

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on January 23, 1995,
at 10:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 239, HB 241, HB 242
Executive Action: None.

HEARING ON HB 239

Opening Statement by Sponsor:

REP. JOAN HURDLE, HD 13, Yellowstone County said this bill was an
act clarifying and adding definitions associated with public
swimming pools and public bathing areas; requiring operators to

obtain certification; requiring that political subdivisions license their swimming pools; allowing the Department of Health and Environmental Sciences to validate licenses when the department is the inspecting agency; removing licensing fee amounts from statute; granting the Department of Health and Environmental Sciences rulemaking authority to set fees; requiring that all the license fees be deposited in the local board inspection fund account of the state special revenue fund; clarifying administrative order authority; requiring facility plan reviews for construction, repair, conversion or alteration of a public swimming pool or public bathing place; granting the Department of Health and Environmental Sciences rulemaking authority to adopt rules for facility plan review and to set review fees; granting immediate closure authority to the Department of Health and Environmental Sciences; granting administrative penalty authority to the Department of Health and Environmental Sciences and creating a special revenue account.

Proponents' Testimony:

Dale Taliaferro, Administrator of Health Services, Department of Health and Environmental Sciences said they supported this bill to improve the public health effectiveness of the licenses of public swimming pool program. **EXHIBIT 1**

Charles Sherwood distributed letters from the Great Falls City-County Health Department, Department of Health and Environmental Sciences and a letter written to Governor Racicot. **EXHIBITS 2a, 2b, 2c**

Bill Fitzgerald supports the portion of the bill which deals with small pools owned by private corporations or individuals.

Kenneth F. Smith, Montana Environmental Health Association supplied written testimony plus letters to the committee from **Ted Kybuder, Mike Fahrey, Ted Kylander, Dan Dennehy** and **Jim Carlson**. **EXHIBIT 3**

Kate Wilson, Lewis & Clark County Health Department said they support this bill especially the portion dealing with public swimming pool operators being certified by the National Swimming Pool Foundation. When pools are inspected, pool operators have little or no training as pool operators. She also supplied testimony from **Joan Bowsher** of the same department. **EXHIBIT 4**

Bill Marra said he supports this bill.

Opponents' Testimony:

Greg VanHorsen, Montana Housing Providers stated this bill expands the definition to include spas which significantly increases the number of rental properties affected by this proposed legislation. The bill also includes a new facility plan which states that when there is construction, repair, conversion,

or alteration of a public swimming pool, new provisions are contained in this bill. **EXHIBIT 5**

Jim Kembel, City of Billings said he was in favor of a certification procedure in that it definitely promotes safety in a pool environment. The standard ten days for correcting a violation will not always be appropriate. There are problems in the term "repair" when submitting a facility plan review.

EXHIBIT 6

Stuart Doggett, Montana Innkeepers Association said his association was concerned with safety and fair regulation. There are questions of certification and facility plan review. There was also concern for critical point violations and immediate closure.

Questions From Committee Members and Responses:

REP. MARSHALL asked if the requirements were such that people who have pools need some type of liability insurance. **Mr. VanHorrssen** said in his opinion it was an essential part of a business enterprise. **REP. MARSHALL** asked if anyone had a list of accidents. **Mr. Taliaferro** said there were two deaths and one skin disorder due to water conditions.

REP. ELLIS asked if there was any indication that negligent pool management had anything to do with either of the deaths. **Mr. Taliaferro** said there were violations at both of the pools.

REP. PAVLOVICH stated in 1991 the fee was increased to \$75 and now there is an elimination in this bill. **Mitzi Schwab, Department of Health and Environmental Sciences** said there was a request from many of the counties to have all of the licensed establishment fees moved to the administrative rules so the cost could be assessed and therefore dealt with.

REP. TUSS asked if there could be amendatory language which would include the rental concerns. **Mr. VanHorrssen** said that was a possibility.

REP. COCCHIARELLA said when she had worked for a swimming pool as a lifeguard, the manager of the pool left with 3 weeks remaining in the season. A person must become certified. Not being certified, would the pool need to be closed. **Mr. Taliaferro** said because the policies in operating a pool were established by a trained manager, a plan of correction would be advised.

REP. EWER asked when a facility installs a swimming pool, are there building codes in alignment with what the Department of Health requires? **Ms. Schwab** said there are national standards that are adopted by chapters. There are standards for pools. She said she did not know if they had been adopted by the State Building Codes Commission. **REP. EWER** asked if county public health departments have the ability to unilaterally close public

pools in rental and motel situations. **Ms. McIver** said public health officers, under the powers and duties may forbid assembly under unhealthful conditions. It is a very general statutory provision that can be utilized if necessary. **REP. EWER** asked if there were any cases of waterborne problems known in Montana. **Ms. McIver** said there had been some issues with cidamoniiasis problems in the past and some issues with legionella in the atmosphere of some spas in the resort areas. This is not a problem everywhere but has come up in the past.

CHAIRMAN SIMON said there were violations of the current law and current rules. He asked why do we need to change the law? What is the problem we are trying to fix? Had the current law been followed, the drowning probably would not have occurred and skin problems would not have occurred. **Mr. Taliaferro** said the law could help prevent some of these things in the future.

CHAIRMAN SIMON then said these people were in violation of the law as it currently exists. Why does the law need to be changed. What is the problem the legislature is trying to fix that can't be fixed under current law. **Mr. Taliaferro** said the most significant part is the training. Most operatives intend to operate a pool safely.

REP. MILLS asked what the cost would be to be certified, where the training will be done, and who will supply the training. **Mr. Taliaferro** said the training will be supplied by the staff members who will be trained and in turn will train others. **Ms. Schwab** said the cost would be very low. There are two staff members currently working with the swimming pool program. One is in Billings and one in Helena. They can travel and conduct regional meetings and the pool providers will be given a schedule.

Closing by Sponsor:

Sponsor closes.

HEARING ON HB 241

Opening Statement by Sponsor:

REP. BILL CAREY, HD 67, Missoula County said this bill was an act creating the Montana Cooperative Affordable Housing Act; providing for the creation of cooperative affordable housing corporations for the purpose of providing affordable housing for low and moderate income persons and households. He also supplied information on the advantages of cooperative ownership which included information on the economic advantages, limited liability, enforced savings, tax deductions, low initial entry costs and community reinvestment. This also contained information on shared maintenance responsibility, reduction of vandalism, improvement and stabilization of the surrounding

neighborhoods and repair, rehabilitation and energy savings. The social benefits were also discussed which included community involvement and leadership development, community stability and diversity, extended services and enforcement of community standards. **EXHIBIT 7**

Proponents' Testimony:

Kate Cholewa, Montana Women's Lobby said they recognized the escalating costs of housing in Montana as a growing problem. The past five years have shown escalating rents and housing costs and a shortage of housing for both purchasing and rent. Low income families headed by women in this state spend approximately 72% of their income on housing and utilities. This bill will help those who are unable to purchase their own homes.

Melissa Case, Montana People's Action said this bill provides a badly needed definition to what constitutes a cooperative in the state. She said it is hard to imagine why anybody might be opposed to this bill. This is a win, win bill which will simply provide Montanans with another method to become homeowners. In Montana's current housing climate, we need to provide citizens with every opportunity to own their homes and control their housing future. **EXHIBIT 8**

Bob Pyfer, Senior Vice President, Montana Credit Unions League supports this bill as furthering the cooperative concept. The concept has certainly helped to enhance the financial well-being of many credit union members and feels it could be effective in helping to address the affordable housing.

Lynn Moon, City of Helena said she supports this bill.

TAPE 1, SIDE B

Opponents' Testimony:

Greg VanHorssen, Montana Housing Providers said this bill does not seem necessary and would not effectuate its intended purpose. The bill would create a confused system of property ownership mixing landlord-tenant law with the law of corporations and securities. The result of the bill, while enjoyable for lawyers, would create difficulty in many landlord-tenant relationships. He further said that this bill reveals that the person living in the building has no ownership in the building at all. Instead, the entity owning the building is the corporation and the person living in the unit is a shareholder in that corporation. This individual also has a lease from the corporation allowing him or her to live in the unit. It is generally recognized that the purchaser of such an apartment is the owner of stock in the association and a tenant of the association and not the legal owner of the real estate. **EXHIBIT 9**

Questions From Committee Members and Responses:

REP. MARSHALL questioned who raises the money for the original building. **REP. CAREY** said the future residents and corporate owners. **REP. MARSHALL** then asked who puts the program together, builds the building and starts to sell stock to the residents. **REP. CAREY** said there are businesses that pre-package the co-op residents and determine the eligibility for loans. This information is then submitted to the bank and these individuals in turn get the loan. These are people who are looking for a new way to buy housing.

