

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 719 Swim-up Bars
SPONSOR(S): Regulatory Reform Subcommittee, Smith, D.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1044

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	16 Y, 0 N, As CS	Brackett	Anstead
2) State Administration & Technology Appropriations Subcommittee		Helpling	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

Public swimming pools include those pools located at public lodging establishments and theme parks. The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida. In order to operate or continue to operate a public swimming pool, it must have a valid operating permit from DOH. Currently, DOH prohibits food, beverages, and glass containers from being in a public swimming pool.

The Florida Building Commission (Commission), within the Department of Business and Professional Regulation, implements and adopts the Florida Building Code. The Florida Building Code is the statewide building code for all construction, including swimming pools in the state. Every local government must enforce the Florida Building Code and issue building permits. A local government may not issue a certificate of completion for a public swimming pool until DOH has issued an operating permit for the pool.

A swim-up bar is a version of a traditional bar that is located in a swimming pool. Swim-up bars do not require a person to leave a pool in order to get a beverage. Typically, swim-up bars have submerged barstools in the swimming pool and relatively shallow waters so patrons can sit or stand in the pool while they consume beverages.

Swim-up bars are allowed in private residences. However, swim-up bars are not allowed in public pools because food and beverages are not allowed in public swimming pools.

The bill:

- Prohibits DOH and local governments from prohibiting swim-up bars located in transient public lodging establishment or theme parks or entertainment complexes.
- Requires swim-up bars to be separated from other public pools that do not allow beverages or food.
- Prohibits glass items from being in a swim-up bar or the immediate area around the pool.
- Requires a lifeguard to be on duty when a swim-up bar is in use.
- Limits the water depth in swim-up bars to less than five feet.
- Requires swim-up bars to be in compliance with all relevant regulations for public pools.
- Gives DOH rulemaking authority to ensure swim-up bars comply with the regulations for swim-up bars.
- Requires the Commission to adopt provisions for swim-up bars in the Florida Building Code, related to water recirculation systems, pool deck obstructions, and pool signs.

The bill may have an insignificant negative fiscal impact on state government. See Fiscal Analysis & Economic Impact Statement.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Swimming Pools

A public swimming pool means a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith.¹

A public swimming pool includes “a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.”²

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida. In order to operate or continue operating a public swimming pool, an owner must have a valid operating permit from DOH.³ Swimming pools in private residences that have less than five living units are not public swimming pools and are not subject to regulation by DOH.⁴

If DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied.⁵ DOH is authorized to establish a schedule of fees for plan approval and permitting.⁶ Operating permits must be renewed annually and may be transferred from one name or owner to another.⁷

DOH may grant variances from any rule relating to the sanitation and safety standards for public swimming pools. DOH may also grant variances from the provisions of the Florida Building Code specifically pertaining to public swimming pools when requested by the pool owner or the pool owner's representative to relieve hardship. In order to receive a variance from the provisions of the Florida Building Code, it must be shown that the hardship was not caused intentionally by the action of the applicant, no reasonable alternative exists, and the health and safety of the pool patrons is not at risk.⁸

DOH may suspend or revoke an operating permit, or impose an administrative fine of up to \$500 on any person or public body that fails to comply with the rules and regulations for public swimming pools. Each day that a violation continues may constitute as a separate violation.⁹

DOH may also impose an administrative fine for any violations of the laws relating to the removal of sanitary nuisances such as garbage or human waste.¹⁰

¹ S. 514.011(2), F.S.

² *Id.*

³ S. 514.031(1), F.S.

⁴ S. 514.011(3), F.S.

⁵ *Id.*

⁶ S. 514.033, F.S.

⁷ Ss. 514.031(2) - (4), F.S.

⁸ S. 514.0115(9), F.S.

⁹ S. 514.05, F.S.

¹⁰ *Id.*

Safety and Sanitation Features

All public pools must be equipped with the following safety features:¹¹

- Safety drain outlet cover(s)/grate(s) and allowable secondary anti-entrapment devices;¹²
- A shepherd's hook securely attached to a one piece pole not less than 16 feet in length. Pools over 50 feet in length shall have a shepherd's hook on each of the longer sides of the pool;
- At least one 18 inch diameter lifesaving ring with sufficient rope attached to reach all parts of the pool from the pool deck. Pools over 50 feet in length shall have a lifesaving ring on each of the longer sides of the pool;
- Safety equipment shall be mounted in a conspicuous place and be readily available for use; and
- Lighting if the pool is used during nighttime.

