

HOUSE BILL NO. 989

INTRODUCED BY CROMLEY  
BY REQUEST OF THE DEPARTMENT OF HEALTH  
AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

MARCH 13, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & ECONOMIC DEVELOPMENT.  
  
FIRST READING.  
  
MARCH 20, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.  
  
MARCH 21, 1991                   PRINTING REPORT.  
  
MARCH 23, 1991                   SECOND READING, DO PASS.  
  
MARCH 25, 1991                   ENGROSSING REPORT.  
  
MARCH 26, 1991                   THIRD READING, PASSED.  
AYES, 55; NOES, 41.  
  
TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 26, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON PUBLIC HEALTH, WELFARE, & SAFETY.  
  
FIRST READING.  
  
APRIL 3, 1991                   COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.  
  
APRIL 5, 1991                   SECOND READING, CONCURRED IN.  
  
APRIL 6, 1991                   THIRD READING, CONCURRED IN.  
AYES, 45; NOES, 4.  
  
RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1991                   RECEIVED FROM SENATE.  
  
SECOND READING, AMENDMENTS  
CONCURRED IN. MOTION FAILED.

AYES, 48; NOES, 50.

APRIL 12, 1991

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 16, 1991

ON MOTION, CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

APRIL 18, 1991

ON MOTION, CONFERENCE COMMITTEE  
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 18, 1991

ON MOTION, CONFERENCE COMMITTEE  
DISSOLVED.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

APRIL 19, 1991

FREE CONFERENCE COMMITTEE REPORTED.

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

APRIL 20, 1991

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 20, 1991

FREE CONFERENCE COMMITTEE  
REPORT ADOPTED.

IN THE HOUSE

APRIL 22, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 989  
 2 INTRODUCED BY CROHLEY  
 3 BY REQUEST OF THE DEPARTMENT OF HEALTH  
 4 AND ENVIRONMENTAL SCIENCES.

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAWS RELATING TO REGULATION OF FOOD ESTABLISHMENTS;  
 8 INCREASING THE FEE FOR LICENSING OF FOOD ESTABLISHMENTS;  
 9 CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF  
 10 LICENSE FEES; ALLOCATING MONEY IN THE ACCOUNT TO THE  
 11 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; CLARIFYING  
 12 WHO MAY CONDUCT INVESTIGATIONS AND INSPECTIONS OF FOOD  
 13 ESTABLISHMENTS; REQUIRING MINIMUM PERFORMANCE STANDARDS THAT  
 14 MUST BE MET IN ORDER FOR THE LOCAL BOARD OF HEALTH TO  
 15 RECEIVE PAYMENTS FROM THE LOCAL BOARD INSPECTION FUND  
 16 ACCOUNT; REQUIRING PAYMENTS RECEIVED FROM THE ACCOUNT TO BE  
 17 USED ONLY FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT;  
 18 PROHIBITING FUNDS FROM THE LOCAL BOARD INSPECTION FUND  
 19 ACCOUNT FROM BEING USED TO SUPPLANT OTHER FUNDS RECEIVED BY  
 20 THE LOCAL BOARD OF HEALTH; PROVIDING CIVIL PENALTIES FOR  
 21 VIOLATION OF THE LAWS REGULATING FOOD ESTABLISHMENTS;  
 22 ALLOWING THE DEPARTMENT AND COUNTIES TO RECOVER THE COSTS OF  
 23 INVESTIGATIONS AND OTHER EXPENSES IN ENFORCING THE LAWS  
 24 RELATING TO FOOD ESTABLISHMENTS; AND AMENDING SECTIONS  
 25 50-50-102, 50-50-205, 50-50-301, 50-50-302, AND 50-50-305,

1 MCA."

2  
 3 STATEMENT OF INTENT  
 4 A statement of intent is required for this bill because  
 5 it amends 50-50-305 to grant the department of health and  
 6 environmental sciences authority to adopt rules to establish  
 7 minimum program performance standards that must be met in  
 8 order for the local board of health to receive payments from  
 9 the local board inspection fund account.

10 It is intended that minimum performance standards  
 11 include but not be limited to measures necessary to ensure  
 12 the accuracy of inspection reports and to allow statewide  
 13 standardization of inspections and the documentation of work  
 14 performed.

15 Also, it is recognized that the exact nature of  
 16 performance standards is still in the developmental stage.  
 17 Therefore, it is intended that these performance standards  
 18 be adopted only after close coordination with local health  
 19 departments and boards and extensive solicitation of  
 20 comments prior to adoption of final standards.

21  
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 **Section 1.** Section 50-50-102, MCA, is amended to read:  
 24 "50-50-102. Definitions. Unless the context requires  
 25 otherwise, in this chapter the following definitions apply:



1 (1) "Board" means the board of health and environmental  
2 sciences, provided for in 2-15-2104.

3 (2) "Commercial establishment" means an establishment  
4 operated primarily for profit.

5 ~~(2)~~(3) "Department" means the department of health and  
6 environmental sciences, provided for in Title 2, chapter 15,  
7 part 21.

8 ~~(3)~~(4) "Establishment" means a food manufacturing  
9 establishment, meat market, food service establishment, food  
10 warehouse, frozen food plant, commercial food processor, or  
11 perishable food dealer.

12 ~~(4)~~(5) "Food" means an edible substance, beverage, or  
13 ingredient used, intended for use, or for sale for human  
14 consumption.

15 ~~(5)~~(6) "Food manufacturing establishment" means a  
16 commercial establishment and buildings or structures in  
17 connection with it used to manufacture or prepare food for  
18 sale or human consumption, but does not include milk  
19 producers' facilities, milk pasteurization facilities, milk  
20 product manufacturing plants, slaughterhouses, or meat  
21 packing plants.

22 ~~(6)~~(7) "Food service establishment" means a fixed or  
23 mobile restaurant, coffee shop, cafeteria, short-order cafe,  
24 luncheonette, grille, tearoom, sandwich shop, soda fountain,  
25 food store serving food or beverage samples, food or drink

1 vending machine, tavern, bar, cocktail lounge, nightclub,  
2 industrial feeding establishment, catering kitchen,  
3 commissary, private organization routinely serving the  
4 public, or similar place where food or drink is prepared,  
5 served, or provided to the public with or without charge.  
6 The term does not include establishments, vendors, or  
7 vending machines which sell or serve only packaged  
8 nonperishable foods in their unbroken original containers or  
9 a private organization serving food only to its members.

10 (8) "Food warehouse" means a commercial establishment  
11 and buildings or structures in connection with it used to  
12 store food, drugs, or cosmetics for distribution to retail  
13 outlets.

14 ~~(7)~~(9) "Frozen food plant" means a place used to  
15 freeze, process, or store food, including facilities used in  
16 conjunction with the frozen food plant, and a place where  
17 individual compartments are offered to the public on a  
18 rental or other basis.

19 ~~(8)~~(10) "Meat market" means a commercial establishment  
20 and buildings or structures in connection with it used to  
21 process, store, or display meat or meat products for sale to  
22 the public or for human consumption.

23 ~~(9)~~(11) "Nonprofit organization" means any organization  
24 qualifying as a tax-exempt organization under 26 U.S.C. 501.

25 ~~(10)~~(12) "Perishable food dealer" means a person or

1 commercial establishment which is in the business of  
2 purchasing and selling perishable food to the public.

3 ~~(11)~~(13) "Person" means a person, partnership,  
4 corporation, association, cooperative group, or other entity  
5 engaged in operating, owning, or offering services of an  
6 establishment."

7 **Section 2.** Section 50-50-205, MCA, is amended to read:

8 "50-50-205. License fee -- late fee. (1) For each  
9 license issued, the department shall collect a fee of \$38  
10 \$75. It shall deposit 85% of the fees collected ~~in-the-state~~  
11 ~~special--revenue--fund--to--the-credit-of~~ under this section  
12 into the local board inspection fund account created by in  
13 50-2-108(2)--and--the. The balance of the fees must be  
14 deposited in the state-general-fund account provided for in  
15 [section 3].