REP. MARSHALL asked how the shares were priced and the founders stocked. He asked if the founders were set up and were then given the majority of the stock and encouraged to start selling smaller shares to the tenants? **REP. CAREY** said the residents themselves get together and put the deal together and then it is advertised.

REP. MARSHALL said if the founders, the people who put all of this together and not doing this for a philanthropic reason, but want to make some money, they normally take the majority of the stock (whoever puts the package together), and start selling the stock at a price higher than their investment stock to the people who participate. How will all of that tie together to benefit the person who deposits \$500 and becomes a member. **REP. CAREY** said he was talking about a limited equity cooperative and not a stock corporation. If there is an opening in a limited equipment cooperative, a person must have a down payment. The cooperative may loan them the money to be able to buy in. It is not an investment to make a return it is an investment to provide for the person investing and secure affordable housing of which there is an ownership stake.

REP. LARSON stated he was totally in favor of affordable housing but would be interested in seeing a delay in this action to procure a description of how the original corporation is set up from stock platform.

REP. LARSON said he was interested in the testimony of **Mr. VanHorsen** regarding the landlord-tenant law. **REP. CAREY** said he also was confused on this issue. The whole point is to basically have the heretofore tenants become owners. The IRS code allows resident cooperatives to deduct their share of the mortgage or the corporation. If there are 20 households in a cooperative they get 1/20 of the deduction of their interest on that mortgage. The IRS indicates this is home ownership.

REP. LARSON questioned the possibility of a mobile home park owner owning the land, a cooperative organization owning several trailers in the park and asked if there are ambiguities for the owner. **REP. CAREY** said yes. He said he was referring to residents themselves owning the corporation which owns the trailer park. **REP. LARSON** then asked if there was a disagreement

with **Mr. VanHorssen's** testimony that a group could be formed for the purpose of purchasing five or six trailers and they could in fact reside in the same common trailer park as a cooperative. **REP. CAREY** said he did disagree with that theory. It could happen if the landlord was willing to sell them their trailer courts. **REP. LARSON** said his question had not been answered. If a landlord owns a trailer park what is to stop the mobile home owners from forming a cooperative and collectively purchasing and owning the trailer homes together and then presenting themselves as a block of tenants to the landlord. **REP. CAREY** said the answer was nothing.

REP. DEVANEY asked if this would be for a profit corporation. **REP. CAREY** said this was not correct. It is a non profit. Once the necessary reserves are set aside necessary for any future improvements, the dividends, if any, would go back to the resident owners.

REP. BARNETT said he was not clear on creating a mobile home park or could this function the same way as Habitat for Humanity and still be a part of the cooperative. **REP. CAREY** said yes it could work in that manner.

REP. MILLS asked if a person purchased a house or an apartment which of these would be the most expensive. **REP. CAREY** said these were different types of property. Tenants are not able to afford the rent much less buy an apartment building.

REP. ELLINGSON said as he understood the concept, equity in the corporation is developed by the members of the corporation. They are entitled, at some point, if they want to terminate from the corporation to get their share of the equity plus an amount that is set according to the by-laws as an appropriate return. However, if the value of the whole property doubles in a five year period of time they cannot walk out of the corporation and ask for the doubling of the value of their investment. In these restrictions on transfer, while they give some return on their investment, they are primarily designed to insure that the property will continue to be available for low and moderate income housing. **REP. CAREY** said this was correct.

CHAIRMAN SIMON said as he understood, the Articles of Incorporation required that cooperative interest may not be sold at more than the transferred value determined by a limited equity. Articles of Incorporation would say what the price of the various units are. That is a locked in number. In the case of this legislation, that part of ownership goes away because a person would not have a growth in equity because they can never sell their house for more than what they paid for it. **REP. CAREY** said he did not agree. This is a way for people who are not currently accumulating equity in their housing to accumulate equity. These are a group of people who have probably little or no hope of having enough down payment to buy a place of their own. This is a bridge model. **CHAIRMAN SIMON** asked if there was

a formula that sets out what the value of that unit is to be. That formula would be based probably upon mortgage costs and a number of those kinds of things. It would have little to do with the future appreciation of value of that property. There may be a property where the units may cost \$25,000 each to build, but in the future a comparable unit or replacement of that unit might cost \$100,000 per unit. Those units are worth \$100,000 each but the formula might say they are only worth \$25,000 and if a person may wish to sell his unit, it is sold for \$25,000 and consequently there is no more to be received from this unit than what was initially invested in the unit. **REP. CAREY** said that is precisely the point. It maintains the ability to afford property over time.

CHAIRMAN SIMON then said when a unit is sold in several years there is a really long line of interested people wanting to buy this unit and he would not gain anything from the sale. **REP. CAREY** said that initial purchaser would have gained a lot from this. Housing costs would have been controlled over the housing costs over all that period of time unlike a renter. Decision making powers by virtue of your vote in the corporation which would have decided what improvements would be made. A renter coming to a town 12 years ago would have had more affordable rent to pay. If there had been a housing cooperative they still have an offer and there would have been an affordable place to live.

CHAIRMAN SIMON said in the case of purchasing this stock, someone might invest a part of their savings as part of the down payment and the payment they would in turn be required to make would include some measure of their ability to regain their equity. Or, would they not be able to get that because they can't charge any more than what they are being paid. **REP. CAREY** said they would not be able to retrieve their equity out of the housing corporation. The money could be invested in some other project which would make it a return.

CHAIRMAN SIMON said that at least 80% of the limited equity in cooperative-occupied units must be occupied by members. If there are not 80% members what is done? **REP. CAREY** said a higher monthly service charge must be charged to the members who are there plus there would be a strong incentive to go out and find people to buy in. People have wanted to make money in market rate cooperatives and they have tried to say that not more than 20% of the cooperatives income can come from a source other than its members.

CHAIRMAN SIMON said some units in Billings had been converted from apartments into commercial units. Would that not be a benefit for the people in that cooperative rather than a negative. This seems to prevent that from happening. **REP. CAREY** said that is correct. This is an IRS- driven section. If there were one low income person in a building renting it out to dozens of retailers, the purpose would not have been met of affordable housing for low and moderate income people. If the ability

wanted to be maintained to deduct the share of the interest on the mortgage this would then occur.

CHAIRMAN SIMON stated further, the tenants are the owners of the corporation which then rents back to the tenant. So the tenants and the owners are mixed up. What mechanism is there for the association to evict an owner/tenant that is not cooperating with the rest of the tenants in the building. **REP. CAREY** stated the facts in section 15.

Closing by Sponsor:

Sponsor closes.

HEARING ON HB 242

Opening Statement by Sponsor:

REP. CAREY stated this bill was an act giving tenants a right to buy multiple unit residential property at the asking price before it is offered for sale to others.

Proponents' Testimony:

Melissa Case, Montana People's Action said vacancy levels in rental housing in communities are dangerously low. Families searching for a home or apartment to rent, or a space in a mobile home court to place their mobile in, are often forced to live with friends or relatives or to rent a motel while they search for housing. This bill offers a home for sale first to the family which currently occupies it. It applies only to multiple unit residential property because of the public's interest in avoiding displacement on a scale which is larger than single family displacement. This bill does not require a property owner to sell their property to the current tenant. It simply requires them to give their current tenants the opportunity to pay the asking price prior to seeking another buyer. **EXHIBIT 10**

Opponents' Testimony:

Rick Ahmann, said this bill does nothing to create new housing. It does nothing to fix the housing shortage. Under existing law, landlords do offer their property to tenants. This bill interferes with the free market system. This bill is taking away from the ability of a landlord to sell their property in a time which they reasonably could deal without this provision.

Ray Linder said he was a rental property owner. He opposed this bill because this bill extends a first right of refusal to a tenant without compensation to the owner. He said he had offered one of his rental units to his son at a favorable price. Under no circumstances should he need to extend to his tenants the

privilege which was offered to his son. This bill practically eliminates the right to trade property.

Greg VanHorssen said this bill affords such things as state planning. It does not allow an individual to look into the future with an estate to determine exactly what properties would be available because it could be required, in this bill, to offer a given item of property to tenants.

Steve Mandeville reiterated again his opposition to this bill.

Barbara Booher, Executive Director, Montana Nurse's Association said she opposed this bill. She also said a preferential treatment should not be given to tenants prior to an employee.

Candice Rutledge said she would entertain an offer from a tenant. However, emotional or financial reasons may dictate that she would choose another buyer and as a citizen of a free country she said she should have that right. This bill infringes on her freedom to sell her private property to whomever she chooses.

EXHIBIT 11

Questions From Committee Members and Responses:

REP. ELLIS said this bill infringes on the owner of a multiple unit rental either mobile homes or housing. It disallows them the opportunity to sell to a single buyer. **REP. CAREY** said this bill allows people more of chance to involve more people in the free market. It would be very beneficial for all of the communities to have an equity position in their homes. He said this bill was not trying to infringe on landlords' rights. **REP. ELLIS** then questioned if these tenants were denied an opportunity to buy. **REP. CAREY** said they, in effect, were denied the opportunity. Most people who are renting do not have the economic resources that individual landlords do.

