

## 1 SENATE BILL NO. 61

2 INTRODUCED BY KEATING

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO FOOD  
6 ESTABLISHMENTS; GRANTING LOCAL BOARDS OF HEALTH THE POWER TO ADOPT PLAN REVIEW FEES;  
7 CLARIFYING AND ADDING DEFINITIONS ASSOCIATED WITH FOOD ESTABLISHMENTS; REVISING THE  
8 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES' RULEMAKING AUTHORITY; CLARIFYING  
9 CIVIL PENALTIES ASSOCIATED WITH CIVIL ACTIONS; PROVIDING FOR VALIDATION AND EXPIRATION  
10 OF LICENSES AND A SCHEDULE OF FEES; PROVIDING FOR A VOLUNTARY FOOD MANAGER  
11 CERTIFICATION PROGRAM, INCLUDING FEES; PROVIDING FOR FOOD ESTABLISHMENT PLAN REVIEW  
12 AND FEES; GRANTING IMMEDIATE CLOSURE AUTHORITY FOR AND DEFINING "CRITICAL POINT  
13 VIOLATIONS"; PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND ADMINISTRATIVE  
14 PENALTIES; AMENDING SECTIONS 50-2-116, 50-50-102, 50-50-103, 50-50-109, 50-50-201, 50-50-205,  
15 AND 50-50-207, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."  
16

## 17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because additional rulemaking authority, beyond that  
19 granted by 50-50-103, is being granted to the department of public health and human services. This  
20 rulemaking authority will allow the department to adopt rules to protect the public health by adopting  
21 requirements for food establishments in the following areas:

- 22 (1) safe and sanitary facilities and systems;
- 23 (2) fire codes, life safety codes, and building codes;
- 24 (3) prevention of injury and the spread of disease;
- 25 (4) operation and maintenance in a safe and sanitary manner;
- 26 (5) food coverage, handling, processing, equipment, and utensils;
- 27 (6) licensure and establishment of a schedule of license fees;
- 28 (7) implementation of staggered license expiration dates;
- 29 (8) establishment of a voluntary food manager certification program, including course fees;
- 30 (9) plan review and the establishment of plan review fees;

- 1 (10) reimbursement of local governments for inspections and enforcement;  
2 (11) establishment of critical point violations; and  
3 (12) other rules necessary to implement the provisions of Title 50, chapter 50.

4

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

6

7 **Section 1.** Section 50-2-116, MCA, is amended to read:

8 **"50-2-116. Powers and duties of local boards.** (1) Local boards shall:

9 (a) appoint a local health officer who is a physician or a person with a master's degree in public  
10 health or the equivalent and with appropriate experience, as determined by the department, and shall fix  
11 the health officer's salary;

12 (b) elect a presiding officer and other necessary officers;

13 (c) employ necessary qualified staff;

14 (d) adopt bylaws to govern meetings;

15 (e) hold regular meetings quarterly and hold special meetings as necessary;

16 (f) supervise destruction and removal of all sources of filth that cause disease;

17 (g) guard against the introduction of communicable disease;

18 (h) supervise inspections of public establishments for sanitary conditions;

19 (i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent  
20 than state standards for the control and disposal of sewage from private and public buildings that is not  
21 regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for  
22 granting variances from the minimum requirements that are identical to standards promulgated by the board  
23 of environmental review and must provide for appeal of variance decisions to the department as required  
24 by 75-5-305.

25 (2) Local boards may:

26 (a) quarantine persons who have communicable diseases;

27 (b) require isolation of persons or things that are infected with communicable diseases;

28 (c) furnish treatment for persons who have communicable diseases;

29 (d) prohibit the use of places that are infected with communicable diseases;

30 (e) require and provide means for disinfecting places that are infected with communicable diseases;

1 (f) accept and spend funds received from a federal agency, the state, a school district, or other  
2 persons;

3 (g) contract with another local board for all or a part of local health services;

4 (h) reimburse local health officers for necessary expenses incurred in official duties;

5 (i) abate nuisances affecting public health and safety or bring action necessary to restrain the  
6 violation of public health laws or rules;

7 (j) adopt necessary fees to administer regulations for the control and disposal of sewage from  
8 private and public buildings. The fees must be deposited with the county treasurer.

9 (k) adopt rules that do not conflict with rules adopted by the department:

10 (i) for the control of communicable diseases;

11 (ii) for the removal of filth that might cause disease or adversely affect public health;

12 (iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;

13 (iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might  
14 endanger human lives;

15 (v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that  
16 do not discharge an effluent directly into state waters and that are not required to have an operating permit  
17 as required by rules adopted under 75-5-401; and

18 (vi) for the regulation, as necessary, of the practice of tattooing, which may include registering  
19 tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that  
20 are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes  
21 of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and  
22 inserting indelible colors.

23 (l) adopt plan review fees for establishments regulated under Title 50, chapter 50, that do not  
24 exceed the actual costs of conducting the review."

25  
26 **Section 2.** Section 50-50-102, MCA, is amended to read:

27 **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following  
28 definitions apply:

29 (1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not  
30 potentially hazardous foods.

1 (2) (a) "Commercial establishment" means an establishment operated primarily for profit.

2 (b) The term does not include a farmer's market.

3 (3) "Critical point violation" means a violation of this chapter or rules promulgated under this  
 4 chapter that is more likely than other violations to pose an immediate threat to the public health, safety,  
 5 or welfare or to the environment.

6 ~~(3)~~(4) "Department" means the department of public health and human services provided for in  
 7 2-15-2201.

8 ~~(4)~~(5) (a) "Establishment" means an operation that stores, prepares, processes, manufactures,  
 9 packages, serves, vends, or otherwise provides food for human consumption and includes a food  
 10 manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant,  
 11 ~~commercial food processor, or perishable food dealer, or food salvage dealer.~~

12 (b) The term does not include vendors of only raw, unprocessed produce.

13 ~~(5)~~(6) "Farmer's market" means a farm premises, a roadside stand owned and operated by a  
 14 farmer, or an organized market authorized by the appropriate municipal or county authority.

15 ~~(6)~~(7) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for  
 16 sale for human consumption.

17 (8) "Food manager" means a person who maintains, manages, owns, or is in charge of an  
 18 establishment.

19 ~~(7)~~(9) "Food manufacturing establishment" means a commercial establishment and buildings ~~or~~  
 20 structures, or vehicles in connection with it used to manufacture ~~or~~ process, prepare, or deliver food for  
 21 sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities,  
 22 milk product manufacturing plants, slaughterhouses, or meat packing plants.

23 (10) (a) "Food salvage dealer" means an establishment that repackages food for distribution or sale  
 24 to the public or that offers salvaged foods to the public for sale or human consumption.

25 (b) The term does not include nonprofit food banks.

26 ~~(8)~~(11) (a) "Food service establishment" means a place where food or drink is prepared, served, or  
 27 provided to the public, with or without charge, and includes the following types of operations: fixed or  
 28 mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop,  
 29 soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar,  
 30 cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, or private

1 organization routinely serving the public, ~~or similar place where food or drink is prepared, served, or~~  
2 ~~provided to the public with or without charge.~~

3 (b) The term does not include:

4 (i) establishments, vendors, or vending machines that sell or serve only packaged, nonperishable  
5 foods in their unbroken, original containers;

6 (ii) vending machines that sell or serve bulk, nonperishable foods; or

7 (iii) a private organization serving food only to its members.

8 ~~(9)(12)~~ (a) "Food warehouse" means a commercial establishment and buildings or structures in  
9 connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

10 (b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities  
11 where brewing occurs.

12 ~~(10)(13)~~ "Frozen food plant" means a place used to freeze, process, or store food, including  
13 facilities used in conjunction with the frozen food plant, and a place where individual compartments are  
14 offered to the public on a rental or other basis.

15 ~~(11)(14)~~ (a) "Meat market" means a commercial establishment and buildings or structures in  
16 connection with it used to process, store, or display meat or meat products for sale to the public or for  
17 human consumption.

18 (b) The term does not include custom cutters or wild game processors who cut and wrap  
19 customer-provided meat for the same customer.

20 ~~(12)(15)~~ "Nonprofit organization" means any organization qualifying as a tax-exempt organization  
21 under 26 U.S.C. 501.

22 ~~(13)(16)~~ "Perishable food dealer" means a person or commercial establishment that is in the  
23 business of ~~purchasing and selling~~ retailing perishable food to the public.

24 ~~(14)(17)~~ "Person" means a person, partnership, corporation, association, cooperative group, or  
25 other entity engaged in operating, owning, or offering services of an establishment.

26 ~~(15)(18)~~ (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a form  
27 capable of supporting:

28 (i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

29 (ii) the growth and toxin production of *Clostridium botulinum*.

30 (b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or

1 heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

2 (c) The term does not include:

3 (i) an air-cooled, hard-boiled egg with intact shell;

4 (ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24°C  
5 (75°F);

6 (iii) a food with a water activity (aw) value of 0.85 or less;

7 (iv) a food in an unopened hermetically sealed container that is commercially processed to achieve  
8 and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

9 (v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid  
10 and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium  
11 botulinum cannot occur.

12 ~~(16)~~(19) (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters,  
13 marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration  
14 (pH) of 4.6 or below when measured at 24°C (75°F) and that are aseptically processed, packaged, and  
15 sealed.

16 (b) The term does not include:

17 (i) tomatoes or food products containing tomatoes; or

18 (ii) any other food substrate or product preserved by any method other than that described in  
19 subsection ~~(16)(a)~~ (19)(a).

20 ~~(17)~~(20) "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at a  
21 farmer's market in their natural state that are not packaged and labeled and are not:

22 (a) cooked;

23 (b) canned;

24 (c) preserved, except for drying;

25 (d) combined with other food products; or

26 (e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures."

27

28 **Section 3.** Section 50-50-103, MCA, is amended to read:

29 "50-50-103. **Department authorized to adopt rules.** (1) To protect public health, the department  
30 may adopt rules relating to the construction and operation of establishments defined in 50-50-102;

1 ~~including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls,~~  
 2 ~~construction and fixtures, and housekeeping. The rules may include the following:~~

3 (a) requirements to ensure that establishments have safe and sanitary facilities and systems,  
 4 including drinking water, sewage disposal, and solid waste disposal systems;

5 (b) requirements to prevent injury and the spread of disease and illness in establishments;

6 (c) requirements to ensure that establishments are operated and maintained in a safe and sanitary  
 7 manner;

8 (d) requirements associated with food coverage, handling, processing, equipment, and utensils;

9 (e) requirements for licensing of establishments and establishing a schedule of license fees based  
 10 on the aggregate statewide costs of licensing and regulating establishments. The license fees may include  
 11 a minimal base fee related to the fixed costs of inspecting, licensing, and regulating establishments and may  
 12 include costs based on the risk to public health posed by the particular establishment, the capacity of the  
 13 establishment, the complexity of the establishment operation or operations, and other relevant factors;

14 (f) requirements to implement staggered license expiration dates;

15 (g) requirements to establish a voluntary food manager certification program and to set course fees  
 16 that do not exceed actual costs;

17 (h) requirements for plan review of establishments based on the size and complexity of the  
 18 proposed establishment, the type of water and sewage disposal to service the establishment, the type and  
 19 magnitude of remodeling efforts, the type of food product and process, and other relevant factors and  
 20 setting plan review fees that do not exceed the actual costs of conducting the review;

21 (i) requirements for reimbursing local governments for inspections and enforcement of this chapter;

22 (j) requirements to establish critical point violations; and

23 (k) any other rules necessary to implement the provisions of this chapter.

24 (2) (a) The department and local health authorities may not adopt rules prohibiting the sale of baked  
 25 goods and preserves by nonprofit organizations or by persons at farmer's markets.

26 (b) The department and local health authorities may not require that foods sold pursuant to this  
 27 subsection (2) be prepared in certified or commercial kitchens."

28  
 29 **Section 4.** Section 50-50-109, MCA, is amended to read:

30 **"50-50-109. Civil penalties -- ~~injunctions~~ other enforcement not barred.** (1) An establishment that

1 violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty  
 2 not to exceed \$500 for each violation. Each day of violation is a separate violation for the purposes of this  
 3 section.

4 (2) ~~Civil~~ A civil action to impose penalties, as provided under this section, does not bar  
 5 administrative enforcement under [section 11], administrative penalties under [section 12], or injunctions  
 6 to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department  
 7 pursuant to this chapter."

8

9 **Section 5.** Section 50-50-201, MCA, is amended to read:

10 **"50-50-201. License required.** (1) Except as provided in 50-50-202, a person operating an  
 11 establishment shall procure an annual license from the department.

12 (2) A separate license is required for each establishment, but if more than one type of  
 13 establishment is operated on the same premises and under the same management, only one license is  
 14 required.

15 (3) Only one license is required for a person owning and operating one or more vending machines.

16 (4) ~~Before a license may be issued by the department it must be validated by the local health~~  
 17 ~~officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.~~

18 A license issued by the department is not valid unless signed in accordance with 50-50-214."

19

20 **Section 6.** Section 50-50-205, MCA, is amended to read:

21 **"50-50-205. License fee -- late fee -- preemption of local authority -- exception.** (1) For each  
 22 license issued, the department shall collect a fee of \$60 or a fee that is adopted by an administrative rule  
 23 that provides a schedule of fees that is based on the aggregate statewide costs of licensing and regulating  
 24 establishments. ~~‡~~ The department shall deposit 85% of the fees collected under this section into the local  
 25 board inspection fund account created in 50-2-108, 7.5% of the fees into the general fund, and 7.5% of  
 26 the fees into the special revenue account provided for in 50-50-216.

27 (2) In addition to the license fee required under subsection (1), the department shall collect a late  
 28 fee from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ the  
 29 licensee's current license and who operates an establishment governed by this part in the next licensing  
 30 year. The late fee is \$25 and must be deposited in the special revenue account provided for in 50-50-216.



1 (3) A county or other local government may not impose an inspection fee or charge in addition to  
2 the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected  
3 after two visits to the establishment."  
4

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

6 "**50-50-207. Expiration date of license.** ~~Licenses expire~~ (1) Except as provided in subsection (2),  
7 each license expires on December 31 following the date of issue unless canceled for cause.

8 (2) The department may amend or issue licenses to provide for staggered license expiration dates.  
9 The department may provide for initial license terms of greater than 12 months but no more than 23  
10 months in adopting staggered license expiration dates, and the license fee must be prorated accordingly.  
11 Upon expiration of a license that has been amended or issued to provide a term of greater than 12 months  
12 and subsequent payment of the required license fee, the license must be renewed for a period of 12 months  
13 commencing on the day following the expiration date of the amended or issued license."  
14

15 **NEW SECTION. Section 8. Voluntary food manager certification program -- fees.** The department  
16 may establish and set fees for a voluntary food manager certification program for training and certifying  
17 food managers. All of the fees collected under this section must be deposited in the special revenue  
18 account provided for in 50-50-216 and may be used only for the purposes of implementing and  
19 administering the voluntary food manager certification program.  
20

21 **NEW SECTION. Section 9. Plan review -- fees.** (1) Whenever an establishment is constructed or  
22 remodeled, an existing structure is converted to use as an establishment, or an existing establishment adds  
23 a new type of operation different from the operation for which plans were initially submitted to and  
24 approved by the department, the plans must be submitted to the department for review and approval before  
25 construction, remodeling, conversion, or addition for the new operation begins. The department may  
26 establish plan review fees that do not exceed the actual costs to the department in conducting  
27 establishment plan review. If the department conducts the plan review, the plan review fees established  
28 by the department must be charged.

