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*Senate*  
*Blaylock* *Gov. Ryan*  
BILL NO. 326

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CITIES, TOWNS AND COUNTIES WITH THE AUTHORITY TO PLAN FOR AND REGULATE AREAS OF STATE CONCERN; AUTHORIZING THE DEPARTMENT OF INTERGOVERNMENTAL RELATIONS TO ADOPT RULES FOR THE NOMINATION AND REGULATION OF SUCH AREAS; CREATING A LAND USE COMMISSION TO DESIGNATE AREAS OF STATE CONCERN AND TO HEAR APPEALS CONCERNING THE DESIGNATION AND REGULATION OF AREAS OF STATE CONCERN."

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

Section 1. This act shall be known and may be cited as the "Montana Areas of State Concern Act".

Section 2. Statement of purpose. The legislature finds that while local government has a primary and continuing interest in the control of land use within its jurisdiction, certain areas of Montana are so vital to sustaining an agricultural economy, or possess such unique and fragile qualities that decisions as to their development are of greater than local concern and are of vital importance to all Montana. It is the purpose of this act to establish a system for the identification of these areas and to facilitate local efforts to plan for and regulate them.

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Section 3. Definitions. As used in this act unless the context requires otherwise:

(1) "Area of state concern" means an area designated as provided in this act.

(2) "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, but does not include:

- (a) changes for temporary use of the site;
- (b) uses for securing geological data, including necessary borings to ascertain subsurface conditions;
- (c) uses in preparation for any of the activities excluded from the definition of development in this section;
- (d) the commencement of eminent domain proceedings under Title 93, chapter 99, R.C.M. 1947.

(3) "Commission" means the state land use commission established by this act.

(4) "Department" means the department of intergovernmental relations provided for in Title 82A, chapter 9, R.C.M. 1947.

(5) "Developer" means any person or governmental agency undertaking development as defined in this act.

(6) "Development" means the material alteration, addition to, or construction of any structure or improvement upon land, any extractive activities upon land, or any other

1 activity which materially alters the physical appearance or  
 2 the use of land. "Development" also means the "division of  
 3 land" as that term is defined in this section. Development  
 4 does not include:

5 (a) the construction, maintenance, or improvement of a  
 6 road or railroad track, if the work is carried out on land  
 7 within the boundaries of the existing right-of-way;

8 (b) the inspection or maintenance of any utility  
 9 system such as sewers, mains, pipes, pipelines, cables,  
 10 utility tunnels, power and communication facilities, towers  
 11 or poles within established rights-of-way; or the  
 12 replacement of part or all of such a system with a like  
 13 system of substantially the same capacity;

14 (c) the maintenance, renewal, improvement, or  
 15 alteration of any structure if the work affects only the  
 16 interior or the color of the structure or the decoration of  
 17 the exterior of the structure;

18 (d) the continuance of the agricultural, residential,  
 19 or commercial use of an existing structure or parcel of land  
 20 which does not involve a substantial change in the intensity  
 21 of use of the land; or

22 (e) development undertaken to protect the public  
 23 health, safety, or welfare due to a natural or artificially  
 24 caused emergency, such as fire, flood, earthquake, or  
 25 landslide.

1 (7) "Division of land" means the segregation of one or  
 2 more parcels of land from a larger tract held in single or  
 3 undivided ownership by transferring, or contracting to  
 4 transfer, title to or possession of a portion of the tract  
 5 or properly filing a certificate of survey or a subdivision  
 6 plat establishing the identity of the segregated parcels.

7 (8) "Governing body" means the governing body of a  
 8 county or incorporated city or town.

9 (9) "Guideline" means a rule adopted by the department  
 10 establishing minimum standards, criteria, and procedural  
 11 requirements to be followed by a person in carrying out  
 12 duties and responsibilities under this act.

13 (10) "Person" means any individual, corporation, firm,  
 14 association, organization, governing body, state department,  
 15 or any other entity except the United States government.

16 (11) "Plans and regulations" means those regulations  
 17 adopted under section 11 of this act by a governing body (or  
 18 by the department if the governing body fails to do so) for  
 19 the management of an area of state concern.