Spa pools under 200 square feet of surface area, and interactive water features or wading pools with two feet or less of water depth are exempt from the requirement to have shepherd's hook and lifesaving ring requirement.¹³

If a human fecal accident occurs in a public swimming pool, the pool operator or owner must comply with all recommendations found in the Centers for Disease Control and Prevention's (CDC) "Fecal accident response recommendations for Aquatics Staff."¹⁴ A pool operator or owner may also use an alternative emergency disinfection method developed by industry, by the application of new disinfection technology, or by the use of chemical disinfectants that are effective, safe and appropriate for public bathing facilities, and are approved by the CDC.¹⁵

The CDC recommends that if a person vomits more than just pool water, such as previously eaten food, aquatic staff should respond immediately to clean it up and may use the "Fecal accident response recommendations for Aquatics Staff" to disinfect potentially infectious vomit.¹⁶

Common Recreational Water Illnesses

According to the CDC, recreational water illnesses are diseases that people can get from swimming and playing in bodies of water, including swimming pools, hot tubs/spas, water playgrounds, or oceans, lakes, and rivers, if the water is contaminated with germs.¹⁷

A person can get recreational water illnesses if they swallow, have contact with, or breathe in mists or aerosols from water contaminated with germs. A person can also get them by having contact with chemicals that are in the water or that evaporate from the water and turn into gas in the air.¹⁸

Diarrhea is the most common recreational water illness. People who are already sick with diarrhea can spread it to others when they get in recreational water. People typically have about 0.14 grams of poop (similar to a few grains of sand) on their bodies at any given time. When a person who is sick with diarrhea gets in the water, that tiny amount of poop on their body can wash into the water around them

¹¹ R. 64E-9.008(3) and (7), F.A.C.

¹² Federal law requires public pools and spas to have a drain cover and a secondary anti-entrapment device in order to avoid suction entrapment. 15 U.S.C. § 106.

¹³ R. 64E-9.008(2), F.A.C.

¹⁴ Dated February 15, 2008.

¹⁵ R. 64E-9.004(11), F.A.C.

¹⁶ Centers for Disease Control and Prevention, *Vomit and Blood in the Pool*,

<https://www.cdc.gov/healthywater/swimming/aquatics-professionals/vomit-blood-contamination.html> (last visited Jan. 28, 2022).

¹⁷ Centers for Disease Control and Prevention, *Recreational Water Illnesses*,

<https://www.cdc.gov/healthywater/swimming/swimmers/rwi.html> (last visited Jan. 29, 2022).

¹⁸ *Id.*

and contaminate it with germs. If someone else swallows the contaminated water, they can become infected.¹⁹

Other recreational water illnesses—such as skin, ear, respiratory, eye, and other infections—can be caused by germs that naturally live in the water and soil. If the chemicals used to kill germs (chlorine or bromine) in pools, hot tubs, and water playgrounds are not kept at the right level, these germs can multiply and make swimmers sick.²⁰

The most common symptoms caused by recreational water illnesses are diarrhea, skin rashes, ear pain, cough or congestion, and eye pain. From 2000 to 2014, almost 500 recreational water illness outbreaks were reported to the CDC. The most commonly reported illnesses were:²¹

- Acute gastrointestinal illness (such as diarrhea or vomiting).
- Skin illnesses (such as rash).
- Acute respiratory illness (such as cough or congestion).

Children, pregnant women, and people who have health problems or take medicines that lower their body's ability to fight germs and sickness—such as people whose immune systems are weakened because of cancer, an organ transplant, or HIV—are most at risk for recreational water illnesses.²²

Disinfecting pools with chlorine or bromine and pH is the first defense against the germs that cause recreational water illnesses in pools, hot tubs/spas, and water playgrounds. At the recommended levels, chlorine or bromine can kill most germs in the water within minutes.²³

However, one CDC study found that more than 10% of routine inspections of public pools, hot tubs/spas, and water playgrounds (for example, at hotels/motels and waterparks) led to immediate closure because of serious violations, such as improper chlorine or bromine levels.²⁴

Lifeguards

A “lifeguard” is a person responsible for the safety of the users of a public swimming pool. Lifeguards are not required at a public pool unless the pool has a water slide plunge pool or the pool is a water activity pool with climbable structures.²⁵

However, anyone working as a lifeguard at a public swimming pool must be certified in lifeguarding, first aid, and cardiopulmonary resuscitation by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs.²⁶

Food and Beverages

Food, beverages, glass containers, and animals are prohibited from being in a public swimming pool. Individuals with a disability and service animal trainers may be accompanied by a service animal, but the service animal is not allowed to enter the pool water or onto the drained area of an interactive water feature in order to prevent a direct threat to the health of pool patrons.²⁷

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ S. 514.071, F.S.; R. 64E-9.008, F.A.C.

