

1 House BILL NO. 770  
 2 INTRODUCED BY Hayes  
 3 BY REQUEST OF THE GOVERNOR

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A COMMISSION  
 6 TO DESIGNATE AREAS OF STATE CONCERN; ESTABLISHING CRITERIA  
 7 FOR DESIGNATION OF SUCH AREAS; SETTING FORTH PROCEDURES FOR  
 8 NOMINATION AND DESIGNATION OF SUCH AREAS; AUTHORIZING JOINT  
 9 APPROVAL OF PLANNING GUIDELINES, PLANS, AND MANAGEMENT  
 10 TECHNIQUES WITHIN THOSE AREAS BY THE COMMISSION AND LOCAL  
 11 REPRESENTATIVES; AND PROVIDING FINANCIAL AND TECHNICAL  
 12 ASSISTANCE TO LOCAL GOVERNMENTS TO PLAN FOR AND MANAGE THOSE  
 13 AREAS."

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

16 Section 1. Short title. This act shall be known and  
 17 may be cited as the "Areas of State Concern Act".

18 Section 2. Statement of purpose. The legislature finds  
 19 that in order to maintain and improve a clean and healthful  
 20 environment for present and future generations in Montana  
 21 and in order to protect the health, welfare, safety, and  
 22 quality of life of the residents of this state, it is  
 23 necessary to adequately plan for and manage growth and  
 24 development within the state. The legislature further finds  
 25 that while local government has the primary authority and

1 responsibility to plan for and manage growth and development  
 2 within its jurisdiction, the state must share that  
 3 responsibility when planning and management are needed for  
 4 areas of greater than local concern because of their  
 5 cultural or natural qualities and for areas subject to major  
 6 growth due to resource development. It is the purpose of  
 7 this act to establish a process by which areas of concern to  
 8 all Montanans may be identified and by which the  
 9 responsibility for the management and planning of growth and  
 10 development in such areas may be shared by both state and  
 11 local governments.

12 Section 3. Definitions. As used in this act, unless  
 13 the context requires otherwise, the following definitions  
 14 apply:

- 15 (1) "Area of state concern" means an area designated  
 16 as provided in this act.
- 17 (2) "Commission" means the commission for areas of  
 18 state concern as established by this act.
- 19 (3) "Department" means the department of community  
 20 affairs.
- 21 (4) "Governing body" means the governing body of a  
 22 county or incorporated city or town.
- 23 (5) "Joint commission" means the commission when  
 24 acting jointly with the representatives appointed by the  
 25 local governing body or bodies for an area of state concern.

INTRODUCED BILL

HB770

1 Section 4. Commission for areas of state concern.  
 2 There is created a commission for areas of state concern,  
 3 which shall be attached to the department of community  
 4 affairs for administrative purposes only as provided in  
 5 section 82A-108. The commission shall be considered a  
 6 quasi-judicial board subject to section 82A-112 except as  
 7 follows:

8 (1) The commission shall consist of the director of  
 9 the department, who shall serve as chairman, and four  
 10 citizen members.

11 (2) The four citizen members of the commission shall  
 12 be selected by the governor to represent as broadly as  
 13 possible the geographic areas of the state. In making  
 14 appointments, the governor shall take into consideration the  
 15 representation of local government, agricultural, economic,  
 16 and conservation interests.

17 (3) The commission shall establish bylaws for its  
 18 organization and procedures.

19 (4) The initial citizen members of the commission  
 20 shall be appointed within 90 days of the effective date of  
 21 this act.

22 Section 5. Criteria for designation of areas of state  
 23 concern. To qualify for designation as an area of state  
 24 concern, the commission must find that the area would be  
 25 substantially harmed in the absence of a concerted planning

1 and management program. Such areas must be one of the  
 2 following:

3 (1) an area that contains irreplaceable natural or  
 4 cultural characteristics that are of major concern to the  
 5 state and contains:

6 (a) habitat which is necessary to sustain fish or  
 7 wildlife populations of state significance;

8 (b) a stream designated by the Montana fish and game  
 9 commission as a class I, blue ribbon or class II, red  
 10 ribbon stream;

11 (c) a major recreational area of state significance  
 12 containing a publicly owned recreation site or facility; or

13 (d) an historic or archaeological site or district  
 14 listed or eligible for listing in the national or state  
 15 registers of historic places.

16 (2) an area where state policy permits or encourages  
 17 major resource development and where planning or management  
 18 could mitigate undesirable community or environmental  
 19 impacts due to haphazard growth if the major resource  
 20 development would:

21 (a) require a construction or operating permit from a  
 22 state agency; and

23 (b) create direct employment for 100 or more persons.

24 Section 6. Nomination information requirements. By  
 25 December 31, 1977, the department shall propose and the

1 commission shall adopt, with or without notification,  
 2 requirements for information that must be submitted with the  
 3 nomination of an area for designation as an area of state  
 4 concern. The required information shall at least include:

5 (1) a description of the area and a map of its  
 6 boundaries;

7 (2) a statement of reasons for designating the area;

8 (3) identification of land ownership in the area and  
 9 the governing body or bodies having jurisdiction over the  
 10 nominated area;

11 (4) a description of land use and existing plans or  
 12 regulations affecting land use in the area;

13 (5) a description of techniques or programs which  
 14 could be used to ensure proper management of the area; and

15 (6) a letter confirming the area's eligibility from:

16 (a) the director of the department of fish and game if  
 17 the criteria used for nomination is fish or wildlife habitat  
 18 or class I or II streams; or

19 (b) the director of the Montana historical society if  
 20 the criteria used for nomination is that the area is  
 21 historical or contains archeological sites or districts.