29 (2) The department may delegate to a local health department the authority to conduct an  
30 establishment plan review under this chapter when the local health department has qualified personnel to

1 adequately review the plans for compliance with department rules and this chapter. The local health  
2 department may establish plan review fees that do not exceed the actual costs to the local health  
3 department in conducting establishment plan reviews. If the local health department conducts the plan  
4 review, the plan review fees established by the local health department must be charged.

5 (3) If the department conducts the establishment plan review, all of the fees collected under  
6 subsection (1) must be deposited in the special revenue account provided for in 50-50-216.

7 (4) If the local health department conducts the establishment plan review in compliance with the  
8 department's rules, all of the fees collected under subsection (2) must be deposited in an account  
9 designated by the local health department.

10  
11 **NEW SECTION. Section 10. Critical point violations -- closure order -- hearing.** (1)

12 Notwithstanding other provisions of this chapter, the department may issue a closure order to an  
13 establishment to close immediately if a critical point violation is found at the establishment. The order is  
14 effective immediately upon receipt by the person to whom it is directed, unless the department provides  
15 otherwise.

16 (2) Notice of the order must indicate that it is a closure order, must specify the critical point  
17 violation that presents the immediate threat, and must contain a written statement of the facts constituting  
18 the violation.

19 (3) Upon issuing an order, the department shall fix a place and time for a hearing, not later than  
20 5 working days after issuing the order, unless the person to whom the order is directed requests a later  
21 time. The department may deny a request for a later time if it finds that the person to whom the order is  
22 directed is not complying with the order. The hearing must be conducted in the manner specified in  
23 [section 11].

24 (4) After a hearing held pursuant to subsection (3), if the department finds that a critical point  
25 violation has occurred, the department shall issue an appropriate order in the manner specified in [section  
26 11]. Within 5 working days after the hearing, the department shall affirm, modify, or set aside the order  
27 of the department. An action for review of the order may be initiated using the contested case provisions  
28 of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If a hearing is held  
29 under this section, it must be held in Lewis and Clark County or the county in which the alleged violation  
30 occurred.

1 (5) Until issuance of a contrary decision by the department, an order concerning immediate closure  
2 remains effective and enforceable.

3  
4 **NEW SECTION. Section 11. Administrative enforcement -- notice of violation -- hearing.** (1) If the  
5 department believes that a violation of a provision of this chapter, a rule adopted pursuant to this chapter,  
6 an order issued pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant  
7 to this chapter has occurred, it may serve a written notice of the violation on the alleged violator or the  
8 violator's agent personally or by certified mail. The notice must specify the statute, rule, order, or license  
9 condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The  
10 notice may include an order to take necessary corrective action, including ceasing the violation within a  
11 period of time stated in the order. The order becomes final unless, within 10 days after the notice is  
12 received, the person named as the respondent in the order requests in writing a hearing before the  
13 department. Until issuance of a contrary decision by the department, an order issued pursuant to this  
14 section remains effective and enforceable.

15 (2) A hearing requested by the respondent must be held in accordance with the contested case  
16 provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If, after  
17 a hearing, the department finds that a violation has occurred, the department shall issue an appropriate  
18 order for the prevention, abatement, or control of the violation involved or the taking of other corrective  
19 action. An order issued as part of a notice of violation or after a hearing may prescribe the date by which  
20 the violation must cease and the time limits for a particular action in preventing, abating, or controlling the  
21 violation. If, after a hearing, the department finds that a violation has not occurred or is not occurring, the  
22 department shall declare the order void.

23 (3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department  
24 may take action under another applicable provision of this chapter.

25 (4) Section 50-50-210 does not apply to an action taken by the department pursuant to this  
26 section.

27  
28 **NEW SECTION. Section 12. Administrative penalties -- appeals -- venue for hearing.** (1) An  
29 establishment that violates an order issued by the department pursuant to [section 10 or 11] may be  
30 assessed and ordered by the department to pay an administrative penalty not to exceed \$200 for each

1 violation. Each day of violation constitutes a separate violation. The department or may assess the penalty  
2 by an order issued pursuant to this section or may suspend all or a part of the administrative penalty  
3 assessed under this section if the violation that caused the assessment of the penalty is corrected within  
4 a specified time. Assessment of an administrative penalty under this section may be made in conjunction  
5 with an order issued pursuant to [section 11(2)] after a hearing as provided in [section 11(2)].

6 (2) When the department assesses an administrative penalty under this section, it must have  
7 written notice served personally or by certified mail on the alleged violator or the violator's agent. For  
8 purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

9 (a) the order alleged to have been violated;

10 (b) the facts alleged to constitute the violation;

11 (c) the amount of the administrative penalty assessed under this section;

12 (d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused  
13 the assessment of the penalty;

14 (e) the nature of any corrective action that the department requires if a portion of the penalty is  
15 to be suspended;

16 (f) the time within which the corrective action is to be taken or the time within which the  
17 administrative penalty is to be paid;

18 (g) the right to a hearing, as provided in this section, and the time, place, and nature of any  
19 hearing; and

20 (h) that the hearing provided in this section may be waived or that the alleged violator may proceed  
21 by informal disposition pursuant to 2-4-603.

22 (3) The department shall provide the respondent who is assessed a penalty under this section with  
23 an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The  
24 contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter  
25 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must  
26 be held in Lewis and Clark County or the county in which the alleged violation occurred.

27 (4) In determining appropriate penalties for violations, the department shall consider the gravity of  
28 the violations and the potential for significant harm to the public health or safety. In determining the  
29 appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the  
30 penalty assessment, the department shall consider the cooperation and the degree of care exercised by the

1 respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether  
2 significant harm resulted to the public health or safety from the violation.

3 (5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this  
4 section, the department may take action in district court to recover the amount of the penalty that is unpaid  
5 and any additional amounts assessed or sought under this chapter.

6 (6) Action taken by the department pursuant to this section does not bar other action under this  
7 chapter or any other remedy available to the department for violations of applicable laws or rules adopted  
8 pursuant to those laws.

9 (7) Administrative penalties collected under this section must be deposited in the special revenue  
10 account provided for in 50-50-216.

11

12 **NEW SECTION. Section 13. Codification instruction.** [Sections 8 through 12] are intended to be  
13 codified as an integral part of Title 50, chapter 50, and the provisions of Title 50, chapter 50, apply to  
14 [sections 8 through 12].

15

16 **NEW SECTION. Section 14. Retroactive applicability.** [This act] applies retroactively, within the  
17 meaning of 1-2-109, to licenses issued pursuant to Title 50, chapter 50, prior to October 1, 1997.

18

19 **NEW SECTION. Section 15. Effective dates.** (1) [Sections 1, 3, 13, and 14 and this section] are  
20 effective on passage and approval.

21 (2) [Sections 2 and 4 through 12] are effective October 1, 1997.

22

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0061, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising laws concerning food establishments; granting local Boards of Health the power to adopt plan review fees; clarifying and adding definitions associated with food establishments; and revising the department's rulemaking authority.

ASSUMPTIONS:

1. One year will be needed to establish the new advisory council, design the license fee structure, and implement the new license fee structure into the staggered license issuance system.
2. The revised rule making for license fees will have a fiscal impact in FY99 which cannot be estimated until the rule making process is completed.
3. Voluntary Food Manager Certification fees will be based upon program cost through Department rule making.
4. The Voluntary Food Manager Certification Program will be implemented mid-year in fiscal year 1998 for an estimated 200 operators at \$50 (\$10,000) and an estimated 500 operators at \$50 in fiscal year 1999 (\$25,000). The fees will be deposited into the state special revenue account.
5. Establishment plan review fees will be charged at \$75 per hour, with a maximum of \$250 per plan review. Annualized collections are based upon 50 plans per year at \$250 per plan. Fiscal year 1998 represents three-quarters of annualized operations. Collections are deposited to the state special revenue account.
6. A 0.50 FTE, grade 15, in fiscal year 1998 expanded to a 1.00 FTE in fiscal year 1999 is needed to implement the Voluntary Food Manager Certification Program and establishment plan review responsibilities. Cost will be funded from fee revenues in the state special revenue account.
7. The effective date is October 1, 1997.

FISCAL IMPACT:

Department of Public Health and Human Services

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
FTE	0.50	1.00
Personal Services	17,200	34,400
Operations	<u>2,175</u>	<u>3,100</u>
Total	19,375	37,500
<u>Funding:</u>		
State Special Revenue Account (02)	19,375	37,500
<u>Revenues:</u>		
Voluntary food manager certification (02)	10,000	25,000
Establishment Plan Review Fees (02)	<u>9,375</u>	<u>12,500</u>
Total Revenues	19,375	37,500

(Continued)

*Dave Lewis* 1-12-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

*Thomas F. Keating* 1-13-97  
 THOMAS F. KEATING, PRIMARY SPONSOR DATE  
 Fiscal Note for SB0061, as introduced

**SB 61**

(continued)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The revised establishment license fees based upon cost will increase local health agency revenues. The net increase cannot be estimated until the rule making process is completed.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Food establishment license fees will either be decreased or increased based upon service costs that include an advisory council and public input into a rule making process.

APPROVED BY COM ON PUBLIC  
HEALTH, WELFARE & SAFETY

1 SENATE BILL NO. 61

2 INTRODUCED BY KEATING

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO FOOD  
6 ESTABLISHMENTS; GRANTING LOCAL BOARDS OF HEALTH THE POWER TO ADOPT PLAN REVIEW FEES;  
7 CLARIFYING AND ADDING DEFINITIONS ASSOCIATED WITH FOOD ESTABLISHMENTS; REVISING THE  
8 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES' RULEMAKING AUTHORITY; ~~CLARIFYING~~  
9 ~~CIVIL PENALTIES ASSOCIATED WITH CIVIL ACTIONS~~; PROVIDING FOR VALIDATION AND EXPIRATION  
10 OF LICENSES AND A SCHEDULE OF FEES; ~~PROVIDING FOR A VOLUNTARY FOOD MANAGER~~  
11 ~~CERTIFICATION PROGRAM, INCLUDING FEES~~; PROVIDING FOR FOOD ESTABLISHMENT PLAN REVIEW  
12 AND FEES; ~~GRANTING IMMEDIATE CLOSURE AUTHORITY FOR AND DEFINING "CRITICAL POINT~~  
13 ~~VIOLATIONS"~~; ~~PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND ADMINISTRATIVE~~  
14 ~~PENALTIES~~; AMENDING SECTIONS 50-2-116, 50-50-102, 50-50-103, ~~50-50-109~~, 50-50-201, 50-50-205,  
15 AND 50-50-207, MCA; AND PROVIDING EFFECTIVE DATES ~~AND A RETROACTIVE APPLICABILITY DATE.~~"

16  
17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because additional rulemaking authority, beyond that  
19 granted by 50-50-103, is being granted to the department of public health and human services. This  
20 rulemaking authority will allow the department to adopt rules to protect the public health by adopting  
21 requirements for food establishments in the following areas:

- 22 ~~(1) safe and sanitary facilities and systems;~~  
23 ~~(2) fire codes, life safety codes, and building codes;~~  
24 ~~(3) prevention of injury and the spread of disease;~~  
25 ~~(4) operation and maintenance in a safe and sanitary manner;~~  
26 ~~(5) food coverage, handling, processing, equipment, and utensils;~~  
27 ~~(6)~~(1) licensure and establishment of a schedule of license fees;  
28 ~~(7)~~(2) implementation of staggered license expiration dates;  
29 ~~(8) establishment of a voluntary food manager certification program, including course fees;~~  
30 ~~(9)~~(3) plan review ~~and the establishment of plan review fees~~; AND



- 1           ~~(10)(4) reimbursement of local governments for inspections and enforcement;~~  
2           ~~(11) establishment of critical point violations; and~~  
3           ~~(12) other rules necessary to implement the provisions of Title 50, chapter 50.~~

4

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

6

7           **Section 1.** Section 50-2-116, MCA, is amended to read:

8           "**50-2-116. Powers and duties of local boards.** (1) Local boards shall:

9           (a) appoint a local health officer who is a physician or a person with a master's degree in public  
10 health or the equivalent and with appropriate experience, as determined by the department, and shall fix  
11 the health officer's salary;

12           (b) elect a presiding officer and other necessary officers;

13           (c) employ necessary qualified staff;

14           (d) adopt bylaws to govern meetings;

15           (e) hold regular meetings quarterly and hold special meetings as necessary;

16           (f) supervise destruction and removal of all sources of filth that cause disease;

17           (g) guard against the introduction of communicable disease;

18           (h) supervise inspections of public establishments for sanitary conditions;

19           (i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent  
20 than state standards for the control and disposal of sewage from private and public buildings that is not  
21 regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for  
22 granting variances from the minimum requirements that are identical to standards promulgated by the board  
23 of environmental review and must provide for appeal of variance decisions to the department as required  
24 by 75-5-305.

25           (2) Local boards may:

26           (a) quarantine persons who have communicable diseases;

27           (b) require isolation of persons or things that are infected with communicable diseases;

28           (c) furnish treatment for persons who have communicable diseases;

29           (d) prohibit the use of places that are infected with communicable diseases;

30           (e) require and provide means for disinfecting places that are infected with communicable diseases;

- 1 (f) accept and spend funds received from a federal agency, the state, a school district, or other  
 2 persons;
- 3 (g) contract with another local board for all or a part of local health services;
- 4 (h) reimburse local health officers for necessary expenses incurred in official duties;
- 5 (i) abate nuisances affecting public health and safety or bring action necessary to restrain the  
 6 violation of public health laws or rules;
- 7 (j) adopt necessary fees to administer regulations for the control and disposal of sewage from  
 8 private and public buildings. The fees must be deposited with the county treasurer.
- 9 (k) adopt rules that do not conflict with rules adopted by the department:
- 10 (i) for the control of communicable diseases;
- 11 (ii) for the removal of filth that might cause disease or adversely affect public health;
- 12 (iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;
- 13 (iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might  
 14 endanger human lives;
- 15 (v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that  
 16 do not discharge an effluent directly into state waters and that are not required to have an operating permit  
 17 as required by rules adopted under 75-5-401; and
- 18 (vi) for the regulation, as necessary, of the practice of tattooing, which may include registering  
 19 tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that  
 20 are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes  
 21 of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and  
 22 inserting indelible colors.
- 23 (l) adopt plan review fees for establishments regulated under Title 50, chapter 50, that do not  
 24 exceed the actual costs of conducting the review."

