

~~(4)--Preference-must-be-given-to-applications-that;~~

~~(a) can be reasonably expected to provide an economic return to the applicant within a reasonable time;~~

~~(b) demonstrate a potential commercial value to other entrepreneurs in Montana;~~

~~(c) require such a grant to obtain additional private capital;~~

~~(d) involve processing or adding value to agricultural commodities produced in Montana; or~~

~~(e) provide jobs that will be substantially filled by current Montana residents.~~

(3) The council may not make a loan to an agricultural development project for which the 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 13. Section 90-9-302, MCA, is amended to read:

"90-9-302. Agricultural business incubator program --
criteria -- limitations. (1) There is an agricultural business incubator program account in the state special revenue fund. The council may invest from the account an amount not to exceed \$100,000 each in each agricultural business incubators incubator. The incubators incubator must operate as a self-financing business development entities

entity, providing such services as training, management consultation, accounting, and office space, if necessary, to eligible agricultural businesses. Such Eligible agricultural businesses may include but are not limited to marketing cooperatives and associations.

(2) Investments under this section must be awarded by the council, based upon its review of the following criteria:

(a) the potential ability of the applicant to be financially self-sufficient;

(b) identification of businesses or industries targeted for development assistance;

(c) community support for the incubator program; and

(d) a plan to address business development needs of specific user groups, such as including but not limited to displaced farmers.

(3) Investments may be made only in agricultural business incubators that are located in different geographic areas of the state and that are not located in a municipality with a population in excess of 15,000 people. The municipality or community in which the incubator is located must provide funding or contributions ~~of a value at least three times the amount of the investment under this section~~ on at least a dollar-to-dollar basis. Contributions by applicants may include land, buildings, or professional

1 services."

2 **Section 14.** Section 90-9-306, MCA, is amended to read:

3 **"90-9-306. Appropriation authority and funding --**
4 **prohibited investments.** (1) The council has authority to
5 accept and expend all funds received by it as grants,
6 donations, or other private or public income, including
7 amounts repaid as principal and interest on investments made
8 by the council. These funds are statutorily appropriated to
9 the council as provided in 17-7-502.

10 ~~{2}--No investment may be made in projects for which~~
11 ~~matching funds or participation of financial intermediaries~~
12 ~~is required until such funds have been committed.~~

13 ~~{3}{2}~~ Council members may not personally apply for or
14 receive council investment funds. If an organization with
15 which a member is affiliated applies for council funds, the
16 member must disclose the nature of the affiliation and may
17 not participate in the decision of the council regarding the
18 application."

19 **Section 15.** Section 90-9-307, MCA, is amended to read:

20 **"90-9-307. Accountability.** ~~{1}~~ The council shall
21 develop independent review and audit procedures to ensure
22 that investments and loans made by it are used for the
23 purposes identified in its investment and loan agreements.

24 ~~{2}--The council's investment agreements must contain~~
25 ~~provisions considered necessary by the council to ensure the~~

1 ~~proper inspection and review of projects; the attainment of~~
2 ~~project goals; and the maintenance of adequate financial~~
3 ~~records by recipients of council funds."~~

4 **Section 16.** Section 90-9-401, MCA, is amended to read:

5 **"90-9-401. Agricultural marketing enhancement.** The
6 council shall assist in identification and development of
7 new domestic and foreign markets for Montana agricultural
8 products. The council shall:

9 (1) place assist in placing one full-time professional
10 marketing person in Japan or another Pacific Rim country to
11 develop export marketing opportunities in the Pacific
12 region;

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

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

18 **NEW SECTION. Section 17. Extension of authority.** Any
19 existing authority to make rules on the subject of the
20 provisions of [this act] is extended to the provisions of
21 [this act].

22 **NEW SECTION. Section 18. Codification instruction.**

23 (1) [Sections 1 through 8] are intended to be codified as an
24 integral part of Title 90, chapter 9, part 3, and the
25 provisions of Title 90, chapter 9, part 3, apply to

1 [sections 1 through 8].

2 (2) [Section 9] is intended to be codified as an
3 integral part of Title 90, chapter 9, part 2, and the
4 provisions of Title 90, chapter 9, part 2, apply to [section
5 9].

6 NEW SECTION. **Section 19. Severability.** If a part of
7 [this act] is invalid, all valid parts that are severable
8 from the invalid part remain in effect. If a part of [this
9 act] is invalid in one or more of its applications, the part
10 remains in effect in all valid applications that are
11 severable from the invalid applications.