22 Section 7. Nomination procedures. (1) The nomination  
 23 of an area of state concern may be made by a governing body  
 24 or by citizen petition. In the case of a citizen petition,  
 25 the petition shall bear the signatures of at least 25

1 qualified electors residing in the county in which the  
 2 nominated area lies.

3 (2) The nomination shall be submitted to the governing  
 4 body having jurisdiction over the geographic area proposed  
 5 for designation.

6 (3) If the nomination contains all of the required  
 7 information, it shall be officially accepted by the  
 8 governing body at its next regular meeting.

9 (4) Within 5 days of accepting the nomination, the  
 10 governing body shall send a copy of the required nomination  
 11 information to the department and to appropriate local  
 12 agencies, including any local planning agency, for their  
 13 review. The department shall distribute copies of the  
 14 nomination information to appropriate state agencies. The  
 15 state and local agencies, except any local planning agency,  
 16 shall forward any comments to the governing body and to any  
 17 local planning agency within 30 days after receiving the  
 18 nomination information.

19 (5) Within 45 days after accepting the nomination, the  
 20 governing body shall hold a public hearing on the nomination  
 21 in accordance with [section 16 of this act]. The nominators  
 22 shall reimburse the governing body or bodies for actual  
 23 costs incurred in providing notice of the hearing.

24 (6) Where a local planning agency has been  
 25 established, it shall within 10 days after the public

1 hearing, review any comments by state and local agencies,  
2 the record of the public hearing, and any other pertinent  
3 information and submit to the governing body in writing its  
4 recommendation regarding designation of the area.

5 (7) Within 30 days after the public hearing, the  
6 governing body shall recommend to the commission either  
7 approval or denial of designation of the nominated area as  
8 an area of state concern. It shall submit to the commission  
9 written findings and recommendations concerning designation  
10 of the area, along with comments submitted by state and  
11 local agencies, the record of the public hearing, estimated  
12 cost of the planning process, and any other pertinent  
13 information.

14 (8) If nominations are received for areas which are  
15 adjacent or overlapping, the commission may grant the  
16 governing body an appropriate extension of time to  
17 coordinate the nomination process.

18 Section 8. Nominations incorporating more than one  
19 jurisdictional area. Nominations in which the total  
20 geographic area proposed for designation includes more than  
21 one jurisdiction may be made and shall be processed in  
22 accordance with [section 7 of this act], except:

23 (1) nominations by citizen petition shall be made by  
24 at least 25 qualified electors of each jurisdiction in which  
25 the nominated area lies;

1 (2) nominations and required nomination information  
2 shall be submitted to each governing body having  
3 jurisdiction over any of the geographic areas, proposed for  
4 designation;

5 (3) within 30 days after the last public hearing held  
6 by any of the governing bodies to which the same nomination  
7 has been submitted, representatives of all such governing  
8 bodies shall meet and jointly recommend to the commission  
9 either approval or denial of designation of the nominated  
10 area of state concern along with the written findings and  
11 other information required by [section 7]. If a joint  
12 recommendation cannot be reached, separate recommendations  
13 shall be submitted to the commission, along with the written  
14 findings and other information required by [section 7].

15 Section 9. Designation of an area of state concern.  
16 (1) Within 60 days after receiving the recommendation for  
17 approval or denial from the governing body or bodies, the  
18 commission shall review the written findings,  
19 recommendations, record of the hearing and other information  
20 and either:

21 (a) designate the area, as proposed or with  
22 modifications, as an area of state concern; or

23 (b) deny designation and notify the governing body or  
24 bodies and nominators of the reasons for denial.

25 (2) Before reaching a decision regarding designation,

1 the commission may hold public hearings within the proposed  
 2 area in accordance with [section 16]. All such hearings  
 3 held by the commission shall be held at a location selected  
 4 to facilitate the attendance of local residents who may be  
 5 affected by actions resulting from the hearing.

6 (3) The order designating 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; and

12 (c) any additional information relevant to the  
 13 designation of the area.

14 (4) If the proposed designation is denied by the  
 15 commission, the area or any portion thereof may not be  
 16 re-nominated for a period of at least 1 year after denial.

17 Section 10. Development of planning guidelines for an  
 18 area of state concern. (1) When an area is designated by  
 19 the commission as an area of state concern, the governing  
 20 body or bodies having jurisdiction over the area shall  
 21 within 30 days of designation appoint a total of four  
 22 representatives to meet with the commission as a joint  
 23 commission; except when the area of state concern includes  
 24 more than one jurisdictional area, two members shall be  
 25 appointed from each jurisdiction. The local representatives

1 shall have the same voting rights as members of the  
 2 commission when meeting as a joint commission. The local  
 3 representatives shall be compensated for their expenses in  
 4 the same manner as commission members. When the commission  
 5 meets with local representatives as a joint commission, the  
 6 director of the department may vote only in the case of a  
 7 tie.