25

26 **Section 2.** Section 50-50-102, MCA, is amended to read:

27 **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following  
 28 definitions apply:

29 (1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not  
 30 potentially hazardous foods.

1 (2) (a) "Commercial establishment" means an establishment operated primarily for profit.

2 (b) The term does not include a farmer's market.

3 ~~(3) "Critical point violation" means a violation of this chapter or rules promulgated under this~~  
 4 ~~chapter that is more likely than other violations to pose an immediate threat to the public health, safety,~~  
 5 ~~or welfare or to the environment.~~

6 ~~(3)(4)(3)~~ (3) "Department" means the department of public health and human services provided for  
 7 in 2-15-2201.

8 ~~(4)(5)(4)~~ (a) "Establishment" means an operation that stores, prepares, processes, manufactures,  
 9 packages, serves, vends, or otherwise provides food for human consumption and includes a food  
 10 manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant,  
 11 commercial food processor, or perishable food dealer, or food salvage dealer.

12 (b) The term does not include vendors of only raw, unprocessed produce.

13 ~~(5)(6)(5)~~ "Farmer's market" means a farm premises, a roadside stand owned and operated by a  
 14 farmer, or an organized market authorized by the appropriate municipal or county authority.

15 ~~(6)(7)(6)~~ "Food" means an edible substance, beverage, or ingredient used, intended for use, or for  
 16 sale for human consumption.

17 ~~(8) "Food manager" means a person who maintains, manages, owns, or is in charge of an~~  
 18 ~~establishment.~~

19 ~~(7)(9)(7)~~ "Food manufacturing establishment" means a commercial establishment and buildings ~~or,~~  
 20 structures, or vehicles in connection with it used to manufacture ~~or,~~ process, prepare, or deliver food for  
 21 sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities,  
 22 milk product manufacturing plants, slaughterhouses, or meat packing plants.

23 ~~(10)(8)~~ (a) "Food salvage dealer" means an establishment that repackages food for distribution or  
 24 sale to the public or that offers salvaged foods to the public for sale or human consumption.

25 (b) The term does not include nonprofit food banks.

26 ~~(8)(11)(9)~~ (a) "Food service establishment" means a place where food or drink is prepared, served,  
 27 or provided to the public, with or without charge, and includes the following types of operations: fixed or  
 28 mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop,  
 29 soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar,  
 30 cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, or private

1 organization routinely serving the public, ~~or similar place where food or drink is prepared, served, or~~  
 2 ~~provided to the public with or without charge.~~

3 (b) The term does not include:

4 (i) establishments, vendors, or vending machines that sell or serve only packaged, nonperishable  
 5 foods in their unbroken, original containers;

6 ~~(ii) vending machines that sell or serve bulk, nonperishable foods; or~~

7 ~~(iii) a private organization serving food only to its members.~~

8 ~~(9)(12)(10)~~ (a) "Food warehouse" means a commercial establishment and buildings or structures  
 9 in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

10 (b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities  
 11 where brewing occurs.

12 ~~(10)(13)(11)~~ "Frozen food plant" means a place used to freeze, process, or store food, including  
 13 facilities used in conjunction with the frozen food plant, and a place where individual compartments are  
 14 offered to the public on a rental or other basis.

15 ~~(11)(14)(12)~~ (a) "Meat market" means a commercial establishment and buildings or structures in  
 16 connection with it used to process, store, or display meat or meat products for sale to the public or for  
 17 human consumption.

18 ~~(b) The term does not include custom cutters or wild game processors who cut and wrap~~  
 19 ~~customer provided meat for the same customer, PROCESS, GRIND, PACKAGE, OR FREEZE GAME MEAT~~  
 20 ~~FOR THE OWNER OF THE CARCASS FOR CONSUMPTION BY THE OWNER OR THE OWNER'S FAMILY,~~  
 21 ~~PETS, OR NONPAYING GUESTS.~~

22 ~~(12)(15)(13)~~ "Nonprofit organization" means any organization qualifying as a tax-exempt  
 23 organization under 26 U.S.C. 501.

24 ~~(13)(16)(14)~~ "Perishable food dealer" means a person or commercial establishment that is in the  
 25 business of ~~purchasing and selling~~ retailing perishable food to the public.

26 ~~(14)(17)(15)~~ "Person" means a person, partnership, corporation, association, cooperative group,  
 27 or other entity engaged in operating, owning, or offering services of an establishment.

28 ~~(15)(18)(16)~~ (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a  
 29 form capable of supporting:

30 (i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

1 (ii) the growth and toxin production of Clostridium botulinum.

2 (b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or  
3 heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

4 (c) The term does not include:

5 (i) an air-cooled, hard-boiled egg with intact shell;

6 (ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24°C  
7 (75°F);

8 (iii) a food with a water activity (aw) value of 0.85 or less;

9 (iv) a food in an unopened hermetically sealed container that is commercially processed to achieve  
10 and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

11 (v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid  
12 and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium  
13 botulinum cannot occur.

14 ~~(16)(19)(17)~~ (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters,  
15 marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration  
16 (pH) of 4.6 or below when measured at 24°C (75°F) and that are aseptically processed, packaged, and  
17 sealed.

18 (b) The term does not include:

19 (i) tomatoes or food products containing tomatoes; or

20 (ii) any other food substrate or product preserved by any method other than that described in  
21 subsection ~~(16)(a)~~ ~~(19)(a)~~ (17)(A).

22 ~~(17)(20)(18)~~ "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at  
23 a farmer's market in their natural state that are not packaged and labeled and are not:

24 (a) cooked;

25 (b) canned;

26 (c) preserved, except for drying;

27 (d) combined with other food products; or

28 (e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures."  
29

30 **Section 3.** Section 50-50-103, MCA, is amended to read:

1           **"50-50-103. Department authorized to adopt rules.** (1) To protect public health, the department  
 2 may adopt rules relating to the ~~construction and~~ operation of establishments defined in 50-50-102,  
 3 including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls,  
 4 ~~construction and fixtures, and housekeeping. The rules may include the following:~~

5           ~~(a) requirements to ensure that establishments have safe and sanitary facilities and systems,~~  
 6 ~~including drinking water, sewage disposal, and solid waste disposal systems;~~

7           ~~(b) requirements to prevent injury and the spread of disease and illness in establishments;~~

8           ~~(c) requirements to ensure that establishments are operated and maintained in a safe and sanitary~~  
 9 ~~manner;~~

10          ~~(d) requirements associated with food coverage, handling, processing, equipment, and utensils;~~

11          ~~(e) requirements for licensing of establishments and establishing a schedule of license fees based~~  
 12 ~~on the aggregate statewide costs of licensing and regulating establishments. The license fees may include~~  
 13 ~~a minimal base fee related to the fixed costs of inspecting, licensing, and regulating establishments and may~~  
 14 ~~include costs based on the risk to public health posed by the particular establishment, the capacity of the~~  
 15 ~~establishment, the complexity of the establishment operation or operations, and other relevant factors;~~

16          ~~(f) requirements to implement staggered license expiration dates;~~

17          ~~(g) requirements to establish a voluntary food manager certification program and to set course fees~~  
 18 ~~that do not exceed actual costs;~~

19          ~~(h) requirements for plan review of establishments based on the size and complexity of the~~  
 20 ~~proposed establishment, the type of water and sewage disposal to service the establishment, the type and~~  
 21 ~~magnitude of remodeling efforts, the type of food product and process, and other relevant factors and~~  
 22 ~~setting plan review fees that do not exceed the actual costs of conducting the review;~~

23          ~~(i) requirements for reimbursing local governments for inspections and enforcement of this chapter;~~

24          ~~(j) requirements to establish critical point violations; and~~

25          ~~(k) any other rules necessary to implement the provisions of this chapter., INCLUDING:~~

26          ~~(A) COVERAGE OF FOOD;~~

27          ~~(B) PERSONNEL;~~

28          ~~(C) FOOD EQUIPMENT AND UTENSILS;~~

29          ~~(D) SANITARY FACILITIES AND CONTROLS;~~

30          ~~(E) CONSTRUCTION AND FIXTURES;~~

1           (F) HOUSEKEEPING;

2           (G) STAGGERED LICENSE EXPIRATION DATES;

3           (H) PLAN REVIEW;

4           (I) LICENSURE; AND

5           (J) REIMBURSEMENT OF LOCAL GOVERNMENTS.

6           (2) THE DEPARTMENT MAY ADOPT RULES SETTING LICENSE FEES BASED ON THE  
 7 CATEGORIZATION OF ESTABLISHMENTS WITHIN FIVE DIFFERENT RISK LEVELS, RANGING FROM \$50  
 8 FOR THE LOWEST ESTABLISHMENT RISK LEVEL 1 TO A MAXIMUM OF \$200 FOR THE HIGHEST  
 9 ESTABLISHMENT RISK LEVEL 5. IN CATEGORIZING ESTABLISHMENTS BASED UPON THE RISK TO THE  
 10 PUBLIC, THE DEPARTMENT MAY CONSIDER RISK FACTORS RELATED TO THE TYPES OF FOOD SERVED,  
 11 FOOD PREPARATION STEPS, THE VOLUME OF FOOD AND THE POPULATION SERVED, AND OTHER  
 12 RELEVANT RISK FACTORS.

13           ~~(2)(3)~~ (a) The department and local health authorities may not adopt rules prohibiting the sale of  
 14 baked goods and preserves by nonprofit organizations or by persons at farmer's markets.

15           (b) The department and local health authorities may not require that foods sold pursuant to this  
 16 subsection ~~(2)~~ (3) be prepared in certified or commercial kitchens."

17

18           **Section 4.** ~~Section 50-50-109, MCA, is amended to read:~~

19           ~~"50-50-109. Civil penalties — injunctions other enforcement not barred. (1) An establishment that~~  
 20 ~~violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty~~  
 21 ~~not to exceed \$500 for each violation. Each day of violation is a separate violation for the purposes of this~~  
 22 ~~section.~~

23           ~~(2) Civil A civil action to impose penalties, as provided under this section, does not bar~~  
 24 ~~administrative enforcement under [section 11], administrative penalties under [section 12], or injunctions~~  
 25 ~~to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~  
 26 ~~pursuant to this chapter."~~

27

28           **Section 4.** Section 50-50-201, MCA, is amended to read:

29           "50-50-201. **License required.** (1) Except as provided in 50-50-202, a person operating an  
 30 establishment shall procure an annual license from the department.

1 (2) A separate license is required for each establishment, but if more than one type of  
 2 establishment is operated on the same premises and under the same management, only one license is  
 3 required.

4 (3) Only one license is required for a person owning and operating one or more vending machines.

5 (4) ~~Before a license may be issued by the department it must be validated by the local health~~  
 6 ~~officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.~~  
 7 A license issued by the department is not valid unless signed in accordance with 50-50-214."

8

9 **Section 5.** Section 50-50-205, MCA, is amended to read:

10 "**50-50-205. License fee -- late fee -- preemption of local authority -- exception.** (1) For each  
 11 license issued, the department shall collect a fee of \$60 or a fee that is adopted by an administrative rule  
 12 ~~that provides a schedule of fees that is based on the aggregate statewide costs of licensing and regulating~~  
 13 ~~establishments~~ BASED UPON THE CATEGORIZATION OF ESTABLISHMENTS WITHIN THE FIVE DIFFERENT  
 14 RISK LEVELS. ~~† The department~~ shall deposit 85% of the fees collected under this section into the local  
 15 board inspection fund account created in 50-2-108, 7.5% of the fees into the general fund, and 7.5% of  
 16 the fees into the special revenue account provided for in 50-50-216.

17 (2) In addition to the license fee required under subsection (1), the department shall collect a late  
 18 fee from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ the  
 19 licensee's current license and who operates an establishment governed by this part in the next licensing  
 20 year. The late fee is \$25 and must be deposited in the special revenue account provided for in 50-50-216.

21 (3) A county or other local government may not impose an inspection fee or charge in addition to  
 22 the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected  
 23 after two visits to the establishment."  
 24

25 **Section 6.** Section 50-50-207, MCA, is amended to read:

26 "**50-50-207. Expiration date of license.** ~~Licenses expire~~ (1) Except as provided in subsection (2),  
 27 each license expires on December 31 following the date of issue unless canceled for cause.

28 (2) The department may amend or issue licenses to provide for staggered license expiration dates.  
 29 The department may provide for initial license terms of greater than 12 months but no more than 23  
 30 months in adopting staggered license expiration dates, and the license fee must be prorated accordingly.



1 Upon expiration of a license that has been amended or issued to provide a term of greater than 12 months  
 2 and subsequent payment of the required license fee, the license must be renewed for a period of 12 months  
 3 commencing on the day following the expiration date of the amended or issued license UNLESS  
 4 CONDITIONS EXIST THAT ARE GROUNDS FOR CANCELLATION OR DENIAL OF THE LICENSE."

5  
 6 ~~NEW SECTION. Section 8. Voluntary food manager certification program -- fees.~~ The department  
 7 ~~may establish and set fees for a voluntary food manager certification program for training and certifying~~  
 8 ~~food managers. All of the fees collected under this section must be deposited in the special revenue~~  
 9 ~~account provided for in 50-50-216 and may be used only for the purposes of implementing and~~  
 10 ~~administering the voluntary food manager certification program.~~

11  
 12 NEW SECTION. Section 7. Plan review -- fees. (1) Whenever an establishment is constructed or  
 13 remodeled, an existing structure is converted to use as an establishment, or an existing establishment adds  
 14 a new type of operation different from the operation for which plans were initially submitted to and  
 15 approved by the department OR LOCAL HEALTH DEPARTMENT, the plans must be submitted to the  
 16 department OR LOCAL HEALTH DEPARTMENT for review and approval before construction, remodeling,  
 17 conversion, or addition for the new operation begins. The department ~~may establish plan review fees that~~  
 18 ~~do not exceed the actual costs to the department in conducting establishment plan review. If the~~  
 19 ~~department conducts the plan review, the plan review fees established by the department must be charged.~~  
 20 OR LOCAL HEALTH DEPARTMENT CONDUCTING THE PLAN REVIEW MAY CHARGE A FEE FOR EACH  
 21 FACILITY PLAN REVIEW. IF THE DEPARTMENT CONDUCTS THE PLAN REVIEW, THE FEE MUST BE  
 22 BASED ON AN HOURLY RATE AND MAY NOT EXCEED \$250 FOR EACH PLAN REVIEW. ALL OF THE  
 23 FEES COLLECTED BY THE DEPARTMENT UNDER THIS SUBSECTION MUST BE DEPOSITED IN THE  
 24 SPECIAL REVENUE ACCOUNT PROVIDED IN 50-50-216.

