

1 SENATE BILL NO. 90

2 INTRODUCED BY GROSFIELD

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 PUBLIC
6 SWIMMING POOLS AND PUBLIC BATHING PLACES; GRANTING THE DEPARTMENT OF PUBLIC HEALTH
7 AND HUMAN SERVICES ADDITIONAL RULEMAKING AUTHORITY; ESTABLISHING A VOLUNTARY
8 SWIMMING POOL OPERATOR CERTIFICATION PROGRAM, INCLUDING FEES; REQUIRING THAT THE
9 STATE OR A POLITICAL SUBDIVISION BE REQUIRED TO LICENSE A PUBLIC SWIMMING POOL OR PUBLIC
10 BATHING PLACE BUT BE EXEMPT FROM PAYING THE FEE; GRANTING LICENSE RENEWAL AS A MATTER
11 OF RIGHT; PROVIDING FOR STAGGERED EXPIRATION DATES FOR LICENSES; PROVIDING FOR FACILITY
12 PLAN REVIEW AND FEES; PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND ADMINISTRATIVE
13 PENALTIES; PROVIDING FOR CRITICAL POINT VIOLATIONS AND CLOSURE ORDERS; CREATING A STATE
14 SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 50-53-102, 50-53-103, 50-53-106, 50-53-201,
15 50-53-202, 50-53-203, 50-53-204, 50-53-209, 50-53-212, AND 50-53-216, MCA; AND PROVIDING
16 EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE."

17
18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because it grants the department of public health and
20 human services rulemaking authority to adopt rules to establish a voluntary swimming pool operator
21 certification program and to set course fees that do not exceed the department's costs of implementing and
22 administering the voluntary swimming pool operator certification program. This bill also requires the
23 department to conduct facility plan reviews, to adopt rules for facility plan reviews, and to set facility plan
24 review fees. The rules must include the contents of the application for a facility plan review and procedures
25 for the conduct of facility plan reviews. The plan review fees may be set only at a level necessary to cover
26 the cost to the department of reviewing facility plans for public swimming pools and public bathing places.
27 This bill also grants the department rulemaking authority to establish critical point violations that may justify
28 immediate closure of a facility. Rules may also provide for staggered expiration dates for licenses.

29
30 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

2 "**50-53-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise,
3 the following definitions apply:

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

7 (2) "Department" means the department of public health and human services provided for in
8 2-15-2201.

9 ~~(2)~~(3) "Local board of health" or "board" means a local board as defined in 50-2-101.

10 ~~(3)~~(4) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

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

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

14 ~~(4)~~(7) "Person" means a person, firm, partnership, corporation, organization, the state, or any
15 political subdivision of the state.

16 ~~(5)~~(8) "Public bathing place" means a body of water with bathhouses and related appurtenances
17 operated for the public.

18 ~~(6)~~(9) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances
19 for swimming, bathing, or wading, including natural hot water pools. The term does not include:

20 (a) swimming pools located on private property used for swimming or bathing only by the owner,
21 members of the owner's family, or their invited guests; or

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

24 **Section 2.** Section 50-53-103, MCA, is amended to read:

25 "**50-53-103. Department rules.** (1) The department ~~shall~~ may adopt rules relating to the operation
26 of public swimming pools and public bathing places, including rules:

27 (a) setting standards to ensure sanitation and safety in public swimming pools and public bathing
28 places to protect public health and safety;

29 (b) relating to the licensing of operators of public swimming pools and public bathing places;

30 (c) providing procedures for the enforcement of the laws and rules relating to public swimming

1 pools and public bathing places;

2 (d) relating to cooperative agreements between the department and local boards of health; and

3 (e) setting performance standards for local boards of health, local health officers, and sanitarians
4 to meet as a condition to receipt of funds provided by the department pursuant to 50-53-218;

5 (f) establishing program requirements for a voluntary swimming pool operator certification program
6 and setting course fees that do not exceed the actual costs of implementing and administering the program;

7 (g) implementing staggered license expiration dates;

8 (h) setting standards for public swimming pool and public bathing place facility plan reviews based
9 on the size and complexity of the proposed facility, the type of proposed treatment equipment, the
10 proposed water and sewage systems, and other relevant factors and setting fees that do not exceed the
11 actual costs of conducting the review; and

12 (i) establishing critical point violations.

13 (2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair,
14 inspection, or use of buildings or installation of equipment in buildings is effective only when it has been
15 adopted by the department of commerce as part of the state building code and filed with the secretary of
16 state pursuant to 50-60-204."