8 (2) Within 90 days after the designation of an area of  
 9 state concern, the department shall develop and the joint  
 10 commission shall approve, with or without modifications,  
 11 guidelines for the designated area to be used by the  
 12 governing body or bodies in developing a plan and management  
 13 techniques for the area. In developing and approving  
 14 guidelines for the designated area, the department and the  
 15 joint commission shall consult with and seek the advice of  
 16 state agencies and local agencies and officials having  
 17 jurisdiction within the area, including but not limited to  
 18 governing bodies and planning agencies.

19 (3) The joint commission may modify the guidelines to  
 20 reflect any new information or changed circumstances.

21 Section 11. Multijurisdictional planning  
 22 organizations. If an area of state concern involves more  
 23 than one jurisdiction, the governing bodies having  
 24 jurisdiction over the area may form or utilize a single  
 25 multijurisdictional organization for the purpose of

1 coordinating the planning and development of a plan and  
2 management techniques for the designated area.

3 Section 12. Financial and technical assistance to  
4 governing bodies and multijurisdictional planning  
5 organizations. (1) At the time planning guidelines are  
6 approved, the commission shall allocate funds for the  
7 development of plans and regulations for the designated  
8 area. The commission shall contract with the governing body  
9 or multijurisdictional organization for the expenditure of  
10 funds and work to be performed consistent with the  
11 guidelines for the area. The department shall monitor use  
12 of the funds and periodically report to the joint  
13 commission.

14 (2) The department and appropriate state agencies  
15 shall, upon request, provide the governing body and  
16 multijurisdictional organization with all pertinent  
17 information available and all technical assistance necessary  
18 in regard to an area of state concern.

19 (3) With commission approval, the governing body,  
20 multijurisdictional organization, or department may enter  
21 into contracts with public and private agencies in order to  
22 carry out the objectives of this act.

23 Section 13. Development and implementation of a plan  
24 for an area of state concern. (1) Within 12 months after  
25 financial assistance has been granted, the governing body or

1 multijurisdictional organization, in cooperation with any  
2 local planning agencies, shall develop a plan and management  
3 techniques for the designated area. The plan and management  
4 techniques may include but are not limited to:

5 (a) cooperative agreements with state or federal  
6 agencies;

7 (b) acquisition of conservation easement;

8 (c) capital improvements programming;

9 (d) land use regulations and development standards;

10 and

11 (e) coordination with state agencies for acquisition  
12 of parks, recreation areas, historic sites, and wildlife  
13 habitat.

14 (2) After holding a public hearing in conformance with  
15 the procedures contained in [section 16], the governing body  
16 or bodies shall transmit the proposed plan and management  
17 techniques and the record of the hearing to the department.

18 (3) Within 60 days after the proposed plan and  
19 management techniques have been received by the department:

20 (a) the department shall review them to determine  
21 their conformance with the guidelines for the area and  
22 forward them and the record of the hearing to the joint  
23 commission with any comments and suggested modifications;  
24 and

25 (b) the joint commission shall accept the proposed

1 plan and management techniques if they conform to the  
2 guidelines or return them to the governing body or  
3 multijurisdictional organization for revision.

4 (4) Within 90 days of acceptance by the joint  
5 commission, the governing body or bodies having jurisdiction  
6 over any portion of the area of state concern shall:

7 (a) adopt the plan;

8 (b) whenever the plan requires implementation by  
9 regulation, adopt and enforce the regulation pursuant to  
10 Title 11, chapters 27 or 38, or Title 16, chapters 41 or 47,  
11 except that 16-4705(6) does not apply in an area designated  
12 as an area of state concern; and

13 (c) whenever the plan requires implementation by  
14 nonregulatory management techniques, such as capital  
15 improvement programs and conservation easements, initiate  
16 action to ensure implementation.

17 (5) If a governing body has not completed a plan or  
18 proposed management techniques for an area within the time  
19 limit established by this section, the joint commission  
20 shall direct the department to prepare a plan and management  
21 techniques for the area in conformance with the guidelines  
22 approved by the joint commission. The plan and any  
23 regulation shall be promulgated by the joint commission,  
24 with or without modification, and enforced by the governing  
25 body. The plan or any regulations promulgated by the joint

1 commission may be revised by the local governing body with  
2 the concurrence of the joint commission.

3 (6) If unusual circumstances preclude the completion,  
4 review, adoption, or revision of the plan or management  
5 techniques in the time limit established by this section,  
6 the joint commission may grant an appropriate extension of  
7 time to the governing body.

8 (7) Whenever existing plans or regulations conflict  
9 with those adopted under this act, those adopted under this  
10 act shall supersede.

11 (8) No state or local agency may initiate a  
12 development or grant a permit for development which would  
13 conflict with any regulations adopted under this act.

14 (9) The governing body or bodies shall periodically  
15 review the plan or management techniques for the area and at  
16 any time may revise them if the revision is consistent with  
17 the guidelines for the area and if the joint commission  
18 concurs.

19 (10) If the plan and management techniques approved by  
20 the commission and adopted by the governing body or bodies  
21 are not enforced by the governing body or bodies, the  
22 commission may bring an action in the district court of the  
23 county in which the area of state concern lies.

