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House Bill 5983 (Substitute H-3 as passed by the House)
House Bill 5984 (Substitute H-2 as passed by the House)
Sponsor: Representative Rodney Wakeman (H.B. 5983)
Representative John Cherry (H.B. 5984)
House Committee: Regulatory Reform
Senate Committee: Economic and Small Business Development

Date Completed: 5-26-22

CONTENT

House Bill 5983 (H-3) would amend Part 125 (Campgrounds, Swimming Areas, and Swimmer's Itch) of the Public Health Code to do the following:

- Specify that a person engaged in the operation of a public swimming pool could not allow for the preparation of food or beverages in the swimming pool enclosure, or the consumption of such in the public swimming pool, unless certain requirements pertaining to the pool were met.
- Require a person engaged in the operation of a public swimming pool that allowed for the consumption of food or beverages in the public swimming pool to ensure that food and beverages were served in a container made of plastic or another non-breakable material that was designed to reduce the chances of spilling the food or beverage in the swimming pool water.

House Bill 5984 (H-2) would add Section 548 to the Michigan Liquor Control Code to do the following:

- Allow the Michigan Liquor Control Commission to issue an on-premises public swimming pool permit to an on-premises licensee that was licensed to operate a public swimming pool under Part 125 of the Public Health Code.
- Require the Commission to charge an initial and an annual fee of \$350 for the permit.
- Allow a holder of a permit to sell and serve alcoholic liquor in a public swimming pool located on the licensed premises if certain conditions pertaining to the location and method of sales were met.
- Require the Commission to develop an application for an annual on-premises public swimming pool permit allowing for licensed activities described above.

The bills are tie-barred.

House Bill 5983 (H-3)

Definitions

The Code defines "public swimming pool" as an artificial body of water used collectively by a number of individuals primarily for the purpose of swimming, wading, recreation, or

instruction and includes related equipment, structures, areas, and enclosures intended for the use of individuals using or operating the swimming pool, such as equipment, dressing, locker, shower, and toilet rooms. Instead, under the bill, "public swimming pool" would mean an artificial body of water for a qualified premises that is used collectively by a number of individuals primarily for the purpose of swimming, wading, recreation, or instruction and includes related equipment, structures, areas, and enclosures intended for the use of individuals using or operating the swimming pool, including equipment, dressing, locker, shower, and toilet rooms.

"Qualified premises" would include, but not be limited to, a park, school, motel, camp, resort, apartment, club, hotel, mobile home park, subdivision, and waterpark. "Swimming pool enclosure" would mean the area containing one public swimming pool or, if the area contains two or more public swimming pools, the area containing all the public swimming pools, which area is surrounded by an uninterrupted constructed feature or obstacle that meets all of the following requirements:

- It is used to surround and secure the area.
- It is intended to deter or effectively prevent unpermitted, uncontrolled, and unfettered access to the area.
- It is designed to resist climbing and to prevent passage through and under it.

Under the bill, "alcoholic liquor" would mean that term as defined in Section 105 of the Michigan Liquor Control Code: any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing half of 1% or more of alcohol by volume that are fit for use for food purposes or beverage purposes as defined and classified by the Liquor Control Commission according to alcoholic content as belonging to one of the varieties defined by the Liquor Control Code. "Beverages" would mean alcoholic liquor and nonalcoholic beverages.

"Heightened disinfection and filtration standards" would mean all the following:

- A regenerative media filter system or an equivalent filter system; if the swimming pool used a sand-type filter or a cartridge-type filter, a filter system would be considered equivalent under this subparagraph if it required a reduction in the max flow rate per square foot of filter area.
- An accelerated water turnover rate of once every four hours or less when the public swimming pool is open for use.
- An ultraviolet light secondary disinfection system or an equivalent secondary disinfection system.
- Increased inlets to prevent impaired circulation and to increase water circulation because of potential obstructions.
- Increased number of skimmers or surge weirs to ensure effective surface water skimming.

Allowance of Food & Beverage in a Pool

Under Section 12526 of the Public Health Code, the Department of Environment, Great Lakes, and Energy (EGLE) must examine the plans and specifications of a swimming pool to determine whether the swimming pool facilities, if constructed according to the plans and specifications, are or would be sufficient and adequate to protect the public health and safety. The bill would subject this requirement to the provisions below.

Under the bill, subject to Section 548 of the Michigan Liquor Control Code (which House Bill 5984 (H-2) would add) and the Food Law, a person engaged in the operation of a public swimming pool could not allow the preparation of food or beverages in the swimming pool

enclosure, or consumption of food or beverages in the water of a public swimming pool, unless all the following were met:

- The water temperature of the public swimming pool was maintained at 104 degrees Fahrenheit or less.
- The free disinfectant residual levels in the swimming pool water were tested poolside at least four times per day when the public swimming pool was open for use.
- Lifeguard service was provided in the swimming pool enclosure when the public swimming pool was open for use.
- An individual who held a certification as a certified pool operator, or an equivalent certification as determined by EGLE, was readily available when the public swimming pool was open for use to test the swimming pool water and to operate the water treatment equipment of the public swimming pool.
- The public swimming pool did not contain a slide, diving board, starting block, spray feature, or similar addition in the area of the public swimming pool permitted for the sale and consumption of alcoholic liquor under Section 548 of the Liquor Control Code; however, the public swimming pool could have a waterfall, or another decorative feature, that was not intended for interaction or contact with an individual using the public swimming pool in the area of the public swimming pool permitted for the sale and consumption of alcoholic liquor under Section 548.

