

# Legislative Analysis



## ON-PREMISES PUBLIC SWIMMING POOL PERMIT

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**House Bill 5983 (proposed substitute H-3)**

**House Bill 5984 (proposed substitute H-2)**

**Sponsor: Rep. Rodney Wakeman**

**Committee: Regulatory Reform**

**Complete to 5-9-22**

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 initial and renewal 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 preparation of food and beverages (defined to mean alcoholic and nonalcoholic beverages) in the swimming pool enclosure or allowing the consumption of food or beverages in the water of a public swimming 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:
  - The materials used to construct the area within the swimming pool water that is used for serving, preparing, or consuming food or beverages are made of a material that is nonabsorbent, is easily cleanable, and can be regularly sanitized.
  - The area within the swimming pool water that is used for serving, preparing, or consuming food or beverages is constructed in a manner that has no sharp edges, has no open cracks, and has sealed joints.
  - Areas within the swimming pool water where ice, food, equipment, and any other item that is 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 splash or spillage of swimming pool water.
  - The swimming pool water is equipped with *heightened disinfection and filtration standards* and maintains increased disinfectant residuals.
  - The swimming pool water 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 disinfectant residual levels in the swimming pool water are tested poolside at least four times per day when the public swimming pool is open for use.
- Lifeguard service is provided in the *swimming pool enclosure* when the public swimming pool is open for use.
- A certified pool operator, or an individual holding an equivalent certification, is readily available when the public swimming pool is open for use to test the water and operate the pool's water treatment equipment.
- The public swimming pool does not contain a slide, diving board, starting block, spray feature, or similar addition in the area of the pool permitted for the sale and consumption of alcohol. However, the pool could have a waterfall, or another decorative feature, that is not intended for interaction or contact with an individual using the pool in the area permitted for the sale and consumption of alcohol.

*Heightened disinfection and filtration standards* would mean all of the following:

- A regenerative media filter system or an equivalent filter system. If the swimming pool uses a sand-type filter or a cartridge-type filter, a filter system would be considered equivalent if it requires 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 due to potential obstructions.
- Increased number of skimmers or surge weirs to ensure effective surface water skimming.

*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 of the public swimming pools, which area is surrounded by an uninterrupted constructed feature that is used to surround and secure the area; is intended to deter or effectively prevent unpermitted, uncontrolled, and unfettered access to the area; and 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 (MLCC) to issue an on-premises public swimming pool permit to an on-premises licensee that is also licensed to operate a public swimming pool under Part 125 of the Public Health Code (as proposed by HB 5983). The MLCC 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 initial and annual fee for the new permit would be \$350. The on-premises public swimming pool permit would not be transferable by location. The permit would allow the holder to sell and serve alcoholic beverages in a public swimming pool located on the licensed premises if both of the following conditions were met:

- The sales of food or beverages performed under the permit are made within an exclusive area that is well-defined, clearly marked, and not accessible to minors. (The bill states as an example, and not as a limitation, that an exclusive area would be well-defined and clearly marked if it were delineated by a buoy line.) An individual could possess alcohol purchased from a permit holder only in the exclusive area and the licensed premises adjacent to the exclusive area.
- 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 MLCC rules.

Proposed MCL 436.1548

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 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, housed within the Department of Licensing and Regulatory Affairs. Under the bill, the MLCC could charge a permit fee of \$350, both initially and on an annual basis. The revenue from assessed fees would be distributed in accordance with the Michigan Liquor Control Code, which provides 41.5% for the 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 would 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.