²⁶ *Id.*

²⁷ R. 64E-9.004(4), F.A.C.

The Florida Building Code and Florida Building Commission

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.²⁸

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.²⁹ The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.³⁰

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.³¹

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.³²

The Florida Building Commission

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.³³

The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.³⁴

The Commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.³⁵ TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.³⁶

²⁸ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan. 28, 2022).

²⁹ *Id.*; DBPR, *Building Code Information System*, <https://floridabuilding.org/c/default.aspx#> (last visited on Jan. 28, 2022).

³⁰ *Id.*

³¹ See S. 553.72(1), F.S.

³² Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Jan. 28, 2022).

³³ Ss. 553.73 and 553.74, F.S.

³⁴ *Id.*

³⁵ Department of Business and Professional regulation, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Jan. 28, 2022).

³⁶ S. 553.73(3), F.S.; Rule 61G20-2.001, F.A.C.

Local Enforcement of the Florida Building Code

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.³⁷

Every local government must enforce the Building Code and issue building permits.³⁸ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building or structure, including swimming pools, without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.³⁹

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.⁴⁰ A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection to ensure work complies with the Building Code.⁴¹

A local government may not issue a building permit for a public swimming pool without proof that an operating permit from DOH has been applied for. A local government may not issue a certificate of completion or occupancy for a public swimming pool until DOH has issued an operating permit for the pool.⁴²

Swim-up Bars

A swim-up bar is a version of a traditional bar that is located in a swimming pool. Swim-up bars do not require a person to leave a pool in order to get a beverage. Typically, swim-up bars have sub-merged barstools in the swimming pool and relatively shallow waters so patrons can sit or stand in the pool.⁴³

Swim-up bars began in Las Vegas in the 1950s when swimming pools at hotels became popular. Hotels and casinos wanted to give patrons who preferred to spend their stay in the pool, the opportunity to play casino games and drink. Since then, swim-up bars have been built in vacation spots throughout the world as well as in private residences.⁴⁴

Currently, there is at least one swim up bar in Florida, which is located at the Island Resort at Fort Walton Beach, which was built in 1966.⁴⁵ However, swim-up bars are currently not allowed in public swimming pools without a variance from DOH because food and beverages are prohibited from being in public swimming pools.

Swim-up bars are allowed in private residences and, according to DBPR, the Building Code's construction standards are sufficient to construct swim-up bars in pools.⁴⁶ However, the Building Code prohibits food and beverages from being in a public swimming pool or on a pool deck near a public swimming pool.⁴⁷

³⁷ S. 553.72, F.S.

³⁸ Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

³⁹ See Ss. 125.56(4)(a) and 553.79(1), F.S.

⁴⁰ S. 202 of the Building Code (Building), Seventh Edition.

⁴¹ S. 468.603(2), F.S.

⁴² S. 553.79(13), F.S.

⁴³ Kylie Morrow, *Sandals Best Swim Up Bars & How It All Started*, Sandals Blog (Jun. 25, 2019)

<https://www.sandals.com/blog/story-behind-the-swim-up-bar/> (last visited Jan. 28, 2022).

⁴⁴ *Id.*; Sarah Hutchinson, *Swim-up Bar Ideas*, <https://www.landscapingnetwork.com/swimming-pool/swim-up-bar.html> (last visited Jan. 28, 2022).

⁴⁵ The Island Resort at Fort Walton Beach, *Our Story*, <https://www.theislandfl.com/about-us.htm> (last visited Jan. 28, 2022).

⁴⁶ Email from Conner Mann, Legislative Affairs Coordinator, Department of Business and Professional Regulation, Swim-up Bars (Jan. 28, 2022).

⁴⁷ S. 454 of the Building Code (Building), Seventh Edition.

