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House Bill 6190 (Substitute H-2 as passed by the House)

Sponsor: Representative Michael Webber

House Committee: Regulatory Reform
Ways and Means

Senate Committee: Regulatory Reform

Date Completed: 10-27-20

CONTENT

The bill would amend Part 125 (Campgrounds, Swimming Areas, and Swimmers' Itch) of the Public Health Code to specify that Sections 12521 to 12534 of the Code, which, collectively, govern the construction and operation of public swimming pools, also would apply to the construction and operation of learn to swim facilities.

Review of Design, Construction, & Operation

The Code requires the Department of Environment, Great Lakes, and Energy (EGLE) to review the design, construction, and operation of public swimming pools to protect the public health, prevent the spread of disease, and prevent accidents or premature deaths. "Public swimming pool" means 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. The bill would refer to an artificial body of water *for a qualified premise* used for the purposes currently specified in the Code. "Qualified premises" would include a park, school, motel, camp, resort, apartment, club, hotel, mobile home park, subdivision, and waterpark.

The bill also would require EGLE to review the design, construction, and operation of learn to swim facilities to protect the public health, prevent the spread of disease, and prevent accidents or premature deaths. "Learn to swim facility" means a swimming pool facility that is used primarily for a member-based swim instruction business.

The Code requires EGLE to promulgate rules to carry out Sections 12521 to 12534 of the Code. Under the bill, rules that applied to public swimming pools would continue to apply to learn to swim facilities unless EGLE rescinded them or they were amended so as not to apply to learn to swim facilities.

The Code grants EGLE supervisory and visitorial power and control over people engaged in the construction and operation of public swimming pools. Under the bill, this provision also would apply to the construction and operation of a learn to swim facility.

Inspection & Right of Entry

The Code requires EGLE, its agents or representatives, or representatives of a designated local health department to make periodic inspections of public swimming pools.

The Department, its agents or representatives, or representatives of a designated local health department may enter upon the swimming pool premises and other property at all reasonable

times to inspect the pool and carry out the authority vested in the Department. Under the bill, these provisions also would apply to a learn to swim facility.

Construction & Modification

Under the Code, a person intending to construct a public swimming pool or to modify an existing public swimming pool must submit plans and specifications for the proposed installation accompanied by a specified fee to EGLE for review and approval and must secure a permit for the construction. A person may not start or engage in the construction of a public swimming pool or modify an existing public swimming pool until the permit for the construction is issued by the Department.

Sections 12521 to 12534 or an action of the Department does not relieve the applicant or owner of a public swimming pool from responsibility of securing a building permit or complying with applicable local codes, regulations, or ordinances not in conflict with Sections 12521 to 12534. Compliance with an approved plan does not authorize the owner constructing or operating a public swimming pool to create or maintain a nuisance or a hazard to health or safety. Plans and specifications submitted for the purpose of obtaining a construction permit must include a true description of the entire swimming pool system and auxiliary structures or parts thereof as proposed to be constructed and operated.

Under the bill, these provisions also would apply to a learn to swim facility.

Examination of Plans & Specifications

The Code requires EGLE to examine the plans and specifications and determine whether the swimming pool facilities, if constructed in accordance with the plans and specifications, are or would be sufficient and adequate to protect the public health and safety. If the plans and specifications are approved, the Department must issue a permit for construction. If the plans and specifications are not approved, the Department must notify the applicant or the applicant's representative of the deficiencies. The applicant may have the plans and specifications amended to remedy the deficiencies and resubmit the documents, without additional fee, for further consideration.

A construction permit is valid for up to two years after the date of issuance unless a written time extension is granted by the Department. Each public swimming pool must be constructed or modified in accordance with the approved plans and specifications unless written approval of a change is granted by the Department.

Under the bill, these provisions also would apply to a learn to swim facility.

Licensure

The Code prohibits a public swimming pool from being operated without a license. A person engaged in the operation of a public swimming pool must obtain a license to operate the pool from EGLE, its agent or representative, or a representative of a designated local health department and must pay an initial or renewal fee. The owner of a public swimming pool must display the license in a conspicuous place on the premises.

A license expires on December 31 of every third year if the annual renewal fee is paid or as stipulated on the license, whichever is sooner. A license must be renewed after receiving a proper application, an annual renewal fee, and evidence that the public swimming pool is being operated and maintained in accordance with Sections 12521 to 12534 and the

applicable rules and regulations. A license is not transferable to another person, but it may be replaced by another license upon receipt of a proper application and the appropriate fee.