20 Section 4. There is a new R.C.M. section numbered  
 21 82A-907 that reads as follows:

22 82A-907. State land use commission. There is created  
 23 a state land use commission, which shall be allocated for  
 24 administrative purposes only as provided in section 82A-108,  
 25 to the department of intergovernmental relations. The

1 commission shall be organized in the following manner.

2 (1) The commission is designated a quasi-judicial board as  
3 provided in section 82A-112, except that subsections (2)(a)  
4 and (5) of that section do not apply.

5 (2) The commission shall consist of five (5) members  
6 appointed by the governor and confirmed by the senate. The  
7 members of the commission shall be appointed as soon as  
8 practicable after the effective date of this act. The  
9 initial appointments shall be made as follows: the term of  
10 one member shall expire December 31, 1976; the term of one  
11 member shall expire December 31, 1977; the term of one  
12 member shall expire December 31, 1978; the term of one  
13 member shall expire December 31, 1979; and the term of one  
14 member shall expire December 31, 1980. Thereafter, all  
15 appointments shall be made for a term of five (5) years.  
16 Having once served a full five (5) year term, no member may  
17 be reappointed for a consecutive term.

18 (3) One (1) commission member shall be appointed from  
19 each public service commission district as defined in  
20 section 70-101.1. In making appointments, the governor  
21 shall take into consideration the representation of local  
22 government, agricultural, economic, and conservation  
23 interests. No more than three (3) members of the commission  
24 may be from the same political party.

25 (4) The commission shall elect a chairman and

1 establish rules for its organization and procedures.

2 Section 5. Powers and duties of commission. The  
3 commission shall:

4 (1) designate areas of state concern pursuant to this  
5 act;

6 (2) hear appeals pursuant to the Montana  
7 Administrative Procedure Act regarding any state or local  
8 decision concerning areas of state concern;

9 (3) terminate the designation of an area of state  
10 concern pursuant to this act;

11 (4) on appeal, have the authority subject to section  
12 14 of this act, to uphold or invalidate any rule adopted by  
13 the department, or any plans and regulations adopted by a  
14 governing body, pursuant to this act; and

15 (5) conduct public hearings pursuant to section 8 of  
16 this act.

17 Section 6. Powers and duties of the department. The  
18 department shall:

19 (1) adopt rules establishing criteria, requirements  
20 and procedures for the nomination and regulation of areas of  
21 state concern;

22 (2) provide technical and financial assistance to  
23 governing bodies in carrying out the objectives of this act;

24 (3) upon request, assist governing bodies in the  
25 nomination, recommendation, assessment and administration of

1 an area of state concern;

2 (4) enter into contractual agreements with state and  
3 federal agencies and private entities to aid the department  
4 in carrying out the objectives of this act;

5 (5) adopt plans and regulations of an area of state  
6 concern if a governing body does not adopt plans and  
7 regulations which satisfy the requirements of this act; and

8 (6) review plans and regulations developed to  
9 administer an area of state concern.

10 Section 7. Powers and duties of governing bodies.  
11 Governing bodies shall:

12 (1) hold public hearings pursuant to the procedures  
13 outlined in section 15 in order to carry out their  
14 responsibilities under this act;

15 (2) consistent with guidelines promulgated by the  
16 department:

17 (a) adopt and administer interim controls within an  
18 area of state concern;

19 (b) adopt and periodically update plans and  
20 regulations for an area of state concern consistent with the  
21 department's rules;

22 (c) approve, with or without conditions, or disapprove  
23 an application for a permit to develop within an area of  
24 state concern;

25 (d) provide for the enforcement of regulations

1 governing an area of state concern; and

2 (e) nominate areas for designation as an area of state  
3 concern;

4 (3) enter into contractual agreements with state and  
5 federal agencies and private entities to aid the governing  
6 body in carrying out the objectives of this act.

7 Section 8. Inventory -- public hearings -- guidelines.

8 (1) Between the effective date of this act and January 1,  
9 1976 the department shall assemble and make available to the  
10 public a directory listing the nature and source of natural  
11 and cultural resource inventory data and information now  
12 being collected and stored by local, state and federal  
13 agencies in Montana that might be required by citizens,  
14 governing bodies and the commission in accomplishing the  
15 purposes of this act.

