

CHAPTER NO. 535.

HOUSE BILL NO. 875

INTRODUCED BY KANDUCH

IN THE HOUSE

February 19, 1979	Introduced and referred to Committee on Natural Resources.
February 21, 1979	Intent statement attached.  Committee recommend bill do pass. Report adopted.  Printed and placed on members' desks.
February 22, 1979	Second reading, do pass.  Considered correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
March 15, 1979	Committee recommend bill be concurrred in as amended. Report adopted.
March 17, 1979	Motion pass consideration.
March 19, 1979	Second reading, concurrred in.
March 22, 1979	Third reading, concurrred in as amended.

IN THE HOUSE

March 22, 1979	Returned from second house. Concurrred in as amended.
March 23, 1979	On motion consideration passed until the 71st Legislative Day.

March 30, 1979

Second reading, amendments  
adopted.

March 31, 1979

Third reading, amendments  
adopted. Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *875*  
 2 INTRODUCED BY *Sen. Kambach*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE  
 5 DEPARTMENT OF AGRICULTURE TO ESTABLISH RULES FOR THE  
 6 APPROVAL OF DUTCH ELM DISEASE CONTROL PROGRAMS OF LOCAL  
 7 GOVERNMENTS AND ESTABLISH THE ELIGIBILITY OF LOCAL  
 8 GOVERNMENTS WITH APPROVED PROGRAMS FOR FINANCIAL  
 9 ASSISTANCE."

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

12 Section 1. Purpose. The legislature finds that an  
 13 epidemic of Dutch elm disease is occurring in Montana which  
 14 threatens the natural environment. Immediate action is  
 15 therefore necessary to provide funds to assist local  
 16 governments in the implementation of Dutch elm disease  
 17 control programs by conducting reforestation, sanitation,  
 18 and wood utilization or disposal systems, increasing public  
 19 awareness of Dutch elm disease, accelerating training of  
 20 tree inspectors and research for disease prevention, and  
 21 subsidizing private property owners for the removal of  
 22 diseased elm trees.

23 Section 2. Definitions. As used in [this act], the  
 24 following definitions apply:

25 (1) "Department" means the department of agriculture.

1 (2) "Local government" means any political  
 2 subdivision, including any city or town, whether exercising  
 3 self-government powers or general government powers, county,  
 4 or any combination formed under the Interlocal Cooperation  
 5 Act.

6 (3) "Reforestation" means the replacement of elm trees  
 7 removed from public property as part of an approved disease  
 8 control program.

9 (4) "Public property" includes private property within  
 10 5 feet of the boulevard or street terrace in any city which  
 11 has enacted an ordinance on or before July 1, 1981, that  
 12 prohibits or requires a permit for the planting of trees in  
 13 the public right-of-way.

14 (5) "Sanitation" means the identification, inspection,  
 15 or disruption of a common root system and girdling,  
 16 trimming, removal, and disposal of dead or diseased wood of  
 17 elm or oak shade trees.

18 (6) "Wood utilization or disposal system" means  
 19 facilities, equipment, or systems used for the removal and  
 20 disposal of diseased trees.

21 Section 3. Department to adopt rules. (1) The  
 22 department shall adopt rules that will apply to any local  
 23 government which has an approved Dutch elm disease control  
 24 program and is receiving a subsidy from the state. A rule  
 25 will not apply to a local government if an ordinance is

1 adopted which is more stringent as determined by the  
2 department.

3 (2) The rules shall prescribe control measures to be  
4 used to prevent the spread of Dutch elm disease and shall  
5 include the following:

- 6 (a) qualifications for tree inspectors;
- 7 (b) methods to be used for identifying diseased shade  
8 trees;
- 9 (c) procedures for giving reasonable notice of  
10 inspection of private real property;
- 11 (d) measures for the removal of any elm tree that may  
12 contribute to the spread of Dutch elm disease;
- 13 (e) methods of reforestation in areas under an  
14 approved Dutch elm disease control program; and
- 15 (f) any other rule considered by the department as  
16 necessary to insure that approved disease control programs  
17 will prevent the spread of Dutch elm disease.

