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Smith BILL NO. *65*
INTRODUCED BY *McCallum By Request*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE DESIGNATION OF PRIME AGRICULTURAL LANDS AND ESTABLISHING PROCEDURES TO REGULATE THE CONVERSION OF SUCH LANDS TO NONAGRICULTURAL USES."

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

Section 1. Legislative findings and purpose. The legislature finds that of the approximately seventy percent (70%) of Montana's land area which is privately owned, a relatively small portion supports the bulk of agricultural production in the state. Development involving a change of use which would take such land out of food production should be discouraged, or should be encouraged to take place on other and less productive lands. The purpose of this act is to enact a portion of a land use policy for Montana. This is a policy of directing land development to compatible areas by designating areas incompatible with development as a matter of policy, by virtue of their productivity, or as a matter of fact, by virtue of natural conditions such as flood potential or soil characteristics. The legislature declares that well-planned land development is important to many sectors of the state's economy and should be

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encouraged.
Section 2. Definitions. As used in this chapter:
(1) "Commence to construct" means any clearing of land, excavation, construction, or other action that would affect the environment of the site of the proposed development, or acquisition of land under eminent domain proceedings in expectation of such action, but does not include changes for temporary use of the site or uses in securing geological data, including necessary borings to ascertain subsurface conditions.
(2) "Development" means the material alteration, addition to, or construction of any structure or improvement upon land, any extractive activities upon land, or any other activity which materially alters the physical appearance or the use of land. "Development" also means the "division of land" as that term is defined in this section. Development does not include:
(a) the construction, maintenance, or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the existing right-of-way;
(b) the inspection, maintenance, or replacement of any utility system such as sewers, mains, pipes, pipelines, cables, utility tunnels, power and communication facilities, towers, or poles, within established rights-of-way;
(c) the maintenance, renewal, improvement, or

1 alteration of any structure, if the work affects only the
2 interior or the color of the structure or the decoration of
3 the exterior of the structure; or

4 (d) the continuance of the agricultural or residential
5 use of an existing structure or parcel of land;

6 (e) development undertaken to protect the public
7 health, safety, or welfare due to a natural or man-caused
8 emergency.

9 (3) "Division of land" means the segregation of one or
10 more parcels of land from a larger tract held in single or
11 undivided ownership by transferring, or contracting to
12 transfer, title to or possession of a portion of the tract
13 or properly filing a certificate of survey or subdivision
14 plat establishing the identity of the segregated parcels.

15 Section 3. Map of agricultural land base. The Montana
16 department of agriculture shall compile and publish, before
17 June 30, 1976, in accordance with the procedures set forth
18 in section [4 of this act], a map of each county delineating
19 the prime agricultural lands in that county. The
20 delineation shall be by sections of the public land survey
21 and shall include each section where the predominant use is
22 row cultivation of crops, including orchards, or hay
23 production. Land within the boundaries of a city or town
24 may not be delineated. The department may exclude sections
25 where the land has only marginal utility for the foregoing

1 agricultural purposes, and may include lands with high
2 potential value for such uses even if the lands are not in
3 agricultural use at the time.

4 Section 4. Procedure for preparing map. The
5 department of agriculture shall prepare a tentative map of
6 the prime agricultural lands in each county, having first
7 consulted the supervisors of the conservation district if
8 there is a conservation district in the county, the
9 department of revenue, or its agent in the county, and the
10 board of county commissioners. The department shall publish
11 the tentative map in a newspaper generally circulated in the
12 county and shall announce the opportunity for a public
13 hearing on the proposal as provided under section 82-4204
14 (1) (b). Upon consideration of the views expressed, the
15 department shall publish the map for each county as a rule
16 in the Montana Administrative Code.

17 Section 5. Lands mapped as prime agricultural lands --
18 restrictions on conversion -- conversion defined. (1)
19 Within an area delineated as prime agricultural land on the
20 official map of the department of agriculture, a person may
21 not commence to construct a resource conversion, as defined
22 in subsection (2) of this section, unless he has obtained a
23 development permit under section [6 of this act].

24 (2) A "resource conversion" of prime agricultural land
25 includes any development which is projected to:

1 (a) provide temporary or permanent employment for over
2 one hundred (100) persons; or

3 (b) contain fifty (50) or more permanent dwelling
4 units; or

5 (c) generate an average of one thousand (1,000) or
6 more vehicle trips per day of operation; or

7 (d) result in the division of land into fifty (50) or
8 more parcels; or

9 (e) result in the use of a total land area of one
10 hundred (100) or more acres; or

11 (f) result in a capital expenditure of five million
12 dollars (\$5,000,000) or more.