16 (2) Between January 1, 1976 and April 1, 1976, the  
17 commission shall hold at least fifteen (15) public hearings  
18 throughout the state to elicit public comments, identify  
19 public concerns, gather information with respect to regional  
20 land use problems, identify land management needs not  
21 adequately provided for by existing regulations, and gather  
22 such other information as will assist in the full and  
23 effective implementation of this act.

24 (3) Not later than May 1, 1976, the commission shall  
25 make available to the governor, the legislature and the

1 public a report of the hearings conducted pursuant to this  
 2 section. Copies of the report shall be forwarded to the  
 3 department for use in developing the guidelines required for  
 4 the implementation of this act.

5 (4) Based upon the commission report prepared pursuant  
 6 to this section, as well as other relevant information  
 7 available to the department, and in consultation with  
 8 appropriate federal, state and local agencies, the  
 9 department shall, no later than July 1, 1976:

10 (a) adopt guidelines for the identification of areas  
 11 of state concern. These guidelines shall provide for the  
 12 identification of:

- 13 (i) areas of significant agricultural value;
- 14 (ii) areas of significant natural resource development  
 15 value;
- 16 (iii) areas in which development may endanger life or  
 17 property because of natural or artificially caused hazards  
 18 such as landslides, avalanches, or earthquakes;
- 19 (iv) areas in which development may substantially  
 20 affect major public facilities or other projects, existing  
 21 or approved, which represent a substantial expenditure of  
 22 public funds;
- 23 (v) areas of special ecological or biological  
 24 importance or fragility;
- 25 (vi) areas of significant aesthetic, historical,

1 recreational, scientific or cultural value;

2 (vii) proposed sites for new town developments;

3 (b) adopt requirements for the nomination of an area  
 4 for designation as an area of state concern specifying the  
 5 information that must be submitted to nominate an area. The  
 6 required information shall include:

- 7 (i) a geographic description of the area;
- 8 (ii) a statement of the reasons why the area is of  
 9 state concern, referring specifically to the criteria set  
 10 forth in the guidelines prepared under paragraph (a) of this  
 11 subsection;
- 12 (iii) a description of the land use and ownership of  
 13 the area and adjacent land;
- 14 (iv) a description of any ordinances or regulations  
 15 affecting land use in the area, a list of the state and  
 16 local agencies responsible for the administration of those  
 17 ordinances and regulations, and a statement of the reasons  
 18 why those ordinances and regulations are not sufficient to  
 19 insure proper management of the area;
- 20 (v) a description of the land use controls needed to  
 21 insure proper management of the area, and recommendations  
 22 for interim controls;
- 23 (vi) any other data or information relevant to the  
 24 nomination;
- 25 (c) adopt guidelines for the formulation by governing

1 bodies of plans and regulations for the management of an  
 2 area of state concern and for the imposition of interim  
 3 controls. These guidelines shall indicate the types of  
 4 controls necessary and sufficient to manage and protect  
 5 those special characteristics which qualify an area as an  
 6 area of state concern. The department shall develop as  
 7 appropriate a separate set of guidelines for each category  
 8 of area identified in paragraph (a) of this subsection; and

9 (d) develop procedures to apply for a permit to  
 10 undertake a development within an area of state concern. To  
 11 facilitate the application procedure for prospective  
 12 developers who are subject to more than one permit authority  
 13 on the local or state level, the procedures developed by the  
 14 department shall, where practicable, provide mechanisms for  
 15 the consolidation of these permit processes.

16 (5) The guidelines developed by the department under  
 17 this section shall provide for the periodic review and  
 18 update of plans and regulations by a governing body, and  
 19 shall provide procedures for the consideration of a request  
 20 by an interested person for the revision of plans and  
 21 regulations. Revised and updated plans and regulations  
 22 shall be subject to the review, approval, assistance, and  
 23 adoption procedures of this act.

24 (6) In developing procedures and guidelines under this  
 25 section, the department shall be subject to the rule-making

1 provisions of the Montana Administrative Procedure Act,  
 2 sections 82-4201 through 82-4207.

3 Section 9. Designation procedures. (1) A person or  
 4 governing body residing, doing business, or having  
 5 jurisdiction within a county which contains all or part of  
 6 an area to be nominated, may submit a nomination for the  
 7 designation of an area of state concern to the governing  
 8 body or bodies within whose jurisdiction the area lies. The  
 9 person or governing body submitting the nomination shall  
 10 notify by mail or personal delivery all state and local  
 11 agencies responsible for the administration of existing  
 12 laws, ordinances or regulations relating to land use within  
 13 the area, and all persons who reside or own real property  
 14 within the area, that a nomination has been submitted.