17

18 **Section 3.** Section 50-53-106, MCA, is amended to read:

19 "**50-53-106. Duties of pool operators -- voluntary operator certification -- fees.** (1) Each person
20 operating a public swimming pool or public bathing place shall:

21 ~~+(a)~~ operate the public swimming pool or public bathing place in a sanitary and safe manner;

22 ~~+(b)~~ keep records of public health and safety information required by the department; and

23 ~~+(c)~~ furnish information to the department on forms prescribed by it.

24 (2) The department may establish and set fees for a voluntary statewide swimming pool operator
25 certification program for training and certifying pool operators. All of the fees collected under this
26 subsection must be deposited in the special revenue account provided for in [section 14] and may be used
27 only for the purposes of implementing and administering the voluntary swimming pool operator certification
28 program."

29

30 **Section 4.** Section 50-53-201, MCA, is amended to read:

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

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

7 (3) The state or a political subdivision of the state owning or operating a public swimming pool or
 8 public bathing place is ~~not~~ required to obtain a license under subsection (1) but ~~must comply with the health~~
 9 ~~and safety requirements in 50-53-101 through 50-53-109 and this part and the rules of the department is~~
 10 not required to pay the license fee provided for in 50-53-203.

11 (4) A license issued by the department is not valid unless signed in accordance with 50-53-206
 12 or in accordance with 50-53-207, in the case of an appeal."

13
 14 **Section 5.** Section 50-53-202, MCA, is amended to read:

15 **"50-53-202. Application for and right to license -- right to renewal.** (1) An application for both an
 16 original and renewal license to operate a public swimming pool or public bathing place must be made to the
 17 department, must contain the information required by the department, and, except as provided in
 18 50-53-201, must be accompanied by the fee provided for in 50-53-203.

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

21 (3) An existing license may be renewed as a matter of right unless conditions exist that are grounds
 22 for cancellation or denial of a license.

23 ~~(3)~~(4) Upon issuing a license, the department shall forward the license to the appropriate local
 24 health officer for validation as provided in 50-53-206."

25
 26 **Section 6.** Section 50-53-203, MCA, is amended to read:

27 **"50-53-203. License fee and late fee -- disposition.** (1) (a) Except as provided in 50-53-201 and
 28 subsection (1)(b) of this section, each application for an original or renewal license must be accompanied
 29 by a license fee of \$75.

30 (b) The fee for an original or renewal license for a public swimming pool or public bathing place

1 operated in conjunction with a campground, trailer court, work camp, youth camp, bed and breakfast,
 2 hotel, motel, roominghouse, boardinghouse, ~~retirement home~~, or tourist home is \$50.

3 (2) An operator of a public swimming pool or public bathing place, including the state or a political
 4 subdivision of the state owning or operating a public swimming pool or public bathing place, who fails to
 5 renew a license by the expiration date provided in 50-53-204 or the expiration date established by
 6 department rule and who operates the public swimming pool or public bathing place in the license year for
 7 which a renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in
 8 addition to the renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the
 9 operator of responsibility for any operation without a license.

10 (3) The department shall deposit 85% of the fees collected under subsection (1) in the state special
 11 revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money
 12 deposited in the local board inspection fund account is subject to appropriation by the legislature for the
 13 purposes of 50-53-218.

14 (4) The department shall deposit 15% of the fees collected under subsection (1) and all the fees
 15 collected under subsection (2) in an account in the state special revenue fund provided for in [section 14]
 16 to be appropriated by the legislature to the department for the enforcement of 50-53-101 through
 17 50-53-109 and this part."

18
 19 **Section 7.** Section 50-53-204, MCA, is amended to read:

20 "**50-53-204. License expiration -- nontransferability.** (1) A Except as provided in subsection (2),
 21 each license issued under 50-53-101 through 50-53-109 and this part expires on December 31 of the year
 22 of issuance unless it is suspended or canceled by the department before that date.

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

29 ~~(2)~~(3) A license issued under 50-53-101 through 50-53-109 and this part is not transferable."
 30

1 **Section 8.** Section 50-53-209, MCA, is amended to read:

2 "**50-53-209. Cooperative agreements —inspections.** (1) The department may enter into
3 cooperative agreements with local boards of health to ~~authorize those boards to act as agents of the~~
4 ~~department and to conduct inspections of and enforce applicable statutes and department rules relating to~~
5 ~~public swimming pools and public bathing places within the jurisdictions of the respective boards.~~

6 ~~(2) The department or a local board of health, pursuant to a cooperative agreement, shall annually~~
7 ~~conduct:~~

8 ~~(a) at least one full facility inspection and one critical point inspection of each public swimming pool~~
9 ~~or public bathing place operated throughout the year; and~~

10 ~~(b) at least one full facility inspection of each seasonal public swimming pool or public bathing~~
11 ~~place. carry out the provisions of this chapter.~~

12

13 **Section 9.** Section 50-53-212, MCA, is amended to read:

14 "**50-53-212. Administrative enforcement -- notice -- department hearing.** (1) A license may not
15 be denied, suspended, or canceled or corrective action may not be ordered by the department unless the
16 department delivers to the license applicant or licensee a written notice of violation that contains a written
17 statement of the facts constituting the violation and a citation to the statute or rule of the department
18 alleged to have been violated. ~~No further~~ Further administrative enforcement action may not be taken by
19 the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or
20 licensee complies with the provisions of 50-53-213.