18 Section 4. Authority of local government to require  
19 removal or to remove diseased elm trees -- assessment of  
20 costs. (1) Local governments with Dutch elm disease control  
21 programs approved by the department may inspect private real  
22 property after giving reasonable notice for the presence of  
23 Dutch elm disease.

24 (2) An owner of the real property on which a diseased  
25 elm tree is located may be required to remove or treat the

1 tree within the period of time and in the manner established  
2 by the department.

3 (3) Diseased elm trees that are not removed or treated  
4 by approved methods by the department, after issuance of an  
5 order to that effect by the local government, may be  
6 declared a public nuisance and removed or treated by the  
7 local government. The local government may assess an amount  
8 up to the actual expense upon the landowner, and the  
9 assessment shall be a lien on the property. In addition a  
10 local government may assess to the abutting properties up to  
11 50% of the actual expenses of treating or removing with  
12 approved methods diseased elm trees located on street  
13 terraces or boulevards, and the assessment constitutes a  
14 lien on the property.

15 Section 5. Approval of disease control programs --  
16 eligibility for grants. The department, after notice and an  
17 opportunity for a hearing, shall approve any program for the  
18 control of Dutch elm disease submitted to the department  
19 that complies with the rules adopted by the department  
20 pursuant to [section 3] and that is determined to be an  
21 effective program for preventing the spread of Dutch elm  
22 disease. A disease control program must be approved before  
23 the local government is eligible for grants available in  
24 [section 6]. A local government may make application for a  
25 grant at the same time approval of a disease control program

1 is sought.

2 Section 6. Grants to local governments --  
3 administration -- limitations on grants. (1) The department  
4 may, within the limit of appropriations provided, make  
5 grants to local governments with approved disease control  
6 programs for the partial funding of sanitation and  
7 reforestation programs.

8 (2) The department shall make rules for the  
9 administration of grants authorized by this section. The  
10 rules shall establish and contain as a minimum:

- 11 (a) procedures for grant applications;
- 12 (b) conditions and procedures for the administration  
13 of grants; and
- 14 (c) such other matters as the commissioner may find  
15 necessary for the proper administration of the grant  
16 program.

17 (3) Grant payments for wood utilization and disposal  
18 systems made by the department pursuant to this section may  
19 not exceed 50% of the total cost of the system.

20 (4) Grants to any local government for sanitation may  
21 not exceed 45% of sanitation costs approved by the  
22 department, including any amount of sanitation costs paid by  
23 special assessments, ad valorem taxes, federal grants, or  
24 other funds. A local government may not specially assess a  
25 property owner any amount greater than the amount of the

1 tree's sanitation cost minus the amount of the tree's  
2 sanitation cost reimbursed by the department.

3 (5) Grants to local governments for reforestation may  
4 not exceed the lesser of 50% of the cost or \$40 multiplied  
5 by the number of trees planted pursuant to the reforestation  
6 program and are limited for any local government in any year  
7 to grants for not more than the number of trees removed on  
8 public property in the sanitation program in the previous  
9 year, except during the first year of any approved disease  
10 control program.

11 (6) Based on estimates of the costs for the succeeding  
12 quarter under an approved program of wood utilization and  
13 disposal systems, sanitation, and reforestation submitted by  
14 a local government, the department shall direct quarterly  
15 advance payments to be made by the state to the local  
16 government. The department shall direct adjustment of any  
17 overestimate in a succeeding quarter. A local government may  
18 elect to receive the proceeds of its sanitation and  
19 reforestation grants on a periodic cost reimbursement basis.

20 Section 7. Subsidies to certain owners. A local  
21 government may provide subsidies to nonprofit organizations,  
22 to owners of private residential property of 5 acres or  
23 less, to owners of property used for a homestead of more  
24 than 5 acres but less than 20 acres, and to nonprofit  
25 cemeteries for the approved treatment or removal of diseased

HB 875

1 elm trees. An owner of property on which elm trees are  
 2 located may contract with a local government to provide  
 3 protection against the cost of approved treatment or removal  
 4 of diseased elm trees or elm trees that will contribute to  
 5 the spread of elm tree diseases. Under such contracts, the  
 6 local government shall pay for the removal or approved  
 7 treatment under such terms and conditions as may be  
 8 determined by the governing body of the local government.

