



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 628 (as reported without amendment)
Sponsor: Senator Ron Jelinek
Committee: Natural Resources and Environmental Affairs

(as passed by the Senate)

Date Completed: 10-15-07

RATIONALE

The Public Health Code requires the owner of a public bathing beach to have rescue and safety equipment available, as well as a means of communication with outside sources of assistance. Evidently, some local units of government are unaware of the requirement or cannot afford to equip all of their beaches, and others have been advised by their attorneys that providing the equipment could leave them vulnerable to liability if it were tampered with or stolen. As a result, some local units either fail to comply with the law, knowingly or not, or close public beaches. In order to encourage local units to provide safety and rescue equipment at their beaches, it has been suggested that this provision of the Code should be permissive, and that a local unit that provides the equipment should be shielded from liability under the governmental immunity Act.

CONTENT

The bill would amend the Public Health Code to permit, rather than require, the owner or person in charge of a public bathing beach to provide and maintain suitable and adequate safety and rescue equipment and suitable means of communication with outside sources of assistance.

Currently, this equipment and means of communication must be available and accessible at the beach when it is open to bathers. Under the bill, this provision would apply only if the owner or person in charge of the beach provided and maintained the equipment and means of communication. Additionally, the bill specifies that if the owner or person in charge provided and maintained the safety

and rescue equipment and means of communication, that action would constitute the "exercise or discharge of a governmental function".

(Under the governmental immunity Act, a governmental agency and its officers, employees, and volunteers generally are immune from tort liability if engaged in the "exercise or discharge of a governmental function".)

MCL 333.12542

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Public beaches within the State provide numerous recreational opportunities and play an important role in Michigan's tourism industry, and the proper equipment and communication with rescue entities are crucial to maintaining safety. Some local units of government are concerned that in providing safety equipment and a means of communication, they actually might open themselves up to liability if the equipment is stolen or compromised in some way, and a swimmer is injured or dies. By allowing, rather than requiring, public beach owners to provide the equipment and means of communication, and classifying these actions as the "exercise or discharge of a governmental function", the bill would encourage local units to take measures to prevent injury and save lives.

Response: The bill could weaken the law by making the provision of safety equipment permissive.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. To the extent that State or local government entities would opt out of providing this equipment, they could realize minor cost savings. Additionally, by making the provision of the equipment a governmental function, the bill would shield the owner or person in charge of the beach from liability, which could result in additional savings. There are no data on the number of cases the bill would affect.

Fiscal Analyst: Stephanie Yu

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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.