In addition, a person engaged in the operation of a public swimming pool could not allow the preparation or consumption of food and beverages as described above unless EGLE had determined under Section 12526 that the plans and specifications for the public swimming pool met all the following requirements:

- The materials used to construct the area within the swimming pool water that was used for serving, preparing, or consuming food or beverages were made of a material that was nonabsorbent, was easily cleanable, and could be sanitized regularly.
- The area within the swimming pool water that was used for serving, preparing, or consuming food or beverages was constructed in a manner that had no sharp edges, no open cracks, and no sealed joints.
- Areas within the swimming pool water where there was ice, food, equipment, and any other item that was stored or used in the preparation of food or beverages were physically separated by a service counter or other structure or material in a manner that protected the ice, food, equipment, or other item from splash or spillage of a swimming pool water.
- The swimming pool water was equipped with heightened disinfection and filtration standards and maintained increased disinfectant residuals.
- The swimming pool water was monitored with an electronic chemical control monitoring system.

The bill would require a person engaged in the operation of a public swimming pool that allowed for the consumption of food or beverages in the public swimming pool to ensure that food and beverages were served in a container made of plastic or another non-breakable material and that was designed to reduce the chances of spilling the food or beverage in the swimming pool water.

House Bill 5984 (H-2)

The bill would amend the Liquor Control Code to allow the Commission to issue an on-premises public swimming pool permit to an on-premises licensee that was licensed to operate a public swimming pool under Part 125 of the Public Health Code. The Commission would have to charge an initial and annual fee for an on-premises public swimming pool permit of

\$350. An on-premises public swimming pool permit issued under the bill would not be transferrable by location.

Under the bill, a holder of an on-premises public swimming pool permit could sell and serve alcoholic liquor in a public swimming pool located on the licensed premises if the following conditions were met:

- The sales performed under the on-premises public swimming pool permit were made within an exclusive area that was well defined, clearly marked, and not accessible to minors.
- The sales were conducted by employees of the holder of the on-premises public swimming pool permit who had completed a server training program as provided in Section 906 and the rules promulgated by the Commission.

(Section 906 of the Liquor Control Code defines "server training program" as an educational program in which the curriculum has been approved by the Commission under the standards provided by the Code and which is offered by an administrator or instructor to a retail licensee, or a licensee operating a tasting room or providing samples of alcoholic liquor, for its employees.)

The bill specifies that an individual who purchased alcoholic liquor in an exclusive area could possess alcoholic liquor sold by the holder of the on-premises public swimming pool permit only in the exclusive area and the licensed premises adjacent to the exclusive area. The bill states that, "as an example, and not by way of limitation, an exclusive area is delineated by a buoy line."

The bill would require the Commission to develop an application for an annual on-premises public swimming pool permit allowing for licensed activities as described above.

MCL 333.12521 et al. (H.B. 5983)
Proposed MCL 436.1548 (H.B. 5984)

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

House Bill 5983 (H-3)

The bill would have a minimal fiscal impact on EGLE and no fiscal impact on local units of government. The bill would allow for the construction of swim-up pool bars in public swimming pools. Operators of public swimming pools would have to obtain the necessary permits from EGLE before construction of the swim-up pool bar could begin.

The bill would have a minimal increase in costs for EGLE because of the bill's expansion of the Department's permitting role; however, the extent of any cost increase is unknown. Currently, EGLE is aware of two potential permit applications pending the bill's enactment. In fiscal year 2020-21, EGLE received 5,018 public swimming pool license renewal applications and approved 4,812 of those applications. Additionally, EGLE received 69 public swimming pool construction permits and approved 81 construction projects for the same year. Therefore, the bill likely would not increase EGLE's operating expenses significantly, as it already regulates public swimming pools. Costs for EGLE could increase if requests to construct pools with swim-up bars caused the number of construction permits to increase significantly.

House Bill 5984 (H-2)

The bill would have an indeterminate fiscal impact on State government and local units of government. The Commission would collect the annual fee of \$350 for on-premises public swimming pool permits. The amount of revenue collected as well as the costs to the Commission associated with the permits would depend on the number of permits issued. Revenue collected would be distributed in the same manner as most other retail license fees, with 55% returned to local governments as liquor law enforcement grants and the remainder used for Liquor Control Code enforcement and substance abuse treatment programs.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.