The bill also would prohibit a learn to swim facility from being operated without a license and the license provisions described above would apply to a learn to swim facility.

License Fees

The Code prescribes certain fees related to public swimming pool regulation, including a construction permits fee, a construction permit fee for modification of an existing swimming pool, an initial license fee for a swimming pool, an initial license fee for a modified swimming pool, an annual renewal license fee, a late annual renewal fee, a lapsed annual renewal license fee, and a replacement license fee for transfer to another person.

Under the bill, these fees also would apply to a learn to swim facility. A person that had a valid, current permit to operate a learn to swim facility on the bill's effective date would not be required to pay an initial license fee.

Denial & Revocation of License

Under the Code, if upon investigation, EGLE, its agent or representative, or a representative of a designated local health department finds that a public swimming pool was not constructed or modified in accordance with the approved plans and specifications, the Department, its agent or representative, or a representative of a designated local health department must notify the applicant that the license will not be issued, citing the deficiencies or noncomplying items that constitute the reasons for not doing so and a date by which the licensee must comply. An applicant who fails to correct the deficiencies or noncomplying items within the time specified must be denied a license. Under the bill, these provisions also would apply to a learn to swim facility that was not constructed or modified in accordance with the approved plans and specifications.

The Code allows the Department, in accordance with the Administrative Procedures Act (APA), to revoke a license to operate a public swimming pool upon a finding that it is not being operated or maintained in accordance with Sections 12521 to 12534 or the rules. A person aggrieved by a decision of the Department or its authorized representative to revoke the license may appeal to a court of competent jurisdiction as provided by the APA. A license that has been revoked must be reissued only when the Department determines the deficiencies are corrected. Under the bill, these provisions also would apply to a learn to swim facility that was not being operated or maintained in accordance with Sections 12521 to 12534 or the rules.

Periodic Report

The Code requires the Department to provide for a system of periodic reports covering the operation of a public swimming pool so that the Department may readily determine compliance with Sections 12521 to 12534 and the rules. Under the bill, the periodic reports also would have to cover the operation of a learn to swim facility.

Prohibited Use

Under the Code, if the Department, its agent or representative, or a representative of a designated local health department considers that conditions warrant prompt closing of a swimming pool until Sections 12521 to 12534 and the rules are complied with for the protection of the public health and safety, the Department or designated local health

department may order the owner or operator of the swimming pool to prohibit an individual from using it until corrections are made to protect adequately the public health and safety. Under the bill, this provision also would apply to a learn to swim facility.

Use of a Life Jacket

The Code specifies that a person may not prohibit the use of a Coast Guard-approved life jacket in a public swimming pool by an individual who has in his or her possession a statement signed by a licensed physician stating that the individual has a physical disability or condition that necessitates the use of a life jacket. An individual assumes the risk of any injury to himself or herself caused by the use of a life jacket, which is not otherwise caused by the negligence of the operator of the public swimming pool. Under the bill, these provisions also would apply to the use of a Coast Guard-approved life jacket in a learn to swim facility.

Payments to Local Health Departments

The Code also allows EGLE to approve payments for each public swimming pool granted an initial license and each renewal license to a designated local health department when the fees are collected by the State from the designated local health department's respective area, as follows:

- Initial license fee, \$100.
- Annual renewal license fee, \$30.
- Late annual renewal license fee, \$45.
- Lapsed annual renewal license fee, \$70.

Under the bill, these provisions also would apply to a payment approved for each learn to swim facility.

The Code allows a designated local health department to collect additional fees from the owner of a public swimming pool for services provided under Section 12521 to 12534. Under the bill, a designated local health department also could collect additional fees from the owner of a learn to swim facility for services provided under Section 12521 to 12534

Action for Injunction

Under the Code, notwithstanding the existence and pursuit of any other remedy, the Department, its agent or representative, or a representative of a designated local health department may maintain an action in the name of the State for injunction or other process against a person to restrain or prevent the construction or modification of a public swimming pool without a construction permit, or the operation of a public swimming pool without an operation permit, or in a manner contrary to law. Under the bill, this provision also would apply to an action to restrain or prevent the construction or modification of a learn to swim facility without a construction permit, or the operation of a learn to swim facility without an operation permit.

MCL 333.12521 et al.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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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.