CHAIRMAN SIMON stated if someone approached him and offered to buy his property would he be required, according to this bill, to refuse someone's offer of purchase because this property had not been offered to the residing tenant first. **REP. CAREY** said yes.

Closing by Sponsor:

Sponsor closes.

ADJOURNMENT

Adjournment: 12:00 PM.



BRUCE T. SIMON, Chairman



ALBERTA STRACHAN, Secretary

BTS/ajs

HOUSE OF REPRESENTATIVES
BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 1-23-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chair, Maj.	X		
Rep. Bob Pavlovich, Vice Chair, Min.	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

EXHIBIT 1
DATE 1-23-95
HB 239

Department of Health & Environmental Sciences
Testimony on House Bill 239
for
House Business and Labor Committee, Jan. 23, 1995

Submitted by: Dale Taliaferro, Administrator of Health Services

Mr. Chairman and members of the committee, the Department of Health & Environmental Sciences (DHES) supports HB 239 to improve the public health effectiveness of the licensed public swimming pool program. Although a few sections of 50-53, MCA requiring some health and safety provisions have been in effect since 1967, the licensure program for public swimming pools was implemented in 1992. During this process, many significant health and safety hazards have been identified and corrected, reducing the risk of illness, injury, or death by the public in these facilities. Through use of the licensure program in the past 3 years, issues were identified that need to be statutorily addressed to improve the program functionality and effectiveness.

The proposal to modify the definitions clarifies the usage of "critical point" as a required inspection type and includes definitions for "operate" and "operator" of a licensed public pool. Condominium pools are specifically identified as private pools and excluded from license requirements.

An important new provision in HB 239 is to require public swimming pool operator "certification" for equipment/facility maintenance, chemical handling practices, pool water chemistry, necessary safety equipment and usage, record keeping and other necessary operation skills. Certification will occur through National Swimming Pool Foundation classes or other state accredited training. Through the licensure and facility inspection process, many critical violations have been identified which should have been addressed by educated and trained public pool operators as an on-going process.

The proposal to include right to licensure renewal protects both pool facilities and public health agencies. For facilities, this precludes loss of an issued license unless due process is followed. For health agencies this allows flexibility to perform facility inspections during seasonally heavy bather usage rather than just before or after the license expires at the end of December.

HB 239 proposes to move statutorily set licensure fees to the administrative rules, and restrict licensure fee costs to actual cost of licensing and inspection. It also changes the distribution of the fee so that Local Health Departments doing the inspections will receive all of the fee. This proposal is supported by local health agencies, the Montana Association of County Officials, and the Montana Environmental Health Association. The Department does not anticipate any significant changes to current pool license fees, but will obtain information from

the Counties to determine actual costs and adjust the fees when necessary to assure continuance of swimming pool health and safety licensure and inspection services. Political subdivision exemption from licensure requirements will be removed by HB 239 to assure compliance and provide revenue to support continued inspection of these heavily used public facilities.

Because some counties do not enter into cooperative agreements to inspect pools, modifications have been introduced to allow DHES to validate licenses and facilities to appeal license validations directly to the Department when it is the inspection agency. Addition of immediate closure order authority is also needed for the Department when it is the inspection agency. Critical conditions justifying this action would include poor water visibility resulting in inability to see disabled swimmers on the bottom of the pool and failure to provide functional safety equipment or CPR available personnel on the premises during pool operating hours. Local health agencies already have immediate closure authority through their health officer.

Many swimming pool public health and safety problems arise from poor design, such as undersized or poorly placed circulation systems, abrupt pool slopes in diving or wading areas, insufficient consideration of the water quality (alkalinity, pH, total dissolved solids, temperature, etc.) which are expensive and usually very difficult to correct after installation. Facility public health plan review prior to new construction or significant remodeling can resolve many public health issues in the facility design and planning stage. Due to technical plan review requirements, the DHES performs most pool plan review proposals. Preliminary analysis of plan review costs are approximately \$75.00 per review.

Administrative penalties for the DHES would be authorized as alternative measures to current enforcement capabilities.

In 1994, 458 public swimming pools and spa facilities were licensed, and 84 were regulated, but not licensed. Major initiatives during 1994 were to have CPR trained personnel on-premises when life guards are not provided and complete and functional safety equipment on-premises. Two deaths were reported and at least one outbreak affecting 15 people with severe skin reactions due to improperly balanced water chemistry. With continued increases in public swimming pool and spa installations to respond to Montana's growing tourism industry, providing healthful and safe swimming conditions to the public continues as a Public Health priority.

CITY-COUNTY HEALTH DEPARTMENT



1130 17TH AVENUE SOUTH
GREAT FALLS, MONTANA 59405-4597
(406) 454-6950 FAX: (406) 454-6959

WIC PROGRAM: (406) 454-6953

BETTER BEGINNINGS: (406) 454-6954



EXHIBIT 2
DATE 1-23-95
HB 239

DATE: 14 June 1994

TO: Management -- Swimming Pool/Spa Owners and Operators.

FROM: Janet Gudatis, Registered Sanitarian *JG*

RE: State Law Requiring CPR Certified personnel on premises during all hours of pool operation.

On 15 April 1994 a form letter was sent to all pool operators inviting them to attend a pool and spa training course scheduled for 16 May 1994. In the letter, you were informed that Robert K. Stevenson, City-County Health Department, would be present to discuss State Pool Regulations and our department's closure policy (enclosed with the letter).

In the interim period, the department revised the pool closure policy. One of the major additions was the following requirement:

1. Montana Codes Annotated, 50-53-107(2b), which states "A lifeguard is not required for a privately owned public swimming pool if:
(b) one individual per shift is on the premises,
accessible to the pool, and currently certified as
competent in cardiopulmonary resuscitation by either the
American Red Cross or the American Heart Association."

During the meeting, those present were provided with the new City-County Health Department closure policy (enclosed). The above safety requirement is state law and constitutes a critical item. All pool owners must comply with the law immediately (i.e., obtain certification for an adequate number of personnel in order to meet the requirement). Your personnel should be current in CPR certification for adults, children and infants.

Certification courses can be arranged by contacting:

American Red Cross, Dick Ott, Director of Health and Safety
727-2212.

Blue Star Ambulance -- 453-0049. Cost of \$20.00/person.

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14 June 1994

Public pools, with lifeguards on duty, are not exempt from the CPR certification requirement:

1. Administrative Rules of Montana, 16.10.1524(3), which states "An individual certified in cardiopulmonary resuscitation shall be on premises at all times."

As the owner of an establishment with a pool, you should be aware of the tremendous liability associated with it. It is your responsibility to know the rules governing pool/spa operation and achieve compliance.

The tourist season is here, therefore it is in your establishment's best interest to meet the minimum requirements as soon as possible. If you have any questions, please contact me at 454-6950.

Enclosure

cc: American Red Cross
Blue Star Ambulance
Keith Bell, Water Quality Bureau
Dave Gliko, City Attorney
Pat Paul, County Attorney
Mitzi Schwab, Bureau Chief, Food & Consumer Safety Bureau
Files

\pool.let

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES
LEGAL UNIT

EXHIBIT 2
DATE 1-23-95
HB 239



COGSWELL BUILDING
1400 BROADWAY

STATE OF MONTANA

(406) 444-2630 (OFFICE)
(406) 444-1804 (FAX)

PO BOX 200901
HELENA, MONTANA 59620-0901

July 29, 1994

R.F. Clary, Jr.
Attorney at Law
P.O. Box 342
Great Falls, MT 59403

Re: Park Plaza Association

Dear Mr. Clary:

Cynthia Brooks furnished me your July 7, 1994, letter, in which you challenged this Department's interpretation that your condominium swimming pool is subject to licensure and regulation. The following is my response:

You cited § 50-53-102(6)(a), MCA, which provides:

[The definition of public swimming pool does not include] swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests; . . . (emphasis added)

Based on this statutory definition, you believe that ARM 16.10.1502, which defines privately owned public swimming pools and includes condominiums, conflicts with the statutory exemption cited above because "the occupants of true strict condominiums are private owners."

In your letter dated June 22, 1994, you indicated that Park Plaza's by-laws permit the leasing of units by the owner and, in fact, one owner at Park Plaza is currently leasing three units. Clearly, those lessees are not "owners" as contemplated by the exclusion of § 50-53-102(6)(a), MCA. There is no question that this leasing of condominium units is no different from the leasing of apartment units, which is also included in the definition of ARM 16.10.1502. Therefore, Park Plaza does not fall within the clear language of the statutory exclusion.