15 (2) At its next meeting, the governing body or bodies  
 16 shall by official action accept the nomination for  
 17 designation if it includes all the information required by  
 18 department guidelines adopted pursuant to section 8 of this  
 19 act, or it shall state in writing its reasons for refusing  
 20 to accept the nomination. A governing body shall refuse to  
 21 accept a nomination for designation which does not include  
 22 all the information required to be submitted by this act and  
 23 by the rules adopted by the department pursuant to this act.

24 (3) A person or agency notified of the nomination  
 25 under subsection (1) of this section may submit a written

1 statement to the governing body supporting or opposing the  
2 nomination.

3 (4) If the nomination for designation is accepted by  
4 the governing body, no person may commence to construct a  
5 development in the area until the designation of the area is  
6 either accepted or rejected by the commission.

7 (5) The decision of the governing body to accept or  
8 reject the nomination for designation may be appealed to the  
9 commission by any person identified in subsection (1) of  
10 this section. The appeal must be initiated within ten (10)  
11 days after the decision of the governing body, and the  
12 commission shall conduct the hearing for this appeal subject  
13 to the rule-making provision of the Montana Administrative  
14 Procedure Act, section 82-4204.

15 (6) Within forty-five (45) days after accepting a  
16 nomination for designation the governing body shall hold a  
17 public hearing on the nomination pursuant to section 15 of  
18 this act. At least thirty (30) days prior to the public  
19 hearing the nominator shall send by certified mail, or other  
20 method of personal service which provides for a signed  
21 receipt, notice of the hearing to persons who reside or own  
22 real property within the proposed area and to the department  
23 for distribution to appropriate state and local agencies.

24 (7) Within sixty (60) days following the hearing, the  
25 governing body shall submit to the commission written

1 findings and a recommendation for approval, with or without  
2 modification, or disapproval of the nomination. The  
3 governing body shall include with its recommendation the  
4 record of the hearing, copies of the application and any  
5 other pertinent information, including copies of existing  
6 regulations affecting the area and suggested additional  
7 regulations needed to effectively manage the area.

8 Section 10. Designation of an area of state concern.

9 (1) Within sixty (60) days after receiving a  
10 recommendation from a governing body the commission shall  
11 either:

12 (a) designate the proposed area as an area of state  
13 concern and notify the governing body of the reasons  
14 therefor; or

15 (b) deny the designation of the area and notify the  
16 governing body of the reasons therefor; or

17 (c) return the recommendation with suggested  
18 modifications to the governing body.

19 (2) If the commission's decision is contrary to the  
20 recommendation of a governing body, such a decision shall  
21 require the concurrence of at least three (3) members of the  
22 commission.

23 (3) When designating an area of state concern the  
24 commission shall direct the appropriate governing body or  
25 bodies to impose interim controls consistent with the

1 guidelines adopted by the department pursuant to section 8  
2 of this act. Interim controls shall be administered by the  
3 governing body or bodies having jurisdiction over the  
4 designated area and shall be in effect until plans and  
5 regulations are adopted.

6 (4) The designation order of an area of state concern  
7 shall include:

8 (a) a description of the area and a map of its  
9 boundaries;

10 (b) a statement of the reasons for designating the  
11 area;

12 (c) a list of the units of local governing authorized  
13 by law to exercise land use planning and regulatory powers  
14 within the area;

15 (d) minimum requirements to be met by governing bodies  
16 in adopting plans and regulations under this act;

17 (e) interim controls that shall be imposed until plans  
18 and regulations are adopted; and

19 (f) any additional information relevant to the  
20 designation of the area.

21 (5) If the proposed designation of an area as an area  
22 of state concern is denied by the commission, substantially  
23 the same area may not be renominated for a period of one (1)  
24 year after denial.

25 Section 11. Development of plans and regulations to

1 protect an area of state concern. (1) Within six (6)  
2 months after the designation of an area of state concern the  
3 governing body or bodies having jurisdiction shall develop  
4 and transmit to the department plans and regulations for the  
5 designated area. These plans and regulations shall be  
6 consistent with the designation order for the area and the  
7 guidelines adopted by the department pursuant to section 8  
8 of this act.