16 (2) In addition to the license fee required under  
17 subsection (1), the department shall collect a late fee from  
18 any licensee who has failed to submit a license renewal fee  
19 prior to the expiration of his current license and who  
20 operates an establishment governed by this part in the next  
21 licensing year. The late fee is \$25 and must be deposited in  
22 the state-general-fund account provided for in [section 3]."

23 NEW SECTION. **Section 3. Special revenue account.** There  
24 is an account in the state special revenue fund. Money in  
25 the account is allocated to the department to be used to

1 administer the provisions of this chapter and the rules  
2 adopted under it.

3 **Section 4.** Section 50-50-301, MCA, is amended to read:

4 "50-50-301. Health officers and sanitarians to  
5 ~~investigate--and make investigations and inspections.~~ State  
6 and local health officers~~7[, sanitarians-in-training,] and~~  
7 registered sanitarians~~7--or--other-authorized-persons~~ shall  
8 make investigations and inspections of establishments and  
9 make reports to the department as required by under rules  
10 adopted by the department."

11 **Section 5.** Section 50-50-302, MCA, is amended to read:

12 "50-50-302. Health officers and sanitarians to have  
13 free access. State and local health officers~~7[,~~  
14 ~~sanitarians-in-training,] and~~ sanitarians~~7---and---other~~  
15 ~~authorized-persons-shall-have~~ must be provided free access  
16 to establishments at all reasonable hours for the purpose of  
17 conducting investigations and inspections as required under  
18 this chapter."

19 **Section 6.** Section 50-50-305, MCA, is amended to read:

20 "50-50-305. Department to pay local board for  
21 inspections and enforcement. (1) Before June 30 of each  
22 year, the department shall pay to a local board of health,  
23 as established under 50-2-104, 50-2-106, or 50-2-107, an  
24 amount from the local board inspection fund account created  
25 by in 50-2-108(2)--which-is that must be used only for the

1 purpose of inspecting establishments licensed under this  
2 chapter and enforcing the provisions of this chapter;  
3 provided, however, that:

4 (a) there is a functioning local board of health; and  
5 that

6 (b) the local board of health, local health officers,  
7 [sanitarians-in-training,] and registered sanitarians:

8 (i) assist in the inspections and enforcement of the  
9 provisions of this chapter and the rules adopted under it;  
10 and

11 (ii) meet minimum program performance standards as  
12 established under rules adopted by the department.

13 (2) The funds received by the local board of health  
14 shall pursuant to subsection (1) must be deposited with the  
15 appropriate local fiscal authority and shall-be-in-addition  
16 to-the-funds-appropriated-under--50-2-108--through--50-2-114  
17 must be used to supplement, but not supplant, other funds  
18 received by the local board of health that in the absence of  
19 funding received under subsection (1) would be made  
20 available for the same purpose.

21 (3) Funds in the local board inspection fund account  
22 not paid to the local board of health as provided in  
23 subsection (1) may be used by the department, within any  
24 jurisdiction that does not qualify to receive payments from  
25 the local board inspection fund account, to enforce the

1 provisions of this chapter and the rules adopted under it."

2 NEW SECTION. Section 7. Civil penalties -- injunctions  
3 not barred. (1) An establishment that violates this chapter  
4 or rules adopted by the department pursuant to this chapter  
5 is subject to a civil penalty not to exceed \$500. Each day  
6 of violation constitutes a separate violation.

7 (2) Civil action to impose penalties, as provided under  
8 this section, does not bar injunctions to enforce compliance  
9 with this chapter or to enforce compliance with a rule  
10 adopted by the department pursuant to this chapter.

11 NEW SECTION. Section 8. Costs and expenses -- recovery  
12 by department or county. In a civil action initiated by the  
13 department or county under this chapter, the court may, by  
14 petition of the department or county, order an establishment  
15 that is found in violation of this chapter or rules adopted  
16 under this chapter to pay the costs of investigations and  
17 any other expenses incurred in enforcing the provisions of  
18 this chapter.

19 NEW SECTION. Section 9. Codification instruction.  
20 [Sections 3, 7, and 8] are intended to be codified as an  
21 integral part of Title 50, chapter 50, and the provisions of  
22 Title 50, chapter 50, apply to [sections 3, 7, and 8].

23 NEW SECTION. Section 10. Coordination instruction. If  
24 House Bill No. 943 is passed and approved and if it includes  
25 a section defining a sanitarian-in-training, then the

LC 1183/01

1 bracketed language in [sections 4 through 6] is effective.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0989, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill to generally revise the laws relating to regulation of food establishments; increasing fees for licensing of food establishments; creating a special revenue account; allocating funds from the special revenue account to DHES and requiring minimum performance standards for local boards of health to receive funds from the account; providing civil penalties; and authorizing DHES to recover enforcement costs.

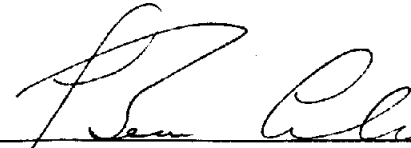
ASSUMPTIONS:

1. The number of annual food establishment licenses issued will remain reasonably constant.
2. The current annual license fee/food establishment of \$30 of which 85% (\$25.50) is deposited in the state special revenue account (local board inspection fund) and 15% (\$4.50) is deposited in the state general fund will be increased to \$75/food establishment with 85% (\$63.75) deposited in the state special revenue account (local board inspection fund), 6% (\$4.50) deposited in the state general fund, and 9% (\$6.75) deposited in the special revenue account earmarked for the department.
3. 5% of annual food establishment license renewals will be delinquent with a late fee penalty of \$25 assessed.
4. The special revenue account earmarked to the department will be used as the funding source for necessary program development resulting from the proposed legislation.

FISCAL IMPACT:

see next page

  
\_\_\_\_\_  
ROD SUNDSTED, BUDGET DIRECTOR      3-18-91  
Office of Budget and Program Planning      DATE

  
\_\_\_\_\_  
BRENT R. CROMLEY, PRIMARY SPONSOR      3-18-91  
Fiscal Note for HB0989, as introduced.      DATE      HB 989-1



Fiscal Note Request, HB0989, as introduced.

Form BD-15

Page 2

FISCAL IMPACT:

Department of Health and Environmental Sciences:

<u>Expenditures:</u>	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Operating Expenses	0	37,100	37,100	0	22,800	22,800
Grants	<u>140,250</u>	<u>350,625</u>	<u>210,375</u>	<u>140,250</u>	<u>350,625</u>	<u>210,375</u>
Total	140,250	387,725	247,475	140,250	373,425	233,175
<u>Funding:</u>						
Local Brd Insp. Fund (02)	<u>140,250</u>	<u>387,725</u>	<u>247,475</u>	<u>140,250</u>	<u>373,425</u>	<u>233,175</u>
Total	140,250	387,725	247,475	140,250	373,425	233,175
<u>Revenues:</u>						
Late Penalty Fee (01)	6,875	0	(6,875)	6,875	0	(6,875)
Local Brd Insp. Fund (02)	140,250	350,625	210,375	140,250	350,625	210,375
License Renewal (02)	0	37,125	37,125	0	37,125	37,125
Late Penalty Fee (02)	<u>0</u>	<u>6,875</u>	<u>6,875</u>	<u>0</u>	<u>6,875</u>	<u>6,875</u>
Total	147,125	394,625	247,500	147,125	394,625	247,500
General Fund (decrease)			(6,875)			(6,875)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Increasing the food establishment licensing fee from \$30 to \$75 with 85% deposited in the local board inspection fund would increase the reimbursement per establishment from \$25.50 to \$63.75 for inspection and enforcement of food establishments by local environmental health programs. Reimbursement from the local board inspection fund to local environmental health programs representing all 56 counties is made in proportion to the number of establishments licensed per jurisdiction.