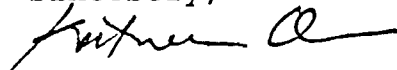
In addition, Park Plaza has thirty-five units and, presumably, has thirty-five different owners or lessees. Under your interpretation of § 50-53-102(6)(a), MCA, each of those owners, his/her family,

Letter to R.F. Clary, Jr.
July 29, 1994
Page 2

and their invited guests (possibly numbering in the hundreds) could use the pool but Park Plaza would not be required to comply with statutes and regulations governing that pool. This is not what the legislature intended when it exempted "swimming pools on private property used for swimming or bathing only by the owner, members of his family, or their invited guests" from licensure.. Whether two of the lessees are unable to use the pool is irrelevant, as those lessees have access to the pool and thus their families and invited guests also have access to the pool.

In summary, given the multiple owners, the condominium unit described by you, Park Plaza, 405 Park Drive, Great Falls, Montana, 59401, falls within the Department's licensure requirements for swimming pools.

Sincerely,



Katherine Orr
Chief Legal Counsel

KJO/cm

cc: Cynthia Brooks, Legal Counsel
Mitzi Schwab, Food and Consumer Safety Bureau Chief
Janet Gudatis, Great Falls City-County Health Department

CHARLES SHERWOOD
405 PARK DRIVE 2D
GREAT FALLS MT 59401

PHONE 406 452-6230

EXHIBIT 2
DATE 1-23-95
HB 239

August 8, 1994

The Honorable Marc Racicot
Governor of the State of Montana
State Capitol
Helena, Montana 59620

Dear Governor Racicot:

I wish to appeal to you, governor, for help in a disagreement between, on the one side, myself and my neighbors and, on the other side the Department of Health and Environmental Sciences and the City-County Health Department office in Great Falls.

This question is whether or not a certain small indoor swimming is a public pool or a private one.

The departments have decided the pool is public and therefore subject to licensure and regulation. Enclosed please find copies of letters from the departments showing their side of the matter. In this letter I will try to show our side of the matter and hope that, in the event you find it credible, you will help us gain relief from the departments decision.

The swimming pool is located inside an eight-story building at 405 Park Drive, Great Falls which also contains 35 home units. The owners here are all of retirement age but there is no age requirement for ownership. We spend thousands of dollars each year on maintenance and decore, keeping our pool in top shape and beautiful. Some years ago the City-County Health Department licensed the pool. We thought little of it then but now realize what a bad mistake it was. Each year or inspection time the regulators impose some additional requirement for signs or apparatus that is expensive and not only unnecessary but is a junky eye-sore. This is overkill for this small of a pool. There seems to be no end to these additions and is certainly troublesome. Now we get these closure policy notices which are even scary. We have always timely complied with all department demands and expect to do so in the future because the pool means so very much to us. To me, they have become threatening. Closure of this pool would just about kill some of us.

Our pool is privately owned, located on private property and used only by the owners, members of his or her family, or their invited guests. No association owns any part of part of this property. Each owner owns a percentage of the ground, building and all common areas in proportion to his or her units square footage to the whole of all units. This is the primary residence of 100 percent of all of the owners. As to the, now two, lessees here, this is not only their primary residence but, like most of us, their only residence.

The cited code in the letter from the Department of Health concerning exemption is very plain, unambiguous and forthright and exempts us from regulation.

The department's interpretation is too narrow and, I believe, not the "intent of the legislature".

The Health Department statement of pool users "possibly numbering in the hundreds" is preposterous and City-County telling us "The tourist season is here" is similar. These statements by the departments show their bent is toward some really public establishment and has no correlation to our pool. This pool is seldom used by invited guests or even family. Access to the pool is gained only by a resident unlocking two doors, each requiring a different key. I am the most frequent user of the pool (at least every other day) and over ninety percent of the time I am the only person there.

Some of us depend upon the pool for health reasons. It is absolutely vital to my existence, just ask my cardiologist. There are other owners depending on the pool for relief from pain and other ailments. That's why we maintain it here in our home and are not down at some exercise club.

Sure, we want a safe pool and we practice safety. We've had CPR classes in the past and are now scheduling classes to currently certify twelve or more of us in CPR. There is a telephone within twenty feet of the pool to use to call emergency teams through 911.

I am saddened that I can no longer enjoy peace of mind for being told, in so many words, by government officials that a regulation is a regulation and I must do this and do that immediately without these people even looking closely at a particular case.

How scary it is to think that personal situations mean nothing.

Thank you very much, governor, for any consideration you may give to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Charles Sherwood". The signature is written in dark ink and is positioned above the printed name.

Charles Sherwood

OFFICE OF THE GOVERNOR
STATE OF MONTANA

EXHIBIT 2
DATE 1-23-95
HB 239

MARC RACICOT
GOVERNOR



STATE CAPITOL
HELENA, MONTANA 59620-0801

September 9, 1994

Charles Sherwood
405 Park Drive 2D
Great Falls MT 59401

Dear Mr. Sherwood:

This is in response to your letter dated August 8, 1994 regarding the regulation of swimming pools at condominiums. This reply is somewhat dated because of the complexity of the issue. I asked the Department of Health and Environmental Sciences to review both the law and the health and safety issues surrounding this regulatory activity.

The conclusion of this review is that it appears that the law applies to condominium swimming pools where some units are not owner-occupied, and the Department does not have the authority to waive the application of the law. There is still the question of whether or not the law should restrict pools in buildings like your own. I have discussed this issue with Bob Robinson, Director of the Department of Health and Environmental Sciences, and the Department will reevaluate which pools should be covered and consider legislation that will revise the laws on swimming pool regulation.

Thank you for bringing this issue to my attention. I will ask Mr. Robinson to notify you when the Legislature schedules a hearing on proposed legislation, should you wish to testify on such a proposal.

Sincerely,

A handwritten signature of Marc Racicot in dark ink.

MARC RACICOT
Governor

cc: Bob Robinson

received
9-10-94

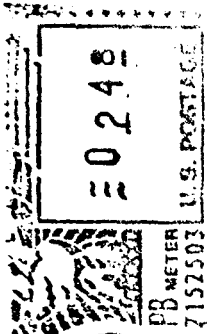
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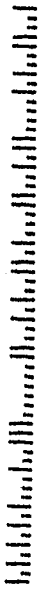
OFFICE OF THE GOVERNOR
STATE OF MONTANA
STATE CAPITOL
PO BOX 200801
HELENA, MONTANA 59620-0801



PRESORTED
FIRST CLASS



Charles Sherwood
405 Park Drive 2D
Great Falls MT 59401





County of Yellowstone

CITY-COUNTY HEALTH DEPARTMENT
COUNTY COURTHOUSE ROOM 308
(406) 258-2757 FAX (406) 258-2969PO BOX 35033
BILLINGS MT
59107-5033

January 20, 1995

State Representative Bob Pavlovich
Minority Vice-Chairman, House Business and Labor Committee
RE: House Bill 239

Dear Representative Pavlovich:

There is an important bill, House Bill 239, which is scheduled for a hearing on January 23, 1995 by the House Business and Labor Committee.

The intent of this bill is to clarify and add definitions associated with swimming pools; to require political subdivisions to license their pools; to remove license fee amounts from statutes and to require swimmer certification.

The Yellowstone City-County Health Department feels this bill will properly insure that the public's health is adequately protected and is in support of this bill.

We strongly urge your support of this bill to insure proper inspections to continue the protection of public health.

Sincerely,
Ted Kylander, R.S.
E.H. Program Manager

MISSOULA
COUNTY

MISSOULA CITY-COUNTY HEALTH DEPARTMENT


301 WEST ALDER ST

MISSOULA MT 59802-4123

(406) 523-4755

Post-it* Fax Note	7671	Date	1-20-95	# of pages	2
To	Mitzi Schwab	From	MLG:Iman		
Co./Dept.	FCS B	Co.	MCCHD		
Phone #	444-2408	Phone #	523-4755		
Fax #	444-2606	Fax #	523-4781		

TO: House Business and Labor Committee Members:
Vicki Cocchiarella, Minority Vice Chairwoman
Matt Denny
Jon Ellingson

FROM: Jim Carlson, Environmental Health Director 
Missoula City-County Health Department

DATE: January 20, 1995

SUBJECT: House Bill 239, Swimming Pools

HB 239 is scheduled for a hearing in your committee on Monday, January 23, at 8:00 AM. Missoula City-County Health Department offers the following comments on the bill:

1. MCCHD does not support language that eliminates the return of 15 percent to the state agency which licenses swimming pools. We support the reinstatement of the original language in Paragraph 4 and Paragraph 5 of Section 5 on page 4 of the bill which would continue to allow 15 percent of the license fee to be returned to Food and Consumer Safety Bureau. Without these funds the Bureau may not be able to continue their support services to local health jurisdictions which carry out inspections and enforcement of these regulations.
2. MCCHD supports the removal of the licensing fee from statute and incorporating the licensing fee in the rules to allow for fee changes as necessary to cover the actual costs of the program to the local health jurisdiction doing the inspection and enforcement.