9 Section 8. Appointment of tree inspection --  
 10 certification by the department -- provision for  
 11 decertification. (1) Each local government with an approved  
 12 disease control program that is receiving a state subsidy  
 13 shall appoint a qualified person to be known as the tree  
 14 inspector to administer the rules of the department or the  
 15 more stringent local ordinances concerning elm tree disease.  
 16 Two or more local governments may jointly appoint a tree  
 17 inspector.

18 (2) Upon a determination by the department that a  
 19 candidate for the position of the inspector is qualified, it  
 20 shall issue a certificate to the tree inspector that he is  
 21 so qualified. Any person certified as a tree inspector by  
 22 the department is authorized to enter and inspect any public  
 23 or private property that might harbor diseased elm trees,  
 24 provided prior notice is given as required by the rule of  
 25 the department made pursuant to [section 3].

1 (3) The department may upon notice and an opportunity  
 2 for a hearing decertify any tree inspector when it appears  
 3 that the tree inspector has failed to act competently or in  
 4 the public interest in the performance of his duties.  
 5 Nothing in this subsection limits or otherwise affects the  
 6 authority of a department to dismiss or suspend a tree  
 7 inspector at its discretion, except as otherwise provided by  
 8 law.

9 Section 9. Financing. (1) A local government may  
 10 collect the amount assessed against the property under  
 11 [section 4] as a special assessment.

12 (2) After a contract for the sanitation or approved  
 13 treatment of trees on private property has been let or the  
 14 work commenced, the local government may issue bonds  
 15 financed by special assessments imposed upon the private  
 16 property to defray the expense of the work.

17 Section 10. Deposit of proceeds in a separate fund.  
 18 The proceeds of any tax levied, assessments and interest  
 19 collected, or any bonds issued under [section 9] and any  
 20 grants received under [section 6] must be deposited by the  
 21 local government in a separate fund and expended only for  
 22 the purposes authorized in [this act].

23 Section 11. Diagnostic laboratory. The department of  
 24 agriculture shall operate a diagnostic laboratory for  
 25 culturing diseased trees for positive identification of

1 diseased elm trees.

2 Section 12. Experimental programs. The department may  
3 establish experimental programs for sanitation or treatment  
4 of elm tree diseases. The department may make grants to  
5 local governments or enter into contracts with municipal,  
6 state, or federal agencies in connection with experimental  
7 elm tree disease control programs.

8 Section 13. Reports to the legislature. On or before  
9 January 31 of each year, the department shall report to the  
10 legislature on the preceding year's approved disease control  
11 programs and any experimental programs conducted pursuant to  
12 [section 12].

-End-

## STATE OF MONTANA

Request No. 474-79

## FISCAL NOTE

Form BD-15

In compliance with a written request received March 8, 1979, there is hereby submitted a Fiscal Note for House Bill 875 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 875 provides assistance to local county or city government to control Dutch Elm disease.

## ASSUMPTIONS:

1. The Department of Agriculture will assist local government or cities to tabulate data and project future needs for the implementation of approved control programs.
2. The Department of Agriculture will report on approved disease control and experimental programs to the 47th Legislature.
3. The Department will not develop a diagnostic laboratory, but will contract for services when necessary.
4. One FTE is required to implement proposed legislation.

## FISCAL IMPACT:

	<u>FY 1980</u>	<u>FY 1981</u>
Additional cost of proposed legislation		
Personal services	\$16,706	\$17,708
Operations	8,275	8,772
Equipment	1,150	0
	<u>\$26,131</u>	<u>\$26,480</u>

The additional costs must be funded from the State General Fund.

*Richard L. Drury*  
 BUDGET DIRECTOR  
 Office of Budget and Program Planning  
 Date: 3/19/79



1                   STATEMENT OF INTENT RE: HB 875

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4           HB 875 requires the Department of Agriculture to adopt  
5 rules to control the spread of Dutch elm disease in Montana.

