

1

House BILL NO. 239

## 2. INTRODUCED BY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING AND ADDING DEFINITIONS ASSOCIATED WITH  
5 PUBLIC SWIMMING POOLS AND PUBLIC BATHING AREAS; REQUIRING OPERATORS TO OBTAIN  
6 CERTIFICATION; REQUIRING THAT POLITICAL SUBDIVISIONS LICENSE THEIR SWIMMING POOLS;  
7 ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO VALIDATE LICENSES  
8 WHEN THE DEPARTMENT IS THE INSPECTING AGENCY; REMOVING LICENSING FEE AMOUNTS FROM  
9 STATUTE; GRANTING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES RULEMAKING  
10 AUTHORITY TO SET FEES; REQUIRING THAT ALL THE LICENSE FEES BE DEPOSITED IN THE LOCAL  
11 BOARD INSPECTION FUND ACCOUNT OF THE STATE SPECIAL REVENUE FUND; CLARIFYING  
12 ADMINISTRATIVE ORDER AUTHORITY; REQUIRING FACILITY PLAN REVIEWS FOR CONSTRUCTION,  
13 REPAIR, CONVERSION, OR ALTERATION OF A PUBLIC SWIMMING POOL OR PUBLIC BATHING PLACE;  
14 GRANTING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES RULEMAKING AUTHORITY  
15 TO ADOPT RULES FOR FACILITY PLAN REVIEW AND TO SET REVIEW FEES; GRANTING IMMEDIATE  
16 CLOSURE AUTHORITY TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; GRANTING  
17 ADMINISTRATIVE PENALTY AUTHORITY TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL  
18 SCIENCES; CREATING A SPECIAL REVENUE ACCOUNT; AND AMENDING SECTIONS 50-53-102,  
19 50-53-106, 50-53-201, 50-53-202, 50-53-203, 50-53-206, 50-53-207, 50-53-212, AND 50-53-216,  
20 MCA."

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## STATEMENT OF INTENT

23 A statement of intent is required for this bill because it grants the department of health and  
24 environmental sciences rulemaking authority to establish licensing fees, to guide the conduct of facility plan  
25 reviews, and to set plan review fees. The licensing fees may be set only at a level necessary to cover the  
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30 considered most serious.

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3 **Section 1.** Section 50-53-102, MCA, is amended to read:

4 **"50-53-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,  
5 the following definitions apply:

6 (1) "Critical point violation" means a violation of this chapter or rules promulgated under this  
7 chapter that is more likely than other violations to pose a threat to the public health, safety, or welfare or  
8 to the environment.

9 (2) "Department" means the department of health and environmental sciences, provided for in Title  
10 2, chapter 15, part 21.

11 (2)(3) "Local board of health" or "board" means a local board as defined in 50-2-101.

12 (3)(4) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

13 (5) "Operate" means to maintain, manage, own, or be in charge of a public bathing place or public  
14 swimming pool.

15 (6) "Operator" means a person who operates a public bathing place or public swimming pool.

16 (4)(7) "Person" means a person, firm, partnership, corporation, organization, the state, or any  
17 political subdivision of the state.

18 (5)(8) "Public bathing place" means a body of water with bathhouses and related appurtenances  
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20 (6)(9) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances  
21 for swimming, bathing, or wading, including spas and natural hot water pools. The term does not include:

22 (a) swimming pools located on private property, including condominium swimming pools, used for  
23 swimming or bathing only by the owner, members of ~~his~~ the owner's family, or their invited guests; or  
24 (b) medicinal hot water baths for individual use."

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26 **Section 2.** Section 50-53-106, MCA, is amended to read:

27 **"50-53-106. Duties of pool operators -- certification required.** Each person operating a public  
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29 (1) shall operate the pool or public bathing place in a sanitary and safe manner;

30 (2) shall keep records of public health and safety information required by the department;

(3) shall furnish information to the department on forms prescribed by it; and  
(4) must be certified or become certified by the national swimming pool foundation or an equivalent  
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**Section 3.** Section 50-53-201, MCA, is amended to read:

"50-53-201. License required -- ~~exemption~~ — validation. (1) ~~Except as provided in subsection (3),~~  
a A person may not operate a public swimming pool or public bathing place without annually obtaining a  
license from the department.

(2) A separate license is required for each public swimming pool or public bathing place unless more than one public swimming pool is operated on the same premises by the same person, in which case a single license is required allowed for all public swimming pools on the premises.

(3) The state or a political subdivision of the state owning or operating a public swimming pool or public bathing place is not required to obtain a license under subsection (1) but must comply with the health and safety requirements in 50-53-101 through 50-53-109 and this part and the rules of the department.

{4} A license issued by the department is ~~not valid unless signed~~ must be validated in accordance with 50-53-206 or, in the case of an appeal, in accordance with 50-53-207, ~~in the case of an appeal~~.

**Section 4.** Section 50-53-202, MCA, is amended to read:

**"50-53-202. Application for and right to license.** (1) An application for both an original and renewal license to operate a public swimming pool or public bathing place must be made to the department, must contain the information required by the department, and must be accompanied by the fee provided for in 50-53-203.

(2) A license must be issued to an applicant who has satisfied the requirements for a license provided in 50-53-101 through 50-53-109, this part, and department rules.

(3) A renewal license must be renewed as a matter of right unless violations exist that are grounds for the cancellation or denial of a license.

{3} (4) Upon issuing a license, the department shall forward the license to the appropriate local health officer authority for validation as provided in 50-53-206."