HB 989-1

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0989, third reading.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill to generally revise the laws relating to regulation of food establishments; increasing fees for licensing of food establishments; creating a special revenue account; allocating funds from the special revenue account to DHES and requiring minimum performance standards for local boards of health to receive funds from the account; providing civil penalties; and authorizing DHES to recover enforcement costs.

ASSUMPTIONS:

1. The number of annual food establishment licenses issued will remain reasonably constant.
2. The current annual license fee/food establishment of \$30 of which 85% (\$25.50) is deposited in the state special revenue account (local board inspection fund) and 15% (\$4.50) is deposited in the state general fund will be increased to \$50/food establishment with 85% (\$42.50) deposited in the state special revenue account (local board inspection fund), 6% (\$3.00) deposited in the state general fund, and 9% (\$4.50) deposited in the special revenue account earmarked for the department.
3. 5% of annual food establishment license renewals will be delinquent with a late fee penalty of \$25 assessed.
4. The special revenue account earmarked to the department will be used as the funding source for necessary program development resulting from the proposed legislation.

FISCAL IMPACT:

see next page

  
\_\_\_\_\_  
ROD SUNDSTED, BUDGET DIRECTOR      4-3-91      DATE  
Office of Budget and Program Planning

  
\_\_\_\_\_  
BRENT R. CROMLEY, PRIMARY SPONSOR      4/4/91      DATE

Fiscal Note for HB0989, third reading.      HB 989-2

FISCAL IMPACT:

Department of Health and Environmental Sciences:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
Operating Expenses	0	37,100	37,100	0	22,800	22,800
Grants	<u>140,250</u>	<u>233,750</u>	<u>93,500</u>	<u>140,250</u>	<u>233,750</u>	<u>93,500</u>
Total	140,250	270,850	130,600	140,250	256,550	116,300
<u>Funding:</u>						
General Fund (01)	0	5,475	5,475	0	0	0
Local Brd Insp. Fund (02)	<u>140,250</u>	<u>265,375</u>	<u>125,125</u>	<u>140,250</u>	<u>256,550</u>	<u>116,300</u>
Total	140,250	270,850	130,600	140,250	256,550	116,300
<u>Revenues:</u>						
Late Penalty Fee (01)	6,875	0	(6,875)	6,875	0	(6,875)
License Renewals (01)	24,750	16,500	(8,250)	24,750	16,500	(8,250)
Local Brd Insp. Fund (02)	140,250	233,750	93,500	140,250	233,750	93,500
License Renewal (02)	0	24,750	24,750	0	24,750	24,750
Late Penalty Fee (02)	<u>0</u>	<u>6,875</u>	<u>6,875</u>	<u>0</u>	<u>6,875</u>	<u>6,875</u>
Total	171,875	281,875	110,000	171,875	281,875	110,000
General Fund (decrease)			(20,600)			(15,125)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Increasing the food establishment licensing fee from \$30 to \$50 with 85% deposited in the local board inspection fund would increase the reimbursement per establishment from \$25.50 to \$42.50 for inspection and enforcement of food establishments by local environmental health programs. Reimbursement from the local board inspection fund to local environmental health programs representing all 56 counties is made in proportion to the number of establishments licensed per jurisdiction.

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A statement of intent is required for this bill because  
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 8 order for the local board of health to receive payments from  
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It is intended that minimum performance standards  
 11 include but not be limited to measures necessary to ensure  
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Also, it is recognized that the exact nature of  
 16 performance standards is still in the developmental stage.  
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10 warehouse, frozen food plant, commercial food processor, or  
11 perishable food dealer.

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22 {6}(7) "Food service establishment" means a fixed or  
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25 food store serving food or beverage samples, food or drink

1 vending machine, tavern, bar, cocktail lounge, nightclub,  
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4 public, or similar place where food or drink is prepared,  
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10 {8} "Food warehouse" means a commercial establishment  
11 and buildings or structures in connection with it used to  
12 store food, drugs, or cosmetics for distribution to retail  
13 outlets, BUT DOES NOT INCLUDE A WINE, BEER, OR SOFT DRINK  
14 WAREHOUSE THAT IS SEPARATE FROM FACILITIES WHERE BREWING  
15 OCCURS.

16 {7}(9) "Frozen food plant" means a place used to  
17 freeze, process, or store food, including facilities used in  
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19 individual compartments are offered to the public on a  
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10 "50-50-205. License fee -- late fee. (1) For each  
11 license issued, the department shall collect a fee of \$30  
12 ~~\$75~~ \$50. It shall deposit 85% of the fees collected in the  
13 ~~state special revenue fund--to--the--credit--of~~ under this  
14 section into the local board inspection fund account created  
15 by in 50-2-108(2) and the ~~the~~ balance, 6% OF THE FEES INTO  
16 THE GENERAL FUND, AND 9% of the fees must--be--deposited in  
17 INTO the state general fund account provided for in [section  
18 3].

19 (2) In addition to the license fee required under  
20 subsection (1), the department shall collect a late fee from  
21 any licensee who has failed to submit a license renewal fee  
22 prior to the expiration of his current license and who  
23 operates an establishment governed by this part in the next  
24 licensing year. The late fee is \$25 and must be deposited in  
25 the ~~state general fund~~ account provided for in [section 3]."

1 **NEW SECTION. Section 3. Special revenue account.** There  
2 is an account in the state special revenue fund. Money in  
3 the account is allocated to the department to be used to  
4 administer the provisions of this chapter and the rules  
5 adopted under it.

6 **Section 4.** Section 50-50-301, MCA, is amended to read:

7 "50-50-301. Health officers and sanitarians to  
8 ~~investigate--and~~ make investigations and inspections. State  
9 and local health officers ~~[, sanitarians-in-training,]~~ and  
10 registered sanitarians, ~~--or--other-authorized-persons~~ shall  
11 make investigations and inspections of establishments and  
12 make reports to the department as required by under rules  
13 adopted by the department."

14 **Section 5.** Section 50-50-302, MCA, is amended to read:

15 "50-50-302. Health officers and sanitarians to have  
16 free access. State and local health officers ~~[,~~  
17 sanitarians-in-training,] and sanitarians, ~~---and---other~~  
18 authorized-persons-shall-have must be provided free access  
19 to establishments at all reasonable hours for the purpose of  
20 conducting investigations and inspections as required under  
21 this chapter."

22 **Section 6.** Section 50-50-305, MCA, is amended to read:

23 "50-50-305. Department to pay local board for  
24 inspections and enforcement. (1) Before June 30 of each  
25 year, the department shall pay to a local board of health,

1 as established under 50-2-104, 50-2-106, or 50-2-107, an  
 2 amount from the local board inspection fund account created  
 3 by in 50-2-108(2) which is that must be used only for the  
 4 purpose of inspecting establishments licensed under this  
 5 chapter and enforcing the provisions of this chapter;  
 6 provided, however, that:

7 (a) there is a functioning local board of health; and  
 8 that

9 (b) the local board of health, local health officers,  
 10 [sanitarians-in-training,] and registered sanitarians:

11 (i) assist in the inspections and enforcement of the  
 12 provisions of this chapter and the rules adopted under it;  
 13 and

14 (ii) meet minimum program performance standards as  
 15 established under rules adopted by the department.

16 (2) The funds received by the local board of health  
 17 shall pursuant to subsection (1) must be deposited with the  
 18 appropriate local fiscal authority and shall-be-in-addition  
 19 to-the-funds-appropriated-under--50-2-100--through--50-2-114  
 20 must be used to supplement, but not supplant, other funds  
 21 received by the local board of health that in the absence of  
 22 funding received under subsection (1) would be made  
 23 available for the same purpose.