6 Section 3 of the bill specifies the rules that the  
7 department may adopt.

8           First adopted by the HOUSE COMMITTEE ON NATURAL  
9 RESOURCES on February 21, 1979.

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HB 875

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2 INTRODUCED BY KANDUCH

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2 Section 6. Grants to local governments --  
3 administration -- limitations on grants. (1) The department  
4 may, within the limit of appropriations provided, make  
5 grants to local governments with approved disease control  
6 programs for the partial funding of sanitation and  
7 reforestation programs.

8 (2) The department shall make rules for the  
9 administration of grants authorized by this section. The  
10 rules shall establish and contain as a minimum:

- 11 (a) procedures for grant applications;  
12 (b) conditions and procedures for the administration  
13 of grants; and  
14 (c) such other matters as the commissioner DIRECTOR  
15 may find necessary for the proper administration of the  
16 grant program.

17 (3) Grant payments for wood utilization and disposal  
18 systems made by the department pursuant to this section may  
19 not exceed 50% of the total cost of the system.

20 (4) Grants to any local government for sanitation may  
21 not exceed 45% of sanitation costs approved by the  
22 department, including any amount of sanitation costs paid by  
23 special assessments, ad valorem taxes, federal grants, or  
24 other funds. A local government may not specially assess a  
25 property owner any amount greater than the amount of the

1 tree's sanitation cost minus the amount of the tree's  
2 sanitation cost reimbursed by the department.

3 (5) Grants to local governments for reforestation may  
4 not exceed the lesser of 50% of the cost or \$40 multiplied  
5 by the number of trees planted pursuant to the reforestation  
6 program and are limited for any local government in any year  
7 to grants for not more than the number of trees removed on  
8 public property in the sanitation program in the previous  
9 year, except during the first year of any approved disease  
10 control program.

11 (6) Based on estimates of the costs for the succeeding  
12 quarter under an approved program of wood utilization and  
13 disposal systems, sanitation, and reforestation submitted by  
14 a local government, the department shall direct quarterly  
15 advance payments to be made by the state to the local  
16 government. The department shall direct adjustment of any  
17 overestimate in a succeeding quarter. A local government may  
18 elect to receive the proceeds of its sanitation and  
19 reforestation grants on a periodic cost reimbursement basis.

20 Section 7. Subsidies to certain owners. A local  
21 government may provide subsidies to nonprofit organizations,  
22 to owners of private residential property of 5 acres or  
23 less, to owners of property used for a homestead of more  
24 than 5 acres but less than 20 acres, and to nonprofit  
25 cemeteries for the approved treatment or removal of diseased

1 elm trees. An owner of property on which elm trees are  
 2 located may contract with a local government to provide  
 3 protection against the cost of approved treatment or removal  
 4 of diseased elm trees or elm trees that will contribute to  
 5 the spread of elm tree diseases. Under such contracts, the  
 6 local government shall pay for the removal or approved  
 7 treatment under such terms and conditions as may be  
 8 determined by the governing body of the local government.

9 Section 8. Appointment of tree inspection ~~INSPECTOR~~ --  
 10 certification by the department -- provision for  
 11 decertification. (1) Each local government with an approved  
 12 disease control program ~~that is receiving a state subsidy~~  
 13 shall appoint a qualified person to be known as the tree  
 14 inspector to administer the rules of the department or the  
 15 more stringent local ordinances concerning elm tree disease  
 16 IN THAT DISEASE CONTROL AREA. Two or more local governments  
 17 may jointly appoint a tree inspector.

18 (2) Upon a determination by the department that a  
 19 candidate for the position of the inspector is qualified, it  
 20 shall issue a certificate to the tree inspector that he is  
 21 so qualified. Any person certified as a tree inspector by  
 22 the department is authorized to enter and inspect any public  
 23 or private property IN THAT DISEASE CONTROL AREA that might  
 24 harbor diseased elm trees, provided prior notice is given as  
 25 required by the ~~rule~~ RULES of the department made pursuant

1 to [section 3].