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

27 (3) The department may combine with any notice or order issued under subsection (1) or (2) an
28 order for the license applicant or licensee to appear before the department within a time specified by the
29 department and show cause why the department should not deny, suspend, or cancel the license or
30 otherwise order compliance with 50-53-101 through 50-53-109, this part, and the rules of the department,

1 or the department may initiate action under any other applicable provision of this chapter.

2 (4) A hearing request by a license applicant or licensee must be made in writing to the department
3 and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to
4 this section must be held in accordance with the contested case procedure of the Montana Administrative
5 Procedure Act. Following a hearing, the department may issue an appropriate order for the prevention,
6 abatement, or control of the violation involved or for taking other corrective action. As appropriate, an
7 order issued as a part of a notice or after a hearing may prescribe the date by which the violation must
8 cease and the time limits for particular action in preventing, abating, or controlling the violation. Service
9 of notice or an order mailed by the department is complete upon mailing."
10

11 **Section 10.** Section 50-53-216, MCA, is amended to read:

12 **"50-53-216. Civil penalties -- other enforcement not barred.** (1) ~~A person who~~ An establishment
13 that violates a provision of 50-53-101 through 50-53-109 and this part, the rules of the department
14 implementing those sections, an order of the department, or any condition of a license issued by the
15 department is subject to a civil penalty not to exceed \$500 for each violation. Each day of violation is a
16 separate violation for the purposes of this section.

17 (2) An action for collection of a civil penalty under this section does not bar an administrative
18 penalty under [section 13], administrative enforcement under 50-53-212, an action for injunctive relief
19 under 50-53-104, or enforcement under 50-53-109."
20

21 **NEW SECTION. Section 11. Facility plan review required -- fees.** (1) Prior to any new
22 construction, major repair, or alteration of a public swimming pool or public bathing place, a person
23 intending to operate a public swimming pool or public bathing place shall submit a facility plan to the
24 department. The department shall adopt rules establishing when a repair or alteration is considered a major
25 repair or alteration and regarding the content of a facility plan and the conduct of a facility plan review.

26 (2) The department may collect fees, adopted by rule, that do not exceed the actual costs of
27 conducting the facility plan review. The fees collected under this section must be deposited in the special
28 revenue account provided for in [section 14].
29

30 **NEW SECTION. Section 12. Critical point violations -- closure order -- hearing.** (1)

1 Notwithstanding other provisions of this chapter, the department may issue a closure order to an operator
2 of a public swimming pool or public bathing place to close immediately if a critical point violation is found.
3 The order is effective immediately upon receipt by the person to whom it is directed, unless the department
4 provides otherwise.

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

8 (3) Upon issuing an order, the department shall fix a place and time for a hearing, not later than
9 5 working days after issuing the order, unless the person to whom the order is directed requests a later
10 time. The department may deny a request for a later time if it finds that the person to whom the order is
11 directed is not complying with the order. The hearing must be conducted in the manner specified in
12 50-53-212.

13 (4) After a hearing held pursuant to subsection (3), if the department finds that a critical point
14 violation has occurred, the department shall issue an appropriate order in the manner specified in
15 50-53-212. Within 5 working days after the hearing, the department shall affirm, modify, or set aside the
16 closure order of the department. An action for review of the order may be initiated using the contested
17 case provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If
18 a hearing is held under this section, it must be held in Lewis and Clark County or the county in which the
19 alleged violation occurred.

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

22
23 **NEW SECTION. Section 13. Administrative penalties -- appeals -- venue for hearing.** (1) An
24 establishment that violates an order issued by the department pursuant to 50-53-212 or [section 12] may
25 be assessed and ordered by the department to pay an administrative penalty not to exceed \$200 for each
26 violation. Each day of violation constitutes a separate violation. The department may assess the penalty
27 by an order issued pursuant to this section or may suspend all or a part of the administrative penalty
28 assessed under this section if the violation that caused the assessment of the penalty is corrected within
29 a specified time. Assessment of an administrative penalty under this section may be made in conjunction
30 with an order issued pursuant to [section 12(2)] after a hearing as provided in [section 12(3)].