25 ~~(2) The department may delegate to a local health department the authority to conduct an~~  
 26 ~~establishment plan review under this chapter when the local health department has qualified personnel to~~  
 27 ~~adequately review the plans for compliance with department rules and this chapter. The local health~~  
 28 ~~department may establish plan review fees that do not exceed the actual costs to the local health~~  
 29 ~~department in conducting establishment plan reviews. If the local health department conducts the plan~~  
 30 ~~review, the plan review fees established by the local health department must be charged. ALL OF THE~~

1 FEES COLLECTED BY A LOCAL HEALTH DEPARTMENT UNDER THIS SUBSECTION MUST BE DEPOSITED  
 2 IN AN ACCOUNT DESIGNATED BY THE LOCAL HEALTH DEPARTMENT.

3 ~~(3) If the department conducts the establishment plan review, all of the fees collected under~~  
 4 ~~subsection (1) must be deposited in the special revenue account provided for in 50-50-216.~~

5 ~~(4) If the local health department conducts the establishment plan review in compliance with the~~  
 6 ~~department's rules, all of the fees collected under subsection (2) must be deposited in an account~~  
 7 ~~designated by the local health department.~~

8 (2) THE DEPARTMENT SHALL APPROVE OR DISAPPROVE THE PLANS WITHIN 30 WORKING  
 9 DAYS AFTER RECEIPT OF A COMPLETE SET OF PLANS. PAYMENT OF THE PLAN REVIEW FEE MUST  
 10 BE MADE TO THE DEPARTMENT WITHIN 30 DAYS AFTER RECEIPT OF WRITTEN NOTIFICATION BY THE  
 11 DEPARTMENT OF PLAN APPROVAL OR DISAPPROVAL AND AN INVOICE STATING THE FEE.

12 (3) FOR PURPOSES OF THIS SECTION, AN ESTABLISHMENT SHALL SUBMIT REMODELING  
 13 PLANS TO THE DEPARTMENT OR LOCAL HEALTH DEPARTMENT WHEN THE REMODELING PERTAINS  
 14 TO:

15 (A) THE DELIVERY, STORAGE, OR PREPARATION OF FOOD;

16 (B) THE PROCESSING AND MANUFACTURING OF FOOD; OR

17 (C) FOOD SERVICE AREAS.

18  
 19 ~~NEW SECTION. Section 10. Critical point violations — closure order — hearing. (1)~~

20 ~~Notwithstanding other provisions of this chapter, the department may issue a closure order to an~~  
 21 ~~establishment to close immediately if a critical point violation is found at the establishment. The order is~~  
 22 ~~effective immediately upon receipt by the person to whom it is directed, unless the department provides~~  
 23 ~~otherwise.~~

24 ~~(2) Notice of the order must indicate that it is a closure order, must specify the critical point~~  
 25 ~~violation that presents the immediate threat, and must contain a written statement of the facts constituting~~  
 26 ~~the violation.~~

27 ~~(3) Upon issuing an order, the department shall fix a place and time for a hearing, not later than~~  
 28 ~~5 working days after issuing the order, unless the person to whom the order is directed requests a later~~  
 29 ~~time. The department may deny a request for a later time if it finds that the person to whom the order is~~  
 30 ~~directed is not complying with the order. The hearing must be conducted in the manner specified in~~

1 ~~{section 11}.~~

2 ~~(4) After a hearing held pursuant to subsection (3), if the department finds that a critical point~~  
 3 ~~violation has occurred, the department shall issue an appropriate order in the manner specified in {section~~  
 4 ~~11}. Within 5 working days after the hearing, the department shall affirm, modify, or set aside the order~~  
 5 ~~of the department. An action for review of the order may be initiated using the contested case provisions~~  
 6 ~~of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If a hearing is held~~  
 7 ~~under this section, it must be held in Lewis and Clark County or the county in which the alleged violation~~  
 8 ~~occurred.~~

9 ~~(5) Until issuance of a contrary decision by the department, an order concerning immediate closure~~  
 10 ~~remains effective and enforceable.~~

11  
 12 ~~**NEW SECTION. Section 11. Administrative enforcement—notice of violation—hearing.** (1) If the~~  
 13 ~~department believes that a violation of a provision of this chapter, a rule adopted pursuant to this chapter,~~  
 14 ~~an order issued pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant~~  
 15 ~~to this chapter has occurred, it may serve a written notice of the violation on the alleged violator or the~~  
 16 ~~violator's agent personally or by certified mail. The notice must specify the statute, rule, order, or license~~  
 17 ~~condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The~~  
 18 ~~notice may include an order to take necessary corrective action, including ceasing the violation within a~~  
 19 ~~period of time stated in the order. The order becomes final unless, within 10 days after the notice is~~  
 20 ~~received, the person named as the respondent in the order requests in writing a hearing before the~~  
 21 ~~department. Until issuance of a contrary decision by the department, an order issued pursuant to this~~  
 22 ~~section remains effective and enforceable.~~

23 ~~(2) A hearing requested by the respondent must be held in accordance with the contested case~~  
 24 ~~provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If, after~~  
 25 ~~a hearing, the department finds that a violation has occurred, the department shall issue an appropriate~~  
 26 ~~order for the prevention, abatement, or control of the violation involved or the taking of other corrective~~  
 27 ~~action. An order issued as part of a notice of violation or after a hearing may prescribe the date by which~~  
 28 ~~the violation must cease and the time limits for a particular action in preventing, abating, or controlling the~~  
 29 ~~violation. If, after a hearing, the department finds that a violation has not occurred or is not occurring, the~~  
 30 ~~department shall declare the order void.~~

1 ~~(3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~  
 2 ~~may take action under another applicable provision of this chapter.~~

3 ~~(4) Section 50-50-210 does not apply to an action taken by the department pursuant to this~~  
 4 ~~section.~~

5  
 6 ~~**NEW SECTION. Section 12. Administrative penalties — appeals — venue for hearing.**~~ (1) An  
 7 establishment that violates an order issued by the department pursuant to ~~[section 10 or 11]~~ may be  
 8 assessed and ordered by the department to pay an administrative penalty not to exceed \$200 for each  
 9 violation. Each day of violation constitutes a separate violation. The department ~~or may assess the penalty~~  
 10 ~~by an order issued pursuant to this section or may suspend all or a part of the administrative penalty~~  
 11 ~~assessed under this section if the violation that caused the assessment of the penalty is corrected within~~  
 12 ~~a specified time. Assessment of an administrative penalty under this section may be made in conjunction~~  
 13 ~~with an order issued pursuant to [section 11(2)] after a hearing as provided in [section 11(2)].~~

14 ~~(2) When the department assesses an administrative penalty under this section, it must have~~  
 15 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~  
 16 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

17 ~~(a) the order alleged to have been violated;~~

18 ~~(b) the facts alleged to constitute the violation;~~

19 ~~(c) the amount of the administrative penalty assessed under this section;~~

20 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~  
 21 ~~the assessment of the penalty;~~

22 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~  
 23 ~~to be suspended;~~

24 ~~(f) the time within which the corrective action is to be taken or the time within which the~~  
 25 ~~administrative penalty is to be paid;~~

26 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~  
 27 ~~hearing; and~~

28 ~~(h) that the hearing provided in this section may be waived or that the alleged violator may proceed~~  
 29 ~~by informal disposition pursuant to 2-4-603.~~

30 ~~(3) The department shall provide the respondent who is assessed a penalty under this section with~~

1 an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The  
 2 contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter  
 3 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must  
 4 be held in Lewis and Clark County or the county in which the alleged violation occurred.

5 (4) ~~In determining appropriate penalties for violations, the department shall consider the gravity of~~  
 6 ~~the violations and the potential for significant harm to the public health or safety. In determining the~~  
 7 ~~appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the~~  
 8 ~~penalty assessment, the department shall consider the cooperation and the degree of care exercised by the~~  
 9 ~~respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether~~  
 10 ~~significant harm resulted to the public health or safety from the violation.~~

11 (5) ~~If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this~~  
 12 ~~section, the department may take action in district court to recover the amount of the penalty that is unpaid~~  
 13 ~~and any additional amounts assessed or sought under this chapter.~~

14 (6) ~~Action taken by the department pursuant to this section does not bar other action under this~~  
 15 ~~chapter or any other remedy available to the department for violations of applicable laws or rules adopted~~  
 16 ~~pursuant to those laws.~~

17 (7) ~~Administrative penalties collected under this section must be deposited in the special revenue~~  
 18 ~~account provided for in 50-50-216.~~

19  
 20 **NEW SECTION. Section 8. Codification instruction.** ~~{Sections 8 through 12} are [SECTION 7] IS~~  
 21 ~~intended to be codified as an integral part of Title 50, chapter 50, and the provisions of Title 50, chapter~~  
 22 ~~50, apply to {sections 8 through 12} [SECTION 7].~~

23  
 24 **NEW SECTION. Section 14. Retroactive applicability.** ~~{This act} applies retroactively, within the~~  
 25 ~~meaning of 1-2-109, to licenses issued pursuant to Title 50, chapter 50, prior to October 1, 1997.~~

26  
 27 **NEW SECTION. Section 9. Effective dates.** (1) ~~{Sections 1, 3, 13, and 14 AND 8 and this section}~~  
 28 ~~are effective on passage and approval.~~

29 (2) ~~{Sections 2 and 4 through 12 } are effective October 1, 1997.~~

30 -END-

## 1 SENATE BILL NO. 61

2 INTRODUCED BY KEATING

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO FOOD  
6 ESTABLISHMENTS; GRANTING LOCAL BOARDS OF HEALTH THE POWER TO ADOPT PLAN REVIEW FEES;  
7 CLARIFYING AND ADDING DEFINITIONS ASSOCIATED WITH FOOD ESTABLISHMENTS; REVISING THE  
8 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES' RULEMAKING AUTHORITY; CLARIFYING  
9 ~~CIVIL PENALTIES ASSOCIATED WITH CIVIL ACTIONS;~~ PROVIDING FOR VALIDATION AND EXPIRATION  
10 OF LICENSES AND A SCHEDULE OF FEES; ~~PROVIDING FOR A VOLUNTARY FOOD MANAGER~~  
11 ~~CERTIFICATION PROGRAM, INCLUDING FEES;~~ PROVIDING FOR FOOD ESTABLISHMENT PLAN REVIEW  
12 AND FEES; ~~GRANTING IMMEDIATE CLOSURE AUTHORITY FOR AND DEFINING "CRITICAL POINT~~  
13 ~~VIOLATIONS"; PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND ADMINISTRATIVE~~  
14 ~~PENALTIES;~~ AMENDING SECTIONS 50-2-116, 50-50-102, 50-50-103, ~~50-50-109~~, 50-50-201, 50-50-205,  
15 AND 50-50-207, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE  
REPRINTED. PLEASE REFER TO SECOND READING COPY  
(YELLOW) FOR COMPLETE TEXT.**

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0061, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws related to food establishments; granting local boards of health the power to adopt plan review fees; clarifying and adding definitions associated with food establishments; revising the Department of Public Health and Human Service's rule-making authority; providing for validation and expiration of licenses and a schedule of fees; and providing for food establishment plan review and fees.

ASSUMPTIONS:

1. This act is effective October 1, 1997.
2. One year will be needed to establish the new advisory council, design the license fee structure, and implement the new license fee structure into the staggered license issuance system.
3. The revised rule-making for license fees will have a fiscal impact in fiscal 1999 which cannot be estimated until the rule-making process is completed.
4. Establishment plan review fees collected will be at \$75 per hour, with a maximum of \$250 per plan review for 40 plans in fiscal 1998 (\$9,375) and for 50 plans in fiscal 1999 (\$10,000). Fees collected will be deposited into state special revenue accounting entity 02199.
5. The fees collected will be used to support program costs in the counties and in the state program. (Please see Effect on County or Other Local Revenues or Expenditures, below.)

FISCAL IMPACT:

Expenditures:

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
Operating Expenses	\$9,375	\$10,000

Funding:

State Special Revenue (02)	\$9,375	\$10,000
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Revenues:

Establishment Plan Review Fees (02)	\$9,375	\$10,000
-------------------------------------	---------	----------

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The revised establishment license fees based upon cost will increase local health agency revenues. The net increase cannot be estimated until the rule-making process is completed.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Food establishment license fees will either be decreased or increased based upon service costs that include an advisory council and public input into a rule-making process.

(Continued)

*Dave Lewis* 2-19-97  
 DAVE LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

*Tom Keating* 2/21/97  
 TOM KEATING, PRIMARY SPONSOR DATE  
 Fiscal Note for SB0061, third reading  
**Am SB 61 #2**

DEDICATION OF REVENUE:

- a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain) No, users of the service are the sole beneficiary of the service fees.
- b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund? All revenues received from the food establishment program fees are clearly identified as licensing, inspection, certification, or establishment plan review services provided by the state or local health agencies.
- c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? X Yes \_\_\_\_ No (if no, explain)
- d) Does the need for this state special revenue provision still exist? X Yes \_\_\_\_ No (Explain) The revenues continue to support specific statutory public health program responsibilities.
- e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain) Yes. It allows the Legislature to closely relate revenues received to services provided by these revenues.
- f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain) Yes. The state statute has an existing special account for funding state and local health agencies program services; therefore, the need exists.
- g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?) The special revenue accounts permit the Legislature and the Department to closely evaluate revenues received with services provided. The special revenue account is the only funding support received by local health agencies for their local program services.