24 Section 14. Interim controls. (1) If the governing  
25 body has recommended designation, it may adopt and enforce

1 interim land use controls for the nominated area after  
 2 holding a public hearing in accordance with [section 16].  
 3 Interim controls shall be terminated upon denial of  
 4 designation or upon adoption of plans and management  
 5 techniques pursuant to [section 13].

6 (2) When the commission designates an area of state  
 7 concern, the joint commission may require that the governing  
 8 body or bodies adopt and enforce interim controls. Such  
 9 controls shall as closely as possible reflect the reasons  
 10 for designating the area given by the commission in its  
 11 designation order. The controls shall be terminated upon  
 12 adoption of a plan and management techniques for the area  
 13 according to [section 13].

14 Section 15. Termination of designation of areas of  
 15 state concern. (1) A petition for termination of  
 16 designation of all or parts of an area of state concern may  
 17 be made by any of the parties eligible to nominate such an  
 18 area under [sections 7 and 8].

19 (2) The petition for termination shall be submitted to  
 20 the governing body or bodies having jurisdiction in the  
 21 area of state concern but in no event may the petition be  
 22 submitted until 1 year after adoption of a plan and  
 23 management techniques for the area according to [section  
 24 13].

25 (3) The petition for termination shall at least

1 contain:

2 (a) a description of the area and a map of its  
 3 boundaries; and

4 (b) a statement of the reasons for termination of  
 5 designation.

6 (4) The governing body shall officially accept any  
 7 petition with the required information at its next regular  
 8 meeting.

9 (5) Within 5 days after accepting the petition for  
 10 termination, the governing body shall send a copy of the  
 11 petition to the department and to appropriate local  
 12 agencies, including any local planning agency, for their  
 13 review. The department shall distribute copies of the  
 14 petition to appropriate state agencies. The state and local  
 15 agencies, except any local planning agency, shall forward  
 16 any comments to the governing body and to any local planning  
 17 agency within 30 days after receiving the petition.

18 (6) Within 45 days after accepting that petition, the  
 19 governing body shall hold a public hearing on the petition  
 20 in accordance with [section 16].

21 (7) Whenever a local planning agency has been  
 22 established, it shall, within 10 days after the public  
 23 meeting, review any comments by state and local agencies,  
 24 the record of the public hearing, and any other pertinent  
 25 information and submit to the governing body in writing its



1 recommendation regarding termination of the area.

2 (8) Within 30 days after the public hearing, the  
3 governing body shall recommend to the commission either  
4 approval or denial of the petition to terminate designation  
5 of an area of state concern. It shall submit to the  
6 commission written findings and recommendations concerning  
7 termination of designation.

8 (9) Within 60 days after receiving the recommendation  
9 for approval or denial of the petition to terminate from  
10 the governing body or bodies having jurisdiction over the  
11 area, the commission shall review the written findings,  
12 recommendations, and other information and either:

13 (a) order the termination of the designation of the  
14 area of state concern and in the order state the reasons for  
15 the termination; or

16 (b) deny the petition to terminate and notify the  
17 governing body or bodies and the nominators of the reasons  
18 for denial.

19 (10) Before reaching a decision regarding termination,  
20 the commission may hold public hearings within the proposed  
21 area in accordance with [section 16]. All such hearings  
22 held by the commission shall be held at a location or  
23 locations selected to facilitate the attendance of local  
24 residents who may be affected by actions resulting from the  
25 hearing.

1 (11) If the recommendation for termination is denied  
2 by the commission, the area or any portion thereof may not  
3 be subject to petition for termination for a period of at  
4 least 1 year after its denial.

5 Section 16. Public hearings. (1) When a public  
6 hearing is held in accordance with this act, notice shall be  
7 published in a newspaper of general circulation in the  
8 county affected, at least two times with at least 7 days  
9 separating each publication. The first publication shall be  
10 no more than 21 days prior to the hearing and the last no  
11 less than 3 days prior to the hearing.

12 (2) The notice shall:

13 (a) indicate the date, time, and place of the hearing;

14 (b) state the purpose of the hearing and the general  
15 location of the proposed area of state concern; and

16 (c) specify the public official from whom additional  
17 information can be obtained.

18 (3) The department shall provide for a mechanical or  
19 written record of any hearing held under this act.

20 Section 17. Protection of property rights. (1) No  
21 regulation adopted under this act may prevent the complete  
22 use, development, or recovery of mineral, forest, or  
23 agricultural resources unless the use, development, or  
24 recovery is demonstrated to have the potential of seriously  
25 endangering the health or safety of residents.

1           (2) No use of land or structures which was lawful when  
2 the use was initiated or when a legal enforceable right to  
3 carry on the use was acquired may be prohibited by any  
4 regulation by governing bodies adopted or promulgated by the  
5 joint commission under this act.

6           Section 18. Severability. If a part of this act is  
7 invalid, all valid parts that are severable from the invalid  
8 part remain in effect. If a part of this act is invalid in  
9 one or more of its applications, the part remains in effect  
10 in all valid applications that are severable from the  
11 invalid applications.

-End-

## STATE OF MONTANA

REQUEST NO. 521-77

## FISCAL NOTE

Form BD-15

In compliance with a written request received Feb. 15, 19 77, there is hereby submitted a Fiscal Note for House Bill 770 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:

House Bill 770 establishes a five member commission for areas of state concern and establishes a criteria for designating such areas. The proposed legislation sets forth procedures for nominating and designating areas of state concern, develops planning guidelines for joint state-local management of such areas, and provides for state financial and technical assistance to local governments to plan for and manage these designated areas.