13 However, a resource conversion does not include any
14 development regulated under the Utility Siting Act, the
15 Strip Mine Siting Act, or sections 50-1207, 50-1208, or
16 50-1507, or any temporary development not interrupting
17 agricultural uses for longer than eighteen (18) months.

18 Section 6. Permit applications -- fees. (1) A person
19 who intends to construct a resource conversion on
20 agricultural land mapped under section [4 of this act] must
21 first obtain a development permit from the governing body
22 within whose jurisdictional area the development would be
23 located. He shall apply for the permit and pay an
24 application fee to the governing body according to the
25 following schedule:

1 (a) if the project cost does not exceed five hundred
2 thousand dollars (\$500,000), no fee;

3 (b) three percent (3%) of any estimated cost up to one
4 million dollars (\$1,000,000); plus one percent (1%) of any
5 estimated cost over a million dollars and up to twenty
6 million dollars (\$20,000,000); plus one-half of one percent
7 (0.5%) of any estimated cost over twenty million dollars
8 (\$20,000,000) and up to one hundred million dollars
9 (\$100,000,000); plus one-quarter of one percent (0.25%) of
10 any amount of estimated cost over one hundred million
11 (\$100,000,000) and up to three hundred million dollars
12 (\$300,000,000); plus one-tenth of one percent (0.1%) of any
13 amount of estimated cost over three hundred million dollars
14 (\$300,000,000).

15 (2) It is the intent of the legislature that the
16 revenues derived from the filing fee be used by the
17 governing body and the department in compiling the
18 information required for rendering a decision on a
19 development of state concern and for carrying out other
20 duties pursuant to this act.

21 Section 7. Preparation of report and environmental
22 statement. The local governing body shall contract with the
23 department of intergovernmental relations or with a
24 consultant approved by the department of intergovernmental
25 relations, to prepare an intensive study and evaluation of

1 the effects of the proposed development and report the same
 2 to the governing body. The department or consultant may
 3 subcontract parts of the report to the local planning board
 4 and to other state agencies having authority and expertise
 5 in relevant subjects. The report shall be prepared in a
 6 manner which satisfies the requirement for a draft
 7 environmental impact statement under section 69-6504.

8 Section 8. Consideration of report -- decision on
 9 application. Within thirty (30) days after receiving the
 10 draft environmental impact statement the local governing
 11 body shall hold a public hearing to consider the permit
 12 application. If a counsel for the agricultural land base
 13 has been appointed under section [10 of this act], or if a
 14 person having interests adverse to the application petitions
 15 to be a party to the proceeding, or if the draft
 16 environmental impact recommends against granting the permit,
 17 the hearing shall be conducted as a contested case under the
 18 Montana Administrative Procedure Act. Within one hundred
 19 and twenty (120) days after the hearing, the governing body
 20 may grant, with or without condition, a development permit,
 21 or may deny the application for a development permit.

22 Section 9. Criteria for evaluating a permit for
 23 resource conversion of agricultural land. (1) In reaching
 24 a decision regarding a development permit for resource
 25 conversion in a mapped area of prime agricultural land the

1 governing body shall determine whether the probable net
 2 benefits from the proposed development will exceed the
 3 probable net detriments both within and beyond the
 4 jurisdictional boundaries of the governing body. Detriments
 5 or benefits shall not be denied consideration on the grounds
 6 that they are indirect, intangible, or not readily
 7 quantifiable.

8 (2) By July 1, 1976 the department of
 9 intergovernmental relations shall adopt rules specifying
 10 criteria for balancing detriments and benefits. These
 11 criteria shall provide governing bodies with a methodology
 12 for considering the detriments and benefits with respect to:

13 (a) the need for the facilities, services, employment
 14 opportunities or amenities related to the general welfare
 15 provided by the development;

16 (b) the need for the agricultural products provided by
 17 the land without the development;

18 (c) alternative sites for the proposed development and
 19 for replacing the agricultural production displaced by the
 20 proposed development;

21 (d) the impact of the development on the social
 22 structure, the natural resources, the economy, and the
 23 environment of the region;

24 (e) the immediate public service costs of the
 25 development, and the long-term projected tax returns from

1 the development as against the costs and tax returns
2 associated with continued agricultural use;

3 (f) the impact of the development on water, sewer,
4 solid waste disposal, education, police and fire protection,
5 public transportation, and other necessary public
6 facilities;

7 (g) the impact of the development on the availability
8 of adequate housing;

9 (h) the likelihood, type, and impacts of subsidiary
10 development which may be influenced by granting or denying
11 the permit for the proposed development;

12 (i) the consistency of the development with
13 comprehensive plans, adopted by governing bodies, of the
14 region affected by the proposed development.