## 1 SENATE BILL NO. 61

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7 CLARIFYING AND ADDING DEFINITIONS ASSOCIATED WITH FOOD ESTABLISHMENTS; REVISING THE  
8 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES' RULEMAKING AUTHORITY; ~~CLARIFYING~~  
9 ~~CIVIL PENALTIES ASSOCIATED WITH CIVIL ACTIONS;~~ PROVIDING FOR VALIDATION AND EXPIRATION  
10 OF LICENSES AND A SCHEDULE OF FEES; ~~PROVIDING FOR A VOLUNTARY FOOD MANAGER~~  
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13 ~~VIOLATIONS"; PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND ADMINISTRATIVE~~  
14 ~~PENALTIES; AMENDING SECTIONS 50-2-116, 50-50-102, 50-50-103, 50-50-109, 50-50-201, 50-50-205,~~  
15 ~~AND 50-50-207, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."~~  
16

## 17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because additional rulemaking authority, beyond that  
19 granted by 50-50-103, is being granted to the department of public health and human services. This  
20 rulemaking authority will allow the department to adopt rules to protect the public health by adopting  
21 requirements for food establishments in the following areas:

- 22 ~~(1) safe and sanitary facilities and systems;~~  
23 ~~(2) fire codes, life safety codes, and building codes;~~  
24 ~~(3) prevention of injury and the spread of disease;~~  
25 ~~(4) operation and maintenance in a safe and sanitary manner;~~  
26 ~~(5) food coverage, handling, processing, equipment, and utensils;~~  
27 ~~(6)~~(1) licensure and establishment of a schedule of license fees;  
28 ~~(7)~~(2) implementation of staggered license expiration dates; AND  
29 ~~(8) establishment of a voluntary food manager certification program, including course fees;~~  
30 ~~(9)~~(3) plan review and the establishment of plan review fees; AND

- 1           ~~(10)(4)(3) reimbursement of local governments for inspections and enforcement;~~  
2           ~~(11) establishment of critical point violations; and~~  
3           ~~(12) other rules necessary to implement the provisions of Title 50, chapter 50.~~

4

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

6

7           ~~Section 1. Section 50-2-116, MCA, is amended to read:~~8           ~~"50-2-116. Powers and duties of local boards. (1) Local boards shall:~~

9           ~~(a) appoint a local health officer who is a physician or a person with a master's degree in public~~  
10 ~~health or the equivalent and with appropriate experience, as determined by the department, and shall fix~~  
11 ~~the health officer's salary;~~

12           ~~(b) elect a presiding officer and other necessary officers;~~13           ~~(c) employ necessary qualified staff;~~14           ~~(d) adopt bylaws to govern meetings;~~15           ~~(e) hold regular meetings quarterly and hold special meetings as necessary;~~16           ~~(f) supervise destruction and removal of all sources of filth that cause disease;~~17           ~~(g) guard against the introduction of communicable disease;~~18           ~~(h) supervise inspections of public establishments for sanitary conditions;~~

19           ~~(i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent~~  
20 ~~than state standards for the control and disposal of sewage from private and public buildings that is not~~  
21 ~~regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for~~  
22 ~~granting variances from the minimum requirements that are identical to standards promulgated by the board~~  
23 ~~of environmental review and must provide for appeal of variance decisions to the department as required~~  
24 ~~by 75-5-305.~~

25           ~~(2) Local boards may:~~26           ~~(a) quarantine persons who have communicable diseases;~~27           ~~(b) require isolation of persons or things that are infected with communicable diseases;~~28           ~~(c) furnish treatment for persons who have communicable diseases;~~29           ~~(d) prohibit the use of places that are infected with communicable diseases;~~30           ~~(e) require and provide means for disinfecting places that are infected with communicable diseases;~~

1 ~~(f) accept and spend funds received from a federal agency, the state, a school district, or other~~  
 2 ~~persons;~~

3 ~~(g) contract with another local board for all or a part of local health services;~~

4 ~~(h) reimburse local health officers for necessary expenses incurred in official duties;~~

5 ~~(i) abate nuisances affecting public health and safety or bring action necessary to restrain the~~  
 6 ~~violation of public health laws or rules;~~

7 ~~(j) adopt necessary fees to administer regulations for the control and disposal of sewage from~~  
 8 ~~private and public buildings. The fees must be deposited with the county treasurer.~~

9 ~~(k) adopt rules that do not conflict with rules adopted by the department:~~

10 ~~(i) for the control of communicable diseases;~~

11 ~~(ii) for the removal of filth that might cause disease or adversely affect public health;~~

12 ~~(iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;~~

13 ~~(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might~~  
 14 ~~endanger human lives;~~

15 ~~(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that~~  
 16 ~~do not discharge an effluent directly into state waters and that are not required to have an operating permit~~  
 17 ~~as required by rules adopted under 75-5-401; and~~

18 ~~(vi) for the regulation, as necessary, of the practice of tattooing, which may include registering~~  
 19 ~~tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that~~  
 20 ~~are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes~~  
 21 ~~of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and~~  
 22 ~~inserting indelible colors.~~

23 ~~(l) adopt plan review fees for establishments regulated under Title 50, chapter 50, that do not~~  
 24 ~~exceed the actual costs of conducting the review."~~

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

27 **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following  
 28 definitions apply:

29 (1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not  
 30 potentially hazardous foods.

1 (2) (a) "Commercial establishment" means an establishment operated primarily for profit.

2 (b) The term does not include a farmer's market.

3 ~~(3) "Critical point violation" means a violation of this chapter or rules promulgated under this~~  
 4 ~~chapter that is more likely than other violations to pose an immediate threat to the public health, safety,~~  
 5 ~~or welfare or to the environment.~~

6 ~~(3)(4)(3)~~ "Department" means the department of public health and human services provided for  
 7 in 2-15-2201.

8 ~~(4)(5)(4)~~ (a) "Establishment" means an operation that stores, prepares, processes, manufactures,  
 9 packages, serves, vends, or otherwise provides food for human consumption and includes a food  
 10 manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant,  
 11 ~~commercial food processor, or perishable food dealer, or food salvage dealer.~~

12 (b) The term does not include vendors of only raw, unprocessed produce.

13 ~~(5)(6)(5)~~ "Farmer's market" means a farm premises, a roadside stand owned and operated by a  
 14 farmer, or an organized market authorized by the appropriate municipal or county authority.

15 ~~(6)(7)(6)~~ "Food" means an edible substance, beverage, or ingredient used, intended for use, or for  
 16 sale for human consumption.

17 ~~(8) "Food manager" means a person who maintains, manages, owns, or is in charge of an~~  
 18 ~~establishment.~~

19 ~~(7)(9)(7)~~ "Food manufacturing establishment" means a commercial establishment and buildings ~~or,~~  
 20 structures, or vehicles in connection with it used to manufacture ~~or, process,~~ prepare, or deliver food for  
 21 sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities,  
 22 milk product manufacturing plants, slaughterhouses, or meat packing plants.

23 ~~(10)(8)~~ (a) "Food salvage dealer" means an establishment that repackages food for distribution or  
 24 sale to the public or that offers salvaged foods to the public for sale or human consumption.

25 (b) The term does not include nonprofit food banks.

26 ~~(8)(11)(9)~~ (a) "Food service establishment" means a place where food or drink is prepared, served,  
 27 or provided to the public, with or without charge, and includes the following types of operations: fixed or  
 28 mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop,  
 29 soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar,  
 30 cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, or private

1 organization routinely serving the public, ~~or similar place where food or drink is prepared, served, or~~  
 2 ~~provided to the public with or without charge.~~

3 (b) The term does not include:

4 (i) establishments, vendors, or vending machines that sell or serve only packaged, nonperishable  
 5 foods in their unbroken, original containers;

6 (ii) vending machines that sell or serve bulk, nonperishable foods; or

7 (iii) a private organization serving food only to its members.

8 ~~(9)(12)(10)~~ (a) "Food warehouse" means a commercial establishment and buildings or structures  
 9 in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

10 (b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities  
 11 where brewing occurs.

12 ~~(10)(13)(11)~~ "Frozen food plant" means a place used to freeze, process, or store food, including  
 13 facilities used in conjunction with the frozen food plant, and a place where individual compartments are  
 14 offered to the public on a rental or other basis.

15 ~~(11)(14)(12)~~ (a) "Meat market" means a commercial establishment and buildings or structures in  
 16 connection with it used to process, store, or display meat or meat products for sale to the public or for  
 17 human consumption.

18 (b) The term does not include custom cutters or wild game processors who cut and wrap  
 19 customer provided meat for the same customer, PROCESS, GRIND, PACKAGE, OR FREEZE GAME MEAT  
 20 FOR THE OWNER OF THE CARCASS FOR CONSUMPTION BY THE OWNER OR THE OWNER'S FAMILY,  
 21 PETS, OR NONPAYING GUESTS.

22 ~~(12)(15)(13)~~ "Nonprofit organization" means any organization qualifying as a tax-exempt  
 23 organization under 26 U.S.C. 501.

24 ~~(13)(16)(14)~~ "Perishable food dealer" means a person or commercial establishment that is in the  
 25 business of ~~purchasing and selling~~ retailing perishable food to the public.

26 ~~(14)(17)(15)~~ "Person" means a person, partnership, corporation, association, cooperative group,  
 27 or other entity engaged in operating, owning, or offering services of an establishment.

28 ~~(15)(18)(16)~~ (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a  
 29 form capable of supporting:

30 (i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

1 (ii) the growth and toxin production of *Clostridium botulinum*.

2 (b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or  
3 heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

4 (c) The term does not include:

5 (i) an air-cooled, hard-boiled egg with intact shell;

6 (ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24°C  
7 (75°F);

8 (iii) a food with a water activity (aw) value of 0.85 or less;

9 (iv) a food in an unopened hermetically sealed container that is commercially processed to achieve  
10 and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

11 (v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid  
12 and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium*  
13 *botulinum* cannot occur.

14 ~~(16)(19)(17)~~ (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters,  
15 marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration  
16 (pH) of 4.6 or below when measured at 24°C (75°F) and that are aseptically processed, packaged, and  
17 sealed.

18 (b) The term does not include:

19 (i) tomatoes or food products containing tomatoes; or

20 (ii) any other food substrate or product preserved by any method other than that described in  
21 subsection ~~(16)(a)~~ ~~(19)(a)~~ (17)(A).

22 ~~(17)(20)(18)~~ "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at  
23 a farmer's market in their natural state that are not packaged and labeled and are not:

24 (a) cooked;

25 (b) canned;

26 (c) preserved, except for drying;

27 (d) combined with other food products; or

28 (e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures."  
29

30 **Section 2.** Section 50-50-103, MCA, is amended to read:

1           "50-50-103. Department authorized to adopt rules. (1) To protect public health, the department  
2 may adopt rules relating to the ~~construction and~~ operation of establishments defined in 50-50-102,  
3 including ~~coverage of food, personnel, food equipment and utensils, sanitary facilities and controls,~~  
4 ~~construction and fixtures, and housekeeping. The rules may include the following:~~

5           ~~(a) requirements to ensure that establishments have safe and sanitary facilities and systems,~~  
6 ~~including drinking water, sewage disposal, and solid waste disposal systems;~~

7           ~~(b) requirements to prevent injury and the spread of disease and illness in establishments;~~

8           ~~(c) requirements to ensure that establishments are operated and maintained in a safe and sanitary~~  
9 ~~manner;~~

10          ~~(d) requirements associated with food coverage, handling, processing, equipment, and utensils;~~

11          ~~(e) requirements for licensing of establishments and establishing a schedule of license fees based~~  
12 ~~on the aggregate statewide costs of licensing and regulating establishments. The license fees may include~~  
13 ~~a minimal base fee related to the fixed costs of inspecting, licensing, and regulating establishments and may~~  
14 ~~include costs based on the risk to public health posed by the particular establishment, the capacity of the~~  
15 ~~establishment, the complexity of the establishment operation or operations, and other relevant factors;~~

16          ~~(f) requirements to implement staggered license expiration dates;~~

17          ~~(g) requirements to establish a voluntary food manager certification program and to set course fees~~  
18 ~~that do not exceed actual costs;~~

19          ~~(h) requirements for plan review of establishments based on the size and complexity of the~~  
20 ~~proposed establishment, the type of water and sewage disposal to service the establishment, the type and~~  
21 ~~magnitude of remodeling efforts, the type of food product and process, and other relevant factors and~~  
22 ~~setting plan review fees that do not exceed the actual costs of conducting the review;~~

23          ~~(i) requirements for reimbursing local governments for inspections and enforcement of this chapter;~~

24          ~~(j) requirements to establish critical point violations; and~~

25          ~~(k) any other rules necessary to implement the provisions of this chapter., INCLUDING:~~

26          ~~(A) COVERAGE OF FOOD;~~

27          ~~(B) PERSONNEL;~~

28          ~~(C) FOOD EQUIPMENT AND UTENSILS;~~

29          ~~(D) SANITARY FACILITIES AND CONTROLS;~~

30          ~~(E) CONSTRUCTION AND FIXTURES;~~

1 (F) HOUSEKEEPING;

2 (G) STAGGERED LICENSE EXPIRATION DATES;

3 (H) PLAN REVIEW;

4 (I) LICENSURE; AND

5 (J) REIMBURSEMENT OF LOCAL GOVERNMENTS.

6 (2) THE DEPARTMENT MAY ADOPT RULES SETTING LICENSE FEES BASED ON THE  
7 CATEGORIZATION OF ESTABLISHMENTS WITHIN FIVE THREE DIFFERENT RISK LEVELS, RANGING FROM  
8 \$50 FOR THE LOWEST ESTABLISHMENT RISK LEVEL 1 TO A MAXIMUM OF \$200 FOR THE HIGHEST  
9 ESTABLISHMENT RISK LEVEL 5. THE FEE FOR THE ESTABLISHMENT RISK LEVEL 1 MAY NOT EXCEED  
10 \$35. THE FEE FOR THE ESTABLISHMENT RISK LEVEL 2 MAY NOT EXCEED \$65. THE FEE FOR THE  
11 ESTABLISHMENT RISK LEVEL 3 MAY NOT EXCEED \$100. IN CATEGORIZING ESTABLISHMENTS BASED  
12 UPON THE RISK TO THE PUBLIC, THE DEPARTMENT MAY CONSIDER RISK FACTORS RELATED TO THE  
13 TYPES OF FOOD SERVED, FOOD PREPARATION STEPS, THE VOLUME OF FOOD AND THE POPULATION  
14 SERVED, AND OTHER RELEVANT RISK FACTORS.

15 ~~(2)(3)~~ (a) The department and local health authorities may not adopt rules prohibiting the sale of  
16 baked goods and preserves by nonprofit organizations or by persons at farmer’s markets.

17 (b) The department and local health authorities may not require that foods sold pursuant to this  
18 subsection ~~(2)~~ (3) be prepared in certified or commercial kitchens.”

19  
20 **Section 4.** Section 50-50-109, MCA, is amended to read:

21 ~~“50-50-109. Civil penalties – injunctions other enforcement not barred. (1) An establishment that~~  
22 ~~violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty~~  
23 ~~not to exceed \$500 for each violation. Each day of violation is a separate violation for the purposes of this~~  
24 ~~section.~~

25 ~~(2) Civil. A civil action to impose penalties, as provided under this section, does not bar~~  
26 ~~administrative enforcement under [section 11], administrative penalties under [section 12], or injunctions~~  
27 ~~to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~  
28 ~~pursuant to this chapter.”~~

29  
30 **Section 3.** Section 50-50-201, MCA, is amended to read:



1           **"50-50-201. License required.** (1) Except as provided in 50-50-202, a person operating an  
2 establishment shall procure an annual license from the department.

3           (2) A separate license is required for each establishment, but if more than one type of  
4 establishment is operated on the same premises and under the same management, only one license is  
5 required.

6           (3) Only one license is required for a person owning and operating one or more vending machines.

7           (4) ~~Before a license may be issued by the department it must be validated by the local health~~  
8 ~~officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.~~  
9 A license issued by the department is not valid unless signed in accordance with 50-50-214."

10  
11           **Section 4.** Section 50-50-205, MCA, is amended to read:

12           **"50-50-205. License fee -- late fee -- preemption of local authority -- exception.** (1) For each  
13 license issued, the department shall collect ~~a fee of \$60 or a fee that is adopted by an administrative rule~~  
14 ~~that provides a schedule of fees that is based on the aggregate statewide costs of licensing and regulating~~  
15 ~~establishments~~ BASED UPON THE CATEGORIZATION OF ESTABLISHMENTS WITHIN THE FIVE THREE  
16 DIFFERENT RISK LEVELS. ~~#~~ The department shall deposit 85% of the fees collected under this section into  
17 the local board inspection fund account created in 50-2-108, 7.5% of the fees into the general fund, and  
18 7.5% of the fees into the special revenue account provided for in 50-50-216.