24 (3) Funds in the local board inspection fund account  
 25 not paid to the local board of health as provided in

1 subsection (1) may be used by the department, within any  
 2 jurisdiction that does not qualify to receive payments from  
 3 the local board inspection fund account, to enforce the  
 4 provisions of this chapter and the rules adopted under it."

5 **NEW SECTION. Section 7. Civil penalties -- injunctions**  
 6 not barred. (1) An establishment that violates this chapter  
 7 or rules adopted by the department pursuant to this chapter  
 8 is subject to a civil penalty not to exceed \$500. **Each--day**  
 9 **of-violation-constitutes-a-separate-violation:**

10 (2) Civil action to impose penalties, as provided under  
 11 this section, does not bar injunctions to enforce compliance  
 12 with this chapter or to enforce compliance with a rule  
 13 adopted by the department pursuant to this chapter.

14 **NEW SECTION. Section 8. Costs and expenses -- recovery**  
 15 **by department or county.** In a civil action initiated by the  
 16 department or county under this chapter, the court may, by  
 17 petition of the department or county, order an establishment  
 18 that is found in violation of this chapter or rules adopted  
 19 under this chapter to pay the costs of investigations and  
 20 any other expenses incurred in enforcing the provisions of  
 21 this chapter.

22 **NEW SECTION. Section 9. Codification instruction.**  
 23 [Sections 3, 7, and 8] are intended to be codified as an  
 24 integral part of Title 50, chapter 50, and the provisions of  
 25 Title 50, chapter 50, apply to [sections 3, 7, and 8].

1        NEW SECTION. **Section 10.** Coordination instruction. If  
2 House Bill No. 943 is passed and approved and if it includes  
3 a section defining a sanitarian-in-training, then the  
4 bracketed language in [sections 4 through 6] is effective.

-End-



1                   HOUSE BILL NO. 989  
 2                   INTRODUCED BY CROMLEY  
 3                   BY REQUEST OF THE DEPARTMENT OF HEALTH  
 4                   AND ENVIRONMENTAL SCIENCES  
 5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAWS RELATING TO REGULATION OF FOOD ESTABLISHMENTS;  
 8 INCREASING THE FEE FOR LICENSING OF FOOD ESTABLISHMENTS;  
 9 CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF A  
 10 PORTION OF LICENSE FEES; ALLOCATING MONEY IN THE ACCOUNT TO  
 11 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES;  
 12 CLARIFYING WHO MAY CONDUCT INVESTIGATIONS AND INSPECTIONS OF  
 13 FOOD ESTABLISHMENTS; REQUIRING MINIMUM PERFORMANCE STANDARDS  
 14 THAT MUST BE MET IN ORDER FOR THE LOCAL BOARD OF HEALTH TO  
 15 RECEIVE PAYMENTS FROM THE LOCAL BOARD INSPECTION FUND  
 16 ACCOUNT; REQUIRING PAYMENTS RECEIVED FROM THE ACCOUNT TO BE  
 17 USED ONLY FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT;  
 18 PROHIBITING FUNDS FROM THE LOCAL BOARD INSPECTION FUND  
 19 ACCOUNT FROM BEING USED TO SUPPLANT OTHER FUNDS RECEIVED BY  
 20 THE LOCAL BOARD OF HEALTH; PROVIDING CIVIL PENALTIES FOR  
 21 VIOLATION OF THE LAWS REGULATING FOOD ESTABLISHMENTS;  
 22 ALLOWING THE DEPARTMENT AND COUNTIES TO RECOVER THE COSTS OF  
 23 INVESTIGATIONS AND OTHER EXPENSES IN ENFORCING THE LAWS  
 24 RELATING TO FOOD ESTABLISHMENTS; AND AMENDING SECTIONS  
 25 50-50-102, 50-50-205, 50-50-301, 50-50-302, AND 50-50-305,

1 MCA."

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STATEMENT OF INTENT

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A statement of intent is required for this bill because it amends 50-50-305 to grant the department of health and environmental sciences authority to adopt rules to establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and the documentation of work performed.

Also, it is recognized that the exact nature of performance standards is still in the developmental stage. Therefore, it is intended that these performance standards be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final standards.

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

**Section 1.** Section 50-50-102, MCA, is amended to read:

"50-50-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

1 (1) "Board" means the board of health and environmental  
2 sciences, provided for in 2-15-2104.

3 (2) "Commercial establishment" means an establishment  
4 operated primarily for profit.

5 (3) "Department" means the department of health and  
6 environmental sciences, provided for in Title 2, chapter 15,  
7 part 21.

8 (4) "Establishment" means a food manufacturing  
9 establishment, meat market, food service establishment, food  
10 warehouse, frozen food plant, commercial food processor, or  
11 perishable food dealer.

12 (5) "Food" means an edible substance, beverage, or  
13 ingredient used, intended for use, or for sale for human  
14 consumption.

15 (6) "Food manufacturing establishment" means a  
16 commercial establishment and buildings or structures in  
17 connection with it used to manufacture or prepare food for  
18 sale or human consumption, but does not include milk  
19 producers' facilities, milk pasteurization facilities, milk  
20 product manufacturing plants, slaughterhouses, or meat  
21 packing plants.

22 (7) "Food service establishment" means a fixed or  
23 mobile restaurant, coffee shop, cafeteria, short-order cafe,  
24 luncheonette, grille, tearoom, sandwich shop, soda fountain,  
25 food store serving food or beverage samples, food or drink

1 vending machine, tavern, bar, cocktail lounge, nightclub,  
2 industrial feeding establishment, catering kitchen,  
3 commissary, private organization routinely serving the  
4 public, or similar place where food or drink is prepared,  
5 served, or provided to the public with or without charge.  
6 The term does not include establishments, vendors, or  
7 vending machines which sell or serve only packaged  
8 nonperishable foods in their unbroken original containers or  
9 a private organization serving food only to its members.

10 (8) "Food warehouse" means a commercial establishment  
11 and buildings or structures in connection with it used to  
12 store food, drugs, or cosmetics for distribution to retail  
13 outlets, BUT DOES NOT INCLUDE A WINE, BEER, OR SOFT DRINK  
14 WAREHOUSE THAT IS SEPARATE FROM FACILITIES WHERE BREWING  
15 OCCURS.

16 (9) "Frozen food plant" means a place used to  
17 freeze, process, or store food, including facilities used in  
18 conjunction with the frozen food plant, and a place where  
19 individual compartments are offered to the public on a  
20 rental or other basis.

21 (10) "Meat market" means a commercial establishment  
22 and buildings or structures in connection with it used to  
23 process, store, or display meat or meat products for sale to  
24 the public or for human consumption.

25 (11) "Nonprofit organization" means any organization

1 qualifying as a tax-exempt organization under 26 U.S.C. 501.

2 ~~(10)~~(12) "Perishable food dealer" means a person or  
3 commercial establishment which is in the business of  
4 purchasing and selling perishable food to the public.

5 ~~(11)~~(13) "Person" means a person, partnership,  
6 corporation, association, cooperative group, or other entity  
7 engaged in operating, owning, or offering services of an  
8 establishment."

9 **Section 2.** Section 50-50-205, MCA, is amended to read:

10 "50-50-205. License fee -- late fee. (1) For each  
11 license issued, the department shall collect a fee of \$30  
12 ~~\$75~~ \$50. It shall deposit 85% of the fees collected in the  
13 ~~state special revenue fund to the credit of~~ under this  
14 section into the local board inspection fund account created  
15 by in 50-2-108(2) and the ~~The~~ balance, 6% OF THE FEES INTO  
16 THE GENERAL FUND, AND 9% of the fees must be deposited in  
17 INTO the state general fund account provided for in [section  
18 3].