This memorandum is being faxed to Mitzi Schwab, Chief of the Food and Consumer Safety Bureau, who will hand carry it to you. If you have questions about the bill, you can reach her at 444-2408.

Montana
Environmental
Health Association
1951

EXHIBIT 3
DATE 1-23-95
HB 239

January 23, 1995

State Representative Bruce Simon
Chairman, House Business and Labor Committee

RE: House Bill 239

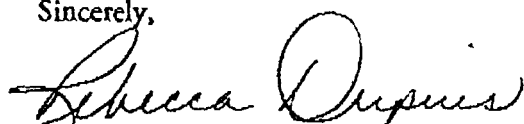
Dear Representative Simon and Committee Members:

On January 23, 1995, the House Business and Labor Committee will hold a hearing on House Bill 239. The Montana Environmental Health Association (MEHA) strongly supports the passage of this bill.

House Bill 239 addresses swimming pools. The bill removes license fee amounts from the statutes and places authority for fee establishment under the Department of Health and Environmental Sciences rule making authority. In addition, it requires pools in public subdivisions to be licensed, requires operator certification, and establishes plan review fees.

The MEHA feels that these additions and clarifications to the law currently addressing swimming pools will allow local health departments to insure that the public health is adequately protected. MEHA strongly urges your support of this bill.

Sincerely,



Rebecca Dupuis
President



7

Montana
Environmental
Health Association
1951



January 20, 1995

Representative Bruce Simon
Members House Business and Labor Committee

Dear Representative Simon and Committee Members:

The Montana Environmental Health Association has voted to support the proposed Legislation that pertain to Swimming Pools and Public Bathing Places. The vote was taken at the Annual Fall Conference Oct 4, 1994. This is House Bill 239.

The Montana Environmental Health Association is comprised of 108 Public Health Professionals that believe this legislation is in the best interest of Public Health in the State of Montana.

Our members as professionals who are responsible for environmental health recognize the importance of having trained and informed people operating pools. Training will be addressed by HB 239.

National statistics indicate that there are many water born illnesses and safety issues that will also be addressed by this bill.

We on the local level do need the support of the Montana Department of Health and Environmental Sciences to enable us to provide training, technical information, and inspections of the pools and bathing areas of the state. This bill will also provide that support.

Sincerely

A handwritten signature in cursive script that reads "Kenneth F. Smith".

Kenneth F. Smith R.S.

Treasurer
Montana Environmental Health Association



CARBON COUNTY PLANNING/SANITARIAN'S OFFICE

Michael Fahley, R.S.
Office: (406) 446-1694

P.O. Box 466
Red Lodge, Montana 59068

January 20, 1995

Montana House of Representatives
Alvin Ellis, Jr.

EXHIBIT 3

DATE 1-23-95


HB 239

RE: HB 239, Public Swimming Pools and Spas

Dear Alvin,

I would like to express my support for HB 239 which affects public swimming pools and spas. I am particularly supportive of the proposal to require pool operators to be certified. During my inspections of pools and spas here in Carbon County, I have often found that operators have no training in how to maintain or operator a pool or spa. I have also found personnel turnover to be so high that I usually find myself dealing with someone that is not trained or experienced in operating a pool or hot tub. Operating a pool and/or hot tub properly is actually a very time consuming and sophisticated task that requires training and knowledge of chemistry as well as the mechanical parts of the pool or spa, such as the filtration system. As a local sanitarian that is pressed for resources, I am supportive of placing the responsibility for training employees on the owner/operator of the establishment. Thank you for your time Alvin.

Sincerely,


Mike Fahley, R.S.
Carbon County Planning Director/Sanitarian



County of Yellowstone

CITY-COUNTY HEALTH DEPARTMENT
COUNTY COURTHOUSE ROOM 308
(406) 256-2757 FAX (406) 256-2968

PO BOX 35033
BILLINGS MT
59107-5033



January 20, 1995

State House Business & Labor Committee
State Representative Bruce Simon, Chairman

RE: House Bill 239

Dear Representative Simon and Committee Members:

This letter is to serve as written testimony for House Bill 239 which will be heard by the House Business and Labor Committee on January 23, 1995.

The Yellowstone City-County Health Department believes this bill is important because it removes condominiums from the definitions as a public swimming pool. These types of pools are hard to regulate and enforcement is difficult. The bill also sets certification requirements for operators. This would insure proper education for operators. The bill also allows the State Department of Health and Environmental Sciences to set license fees that would be commensurate with actual program costs.

Local health departments are doing the inspections of swimming pools and spas. They must be properly funded to provide adequate inspections to protect the public health. Swimming pools can be dangerous and hazardous if not properly maintained in regard to safety requirements and water chemistry requirements.

The Yellowstone City-County Health Department strongly supports House Bill 239.

Sincerely,

Ted Kylander, R.S.
Environmental Health Program Manager



BUTTE-SILVER BOW HEALTH DEPARTMENT

25 WEST FRONT
BUTTE, MONTANA 59701

406-723-3274
FAX 406-723-7245

EXHIBIT 3
DATE 1-23-95
HB 239

MEMO TO: REPRESENTATIVE BOB PAVLOVICH, HOUSE BUSINESS AND LABOR COMMITTEE
FROM: DAN DENNEHY/DAN POWERS, BUTTE-SILVER BOW HEALTH DEPARTMENT *DD. & Z*
DATE: JANUARY 20, 1995
RE: REQUEST FOR SUPPORT OF HOUSE BILL 239, SWIMMING POOLS

WE WOULD LIKE TO REQUEST YOUR SUPPORT FOR HOUSE BILL 239 CONCERNING
SWIMMING POOLS AND SWIMMING AREAS.

AS YOU MAY KNOW, SWIMMING POOLS AND SPAS CAN BECOME BREEDING AREAS FOR
MANY BACTERIAL AND VIRAL INFECTIONS IF ADEQUATE OPERATIONAL EQUIPMENT IS
NOT PROVIDED AND THEY ARE RUN BY UNTRAINED/UNCERTIFIED PERSONNEL.

THIS BILL WILL HELP TO INSURE THAT OUR POOLS AND SPAS WILL BE OPERATED IN A
SAFE AND SANITARY MANNER BY COMPETENT PERSONNEL. THIS WILL PROTECT THE
HEALTH AND WELL BEING OF OUR CITIZENS THROUGHOUT THE STATE.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

EXHIBIT 4
DATE 1-23-95
HB 239

TO: House Business and Labor Committee
FROM: Joan Bowsher, Lewis & Clark City/County Health Department
SUBJECT: House Bill 239 - Testimony in Support

Mr. Chairman and members of the Committee: The Lewis and Clark City/County Health Department appears before you in support of HB 239. This bill contains important amendments to the 1992 licensure program for public swimming pools and we urge you to pass this bill in order to improve critical health and safety aspects of this program.

Specifically, we support the inclusion of a requirement that public swimming pool operators be certified by the national swimming pool foundation or an equivalent program. In this county when pools are inspected, it is not uncommon to find pool operators who have little to no training in such things as proper pool chemistry, safety requirements, or the health risks associated with improper pool maintenance. Although we can correct deficiencies and instruct on some issues during our inspections, it is critical that our public pools be operated in a safe and healthy manner at all times and with consistency.

We would urge, however, with respect to the certification requirement, that the DHES insures that either a national swimming pool foundation class or a substitute program is readily available, conveniently located for people across the state, and not cost prohibitive. For this requirement to benefit the public, it is critical that the certification requirements are not impossible to attain.

We also support the section of the bill which would allow pool license fees to be set by administrative rule to reflect the actual costs of licensing and inspecting. However, we would urge that language be retained in the bill that guarantees that the local health agencies performing the public health inspections receive sufficient revenues from those license fees in order to cover our costs.

Finally, the section providing for a plan review prior to the construction or alteration of a public swimming pool is common sense. Many safety concerns arise from improper pool design which are difficult and expensive to correct after the fact. It is in everyone's best interests to insure that pools are designed and constructed properly and do not require costly renovation later.

Thank you for the opportunity to testify; we urge the committee to recommend passage of HB 239.

Turn in, for the record, additional comments in support of this bill from

HOUSE BILL 239
TESTIMONY OF MONTANA HOUSING PROVIDERS
HOUSE BUSINESS & LABOR COMMITTEE
MONDAY, JANUARY 23, 1995
10:00 AM ROOM 104

EXHIBIT 5
DATE 1-23-95
HB 239

Mr. Chairman, members of the Committee, my name is Greg Van Horssen and I represent a state wide group of housing providers who are in the business of providing affordable housing to many Montana citizens across the state.

The Montana Housing Providers that I represent rise in opposition to House Bill 239. The requirements of the bill would necessarily result in higher operation costs which inevitably results in higher rent requirements.