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

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

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

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

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

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

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

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

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

17 (3) The department shall provide the respondent who is assessed a penalty under this section with
18 an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The
19 contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter
20 4, part 6, apply to a hearing conducted under this section. If a hearing is held under this section, it must
21 be held in Lewis and Clark County or the county in which the alleged violation occurred.

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

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

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0090, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the laws related to swimming pools and public bathing areas; granting the Department of Public Health and Human Services (DPHHS) additional rulemaking authority; establishing a voluntary swimming pool operator certification program, including fees; requiring that the state or a political subdivision be required to license a public swimming pool or public bathing place but be exempt from paying the fee; granting license renewal as a matter of right; providing for staggered expiration dates for licenses; providing for facility plan review and fees; providing for enforcement methods and civil and administrative penalties; providing for critical point violations and closure orders; and creating a state special revenue account.

ASSUMPTIONS:

1. Most of this legislation is effective October 1, 1997.
2. The bill exempts the state and political subdivision establishments from license fee payments and establishment plan review fee payments.
3. Voluntary Swimming Pool Operator Certification fees for FY98 and FY99 are based upon 61 certifications annually at \$200.00 each (\$12,200).
4. Voluntary Swimming Pool Operator Certification fees collected will be placed in the special revenue account.
5. Establishment Plan Review fees collected will be at \$75 per hour, with a maximum of \$250 per plan review. Approximately 40 plans reviewed in FY98 and FY99 (\$10,000).
6. Establishment Plan Review fees collected will be placed in the state special revenue account.

FISCAL IMPACT:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expense	22,200	22,200

Funding:

State Special Revenue (02)	22,200	22,200
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Revenues:

Swimming pool operator certification fees	12,200	12,200
Swimming pool plan review fees	<u>10,000</u>	<u>10,000</u>
Total	22,200	22,200

Net Impact on Fund Balance: (Revenue minus expense)

State Special Revenue (02)	0	0
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Dave Lewis 1-11-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Lorent G Grosfield Jan. 13 1997

LORENTS GROSFIELD, PRIMARY SPONSOR DATE

Fiscal Note for SB0090, as introduced

SB 90

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 public swimming pool 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? Yes No (if no, explain)
- d) Does the need for this state special revenue provision still exist? 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 service(s) 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. 90

2 INTRODUCED BY GROSFIELD

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC
6 SWIMMING POOLS AND PUBLIC BATHING PLACES; GRANTING THE DEPARTMENT OF PUBLIC HEALTH
7 AND HUMAN SERVICES ADDITIONAL RULEMAKING AUTHORITY; ~~ESTABLISHING A VOLUNTARY~~
8 ~~SWIMMING POOL OPERATOR CERTIFICATION PROGRAM, INCLUDING FEES;~~ REQUIRING THAT THE
9 STATE OR A POLITICAL SUBDIVISION BE REQUIRED TO LICENSE A PUBLIC SWIMMING POOL OR PUBLIC
10 BATHING PLACE BUT BE EXEMPT FROM PAYING THE FEE; RAISING FEES FOR POOL INSPECTIONS OF
11 ALL POOLS; REMOVING A DIFFERENT FEE FOR CERTAIN POOLS; GRANTING LICENSE RENEWAL AS A
12 MATTER OF RIGHT; PROVIDING FOR STAGGERED EXPIRATION DATES FOR LICENSES; PROVIDING FOR
13 FACILITY PLAN REVIEW AND FEES; ~~PROVIDING FOR ENFORCEMENT METHODS AND CIVIL AND~~
14 ~~ADMINISTRATIVE PENALTIES; PROVIDING FOR CRITICAL POINT VIOLATIONS AND CLOSURE ORDERS;~~
15 CREATING A STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS ~~50-53-102,~~ 50-53-103,
16 50-53-104, 50-53-106, 50-53-201, 50-53-202, 50-53-203, 50-53-204, 50-53-209, AND 50-53-212, AND
17 ~~50-53-216,~~ MCA; AND PROVIDING EFFECTIVE DATES ~~AND A RETROACTIVE APPLICABILITY DATE."~~

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21 human services rulemaking authority to adopt rules ~~to establish a voluntary swimming pool operator~~
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25 ~~review fees~~ FOR FACILITY PLAN REVIEWS. The rules must include the contents of the application for a
26 facility plan review and procedures for the conduct of facility plan reviews. ~~The plan review fees may be~~
27 ~~set only at a level necessary to cover the cost to the department of reviewing facility plans for public~~
28 ~~swimming pools and public bathing places. This bill also grants the department rulemaking authority to~~
29 ~~establish critical point violations that may justify immediate closure of a facility.~~ THE DEPARTMENT SHALL
30 CONSULT WITH THE AFFECTED PARTIES IN THE DEVELOPMENT OF THESE RULES. THE RULES SHOULD