12 NEW SECTION. **Section 20. Effective date.** [This act]
13 is effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

March 3, 1989

MR. PRESIDENT:

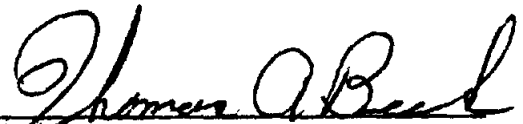
We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 658 (third reading copy -- blue), respectfully report that HB 658 be amended and as so amended be concurred in:

Sponsor: Swysgood (Jergeson)

1. Page 9, line 13.
Strike: "lender"
Insert: "council"

AND AS AMENDED BE CONCURRED IN

Signed: _____


Thomas A. Beck, Chairman

SENATE

scrhb658.303

HB 658

1 HOUSE BILL NO. 658

2 INTRODUCED BY SWYSGOOD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH AN
5 AGRICULTURAL DEVELOPMENT LOAN PROGRAM CONSISTING OF SEED
6 CAPITAL AND RESEARCH AND DEVELOPMENT PROJECTS; TO ESTABLISH
7 PRIORITIES AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM;
8 TO ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL
9 AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO ESTABLISH THE
10 REQUIREMENTS AND PAYBACK PROVISIONS OF SEED CAPITAL AND
11 RESEARCH AND DEVELOPMENT PROJECT LOAN AGREEMENTS; TO PROVIDE
12 FOR PAYBACK; TO PROVIDE RULEMAKING AUTHORITY FOR THE
13 AGRICULTURE DEVELOPMENT COUNCIL; AMENDING SECTIONS 90-9-103,
14 90-9-202, 90-9-301, 90-9-302, 90-9-306, 90-9-307, AND
15 90-9-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

16 STATEMENT OF INTENT

17
18 A statement of intent is required for this bill because
19 [section 9] grants rulemaking authority to the Montana
20 agriculture development council to implement the
21 agricultural development project loan program.

22 It is the legislature's intent that the council adopt
23 rules:

24 (1) governing the conduct of council business;

25 (2) establishing application procedures that, at a

1 minimum, require the submittal of an executive summary for
2 an agricultural development project loan, a business plan
3 for a seed capital project loan, a research and development
4 project proposal for a research and development project
5 loan, and other documents necessary to meet the criteria
6 established in the act;

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

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

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. Section 1. General criteria underlying
17 agricultural development project loans. The council may make
18 an agricultural development project loan only upon a
19 favorable determination that the proposed agricultural
20 development project:

21 (1) is consistent with the findings and purposes of
22 the act because it incorporates innovative agricultural
23 technology;

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

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

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

6 (5) can provide matching funds;

7 (6) has potential to benefit existing agricultural
8 business;

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

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

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

15 NEW SECTION. Section 2. Seed capital projects --
16 program goals. (1) The council may make a seed capital
17 project loan to a seed capital project if it determines that
18 the project meets the loan criteria established in [sections
19 1 and 3] and further determines that the project meets the
20 goals established in subsection (2) and involves development
21 and commercialization of innovative agricultural products or
22 processes.

23 (2) The goals of this program are:

24 (a) to assist in the development of innovative
25 technology in the state by providing a source of capital to

1 the agricultural-based sector of the state's economy;

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

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

10 NEW SECTION. Section 3. Specific criteria for seed
11 capital project loans. The council may make a seed capital
12 project loan only if it determines that the proposed project
13 complies with the criteria and goals set forth in [sections
14 1 and 2] and further determines that:

15 (1) the project develops or employs innovative
16 agricultural products or processes that promise a
17 significant competitive advantage;

18 (2) the project requires financing that is not
19 available from conventional lending sources;

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

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

25 (5) the project demonstrates a capacity to diversify

1 or add value to the state's agricultural businesses;

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

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

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

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

11 (10) if applicable, the company's business plan is
12 designed to provide financing, marketing, and production
13 milestones to accomplish the proposed commercialization.

14 **NEW SECTION. Section 4. Research and development**
15 **project -- program goals.** (1) The council may make a
16 research and development project loan if it determines that
17 the project meets the loan criteria established in [sections
18 1 and 5] and further determines that the project meets the
19 goals established in subsection (2).

