

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 261 Construction Contracting  
**SPONSOR(S):** Russell  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1352

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DIRECTOR	REFERENCE	ACTION	ANALYST	STAFF
	1) <u>Trades, Professions, &amp; Reg. Business (Sub)</u>	<u>7 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
	2) <u>Business Regulation</u>	<u></u>	<u></u>	<u></u>
	3) <u></u>	<u></u>	<u></u>	<u></u>
	4) <u></u>	<u></u>	<u></u>	<u></u>
	5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Swimming pool and spa contractors are regulated by the Construction Industry Licensing Board (CILB), under the Department of Business and Professional Regulation (DBPR). Persons meeting the definition of this category of contracting are required to be licensed by the CILB. These activities are presently regulated as contractors requiring any one of three licenses: residential pool/spa, commercial pool/spa, or swimming pool/spa servicing.

Counties and municipalities also issue local professional licenses for certain specialty services that are not specifically defined by statute, including pool and spa specialty services. Those services do not require state certification or state registration. Construction statutes provide that any person who is not required to obtain a registration or certification may perform specialty contracting services for the construction, remodeling, repair, or improvement of a single-family residence without obtaining a local professional license, if such person is under the supervision of a certified or registered general, building, or residential contractor.

The bill allows a person who is not licensed, either by certification or registration, to perform specialty contracting services for the construction, remodeling, repair, or improvement of a swimming pool or spa without obtaining a local professional license. The person is required to be under the supervision of a certified or registered commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor acting within the scope of his or her license.

The bill specifies that for purposes of this exemption, the term "supervision" does not require the existence of a direct contract between the licensed pool contractor and the person performing the specialty contracting services.

Costs associated with the issuance of the license would no longer be incurred as the specialty contractors would be exempt from local licensure and the payment of applicable fees. Possible enforcement costs associated with unlicensed activity in this area should also be minimized at the local level. As a result, there does not appear to be a significant fiscal impact at the state or local government levels.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

**STORAGE NAME** h0261a.br.doc  
**DATE** January 29, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Chapter 489, F.S., requires that all individuals who practice contracting in Florida must either be “registered” or “certified.” “Registration” allows an individual to practice contracting only in the jurisdiction that issues that individual’s local license. This registration is issued by the DBPR upon proof of local licensure. Such proof consists of an occupational license issued by the local jurisdiction, and evidence of compliance with local licensing requirements, if a local licensing requirement exists. Some local jurisdictions have rigorous standards for license issuance, such as experience and insurance requirements, and passage of an examination. Other local jurisdictions will issue a license for a nominal fee and have no experience or examination requirements.

The DBPR issues a “certificate” to those individuals who apply to the CILB, show compliance with education and experience requirements, and pass a DBPR/CILB sanctioned and administered examination for a particular scope of practice. A certification allows an individual to practice their trade in any jurisdiction in the state.

Section 489.105(3)(a)-(o), F.S., specifies categories of licensure to include general, building, residential, sheet metal, roofing, air-conditioning, mechanical, swimming pool, plumbing, underground utility and excavation, and solar contractors. Swimming pool categories include commercial pool/spa contractor, residential pool/spa contractor, and swimming pool/spa servicing contractor, as provided in s. 489.105(3)(j)-(l), F.S.

Counties and municipalities also issue local professional licenses for certain specialty services that are not specifically defined in s. 489.105(3), F.S. Those services do not require state certification or registration. Section 489.117(4)(d), F.S., provides that any person who is not required to obtain a registration or certification pursuant to s. 489.105(3)(d)-(o), F.S., (licensure for construction categories other than general, building, or residential categories):

may perform specialty contracting services for the construction, remodeling, repair, or improvement of a single-family residence without obtaining a local professional license, if such person is under the supervision of a certified or registered general, building, or residential contractor. The term “supervision” does not require the existence of a direct contract between the certified or registered contractor and the person performing the specialty contracting services.

[Note: The primary contractor is responsible for the supervision and liability of the project. The primary contractor often hires unlicensed individuals (such as framers) to do limited, special aspects of the work under the primary contractors' supervision. If that individual then hires additional help to actually do the work, the second worker would not necessarily have a "direct contract" with the primary contractor. The contractor would still be required to maintain direct supervision of the specialty work.] emphasis supplied

The current exemption from local licensure for single-family residential construction would not apply to a pool/spa specialty contractor.

### Effect of Proposed Changes

The bill allows a person who is not licensed either by certification or registration to perform specialty contracting services for the construction, remodeling, repair, or improvement of a swimming pool or spa without obtaining a local professional license. The person is required to be under the supervision of a certified or registered commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor acting within the scope of his or her license.

The bill specifies that for purposes of this exemption, the term "supervision" does not require the existence of a direct contract between the licensed pool contractor and the person performing the specialty contracting services.

#### C. SECTION DIRECTORY:

Section 1. Creates an exemption from local licensure for persons performing pool and spa specialty work under the supervision of a licensed pool and spa contractor.

Section 2. Effective date - July 1, 2004.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None anticipated.
2. Expenditures:  
None anticipated.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
The DBPR impact statement on the bill indicates no fiscal impact on local government. See fiscal comments in D. below.
2. Expenditures:  
See 1. above.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant.

#### D. FISCAL COMMENTS:

Costs associated with the issuance of the license would no longer be incurred as the specialty contractors would be exempt from local licensure and the payment of applicable fees. Possible enforcement costs associated with unlicensed activity in this area should also be minimized at the local level. As a result, there does not appear to be a significant fiscal impact at the state or local government levels.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to 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:**

None noted.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**