1           **Section 5.** Section 50-53-203, MCA, is amended to read:

2           **"50-53-203. License fee and late fee -- disposition.** (1) ~~(a) Except as provided in subsection~~  
3 ~~(1)(b), each application~~ Each applicant for an original or renewal license ~~must be accompanied by a~~ shall  
4 ~~submit to the department an annual license fee of \$75 with the application.~~

5           ~~(b) The fee for an original or renewal license for a public swimming pool or public bathing place~~  
6 ~~operated in conjunction with a campground, trailer court, work camp, youth camp, hotel, motel,~~  
7 ~~roominghouse, boardinghouse, retirement home, or tourist home is \$50.~~

8           (2) The department shall adopt rules establishing license fees that do not exceed the actual cost  
9 of licensing and inspecting each type of facility.

10           (3) An operator of a public swimming pool or public bathing place who fails to renew a license by  
11 the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing  
12 place in the license year for which a renewal fee was not paid shall, upon renewal, pay to the department  
13 a late renewal fee of \$25 in addition to the renewal fee required by subsection (1). Payment of the late  
14 renewal fee does not relieve the operator of responsibility for any operation without a license.

15           ~~(3)(4) The department shall deposit 85% of the fees collected under subsection (1) in the state~~  
16 ~~special revenue fund provided in [section 13] to the credit of the local board inspection fund account~~  
17 ~~created by 50-2-108. Money deposited in the local board inspection fund account is subject to~~  
18 ~~appropriation by the legislature for the purposes of 50-53-218.~~

19           ~~(4)(5) The department shall deposit 15% of the fees collected under subsection (1) and all the fees~~  
20 ~~collected under subsection (2) (3) in an account in the state special revenue fund provided in [section 13]~~  
21 ~~to be appropriated by the legislature to the department for the enforcement of 50-53-101 through~~  
22 ~~50-53-109 and this part."~~

23

24           **Section 6.** Section 50-53-206, MCA, is amended to read:

25           **"50-53-206. Validation of license required -- validation by local officer.** (1) A license issued by the  
26 department under 50-53-101 through 50-53-109 and this part is not valid until it is signed by:

27           (a) the local health officer of the jurisdiction in which the public swimming pool or public bathing  
28 place is located;

29           (b) the sanitarian in the county in which the public swimming pool or public bathing place is located  
30 if there is no local health officer; or

1                   (c) the department, when the department is the agency conducting the inspection of the public  
2 swimming pool or public bathing place.

3                   (2) The local health officer shall, ~~Within~~ Within 15 days of receipt of the license, ~~the local health~~  
4 ~~officer, the sanitarian, or the department shall~~ validate or refuse to validate the license. Failure ~~of the officer~~  
5 to validate a license is a refusal for the purposes of 50-53-207."

6

7                   **Section 7.** Section 50-53-207, MCA, is amended to read:

8                   **"50-53-207. Refusal of health officer to validate -- appeal to board.** (1) A local health officer, ~~a~~  
9 ~~sanitarian, or the department~~ may refuse to validate a license issued by the department under 50-53-101  
10 through 50-53-109 and this part only if the officer, ~~sanitarian, or department~~ determines that the license  
11 applicant has not met the requirements for the issuance of a license under 50-53-101 through 50-53-109,  
12 this part, and the rules of the department. If the local health officer, ~~sanitarian, or department~~ refuses to  
13 validate a license, ~~then within 5 days of the decision, the officer, sanitarian, or department~~ shall notify the  
14 license applicant and ~~the officer or sanitarian shall notify~~ the department of the refusal ~~within 5 days of his~~  
15 ~~decision.~~ The notice must state the grounds for the refusal.

16                   (2) The license applicant may appeal the decision of the ~~local health officer or sanitarian~~ to the local  
17 board of health ~~or may appeal the decision of the department to the board of health and environmental~~  
18 ~~sciences~~ by filing a written notice of appeal with the ~~officer and the appropriate~~ board within 30 days of  
19 the ~~officer's~~ refusal or within 30 days of the expiration of the period for the ~~officer's~~ decision under  
20 50-53-206, whichever is first.

21                   (3) Upon filing the notice of appeal, the license applicant is entitled to a hearing before the  
22 ~~appropriate~~ board to determine the applicant's eligibility for a license under 50-53-101 through 50-53-109,  
23 this part, and the rules of the department. The hearing must be held pursuant to the contested case  
24 procedure of the Montana Administrative Procedure Act. If the board finds that the applicant is entitled to  
25 a validated license, the ~~chairman presiding officer~~ of the board shall validate the license by signing the  
26 license."

27

28                   **Section 8.** Section 50-53-212, MCA, is amended to read:

29                   **"50-53-212. Administrative enforcement -- notice -- department hearing.** (1) A license may not be  
30 denied, suspended, or canceled ~~or~~ and corrective action may not be ordered by the department unless the

1 department delivers to the license applicant or licensee a written notice of violation that contains a written  
2 statement of the facts constituting the violation and a citation to the statute or rule of the department  
3 alleged to have been violated. ~~No further~~ Further administrative enforcement action may not be taken by  
4 the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or  
5 licensee complies with the provisions of 50-53-213.

6 (2) The department may combine with any notice issued under subsection (1) an order for the  
7 suspension or cancellation of a license or for corrective action as the department finds necessary to remedy  
8 the violation evidenced in the notice. The order becomes final 10 days after service unless within that time  
9 the license applicant or licensee requests a hearing pursuant to subsection (4) or submits a corrective action  
10 plan in accordance with 50-53-213. Until issuance of a contrary decision by the department, an order  
11 concerning corrective action remains effective and enforceable.

12 (3) The department may combine with any notice or order issued under subsection (1) or (2) an  
13 order for the license applicant or licensee to appear before the department within a time specified by the  
14 department and show cause why the department should not deny, suspend, or cancel the license or  
15 otherwise order compliance with 50-53-101 through 50-53-109, this part, and the rules of the department,  
16 or the department may initiate action under any other applicable provisions of this chapter.