9 (2) The governing body may request financial and  
10 technical assistance from the department as provided in  
11 section 20 of this act and appropriate state agencies in  
12 completing plans and regulations for an area of state  
13 concern.

14 (3) Governing bodies may cooperate in the preparation  
15 of plans and regulations for an area of state concern which  
16 overlaps jurisdictional boundaries.

17 (4) Within sixty (60) days after receiving plans and  
18 regulations for an area of state concern the department  
19 shall review the plans and regulations and shall approve  
20 them by written order if they are consistent with the  
21 designation order for the area and the guidelines adopted by  
22 the department pursuant to this act, or shall return them to  
23 the governing body with a written explanation of the need  
24 for modification. Within sixty (60) days after receiving  
25 plans and regulations returned for modification, the

1 governing body shall either revise them according to the  
 2 requirements of the written explanation and resubmit them to  
 3 the department for approval, seek an extension as provided  
 4 in subsection (5) of this section or appeal the department's  
 5 proposed modifications to the commission.

6 (5) If the complexity or size of an area of state  
 7 concern precludes the completion, review and adoption of  
 8 plans and regulations within the time limits established by  
 9 this act, the department may grant an appropriate extension  
 10 of time to a governing body.

11 (6) Within thirty (30) days after approval by the  
 12 department the proposed plans and regulations for an area  
 13 shall be adopted by ordinance or resolution and enforced by  
 14 the governing body.

15 Section 12. State authority to adopt rules to protect  
 16 designated areas of state concern. (1) When a governing  
 17 body fails to develop and adopt plans and regulations for a  
 18 designated area of state concern within one (1) year after  
 19 designation of the area, the department shall adopt within  
 20 three (3) months rules for the management of the area that  
 21 are consistent with the designation order and the guidelines  
 22 adopted pursuant to this act.

23 (2) Rules for managing an area of state concern that  
 24 are adopted by the department shall be administered by the  
 25 appropriate governing body. The governing body may, at any

1 time, adopt plans and regulations for the area which, if  
 2 approved by the department, supersede the rules adopted by  
 3 the department.

4 Section 13. Application for a permit to develop within  
 5 an area of state concern. (1) After the designation of an  
 6 area of state concern no person may commence to construct a  
 7 development within the area without first obtaining a permit  
 8 to develop from the governing body. A permit shall be  
 9 granted only if the proposed development complies with the  
 10 adopted plans and regulations for the area of state concern.

11 (2) Upon receiving an application for a permit to  
 12 develop within an area of state concern a governing body  
 13 shall transmit copies of the application to the department.  
 14 The department shall distribute copies of the application to  
 15 all state departments exercising permit authority over the  
 16 proposed development. Within thirty (30) days such  
 17 departments shall prepare a report indicating what must be  
 18 done by the developer to receive a permit pursuant to the  
 19 permit authority of that department and estimating the cost  
 20 and technical feasibility of the requirements being met and  
 21 the permit being granted.

22 (3) Within fifteen (15) days of receipt of the reports  
 23 from the departments exercising permit authority over the  
 24 proposed development, the department shall prepare a report  
 25 synthesizing the reports of the other departments in a

1 manner satisfying the requirements for an environmental  
2 impact statement pursuant to the Montana Environmental  
3 Policy Act, section 69-6504 (b) (3). The department's report  
4 shall be circulated as a draft environmental impact  
5 statement.

6 (4) Within thirty (30) days after receiving the draft  
7 environmental impact statement, the appropriate governing  
8 body shall hold a public hearing pursuant to section 15 of  
9 this act to consider the permit application. A department  
10 holding permit authority over the proposed development, may,  
11 at its discretion, use this hearing of the governing body to  
12 satisfy the hearing requirements of the law they are  
13 administering in reviewing the proposed development. Within  
14 thirty (30) days after the hearing, the governing body shall  
15 grant, with or without conditions, or refuse to grant, a  
16 conditional development permit.

17 (5) A conditional development permit shall clearly  
18 indicate the requirements which must be satisfied by a  
19 developer to obtain a final development permit.