19           (2) In addition to the license fee required under subsection (1), the department shall collect a late  
20 fee from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ the  
21 licensee's current license and who operates an establishment governed by this part in the next licensing  
22 year. The late fee is \$25 and must be deposited in the special revenue account provided for in 50-50-216.

23           (3) A county or other local government may not impose an inspection fee or charge in addition to  
24 the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected  
25 after two visits to the establishment."  
26

27           **Section 5.** Section 50-50-207, MCA, is amended to read:

28           **"50-50-207. Expiration date of license.** ~~Licenses expire~~ (1) Except as provided in subsection (2),  
29 each license expires on December 31 following the date of issue unless canceled for cause.

30           (2) The department may amend or issue licenses to provide for staggered license expiration dates.

1 The department may provide for initial license terms of greater than 12 months but no more than 23  
 2 months in adopting staggered license expiration dates, and the license fee must be prorated accordingly.  
 3 Upon expiration of a license that has been amended or issued to provide a term of greater than 12 months  
 4 and subsequent payment of the required license fee, the license must be renewed for a period of 12 months  
 5 commencing on the day following the expiration date of the amended or issued license UNLESS  
 6 CONDITIONS EXIST THAT ARE GROUNDS FOR CANCELLATION OR DENIAL OF THE LICENSE."

7  
 8 ~~**NEW SECTION. Section 8. Voluntary food manager certification program -- fees.** The department~~  
 9 ~~may establish and set fees for a voluntary food manager certification program for training and certifying~~  
 10 ~~food managers. All of the fees collected under this section must be deposited in the special revenue~~  
 11 ~~account provided for in 50-50-216 and may be used only for the purposes of implementing and~~  
 12 ~~administering the voluntary food manager certification program.~~

13  
 14 ~~**NEW SECTION. Section 7. Plan review -- fees.** (1) Whenever an establishment is constructed or~~  
 15 ~~remodeled, an existing structure is converted to use as an establishment, or an existing establishment adds~~  
 16 ~~a new type of operation different from the operation for which plans were initially submitted to and~~  
 17 ~~approved by the department OR LOCAL HEALTH DEPARTMENT, the plans must be submitted to the~~  
 18 ~~department OR LOCAL HEALTH DEPARTMENT for review and approval before construction, remodeling,~~  
 19 ~~conversion, or addition for the new operation begins. The department may establish plan review fees that~~  
 20 ~~do not exceed the actual costs to the department in conducting establishment plan review. If the~~  
 21 ~~department conducts the plan review, the plan review fees established by the department must be charged.~~  
 22 ~~OR LOCAL HEALTH DEPARTMENT CONDUCTING THE PLAN REVIEW MAY CHARGE A FEE FOR EACH~~  
 23 ~~FACILITY PLAN REVIEW. IF THE DEPARTMENT CONDUCTS THE PLAN REVIEW, THE FEE MUST BE~~  
 24 ~~BASED ON AN HOURLY RATE AND MAY NOT EXCEED \$250 FOR EACH PLAN REVIEW. ALL OF THE~~  
 25 ~~FEES COLLECTED BY THE DEPARTMENT UNDER THIS SUBSECTION MUST BE DEPOSITED IN THE~~  
 26 ~~SPECIAL REVENUE ACCOUNT PROVIDED IN 50-50-216.~~

27 ~~(2) The department may delegate to a local health department the authority to conduct an~~  
 28 ~~establishment plan review under this chapter when the local health department has qualified personnel to~~  
 29 ~~adequately review the plans for compliance with department rules and this chapter. The local health~~  
 30 ~~department may establish plan review fees that do not exceed the actual costs to the local health~~

1 department in conducting establishment plan reviews. If the local health department conducts the plan  
 2 review, the plan review fees established by the local health department must be charged. ALL OF THE  
 3 FEES COLLECTED BY A LOCAL HEALTH DEPARTMENT UNDER THIS SUBSECTION MUST BE DEPOSITED  
 4 IN AN ACCOUNT DESIGNATED BY THE LOCAL HEALTH DEPARTMENT.

5 (3) If the department conducts the establishment plan review, all of the fees collected under  
 6 subsection (1) must be deposited in the special revenue account provided for in 50-50-216.

7 (4) If the local health department conducts the establishment plan review in compliance with the  
 8 department's rules, all of the fees collected under subsection (2) must be deposited in an account  
 9 designated by the local health department.

10 (2) THE DEPARTMENT SHALL APPROVE OR DISAPPROVE THE PLANS WITHIN 30 WORKING  
 11 DAYS AFTER RECEIPT OF A COMPLETE SET OF PLANS. PAYMENT OF THE PLAN REVIEW FEE MUST  
 12 BE MADE TO THE DEPARTMENT WITHIN 30 DAYS AFTER RECEIPT OF WRITTEN NOTIFICATION BY THE  
 13 DEPARTMENT OF PLAN APPROVAL OR DISAPPROVAL AND AN INVOICE STATING THE FEE.

14 (3) FOR PURPOSES OF THIS SECTION, AN ESTABLISHMENT SHALL SUBMIT REMODELING  
 15 PLANS TO THE DEPARTMENT OR LOCAL HEALTH DEPARTMENT WHEN THE REMODELING PERTAINS  
 16 TO:

17 (A) THE DELIVERY, STORAGE, OR PREPARATION OF FOOD;

18 (B) THE PROCESSING AND MANUFACTURING OF FOOD; OR

19 (C) FOOD SERVICE AREAS.

20  
 21 NEW SECTION. Section 10. Critical point violations -- closure order -- hearing. (1)  
 22 Notwithstanding other provisions of this chapter, the department may issue a closure order to an  
 23 establishment to close immediately if a critical point violation is found at the establishment. The order is  
 24 effective immediately upon receipt by the person to whom it is directed, unless the department provides  
 25 otherwise.

26 (2) Notice of the order must indicate that it is a closure order, must specify the critical point  
 27 violation that presents the immediate threat, and must contain a written statement of the facts constituting  
 28 the violation.

29 (3) Upon issuing an order, the department shall fix a place and time for a hearing, not later than  
 30 5 working days after issuing the order, unless the person to whom the order is directed requests a later

1 time. The department may deny a request for a later time if it finds that the person to whom the order is  
 2 directed is not complying with the order. The hearing must be conducted in the manner specified in  
 3 ~~{section 11}~~.

4 (4) ~~After a hearing held pursuant to subsection (3), if the department finds that a critical point~~  
 5 ~~violation has occurred, the department shall issue an appropriate order in the manner specified in {section~~  
 6 ~~11}. Within 5 working days after the hearing, the department shall affirm, modify, or set aside the order~~  
 7 ~~of the department. An action for review of the order may be initiated using the contested case provisions~~  
 8 ~~of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If a hearing is held~~  
 9 ~~under this section, it must be held in Lewis and Clark County or the county in which the alleged violation~~  
 10 ~~occurred.~~

11 (5) ~~Until issuance of a contrary decision by the department, an order concerning immediate closure~~  
 12 ~~remains effective and enforceable.~~

13  
 14 **NEW SECTION. Section 11. Administrative enforcement — notice of violation — hearing.** (1) ~~If the~~  
 15 ~~department believes that a violation of a provision of this chapter, a rule adopted pursuant to this chapter,~~  
 16 ~~an order issued pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant~~  
 17 ~~to this chapter has occurred, it may serve a written notice of the violation on the alleged violator or the~~  
 18 ~~violator's agent personally or by certified mail. The notice must specify the statute, rule, order, or license~~  
 19 ~~condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The~~  
 20 ~~notice may include an order to take necessary corrective action, including ceasing the violation within a~~  
 21 ~~period of time stated in the order. The order becomes final unless, within 10 days after the notice is~~  
 22 ~~received, the person named as the respondent in the order requests in writing a hearing before the~~  
 23 ~~department. Until issuance of a contrary decision by the department, an order issued pursuant to this~~  
 24 ~~section remains effective and enforceable.~~

25 (2) ~~A hearing requested by the respondent must be held in accordance with the contested case~~  
 26 ~~provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If, after~~  
 27 ~~a hearing, the department finds that a violation has occurred, the department shall issue an appropriate~~  
 28 ~~order for the prevention, abatement, or control of the violation involved or the taking of other corrective~~  
 29 ~~action. An order issued as part of a notice of violation or after a hearing may prescribe the date by which~~  
 30 ~~the violation must cease and the time limits for a particular action in preventing, abating, or controlling the~~

1 violation. If, after a hearing, the department finds that a violation has not occurred or is not occurring, the  
2 department shall declare the order void.

3 ~~(3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~  
4 ~~may take action under another applicable provision of this chapter.~~

5 ~~(4) Section 50-50-210 does not apply to an action taken by the department pursuant to this~~  
6 ~~section.~~

7  
8 ~~**NEW SECTION. Section 12. Administrative penalties — appeals — venue for hearing.** (1) An~~  
9 ~~establishment that violates an order issued by the department pursuant to [section 10 or 11] may be~~  
10 ~~assessed and ordered by the department to pay an administrative penalty not to exceed \$200 for each~~  
11 ~~violation. Each day of violation constitutes a separate violation. The department or may assess the penalty~~  
12 ~~by an order issued pursuant to this section or may suspend all or a part of the administrative penalty~~  
13 ~~assessed under this section if the violation that caused the assessment of the penalty is corrected within~~  
14 ~~a specified time. Assessment of an administrative penalty under this section may be made in conjunction~~  
15 ~~with an order issued pursuant to [section 11(2)] after a hearing as provided in [section 11(2)].~~

16 ~~(2) When the department assesses an administrative penalty under this section, it must have~~  
17 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~  
18 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

19 ~~(a) the order alleged to have been violated;~~

20 ~~(b) the facts alleged to constitute the violation;~~

21 ~~(c) the amount of the administrative penalty assessed under this section;~~

22 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~  
23 ~~the assessment of the penalty;~~

24 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~  
25 ~~to be suspended;~~

26 ~~(f) the time within which the corrective action is to be taken or the time within which the~~  
27 ~~administrative penalty is to be paid;~~

28 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~  
29 ~~hearing; and~~

30 ~~(h) that the hearing provided in this section may be waived or that the alleged violator may proceed~~

1 ~~by informal disposition pursuant to 2-4-603.~~

2 ~~(3) The department shall provide the respondent who is assessed a penalty under this section with~~  
 3 ~~an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The~~  
 4 ~~contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter~~  
 5 ~~4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must~~  
 6 ~~be held in Lewis and Clark County or the county in which the alleged violation occurred.~~

7 ~~(4) In determining appropriate penalties for violations, the department shall consider the gravity of~~  
 8 ~~the violations and the potential for significant harm to the public health or safety. In determining the~~  
 9 ~~appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the~~  
 10 ~~penalty assessment, the department shall consider the cooperation and the degree of care exercised by the~~  
 11 ~~respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether~~  
 12 ~~significant harm resulted to the public health or safety from the violation.~~

13 ~~(5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this~~  
 14 ~~section, the department may take action in district court to recover the amount of the penalty that is unpaid~~  
 15 ~~and any additional amounts assessed or sought under this chapter.~~

16 ~~(6) Action taken by the department pursuant to this section does not bar other action under this~~  
 17 ~~chapter or any other remedy available to the department for violations of applicable laws or rules adopted~~  
 18 ~~pursuant to those laws.~~

19 ~~(7) Administrative penalties collected under this section must be deposited in the special revenue~~  
 20 ~~account provided for in 50-50-216.~~

21

22 ~~NEW SECTION. Section 8. Codification instruction. [Sections 8 through 12] are [SECTION 7] IS~~  
 23 ~~intended to be codified as an integral part of Title 50, chapter 50, and the provisions of Title 50, chapter~~  
 24 ~~50, apply to [sections 8 through 12] [SECTION 7].~~

25

26 ~~NEW SECTION. Section 14. Retroactive applicability. [This act] applies retroactively, within the~~  
 27 ~~meaning of 1-2-109, to licenses issued pursuant to Title 50, chapter 50, prior to October 1, 1997.~~

28

29 ~~NEW SECTION. Section 6. Effective dates. (1) [Sections 1, 3, 13, and 14 AND 8 SECTION 2 and~~  
 30 ~~this section] are effective on passage and approval.~~

1 (2) [Sections ~~2 and 4~~ 1 AND 3 through ~~42 7~~ 5] are effective October 1, 1997.

2 -END-

## 1 SENATE BILL NO. 61

2 INTRODUCED BY KEATING

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO FOOD  
 6 ESTABLISHMENTS; ~~GRANTING LOCAL BOARDS OF HEALTH THE POWER TO ADOPT PLAN REVIEW FEES;~~  
 7 CLARIFYING AND ADDING DEFINITIONS ASSOCIATED WITH FOOD ESTABLISHMENTS; REVISING THE  
 8 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES' RULEMAKING AUTHORITY; CLARIFYING  
 9 CIVIL PENALTIES ASSOCIATED WITH CIVIL ACTIONS; PROVIDING FOR VALIDATION AND EXPIRATION  
 10 OF LICENSES AND A SCHEDULE OF FEES; ~~PROVIDING FOR A VOLUNTARY FOOD MANAGER~~  
 11 ~~CERTIFICATION PROGRAM, INCLUDING FEES; PROVIDING FOR FOOD ESTABLISHMENT PLAN REVIEW~~  
 12 ~~AND FEES; GRANTING IMMEDIATE CLOSURE AUTHORITY FOR AND DEFINING "CRITICAL POINT~~  
 13 ~~VIOLATIONS"; PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND ADMINISTRATIVE~~  
 14 ~~PENALTIES; AMENDING SECTIONS 50-2-116, 50-50-102, 50-50-103, 50-50-109, 50-50-201, 50-50-205,~~  
 15 ~~AND 50-50-207, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."~~

16  
17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because additional rulemaking authority, beyond that  
 19 granted by 50-50-103, is being granted to the department of public health and human services. This  
 20 rulemaking authority will allow the department to adopt rules to protect the public health by adopting  
 21 requirements for food establishments in the following areas:

- 22 ~~(1) safe and sanitary facilities and systems;~~  
 23 ~~(2) fire codes, life safety codes, and building codes;~~  
 24 ~~(3) prevention of injury and the spread of disease;~~  
 25 ~~(4) operation and maintenance in a safe and sanitary manner;~~  
 26 ~~(5) food coverage, handling, processing, equipment, and utensils;~~  
 27 ~~(6)(1) licensure and establishment of a schedule of license fees;~~  
 28 ~~(7)(2) implementation of staggered license expiration dates; AND~~  
 29 ~~(8) establishment of a voluntary food manager certification program, including course fees;~~  
 30 ~~(9)(3) plan review and the establishment of plan review fees; AND~~