20 (2) The goals of this program are:

21 (a) to significantly upgrade existing agricultural
22 research capabilities within the state's research and
23 development institutions and organizations;

24 (b) to provide financial support to individual
25 research projects that have significant potential to advance

1 development of agricultural business in the state;

2 (c) to facilitate the process of transferring research
3 from the laboratory to the commercial marketplace;

4 (d) to provide financial support for the development
5 of advanced research capabilities within the state's
6 university system through the acquisition of facilities,
7 equipment, or personnel;

8 (e) to facilitate the flow of information to
9 agricultural-based businesses in the state in order to
10 assist those businesses in reaching their full commercial
11 potential; or

12 (f) to improve the information and resources available
13 to the state's agricultural businesses involved in
14 commercialization of innovative agricultural products and
15 processes.

16 **NEW SECTION. Section 5. Specific criteria for**
17 **research and development project loans.** The council may make
18 a research and development project loan only if it
19 determines that the proposed project substantially complies
20 with the criteria and goals set forth in [sections 1 and 4]
21 and further determines that the project:

22 (1) has the potential to diversify or add value to the
23 state's agricultural economy;

24 (2) demonstrates a clear path to commercial
25 development of the research results within the state;

- 1 (3) involves university system research participation,
- 2 if appropriate;
- 3 (4) employs or otherwise takes advantage of existing
- 4 research and development strengths within the state's
- 5 university and private research establishment;
- 6 (5) involves a realistic and achievable research
- 7 project design;
- 8 (6) develops or employs innovative agricultural
- 9 products or processes; and
- 10 (7) is located within the state.

11 **NEW SECTION. Section 6. Agricultural development**
 12 **project loan agreement -- contents -- council decisions**
 13 **final.** (1) If the council determines that an agricultural
 14 development project meets the criteria established in the
 15 act and has complied with the applicable procedures and
 16 review processes established by the council, the council may
 17 enter into an agricultural development project loan
 18 agreement with the company and authorize the disbursement of
 19 funds to the company.

20 (2) The loan agreement, at a minimum, must contain the
 21 following provisions:

- 22 (a) the project budget;
- 23 (b) the financing, marketing, and production
- 24 milestones for the project that describe project tasks to be
- 25 achieved at designated times in each area;

- 1 (c) the reporting requirements, including but not
- 2 limited to:
- 3 (i) financial statements to be submitted on at least
- 4 an annual basis as determined by the council;
- 5 (ii) quarterly commercialization progress reports;
- 6 (iii) annual reports; and
- 7 (iv) reports on any significant project transactions;
- 8 (d) the disbursement schedule for the loan;
- 9 (e) the payback to the council;
- 10 (f) the causes for loan revocation, suspension, or
- 11 termination; and
- 12 (g) the intellectual property provisions.
- 13 (3) All decisions of the council are final and are not
- 14 subject to the contested case provisions of Title 2, chapter
- 15 4.

16 **NEW SECTION. Section 7. Seed capital project loan**
 17 **agreement -- specific loan requirements -- payback.** (1) In
 18 addition to the loan requirements of [section 6], a seed
 19 capital project loan must be structured as contracted debt,
 20 including but not limited to the following terms:

- 21 (a) an interest rate set at a level that provides for
- 22 a return to the council, from paybacks by all of its
- 23 portfolio companies, an amount at least equal to the
- 24 principal amount of the loan and that provides for a market
- 25 rate of return when considering the overall benefit to the

1 state derived from the projects;

2 (b) a provision in the note that may defer debt
3 service until maturity of the note, the term of which may
4 not exceed 8 years;

5 (c) a loan amount that may not exceed \$50,000 in any
6 one round of financing. Successive rounds of financing in
7 which the council participates for any one company may not
8 occur within a 9-month period. The total amount that may be
9 loaned to any one company may not exceed \$150,000.

10 (d) a provision that the note becomes due in full upon
11 dissolution or liquidation of the company;

12 (e) a provision that the company will provide the
13 lender COUNCIL with a second priority security interest in
14 all of the equipment used in the company's business,
15 accounts receivable, and inventory to secure repayment of
16 the loan;

17 (f) a provision that the priority security interest in
18 the company's assets referred to in subsection (1)(e) will
19 be evidenced by appropriate forms required to secure the
20 assets as provided in Title 30, chapter 9.

21 (2) In addition to the provisions in [section 6] and
22 subsection (1) of this section, a seed capital project loan
23 agreement may provide for any of the following:

24 (a) a convertible debenture;

25 (b) a warrant held by the council; or

1 (c) a warrant held by a third party for the benefit of
2 the council.