20 (6) Within the time limits imposed by the laws  
21 authorizing state departments to exercise permit authority  
22 over the proposed development, the departments exercising  
23 the permit authority shall cooperate with the department in  
24 preparing a final environmental impact statement. The final  
25 environmental impact statement shall include the final

1 actions of the departments with respect to the proposed  
2 development, the information required by section 69-6504,  
3 subsections (b)(3) and (4), and such other information as  
4 the department finds relevant and useful to the governing  
5 body in reaching a decision on the development permit  
6 application.

7 (7) Within thirty (30) days after receiving the final  
8 environmental impact statement, the governing body shall  
9 hold a public hearing pursuant to section 15 of this act.  
10 Unless the developer agrees to an extension of time, the  
11 governing body shall grant, with or without conditions, or  
12 refuse to grant a final development permit within fifteen  
13 (15) days after the hearing.

14 (8) A governing body may include as a condition of a  
15 permit for a development within an area of state concern  
16 that the developer file with the governing body a bond  
17 payable to the governing body with surety satisfactory to  
18 the department in the penal sum to be determined by the  
19 governing body, conditioned upon the faithful performance of  
20 the requirements set forth in the plans and regulations for  
21 the area of state concern. In determining the amount of the  
22 bond, the governing body shall consider the nature and scope  
23 of the development and its possible adverse impact on the  
24 area.

25 (9) When a governing body issues a development permit

1 for a development within an area of state concern, a  
2 developer may not commence construction on the proposed  
3 development until after the thirty (30) day period for  
4 appeals to the commission has expired.

5 (10) A party to a hearing held pursuant to this section  
6 of this act who is aggrieved by a final decision of a  
7 governing body under this section may appeal to the  
8 commission within thirty (30) days after the written  
9 decision is formally issued.

10 (11) Upon receipt of an appeal the commission shall  
11 hold a public hearing pursuant to the contested case  
12 provisions of the Montana Administrative Procedure Act,  
13 sections 82-4209 through 82-4217. The commission may  
14 consolidate all appeals involving a single development  
15 within an area of state concern.

16 (12) Within sixty (60) days after the hearing the  
17 commission shall issue a written decision upholding,  
18 modifying, or reversing the decision of the governing body.  
19 If the commission's decision is contrary to the decision of  
20 a governing body, such a decision shall require the  
21 concurrence of at least three (3) members of the commission.

22 (13) When the commission renders a decision which  
23 provides for the granting of a development permit, the  
24 developer may not commence construction on the proposed  
25 development until after the thirty (30) day period for

1 appeal to a state district court has expired.

2 (14) Any person or agency who commences to construct a  
3 development in violation of the permit requirements of this  
4 section (as qualified by section 21 of this act), or who  
5 causes such violation, may be enjoined in civil proceedings  
6 brought in the name of the county or the state of Montana.

7 Section 14. Appeals. In hearing an appeal under this  
8 act, the commission may reverse or modify a decision by a  
9 governing body or the department upon a showing of:

- 10 (a) material variance from required procedures; or  
11 (b) abuse of discretion or disregard for or failure to  
12 satisfy the requirements of this act or of guidelines  
13 established by the department under this act; or  
14 (c) over-riding state interest.

15 Section 15. Public hearings. (1) When a public  
16 hearing is held in accordance with this act, a governing  
17 body shall:

- 18 (a) at least two weeks before the hearing publish  
19 notice of the hearing in a newspaper of general circulation  
20 in the county or counties affected and, where applicable,  
21 give notice to:

- 22 (i) the developer;  
23 (ii) the local planning board and the local board(s)  
24 of conservation district supervisors; and  
25 (iii) the residents and owners of real property

1 adjacent to a proposed development within an area of state  
2 concern;

3 (b) the notice shall:

4 (i) indicate the date, time, and place of hearing;

5 (ii) state the purpose of the hearing and where  
6 applicable, the general location of the proposed area of  
7 state concern or the proposed development; and

8 (iii) specify the public official from whom additional  
9 information can be obtained.

10 (2) When a proposed area of state concern or  
11 development comes within the jurisdiction of two or more  
12 governing bodies, the governing bodies may where  
13 practicable, hold a joint hearing on the matter.

14 (3) A mechanical or written record shall be made of  
15 any hearing held pursuant to this act, and shall be  
16 available to the public.