- 1           ~~(10)(4)(3) reimbursement of local governments for inspections and enforcement;~~  
 2           ~~(11) establishment of critical point violations; and~~  
 3           ~~(12) other rules necessary to implement the provisions of Title 50, chapter 50.~~

4

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

6

7           ~~Section 1. Section 50-2-116, MCA, is amended to read:~~8           ~~"50-2-116. Powers and duties of local boards. (1) Local boards shall:~~

9           ~~(a) appoint a local health officer who is a physician or a person with a master's degree in public~~  
 10 ~~health or the equivalent and with appropriate experience, as determined by the department, and shall fix~~  
 11 ~~the health officer's salary;~~

12           ~~(b) elect a presiding officer and other necessary officers;~~13           ~~(c) employ necessary qualified staff;~~14           ~~(d) adopt bylaws to govern meetings;~~15           ~~(e) hold regular meetings quarterly and hold special meetings as necessary;~~16           ~~(f) supervise destruction and removal of all sources of filth that cause disease;~~17           ~~(g) guard against the introduction of communicable disease;~~18           ~~(h) supervise inspections of public establishments for sanitary conditions;~~

19           ~~(i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent~~  
 20 ~~than state standards for the control and disposal of sewage from private and public buildings that is not~~  
 21 ~~regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for~~  
 22 ~~granting variances from the minimum requirements that are identical to standards promulgated by the board~~  
 23 ~~of environmental review and must provide for appeal of variance decisions to the department as required~~  
 24 ~~by 75-5-305.~~

25           ~~(2) Local boards may:~~26           ~~(a) quarantine persons who have communicable diseases;~~27           ~~(b) require isolation of persons or things that are infected with communicable diseases;~~28           ~~(c) furnish treatment for persons who have communicable diseases;~~29           ~~(d) prohibit the use of places that are infected with communicable diseases;~~30           ~~(e) require and provide means for disinfecting places that are infected with communicable diseases;~~

1 ~~(f) accept and spend funds received from a federal agency, the state, a school district, or other~~  
 2 ~~persons;~~

3 ~~(g) contract with another local board for all or a part of local health services;~~

4 ~~(h) reimburse local health officers for necessary expenses incurred in official duties;~~

5 ~~(i) abate nuisances affecting public health and safety or bring action necessary to restrain the~~  
 6 ~~violation of public health laws or rules;~~

7 ~~(j) adopt necessary fees to administer regulations for the control and disposal of sewage from~~  
 8 ~~private and public buildings. The fees must be deposited with the county treasurer.~~

9 ~~(k) adopt rules that do not conflict with rules adopted by the department;~~

10 ~~(i) for the control of communicable diseases;~~

11 ~~(ii) for the removal of filth that might cause disease or adversely affect public health;~~

12 ~~(iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;~~

13 ~~(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might~~  
 14 ~~endanger human lives;~~

15 ~~(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that~~  
 16 ~~do not discharge an effluent directly into state waters and that are not required to have an operating permit~~  
 17 ~~as required by rules adopted under 75-5-401; and~~

18 ~~(vi) for the regulation, as necessary, of the practice of tattooing, which may include registering~~  
 19 ~~tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that~~  
 20 ~~are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes~~  
 21 ~~of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and~~  
 22 ~~inserting indelible colors.~~

23 ~~(l) adopt plan review fees for establishments regulated under Title 50, chapter 50, that do not~~  
 24 ~~exceed the actual costs of conducting the review.~~

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

27 **"50-50-102. Definitions.** Unless the context requires otherwise, in this chapter, the following  
 28 definitions apply:

29 (1) "Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not  
 30 potentially hazardous foods.

1 (2) (a) "Commercial establishment" means an establishment operated primarily for profit.

2 (b) The term does not include a farmer's market.

3 ~~(3) "Critical point violation" means a violation of this chapter or rules promulgated under this~~  
 4 ~~chapter that is more likely than other violations to pose an immediate threat to the public health, safety,~~  
 5 ~~or welfare or to the environment.~~

6 ~~(3)(4)(3)~~ "Department" means the department of public health and human services provided for  
 7 in 2-15-2201.

8 ~~(4)(5)(4)~~ (a) "Establishment" means an operation that stores, prepares, processes, manufactures,  
 9 packages, serves, vends, or otherwise provides food for human consumption and includes a food  
 10 manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant,  
 11 commercial food processor, or perishable food dealer, or food salvage dealer.

12 (b) The term does not include vendors of only raw, unprocessed produce.

13 ~~(5)(6)(5)~~ "Farmer's market" means a farm premises, a roadside stand owned and operated by a  
 14 farmer, or an organized market authorized by the appropriate municipal or county authority.

15 ~~(6)(7)(6)~~ "Food" means an edible substance, beverage, or ingredient used, intended for use, or for  
 16 sale for human consumption.

17 ~~(8) "Food manager" means a person who maintains, manages, owns, or is in charge of an~~  
 18 ~~establishment.~~

19 ~~(7)(9)(7)~~ "Food manufacturing establishment" means a commercial establishment and buildings ~~or,~~  
 20 structures, or vehicles in connection with it used to manufacture ~~or, process, prepare, or deliver~~ food for  
 21 sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities,  
 22 milk product manufacturing plants, slaughterhouses, or meat packing plants.

23 ~~(10)(8)~~ (a) "Food salvage dealer" means an establishment that repackages food for distribution or  
 24 sale to the public or that offers salvaged foods to the public for sale or human consumption.

25 (b) The term does not include nonprofit food banks.

26 ~~(8)(11)(9)~~ (a) "Food service establishment" means a place where food or drink is prepared, served,  
 27 or provided to the public, with or without charge, and includes the following types of operations: fixed or  
 28 mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop,  
 29 soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar,  
 30 cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, or private

1 organization routinely serving the public, ~~or similar place where food or drink is prepared, served, or~~  
 2 ~~provided to the public with or without charge.~~

3 (b) The term does not include:

4 (i) establishments, vendors, or vending machines that sell or serve only packaged, nonperishable  
 5 foods in their unbroken, original containers;

6 ~~(ii) vending machines that sell or serve bulk, nonperishable foods; or~~

7 ~~(iii) a private organization serving food only to its members.~~

8 ~~(9)(12)(10)~~ (a) "Food warehouse" means a commercial establishment and buildings or structures  
 9 in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

10 (b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities  
 11 where brewing occurs.

12 ~~(10)(13)(11)~~ "Frozen food plant" means a place used to freeze, process, or store food, including  
 13 facilities used in conjunction with the frozen food plant, and a place where individual compartments are  
 14 offered to the public on a rental or other basis.

15 ~~(11)(14)(12)~~ (a) "Meat market" means a commercial establishment and buildings or structures in  
 16 connection with it used to process, store, or display meat or meat products for sale to the public or for  
 17 human consumption.

18 (b) ~~The term does not include custom cutters or wild game processors who cut and wrap~~  
 19 ~~customer provided meat for the same customer, PROCESS, GRIND, PACKAGE, OR FREEZE GAME MEAT~~  
 20 ~~FOR THE OWNER OF THE CARCASS FOR CONSUMPTION BY THE OWNER OR THE OWNER'S FAMILY,~~  
 21 ~~PETS, OR NONPAYING GUESTS.~~

22 ~~(12)(15)(13)~~ "Nonprofit organization" means any organization qualifying as a tax-exempt  
 23 organization under 26 U.S.C. 501.

24 ~~(13)(16)(14)~~ "Perishable food dealer" means a person or commercial establishment that is in the  
 25 business of ~~purchasing and selling~~ retailing perishable food to the public.

26 ~~(14)(17)(15)~~ "Person" means a person, partnership, corporation, association, cooperative group,  
 27 or other entity engaged in operating, owning, or offering services of an establishment.

28 ~~(15)(18)(16)~~ (a) "Potentially hazardous food" means a food that is natural or synthetic and is in a  
 29 form capable of supporting:

30 (i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

1 (ii) the growth and toxin production of *Clostridium botulinum*.

2 (b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or  
3 heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

4 (c) The term does not include:

5 (i) an air-cooled, hard-boiled egg with intact shell;

6 (ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24°C  
7 (75°F);

8 (iii) a food with a water activity (aw) value of 0.85 or less;

9 (iv) a food in an unopened hermetically sealed container that is commercially processed to achieve  
10 and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

11 (v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid  
12 and progressive growth of infectious and toxigenic microorganisms or the slower growth of *Clostridium*  
13 *botulinum* cannot occur.

14 ~~(16)(19)(17)~~ (a) "Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters,  
15 marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration  
16 (pH) of 4.6 or below when measured at 24°C (75°F) and that are aseptically processed, packaged, and  
17 sealed.

18 (b) The term does not include:

19 (i) tomatoes or food products containing tomatoes; or

20 (ii) any other food substrate or product preserved by any method other than that described in  
21 subsection ~~(16)(a)~~ ~~(19)(a)~~ (17)(A).

22 ~~(17)(20)(18)~~ "Raw and unprocessed farm products" means fruits, vegetables, and grains sold at  
23 a farmer's market in their natural state that are not packaged and labeled and are not:

24 (a) cooked;

25 (b) canned;

26 (c) preserved, except for drying;

27 (d) combined with other food products; or

28 (e) peeled, diced, cut, blanched, or otherwise subjected to value-adding procedures."  
29

30 **Section 2.** Section 50-50-103, MCA, is amended to read:

1           "50-50-103. Department authorized to adopt rules. (1) To protect public health, the department  
2 may adopt rules relating to the ~~construction and~~ operation of establishments defined in 50-50-102,  
3 including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls,  
4 construction and fixtures, and housekeeping. ~~The rules may include the following:~~

5           ~~(a) requirements to ensure that establishments have safe and sanitary facilities and systems,~~  
6 ~~including drinking water, sewage disposal, and solid waste disposal systems;~~

7           ~~(b) requirements to prevent injury and the spread of disease and illness in establishments;~~

8           ~~(c) requirements to ensure that establishments are operated and maintained in a safe and sanitary~~  
9 ~~manner;~~

10          ~~(d) requirements associated with food coverage, handling, processing, equipment, and utensils;~~

11          ~~(e) requirements for licensing of establishments and establishing a schedule of license fees based~~  
12 ~~on the aggregate statewide costs of licensing and regulating establishments. The license fees may include~~  
13 ~~a minimal base fee related to the fixed costs of inspecting, licensing, and regulating establishments and may~~  
14 ~~include costs based on the risk to public health posed by the particular establishment, the capacity of the~~  
15 ~~establishment, the complexity of the establishment operation or operations, and other relevant factors;~~

16          ~~(f) requirements to implement staggered license expiration dates;~~

17          ~~(g) requirements to establish a voluntary food manager certification program and to set course fees~~  
18 ~~that do not exceed actual costs;~~

19          ~~(h) requirements for plan review of establishments based on the size and complexity of the~~  
20 ~~proposed establishment, the type of water and sewage disposal to service the establishment, the type and~~  
21 ~~magnitude of remodeling efforts, the type of food product and process, and other relevant factors and~~  
22 ~~setting plan review fees that do not exceed the actual costs of conducting the review;~~

23          ~~(i) requirements for reimbursing local governments for inspections and enforcement of this chapter;~~

24          ~~(j) requirements to establish critical point violations; and~~

25          ~~(k) any other rules necessary to implement the provisions of this chapter, INCLUDING:~~

26          ~~(A) COVERAGE OF FOOD;~~

27          ~~(B) PERSONNEL;~~

28          ~~(C) FOOD EQUIPMENT AND UTENSILS;~~

29          ~~(D) SANITARY FACILITIES AND CONTROLS;~~

30          ~~(E) CONSTRUCTION AND FIXTURES;~~

1           (F) HOUSEKEEPING;

2           (G) STAGGERED LICENSE EXPIRATION DATES;

3           (H) PLAN REVIEW;

4           (I) LICENSURE; AND

5           (J) REIMBURSEMENT OF LOCAL GOVERNMENTS.

6           (2) THE DEPARTMENT MAY ADOPT RULES SETTING LICENSE FEES BASED ON THE  
 7 CATEGORIZATION OF ESTABLISHMENTS WITHIN FIVE THREE DIFFERENT RISK LEVELS, RANGING FROM  
 8 \$50 FOR THE LOWEST ESTABLISHMENT RISK LEVEL 1 TO A MAXIMUM OF \$200 FOR THE HIGHEST  
 9 ESTABLISHMENT RISK LEVEL 5. THE FEE FOR THE ESTABLISHMENT RISK LEVEL 1 MAY NOT EXCEED  
 10 \$35. THE FEE FOR THE ESTABLISHMENT RISK LEVEL 2 MAY NOT EXCEED \$65. THE FEE FOR THE  
 11 ESTABLISHMENT RISK LEVEL 3 MAY NOT EXCEED \$100. IN CATEGORIZING ESTABLISHMENTS BASED  
 12 UPON THE RISK TO THE PUBLIC, THE DEPARTMENT MAY CONSIDER RISK FACTORS RELATED TO THE  
 13 TYPES OF FOOD SERVED, FOOD PREPARATION STEPS, THE VOLUME OF FOOD AND THE POPULATION  
 14 SERVED, AND OTHER RELEVANT RISK FACTORS.

15           ~~(2)(3)~~ (a) The department and local health authorities may not adopt rules prohibiting the sale of  
 16 baked goods and preserves by nonprofit organizations or by persons at farmer's markets.

17           (b) The department and local health authorities may not require that foods sold pursuant to this  
 18 subsection ~~(2)~~ (3) be prepared in certified or commercial kitchens."

19

20           **Section 4.** ~~Section 50-50-109, MCA, is amended to read:~~

21           ~~"50-50-109. Civil penalties -- injunctions other enforcement not barred. (1) An establishment that~~  
 22 ~~violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty~~  
 23 ~~not to exceed \$500 for each violation. Each day of violation is a separate violation for the purposes of this~~  
 24 ~~section.~~

25           ~~(2) Civil A civil action to impose penalties, as provided under this section, does not bar~~  
 26 ~~administrative enforcement under [section 11], administrative penalties under [section 12], or injunctions~~  
 27 ~~to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department~~  
 28 ~~pursuant to this chapter."~~

29

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

1 "50-50-201. License required. (1) Except as provided in 50-50-202, a person operating an  
2 establishment shall procure an annual license from the department.

3 (2) A separate license is required for each establishment, but if more than one type of  
4 establishment is operated on the same premises and under the same management, only one license is  
5 required.

6 (3) Only one license is required for a person owning and operating one or more vending machines.

7 (4) ~~Before a license may be issued by the department it must be validated by the local health~~  
8 ~~officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.~~  
9 A license issued by the department is not valid unless signed in accordance with 50-50-214.

10

11 **Section 4.** Section 50-50-205, MCA, is amended to read:

12 "**50-50-205. License fee -- late fee -- preemption of local authority -- exception.** (1) For each  
13 license issued, the department shall collect ~~a fee of \$60 or a fee that is adopted by an administrative rule~~  
14 ~~that provides a schedule of fees that is based on the aggregate statewide costs of licensing and regulating~~  
15 ~~establishments~~ BASED UPON THE CATEGORIZATION OF ESTABLISHMENTS WITHIN THE FIVE THREE  
16 DIFFERENT RISK LEVELS. ~~‡~~ The department shall deposit 85% of the fees collected under this section into  
17 the local board inspection fund account created in 50-2-108, 7.5% of the fees into the general fund, and  
18 7.5% of the fees into the special revenue account provided for in 50-50-216.