2 (3) The department may upon notice and an opportunity  
 3 for a hearing decertify any tree inspector when it appears  
 4 that the tree inspector has failed to act competently or in  
 5 the public interest in the performance of his duties.  
 6 Nothing in this subsection limits or otherwise affects the  
 7 authority of a IHE department to dismiss or suspend a tree  
 8 inspector at its discretion, except as otherwise provided by  
 9 law.

10 Section 9. Financing. (1) A local government may  
 11 collect the amount assessed against the property under  
 12 [section 4] as a special assessment.

13 (2) After a contract for the sanitation or approved  
 14 treatment of trees on private property has been let or the  
 15 work commenced, the local government may issue bonds  
 16 financed by special assessments imposed upon the private  
 17 property to defray the expense of the work.

18 Section 10. Deposit of proceeds in a separate fund.  
 19 The proceeds of any tax levied, assessments and interest  
 20 collected, or any bonds issued under [section 9] and any  
 21 grants received under [section 6] must be deposited by the  
 22 local government in a separate fund and expended only for  
 23 the purposes authorized in [this act].

24 ~~Section 11. Diagnostic laboratory. The department of~~  
 25 ~~agriculture shall operate a diagnostic laboratory for~~

1 culturing--diseased--trees--for--positive--identification-of  
2 diseased-elm-trees;

3 Section 11. Experimental programs. The department may  
4 establish experimental programs for sanitation or treatment  
5 of elm tree diseases. The department may make grants to  
6 local governments or enter into contracts with municipal,  
7 state, or federal agencies in connection with experimental  
8 elm tree disease control programs.

9 Section 12. Reports to the legislature. On or before  
10 January 31 of each year, the department shall report to the  
11 legislature on the preceding year's approved disease control  
12 programs and any experimental programs conducted pursuant to  
13 [section 12].

14 SECTION 13. THERE IS A NEW MCA SECTION THAT READS:

15 Department to accept funds -- responsibility and  
16 liability limited. The department is authorized to accept  
17 funds from any source available for use in this program. The  
18 responsibility and liability of the department to conduct or  
19 participate in this program shall be limited to the amount  
20 of funds available.

-End-

March 15, 1979

SENATE STANDING COMMITTEE REPORT  
(Agriculture, Livestock & Irrigation)

That House Bill No. 875 be amended as follows:

1. Page 2, line 22.

Strike: "any"

2. Page 2.

Following: line 22

Strike: "government"

Insert: "governments"

3. Page 2, lines 23 and 24.

Following: "government"

Insert: "."

Strike: "which has an approved Dutch elm disease control program  
and is receiving a subsidy from the state."

4. Page 5, line 14.

Following: "the"

Strike: "commissioner"

Insert: "director"

5. Page 7, line 9.

Following: "tree"

Strike: "inspection"

Insert: "inspector"

6. Page 7, line 12.

Following: "program"

Strike: "that is receiving a state subsidy"

7. Page 7, line 15.

Following: "disease"

Strike: "."

Insert: ", "

8. Page 7, lines 16 and 17.

Strike: lines 16 and 17 in their entirety

Insert: "in that disease control area. Two or more local governments  
may jointly appoint a tree inspector."

9. Page 7, lines 23, 24 and 25.

Following: "property"

Strike: the remainder of line 23 and lines 24 and 25 in their entirety

Insert: "in that disease control area that might harbor diseased  
elm trees, provided prior notice is given as required by rules of  
the department made pursuant to [section 3]."

10. Page 8, line 6.

Following: "of"

Strike: "a"

Insert: "the"

11. Page 8, line 23 through line 1 on page 9.  
Strike: section 11 in its entirety  
Renumber: subsequent subsections

12. Page 9.

Following: line 12

Insert: "Section 13. THERE IS A NEW MCA SECTION THAT READS:

Department to accept funds. Responsibility and liability limited.

The department is authorized to accept funds from any source available, for use in this program. The responsibility and liability of the department to conduct or participate in this program shall be limited to the amount of funds available."