1 BE DEVELOPED WITH A GOAL OF MAKING THE FACILITY PLAN REVIEW PROCEDURE AS REASONABLE,
 2 UNCUMBERSOME, AND INEXPENSIVE AS POSSIBLE. THE RULES REGARDING LIFEGUARD
 3 REQUIREMENTS AND QUALIFICATIONS SHOULD BE DEVELOPED TO GIVE GUIDANCE TO LOCAL
 4 GOVERNMENTS AND OTHERS WHO HAVE PUBLIC SWIMMING POOLS TO ENABLE THEM TO BE ABLE
 5 TO RECOGNIZE SUBSTANTIALLY SIMILAR CERTIFICATION PROCESSES SO AS TO MAXIMIZE
 6 COOPERATION BETWEEN FACILITIES AND ENHANCE THE ABILITY OF LIFEGUARDS TO GAIN AND
 7 MAINTAIN CERTIFICATION IN AN EFFICIENT AND INEXPENSIVE MANNER. Rules may also provide for
 8 staggered expiration dates for licenses.

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

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 16 ~~chapter that is more likely than other violations to pose an immediate threat to the public health, safety,~~
 17 ~~or welfare or to the environment.~~

18 ~~(2) "Department" means the department of public health and human services provided for in~~
 19 ~~2-15-2201.~~

20 ~~(2)(3) "Local board of health" or "board" means a local board as defined in 50-2-101.~~

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

25 ~~(4)(7) "Person" means a person, firm, partnership, corporation, organization, the state, or any~~
 26 ~~political subdivision of the state.~~

27 ~~(5)(8) "Public bathing place" means a body of water with bathhouses and related appurtenances~~
 28 ~~operated for the public.~~

29 ~~(6)(9) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances~~
 30 ~~for swimming, bathing, or wading, including natural hot water pools. The term does not include:~~

1 ~~(a) swimming pools located on private property used for swimming or bathing only by the owner,~~
 2 ~~members of the owner's family, or their invited guests; or~~

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

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6 **"50-53-103. Department rules.** (1) The department ~~shall~~ may adopt rules relating to the operation
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8 (a) setting standards to ensure sanitation and safety in public swimming pools and public bathing
 9 places to protect public health and safety;

10 (b) relating to the licensing of operators of public swimming pools and public bathing places;

11 (c) providing procedures for the enforcement of the laws and rules relating to public swimming
 12 pools and public bathing places;

13 (d) relating to cooperative agreements between the department and local boards of health; ~~and~~

14 (e) setting performance standards for local boards of health, local health officers, and sanitarians
 15 to meet as a condition to receipt of funds provided by the department pursuant to 50-53-218;

16 ~~(f) establishing program requirements for a voluntary swimming pool operator certification program~~
 17 ~~and setting course fees that do not exceed the actual costs of implementing and administering the program;~~

18 ~~(g)(F) implementing staggered license expiration dates;~~

19 ~~(h)(G) setting standards for public swimming pool and public bathing place facility plan reviews~~
 20 ~~based on the size and complexity of the proposed facility, the type of proposed treatment equipment, the~~
 21 ~~proposed water and sewage systems, and other relevant factors and setting fees that do not exceed the~~
 22 ~~actual costs of conducting the review; and~~

23 ~~(i)(H) establishing critical point violations~~ LIFEGUARD REQUIREMENTS AND QUALIFICATIONS.

24 (2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair,
 25 inspection, or use of buildings or installation of equipment in buildings is effective only when it has been
 26 adopted by the department of commerce as part of the state building code and filed with the secretary of
 27 state pursuant to 50-60-204."

28
 29 **SECTION 2. SECTION 50-53-104, MCA, IS AMENDED TO READ:**

30 **"50-53-104. Powers of health officers -- enforcement authority.** (1) Authorized employees of the

1 department and local boards of health ~~may~~:

2 ~~(1) shall~~ at reasonable times inspect public swimming pools and public bathing places and otherwise
3 conduct investigations to determine if provisions of this chapter and rules of the department have been or
4 are being violated and make reports to the department concerning the inspections;

5 (2) Authorized employees of the department and local boards of health may:

6 (a) request an injunction from the district court to enjoin actions in violation of this chapter or rules
7 adopted by the department;

8 ~~(3)(b)~~ bring actions to abate nuisances maintained in violation of this chapter in the manner
9 provided by law for the summary abatement of other public nuisances; and

10 ~~(4)(c)~~ file complaints with the district court for assessment of the penalties provided for in
11 50-53-216 or for recovery of costs provided for in 50-53-217, or both."