17 Section 16. Notice of activities -- public  
18 dissemination. (1) A governing body shall notify the  
19 department whenever it grants or denies a development permit  
20 as provided in this act.

21 (2) The department shall publish each month and mail  
22 to any person upon request a publication containing a list  
23 of nominations for areas of state concern, applications for  
24 developments within areas of state concern, and a list of  
25 the decisions before the commission. The department may

1 institute a reasonable charge for the publication to cover  
2 the cost of preparation and mailing. The department may  
3 include in the publication notices regarding other land  
4 development proposals or regulations deemed to be of  
5 sufficient importance to justify their dissemination.

6 Section 17. Termination of designation of an area of  
7 state concern. (1) Any person may petition the commission  
8 for the termination of the designation of an area of state  
9 concern. The petition must contain a statement of the  
10 reasons why the petitioner believes that the area is no  
11 longer of state concern and appropriate data and information  
12 to support the petitioner's claim.

13 (2) After receiving a petition for termination, the  
14 commission shall send a copy of the petition to the  
15 governing body having jurisdiction over the area of state  
16 concern, the department, the person who nominated the area  
17 for designation and any other person who requests a copy of  
18 the petition.

19 (3) Within sixty (60) days after receiving a petition  
20 for termination the commission shall hold a hearing on the  
21 petition subject to the rule-making provisions of the  
22 Montana Administrative Procedure Act, section 82-4204.

23 (4) Within thirty (30) days after the hearing the  
24 commission shall grant or deny the petition.

25 (5) When the designation of an area is terminated

1 pursuant to this section, the area or substantially the same  
2 area may not be nominated as an area of state concern for a  
3 period of one (1) year after the date of termination.

4 (6) When a petition for termination of the designation  
5 of all or part of an area of state concern is denied, the  
6 designation of the area may not be reconsidered for  
7 termination for a period of one (1) year after the date of  
8 denial.

9 Section 18. Permit expiration and revocation. (1) A  
10 permit granted under this act may be revoked by the  
11 governing body or the commission if the conditions attached  
12 to the permit are violated.

13 (2) If a developer fails to commence construction of a  
14 development for which a permit is granted pursuant to this  
15 act within one (1) year following the date of issue of the  
16 permit, the project shall be considered abandoned and the  
17 permit shall be considered expired. A developer may apply  
18 to the governing body having jurisdiction for an extension  
19 of a permit prior to expiration. A governing body may grant  
20 a single extension of a permit for a period not to exceed  
21 one (1) year. In granting the extension the governing body  
22 need not hold a public hearing.

23 Section 19. Failure to serve notice. (1) Inadvertent  
24 failure of service on, or notice to, a person identified in  
25 sections 9, 15, and 17 of this act may be rectified pursuant

1 to rules adopted by the department to afford that person  
2 adequate notice, and to assure that person opportunity for  
3 effective participation in the proceedings required by this  
4 act.

5 Section 20. Financial -- technical assistance to local  
6 governing bodies. (1) To achieve the purposes of this  
7 act, the department is authorized to allocate and disburse  
8 funds to governing bodies.

9 (2) A governing body whose jurisdictional area  
10 encompasses an area of state concern is eligible to receive  
11 financial aid from the department for the preparation and  
12 administration of plans and regulations for the area. The  
13 department may contract with a governing body for the  
14 expenditure of allocated funds and shall monitor the use of  
15 those funds.

16 Section 21. Coordination with existing statutes.  
17 (1) All permit, license and land management programs under  
18 existing state laws, regulations or ordinances shall be  
19 administered in a manner consistent with this act, and with  
20 guidelines, plans and regulations promulgated under this  
21 act. No development subject to existing permit, license or  
22 other approval procedures may be commenced without also  
23 satisfying the requirements of this act; provided that state  
24 air and water quality agencies shall retain authority which  
25 they have or may be granted to determine compliance of

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1 proposed developments with state and federal standards and  
 2 implementation plans for air and water quality and to  
 3 enforce those standards.

4 (2) Where an area of state concern lies within or  
 5 includes a delineated floodway the land use regulations  
 6 adopted under this act may be no less restrictive than any  
 7 regulations adopted under the floodway management act,  
 8 sections 89-3501 through 89-3515.