The bill expands the definition of "public swimming pool" to include spas (see Section 1) which significantly increases the number of rental properties affected by this proposed legislation. Additionally, while condominium pools are for some reason exempted from the bill, all pools maintained by the landlord for the benefit of a tenant are included.

As such, any landlord who chooses to offer such an amenity for the tenants faces two primary requirements under the bill:

- 1) the landlord must become certified by a national pool foundation (for a fee); and
- 2) the landlord must create and submit, also for a fee, something called a "facility plan."

Under the language of the bill, we don't yet know what the "facility plan" will have to include, but you can be sure that the creation of the plan will cost the landlord some money. You can also be sure that the submission of the plan for the Department's review will also require a fee (new section 10, subsection 2).

Another critical point under the bill is that a new facility plan is required (along with associated creation and review fees) every time that there

HOUSE BILL 239
TESTIMONY OF MONTANA HOUSING PROVIDERS
HOUSE BUSINESS & LABOR COMMITTEE
(Cont d.)

is "construction, repair, conversion, or alteration of a public swimming pool." It is, therefore, conceivable that one or more facility plans could be required of a property owner every season.

Costs are incurred for license applications for all pools and spas. Costs are incurred for certifications. Costs are incurred for facility plans. Costs are incurred every time there is construction, repair, conversion, or alteration.

Who bears the burden of those costs? It should be no secret to anyone that, ultimately, the costs associated with the operation of a rental property are borne by the renters. The costs in House Bill 239 are no exception.

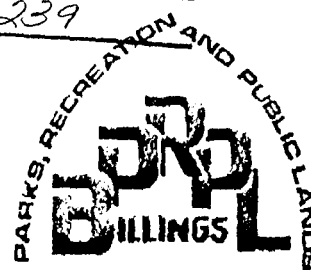
If this Committee has not already heard about the problem with affordable housing in the state, it certainly will before this legislative session is over. This bill guarantees that rental rates will increase for those tenants who enjoy property served by swimming pools or spas.

The housing providers that I represent work diligently to keep those rental figures affordable. But bills like this one make their efforts more and more difficult.

For these reasons, the Montana Housing Providers ask this Committee for a DO NOT PASS recommendation on House Bill 239.

EXHIBIT 6
DATE 1-23-95
HB 239

CITY OF BILLINGS
DEPARTMENT OF PARKS, RECREATION & PUBLIC LANDS
RECREATION DIVISION
510 NORTH BROADWAY
P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 657-8371



January 20, 1995

TO: Jim Kembel, Lobbyist for the City of Billings
FROM: Joseph E. Fedin, Recreation Superintendent *JEF*
SUBJECT: House Bill #239

The following are several points of concern to us regarding House Bill #239.

Under Section 2 regarding required certifications, I must state that I am personally in favor of a certification procedure in that it definitely promotes safety in a pool environment. The major problem I see with this, though, is that no such certification programs that I am aware of exist in the state of Montana. Since all of our pool managers are seasonal, it would be very difficult to send them out of state for this type of training. We also have a fairly good turn over rate from year to year and the cost involved could be substantial. If the state could provide somewhat localized training for the certification, I would certainly endorse the intent. I also feel that if the certification is required, it should be required at the start of employment rather than within one year after starting. This year basically defeats the purpose of certification if there are operators managing pools without being certified.

Under Section 8, I feel that a standard ten days for correcting a violation will not always be appropriate. Many times repairs can be made in less than ten days, but, depending upon the nature of the problem, sometimes it may take much longer. There are some types of repairs where a pool would have to be drained completely, or if bidding was required, it could take a substantial amount of time. I agree that if it is a hazardous or life-threatening situation, it should be closed immediately, but if not, compliance to certain types of violations could go longer than ten days without an adverse impact on the public.

Finally, under Section 10, I have some problems with the term "repair" when it comes to submitting a facility plan review. We do repairs on a daily basis and I don't feel

that this word should be included in this section. I think the intent is for new construction, major renovations, or alterations to a pool or bath house and repairs that do not involve modifications should not be included under such a facility plan review.

Thank you for considering these comments as this house bill is being debated.

JEF me

Advantages of Cooperative Ownership

In discussing the advantages to the residents, it is important to think of cooperative homeownership primarily as an alternative to renting, although more than 300,000 families who could afford individual homeownership are members of housing cooperatives. Since 75%* of families cannot afford to purchase a new home today, this leaves a relatively large segment of the population to which cooperative ownership would be an attractive alternative. In fact, many families have gone on to purchase individual homes after being members of cooperative communities for several years, during which time they have had a chance to accumulate money for a down payment, by saving through lower monthly charges than rental housing can provide.

Economic Advantages

Cooperative ownership can help stabilize housing costs. Residents' monthly housing charges go up only as a result of increases in local taxes, utilities, and other operating expenses. The principle and interest payments remain stable for many years.

Additionally, the costs associated with turnover of ownership are eliminated. The resident saves the additional money which is usually included to cover fees charged by real estate brokers, title companies, mortgage firms, and attorneys with each settlement.

The transfer of membership from the old member to the new, for example, can be made in many co-ops at a cost of as low as approximately \$50, and requires only several simple documents. Since the property is owned by a corporation which has a blanket mortgage on the entire building or development, no change in financing or real property ownership takes place. This means the interest rate can remain fixed for as many as 40 years. As a result, some cooperatives are able to charge members as low as \$75 to \$100 a month, because they are paying interest at the rate of 4% on the mortgage.

Since residents know they can influence operating costs, they often devise ways of keeping these costs lower. In effect, the housing development has a manager living in each apartment who can see a direct correlation between the monthly cost of his or her home and the need for preventive maintenance, energy conservation, reduction of vandalism, etc. It is impossible for an absentee owner to keep in such close touch with these expenses.

*Joint Center for Urban Studies of the Massachusetts Institute of Technology and Harvard University, *The Nation's Housing, 1975 to 1985*.

For more information about housing co-operatives please contact Bill Carey at
219 S. 3rd Street West Missoula, MT 59801-2523 Tel: 549-0543 (wk) 721-5008 (hm)

The co-op must have the right to approve incoming members who take the place of those leaving the cooperative, to protect the interests of the remaining residents. A credit check and a visit with the membership committee are usually included. This helps to orient the incoming member to the rights and responsibilities of co-op membership.

Sub-leasing should be permitted only for the short-term absence of a member, if allowed at all. If permitted, the length of the sub-lease agreement and the amount of payment should be determined by the cooperative. To allow sub-leasing on any scale would be a return to absentee ownership.

What It Costs To Become A Member

There are three basic approaches to the initial membership payment in housing cooperatives. These depend upon the type of housing service the initial organizers intend to provide.

In the first, the value of the membership share does not increase over time. An incoming member purchases a small membership share, usually under \$500. This amount has no real relation to the "value" of the homes the cooperative owns. Upon making payment, the member is granted right of occupancy and a vote in the cooperative corporation. When a member moves out, the membership share or loan is refunded (less any amounts due for charges). An important advantage of this method is that the cost of becoming a member remains the same over the years, so that membership stays within the reach of most people. For this reason, co-ops in this category often have long waiting lists.

The second type is a limited value increase membership plan. Under this method, the member's initial payment, which can be as low as several hundred dollars, grows over time according to a formula. Organizers of these cooperatives feel that the potential of future gain must be included as a part of their marketing program in order to attract people who are used to the concept of rising home investment values.

The third type allows the resale value of the membership share to be determined by market conditions—that is, how much prospective residents will pay for the privilege of becoming a member of that particular community.

The "equity" question has plagued cooperative organizers for many years, and remains an area of considerable discussion. The question is relatively simple: Does a co-op allow the resale of memberships on the open market, does the co-op allow the resale value to rise at the controlled rate, or does the co-op effectively "freeze" the resale value of a membership? In determining how this will be structured, it is important to determine the goals of the co-op. If the primary goal is to provide good housing that will always be available to low, moderate and middle income families, some way of limiting return is a must. Even in controlled rising value co-ops, members have found that after a few years, low to middle income families can no longer afford the cost of housing.

Limited Liability.

Since there are no individual mortgages, a member has no personal liability on the mortgage. The cooperative or community association is legally responsible for paying off the mortgage. This is especially useful in cases where the individual family's credit rating may not support purchase of a home and signing a mortgage, but will support monthly housing payments.

If a resident encounters financial difficulty, he or she must find a solution, usually from a source outside the cooperative. If the resident cannot pay the monthly charges, and cannot find help, he or she must leave the community so that homes of the other residents are not threatened. In some cases co-ops have worked side by side with credit unions to provide needed financial assistance for a short period of time.

Enforced Savings.

Responsible cooperatives provide for a portion of the rent collected to go into reserve funds. Reserve funds may include a general operating reserve, which would cover vacancies, collection losses, rapid increases because of fuel cost increases, or other extraordinary expenses.

