

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources *JAA*

BOARD AGENDA # *B-9

Urgent

Routine

AGENDA DATE December 8, 2009

CEO Concur with Recommendation YES NO
(Information Attached) *phx*

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Department of Environmental Resources (DER) to Collect an Annual Fee, on Behalf of the State of California, Assessed on the Owners of Public Swimming Pools, Effective January 1, 2010 until January 1, 2014, as Required by the California Health and Safety Code

STAFF RECOMMENDATIONS:

1. Authorize the Department of Environmental Resources, effective January 1, 2010 until January 1, 2014, to collect a fee from the owner of a public swimming pool, on behalf of the State of California, assessed at an amount of six dollars (\$6) per public swimming pool, as required in Section 116064.2 of the California Health and Safety Code.
2. Authorize the County to transmit the five dollars (\$5) of the collected fee to the State Controller for deposit into the Recreational Health Fund in the State Treasury.
3. Authorize the County to retain one dollar (\$1) of the assessed amount for administrative costs associated with collecting the fee and any necessary reporting to the State of California.

FISCAL IMPACT:

The Department of Environmental Resources (DER) currently regulates approximately four hundred public swimming pools in Stanislaus County. If authority to collect the specified fee on behalf of the State of California is approved, the total fee revenue anticipated to be collected in 2010 by DER would be approximately two thousand four hundred dollars (\$2,400). Of this amount, two thousand dollars (\$2,000) will be transmitted to the Recreational Health Fund in the State Treasury and four hundred dollars (\$400) will be retained by DER for administrative expenses as allowed by current State law.

BOARD ACTION AS FOLLOWS:

No. 2009-804

On motion of Supervisor Chiesa, Seconded by Supervisor Grover
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize the Department of Environmental Resources to Collect an Annual Fee, on Behalf of the State of California, Assessed on the Owners of Public Swimming Pools, Effective January 1, 2010 until January 1, 2014, as Required by the California Health and Safety Code

DISCUSSION:

Public swimming pools were to be in compliance with a new federal law effective December 19, 2009, requiring specific safety upgrades to help prevent anti-entrapment of bathers. At that time, the State of California did not have the same law in effect. With the amendment of the Health and Safety Code Sections 116064.1 and 116064.2, the State of California will be in-line with the federal anti-entrapment regulations for the protection of public health and safety. The law will be in effect on January 1, 2010.

The law further establishes a surcharge on public swimming pools that is to be collected by local public health or environmental health jurisdictions and transmitted to the State Controller for deposit into the Recreational Health Fund. Local jurisdictions are allowed to add up to a six dollar (\$6) surcharge to the normal annual fees for public swimming pools that are due on and after January 1, 2010.

Per the amended law, the local health department may retain a portion of the fee collected in an amount necessary to cover the administrative costs of collecting the fee and any necessary reporting, but in no case to exceed one dollar (\$1). The local health department is required to transmit the remaining collected fee to the State Controller for deposit into the Recreational Health Fund, which has been created in the State Treasury.

The local health department is not be required to take action to collect an unpaid State fee, but is directed to submit to the State Department of Public Health, every six months, a list containing the name and address of the owner of each public pool who has failed to make payment more than 90 days after the date that the bill was provided to the owner of the public swimming pool. Owners that are currently exempt from local swimming pool permit fees are exempt from the fees imposed pursuant to Section 116064.2. of the Health and Safety Code.

POLICY ISSUE:

The Board should determine if this action is consistent with its priorities of effective partnerships and the efficient delivery of public services.

STAFFING IMPACTS:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Sonya K. Harrigfeld, Director. Telephone: 209-525-6770.

Assembly Bill No. 1020

CHAPTER 267

An act to amend Section 18942 of, and to add Sections 116064.1 and 116064.2 to, the Health and Safety Code, relating to swimming pools.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1020, Emmerson. Public swimming pools: anti-entrapment devices and systems.

(1) Under existing law, public wading pools, as defined, are required to equip drain suction outlets with specified anti-entrapment grates to prevent physical entrapment of the bathers. Under existing law, the Swimming Pool Safety Act, public swimming pools are exempted from that act's requirements that newly constructed pools be equipped with specified safety features, including anti-entrapment grates for drain suction outlets.