3 NEW SECTION. Section 8. Research and development
4 project loan agreement -- specific loan requirements --
5 payback. In addition to the loan requirements of [section
6 6], a research and development project loan agreement must
7 be structured as contracted debt, including but not limited
8 to the following terms:

9 (1) The agreement must include provisions calling for
10 a payback of two times the original loan amount, paid as a
11 percentage of the income stream derived from the sale or
12 other commercialization of products or processes developed
13 with the council's financing. This percentage rate may not
14 exceed 5%.

15 (2) The payback for an agricultural technology
16 transfer and assistance project loan may be made pursuant to
17 subsection (1) or may be realized in terms of indirect
18 benefits related to the goals and criteria of the act. No
19 more than 10% of the council's funds designated for research
20 and development in any one fiscal year may be used for
21 agricultural technology transfer and assistance loans.

22 NEW SECTION. Section 9. Rulemaking. The council shall
23 adopt rules necessary to implement the provisions of this
24 chapter, including but not limited to rules:

25 (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, a business plan for a seed capital 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;

(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 agreement.

Section 10. 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 such an agricultural enterprise.

(3) "Agricultural development project" means either a seed capital or research and development project designed to discover, develop, transfer, 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) "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) "Council" means the Montana agriculture development council established in 2-15-1817.

(8) "Debenture" or "note" means a writing or

1 certificate issued as evidence of debt.

2 (9) "Department" means the department of commerce
3 AGRICULTURE established in 2-15-1881 2-15-3001.

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

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

16 (12) "Investment" means an award of money, with or
17 without repayment requirements, for the purposes provided
18 for in this chapter 90-9-302 and 90-9-401.

19 (13) "Matching funds" means the funds received in cash
20 by the agricultural development project loan recipient from
21 nonstate appropriated sources and contributed by the loan
22 recipient to the project in an amount that is at least equal
23 to the funds loaned to the recipient by the council for use
24 in the agricultural development project.

25 (14) "Portfolio company" means a startup or expansion

1 stage company that has received a seed capital project loan
2 from the council.

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

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

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

15 (18) "Seed capital project" means a startup or
16 expansion capital project.

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

20 (20) "State" means the state of Montana.

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

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

25 (b) provides better access and exposure to business

1 development assistance or information for researchers or
 2 early-stage agricultural businesses that commercialize
 3 agricultural technology products.

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

8 **Section 11.** Section 90-9-202, MCA, is amended to read:

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

11 (1) establish policies and priorities to enhance the
 12 future development of agriculture in Montana;

13 (2) make investments or loans in agricultural
 14 development projects that have a short- or long-term ability
 15 to stimulate agriculture development and diversification in
 16 Montana, including but not limited to:

17 (a) seed capital awards loans for development and
 18 commercialization of new products and processes;

19 (b) agricultural business incubators;

20 (c) foreign and domestic market development
 21 activities;

22 (d) applied technological research; and

23 (e) agricultural technology assistance and transfer;

24 and

25 (3) accept grants or receive devises of money or

1 property for use in making the investments described-in or
 2 loans authorized by this chapter.

3 ~~(4)--adopt-rules-necessary-to-implement-the--provisions~~
 4 ~~of-this-chapter,-including-but-not-limited-to-rules-~~

5 ~~(a)--governing-the-conduct-of-council-business;~~

6 ~~(b)--establishing--matching--fund-requirements-for-seed~~
 7 ~~capital-investment-programs;~~

8 ~~(c)--establishing---criteria---for---determining---the~~
 9 ~~eligibility-of-projects-and-programs-for-investments,-and~~

10 ~~(d)--establishing--methods--of--committing-funds,-types~~
 11 ~~and-amounts-of-fees,-return-on--investments,-and--types--of~~
 12 ~~investments-to-be-made."~~

13 **Section 12.** Section 90-9-301, MCA, is amended to read:

14 **"90-9-301. Agriculture seed capital account --**
 15 **matching funds ---preference.** (1) There is an agriculture
 16 seed capital account administered by the council.