19 (2) In addition to the license fee required under  
20 subsection (1), the department shall collect a late fee from  
21 any licensee who has failed to submit a license renewal fee  
22 prior to the expiration of his current license and who  
23 operates an establishment governed by this part in the next  
24 licensing year. The late fee is \$25 and must be deposited in  
25 the ~~state general fund~~ account provided for in [section 3]."

1 **NEW SECTION. Section 3. Special revenue account.** There  
2 is an account in the state special revenue fund. Money in  
3 the account is allocated to the department to be used to  
4 administer the provisions of this chapter and the rules  
5 adopted under it.

6 **Section 4.** Section 50-50-301, MCA, is amended to read:

7 "50-50-301. Health officers and sanitarians to  
8 ~~investigate--and make investigations and inspections.~~ State  
9 and local health officers, [, sanitarians-in-training,] and  
10 registered sanitarians ~~--or--other-authorized-persons~~ shall  
11 make investigations and inspections of establishments and  
12 make reports to the department as required by under rules  
13 adopted by the department."

14 **Section 5.** Section 50-50-302, MCA, is amended to read:

15 "50-50-302. Health officers and sanitarians to have  
16 free access. State and local health officers, [,  
17 sanitarians-in-training,] and sanitarians, ~~---and---other~~  
18 ~~authorized-persons-shall-have~~ must be provided free access  
19 to establishments at all reasonable hours for the purpose of  
20 conducting investigations and inspections as required under  
21 this chapter."

22 **Section 6.** Section 50-50-305, MCA, is amended to read:

23 "50-50-305. Department to pay local board for  
24 inspections and enforcement. (1) Before June 30 of each  
25 year, the department shall pay to a local board of health,

1 as established under 50-2-104, 50-2-106, or 50-2-107, an  
 2 amount from the local board inspection fund account created  
 3 by in 50-2-108(2)-which-is that must be used only for the  
 4 purpose of inspecting establishments licensed under this  
 5 chapter and enforcing the provisions of this chapter;  
 6 provided, however, that:

7 (a) there is a functioning local board of health; and  
 8 that

9 (b) the local board of health, local health officers,  
 10 [sanitarians-in-training,] and registered sanitarians:

11 (i) assist in the inspections and enforcement of the  
 12 provisions of this chapter and the rules adopted under it;  
 13 and

14 (ii) meet minimum program performance standards as  
 15 established under rules adopted by the department.

16 (2) The funds received by the local board of health  
 17 shall pursuant to subsection (1) must be deposited with the  
 18 appropriate local fiscal authority and shall-be-in-addition  
 19 to-the-funds-appropriated-under--50-2-108--through--50-2-114  
 20 must be used to supplement, but not supplant, other funds  
 21 received by the local board of health that in the absence of  
 22 funding received under subsection (1) would be made  
 23 available for the same purpose.

24 (3) Funds in the local board inspection fund account  
 25 not paid to the local board of health as provided in

1 subsection (1) may be used by the department, within any  
 2 jurisdiction that does not qualify to receive payments from  
 3 the local board inspection fund account, to enforce the  
 4 provisions of this chapter and the rules adopted under it."

5 NEW SECTION. Section 7. Civil penalties -- injunctions  
 6 not barred. (1) An establishment that violates this chapter  
 7 or rules adopted by the department pursuant to this chapter  
 8 is subject to a civil penalty not to exceed \$500. Each--day  
 9 of-violation-constitutes-a-separate-violation:

10 (2) Civil action to impose penalties, as provided under  
 11 this section, does not bar injunctions to enforce compliance  
 12 with this chapter or to enforce compliance with a rule  
 13 adopted by the department pursuant to this chapter.

14 NEW SECTION. Section 8. Costs and expenses -- recovery  
 15 by department or county. In a civil action initiated by the  
 16 department or county under this chapter, the court may, by  
 17 petition of the department or county, order an establishment  
 18 that is found in violation of this chapter or rules adopted  
 19 under this chapter to pay the costs of investigations and  
 20 any other expenses incurred in enforcing the provisions of  
 21 this chapter.

22 NEW SECTION. Section 9. Codification instruction.  
 23 [Sections 3, 7, and 8] are intended to be codified as an  
 24 integral part of Title 50, chapter 50, and the provisions of  
 25 Title 50, chapter 50, apply to [sections 3, 7, and 8].

1        NEW SECTION.   **Section 10.**   Coordination instruction.   If  
2   House Bill No. 943 is passed and approved and if it includes  
3   a section defining a sanitarian-in-training, then the  
4   bracketed language in [sections 4 through 6] is effective.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 3, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 989 (third reading copy -- blue), respectfully report that House Bill No. 989 be amended and as so amended be concurred in:

1. Title, line 20.

Following: "HEALTH"

Insert: "PROHIBITING A COUNTY OR OTHER LOCAL GOVERNMENT FROM IMPOSING AN ADDITIONAL INSPECTION FEE OR CHARGE UNLESS MORE THAN TWO REMEDIAL INSPECTIONS ARE NECESSARY;"

2. Page 5, line 10.

Following: "late fee"

Insert: "-- preemption of local authority -- exception"

3. Page 5, line 12.

Following: "\$75"

Strike: "\$50"

Insert: "\$75"

4. Page 5.

Following: line 25

Insert: "(3) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment."

5. Page 8, line 21.

Following: "chapter"

Insert: "in the case of a wilful violation. These costs are limited to the direct costs of investigations and other expenses"

Signed: *Dorothy Eck*  
Dorothy Eck, Chairman

*439*  
Am. Coord.

*SB 4-3-91 3:15*  
Sec. of Senate

SENATE  
HB 989

## 1 HOUSE BILL NO. 989

2 INTRODUCED BY CROMLEY

3 BY REQUEST OF THE DEPARTMENT OF HEALTH

4 AND ENVIRONMENTAL SCIENCES

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAWS RELATING TO REGULATION OF FOOD ESTABLISHMENTS;  
 8 INCREASING THE FEE FOR LICENSING OF FOOD ESTABLISHMENTS;  
 9 CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF A  
 10 PORTION OF LICENSE FEES; ALLOCATING MONEY IN THE ACCOUNT TO  
 11 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES;  
 12 CLARIFYING WHO MAY CONDUCT INVESTIGATIONS AND INSPECTIONS OF  
 13 FOOD ESTABLISHMENTS; REQUIRING MINIMUM PERFORMANCE STANDARDS  
 14 THAT MUST BE MET IN ORDER FOR THE LOCAL BOARD OF HEALTH TO  
 15 RECEIVE PAYMENTS FROM THE LOCAL BOARD INSPECTION FUND  
 16 ACCOUNT; REQUIRING PAYMENTS RECEIVED FROM THE ACCOUNT TO BE  
 17 USED ONLY FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT;  
 18 PROHIBITING FUNDS FROM THE LOCAL BOARD INSPECTION FUND  
 19 ACCOUNT FROM BEING USED TO SUPPLANT OTHER FUNDS RECEIVED BY  
 20 THE LOCAL BOARD OF HEALTH; PROHIBITING A COUNTY OR OTHER  
 21 LOCAL GOVERNMENT FROM IMPOSING AN ADDITIONAL INSPECTION FEE  
 22 OR CHARGE UNLESS MORE THAN TWO REMEDIAL INSPECTIONS ARE  
 23 NECESSARY; PROVIDING CIVIL PENALTIES FOR VIOLATION OF THE  
 24 LAWS REGULATING FOOD ESTABLISHMENTS; ALLOWING THE DEPARTMENT  
 25 AND COUNTIES TO RECOVER THE COSTS OF INVESTIGATIONS AND

1 OTHER EXPENSES IN ENFORCING THE LAWS RELATING TO FOOD  
 2 ESTABLISHMENTS; AND AMENDING SECTIONS 50-50-102, 50-50-205,  
 3 50-50-301, 50-50-302, AND 50-50-305, MCA."