17 (4) A hearing request by a license applicant or licensee must be made in writing to the department  
18 and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to  
19 this section must be held in accordance with the contested case procedure of the Montana Administrative  
20 Procedure Act. Following a hearing, the department may issue an appropriate order for the prevention,  
21 abatement, or control of the violation involved or for taking other corrective action. As appropriate, an  
22 order issued as a part of a notice or after a hearing may prescribe the date by which the violation must  
23 cease and the time limits for particular action in preventing, abating, or controlling the violation. Service  
24 of notice or an order mailed by the department is complete upon mailing."

25

26 **Section 9.** Section 50-53-216, MCA, is amended to read:

27 **"50-53-216. Civil penalties -- other enforcement not barred.** (1) A Except as provided in [section  
28 12], a person who violates a provision of 50-53-101 through 50-53-109 and this part, the rules of the  
29 department implementing those sections, an order of the department, or any condition of a license issued  
30 by the department is subject to a civil penalty not to exceed \$500 for each violation.

(2) An action for collection of a civil penalty under this section does not bar an administrative penalty under [section 12], administrative enforcement under 50-53-212, an action for injunctive relief under 50-53-104, or enforcement under 50-53-109."

5 **NEW SECTION. Section 10. Facility plan review required -- rulemaking authority -- fees.** (1) Prior  
6 to the construction, repair, conversion, or alteration of a public swimming pool or public bathing place, a  
7 person intending to operate a public swimming pool or public bathing place shall submit a facility plan to  
8 the department. The department shall adopt rules regarding the content of the facility plan and the conduct  
9 of a facility plan review.

17 (3) The department may delegate to a local government the authority to conduct a facility plan  
18 review under this section when the local government has qualified personnel, as determined by department  
19 rule, to adequately review the plans for compliance with department rules and this chapter.

20 (4) If a local government conducts the facility plan review in compliance with department rules,  
21 90% of the fees collected under subsection (1) must be paid to the local government's general fund  
22 account and 10% of the fees must be paid to the state special revenue fund provided for in [section 13].

(5) If the department conducts the facility plan review, all of the fees collected under subsection (1) must be deposited into the state special revenue fund provided for in [section 13].

26        NEW SECTION. **Section 11. Critical point violations -- rulemaking authority -- closure order --**  
27 **appeal -- hearing.** (1) The department shall adopt rules specifying critical point violations. The department  
28 may order a facility to close immediately if critical point violations, as established by department rule, are  
29 found at the facility that present an immediate threat to the public health, safety, or welfare or to the  
30 environment. The licensee has the right to appeal the immediate closure order to the department, and the

1 appeal must be made within 10 days after receipt of the immediate closure order.

2 (2) On receipt of an appeal, the department shall schedule a hearing. Until issuance of a contrary  
3 decision by the department, an order concerning immediate closure remains effective and enforceable.

4 (3) After a hearing held under subsection (2), if the department finds that a critical point violation  
5 has occurred, the department shall issue an appropriate order for the prevention, abatement, or control of  
6 the violation involved or for taking other corrective action. As appropriate, an order issued after a hearing  
7 may prescribe the date by which the violation must cease and the time limits for particular action in  
8 preventing, abating, or controlling the violation. If after a hearing the department finds that a critical point  
9 violation has not occurred or is not occurring, the department shall declare the immediate closure order  
10 void.

11 (4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter  
12 4, part 6, apply to a hearing conducted pursuant to this section.

13

14 **NEW SECTION. Section 12. Administrative penalties.** (1) In lieu of proceeding under 50-53-216,  
15 the department may assess penalties of not more than \$500 a day for each violation against a person who  
16 has violated this chapter or rules promulgated under this chapter or who has failed or refused to comply  
17 with an order issued by the department pursuant to 50-53-212 or [section 11].

18 (2) In determining the amount of a penalty assessed pursuant to this section, the department shall  
19 take into account the nature, circumstances, extent, and gravity of the noncompliance, any prior history  
20 of violations, the economic benefit or savings, if any, resulting from the noncompliance, and any other  
21 factors bearing on the severity of the violation.

22 (3) An administrative penalty may not be collected pursuant to this section unless the person  
23 charged with the noncompliance is given notice and opportunity for a hearing before the department. The  
24 contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply  
25 to a hearing conducted pursuant to this section.

26 (4) A person against whom a penalty is assessed under this section may obtain judicial review of  
27 the penalty as provided for in Title 2, chapter 4, part 7.

28 (5) Administrative penalties payable under this section must be deposited in the state special  
29 revenue account provided for in [section 13].

30

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

4

5        **NEW SECTION. Section 14. Codification instruction.** (1) [Section 10] is intended to be codified  
6 as an integral part of Title 50, chapter 53, and the provisions of Title 50, chapter 53, apply to [section 10].

7        (2) [Sections 11 through 13] are intended to be codified as an integral part of Title 50, chapter 53,  
8 part 2, and the provisions of Title 50, chapter 53, part 2, apply to [sections 11 through 13].

9

-END-

## STATE OF MONTANA - FISCAL NOTE

## Fiscal Note for HB0239, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

The proposed legislation requires mandatory public swimming pool operator certification, removes licensure exemption from political subdivision pools, transfers the 15% of state license fee portion to county grants, adds facility license right to renewal, adds facility plan review requirement and fee, adds department closure power based on critical violations, adds administrative order penalty, and other clarifying language.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point for determining any fiscal impact due to this proposed legislation.
2. Swimming pool license fees of \$75 and \$50, currently provided in statute, will remain the same under administrative rules to be implemented during FY96 and FY97.
3. The current swimming pool license fee revenue of 85% for county inspections and 15% for state licensing support will be changed to 100% county inspections support. The amount which will go from state licensing support to county inspections support is estimated to be approximately \$3,800 in FY96 and \$4,100 in FY97.
4. Annually, 35 facilities will apply for plan review. Plan review fees will be set at \$75 by administrative rule, based upon an average cost of \$25/hour and an average of 3 hours to complete a plan review. Total annual revenue expected from these activities is \$2,625 (i.e. 35 x \$75). The activities for plan review will partially offset the activities which will not be funded at the state level due to sending all swimming pool license fees to the county and retaining none at the state level.
5. Approximately 120 political subdivision owned and operated public swimming pools which are currently exempt will need to be licensed. The license fee would be \$75. Additional annual revenue from these facilities would be \$9,000.