## ASSUMPTION:

The effective date of the proposed legislation would be July 1, 1977, but the allocation of financial assistance funds to local governments would not be needed until the second fiscal year of the biennium.

## FISCAL IMPACT:

	<u>FY78</u>	<u>FY79</u>
Personal Services	\$1,300	\$ 7,800
Operating Expenses	5,600	16,300
Local Assistance	<u>0</u>	<u>120,000</u>
Total additional expenditures under proposed law	<u>\$6,900</u>	<u>\$144,100</u>

NOTE: Unless other revenue sources can be found, the state general fund will have to support the above additional costs.

*Richard L. Zaunger*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-21-77

Approved by Committee  
on Natural Resources

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23 necessary to adequately plan for and manage growth and  
24 development within the state. The legislature further finds  
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1 responsibility to plan for and manage growth and development  
2 within its jurisdiction, the state must share that  
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4 areas of greater than local concern because of their  
5 cultural or natural qualities and for areas subject to major  
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21 (4) "Governing body" means the governing body of a  
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 13 possible the geographic areas of the state. In making  
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 15 representation of local government, agricultural, economic,  
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1 and management program. Such areas must be one of the  
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 4 cultural characteristics that are of major concern to the  
 5 state and contains:

6 (a) habitat which is necessary to sustain fish or  
 7 wildlife populations of state significance;

8 (b) a stream designated by the Montana fish and game  
 9 commission as a class I, blue ribbon or class II, red  
 10 ribbon stream;

11 (c) a major recreational area of state significance  
 12 containing a publicly owned recreation site or facility; or

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 14 listed or eligible for listing in the national or state  
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 12 regulations affecting land use in the area;

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 20 the criteria used for nomination is that the area is  
 21 historical or contains archeological sites or districts.

22 section 7. Nomination procedures. (1) The nomination  
 23 of an area of state concern may be made by a governing body  
 24 or by citizen petition. In the case of a citizen petition,  
 25 the petition shall bear the signatures of ~~at least~~ 25 50 08

1 ~~MAKE QUALIFIED ELECTORS OR 1% OF THE~~ qualified electors,  
 2 ~~WHICHEVER IS GREATER,~~ residing in the county in which the  
 3 nominated area lies.

4 (2) The nomination shall be submitted to the governing  
 5 body having jurisdiction over the geographic area proposed  
 6 for designation.

7 (3) If the nomination contains all of the required  
 8 information, it shall be officially accepted by the  
 9 governing body at its next regular meeting.

10 (4) Within 5 days of accepting the nomination, the  
 11 governing body shall send a copy of the required nomination  
 12 information to the department and to appropriate local  
 13 agencies, including any local planning agency, for their  
 14 review. The department shall distribute copies of the  
 15 nomination information to appropriate state agencies. The  
 16 state and local agencies, except any local planning agency,  
 17 shall forward any comments to the governing body and to any  
 18 local planning agency within 30 days after receiving the  
 19 nomination information.

20 (5) Within 45 days after accepting the nomination, the  
 21 governing body shall hold a public hearing on the nomination  
 22 in accordance with [section 16 of this act]. The nominators  
 23 shall reimburse the governing body or bodies for actual  
 24 costs incurred in providing notice of the hearing.

25 (6) Where a local planning agency has been

1 established, it shall within 10 days after the public  
 2 hearing, review any comments by state and local agencies,  
 3 the record of the public hearing, and any other pertinent  
 4 information and submit to the governing body in writing its  
 5 recommendation regarding designation of the area.

6 (7) Within 30 days after the public hearing, the  
 7 governing body shall ~~recommend--to--the--commission--either~~  
 8 ~~approval--or--denial--of--designation--of--the--nominated--area--as~~  
 9 ~~an--area--of--state--concern;--it--shall--submit--to--the--commission~~  
 10 ~~written--findings--and--recommendations--concerning--designation~~  
 11 ~~of--the--area;--along--with--comments--submitted--by--state--and~~  
 12 ~~local--agencies;--the--record--of--the--public--hearing;--estimated~~  
 13 ~~cost--of--the--planning--process;--and--any--other--pertinent~~  
 14 ~~information. EITHER APPROVE OR REJECT THE NOMINATION FOR~~  
 15 ~~DESIGNATION OF THE AREA AS AN AREA OF STATE CONCERN. IF THE~~  
 16 ~~GOVERNING BODY APPROVES DESIGNATION IT SHALL SUBMIT TO THE~~  
 17 ~~COMMISSION WRITTEN FINDINGS AND RECOMMENDATIONS FOR~~  
 18 ~~DESIGNATION OF THE AREA, WITH OR WITHOUT MODIFICATION, ALONG~~  
 19 ~~WITH COMMENTS SUBMITTED BY STATE AND LOCAL AGENCIES, THE~~  
 20 ~~RECORD OF THE PUBLIC HEARING, ESTIMATED COST OF THE PLANNING~~  
 21 ~~PROCESS, AND ANY OTHER PERTINENT INFORMATION. IF THE~~  
 22 ~~GOVERNING BODY REJECTS DESIGNATION, IT SHALL NOTIFY THE~~  
 23 ~~COMMISSION AND THE NOMINATORS AND STATE THE REASONS FOR~~  
 24 ~~REJECTION BY THE GOVERNING BODY. IF THE PROPOSED DESIGNATION~~  
 25 ~~IS REJECTED, THE AREA OR ANY PORTION THEREOF MAY NOT BE~~