## 5 STATEMENT OF INTENT

6 A statement of intent is required for this bill because  
 7 it amends 50-50-305 to grant the department of health and  
 8 environmental sciences authority to adopt rules to establish  
 9 minimum program performance standards that must be met in  
 10 order for the local board of health to receive payments from  
 11 the local board inspection fund account.

12 It is intended that minimum performance standards  
 13 include but not be limited to measures necessary to ensure  
 14 the accuracy of inspection reports and to allow statewide  
 15 standardization of inspections and the documentation of work  
 16 performed.

17 Also, it is recognized that the exact nature of  
 18 performance standards is still in the developmental stage.  
 19 Therefore, it is intended that these performance standards  
 20 be adopted only after close coordination with local health  
 21 departments and boards and extensive solicitation of  
 22 comments prior to adoption of final standards.

23  
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 **Section 1.** Section 50-50-102, MCA, is amended to read:

1       "50-50-102. Definitions. Unless the context requires  
2 otherwise, in this chapter the following definitions apply:

3       (1) "Board" means the board of health and environmental  
4 sciences, provided for in 2-15-2104.

5       (2) "Commercial establishment" means an establishment  
6 operated primarily for profit.

7       (3) "Department" means the department of health and  
8 environmental sciences, provided for in Title 2, chapter 15,  
9 part 21.

10       (4) "Establishment" means a food manufacturing  
11 establishment, meat market, food service establishment, food  
12 warehouse, frozen food plant, commercial food processor, or  
13 perishable food dealer.

14       (5) "Food" means an edible substance, beverage, or  
15 ingredient used, intended for use, or for sale for human  
16 consumption.

17       (6) "Food manufacturing establishment" means a  
18 commercial establishment and buildings or structures in  
19 connection with it used to manufacture or prepare food for  
20 sale or human consumption, but does not include milk  
21 producers' facilities, milk pasteurization facilities, milk  
22 product manufacturing plants, slaughterhouses, or meat  
23 packing plants.

24       (7) "Food service establishment" means a fixed or  
25 mobile restaurant, coffee shop, cafeteria, short-order cafe,

1 luncheonette, grille, tearoom, sandwich shop, soda fountain,  
2 food store serving food or beverage samples, food or drink  
3 vending machine, tavern, bar, cocktail lounge, nightclub,  
4 industrial feeding establishment, catering kitchen,  
5 commissary, private organization routinely serving the  
6 public, or similar place where food or drink is prepared,  
7 served, or provided to the public with or without charge.  
8 The term does not include establishments, vendors, or  
9 vending machines which sell or serve only packaged  
10 nonperishable foods in their unbroken original containers or  
11 a private organization serving food only to its members.

12       (8) "Food warehouse" means a commercial establishment  
13 and buildings or structures in connection with it used to  
14 store food, drugs, or cosmetics for distribution to retail  
15 outlets, BUT DOES NOT INCLUDE A WINE, BEER, OR SOFT DRINK  
16 WAREHOUSE THAT IS SEPARATE FROM FACILITIES WHERE BREWING  
17 OCCURS.

18       (9) "Frozen food plant" means a place used to  
19 freeze, process, or store food, including facilities used in  
20 conjunction with the frozen food plant, and a place where  
21 individual compartments are offered to the public on a  
22 rental or other basis.

23       (10) "Meat market" means a commercial establishment  
24 and buildings or structures in connection with it used to  
25 process, store, or display meat or meat products for sale to



1 the public or for human consumption.

2 ~~{9}~~(11) "Nonprofit organization" means any organization  
3 qualifying as a tax-exempt organization under 26 U.S.C. 501.

4 ~~{10}~~(12) "Perishable food dealer" means a person or  
5 commercial establishment which is in the business of  
6 purchasing and selling perishable food to the public.

7 ~~{11}~~(13) "Person" means a person, partnership,  
8 corporation, association, cooperative group, or other entity  
9 engaged in operating, owning, or offering services of an  
10 establishment."

11 **Section 2.** Section 50-50-205, MCA, is amended to read:

12 **"50-50-205. License fee -- late fee -- PREEMPTION OF**  
13 **LOCAL AUTHORITY -- EXCEPTION.** (1) For each license issued,  
14 the department shall collect a fee of ~~900~~ 975 ~~950~~ 975. It  
15 shall deposit 85% of the fees collected ~~in-the-state-special~~  
16 ~~revenue--fund--to--the-credit-of~~ under this section into the  
17 local board inspection fund account created by in  
18 50-2-108(2)--and--the--~~The~~ balance, 6% OF THE FEES INTO THE  
19 GENERAL FUND, AND 9% of the fees must-be-deposited in INTO  
20 the state-general-fund account provided for in [section 3].

21 (2) In addition to the license fee required under  
22 subsection (1), the department shall collect a late fee from  
23 any licensee who has failed to submit a license renewal fee  
24 prior to the expiration of his current license and who  
25 operates an establishment governed by this part in the next

1 licensing year. The late fee is \$25 and must be deposited in  
2 the ~~state-general-fund~~ account provided for in [section 3].

3 (3) A COUNTY OR OTHER LOCAL GOVERNMENT MAY NOT IMPOSE  
4 AN INSPECTION FEE OR CHARGE IN ADDITION TO THE FEE PROVIDED  
5 FOR IN SUBSECTION (1) UNLESS A VIOLATION OF THIS CHAPTER OR  
6 RULE PERSISTS AND IS NOT CORRECTED AFTER TWO VISITS TO THE  
7 ESTABLISHMENT."

8 **NEW SECTION.** **Section 3.** Special revenue account. There

9 is an account in the state special revenue fund. Money in  
10 the account is allocated to the department to be used to  
11 administer the provisions of this chapter and the rules  
12 adopted under it.

13 **Section 4.** Section 50-50-301, MCA, is amended to read:

14 **"50-50-301. Health officers and sanitarians to**  
15 **investigate--and make investigations and inspections.** State  
16 and local health officers~~7~~, [, sanitarians-in-training,] and  
17 registered sanitarians7--or--other-authorized-persons shall  
18 make investigations and inspections of establishments and  
19 make reports to the department as required by under rules  
20 adopted by the department."

21 **Section 5.** Section 50-50-302, MCA, is amended to read:

22 **"50-50-302. Health officers and sanitarians to have**  
23 **free access.** State and local health officers~~7~~, [,  
24 sanitarians-in-training,] and sanitarians~~7~~~~---and---other~~  
25 authorized-persons-shall-have must be provided free access

1 to establishments at all reasonable hours for the purpose of  
 2 conducting investigations and inspections as required under  
 3 this chapter."

4 **Section 6.** Section 50-50-305, MCA, is amended to read:

5 "50-50-305. Department to pay local board for  
 6 inspections and enforcement. (1) Before June 30 of each  
 7 year, the department shall pay to a local board of health,  
 8 as established under 50-2-104, 50-2-106, or 50-2-107, an  
 9 amount from the local board inspection fund account created  
 10 by in 50-2-108+2} which is that must be used only for the  
 11 purpose of inspecting establishments licensed under this  
 12 chapter and enforcing the provisions of this chapter;  
 13 provided, however, that:

14 (a) there is a functioning local board of health; and  
 15 ~~that~~

16 (b) the local board of health, local health officers,  
 17 [sanitarians-in-training,] and registered sanitarians;

18 (i) assist in the inspections and enforcement of the  
 19 provisions of this chapter and the rules adopted under it;  
 20 and

21 (ii) meet minimum program performance standards as  
 22 established under rules adopted by the department.

