HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1431 Specialty Contracting Services
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Brackett	Anstead

SUMMARY ANALYSIS

Construction Contractors, including pool/spa contractors, are certified by or registered with the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation. Certified contractors can practice statewide and are licensed and regulated by the CILB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality. Registered contractors are required to register their license with the CILB.

Specialty contractors are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as drywall or demolition. Specialty contractor licenses are created by the CILB through rulemaking. Specialty contractors certified by the CILB are permitted to practice in any jurisdiction in the state. The CILB has created eight types of pool/spa specialty contractors.

In order to perform contracting in the state, a person must be certified or registered (licensed) as a contractor, be an employee of a licensed contractor, or fall under an exemption provided in current law.

The bill creates a new exemption to licensure requirements by allowing unlicensed persons to perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features, hot tubs, and spas without obtaining a specialty contractor license or local license.

The bill only allows the unlicensed person to perform the work if:

- the unlicensed person is under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor;
- the work is within the scope of the supervising contractor's license;
- the supervising contractor is responsible for the work; and
- the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person performing the specialty contracting services, or require the unlicensed person to be an employee of the supervising pool/spa contractor.

The bill does not have a fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Contractors

Contractors are regulated by ch. 489, F.S., which outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers construction contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers electrical/alarm system contracting regulated by the Electrical Contractors' Licensing Board. Both boards are housed in the Department of Business and Professional Regulation (DBPR).

Construction contractors are either certified or registered by the CILB. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[1]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[2]

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued. Registered contractors must register their license with the CILB after obtaining a local license.[3]

In order to perform construction contracting in the state, a person must be certified or registered as a contractor, be an employee[4] of a certified or registered contractor, or fall under an exemption provided in current law.[5]

Swimming Pool/Spa Contractors

"Commercial pool/spa contractors" are individuals who are certified or registered to construct, repair, and service any public or private swimming pool, hot tub, or spa including:[6]

- Installing, repairing, or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment, interior finishes, package pool heaters, and perimeter piping and filter piping;
- Constructing equipment rooms or housing for pool/spa equipment; and
- The scope of work of a swimming pool/spa servicing contractor.

"Residential pool/spa contractors" are individuals who are certified or registered to construct repair, and service any residential swimming pool, hot tub, or spa. The scope of work is identical to the scope of

[1] S. 489.107, F.S.
[2] S. 489.105, F.S.
[3] Ss. 489.105, and 489.117, F.S.
[4] "Employee" means a person who receives compensation from and is under the supervision and control of an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law. S. 489.103(2)(b), F.S.
[5] Ss. 489.103(2), and 489.113, F.S.
[6] S. 489.105(3)(j), F.S.

work for commercial pool/spa contractors; however, residential pool/spa contractors may only work on residential swimming pools, hot tubs, and spas.[7]

"Swimming pool/spa servicing contractors" are individuals who are certified or registered to repair and service any public or private swimming pool, hot tub, or spa including:[8]

- Repairing or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment and interior refinishing;
- Reinstalling or adding pool heaters;
- Repairing or replacing perimeter piping and filter piping;
- Repairing equipment rooms or housing for pool/spa equipment; and
- Substantially or completing draining a swimming pool, or hot tub or spa, for the purpose of repair or renovation.

The scope of work for all three types of swimming pool/spa contractors does not include direct connections to a sanitary sewer system or to potable water lines.[9]

Water treatment or cleaning a pool or spa does not require a license unless the structural integrity of the pool or spa is affected, or equipment attached to the pool or spa must be substantially or completely disassembled or replaced in order to treat the water or clean the pool. Installing an aboveground pool also does not require a license.[10]

A contractor, including pool/spa contractors, must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, and air-conditioning work, to a contractor certified or registered in the respective category, unless the pool/spa contractor also holds a state certificate or registration in the respective category.[11]

In order to obtain certification as one of the swimming pool/spa contractors, a person must:[12]

- Apply to DBPR in writing;
- Be 18 years of age;
- Be of good moral character;
- Pass the examination for the certification sought; and
- Have one of the following:
    - A bachelor degree from a four year college in the appropriate field of engineering, architecture, or building construction, and one year of proven experience;
    - Four years of experience as a foreman or a skilled worker with at least one year as a foreman;
    - A combination of college and experience as a foreman or skilled worker that equals four years with at least one of the years as a foreman; or
    - One year of experience and 60 hours of instruction courses approved by the CILB; however, this only applies to swimming pool/spa servicing contractors.

Swimming Pool/Spa Specialty Contractors

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as a drywall specialty

[7] S. 489.105(3)(k), F.S.
[8] S. 489.105(3)(l), F.S.
[9] S. 489.105, F.S.
[10] Ss. 489.103(6), and 489.105, F.S.; DBPR, *Trust but Verify*, http://www.myfloridalicense.com/dbpr/reg/documents/trustbutverify_000.pdf?x40199 (last visited Mar. 19, 2021).
[11] S. 489.113(3), F.S.
[12] Ss. 489.111, & 489.113, F.S.

license or a demolition specialty license. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[13]

The CILB has created eight types of pool/spa specialty contractor certifications. Pool/spa specialty contractors, except residential swimming pool/spa servicing specialty contractors, must work under contract with and under the supervision of a licensed swimming pool/spa contractor. However, they are not required to be employees of a licensed pool/spa contractor.[14]