Other reserves usually include a reserve for replacement of obsolete components of buildings and equipment, reserves for painting, and other specific purpose reserves.

The reserves are crucial in any housing development or building owned by a cooperative. They provide emergency funds which upper income homeowners often have in the bank or can easily borrow, but which families of lower income are usually unable to accumulate.

Some co-ops also include in their budget development funds which assist in expanding member services or making down payments on additional buildings.



Tax Deductions.

Members of a cooperative housing corporation may deduct their share of taxes and mortgage interest paid by the cooperative, as can other homeowners. This tax benefit is not available to renters.

Low Initial Entry Costs.

In a cooperative, the mortgage financing is usually independent, so the initial cash required to become a member may equal as little as the equivalent of one or two months' rent. The cooperative corporation most often has financing that covers the entire amount of the purchase price, including any improvements, so the individual member need only put up the money for the "membership share."

Community Reinvestment.

Cooperatively-owned housing developments can benefit the neighborhood and the locality economically. Community control of a development's budget can direct spending within the community, which has the potential for improving the overall economy of neighborhoods and communities which have been hurt by disinvestment. In areas where unemployment rates are higher than average, the potential to sustain employment may be an added factor. Cooperatives' benefits are in direct contrast to many rental developments, in which rent payments are drained away from the neighborhood and sometimes to another state, and never come back.

Physical Advantages

Shared Maintenance Responsibility

The members of a cooperative housing development have limited direct maintenance responsibilities. The cooperative association is responsible for major repairs, insurance, replacement of worn out equipment (and often appliances), and upkeep of common grounds and facilities. This community responsibility can assure a satisfactory level of maintenance throughout the housing community.

Reduction of Vandalism.

Co-op members take care of their communities. An important result of conversion from rental to cooperative ownership often has been reduction of vandalism and abuse of property.

Improvement and Stabilization of the Surrounding Neighborhood.

A change from rental to cooperative community ownership often brings with it an improvement in the nature of the facilities and surroundings. When residents realize they are their own

landlord, they often become more active in the policing of standards they would like to see for the neighborhood. Increased activity by residents of one building sometimes affects property not owned by the co-op. Individual homeowners, when they see their neighbors are improving their property, will often do the same to their own homes. A neighborhood improvement campaign can be sponsored by the cooperative corporation, in which the surrounding neighborhood residents and businesses take part. If enough cooperatively-owned buildings are strategically organized, it is possible that entire sections of a neighborhood could be revitalized, through this spillover effect. In the long run, this can mean more natural social organization, increased tax revenues, and less expenditures required of local governments.

Repair, Rehabilitation and Energy Savings

Because the residents in a well-run co-op realize the development belongs to them, anytime a window is broken they will be quick to see it is repaired, saving energy as well as money.

In either a conversion, or in an established cooperative, there may be a need for extensive rehabilitation to prolong the life of the physical development. This is the opportunity to incorporate as many energy saving plans and devices as economically feasible. Because members of the co-op know that they will own their building for years to come, there is a built-in incentive to install energy-saving systems, such as solar and wind technologies. The co-op has more incentive in this regard than does either the individual homeowner or the investor-owner of a rental building, for the simple reason that the latter two will sell their building before enough years have passed for them to reap the benefits. The resale value of such devices has not yet been proven. The same is true for water-saving devices and other adjustments and alterations that can be made to existing systems.

Social Benefits

Community Involvement And Leadership Development.

In a cooperatively owned housing development, residents participate at various levels in the decision-making process. Participation can be in the form of voting for the members of the boards of directors, or membership on a committee, or serving as a board member. At a minimum, all residents have a vote in the annual election of the board of directors. Because members of the community own it together, they make decisions themselves which affect their everyday lives. Resident self-esteem is often heightened and tenant resentment reduced when people have such control over their lives.

Community Stability and Diversity.

Residents have the security of being able to remain in their homes for as long as they wish, as long as they pay their monthly obligations and follow rules they have helped to make.

This creates residential communities which are far more stable than those made up of ordinary rental housing. In addition, community networks are strengthened, and mutual trust increases, when neighbors own their homes together. Co-op members have indicated that the possibility for interaction with people from different backgrounds and cultures was often a positive factor in their decision to become members.

Extended Services.

People living together in a housing co-op can provide themselves with additional services which they need or want. Programs and services such as athletic teams, pre-school co-ops, credit unions, tutoring, food-buying clubs, arts and crafts programs, and funeral and memorial societies often strengthen the housing services.

Enforcement of Community Standards.

In cooperatively-owned housing, residents are able to maintain standards of behavior among themselves which are impossible to impose from the outside. Because community members live in close proximity, adherence to rules and bylaws which protect the rights of all members are necessary to make life easier and more comfortable for all. When new members wish to enter the community, a membership committee meets with the applicant in a screening interview. This accomplishes several goals:

1. It gives existing residents a chance to explain to applicants the expectations all residents have of each other, including both rights and responsibilities.
2. It gives the existing residents a chance to ask the applicants questions which may be of concern to them and affect the quality of their lives.
3. It gives the applicant a chance to ask questions about the community which can easily be answered by other residents.
4. It provides the applicant with a reference point of people who can be called upon later as questions may arise.

The applicant interview provides a two-way flow of information which is usually lacking in rental housing. It also offers a point at which existing residents may reject an applicant if non-cooperative tendencies emerge as a result of the initial meeting.

Although the selection process could lead to discrimination on the basis of race, religion, or ethnic origin, co-ops have led the way in intentionally integrating their co-ops and maintaining a racial balance over the years. Cooperatives have remained integrated in many cases, although the neighborhoods around them have changed from white to black or black to white.

TESTIMONY OF MELISSA CASE
FOR MONTANA PEOPLE'S ACTION
IN SUPPORT OF HOUSE BILL 241
JANUARY 23, 1995

My name is Melissa Case and I come before you today representing Montana People's Action (MPA). With a membership and donor base of over 6,700 low- and moderate-income families in over fifty state house districts, MPA has been a key player on a broad range of housing issues over the last five years. The organization has been particularly active - and successful - in pressing for increased bank lending for housing loans in low-income neighborhoods, and in advancing the rights of Montana's 110,000 mobile home court residents.

MPA believes that there is broad agreement amongst Montanans that increasing home ownership is a worthy goal for Montana. Home ownership creates investment in our communities, expands our property tax roles, and increases the number of stakeholders in our communities and our state.

Unfortunately, for many Montanans, home ownership has become just a dream as the cost of housing in our state continues to increase at a pace which is much faster than the increase in household incomes.

House Bill 241 will assist those Montanans who choose to pool their resources in order to cooperatively pursue home ownership. It requests no public assistance to promote cooperatives. Quite simply, it establishes terms and conditions under which cooperatives can be organized.

By defining cooperatives, using terms that are generally accepted by other states, House Bill 241 will assist potential cooperative home owners in organizing. Equally important, it will assist lenders and state agencies involved in both housing lending and promoting the development of affordable housing, in defining cooperative entities and understanding how to work with these entities when it comes to lending and other forms of financial assistance.

This bill provides badly needed definition to what constitutes a cooperative in our state. It is also hard to imagine why anybody might be opposed to this bill. This is a

win-win bill which will simply provide Montanans with another method to become home owners. And in Montana's current housing climate, we need to provide our citizens with every opportunity to own their homes and control their housing future.

HOUSE BILL 241
TESTIMONY OF MONTANA HOUSING PROVIDERS
HOUSE BUSINESS AND LABOR COMMITTEE
MONDAY, JANUARY 23rd, 1995
10:00 AM, ROOM 104.

EXHIBIT 9
DATE 1-23-95
HB 241

Mr. Chairman, members of the Committee, for the record, my name is Greg Van Horssen and I represent the Montana Housing providers. The Montana Housing providers rise in opposition to House Bill 241 simply because the legislation does not seem to be necessary and would not effectuate its intended purpose. The bill would create a confused system of property "ownership" mixing landlord-tenant law with the law of corporations and securities. The result of the bill, while enjoyable for lawyers, would create difficulty in many landlord-tenant relationships.

House Bill 241, at first blush, would seem to foster the "pride of ownership." But a closer look reveals that the person living in the building has no ownership in the building at all. Instead, the entity owning the building is the corporation and the person living in the unit is a shareholder in that corporation who also has a lease from the corporation allowing him or her to live in the unit. It is generally recognized that "the purchaser of such an apartment is the owner of stock in the association and a tenant of the association, and not the legal owner of the real estate." People ex rel. McGoldrick v. Sterling, 283 App. Div. 88, 126 NYS 2d 803.

For these reasons, it is difficult to imagine that the creation of cooperative housing corporations will do anything to instill the pride of ownership. It will almost certainly, however, create confusion in certain landlord-tenant relationships.