This bill would require an existing public swimming pool, as defined, to be equipped with anti-entrapment devices or systems that meet ASME/ANSI or ASTM performance standards. It would also require an existing public swimming pool with a single main drain that is not an unblockable drain to meet at least one of the specified standards. The bill would impose timeframes by which its requirements must be met, subject to exceptions, as specified.

The bill would require that every newly constructed public swimming pool have at least 2 main drains per pump that are hydraulically balanced and symmetrically plumbed through one or more "T" fittings, and that are separated by a distance of at least 3 feet in any dimension between the drains.

This bill would authorize the State Department of Public Health to approve amendments or successors to these standards.

The bill would require the department to develop, and a public swimming pool owner to file, a form to indicate compliance with the requirements of the bill, as specified. The form would be required to include a certification by a qualified individual, as defined, that prescribed factual information provided on the form is true to the best of his or her knowledge.

This bill would declare the intent of the Legislature to occupy the whole field of health and safety standards for public swimming pools and to preempt all local health and safety standards relating to public swimming pools.

This bill would authorize the department, until January 1, 2014, to assess a fee, as prescribed, but in an amount not to exceed \$6, to defray the department's costs of carrying out its duties under the bill. The local health department would be required to collect the fee and would be authorized to

retain a portion of this fee in an amount necessary to cover the administrative costs of collecting the fee, but in an amount not to exceed \$1. The applicable local health department would be required to bill the owner of each public swimming pool in its jurisdiction for the amount of the state fee and remit money collected to the Controller. The bill would require a local health department to submit to the department, every 6 months, a list containing specified information regarding owners of public swimming pools who have failed to pay the state fees for more than 90 days, as prescribed. The bill would require any moneys collected from this state fee by either the local health department or the department to be deposited into the Recreational Health Fund, created by the bill. Money in that fund would be available, upon appropriation by the Legislature, for carrying out the department's duties under the bill.

Violation of these requirements would constitute a misdemeanor. By creating new crimes, the bill would impose a state-mandated local program.

By imposing new duties on local building officials and local health officials, the bill would impose a state-mandated local program.

(2) Existing law requires the California Building Standards Commission to publish editions of the California Building Standards Code, as prescribed. Existing law requires the commission to publish the text of specified statutes in the code.

This bill would require the commission to publish the text of specified provisions of the bill within the California Building Standards Code, as prescribed.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

The people of the State of California do enact as follows:

SECTION 1. Section 18942 of the Health and Safety Code is amended to read:

18942. (a) The commission shall publish, or cause to be published, editions of the code in its entirety once in every three years. In each intervening year the commission shall publish, or cause to be published, supplements as necessary. For emergency building standards defined in subdivision (a) of Section 18913, an emergency building standards supplement shall be published whenever the commission determines it is necessary.

(b) The commission shall publish the text of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104, within the requirements for single-family residential occupancies contained in Part 2 of Title 24 of the California Code of Regulations, with the following note:

“NOTE: These regulations are subject to local government modification. You should verify the applicable local government requirements at the time of application for a building permit.”

(c) The commission shall publish the text of Section 116064.2 within Part 2 of Title 24 of the California Code of Regulations.

(d) The commission may publish, stockpile, and sell at a reasonable price the code and materials incorporated therein by reference if it deems the latter is insufficiently available to the public, or unavailable at a reasonable price. Each state department concerned and each city, county, or city and county shall have an up-to-date copy of the code available for public inspection.

(e) (1) Each city, county, and city and county, including charter cities, shall obtain and maintain with all revisions on a current basis, at least one copy of the building standards and other state regulations relating to buildings published in Titles 8, 19, 20, 24, and 25 of the California Code of Regulations. These codes shall be maintained in the office of the building official responsible for the administration and enforcement of this part.

(2) This subdivision shall not apply to a city or county that contracts for the administration and enforcement of the provisions of this part with another local government agency that complies with this section.

SEC. 2. Section 116064.1 is added to the Health and Safety Code, to read:

116064.1. The Legislature finds and declares that the public health interest requires that there be uniform statewide health and safety standards for public swimming pools to prevent physical entrapment and serious injury to children and adults. It is the intent of the Legislature to occupy the whole field of health and safety standards for public swimming pools and the requirements established in this article and the regulations adopted pursuant to this article shall be exclusive of all local health and safety standards relating to public swimming pools.

SEC. 3. Section 116064.2 is added to the Health and Safety Code, to read:

116064.2. (a) As used in this section, the following words have the following meanings:

(1) “ASME/ANSI performance standard” means a standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

(2) “ASTM performance standard” means a standard that is developed and published by ASTM International.