FISCAL IMPACT:Expenditures:

	FY96	FY97
	<u>Difference</u>	<u>Difference</u>
Operating Expenses (Swimming Pool)	(3,800)	(4,100)
Operating Expenses (Plan Review)	2,625	2,625
Grants to Counties (Swimming Pool)	<u>12,800</u>	<u>13,100</u>
Total	11,625	11,625

Funding:

State Special Revenue (Fees)	11,625	11,625
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Revenues:

State Special Revenue (02)	11,625	11,625
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

County inspection program expenditures should not increase because the required number of pool facility inspections remains the same. New pool facilities continue to be licensed with fee revenues to cover the cost of performing inspections. Removing the exemption from licensure for political subdivision pools will provide county health department revenues to cover the costs of performing these required inspections for which there are currently no grant revenues.

*Dave Lewis* 1-24-95  
 DAVE LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

*Joan Hurdle*  
 JOAN HURDLE, PRIMARY SPONSOR DATE  
 Fiscal Note for HB0239, as introduced  
 HB 239

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2       ~~(3) shall furnish information to the department on forms prescribed by it; and~~  
3       ~~(4) must be certified or become certified by the national swimming pool foundation or an equivalent~~  
4       ~~department approved certification program within 1 year after the operator's date of employment or by~~  
5       ~~October 1, 1996, whichever is later.~~"

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3 (1)(b), each application Each applicant for an original or renewal license must be accompanied by a shall  
4 submit to the department an annual license fee of \$75 with the application.

5           (b) The fee for an original or renewal license for a public swimming pool or public bathing place  
6 operated in conjunction with a campground, trailer court, work camp, youth camp, hotel, motel,  
7 roominghouse, boardinghouse, retirement home, or tourist home is \$50.

8           (2) The department shall adopt rules establishing license fees that do not exceed the actual cost  
9 of licensing and inspecting each type of facility.

10           (3) An operator of a public swimming pool or public bathing place who fails to renew a license by  
11 the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing  
12 place in the license year for which a renewal fee was not paid shall, upon renewal, pay to the department  
13 a late renewal fee of \$25 in addition to the renewal fee required by subsection (1). Payment of the late  
14 renewal fee does not relieve the operator of responsibility for any operation without a license.

15           (3)(4) The department shall deposit 85% of the fees collected under subsection (1) in the state  
16 special revenue fund provided in [section 13] to the credit of the local board inspection fund account  
17 created by 50-2-103. Money deposited in the local board inspection fund account is subject to  
18 appropriation by the legislature for the purposes of 50-53-218.

19           (4)(5) The department shall deposit 15% of the fees collected under subsection (1) and all the fees  
20 collected under subsection (2) [3] in an account in the state special revenue fund provided in [section 13]  
21 to be appropriated by the legislature to the department for the enforcement of 50-53-101 through  
22 50-53-109 and this part."

23  
24           **Section 6.** Section 50-53-206, MCA, is amended to read:

25           **"50-53-206. Validation of license required validation by local officer.** (1) A license issued by the  
26 department under 50-53-101 through 50-53-109 and this part is not valid until it is signed by:

27           (a) the local health officer of the jurisdiction in which the public swimming pool or public bathing  
28 place is located;

29           (b) the sanitarian in the county in which the public swimming pool or public bathing place is located  
30 if there is no local health officer; or

(e) the department, when the department is the agency conducting the inspection of the public swimming pool or public bathing place.

(2) The local health officer shall, within Within 15 days of receipt of the license, the local health officer, the sanitarian, or the department shall validate or refuse to validate the license. Failure of the officer to validate a license is a refusal for the purposes of 50-53-207."

~~Section 7. Section 50.53.207, MCA, is amended to read:~~

~~"50 53 207. Refusal of health officer to validate — appeal to board.~~ (1) A local health officer, a sanitarian, or the department may refuse to validate a license issued by the department under 50 53 101 through 50 53 109 and this part only if the officer, sanitarian, or department determines that the license applicant has not met the requirements for the issuance of a license under 50 53 101 through 50 53 109, this part, and the rules of the department. If the local health officer, sanitarian, or department refuses to validate a license, then within 5 days of the decision, the officer, sanitarian, or department shall notify the license applicant and the officer or sanitarian shall notify the department of the refusal within 5 days of his decision. The notice must state the grounds for the refusal.

(2) The license applicant may appeal the decision of the local health officer or sanitarian to the local board of health or may appeal the decision of the department to the board of health and environmental sciences by filing a written notice of appeal with the officer and the appropriate board within 30 days of the officer's refusal or within 30 days of the expiration of the period for the officer's decision under 50-53-206, whichever is first.

(3) Upon filing the notice of appeal, the license applicant is entitled to a hearing before the appropriate board to determine the applicant's eligibility for a license under 50-53-101 through 50-53-109, this part, and the rules of the department. The hearing must be held pursuant to the contested case procedure of the Montana Administrative Procedure Act. If the board finds that the applicant is entitled to a validated license, the chairman presiding officer of the board shall validate the license by signing the license."