12
13 ~~Section 3. Section 50-53-106, MCA, is amended to read:~~

14 ~~"50-53-106. Duties of pool operators -- voluntary operator certification -- fees. (1) Each person~~
15 ~~operating a public swimming pool or public bathing place shall:~~

16 ~~(1)(a) operate the public swimming pool or public bathing place in a sanitary and safe manner;~~

17 ~~(2)(b) keep records of public health and safety information required by the department; and~~

18 ~~(3)(c) furnish information to the department on forms prescribed by it.~~

19 ~~(2) The department may establish and set fees for a voluntary statewide swimming pool operator~~
20 ~~certification program for training and certifying pool operators. All of the fees collected under this~~
21 ~~subsection must be deposited in the special revenue account provided for in (section 14) and may be used~~
22 ~~only for the purposes of implementing and administering the voluntary swimming pool operator certification~~
23 ~~program."~~

24
25 **Section 3.** Section 50-53-201, MCA, is amended to read:

26 **"50-53-201. License required -- fee exemption -- validation.** (1) ~~Except as provided in subsection~~
27 ~~(3), a~~ A person may not operate a public swimming pool or public bathing place without annually obtaining
28 a license from the department.

29 (2) A separate license is required for each public swimming pool or public bathing place unless
30 more than one public swimming pool is operated on the same premises by the same person, in which case

1 a single license is required for all public swimming pools on the premises.

2 (3) The state or a political subdivision of the state owning or operating a public swimming pool or
 3 public bathing place is ~~not~~ required to obtain a license under subsection (1) but ~~must comply with the health~~
 4 ~~and safety requirements in 50-53-101 through 50-53-109 and this part and the rules of the department is~~
 5 not required to pay the license fee provided for in 50-53-203.

6 (4) A license issued by the department is not valid unless signed in accordance with 50-53-206
 7 or in accordance with 50-53-207, in the case of an appeal."

8

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

10 "**50-53-202. Application for and right to license -- right to renewal.** (1) An application for both an
 11 original and renewal license to operate a public swimming pool or public bathing place must be made to the
 12 department, must contain the information required by the department, and, except as provided in
 13 50-53-201, must be accompanied by the fee provided for in 50-53-203.

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

16 (3) An existing license may be renewed as a matter of right unless conditions exist that are grounds
 17 for cancellation or denial of a license.

18 ~~(3)(4)~~ (4) Upon issuing a license, the department shall forward the license to the appropriate local
 19 health officer for validation as provided in 50-53-206."

20

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

22 "**50-53-203. License fee and late fee -- disposition.** (1) ~~(a)~~ Except as provided in 50-53-201 and
 23 subsection (1)(b) of this section, each application for an original or renewal license must be accompanied
 24 by a license fee of ~~\$75~~ \$100.

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

28 (2) An operator of a public swimming pool or public bathing place, including the state or a political
 29 subdivision of the state owning or operating a public swimming pool or public bathing place, who fails to
 30 renew a license by the expiration date provided in 50-53-204 or the expiration date established by

1 department rule and who operates the public swimming pool or public bathing place in the license year for
2 which a renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in
3 addition to the renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the
4 operator of responsibility for any operation without a license.

5 (3) The department shall deposit 85% of the fees collected under subsection (1) in the state special
6 revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money
7 deposited in the local board inspection fund account is subject to appropriation by the legislature for the
8 purposes of 50-53-218.

9 (4) The department shall deposit 15% of the fees collected under subsection (1) and all the fees
10 collected under subsection (2) in an account in the state special revenue fund provided for in [section 14
11 10] to be appropriated by the legislature to the department for the enforcement of 50-53-101 through
12 50-53-109 and this part."

13

14 **Section 6.** Section 50-53-204, MCA, is amended to read:

15 **"50-53-204. License expiration -- nontransferability.** (1) A Except as provided in subsection (2),
16 each license issued under 50-53-101 through 50-53-109 and this part expires on December 31 of the year
17 of issuance unless it is suspended or canceled by the department before that date.

18 (2) The department may amend or issue licenses to provide for staggered license expiration dates.
19 The department may provide for initial license terms of greater than 12 months but no more than 23
20 months in adopting staggered license expiration dates, and the license fee must be prorated accordingly.
21 Upon expiration of a license that has been amended or issued to provide a term of greater than 12 months
22 and subsequent payment of the required license fee, the license must be renewed for a period of 12 months
23 commencing on the day following the expiration date of the amended or issued license UNLESS
24 CONDITIONS EXIST THAT ARE GROUNDS FOR CANCELLATION OR DENIAL OF THE LICENSE.

25 ~~(2)(3)~~ A license issued under 50-53-101 through 50-53-109 and this part is not transferable."
26

27

28 **Section 7.** Section 50-53-209, MCA, is amended to read:

29 **"50-53-209. Cooperative agreements — inspections.** ~~(4)~~ The department may enter into
30 cooperative agreements with local boards of health to ~~authorize these boards to act as agents of the~~
~~department and to conduct inspections of and enforce applicable statutes and department rules relating to~~

1 ~~public swimming pools and public bathing places within the jurisdictions of the respective boards.~~

2 (2) ~~The department or a local board of health, pursuant to a cooperative agreement, shall annually~~
3 ~~conduct:~~

4 (a) ~~at least one full facility inspection and one critical point inspection of each public swimming pool~~
5 ~~or public bathing place operated throughout the year; and~~

6 (b) ~~at least one full facility inspection of each seasonal public swimming pool or public bathing~~
7 ~~place. carry out the provisions of this chapter.~~

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

10 **"50-53-212. Administrative enforcement -- notice -- department hearing.** (1) A license may not
11 be denied, suspended, or canceled or corrective action may not be ordered by the department unless the
12 department delivers to the license applicant or licensee a written notice of violation that contains a written
13 statement of the facts constituting the violation and a citation to the statute or rule of the department
14 alleged to have been violated. ~~No further~~ Further administrative enforcement action may not be taken by
15 the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or
16 licensee complies with the provisions of 50-53-213.

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

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

28 (4) A hearing request by a license applicant or licensee must be made in writing to the department
29 and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to
30 this section must be held in accordance with the contested case procedure of the Montana Administrative

1 Procedure Act. Following a hearing, the department may issue an appropriate order for the prevention,
 2 abatement, or control of the violation involved or for taking other corrective action. As appropriate IF IT
 3 IS POSSIBLE TO PRESCRIBE A CERTAIN DATE BY WHICH THE VIOLATION MUST CEASE, an order issued
 4 as a part of a notice or after a hearing may MUST prescribe the date by which the violation must cease and
 5 the time limits for particular action in preventing, abating, or controlling the violation. Service of notice or
 6 an order mailed by the department is complete upon mailing."

7
 8 ~~Section 10. Section 50-53-216, MCA, is amended to read:~~

9 ~~"50-53-216. Civil penalties—other enforcement not barred. (1) A person who An establishment~~
 10 ~~that violates a provision of 50-53-101 through 50-53-109 and this part, the rules of the department~~
 11 ~~implementing those sections, an order of the department, or any condition of a license issued by the~~
 12 ~~department is subject to a civil penalty not to exceed \$500 for each violation. Each day of violation is a~~
 13 ~~separate violation for the purposes of this section.~~

14 ~~(2) An action for collection of a civil penalty under this section does not bar an administrative~~
 15 ~~penalty under [section 13], administrative enforcement under 50-53-212, an action for injunctive relief~~
 16 ~~under 50-53-104, or enforcement under 50-53-109."~~

17
 18 NEW SECTION. Section 9. Facility plan review required -- fees. (1) Prior to any new construction,
 19 major repair, or alteration of a public swimming pool or public bathing place, a person intending to operate
 20 a public swimming pool or public bathing place shall submit a facility plan to the department. The
 21 department shall adopt rules establishing when a repair or alteration is considered a major repair or
 22 alteration and regarding the content of a facility plan and the conduct of a facility plan review.

23 (2) The department ~~may collect fees, adopted by rule, that do not exceed the actual costs of~~
 24 ~~conducting the facility plan review.~~ SHALL COLLECT A FEE FOR EACH FACILITY PLAN REVIEW. THE FEE
 25 MUST BE BASED ON AN HOURLY RATE OF \$75 AND MAY NOT EXCEED \$250 FOR EACH FACILITY PLAN
 26 REVIEW. The fees collected under this section must be deposited in the special revenue account provided
 27 for in [section 44 10].

28 (3) THE STATE OR A POLITICAL SUBDIVISION OF THE STATE SUBMITTING A FACILITY PLAN
 29 FOR REVIEW UNDER THIS SECTION IS NOT REQUIRED TO PAY A PLAN REVIEW FEE.

30 (4) THE DEPARTMENT SHALL APPROVE OR DISAPPROVE THE PLANS WITHIN 30 WORKING

1 DAYS AFTER RECEIPT OF A COMPLETED SET OF FACILITY PLANS. PAYMENT OF THE PLAN REVIEW
 2 FEE MUST BE MADE TO THE DEPARTMENT WITHIN 30 DAYS AFTER RECEIPT OF WRITTEN
 3 NOTIFICATION BY THE DEPARTMENT OF PLAN APPROVAL OR DISAPPROVAL AND RECEIPT OF AN
 4 INVOICE STATING THE AMOUNT OF THE FEE.