1 ~~RENOMINATED FOR A PERIOD OF AT LEAST 1 YEAR AFTER REJECTION.~~  
 2 ~~(8) THE AUTHORITY OF A GOVERNING BODY TO REJECT A~~  
 3 ~~NOMINATION FOR DESIGNATION SHALL BE LIMITED TO A NOMINATION~~  
 4 ~~WHERE, IN A WRITTEN FINDING OF FACT, THE GOVERNING BODY~~  
 5 ~~DETERMINES THAT EITHER THE AREA DOES NOT MEET THE CRITERIA~~  
 6 ~~FOR DESIGNATION OR THAT PROPER PLANNING AND MANAGEMENT OF~~  
 7 ~~THE AREA CAN BE ACHIEVED THROUGH THE EXISTING PLANNING~~  
 8 ~~PROGRAM.~~

9 (9)(2) If nominations are received for areas which are  
 10 adjacent or overlapping, the commission may grant the  
 11 governing body an appropriate extension of time to  
 12 coordinate the nomination process.

13 Section 8. Nominations incorporating more than one  
 14 jurisdictional area. Nominations in which the total  
 15 geographic area proposed for designation includes more than  
 16 one jurisdiction may be made and shall be processed in  
 17 accordance with [section 7 of this act], except:

18 (1) nominations by citizen petition shall be made by  
 19 ~~at--least--25 50 OR MORE QUALIFIED ELECTORS OR 1% OF THE~~  
 20 ~~qualified electors, WHICHEVER IS GREATER,~~ of each  
 21 jurisdiction in which the nominated area lies;

22 (2) nominations and required nomination information  
 23 shall be submitted to each governing body having  
 24 jurisdiction over any of the geographic areas, proposed for  
 25 designation;

1 (3) within 30 days after the last public hearing held  
 2 by any of the governing bodies to which the same nomination  
 3 has been submitted, representatives of all such governing  
 4 bodies shall meet and jointly recommend ~~to the commission~~  
 5 ~~either approval or denial of designation of the nominated~~  
 6 ~~area of state concern along with the written findings and~~  
 7 ~~other information required by [section 7]. If a joint~~  
 8 ~~recommendation cannot be reached, separate recommendations~~  
 9 ~~shall be submitted to the commission along with the written~~  
 10 ~~findings and other information required by [section 7].~~  
 11 APPROVE OR REJECT DESIGNATION OF THE NOMINATED AREA OF STATE  
 12 CONCERN. IF A JOINT DECISION CANNOT BE REACHED, SEPARATE  
 13 DECISIONS SHALL BE MADE BY EACH GOVERNING BODY.

14 Section 9. Designation of an area of state concern.  
 15 (1) Within 60 days after receiving the recommendation for  
 16 approval ~~or denial~~ from the governing body or bodies, the  
 17 commission shall review the written findings,  
 18 recommendations, record of the hearing and other information  
 19 and either:

20 (a) designate the area, as proposed or with  
 21 modifications, as an area of state concern; or

22 (b) deny designation and notify the governing body or  
 23 bodies and nominators of the reasons for denial.

24 (2) Before reaching a decision regarding designation,  
 25 the commission may hold public hearings within the proposed

1 area in accordance with [section 16]. All such hearings  
 2 held by the commission shall be held at a location selected  
 3 to facilitate the attendance of local residents who may be  
 4 affected by actions resulting from the hearing.

5 (3) The order designating an area of state concern  
 6 shall include:

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

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

11 (c) any additional information relevant to the  
 12 designation of the area.

13 (4) If the proposed designation is denied by the  
 14 commission, the area or any portion thereof may not be  
 15 renominated for a period of at least 1 year after denial.

16 Section 10. Development of planning guidelines for an  
 17 area of state concern. (1) When an area is designated by  
 18 the commission as an area of state concern, the governing  
 19 body or bodies having jurisdiction over the area shall  
 20 within 30 days of designation appoint a total of four  
 21 representatives to meet with the commission as a joint  
 22 commission; except when the area of state concern includes  
 23 more than one jurisdictional area, two members shall be  
 24 appointed from each jurisdiction. The local representatives  
 25 shall have the same voting rights as members of the



1 commission when meeting as a joint commission. The local  
2 representatives shall be compensated for their expenses in  
3 the same manner as commission members. When the commission  
4 meets with local representatives as a joint commission, the  
5 director of the department may vote only in the case of a  
6 tie.

7 (2) Within 90 days after the designation of an area of  
8 state concern, the department shall develop and the joint  
9 commission shall approve, with or without modifications,  
10 guidelines for the designated area to be used by the  
11 governing body or bodies in developing a plan and management  
12 techniques for the area. In developing and approving  
13 guidelines for the designated area, the department and the  
14 joint commission shall consult with and seek the advice of  
15 state agencies and local agencies and officials having  
16 jurisdiction within the area, including but not limited to  
17 governing bodies and planning agencies.