House Bill 241 goes much farther than just allowing corporation to be formed for the ownership of real property. The Bill also allows for the formation of cooperatives for the purpose of owning personal property as well.

HOUSE BILL 241
TESTIMONY OF MONTANA HOUSING PROVIDERS
HOUSE BUSINESS AND LABOR COMMITTEE
(Cont d.)

This expansion of the scope of the corporation would create significant problems in the case where the ownership of the personal property differs from the ownership of the underlying real property.

The trailer court or mobile home park is an example of where this problem could arise. In many mobile home parks in Montana, the park owner has title to the real estate only, and he or she rents space the mobile home owners. In the event that several mobile home owners formed a cooperative housing corporation, it would be difficult for the park owner to remove a particular resident who might be responsible for non-payment of rents.

In the event that one or two individuals did not pay their space rental fees, the park owners only recourse would be to bring action against the cooperative housing corporation, instead of the parties actually responsible for non-payment. Under this set of circumstances, the park owner would be forced to proceed against all members of the cooperative instead of the one or two non-paying tenants. This would work a disservice to both the park owner and the paying members of the cooperative.

In summary, this bill would create a type of hybrid property ownership in Montana which would do little to advance the interests of Montana tenants. The Montana Landlord - Tenant law would also suffer in that this bill creates a type of property right not previously contemplated by that law.

For these reasons, the Montana Housing Providers ask this committee for a DO NOT PASS recommendation on House Bill 241.

Thank you for your time and consideration.

EXHIBIT 10 P.2
DATE 1-23-95
HB 242

TESTIMONY OF MELISSA CASE
FOR MONTANA PEOPLE'S ACTION
IN SUPPORT OF HOUSE BILL 242
JANUARY 23, 1995

My name is Melissa Case and I come before you today representing Montana People's Action (MPA). With a membership and donor base of over 6,700 low- and moderate-income families in over fifty state house districts, MPA has been a key player on a broad range of housing issues over the last five years. The organization has been particularly active - and successful - in pressing for increased bank lending for housing loans in low-income neighborhoods, and in advancing the rights of Montana's 110,000 mobile home court residents.

Montana People's Action supports House Bill 242.

Vacancy levels in rental housing in Montana's communities are dangerously low. Families searching for a home or apartment to rent, or a space in a mobile home court to place their mobile in, are often forced to live with friends or relatives, or to rent a motel while they search for housing.

Furthermore, as the cost of housing has risen dramatically, home ownership has become more difficult for many Montana families to achieve.

When apartments or mobile home courts which house multiple families come up for sale, it can often cause major disruption in the local housing market. What our communities don't need is more families out searching for affordable rental or ownership situations.

House Bill 242 simply codifies a practice which used to be the norm - offering a home (or farm) for sale first to the family which currently occupies it. Furthermore, it applies only to multiple-unity residential property because of the public's interest in avoiding displacement on a scale which is larger than single family displacement. This bill does not require a property owner to sell their property to the current tenant. It simply requires them to give their current tenants the opportunity to pay the asking price prior to seeking another buyer.

Montana People's Action supports House Bill 242 as a mechanism which will promote home ownership in our communities and provide tenants with the opportunity to become stakeholders.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

DATE 1-23-95

BILL NO. HB242 SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Rick Ahmann 701 Logan St. Helena	Self		X
Stuart Daggett	MT Manufactured Housing & RV Assoc.		
Brenda Doonan	MNA		X
RAY LINDER	Self		X
CANDACE RUTLEDGE	Self		X
J. Shultz	MT Assoc. REALTORS		X
Jerry Swenson	Self		X

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**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Business & Labor

COMMITTEE

BILL NO.

HB 242

DATE 1-23-95

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Janet Menner 13608 Hwy 200 Sun River Mt.			X
W. D. Dwyer 401-17th St Reno, NV	Montana People's Action		X
Ken L. Fischer P.O. Box 1387 G.F. MT 59403	IPM		✓
Ronda Carpenter 3208 2nd Ave So. Grt Falls	Mt Housing Providers (IPM's, MLA, WMLA)		4
Cecil Walborn 3805-7th St NE #212	Income Property Owners & Manager		X
Jim Whitaker 4020-5th Ave South M-F	IPM's		X
Linda Rea	Apartment		X
Jeri Rea P.O. Box 1106 98624	Apt		X
Ed Gomer 13608 Hwy 200 Sun River MT 59483	MLA		X
Fred Sodermark 2008 11th St SW Grt Falls, MT 59404	MLA		X
Greg Van Housen Montana Habitat	Montana Housing Providers		X
Clint Bergman 435 West Dr. Bozeman	Castle Rock Hill Housing Home Parks		X
Melissa Case	Montana Peoples Action	X	
Steve Maderille	Self		X

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Business + Labor

DATE 1-23-95

BILL NO. HB 239

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Charles Sherwood	Self	X	
J. L. Brown	Park Plaza - Ft. Jells	X	
Clint Rignolds	CASPER RAIL M.C.		X
Stuart Daggott	INT Insurers Assoc.		X

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Business & Labor ~~SUB~~-COMMITTEE DATE 1-18-95
BILL NO. 168 SPONSOR(S) SCOTT ORR

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
SCOTT WALDROW	VOL. FIREFIGHTERS	✓	
Nancy Butler	State Fund		✓
Jacqueline Denmark	Am. Ins. Assoc.		✓
Bob Gilbert	MT Vol. Firefighters ASSN	✓	
James A. Laffey	MT Fire Dist Assn	✓	
SCOTT J. ORR	HD 82	✓	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Business & Labor

COMMITTEE

BILL NO. HB 241

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Janet Neman - Sun River, MT 13608 Hwy 200	MT. Landlords Assoc.		✓
John S. Lofgren 13608 Hwy 200	Mont. Landlords Assoc.		X
Cecil Walborn 3805-7th St. NE #212 GF, MT.	Income property OWNERS + MANAGERS		X
Ronda Caputo 3208 2nd Ave S. Cirt 715	MT Housing Providers (MLA, WMLA, IPM's)		4
Don L. Lischer R.O. Box 1357 G.R. MT 59403	IPM		✓
Wade Rea PO Box 1106	Apartments		X
Jim Whitaker 4024 - 5th Ave South G.F.	IPM's		X
Ed Gerner 13608 Hwy 200 Sun River, MT 59483	MLA		X
FRED Sodomka 2008 11th St SW G.F. Falls, MT 59404	MLA		X
Greg Van Horssen Helena	Montana Housing Providers		X
Sybil Moon	City of Helena		
Clint Rymore	Castle Rock - mt. Bismarck		X
Melissa Case	Montana Peoples Action	X	
Steve Poysoff	mt manufactured Housing + RV Assoc.		

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Kate Cholewa

MT Womens Lobby

X

Jerry Swenson
B. A. P. I.

self
MT Landlords Assoc.

X

X

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<i>[Handwritten: Bill Smith, 1744]</i>	<i>[Handwritten: Bill Smith, 1744]</i>		X
<i>[Handwritten: Janet Memon, 13608 Hwy 200, Sun River, MT]</i>	<i>[Handwritten: Mt Landards Assoc]</i>		✓
<i>[Handwritten: W James Kambel]</i>	<i>[Handwritten: City of Billings]</i>		✓
<i>[Handwritten: Van L. Lecher, PO Box 1357, GF, MT 59403]</i>	<i>[Handwritten: IRM]</i>		✓
<i>[Handwritten: Linda Carpenter]</i>	<i>[Handwritten: Montana Housing Providers (MLA, WINLA, IPM's)]</i>		X
<i>[Handwritten: Cecil W. Albora, 3805-7th St NE #212, GF, MT]</i>	<i>[Handwritten: Income Property Owners & Managers]</i>		X
<i>[Handwritten: Jim Whitaker, 4020-5th Ave South, GF]</i>	<i>[Handwritten: IPM, S]</i>		X
<i>[Handwritten: Mitzi Schwab]</i>	<i>[Handwritten: DHEC]</i>	X	
<i>[Handwritten: Kenneth F Smith]</i>	<i>[Handwritten: Montana Environmental Health Association]</i>	X	
<i>[Handwritten: Fred Sodan, 2008 7th St SW, Great Falls, MT 59404]</i>	<i>[Handwritten: MLTA]</i>		X
<i>[Handwritten: Ed Gemer, 13608 Hwy 200, Sun River, MT 59483]</i>	<i>[Handwritten: MLA]</i>		X
<i>[Handwritten: Greg Van Horssen, Helena, MT]</i>	<i>[Handwritten: Montana Housing Provider]</i>		X
<i>[Handwritten: Bob Greene]</i>	<i>[Handwritten: Montana Retired Firefighter]</i>		
<i>[Handwritten: William J. Fitzgerald]</i>	<i>[Handwritten: Park Plaza Assoc]</i>	X	

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