The CILB has created the following eight types of pool/spa specialty contractors:[15]

- Swimming Pool Layout Specialty Contractor-
  - The scope of work is limited to the layout, shaping, steel installation, and rough piping of pools, spas, and hot tub shells.
- Swimming Pool Structural Specialty Contractor-
  - The scope of work is limited to the shaping and shooting of gunite, shotcrete, concrete, or similar product mix used in the construction of swimming pools and spas, and the installation of fiberglass shells and vinyl liners.
- Swimming Pool Excavation Specialty Contractors –
  - The scope of work is limited to the excavation and earthmoving for the installation of pools, spas, and hot tub shells;
- Swimming Pool Trim Specialty Contractor –
  - The scope of work is limited to the installation of tile and coping for pools, spas, hot tub shells, and decorative or interactive water displays;
- Swimming Pool Decking Specialty Contractor-
  - The scope of work is limited to the construction and installation of concrete flatwork, pavers and bricks, retaining walls, and footings associated with the construction of pools, spas, and hot tub shells.
- Swimming Pool Piping Specialty Contractor-
  - The scope of work is limited to the installation of piping or the installation of circulating, filtering, disinfecting, controlling, or monitoring equipment and devices used in the construction of pools, spas, hot tubs, and decorative or interactive water displays or areas.
- Swimming Pool Finishes Specialty Contractor-
  - The scope of work is limited to the coating or plastering of the interior surfaces of pools, spas, or hot tub shells.
- Residential swimming pool/spa servicing specialty contractor-
  - The scope of work is identical to the scope of work for swimming pool/spa servicing contractors; however, they may only work on residential swimming pools, hot tubs, and spas.

In order to obtain one of the certified specialty pool/spa contractor a person must:[16]

- Submit a written application to the CILB;
- Be at least 18 years of age;
- Be of good moral character;
- Pass a written examination for the specialty pool/spa contractor category sought; and
- Demonstrate four years of experience in the specialty pool/spa contractor category sought, or one year of experience and 60 hours of instruction courses approved by the CILB; however, the one year of experience only applies to residential swimming pool/spa servicing contractors.

[13] S. 489.105(3)(q), F.S.
[14] Rule 61G4-15.032, F.A.C.; Rule 61G4-15.040, F.A.C.
[15] *Id.*
[16] Rule 61G4-15.032, F.A.C.; Email from Colton Madill, Deputy Legislative Affairs Director, DBPR, RE: Pool Contractor Information, (Jan. 31, 2020).

Exemptions from Licensure

An unlicensed person may perform work that falls under the scope of contracting if they fall under an exemption provided in current law. Currently, there are 23 exemptions provided in current law, including:[17]

- a person performing contracting if it is casual, minor, or inconsequential in nature, and the aggregate contract price for all labor and materials is less than $2,500, subject to certain requirements. This is referred to as the handyman exemption;

- an owner building or improving one or two-family residences, farm outbuildings, or improving commercial buildings at a cost that does not exceed $75,000, subject to certain requirements;

- an employee of an apartment community or apartment management company who makes minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems subject to certain requirements;

- a person who sells or installs any finished products, materials, or articles of merchandise that are not fabricated into and do not become a permanent part of a structure such as awnings; and

- An employee of the United States, the state, or any municipality, county, irrigation district, reclamation district, or political subdivision, except school boards, state university boards of trustees, and community college boards of trustee, subject to certain requirements.

Another exemption allows an unlicensed person to perform contracting if the person is under the supervision of licensed general, building, or residential contractor, and the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor.

The work must be within the scope of the supervising contractor's license, and the supervising contractor must also be responsible for the work. The unlicensed person must have a direct contract with the contractor. However, this is an exemption from state licensure requirements and it does not affect the ability of local governments to impose licensing requirements on unlicensed persons.[18]

Effect of the Bill

The bill creates an additional exemption to contractor licensure. The bill provides that unlicensed persons may perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features,[19] hot tubs, and spas without obtaining a specialty contractor license or local license.

The bill only allows the unlicensed person to perform the work if:

- the unlicensed person is under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor;
- the work is within the scope of the supervising contractor's license;
- the supervising contractor is responsible for the work; and
- the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

[17] S. 489.103, F.S.
[18] S. 489.113(2), F.S.; *Florida Home Builders Association v. St. Johns County*, 914 So. 2d 1035 (Fla. 5th DCA 2005).
[19] The Florida Building Code defines "interactive water features" as structure designed to allow for recreational activities with recirculated, filtered, and treated water; but having minimal standing water. Water from the interactive fountain type features is collected by gravity below grade in a collector tank or sump. The water is filtered, disinfected and then pumped to the feature spray discharge heads. The collector tank and water filtration features required make this structure a type of public swimming pool. Section 454 of the Seventh edition of the Florida Building Code (Building).

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person performing the specialty contracting services, or require the unlicensed person to be an employee of the supervising pool/spa contractor.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.117, F.S., creating an exemption to licensure requirements.

Section 2. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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 persons, who are under the supervision of licensed pool/spa contractors, to perform work on pools, spas, hot tubs, and interactive water features without having to obtain a license. This may also result in certain projects being completed in less time and at a lower cost to consumers.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

No.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES