

Legislative Analysis



ON-PREMISES PUBLIC SWIMMING POOL PERMIT

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House Bills 5983 and 5984 as introduced
Sponsor: Rep. Rodney Wakeman
Committee: Regulatory Reform
Complete to 4-26-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5983 would amend the Public Health Code to allow a public swimming pool operator to sell food and beverages (including alcoholic beverages) for consumption in the swimming pool if certain conditions are met. House Bill 5984 would amend the Michigan Liquor Control Code to create a new on-premises public swimming pool permit, establish an annual permit fee, and provide certain conditions, including a requirement that the exclusive area in which alcohol is sold under the permit not be accessible to minors.

House Bill 5983 would provide that, subject to the Food Law and the provisions that HB 5984 would add to the Michigan Liquor Control Code, a person engaged in the operation of a public swimming pool is prohibited from allowing the consumption of food and beverages (including alcohol) in the pool unless all of the following conditions are met:

- The Department of Environment, Great Lakes, and Energy (EGLE) has determined under section 12526 of the code (which requires EGLE to examine the plans and specifications for a swimming pool facility to determine whether they are adequate to protect the public health and safety before issuing a permit for construction of the pool) that the plans and specifications for the swimming pool facility also meet all of the following requirements:
 - Materials used to construct the area used for serving, preparing, or consuming food or beverages can be regularly sanitized.
 - Areas where there is ice, food, equipment, and any other item stored or used in food or beverage preparation are physically separated by a service counter or other structure or material in a manner that protects the ice, food, or equipment from splashes or spillage of swimming pool water.
 - The swimming pool water is equipped with *heightened filtration standards*, which would mean a regenerative media filter system, an accelerated water turnover rate of once every 30 minutes when the pool is open for use, and an ultraviolet light secondary disinfection system.
 - The pool is monitored with an electronic chemical control monitoring system.
- The water temperature of the public swimming pool is maintained at 104 degrees Fahrenheit or less.
- The free and combined chlorine levels in the swimming pool water are tested poolside at least two times per day when the public pool is open for use.
- At least one lifeguard is on duty in the *swimming pool enclosure* when the public swimming pool is open for use. *Swimming pool enclosure* would mean the area containing one or more public swimming pools, which area is surrounded by an uninterrupted constructed feature that is used to surround and secure the area; that is intended to deter or effectively prevent unpermitted, uncontrolled, and unfettered

access to the area; and that is designed to resist climbing and to prevent passage through and under it.

In addition, a person engaged in the operation of a public swimming pool that allows food or beverages to be consumed in the swimming pool under the above provisions would have to ensure that the food and beverages are served in containers that are made of plastic or another nonbreakable material and that are designed to reduce the chances of spilling the food or beverage in the swimming pool water.

Finally, the bill would amend the definition of *public swimming pool* currently contained in the code to include “areas used to serve, prepare, or consume food and beverages” among the equipment, structures, areas, and enclosures intended for the use of individuals using or operating the swimming pool that are considered part of the public swimming pool for purposes of that definition. The bill also would rearrange other elements of the current definition, with no apparent change in meaning.

MCL 333.12521 and 333.12526 and proposed MCL 333.12526a

House Bill 5984 would add a new section to the Michigan Liquor Control Code to authorize the Michigan Liquor Control Commission to issue a nontransferable on-premises public swimming pool permit to an on-premises licensee that operates a public swimming pool. The commission would have to develop an application for an annual on-premises public swimming pool permit that would allow for licensed activities under the bill. The fee for the new permit would be \$350. The permit would allow the holder to sell and serve alcoholic beverages in a public swimming pool located on the licensed premises if all of the following conditions were met:

- The permit holder complies with section 12526a of the Public Health Code (as proposed by HB 5983).
- The sales of food or beverages performed under the permit are limited to an exclusive area that is well-defined, clearly marked, and inaccessible to minors.
- The sales are conducted by employees of the permit holder who have completed a server training program as provided for in section 906 of the code and Liquor Control Commission rules.

Proposed MCL 436.1548

House Bills 5983 and 5984 are tie-barred to one another, which means that neither bill would take effect unless both bills were enacted.

FISCAL IMPACT:

House Bill 5983 may increase costs for the Department of Environment, Great Lakes, and Energy by expanding the department’s regulatory responsibility relative to public swimming pool construction. The extent of this potential cost increase is unclear and is likely to hinge on the number of facilities that would be subject to new statutory provisions included in the bill. Revenue received from public swimming pool construction permits and operating licenses is deposited to the Public Swimming Pool Fund and used by EGLE primarily to support the department’s Environmental Health program. This program is funded by \$7.4 million Gross

(\$2.5 million GF/GP) and 57.0 FTE positions in FY 2021-22. EGLE's total FY 2021-22 appropriations are \$2.6 billion Gross (\$282.9 million GF/GP) and 1,467.0 FTE positions. The bill is unlikely to affect departmental revenues or costs or revenues for local governments.

House Bill 5984 would have an indeterminate fiscal impact on the Michigan Liquor Control Commission (MLCC), housed within the Department of Licensing and Regulatory Affairs. Under the bill, MLCC could charge a permit fee of \$350. The revenue from assessed fees would be distributed in accordance with the Michigan Liquor Control Code, which provides 41.5% for MLCC for licensing and enforcement activities, 55% for local governments, and 3.5% for alcoholism programs. The magnitude of the revenues, cost of departmental implementation and administration, and net fiscal impact are all indeterminate, as the values depend on the volume of licenses, which is indeterminate.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.