18 (3) The joint commission may modify the guidelines to  
19 reflect any new information or changed circumstances.

20 Section 11. Multijurisdictional planning  
21 organizations. If an area of state concern involves more  
22 than one jurisdiction, the governing bodies having  
23 jurisdiction over the area may form or utilize a single  
24 multijurisdictional organization for the purpose of  
25 coordinating the planning and development of a plan and

1 management techniques for the designated area.

2 Section 12. Financial and technical assistance to  
3 governing bodies and multijurisdictional planning  
4 organizations. (1) At the time planning guidelines are  
5 approved, the commission shall allocate funds for the  
6 development of plans and regulations for the designated  
7 area. The commission shall contract with the governing body  
8 or multijurisdictional organization for the expenditure of  
9 funds and work to be performed consistent with the  
10 guidelines for the area. The department shall monitor use  
11 of the funds and periodically report to the joint  
12 commission.

13 (2) The department and appropriate state agencies  
14 shall, upon request, provide the governing body and  
15 multijurisdictional organization with all pertinent  
16 information available and all technical assistance necessary  
17 in regard to an area of state concern.

18 (3) With commission approval, the governing body,  
19 multijurisdictional organization, or department may enter  
20 into contracts with public and private agencies in order to  
21 carry out the objectives of this act.

22 Section 13. Development and implementation of a plan  
23 for an area of state concern. (1) Within 12 months after  
24 financial assistance has been granted, the governing body or  
25 multijurisdictional organization, in cooperation with any

1 local planning agencies, shall develop a plan and management  
 2 techniques for the designated area. The plan and management  
 3 techniques may include but are not limited to:

- 4 (a) cooperative agreements with state or federal  
 5 agencies;
- 6 (b) acquisition of conservation easement;
- 7 (c) capital improvements programming;
- 8 (d) land use regulations and development standards;
- 9 and

10 (e) coordination with state agencies for acquisition  
 11 of parks, recreation areas, historic sites, and wildlife  
 12 habitat.

13 (2) After holding a public hearing in conformance with  
 14 the procedures contained in [section 16], the governing body  
 15 or bodies shall transmit the proposed plan and management  
 16 techniques and the record of the hearing to the department.

17 (3) Within 60 days after the proposed plan and  
 18 management techniques have been received by the department:

19 (a) the department shall review them to determine  
 20 their conformance with the guidelines for the area and  
 21 forward them and the record of the hearing to the joint  
 22 commission with any comments and suggested modifications;  
 23 and

24 (b) the joint commission shall accept the proposed  
 25 plan and management techniques if they conform to the

1 guidelines or return them to the governing body or  
 2 multijurisdictional organization for revision.

3 (4) Within 90 days of acceptance by the joint  
 4 commission, the governing body or bodies having jurisdiction  
 5 over any portion of the area of state concern shall:

- 6 (a) adopt the plan;
- 7 (b) whenever the plan requires implementation by  
 8 regulation, adopt and enforce the regulation pursuant to  
 9 title 11, chapters 27 or 38, or title 16, chapters 41 or 47,  
 10 except that 16-4705(6) does not apply in an area designated  
 11 as an area of state concern; and

12 (c) whenever the plan requires implementation by  
 13 nonregulatory management techniques, such as capital  
 14 improvement programs and conservation easements, initiate  
 15 action to ensure implementation.

16 (5) If a governing body has not completed a plan or  
 17 proposed management techniques for an area within the time  
 18 limit established by this section, the joint commission  
 19 shall direct the department to prepare a plan and management  
 20 techniques for the area in conformance with the guidelines  
 21 approved by the joint commission. The plan and any  
 22 regulation shall be promulgated by the joint commission,  
 23 with or without modification, and enforced by the governing  
 24 body. The plan or any regulations promulgated by the joint  
 25 commission may be revised by the local governing body with

1 the concurrence of the joint commission.

2 (6) If unusual circumstances preclude the completion,  
3 review, adoption, or revision of the plan or management  
4 techniques in the time limit established by this section,  
5 the joint commission may grant an appropriate extension of  
6 time to the governing body.

7 (7) Whenever existing plans or regulations conflict  
8 with those adopted under this act, those adopted under this  
9 act shall supersede.

10 (8) No state or local agency may initiate a  
11 development or grant a permit for development which would  
12 conflict with any regulations adopted under this act.

13 (9) The governing body or bodies shall periodically  
14 review the plan or management techniques for the area and at  
15 any time may revise them if the revision is consistent with  
16 the guidelines for the area and if the joint commission  
17 concurs.

18 (10) If the plan and management techniques approved by  
19 the commission and adopted by the governing body or bodies  
20 are not enforced by the governing body or bodies, the  
21 commission may bring an action in the district court of the  
22 county in which the area of state concern lies.

23 Section 14. Interim controls. (1) If the governing  
24 body has recommended designation, it may adopt and enforce  
25 interim land use controls for the nominated area after

1 holding a public hearing in accordance with [section 16].  
2 Interim controls shall be terminated upon denial of  
3 designation BY THE COMMISSION or upon adoption of plans and  
4 management techniques pursuant to [section 13].