**Section 8.** Section 50.53.212, MCA, is amended to read:

~~"50-53-212. Administrative enforcement—notice—department hearing. (1) A license may not be denied, suspended, or canceled or and corrective action may not be ordered by the department unless the~~

1 department delivers to the license applicant or licensee a written notice of violation that contains a written  
2 statement of the facts constituting the violation and a citation to the statute or rule of the department  
3 alleged to have been violated. No further Further administrative enforcement action may not be taken by  
4 the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or  
5 licensee complies with the provisions of 50-53-213.

6 (2) The department may combine with any notice issued under subsection (1) an order for the  
7 suspension or cancellation of a license or for corrective action as the department finds necessary to remedy  
8 the violation evidenced in the notice. The order becomes final 10 days after service unless within that time  
9 the license applicant or licensee requests a hearing pursuant to subsection (4) or submits a corrective action  
10 plan in accordance with 50-53-213. Until issuance of a contrary decision by the department, an order  
11 concerning corrective action remains effective and enforceable.

12 (3) The department may combine with any notice or order issued under subsection (1) or (2) an  
13 order for the license applicant or licensee to appear before the department within a time specified by the  
14 department and show cause why the department should not deny, suspend, or cancel the license or  
15 otherwise order compliance with 50-53-101 through 50-53-109, this part, and the rules of the department,  
16 or the department may initiate action under any other applicable provisions of this chapter.

17 (4) A hearing request by a license applicant or licensee must be made in writing to the department  
18 and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to  
19 this section must be held in accordance with the contested case procedure of the Montana Administrative  
20 Procedure Act. Following a hearing, the department may issue an appropriate order for the prevention,  
21 abatement, or control of the violation involved or for taking other corrective action. As appropriate, an  
22 order issued as a part of a notice or after a hearing may prescribe the date by which the violation must  
23 cease and the time limits for particular action in preventing, abating, or controlling the violation. Service  
24 of notice or an order mailed by the department is complete upon mailing."

25

26 **Section 9.** Section 50-53-216, MCA, is amended to read:

27 **50-53-216. Civil penalties—other enforcement not barred.** (1) A Except as provided in [section  
28 12], a person who violates a provision of 50-53-101 through 50-53-109 and this part, the rules of the  
29 department implementing these sections, an order of the department, or any condition of a license issued  
30 by the department is subject to a civil penalty not to exceed \$500 for each violation.

1           (2) An action for collection of a civil penalty under this section does not bar an administrative  
2       penalty under [section 12], administrative enforcement under 50-53-212, an action for injunctive relief  
3       under 50-53-104, or enforcement under 50-53-109."

4

5       **NEW SECTION. Section 10. Facility plan review required — rulemaking authority — fees.** (1) Prior  
6       to the construction, repair, conversion, or alteration of a public swimming pool or public bathing place, a  
7       person intending to operate a public swimming pool or public bathing place shall submit a facility plan to  
8       the department. The department shall adopt rules regarding the content of the facility plan and the conduct  
9       of a facility plan review.

10           (2) The department shall adopt rules for fees for facility plan reviews. The rules must set forth fees  
11       that do not exceed the actual costs of conducting a facility plan review. The rules must provide for a  
12       schedule of fees to be paid by the applicant for a plan review to the department for deposit in the special  
13       revenue account provided for in [section 13] or to the local government general fund account of the  
14       reviewing local government authority. The fees must be based on the complexity of the proposed facility,  
15       including but not limited to the size of the facility, the type of proposed treatment equipment, and the  
16       proposed water and sewage systems.

17           (3) The department may delegate to a local government the authority to conduct a facility plan  
18       review under this section when the local government has qualified personnel, as determined by department  
19       rule, to adequately review the plans for compliance with department rules and this chapter.

20           (4) If a local government conducts the facility plan review in compliance with department rules,  
21       90% of the fees collected under subsection (1) must be paid to the local government's general fund  
22       account and 10% of the fees must be paid to the state special revenue fund provided for in [section 13].

23           (5) If the department conducts the facility plan review, all of the fees collected under subsection  
24       (1) must be deposited into the state special revenue fund provided for in [section 13].

25

26       **NEW SECTION. Section 11. Critical point violations — rulemaking authority — closure order —**  
27       **appeal — hearing.** (1) The department shall adopt rules specifying critical point violations. The department  
28       may order a facility to close immediately if critical point violations, as established by department rule, are  
29       found at the facility that present an immediate threat to the public health, safety, or welfare or to the  
30       environment. The licensee has the right to appeal the immediate closure order to the department, and the

1 ~~appeal must be made within 10 days after receipt of the immediate closure order.~~

2 ~~(2) On receipt of an appeal, the department shall schedule a hearing. Until issuance of a contrary~~  
3 ~~decision by the department, an order concerning immediate closure remains effective and enforceable.~~

4 ~~(3) After a hearing held under subsection (2), if the department finds that a critical point violation~~  
5 ~~has occurred, the department shall issue an appropriate order for the prevention, abatement, or control of~~  
6 ~~the violation involved or for taking other corrective action. As appropriate, an order issued after a hearing~~  
7 ~~may prescribe the date by which the violation must cease and the time limits for particular action in~~  
8 ~~preventing, abating, or controlling the violation. If after a hearing the department finds that a critical point~~  
9 ~~violation has not occurred or is not occurring, the department shall declare the immediate closure order~~  
10 ~~void.~~

11 ~~(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter~~  
12 ~~4, part 6, apply to a hearing conducted pursuant to this section.~~

13

14 **NEW SECTION. Section 12. Administrative penalties.** ~~(1) In lieu of proceeding under 50-53-216,~~  
15 ~~the department may assess penalties of not more than \$500 a day for each violation against a person who~~  
16 ~~has violated this chapter or rules promulgated under this chapter or who has failed or refused to comply~~  
17 ~~with an order issued by the department pursuant to 50-53-212 or [section 11].~~

