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Senate Bills 1006 and 1007 (as introduced 4-14-22)
Sponsor: Senator Ken Horn (S.B. 1006)
Senator Jeremy Moss (S.B. 1007)
Committee: Economic and Small Business Development

Date Completed: 5-26-22

CONTENT

Senate Bill 1007 would amend Part 125 (Campgrounds, Swimming Areas, and Swimmer's Itch) of the Public Health Code to do the following:

- **Prohibit a person engaged in the operation of a public swimming pool from allowing for the consumption of food or beverages in the 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 nonbreakable material and was designed to reduce the chances of spilling the food or beverage in the swimming pool water.**

Senate Bill 1006 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 fee of \$350 for the permit.**
- **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.

Senate Bill 1007

Definitions

The Public Health Code, "public swimming pool" defines 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, 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, toilet room, and areas used to serve, prepare, or consume food and beverages.

"Qualified premises" would include a park, school, motel, camp, resort, apartment, club, hotel, mobile home park, subdivision, and waterpark. "Swimming pool enclosure" would mean the area containing one or more 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 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 prevent climbing and to prevent passage through and under it.

Under the bill, "alcoholic liquor" would mean that term as defined in 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.

"Heightened filtration standards" would mean all the following:

- A regenerative media filter system.
- An accelerated water turnover rate of once every 30 minutes when the public swimming pool was open for use.
- An ultraviolet light secondary disinfection system.

Allowance of Food & Beverage in 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 Senate Bill 1006 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, including alcoholic liquor, in the 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 and combined chlorine levels in the swimming pool water were tested, pool-side, at least two times per day when the public swimming pool was open for use.
- At least one lifeguard was on duty in the swimming pool enclosure when the public swimming pool was open for use.

In addition, a person engaged in the operation of a public swimming pool could not allow the preparation of food or beverages, including alcoholic liquor, in a public swimming pool 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 used for serving, preparing, or consuming food or beverages were made of a material that could be regularly sanitized.
- Areas where 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 a splash or spillage of swimming pool water.
- The swimming pool water was equipped with heightened filtration standards.
- The swimming pool water was monitored with an electric 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 would be required to ensure that food and beverages were served in a container made of plastic or another nonbreakable material that was designed to reduce the chances of spilling the food or beverage in the swimming pool water.

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Under the bill the Commission could issue an on-premises public swimming pool permit to an on-premises licensee that operated a public swimming pool. The Commission would have to charge a fee for an on-premises public swimming pool permit of \$350 and the permit would not be transferrable.

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 all the following conditions were met:

- The holder of the on-premises public swimming pool permit complied with Section 12526a of the Public Health Code created in Senate Bill 1007.
- The sales performed under the on-premises public swimming pool permit would be limited to 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 for in Section 906 and the rules promulgated by the Commission.

(Section 906 of the 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 would require the Commission to develop an application for an annual on-premises public swimming pool permit that would allow for licensed activities.

Proposed MCL 436.548 (S.B. 1006)
MCL 333.12521 et al. (S.B. 1007)

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

Senate Bill 1007

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.

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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 Commission 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.