The Building Code also requires public swimming pools to have a sign stating the rules and regulations for bathers including a statement that food and beverages are not allowed in the pool or on the pool's wet deck area.⁴⁸

According to DBPR, the Building Code does not contain any operational or treatment requirements that specifically accommodate the potential for food and drinks to be served near a public swimming pool. If food and beverages were allowed in public swimming pools, potential changes to the Building Code may be needed, including requiring special water recirculation and treatment systems capable of removing spillage of food and drinks, special travel distances to the swimming pool sanitary facilities, and changes to required signage.⁴⁹

Theme Parks and Public Lodging Establishments

Current law defines a “theme park or entertainment complex” as a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of one million visitors annually.⁵⁰

Current law defines “transient public lodging establishments,” as any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.⁵¹

Classifications of transient public lodging establishments include apartments, hotels, motels, vacation rentals, bed and breakfast inns, and timeshare projects.⁵²

The Division of Hotel and Restaurants (H&R) within DBPR licenses, inspects, and regulates transient public lodging establishments in Florida.⁵³ Each transient public lodging establishment must obtain a license from H&R. Licenses are renewed annually.⁵⁴

Effect of the Bill

The bill prohibits DOH, county health departments, and local governments from prohibiting swim-up bars in transient public lodging establishments, theme parks, or entertainment complexes, as long as:

- The transient public lodging establishment or theme park or entertainment complex designates the public pool as a swim-up bar.
- The transient public lodging establishment or theme park or entertainment complex provides notice to their patrons that food and beverages are being consumed in the swim-up bar.
- The swim-up bar is separated from any other public pools that are not swim-up bars and do not allow the consumption of food and beverages.
- Glass items are not allowed in the swim-up bar or on the pool's wet deck area.
- A lifeguard is present when the swim-up bar is being used.
- The swim-up bar has a water depth of less than 60 inches.
- The swim-up bar is in compliance with the rules and regulations governing public swimming pools.

The bill gives DOH rulemaking authority to ensure swim-up bars comply with the bill's requirements.

⁴⁸ *Id.*

⁴⁹ Email from Conner Mann *supra* note 46.

⁵⁰ S. 509.013(9), F.S.

⁵¹ S. 509.013(4), F.S.

⁵² S. 509.242, F.S.

⁵³ Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Jan. 14, 2022).

⁵⁴ S. 509.241(1), F.S.

The bill defines “swim-up bar” as a public pool used for the consumption of food and beverages by people, that may include a permanent bar or counter from which food and beverages are served to people in the pool.

The bill defines “wet deck area” as the 4-foot-wide unobstructed pool deck area around the outside of the pool water perimeter, curb, ladders, handrails, planters, or lifeguard chairs.

The bill also requires the Commission to adopt provisions allowing swim-up bars in the Building Code, by January 1, 2023, including at a minimum:

- Signage requirements providing that food and beverages are permitted in the swim-up bar;
- An allowance for an obstruction related to a swim-up bar in a public pool's wet deck area; and
- Enhanced requirements for the swim-up bar's recirculation and treatment system above and beyond what is required of a typical public pool.

B. SECTION DIRECTORY:

Section 1. Amends s. 514.0115, F.S., relating to exemptions from supervision or regulation, variances.

Section 2. Amends s. 553.77, F.S., relating to specific powers of the Commission.

Section 3. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on the Commission to adopt requirements and procedures for the approval of swim-up bars at transient public lodging establishments and theme parks or entertainment complexes.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by allowing transient public lodging establishments and theme parks or entertainment complexes to have swim-up bars, which may increase sales of food and beverages for establishments that have such bars.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOH to adopt rules to ensure swim-up bars comply with the bill's requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Regulatory Reform Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Prohibits DOH and local governments from prohibiting swim-up bars located in transient public lodging establishment or theme parks or entertainment complexes.
- Requires swim-up bars to be separated from other public pools that do not allow beverages or food.
- Prohibits glass items from being in a swim-up bar or the immediate area around the pool.
- Requires a lifeguard to be on duty when a swim-up bar is in use.
- Limits the water depth in swim-up bars to less than 5 feet.
- Requires swim-up bars to be in compliance with all relevant regulations for public pools.
- Gives DOH rulemaking authority to ensure swim-up bars comply with the regulations for swim-up bars.
- Requires the Commission to adopt provisions for swim-up bars in the Florida Building Code, related to water recirculation systems, pool deck obstructions, and pool signs.

The staff analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.