23 (2) The funds received by the local board of health  
 24 shall pursuant to subsection (1) must be deposited with the  
 25 appropriate local fiscal authority and ~~shall be in addition~~

1 ~~to the funds appropriated under 50-2-108 through 50-2-114~~  
 2 must be used to supplement, but not supplant, other funds  
 3 received by the local board of health that in the absence of  
 4 funding received under subsection (1) would be made  
 5 available for the same purpose.

6 (3) Funds in the local board inspection fund account  
 7 not paid to the local board of health as provided in  
 8 subsection (1) may be used by the department, within any  
 9 jurisdiction that does not qualify to receive payments from  
 10 the local board inspection fund account, to enforce the  
 11 provisions of this chapter and the rules adopted under it."

12 **NEW SECTION. Section 7.** Civil penalties -- injunctions  
 13 not barred. (1) An establishment that violates this chapter  
 14 or rules adopted by the department pursuant to this chapter  
 15 is subject to a civil penalty not to exceed \$500. ~~Each day~~  
 16 ~~of violation constitutes a separate violation.~~

17 (2) Civil action to impose penalties, as provided under  
 18 this section, does not bar injunctions to enforce compliance  
 19 with this chapter or to enforce compliance with a rule  
 20 adopted by the department pursuant to this chapter.

21 **NEW SECTION. Section 8.** Costs and expenses -- recovery  
 22 by department or county. In a civil action initiated by the  
 23 department or county under this chapter, the court may, by  
 24 petition of the department or county, order an establishment  
 25 that is found in violation of this chapter or rules adopted

1 under this chapter to pay the costs of investigations and  
2 any other expenses incurred in enforcing the provisions of  
3 this chapter IN THE CASE OF A WILLFUL VIOLATION, THESE  
4 COSTS ARE LIMITED TO THE DIRECT COSTS OF INVESTIGATIONS AND  
5 OTHER EXPENSES.

6 NEW SECTION. Section 9. Codification instruction.  
7 [Sections 3, 7, and 8] are intended to be codified as an  
8 integral part of Title 50, chapter 50, and the provisions of  
9 Title 50, chapter 50, apply to [sections 3, 7, and 8].

10 NEW SECTION. Section 10. Coordination instruction. If  
11 House Bill No. 943 is passed and approved and if it includes  
12 a section defining a sanitarian-in-training, then the  
13 bracketed language in [sections 4 through 6] is effective.

-End-

Free Conference Committee  
on House Bill 989  
Report No. 1, April 18, 1991

Page 1 of 1

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 989 and recommend that House Bill 989 (reference copy -- salmon) be amended as follows:

1. Page 5, line 14.

Strike: "\$75"

Insert: "\$60"

2. Page 5, line 18.

Strike: "6%"

Insert: "7.5%"

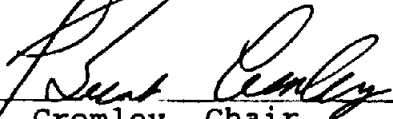
3. Page 5, line 19.

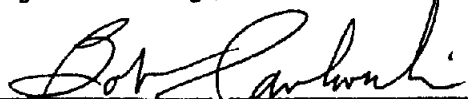
Strike: "9%"

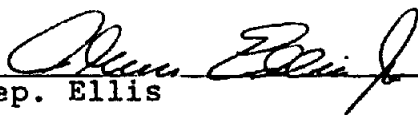
Insert: "7.5%"

And this Free Conference Committee report be adopted.

For the House:

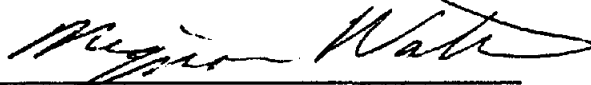
  
Rep. Cromley, Chair

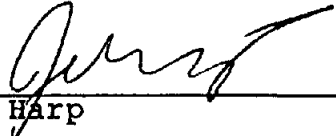
  
Rep. Pavlovich

  
Rep. Ellis

For the Senate:

  
Sen. Eck, Chair

  
Sen. Waterman

  
Sen. Harp

8134-18  
4-18-91  
ADOPT  
REJECT

FCC.R.#1  
HB 989  
831109CC.HSF

1 HOUSE BILL NO. 989  
 2 INTRODUCED BY CROMLEY  
 3 BY REQUEST OF THE DEPARTMENT OF HEALTH  
 4 AND ENVIRONMENTAL SCIENCES  
 5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 7 LAWS RELATING TO REGULATION OF FOOD ESTABLISHMENTS;  
 8 INCREASING THE FEE FOR LICENSING OF FOOD ESTABLISHMENTS;  
 9 CREATING A SPECIAL REVENUE ACCOUNT FOR THE DEPOSIT OF A  
 10 PORTION OF LICENSE FEES; ALLOCATING MONEY IN THE ACCOUNT TO  
 11 THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES;  
 12 CLARIFYING WHO MAY CONDUCT INVESTIGATIONS AND INSPECTIONS OF  
 13 FOOD ESTABLISHMENTS; REQUIRING MINIMUM PERFORMANCE STANDARDS  
 14 THAT MUST BE MET IN ORDER FOR THE LOCAL BOARD OF HEALTH TO  
 15 RECEIVE PAYMENTS FROM THE LOCAL BOARD INSPECTION FUND  
 16 ACCOUNT; REQUIRING PAYMENTS RECEIVED FROM THE ACCOUNT TO BE  
 17 USED ONLY FOR THE PURPOSE OF INSPECTION AND ENFORCEMENT;  
 18 PROHIBITING FUNDS FROM THE LOCAL BOARD INSPECTION FUND  
 19 ACCOUNT FROM BEING USED TO SUPPLANT OTHER FUNDS RECEIVED BY  
 20 THE LOCAL BOARD OF HEALTH; PROHIBITING A COUNTY OR OTHER  
 21 LOCAL GOVERNMENT FROM IMPOSING AN ADDITIONAL INSPECTION FEE  
 22 OR CHARGE UNLESS MORE THAN TWO REMEDIAL INSPECTIONS ARE  
 23 NECESSARY; PROVIDING CIVIL PENALTIES FOR VIOLATION OF THE  
 24 LAWS REGULATING FOOD ESTABLISHMENTS; ALLOWING THE DEPARTMENT  
 25 AND COUNTIES TO RECOVER THE COSTS OF INVESTIGATIONS AND

1 OTHER EXPENSES IN ENFORCING THE LAWS RELATING TO FOOD  
 2 ESTABLISHMENTS; AND AMENDING SECTIONS 50-50-102, 50-50-205,  
 3 50-50-301, 50-50-302, AND 50-50-305, MCA."

5 STATEMENT OF INTENT  
 6 A statement of intent is required for this bill because  
 7 it amends 50-50-305 to grant the department of health and  
 8 environmental sciences authority to adopt rules to establish  
 9 minimum program performance standards that must be met in  
 10 order for the local board of health to receive payments from  
 11 the local board inspection fund account.  
 12 It is intended that minimum performance standards  
 13 include but not be limited to measures necessary to ensure  
 14 the accuracy of inspection reports and to allow statewide  
 15 standardization of inspections and the documentation of work  
 16 performed.  
 17 Also, it is recognized that the exact nature of  
 18 performance standards is still in the developmental stage.  
 19 Therefore, it is intended that these performance standards  
 20 be adopted only after close coordination with local health  
 21 departments and boards and extensive solicitation of  
 22 comments prior to adoption of final standards.  
 23  
 24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 25 **Section 1.** Section 50-50-102, MCA, is amended to read:



1 "50-50-102. Definitions. Unless the context requires  
2 otherwise, in this chapter the following definitions apply:

3 (1) "Board" means the board of health and environmental  
4 sciences, provided for in 2-15-2104.

5 (2) "Commercial establishment" means an establishment  
6 operated primarily for profit.