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

23 ~~(3)--Investments-from-the-account-must-be-matched-by-at~~
 24 ~~least-an-equal-amount-raised-by-the-applicant--from--sources~~
 25 ~~that-are-not-state-appropriated.~~

~~{4}--Preference must be given to applications that:~~

~~{a}--can--be--reasonably--expected--to--provide--an--economic
return--to--the--applicant--within--a--reasonable--time;~~

~~{b}--demonstrate--a--potential--commercial--value--to--other
entrepreneurs--in--Montana;~~

~~{c}--require--such--a--grant--to--obtain--additional--private
capital;~~

~~{d}--involve--processing--or--adding--value--to--agricultural
commodities--produced--in--Montana;--or~~

~~{e}--provide--jobs--that--will--be--substantially--filled--by
current--Montana--residents.~~

(3) The council may not make a loan to an agricultural
development project for which the 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 13. Section 90-9-302, MCA, is amended to read:

**"90-9-302. Agricultural business incubator program --
criteria -- limitations.** (1) There is an agricultural
business incubator program account in the state special
revenue fund. The council may invest from the account an
amount not to exceed \$100,000 each in each agricultural
business incubators incubator. The incubators incubator must

operate as a self-financing business development entities
entity, providing such services as training, management
consultation, accounting, and office space, if necessary, to
eligible agricultural businesses. Such Eligible
agricultural businesses may include but are not limited to
marketing cooperatives and associations.

(2) Investments under this section must be awarded by
the council, based upon its review of the following
criteria:

(a) the potential ability of the applicant to be
financially self-sufficient;

(b) identification of businesses or industries
targeted for development assistance;

(c) community support for the incubator program; and

(d) a plan to address business development needs of
specific user groups, such-as including but not limited to
displaced farmers.

(3) Investments may be made only in agricultural
business incubators that are located in different geographic
areas of the state and that are not located in a
municipality with a population in excess of 15,000 people.
The municipality or community in which the incubator is
located must provide funding or contributions ~~of-a-value--at~~
~~least--three--times--the-amount-of-the-investment-under-this~~
section on at least a dollar-to-dollar basis. Contributions

1 by applicants may include land, buildings, or professional
2 services."

3 **Section 14.** Section 90-9-306, MCA, is amended to read:

4 "90-9-306. Appropriation authority and funding --
5 prohibited investments. (1) The council has authority to
6 accept and expend all funds received by it as grants,
7 donations, or other private or public income, including
8 amounts repaid as principal and interest on investments made
9 by the council. These funds are statutorily appropriated to
10 the council as provided in 17-7-502.

11 ~~{2}--No investment may be made in projects for which~~
12 ~~matching funds or participation of financial intermediaries~~
13 ~~is required until such funds have been committed.~~

14 ~~{3}~~(2) Council members may not personally apply for or
15 receive council investment funds. If an organization with
16 which a member is affiliated applies for council funds, the
17 member must disclose the nature of the affiliation and may
18 not participate in the decision of the council regarding the
19 application."

20 **Section 15.** Section 90-9-307, MCA, is amended to read:

21 "90-9-307. Accountability. {1} The council shall
22 develop independent review and audit procedures to ensure
23 that investments and loans made by it are used for the
24 purposes identified in its investment and loan agreements.

25 ~~{2}--The council's investment agreements must contain~~

1 ~~provisions considered necessary by the council to ensure the~~
2 ~~proper inspection and review of projects, the attainment of~~
3 ~~project goals, and the maintenance of adequate financial~~
4 ~~records by recipients of council funds."~~

5 **Section 16.** Section 90-9-401, MCA, is amended to read:

6 "90-9-401. Agricultural marketing enhancement. The
7 council shall assist in identification and development of
8 new domestic and foreign markets for Montana agricultural
9 products. The council shall:

10 (1) place assist in placing one full-time professional
11 marketing person in Japan or another Pacific Rim country to
12 develop export marketing opportunities in the Pacific
13 region;

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

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

19 NEW SECTION. **Section 17.** Extension of authority. Any
20 existing authority to make rules on the subject of the
21 provisions of [this act] is extended to the provisions of
22 [this act].

23 NEW SECTION. **Section 18.** Codification instruction.

24 (1) [Sections 1 through 8] are intended to be codified as an
25 integral part of Title 90, chapter 9, part 3, and the

1 provisions of Title 90, chapter 9, part 3, apply to
2 [sections 1 through 8].

3 (2) [Section 9] is intended to be codified as an
4 integral part of Title 90, chapter 9, part 2, and the
5 provisions of Title 90, chapter 9, part 2, apply to [section
6 9].

7 NEW SECTION. Section 19. Severability. If a part of
8 [this act] is invalid, all valid parts that are severable
9 from the invalid part remain in effect. If a part of [this
10 act] is invalid in one or more of its applications, the part
11 remains in effect in all valid applications that are
12 severable from the invalid applications.

13 NEW SECTION. Section 20. Effective date. [This act]
14 is effective on passage and approval.

-End-