15 (3) Decisions of a governing body concerning permits
16 shall be in writing and shall set forth findings
17 substantiating the decision.

18 Section 10. Appointment of counsel for the
19 agricultural land base. In any application where a fee is
20 paid under section [6 of this act], the governing body shall
21 budget a portion of the fee for the appointment of a counsel
22 for the agricultural land base. The purpose of such
23 appointment is to guarantee consideration of major
24 applications under the contested case procedures of the
25 Montana Administrative Procedure Act. The initial

1 appointment of and budget for the counsel shall be made by
2 the governing body subject to the approval of the department
3 of agriculture. The budget shall be sufficient to assure
4 the presentation of technical testimony as required by the
5 counsel in the presentation of his case. The counsel shall
6 be a Montana attorney in good standing, who shall advocate
7 the fullest possible conservation of prime agricultural
8 land. He is not answerable to and may not be removed by the
9 governing body.

10 Section 11. Judicial review. Appeal may be taken from
11 any contested case proceeding held by a governing body under
12 this chapter as provided in section 82-4216.

13 Section 12. Severability. It is the intent of the
14 legislature that if part of this act is invalid, all valid
15 parts that are severable from the invalid part remain in
16 effect. If a part of this act is invalid in one or more of
17 its applications, the part remains in effect in all valid
18 applications that are severable from the invalid
19 applications.

-End-

STATE OF MONTANA

REQUEST NO. 33-75

FISCAL NOTE

Form BD-15

In compliance with a written request received January 14, 19 75, there is hereby submitted a Fiscal Note for Senate Bill 65 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring the Department of Agriculture to prepare a map of each county delineating prime agricultural lands; requiring a development permit to convert such land to nonagricultural purposes; establishing procedures for preparation of environmental impact statements and evaluation of permit applications by the Department of Intergovernmental Relations.

FISCAL IMPACT:

(1) Department of Agriculture Responsibility

Assuming the definition of "Prime Agriculture" land includes productivity, flood potential, and soil characteristics, and that the definition should be objective and uniform for all areas, the mapping project as set forth in Section 3 and Section 4 is possible for only Mineral, Yellowstone, Sheridan, Richland, Wibaux, Dawson, Valley, Blain and parts of Glacier, Flathead, Cascade, Judith Basin, Broadwater, Stillwater, Carbon, Big Horn, Powder River, Fergus, Lewis and Clark Counties with part of the Bitterroot area.

At this time, basic data necessary in delineating prime agricultural land is available from the Soil Conservation Service Land Classification project only for the areas listed above. The S.C.S. project at its present stage of completion as of 6/30/74 includes information on 33,891,214 acres. This leaves some 59,170,786 acres to be completed. Their estimated completion date is 1990. Therefore, the basic lack of the necessary type of information for all counties precludes the Montana Department of Agriculture or others from full compliance with Section 3 of Senate Bill 65 by June 30, 1976.

The expenditure estimates set forth are based on partial compliance with Section 3 for only those areas listed above. The estimates assume 1.75 additional personnel working in cooperation with the S.C.S. office during FY 76.

Additional State Expenditures:	FY 76
Personal Services	\$ 30,000
Operating Expenses	6,100
Equipment	1,000
Total	<u>\$ 37,100</u>

(2) Department of Intergovernmental Relations Responsibility.

Under the proposed law, the department is given the responsibility of adopting rules during FY 76 for use by local government units in evaluating permits for resource conversion of agricultural land. It is also named as the contracting agency for preparation of environmental impact statements. Cost estimates below assume 1.5 additional FTE will be required in FY 76 to develop rules and an additional person in FY 77 to coordinate environmental impact statements.

Additional State Expenditures:	FY 76	FY 77
Personal Services	\$ 23,500	\$ 15,000
Operating Expenses	1,500	5,000
Total	<u>\$ 25,000</u>	<u>\$ 20,000</u>

LOCAL IMPACT:

The permit application fees set forth under Section 6, Senate Bill 65 to be paid to local government units are intended to cover the costs of preparation and evaluation of environmental impact statements. Thus, no fiscal impact on local governments is expected from this bill.

Michael B. Bellings

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: January 23, 1975