18 ~~(2) In determining the amount of a penalty assessed pursuant to this section, the department shall~~  
19 ~~take into account the nature, circumstances, extent, and gravity of the noncompliance, any prior history~~  
20 ~~of violations, the economic benefit or savings, if any, resulting from the noncompliance, and any other~~  
21 ~~factors bearing on the severity of the violation.~~

22 ~~(3) An administrative penalty may not be collected pursuant to this section unless the person~~  
23 ~~charged with the noncompliance is given notice and opportunity for a hearing before the department. The~~  
24 ~~contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply~~  
25 ~~to a hearing conducted pursuant to this section.~~

26 ~~(4) A person against whom a penalty is assessed under this section may obtain judicial review of~~  
27 ~~the penalty as provided for in Title 2, chapter 4, part 7.~~

28 ~~(5) Administrative penalties payable under this section must be deposited in the state special~~  
29 ~~revenue account provided for in [section 13].~~

30

1        ~~NEW SECTION. Section 13. State special revenue account.~~ There is an account in the state special  
2        ~~revenue fund. Money in the account is allocated to the department to be used to administer the provisions~~  
3        ~~of this chapter and the rules adopted under it.~~

4

5        ~~NEW SECTION. Section 14. Codification instruction.~~ (1) ~~Section 10~~ is intended to be codified  
6        as an integral part of Title 50, chapter 53, and the provisions of Title 50, chapter 53, apply to ~~section 10~~.

7        (2) ~~Sections 11 through 13~~ are intended to be codified as an integral part of Title 50, chapter 53,  
8        part 2, and the provisions of Title 50, chapter 53, part 2, apply to ~~sections 11 through 13~~.

9

-END-

~~STATEMENT OF INTENT~~

23 A statement of intent is required for this bill because it grants the department of health and  
24 environmental sciences rulemaking authority to establish licensing fees, to guide the conduct of facility plan  
25 reviews, and to set plan review fees. The licensing fees may be set only at a level necessary to cover the  
26 cost of conducting licensing and inspection activities. The rules must cover the application for and conduct  
27 of facility plan reviews. The plan review fees may cover only the cost to the department or the county,  
28 as applicable, of reviewing facility plans for public swimming pools and public bathing places. The  
29 department of health and environmental sciences shall also establish, by rule, those violations that are  
30 considered most serious.

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

2

3 **Section 1.** Section 50-53-102, MCA, is amended to read:

4 **"50-53-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,  
5 the following definitions apply:

6 (1) "Critical point violation" means a violation of this chapter or rules promulgated under this  
7 chapter that is more likely than other violations to pose a threat to the public health, safety, or welfare or  
8 to the environment.

9 (2)(1) "Department" means the department of health and environmental sciences, provided for in  
10 Title 2, chapter 15, part 21.

11 (2)(3)(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

12 (3)(4)(3) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

13 (5)(4) "Operate" means to maintain, manage, own, or be in charge of a public bathing place or  
14 public swimming pool.

15 (6)(5) "Operator" means a person who operates a public bathing place or public swimming pool.

16 (4)(7)(6) "Person" means a person, firm, partnership, corporation, organization, the state, or any  
17 political subdivision of the state.

18 (5)(8)(7) "Public bathing place" means a body of water with bathhouses and related appurtenances  
19 operated for the public.

20 (6)(9)(8) "Public swimming pool" means an artificial pool and bathhouses and related  
21 appurtenances for swimming, bathing, or wading, including spas and natural hot water pools. The term  
22 does not include:

23 (a) swimming pools located on private property, including condominium swimming pools, used for  
24 swimming or bathing only by the owner, members of his the owner's family, or their invited guests; or

25 (b) medicinal hot water baths for individual use."

26

27 **Section 2.** Section 50-53-106, MCA, is amended to read:

28 **"50-53-106. Duties of pool operators—certification required.** Each person operating a public  
29 swimming pool or public bathing place shall:

30 (1) shall operate the pool or public bathing place in a sanitary and safe manner;

1                   (2) ~~shall keep records of public health and safety information required by the department;~~  
2                   (3) ~~shall furnish information to the department on forms prescribed by it; and~~  
3                   (4) ~~must be certified or become certified by the national swimming pool foundation or an equivalent~~  
4                   ~~department approved certification program within 1 year after the operator's date of employment or by~~  
5                   ~~October 1, 1996, whichever is later."~~

6

7                   **Section 3.** Section 50-53-201, MCA, is amended to read:

8                   **"50-53-201. License required—exemption—validation.** (1) Except as provided in subsection (3),  
9                   a ~~A~~ person may not operate a public swimming pool or public bathing place without annually obtaining a  
10                  license from the department.

11                  (2) A separate license is required for each public swimming pool or public bathing place unless  
12                  more than one public swimming pool is operated on the same premises by the same person, in which case  
13                  a single license is required ~~allowed~~ for all public swimming pools on the premises.

14                  (3) The state or a political subdivision of the state owning or operating a public swimming pool or  
15                  public bathing place is ~~not~~ required to obtain a license under subsection (1) but must comply with the health  
16                  and safety requirements in 50-53-101 through 50-53-109 and this part and the rules of the department.

17                  (4) A license issued by the department is ~~not~~ valid unless signed ~~must be validated~~ in accordance  
18                  with 50-53-206 or, in the case of an appeal, in accordance with 50-53-207, in the case of an appeal."

19

20                  **Section 4.** Section 50-53-202, MCA, is amended to read:

21                  **"50-53-202. Application for and right to license.** (1) An application for both an original and renewal  
22                  license to operate a public swimming pool or public bathing place must be made to the department, must  
23                  contain the information required by the department, and must be accompanied by the fee provided for in  
24                  50-53-203.

25                  (2) A license must be issued to an applicant who has satisfied the requirements for a license  
26                  provided in 50-53-101 through 50-53-109, this part, and department rules.