5
 6 ~~NEW SECTION. Section 12. Critical point violations closure order hearing. (1)~~

7 ~~Notwithstanding other provisions of this chapter, the department may issue a closure order to an operator~~
 8 ~~of a public swimming pool or public bathing place to close immediately if a critical point violation is found.~~
 9 ~~The order is effective immediately upon receipt by the person to whom it is directed, unless the department~~
 10 ~~provides otherwise.~~

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

14 ~~(3) Upon issuing an order, the department shall fix a place and time for a hearing, not later than~~
 15 ~~5 working days after issuing the order, unless the person to whom the order is directed requests a later~~
 16 ~~time. The department may deny a request for a later time if it finds that the person to whom the order is~~
 17 ~~directed is not complying with the order. The hearing must be conducted in the manner specified in~~
 18 ~~50-53-212.~~

19 ~~(4) After a hearing held pursuant to subsection (3), if the department finds that a critical point~~
 20 ~~violation has occurred, the department shall issue an appropriate order in the manner specified in~~
 21 ~~50-53-212. Within 5 working days after the hearing, the department shall affirm, modify, or set aside the~~
 22 ~~closure order of the department. An action for review of the order may be initiated using the contested~~
 23 ~~case provisions of the Montana Administrative Procedure Act, as provided in Title 2, chapter 4, part 6. If~~
 24 ~~a hearing is held under this section, it must be held in Lewis and Clark County or the county in which the~~
 25 ~~alleged violation occurred.~~

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

28
 29 ~~NEW SECTION. Section 13. Administrative penalties appeals venue for hearing. (1) An~~
 30 ~~establishment that violates an order issued by the department pursuant to 50-53-212 or [section 12] may~~

1 ~~be assessed and ordered by the department to pay an administrative penalty not to exceed \$200 for each~~
 2 ~~violation. Each day of violation constitutes a separate violation. The department may assess the penalty~~
 3 ~~by an order issued pursuant to this section or may suspend all or a part of the administrative penalty~~
 4 ~~assessed under this section if the violation that caused the assessment of the penalty is corrected within~~
 5 ~~a specified time. Assessment of an administrative penalty under this section may be made in conjunction~~
 6 ~~with an order issued pursuant to [section 12(2)] after a hearing as provided in [section 12(3)].~~

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

- 10 ~~(a) the order alleged to have been violated;~~
- 11 ~~(b) the facts alleged to constitute the violation;~~
- 12 ~~(c) the amount of the administrative penalty assessed under this section;~~
- 13 ~~(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused~~
 14 ~~the assessment of the penalty;~~
- 15 ~~(e) the nature of any corrective action that the department requires if a portion of the penalty is~~
 16 ~~to be suspended;~~
- 17 ~~(f) the time within which the corrective action is to be taken or the time within which the~~
 18 ~~administrative penalty is to be paid;~~
- 19 ~~(g) the right to a hearing, as provided in this section, and the time, place, and nature of any~~
 20 ~~hearing; and~~
- 21 ~~(h) that the hearing provided in this section may be waived or that the alleged violator may proceed~~
 22 ~~by informal disposition pursuant to 2-4-603.~~

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

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

1 ~~penalty assessment, the department shall consider the cooperation and the degree of care exercised by the~~
 2 ~~respondent who is assessed the penalty, how expeditiously the violation was corrected, and whether~~
 3 ~~significant harm resulted to the public health or safety from the violation.~~

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

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

10 ~~(7) Administrative penalties collected under this section must be deposited in the special revenue~~
 11 ~~account provided for in [section 14].~~

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

16
 17 NEW SECTION. Section 11. Codification instruction. (1) [Section 44 9] is intended to be codified
 18 as an integral part of Title 50, chapter 53, and the provisions of Title 50, chapter 53, apply to [section 44
 19 9].

20 (2) ~~[Sections 12 through 14] [SECTION 10] IS~~ are intended to be codified as an integral part of Title
 21 50, chapter 53, part 2, and the provisions of Title 50, chapter 53, part 2, apply to ~~{sections 12 through~~
 22 ~~14} [SECTION 10].~~

23
 24 NEW SECTION. Section 16. Retroactive applicability. ~~[This act] applies retroactively, within the~~
 25 ~~meaning of 1-2-109, to licenses issued pursuant to Title 50, chapter 53, prior to October 1, 1997.~~

26
 27 NEW SECTION. Section 12. Effective dates. (1) [Sections 2, 15, and 16 1 AND 11 and this
 28 section] are effective on passage and approval.

29 (2) [Sections 4 and 3 through 14 2 THROUGH 10] are effective October 1, 1997.

30 -END-