7 ~~(2)~~(3) "Department" means the department of health and  
8 environmental sciences, provided for in Title 2, chapter 15,  
9 part 21.

10 ~~(3)~~(4) "Establishment" means a food manufacturing  
11 establishment, meat market, food service establishment, food  
12 warehouse, frozen food plant, commercial food processor, or  
13 perishable food dealer.

14 ~~(4)~~(5) "Food" means an edible substance, beverage, or  
15 ingredient used, intended for use, or for sale for human  
16 consumption.

17 ~~(5)~~(6) "Food manufacturing establishment" means a  
18 commercial establishment and buildings or structures in  
19 connection with it used to manufacture or prepare food for  
20 sale or human consumption, but does not include milk  
21 producers' facilities, milk pasteurization facilities, milk  
22 product manufacturing plants, slaughterhouses, or meat  
23 packing plants.

24 ~~(6)~~(7) "Food service establishment" means a fixed or  
25 mobile restaurant, coffee shop, cafeteria, short-order cafe,

1 luncheonette, grille, tearoom, sandwich shop, soda fountain,  
2 food store serving food or beverage samples, food or drink  
3 vending machine, tavern, bar, cocktail lounge, nightclub,  
4 industrial feeding establishment, catering kitchen,  
5 commissary, private organization routinely serving the  
6 public, or similar place where food or drink is prepared,  
7 served, or provided to the public with or without charge.  
8 The term does not include establishments, vendors, or  
9 vending machines which sell or serve only packaged  
10 nonperishable foods in their unbroken original containers or  
11 a private organization serving food only to its members.

12 (8) "Food warehouse" means a commercial establishment  
13 and buildings or structures in connection with it used to  
14 store food, drugs, or cosmetics for distribution to retail  
15 outlets, BUT DOES NOT INCLUDE A WINE, BEER, OR SOFT DRINK  
16 WAREHOUSE THAT IS SEPARATE FROM FACILITIES WHERE BREWING  
17 OCCURS.

18 ~~(7)~~(9) "Frozen food plant" means a place used to  
19 freeze, process, or store food, including facilities used in  
20 conjunction with the frozen food plant, and a place where  
21 individual compartments are offered to the public on a  
22 rental or other basis.

23 ~~(8)~~(10) "Meat market" means a commercial establishment  
24 and buildings or structures in connection with it used to  
25 process, store, or display meat or meat products for sale to

1 the public or for human consumption.

2 ~~(9)~~(11) "Nonprofit organization" means any organization  
3 qualifying as a tax-exempt organization under 26 U.S.C. 501.

4 ~~(10)~~(12) "Perishable food dealer" means a person or  
5 commercial establishment which is in the business of  
6 purchasing and selling perishable food to the public.

7 ~~(11)~~(13) "Person" means a person, partnership,  
8 corporation, association, cooperative group, or other entity  
9 engaged in operating, owning, or offering services of an  
10 establishment."

11 **Section 2.** Section 50-50-205, MCA, is amended to read:

12 "50-50-205. License fee -- late fee -- PREEMPTION OF  
13 LOCAL AUTHORITY -- EXCEPTION. (1) For each license issued,  
14 the department shall collect a fee of ~~\$\$\$~~ ~~975~~ ~~950~~ ~~975~~ ~~\$60~~.  
15 It shall deposit 85% of the fees collected ~~in-the-state~~  
16 ~~special-revenue-fund-to-the-credit--of~~ under this section  
17 into the local board inspection fund account created by in  
18 ~~50-2-108(2)-and-the-~~The balance, 6% 7.5% OF THE FEES INTO  
19 THE GENERAL FUND, AND 9% 7.5% of the fees must-be-deposited  
20 in INTO the ~~state--general--fund~~ account provided for in  
21 [section 3].

22 (2) In addition to the license fee required under  
23 subsection (1), the department shall collect a late fee from  
24 any licensee who has failed to submit a license renewal fee  
25 prior to the expiration of his current license and who

1 operates an establishment governed by this part in the next  
2 licensing year. The late fee is \$25 and must be deposited in  
3 the ~~state-general-fund~~ account provided for in [section 3].

4 (3) A COUNTY OR OTHER LOCAL GOVERNMENT MAY NOT IMPOSE  
5 AN INSPECTION FEE OR CHARGE IN ADDITION TO THE FEE PROVIDED  
6 FOR IN SUBSECTION (1) UNLESS A VIOLATION OF THIS CHAPTER OR  
7 RULE PERSISTS AND IS NOT CORRECTED AFTER TWO VISITS TO THE  
8 ESTABLISHMENT."

9 NEW SECTION. **Section 3.** Special revenue account. There  
10 is an account in the state special revenue fund. Money in  
11 the account is allocated to the department to be used to  
12 administer the provisions of this chapter and the rules  
13 adopted under it.

14 **Section 4.** Section 50-50-301, MCA, is amended to read:

15 "50-50-301. Health officers and sanitarians to  
16 ~~investigate--and~~ make investigations and inspections. State  
17 and local health officers~~,~~ [, sanitarians-in-training,] and  
18 registered sanitarians,~~--or--other-authorized-persons~~ shall  
19 make investigations and inspections of establishments and  
20 make reports to the department as required by under rules  
21 adopted by the department."

22 **Section 5.** Section 50-50-302, MCA, is amended to read:

23 "50-50-302. Health officers and sanitarians to have  
24 free access. State and local health officers~~,~~ [,  
25 sanitarians-in-training,] and sanitarians,~~---and---other~~

1 ~~authorized persons shall have~~ must be provided free access  
 2 to establishments at all reasonable hours for the purpose of  
 3 conducting investigations and inspections as required under  
 4 this chapter."

5 **Section 6.** Section 50-50-305, MCA, is amended to read:

6 "50-50-305. Department to pay local board for  
 7 inspections and enforcement. (1) Before June 30 of each  
 8 year, the department shall pay to a local board of health,  
 9 as established under 50-2-104, 50-2-106, or 50-2-107, an  
 10 amount from the local board inspection fund account created  
 11 by in 50-2-108(2)-which-is that must be used only for the  
 12 purpose of inspecting establishments licensed under this  
 13 chapter and enforcing the provisions of this chapter;  
 14 provided, however, that:

15 (a) there is a functioning local board of health; and  
 16 that

17 (b) the local board of health, local health officers,  
 18 [sanitarians-in-training,] and registered sanitarians;

19 (i) assist in the inspections and enforcement of the  
 20 provisions of this chapter and the rules adopted under it;  
 21 and

22 (ii) meet minimum program performance standards as  
 23 established under rules adopted by the department.

24 (2) The funds received by the local board of health  
 25 shall pursuant to subsection (1) must be deposited with the

1 appropriate local fiscal authority and ~~shall be in addition~~  
 2 ~~to the funds appropriated under 50-2-108 through 50-2-114~~  
 3 must be used to supplement, but not supplant, other funds  
 4 received by the local board of health that in the absence of  
 5 funding received under subsection (1) would be made  
 6 available for the same purpose.

7 (3) Funds in the local board inspection fund account  
 8 not paid to the local board of health as provided in  
 9 subsection (1) may be used by the department, within any  
 10 jurisdiction that does not qualify to receive payments from  
 11 the local board inspection fund account, to enforce the  
 12 provisions of this chapter and the rules adopted under it."

13 **NEW SECTION. Section 7.** Civil penalties -- injunctions  
 14 not barred. (1) An establishment that violates this chapter  
 15 or rules adopted by the department pursuant to this chapter  
 16 is subject to a civil penalty not to exceed \$500. ~~Each-day~~  
 17 ~~of-violation-constitutes-a-separate-violation-~~

18 (2) Civil action to impose penalties, as provided under  
 19 this section, does not bar injunctions to enforce compliance  
 20 with this chapter or to enforce compliance with a rule  
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