(3) “Main drain” means a submerged suction outlet typically located at the bottom of a swimming pool that conducts water to a recirculating pump.

(4) “Public swimming pool” means an outdoor or indoor structure, whether in-ground or above-ground, intended for swimming or recreational bathing, including a swimming pool, hot tub, spa, or nonportable wading pool, that is any of the following:

(A) Open to the public generally, whether for a fee or free of charge.

(B) Open exclusively to members of an organization and their guests, residents of a multiunit apartment building, apartment complex, residential real estate development, or other multifamily residential area, or patrons of a hotel or other public accommodations facility.

(C) Located on the premises of an athletic club, or public or private school.

(5) “Qualified individual” means a contractor who holds a current valid license issued by the State of California or a professional engineer licensed in the State of California who has experience working on public swimming pools.

(6) “Safety vacuum release system” means a vacuum release system that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected.

(7) “Skimmer equalizer line” means a suction outlet located below the waterline and connected to the body of a skimmer that prevents air from being drawn into the pump if the water level drops below the skimmer weir. However, a skimmer equalizer line is not a main drain.

(8) “Unblockable drain” means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

(b) Subject to subdivision (c), an ASME/ANSI or ASTM performance standard relating to anti-entrapment devices or systems or an amendment or successor to, or later published edition of an ASME/ANSI or ASTM performance standard relating to anti-entrapment devices or systems shall become the applicable standard in California 90 days after publication by ASME/ANSI or ASTM, respectively, provided that the performance standard or amendment or successor to, or later published edition is approved by the department within 90 days of the publication of the performance standard by ASME/ANSI or ASTM, respectively. Notwithstanding any other law, the department may implement, interpret, or make specific the provisions of this section by means of a policy letter or similar instruction and this action by the department shall not be subject to the rulemaking requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(c) Subject to subdivision (f), every public swimming pool shall be equipped with anti-entrapment devices or systems that comply with ASME/ANSI performance standard A112.19.8, as in effect December 31, 2009, or any applicable ASME/ANSI performance standard that has been adopted by the department pursuant to subdivision (b).

(d) Subject to subdivisions (e) and (f), every public swimming pool with a single main drain that is not an unblockable drain shall be equipped with at least one or more of the following devices or systems that are designed to prevent physical entrapment by pool drains:

(1) A safety vacuum release system that has been tested by a department-approved independent third party and found to conform to ASME/ANSI performance standard A112.19.17, as in effect on December 31, 2009, or any applicable ASME/ANSI performance standard that has been adopted by the department pursuant to subdivision (b), or ASTM

performance standard F2387, as in effect on December 31, 2009, or any applicable ASTM performance standard that has been adopted by the department pursuant to subdivision (b).

(2) A suction-limiting vent system with a tamper-resistant atmospheric opening, provided that it conforms to any applicable ASME/ANSI or ASTM performance standard that has been adopted by the department pursuant to subdivision (b).

(3) A gravity drainage system that utilizes a collector tank, provided that it conforms to any applicable ASME/ANSI or ASTM performance standard that has been adopted by the department pursuant to subdivision (b).

(4) An automatic pump shut-off system tested by a department-approved independent third party and found to conform to any applicable ASME/ANSI or ASTM performance standard that has been adopted by the department pursuant to subdivision (b).

(5) Any other system that is deemed, in accordance with federal law, to be equally effective as, or more effective than, the systems described in paragraphs (1) to (4), inclusive, at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(e) Every public swimming pool constructed on or after January 1, 2010, shall have at least two main drains per pump that are hydraulically balanced and symmetrically plumbed through one or more "T" fittings, and that are separated by a distance of at least three feet in any dimension between the drains. A public swimming pool constructed on or after January 1, 2010, that meets the requirements of this subdivision, shall be exempt from the requirements of subdivision (d).

(f) A public swimming pool constructed prior to January 1, 2010, shall be retrofitted to comply with subdivisions (c) and (d) by no later than July 1, 2010, except that no further retrofitting is required for a public swimming pool that completed a retrofit between December 19, 2007, and January 1, 2010, that complied with the Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. Sec. 8001 et seq.) as in effect on the date of issue of the construction permit, or for a nonportable wading pool that completed a retrofit prior to January 1, 2010, that complied with state law on the date of issue of the construction permit. A public swimming pool owner who meets the exception described in this subdivision shall do one of the following prior to September 30, 2010:

(1) File the form issued by the department pursuant to subdivision (g), as otherwise provided in subdivision (h).