27                  (3) A renewal license must be renewed as a matter of right unless violations exist that are grounds  
28                  for the cancellation or denial of a license.

29                  (3) (4) Upon issuing a license, the department shall forward the license to the appropriate local  
30                  health officer ~~authority~~ for validation as provided in 50-53-206."

1           **Section 5. Section 50-53-203, MCA, is amended to read:**

2           **"50-53-203. License fee and late fee disposition.** (1) (a) Except as provided in subsection  
3 (1)(b), each application Each applicant for an original or renewal license must be accompanied by a shall  
4 submit to the department an annual license fee of \$75 with the application.

5           (b) The fee for an original or renewal license for a public swimming pool or public bathing place  
6 operated in conjunction with a campground, trailer court, work camp, youth camp, hotel, motel,  
7 roominghouse, boardinghouse, retirement home, or tourist home is \$50.

8           (2) The department shall adopt rules establishing license fees that do not exceed the actual cost  
9 of licensing and inspecting each type of facility.

10           (3) An operator of a public swimming pool or public bathing place who fails to renew a license by  
11 the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing  
12 place in the license year for which a renewal fee was not paid shall, upon renewal, pay to the department  
13 a late renewal fee of \$25 in addition to the renewal fee required by subsection (1). Payment of the late  
14 renewal fee does not relieve the operator of responsibility for any operation without a license.

15           (3)(4) The department shall deposit 85% of the fees collected under subsection (1) in the state  
16 special revenue fund provided in [section 13] to the credit of the local board inspection fund account  
17 created by 50-2-108. Money deposited in the local board inspection fund account is subject to  
18 appropriation by the legislature for the purposes of 50-53-218.

19           (4)(5) The department shall deposit 15% of the fees collected under subsection (1) and all the fees  
20 collected under subsection (2) (3) in an account in the state special revenue fund provided in [section 13]  
21 to be appropriated by the legislature to the department for the enforcement of 50-53-101 through  
22 50-53-109 and this part."

24           **Section 6. Section 50-53-206, MCA, is amended to read:**

25           **"50-53-206. Validation of license required validation by local officer.** (1) A license issued by the  
26 department under 50-53-101 through 50-53-108 and this part is not valid until it is signed by:

27           (a) the local health officer of the jurisdiction in which the public swimming pool or public bathing  
28 place is located;

29           (b) the sanitarian in the county in which the public swimming pool or public bathing place is located  
30 if there is no local health officer; or

1           (e) the department, when the department is the agency conducting the inspection of the public  
2 swimming pool or public bathing place.

3           (2) The local health officer shall, within Within 15 days of receipt of the license, the local health  
4 officer, the sanitarian, or the department shall validate or refuse to validate the license. Failure of the officer  
5 to validate a license is a refusal for the purposes of 50-53-207."

6

7           Section 7. Section 50-53-207, MCA, is amended to read:

8           "50-53-207. Refusal of health officer to validate—appeal to board. (1) A local health officer, a  
9 sanitarian, or the department may refuse to validate a license issued by the department under 50-53-101  
10 through 50-53-109 and this part only if the officer, sanitarian, or department determines that the license  
11 applicant has not met the requirements for the issuance of a license under 50-53-101 through 50-53-109,  
12 this part, and the rules of the department. If the local health officer, sanitarian, or department refuses to  
13 validate a license, then within 5 days of the decision, the officer, sanitarian, or department shall notify the  
14 license applicant and the officer or sanitarian shall notify the department of the refusal within 5 days of his  
15 decision. The notice must state the grounds for the refusal.

16           (2) The license applicant may appeal the decision of the local health officer or sanitarian to the local  
17 board of health or may appeal the decision of the department to the board of health and environmental  
18 sciences by filing a written notice of appeal with the officer and the appropriate board within 30 days of  
19 the officer's refusal or within 30 days of the expiration of the period for the officer's decision under  
20 50-53-206, whichever is first.

21           (3) Upon filing the notice of appeal, the license applicant is entitled to a hearing before the  
22 appropriate board to determine the applicant's eligibility for a license under 50-53-101 through 50-53-109,  
23 this part, and the rules of the department. The hearing must be held pursuant to the contested case  
24 procedure of the Montana Administrative Procedure Act. If the board finds that the applicant is entitled to  
25 a validated license, the chairman presiding officer of the board shall validate the license by signing the  
26 license."

27

28           Section 8. Section 50-53-212, MCA, is amended to read:

29           "50-53-212. Administrative enforcement—notice—department hearing. (1) A license may not be

30 denied, suspended, or canceled or and corrective action may not be ordered by the department unless the

1 department delivers to the license applicant or licensee a written notice of violation that contains a written  
2 statement of the facts constituting the violation and a citation to the statute or rule of the department  
3 alleged to have been violated. No further Further administrative enforcement action may not be taken by  
4 the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or  
5 licensee complies with the provisions of 50-53-213.

6 (2) The department may combine with any notice issued under subsection (1) an order for the  
7 suspension or cancellation of a license or for corrective action as the department finds necessary to remedy  
8 the violation evidenced in the notice. The order becomes final 10 days after service unless within that time  
9 the license applicant or licensee requests a hearing pursuant to subsection (4) or submits a corrective action  
10 plan in accordance with 50-53-213. Until issuance of a contrary decision by the department, an order  
11 concerning corrective action remains effective and enforceable.

12 (3) The department may combine with any notice or order issued under subsection (1) or (2) an  
13 order for the license applicant or licensee to appear before the department within a time specified by the  
14 department and show cause why the department should not deny, suspend, or cancel the license or  
15 otherwise order compliance with 50-53-101 through 50-53-109, this part, and the rules of the department,  
16 or the department may initiate action under any other applicable provisions of this chapter.