9 (3) Plans and regulations adopted pursuant to this act  
 10 may be no less restrictive than regulations and ordinances  
 11 adopted pursuant to the Montana Subdivision and Platting  
 12 Act, sections 11-3859 through 11-3876.

13 (4) No development subject to regulation under the  
 14 Montana Utility Siting Act, sections 70-801 through 70-823,  
 15 shall be subject to the provisions of this act.

16 Section 22. Protection of existing rights.

17 (1) Nothing in this act authorizes any governmental agency  
 18 to adopt a rule or issue an order that constitutes a taking  
 19 of property in violation of the constitution of this state  
 20 or the United States.

21 (2) Neither the designation of an area of state  
 22 concern nor the adoption of plans or regulations for the  
 23 management of an area shall in any way limit or modify the  
 24 rights of any person to complete any development approved by  
 25 existing state and local permit authorities on which there

1 has been reliance and a change of position, and which  
 2 approval was issued prior to the date of notice for public  
 3 hearing provided by section 9 of this act. If a developer  
 4 has by his actions in reliance on prior regulations obtained  
 5 vested or other legal rights that in law would have  
 6 prevented a local governing body from changing those  
 7 regulations in a way adverse to his interests, nothing in  
 8 this act authorizes any governmental agency to abridge those  
 9 rights.

10 Section 23. Enforcement of act by residents of state  
 11 -- statement of failure to enforce act -- mandamus. (1) A  
 12 resident of this state, with knowledge that a requirement of  
 13 this act or a rule adopted under this act, is not being  
 14 enforced by a public officer or employee whose duty it is to  
 15 enforce the requirement or rule may bring the failure to  
 16 enforce to the attention of the public officer or employee  
 17 by a written statement under oath that shall state the  
 18 specific facts of the failure to enforce the requirement or  
 19 rule. Knowingly making false statements or charges in the  
 20 affidavit subjects the affiant to penalties prescribed under  
 21 the law of perjury.

22 (2) If the public officer or employee neglects or  
 23 refuses for an unreasonable time after receipt of the  
 24 statement to enforce the requirement or rule, the resident  
 25 may bring an action for mandamus in a district court in the

1 county in which the public officer or employee serves in his  
2 official capacity. If the court finds that a requirement of  
3 this act or rule adopted under this act is not being  
4 enforced, the court may order the public officer or  
5 employee, whose duty it is to enforce the requirement or  
6 rule, to perform his duties. If he fails to do so, the  
7 public officer or employee shall be held in contempt of  
8 court and is subject to the penalties provided by law.

9 Section 24. Savings clause. This act does not affect  
10 rights and duties that matured, penalties that were  
11 incurred, or proceedings that were begun before the  
12 effective date of this act.

13 Section 25. 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-

SB 326

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 31, 19 75, there is hereby submitted a Fiscal Note for Senate Bill 326 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 326 provides cities, towns and counties with the authority to plan for and regulate areas of state concern; authorizes the Department of Intergovernmental Relations to adopt rules for the nomination and regulation of such areas; creates a land use commission to designate areas of state concern and to hear appeals.

## ASSUMPTIONS:

1. Twenty public hearings per year will be held, 12 in Helena, 8 throughout the rest of the state.
2. Commission members will be reimbursed \$25 per day and allowed \$35 per day for expenses.
3. Three full time employees will be required by the department of Intergovernmental Relations. A 10% per year increase in salaries and benefits is assumed.
4. No additional capital outlays will be required by the Department of Intergovernmental Relations.

## FISCAL IMPACT:

|  | FY 76            | FY 77            |
|--|------------------|------------------|
| Estimated increase in expenditures by category |                  |                  |
| Personal Services                              | \$ 59,300        | \$ 64,430        |
| Operating Expenses                             | <u>28,380</u>    | <u>28,300</u>    |
| Total increase                                 | <u>\$ 87,680</u> | <u>\$ 92,730</u> |

## LOCAL IMPACT:

Local governmental units will experience increased expenditures; however the proposed law does broadly allow the Department of Intergovernmental Relations to provide financial assistance to local governing bodies.

## CONCLUSIONS:

Enactment of Senate Bill 326 will result in an estimated minimum state expenditure of \$180,000 during the biennium. The actual amount will vary according to the volume of designated areas of state concern and the amount of local assistance provided.

*Michael J. Bellings*  
by *Karen Wilson*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 5, 1975