(2) (A) File a signed statement attesting that the required work has been completed.

(B) Provide a document containing the name and license number of the qualified individual who completed the required work.

(C) Provide either a copy of the final building permit, if required by the local agency, or a copy of one of the following documents if no permit was required:

(i) A document that describes the modification in a manner that provides sufficient information to document the work that was done to comply with federal law.

(ii) A copy of the final paid invoice. The amount paid for the services may be omitted or redacted from the final invoice prior to submission.

(g) Prior to March 31, 2010, the department shall issue a form for use by an owner of a public swimming pool to indicate compliance with this section. The department shall consult with county health officers and directors of departments of environmental health in developing the form and shall post the form on the department's Internet Web site. The form shall be completed by the owner of a public swimming pool prior to filing the form with the appropriate city, county, or city and county department of environmental health. The form shall include, but not be limited to, the following information:

(1) A statement of whether the pool operates with a single or split main drain.

(2) Identification of the type of anti-entrapment devices or systems that have been installed pursuant to subdivision (c) and the date or dates of installation.

(3) Identification of the type of devices or systems designed to prevent physical entrapment that have been installed pursuant to subdivision (d) in a public swimming pool with a single main drain that is not an unblockable drain and the date or dates of installation or the reason why the requirement is not applicable.

(4) A signature and license number of a qualified individual who certifies that the factual information provided on the form in response to paragraphs (1) to (3), inclusive, is true to the best of his or her knowledge.

(h) A qualified individual who improperly certifies information pursuant to paragraph (4) of subdivision (g) shall be subject to potential disciplinary action at the discretion of the licensing authority.

(i) Except as provided in subdivision (f), each public swimming pool owner shall file a completed copy of the form issued by the department pursuant to this section with the city, county, or city and county department of environmental health in the city, county, or city and county in which the swimming pool is located. The form shall be filed within 30 days following the completion of the swimming pool construction or installation required pursuant to this section or, if the construction or installation is completed prior to the date that the department issues the form pursuant to this section, within 30 days of the date that the department issues the form. The public swimming pool owner or operator shall not make a false statement, representation, certification, record, report, or otherwise falsify information that he or she is required to file or maintain pursuant to this section.

(j) In enforcing this section, health officers and directors of city, county, or city and county departments of environmental health shall consider documentation filed on or with the form issued pursuant to this section by the owner of a public swimming pool as evidence of compliance with this

section. A city, county, or city and county department of environmental health may verify the accuracy of the information filed on or with the form.

(k) To the extent that the requirements for public wading pools imposed by Section 116064 conflict with this section, the requirements of this section shall prevail.

(l) (1) Until January 1, 2014, the department may assess an annual fee on the owners of each public swimming pool, to be collected by the applicable local health department, in an amount not to exceed the amount necessary to defray the department's costs of carrying out its duties under Section 116064.1 and this section but in no case shall this fee exceed six dollars (\$6).

(2) The local health department may retain a portion of the fee collected pursuant to paragraph (1) in an amount necessary to cover the administrative costs of collecting the fee, but in no case to exceed one dollar (\$1).

(3) The local health department shall bill the owner of each public swimming pool in its jurisdiction for the amount of the state fee. The local health department shall transmit the collected state fee to the Controller for deposit into the Recreational Health Fund, which is hereby created in the State Treasury. The local health department shall not be required to take action to collect an unpaid state fee, but shall submit to the department, every six months, a list containing the name and address of the owner of each public swimming pool who has failed to pay the state fee for more than 90 days after the date that the bill was provided to the owner of the public swimming pool.

(4) Owners that are exempt from local swimming pool permit fees shall also be exempt from the fees imposed pursuant to this subdivision.

(5) Except as provided in paragraph (2), all moneys collected by the department pursuant to this section shall be deposited into the Recreational Health Fund. Notwithstanding Section 16305.7 of the Government Code, interest and dividends on moneys in the Recreational Health Fund shall also be deposited in the fund. Moneys in the fund shall, upon appropriation by the Legislature, be available to the department for carrying out its duties under Section 116064.1 and this section and shall not be redirected for any other purpose.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain other costs that may be incurred by a local agency or school district because a local agency or school district has the authority to levy service charges, fees, or assessments

sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.