5 (2) When the commission designates an area of state  
6 concern, the joint commission may require that the governing  
7 body or bodies adopt and enforce interim controls. Such  
8 controls shall as closely as possible reflect the reasons  
9 for designating the area given by the commission in its  
10 designation order. The controls shall be terminated upon  
11 adoption of a plan and management techniques for the area  
12 according to [section 13].

13 Section 15. Termination of designation of areas of  
14 state concern. (1) A petition for termination of  
15 designation of all or parts of an area of state concern may  
16 be made by any of the parties eligible to nominate such an  
17 area under [sections 7 and 8].

18 (2) The petition for termination shall be submitted to  
19 the governing body or bodies having jurisdiction in the  
20 area of state concern but in no event may the petition be  
21 submitted until 1 year after adoption of a plan and  
22 management techniques for the area according to [section  
23 13].

24 (3) The petition for termination shall at least  
25 contain:

1 (a) a description of the area and a map of its  
2 boundaries; and

3 (b) a statement of the reasons for termination of  
4 designation.

5 (4) The governing body shall officially accept any  
6 petition with the required information at its next regular  
7 meeting.

8 (5) Within 5 days after accepting the petition for  
9 termination, the governing body shall send a copy of the  
10 petition to the department and to appropriate local  
11 agencies, including any local planning agency, for their  
12 review. The department shall distribute copies of the  
13 petition to appropriate state agencies. The state and local  
14 agencies, except any local planning agency, shall forward  
15 any comments to the governing body and to any local planning  
16 agency within 30 days after receiving the petition.

17 (6) Within 45 days after accepting that petition, the  
18 governing body shall hold a public hearing on the petition  
19 in accordance with [section 16].

20 (7) Whenever a local planning agency has been  
21 established, it shall, within 10 days after the public  
22 meeting, review any comments by state and local agencies,  
23 the record of the public hearing, and any other pertinent  
24 information and submit to the governing body in writing its  
25 recommendation regarding termination of the area.

1 (8) Within 30 days after the public hearing, the  
2 governing body shall ~~recommend to the commission either~~  
3 ~~approval or denial of the petition to terminate designation~~  
4 ~~of an area of state concern. It shall submit to the~~  
5 ~~commission written findings and recommendations concerning~~  
6 ~~termination of designation. EITHER APPROVE OR REJECT THE~~  
7 ~~PETITION TO TERMINATE DESIGNATION OF AN AREA OF STATE~~  
8 ~~CONCERN. IF THE GOVERNING BODY APPROVES TERMINATION IT SHALL~~  
9 ~~SUBMIT TO THE COMMISSION WRITTEN FINDINGS AND~~  
10 ~~RECOMMENDATIONS FOR TERMINATION OF DESIGNATION. IF THE~~  
11 ~~GOVERNING BODY OR BODIES REJECT THE PETITION FOR~~  
12 ~~TERMINATION, THE AREA OR ANY PORTION THEREOF MAY NOT BE~~  
13 ~~SUBJECT TO PETITION FOR TERMINATION FOR A PERIOD OF AT LEAST~~  
14 ~~1 YEAR AFTER ITS DENIAL.~~

15 (9) Within 60 days after receiving the recommendation  
16 for approval ~~or denial~~ of the petition to terminate from  
17 the governing body or bodies having jurisdiction over the  
18 area, the commission shall review the written findings,  
19 recommendations, and other information and either:

20 (a) order the termination of the designation of the  
21 area of state concern and in the order state the reasons for  
22 the termination; or

23 (b) deny the petition to terminate and notify the  
24 governing body or bodies and the nominators of the reasons  
25 for denial.

1 (10) Before reaching a decision regarding termination,  
 2 the commission may hold public hearings within the proposed  
 3 area in accordance with [section 16]. All such hearings  
 4 held by the commission shall be held at a location or  
 5 locations selected to facilitate the attendance of local  
 6 residents who may be affected by actions resulting from the  
 7 hearing.

8 (11) If the recommendation for termination is denied  
 9 by the commission, the area or any portion thereof may not  
 10 be subject to petition for termination for a period of at  
 11 least 1 year after its denial.

12 Section 16. Public hearings. (1) When a public  
 13 hearing is held in accordance with this act, notice shall be  
 14 published in a newspaper of general circulation in the  
 15 county affected, at least two times with at least 7 days  
 16 separating each publication. The first publication shall be  
 17 no more than 21 days prior to the hearing and the last no  
 18 less than 3 days prior to the hearing.

19 (2) The notice shall:

20 (a) indicate the date, time, and place of the hearing;

21 (b) state the purpose of the hearing and the general  
 22 location of the proposed area of state concern; and

23 (c) specify the public official from whom additional  
 24 information can be obtained.

25 (3) The department shall provide for a mechanical or

1 written record of any hearing held under this act.

2 Section 17. Protection of property rights. (1) No  
 3 regulation adopted under this act may prevent the complete  
 4 use, development, or recovery of mineral, forest, or  
 5 agricultural resources unless the use, development, or  
 6 recovery is demonstrated to have the potential of seriously  
 7 endangering the health or safety of residents.

8 (2) No use of land or structures which was lawful when  
 9 the use was initiated or when a legal enforceable right to  
 10 carry on the use was acquired may be prohibited by any  
 11 regulation by governing bodies adopted or promulgated by the  
 12 joint commission under this act.

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

-End-