19 (2) In addition to the license fee required under subsection (1), the department shall collect a late  
20 fee from any licensee who has failed to submit a license renewal fee prior to the expiration of ~~his~~ the  
21 licensee's current license and who operates an establishment governed by this part in the next licensing  
22 year. The late fee is \$25 and must be deposited in the special revenue account provided for in 50-50-216.

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

26

27 **Section 5.** Section 50-50-207, MCA, is amended to read:

28 "**50-50-207. Expiration date of license.** ~~Licenses expire~~ (1) Except as provided in subsection (2),  
29 each license expires on December 31 following the date of issue unless canceled for cause.

30 (2) The department may amend or issue licenses to provide for staggered license expiration dates.



1 The department may provide for initial license terms of greater than 12 months but no more than 23  
 2 months in adopting staggered license expiration dates, and the license fee must be prorated accordingly.  
 3 Upon expiration of a license that has been amended or issued to provide a term of greater than 12 months  
 4 and subsequent payment of the required license fee, the license must be renewed for a period of 12 months  
 5 commencing on the day following the expiration date of the amended or issued license UNLESS  
 6 CONDITIONS EXIST THAT ARE GROUNDS FOR CANCELLATION OR DENIAL OF THE LICENSE."

7  
 8 ~~NEW SECTION. Section 8. Voluntary food manager certification program — fees.~~ The department  
 9 may establish and set fees for a voluntary food manager certification program for training and certifying  
 10 food managers. All of the fees collected under this section must be deposited in the special revenue  
 11 account provided for in 50-50-216 and may be used only for the purposes of implementing and  
 12 administering the voluntary food manager certification program.

13  
 14 ~~NEW SECTION. Section 7. Plan review — fees.~~ (1) ~~Whenever an establishment is constructed or~~  
 15 ~~remodeled, an existing structure is converted to use as an establishment, or an existing establishment adds~~  
 16 ~~a new type of operation different from the operation for which plans were initially submitted to and~~  
 17 ~~approved by the department OR LOCAL HEALTH DEPARTMENT, the plans must be submitted to the~~  
 18 ~~department OR LOCAL HEALTH DEPARTMENT for review and approval before construction, remodeling,~~  
 19 ~~conversion, or addition for the new operation begins. The department may establish plan review fees that~~  
 20 ~~do not exceed the actual costs to the department in conducting establishment plan review. If the~~  
 21 ~~department conducts the plan review, the plan review fees established by the department must be charged.~~  
 22 ~~OR LOCAL HEALTH DEPARTMENT CONDUCTING THE PLAN REVIEW MAY CHARGE A FEE FOR EACH~~  
 23 ~~FACILITY PLAN REVIEW. IF THE DEPARTMENT CONDUCTS THE PLAN REVIEW, THE FEE MUST BE~~  
 24 ~~BASED ON AN HOURLY RATE AND MAY NOT EXCEED \$250 FOR EACH PLAN REVIEW. ALL OF THE~~  
 25 ~~FEES COLLECTED BY THE DEPARTMENT UNDER THIS SUBSECTION MUST BE DEPOSITED IN THE~~  
 26 ~~SPECIAL REVENUE ACCOUNT PROVIDED IN 50-50-216.~~

27 (2) ~~The department may delegate to a local health department the authority to conduct an~~  
 28 ~~establishment plan review under this chapter when the local health department has qualified personnel to~~  
 29 ~~adequately review the plans for compliance with department rules and this chapter. The local health~~  
 30 ~~department may establish plan review fees that do not exceed the actual costs to the local health~~

1 ~~department in conducting establishment plan reviews. If the local health department conducts the plan~~  
 2 ~~review, the plan review fees established by the local health department must be charged. ALL OF THE~~  
 3 ~~FEES COLLECTED BY A LOCAL HEALTH DEPARTMENT UNDER THIS SUBSECTION MUST BE DEPOSITED~~  
 4 ~~IN AN ACCOUNT DESIGNATED BY THE LOCAL HEALTH DEPARTMENT.~~

5 ~~(3) If the department conducts the establishment plan review, all of the fees collected under~~  
 6 ~~subsection (1) must be deposited in the special revenue account provided for in 50-50-216.~~

7 ~~(4) If the local health department conducts the establishment plan review in compliance with the~~  
 8 ~~department's rules, all of the fees collected under subsection (2) must be deposited in an account~~  
 9 ~~designated by the local health department.~~

10 ~~(2) THE DEPARTMENT SHALL APPROVE OR DISAPPROVE THE PLANS WITHIN 30 WORKING~~  
 11 ~~DAYS AFTER RECEIPT OF A COMPLETE SET OF PLANS. PAYMENT OF THE PLAN REVIEW FEE MUST~~  
 12 ~~BE MADE TO THE DEPARTMENT WITHIN 30 DAYS AFTER RECEIPT OF WRITTEN NOTIFICATION BY THE~~  
 13 ~~DEPARTMENT OF PLAN APPROVAL OR DISAPPROVAL AND AN INVOICE STATING THE FEE.~~

14 ~~(3) FOR PURPOSES OF THIS SECTION, AN ESTABLISHMENT SHALL SUBMIT REMODELING~~  
 15 ~~PLANS TO THE DEPARTMENT OR LOCAL HEALTH DEPARTMENT WHEN THE REMODELING PERTAINS~~  
 16 ~~TO:~~

17 ~~(A) THE DELIVERY, STORAGE, OR PREPARATION OF FOOD;~~

18 ~~(B) THE PROCESSING AND MANUFACTURING OF FOOD; OR~~

19 ~~(C) FOOD SERVICE AREAS.~~

20  
 21 ~~NEW SECTION. Section 10. Critical point violations closure order hearing. (1)~~  
 22 ~~Notwithstanding other provisions of this chapter, the department may issue a closure order to an~~  
 23 ~~establishment to close immediately if a critical point violation is found at the establishment. The order is~~  
 24 ~~effective immediately upon receipt by the person to whom it is directed, unless the department provides~~  
 25 ~~otherwise.~~

26 ~~(2) Notice of the order must indicate that it is a closure order, must specify the critical point~~  
 27 ~~violation that presents the immediate threat, and must contain a written statement of the facts constituting~~  
 28 ~~the violation.~~

29 ~~(3) Upon issuing an order, the department shall fix a place and time for a hearing, not later than~~  
 30 ~~5 working days after issuing the order, unless the person to whom the order is directed requests a later~~

1 ~~time. The department may deny a request for a later time if it finds that the person to whom the order is~~  
 2 ~~directed is not complying with the order. The hearing must be conducted in the manner specified in~~  
 3 ~~[section 11].~~

4 ~~(4) After a hearing held pursuant to subsection (3), if the department finds that a critical point~~  
 5 ~~violation has occurred, the department shall issue an appropriate order in the manner specified in [section~~  
 6 ~~11]. Within 5 working days after the hearing, the department shall affirm, modify, or set aside the order~~  
 7 ~~of the department. An action for review of the order may be initiated using the contested case provisions~~  
 8 ~~of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If a hearing is held~~  
 9 ~~under this section, it must be held in Lewis and Clark County or the county in which the alleged violation~~  
 10 ~~occurred.~~

11 ~~(5) Until issuance of a contrary decision by the department, an order concerning immediate closure~~  
 12 ~~remains effective and enforceable.~~

13  
 14 ~~**NEW SECTION. Section 11. Administrative enforcement notice of violation hearing.** (1) If the~~  
 15 ~~department believes that a violation of a provision of this chapter, a rule adopted pursuant to this chapter,~~  
 16 ~~an order issued pursuant to this chapter, or a condition or limitation imposed by a license issued pursuant~~  
 17 ~~to this chapter has occurred, it may serve a written notice of the violation on the alleged violator or the~~  
 18 ~~violator's agent personally or by certified mail. The notice must specify the statute, rule, order, or license~~  
 19 ~~condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The~~  
 20 ~~notice may include an order to take necessary corrective action, including ceasing the violation within a~~  
 21 ~~period of time stated in the order. The order becomes final unless, within 10 days after the notice is~~  
 22 ~~received, the person named as the respondent in the order requests in writing a hearing before the~~  
 23 ~~department. Until issuance of a contrary decision by the department, an order issued pursuant to this~~  
 24 ~~section remains effective and enforceable.~~

25 ~~(2) A hearing requested by the respondent must be held in accordance with the contested case~~  
 26 ~~provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If, after~~  
 27 ~~a hearing, the department finds that a violation has occurred, the department shall issue an appropriate~~  
 28 ~~order for the prevention, abatement, or control of the violation involved or the taking of other corrective~~  
 29 ~~action. An order issued as part of a notice of violation or after a hearing may proscribe the date by which~~  
 30 ~~the violation must cease and the time limits for a particular action in preventing, abating, or controlling the~~

1 violation. If, after a hearing, the department finds that a violation has not occurred or is not occurring, the  
2 department shall declare the order void.

3 ~~(3) Instead of or in addition to issuing the order provided in subsections (1) and (2), the department~~  
4 ~~may take action under another applicable provision of this chapter.~~

5 ~~(4) Section 50-50-210 does not apply to an action taken by the department pursuant to this~~  
6 ~~section.~~

7

8 ~~**NEW SECTION. Section 12. Administrative penalties — appeals — venue for hearing.** (1) An~~  
9 ~~establishment that violates an order issued by the department pursuant to [section 10 or 11] may be~~  
10 ~~assessed and ordered by the department to pay an administrative penalty not to exceed \$200 for each~~  
11 ~~violation. Each day of violation constitutes a separate violation. The department or may assess the penalty~~  
12 ~~by an order issued pursuant to this section or may suspend all or a part of the administrative penalty~~  
13 ~~assessed under this section if the violation that caused the assessment of the penalty is corrected within~~  
14 ~~a specified time. Assessment of an administrative penalty under this section may be made in conjunction~~  
15 ~~with an order issued pursuant to [section 11(2)] after a hearing as provided in [section 11(2)].~~

16 ~~(2) When the department assesses an administrative penalty under this section, it must have~~  
17 ~~written notice served personally or by certified mail on the alleged violator or the violator's agent. For~~  
18 ~~purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:~~

19 ~~(a) the order alleged to have been violated;~~

20 ~~(b) the facts alleged to constitute the violation;~~

21 ~~(c) the amount of the administrative penalty assessed under this section;~~

22 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~  
23 ~~the assessment of the penalty;~~

24 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~  
25 ~~to be suspended;~~

26 ~~(f) the time within which the corrective action is to be taken or the time within which the~~  
27 ~~administrative penalty is to be paid;~~

28 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~  
29 ~~hearing; and~~

30 ~~(h) that the hearing provided in this section may be waived or that the alleged violator may proceed~~

1 by informal disposition pursuant to ~~2-4-603.~~

2 ~~(3) The department shall provide the respondent who is assessed a penalty under this section with~~  
 3 ~~an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The~~  
 4 ~~contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter~~  
 5 ~~4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must~~  
 6 ~~be held in Lewis and Clark County or the county in which the alleged violation occurred.~~

7 ~~(4) In determining appropriate penalties for violations, the department shall consider the gravity of~~  
 8 ~~the violations and the potential for significant harm to the public health or safety. In determining the~~  
 9 ~~appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the~~  
 10 ~~penalty assessment, the department shall consider the cooperation and the degree of care exercised by the~~  
 11 ~~respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether~~  
 12 ~~significant harm resulted to the public health or safety from the violation.~~

13 ~~(5) If the respondent fails to pay all or part of an administrative penalty assessed pursuant to this~~  
 14 ~~section, the department may take action in district court to recover the amount of the penalty that is unpaid~~  
 15 ~~and any additional amounts assessed or sought under this chapter.~~

16 ~~(6) Action taken by the department pursuant to this section does not bar other action under this~~  
 17 ~~chapter or any other remedy available to the department for violations of applicable laws or rules adopted~~  
 18 ~~pursuant to those laws.~~

19 ~~(7) Administrative penalties collected under this section must be deposited in the special revenue~~  
 20 ~~account provided for in 50-50-216.~~

21

22 ~~**NEW SECTION. Section 8. Codification instruction.** [Sections 8 through 12] are [SECTION 7] IS~~  
 23 ~~intended to be codified as an integral part of Title 50, chapter 50, and the provisions of Title 50, chapter~~  
 24 ~~50, apply to [sections 8 through 12] [SECTION 7].~~

25

26 ~~**NEW SECTION. Section 14. Retroactive applicability.** [This act] applies retroactively, within the~~  
 27 ~~meaning of 1-2-109, to licenses issued pursuant to Title 50, chapter 50, prior to October 1, 1997.~~

28

29 ~~**NEW SECTION. Section 6. Effective dates.** (1) [Sections 1, 3, 13, and 14 AND 8 SECTION 2 and~~  
 30 ~~this section] are effective on passage and approval.~~

1 (2) [~~Sections 2 and 4~~ 1 AND 3 through ~~12~~ 7 5] are effective October 1, 1997.

2 -END-



## FREE CONFERENCE COMMITTEE

on Senate Bill 61  
Report No. 1, April 11, 1997

Page 1 of 1

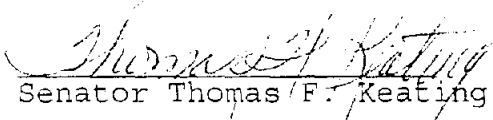
Mr. President and Mr. Speaker:

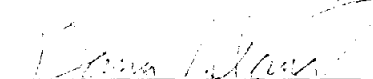
We, your FREE Conference Committee on Senate Bill 61, met and considered SB 61 in its entirety.

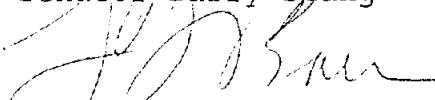
We recommend that Senate Bill 61 (reference copy - salmon) be indefinitely postponed.

And that this FREE Conference Committee report be adopted.

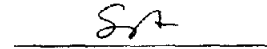
For the Senate:

  
\_\_\_\_\_  
Senator Thomas F. Keating, Chair

  
\_\_\_\_\_  
Senator Barry Stang

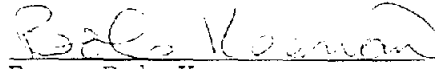
  
\_\_\_\_\_  
Senator Larry Baer

  
\_\_\_\_\_  
Amd. Coord.

  
\_\_\_\_\_  
Sec. of Senate

For the House:

  
\_\_\_\_\_  
Rep. Joe Barnett, Chair

  
\_\_\_\_\_  
Rep. Bob Keenan

  
\_\_\_\_\_  
Rep. Billie Krenzler

ADOPT

REJECT

770804CC.STS

SB 61