17 (4) A hearing request by a license applicant or licensee must be made in writing to the department  
18 and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to  
19 this section must be held in accordance with the contested case procedure of the Montana Administrative  
20 Procedure Act. Following a hearing, the department may issue an appropriate order for the prevention,  
21 abatement, or control of the violation involved or for taking other corrective action. As appropriate, an  
22 order issued as a part of a notice or after a hearing may prescribe the date by which the violation must  
23 cease and the time limits for particular action in preventing, abating, or controlling the violation. Service  
24 of notice or an order mailed by the department is complete upon mailing."

25

26 **Section 9.** Section 50-53-216, MCA, is amended to read:

27 "50-53-216. Civil penalties—other enforcement not barred. (1) A Except as provided in Section  
28 121, a person who violates a provision of 50-53-101 through 50-53-109 and this part, the rules of the  
29 department implementing those sections, an order of the department, or any condition of a license issued  
30 by the department is subject to a civil penalty not to exceed \$500 for each violation.

1       (2) An action for collection of a civil penalty under this section does not bar an administrative  
2       penalty under [section 12], administrative enforcement under 50-53-212, an action for injunctive relief  
3       under 50-53-104, or enforcement under 50-53-109."

5       **NEW SECTION. Section 10. Facility plan review required — rulemaking authority — fees.** (1) Prior  
6       to the construction, repair, conversion, or alteration of a public swimming pool or public bathing place, a  
7       person intending to operate a public swimming pool or public bathing place shall submit a facility plan to  
8       the department. The department shall adopt rules regarding the content of the facility plan and the conduct  
9       of a facility plan review.

10       (2) The department shall adopt rules for fees for facility plan reviews. The rules must set forth fees  
11       that do not exceed the actual costs of conducting a facility plan review. The rules must provide for a  
12       schedule of fees to be paid by the applicant for a plan review to the department for deposit in the special  
13       revenue account provided for in [section 13] or to the local government general fund account of the  
14       reviewing local government authority. The fees must be based on the complexity of the proposed facility,  
15       including but not limited to the size of the facility, the type of proposed treatment equipment, and the  
16       proposed water and sewage systems.

17       (3) The department may delegate to a local government the authority to conduct a facility plan  
18       review under this section when the local government has qualified personnel, as determined by department  
19       rule, to adequately review the plans for compliance with department rules and this chapter.

20       (4) If a local government conducts the facility plan review in compliance with department rules,  
21       90% of the fees collected under subsection (1) must be paid to the local government's general fund  
22       account and 10% of the fees must be paid to the state special revenue fund provided for in [section 13].

23       (5) If the department conducts the facility plan review, all of the fees collected under subsection  
24       (1) must be deposited into the state special revenue fund provided for in [section 13].

26       **NEW SECTION. Section 11. Critical point violations — rulemaking authority — closure order —**  
27       appeal — hearing. (1) The department shall adopt rules specifying critical point violations. The department  
28       may order a facility to close immediately if critical point violations, as established by department rule, are  
29       found at the facility that present an immediate threat to the public health, safety, or welfare or to the  
30       environment. The licensee has the right to appeal the immediate closure order to the department, and the

1 ~~appeal must be made within 10 days after receipt of the immediate closure order.~~

2 ~~(2) On receipt of an appeal, the department shall schedule a hearing. Until issuance of a contrary~~  
3 ~~decision by the department, an order concerning immediate closure remains effective and enforceable.~~

4 ~~(3) After a hearing held under subsection (2), if the department finds that a critical point violation~~  
5 ~~has occurred, the department shall issue an appropriate order for the prevention, abatement, or control of~~  
6 ~~the violation involved or for taking other corrective action. As appropriate, an order issued after a hearing~~  
7 ~~may prescribe the date by which the violation must cease and the time limits for particular action in~~  
8 ~~preventing, abating, or controlling the violation. If after a hearing the department finds that a critical point~~  
9 ~~violation has not occurred or is not occurring, the department shall declare the immediate closure order~~  
10 ~~void.~~

11 ~~(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter~~  
12 ~~4, part 6, apply to a hearing conducted pursuant to this section.~~

13

14 **NEW SECTION. Section 12. Administrative penalties.** ~~(1) In lieu of proceeding under 50-53-216,~~  
15 ~~the department may assess penalties of not more than \$500 a day for each violation against a person who~~  
16 ~~has violated this chapter or rules promulgated under this chapter or who has failed or refused to comply~~  
17 ~~with an order issued by the department pursuant to 50-53-212 or [section 11].~~

18 ~~(2) In determining the amount of a penalty assessed pursuant to this section, the department shall~~  
19 ~~take into account the nature, circumstances, extent, and gravity of the noncompliance, any prior history~~  
20 ~~of violations, the economic benefit or savings, if any, resulting from the noncompliance, and any other~~  
21 ~~factors bearing on the severity of the violation.~~

22 ~~(3) An administrative penalty may not be collected pursuant to this section unless the person~~  
23 ~~charged with the noncompliance is given notice and opportunity for a hearing before the department. The~~  
24 ~~contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply~~  
25 ~~to a hearing conducted pursuant to this section.~~

26 ~~(4) A person against whom a penalty is assessed under this section may obtain judicial review of~~  
27 ~~the penalty as provided for in Title 2, chapter 4, part 7.~~

28 ~~(5) Administrative penalties payable under this section must be deposited in the state special~~  
29 ~~revenue account provided for in [section 13].~~

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

4

5        **NEW SECTION. Section 14. Codification instruction.** (1) ~~Section 10~~ is intended to be codified  
6 as an integral part of Title 50, chapter 53, and the provisions of Title 50, chapter 53, apply to ~~section 10~~.

7        (2) ~~Sections 11 through 13~~ are intended to be codified as an integral part of Title 50, chapter 53,  
8 part 2, and the provisions of Title 50, chapter 53, part 2, apply to ~~sections 11 through 13~~.

9

-END-