

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 261 w/CS Construction Contracting

**SPONSOR(S):** Russell

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1352

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
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>35 Y, 0 N w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Swimming pool/spa contractors are regulated by the Construction Industry Licensing Board (CILB), under the Department of Business and Professional Regulation (DBPR). Individuals who practice contracting in Florida must either be certified or registered. "Certification" allows the contractor to operate statewide. "Registration" allows an individual to practice only in the jurisdiction that issues that individual's local license. The registration is issued by the DBPR upon proof of an occupational license issued by the local jurisdiction and evidence of compliance with local licensing requirements, if any. Some local jurisdictions have rigorous standards for license issuance, such as, experience, insurance requirements, or passage of an examination. Other local jurisdictions issue a license for a nominal fee and have no experience or examination requirements. Counties and municipalities may also issue local professional licenses for certain specialty services, including pool/spa specialty services. Those specialty services do not require state registration.

The bill allows a person who is not licensed, either by state certification or state 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 state certified or state registered pool/spa contractor acting within the scope of his or her license.

The bill mandates that a municipality or county must issue a local registration to a specialty pool/spa contractor if a local license is not otherwise required in that particular local jurisdiction. The bill authorizes a local registration fee to be imposed in an amount not to exceed \$150. The bill prohibits local government from requiring any evidence of competency on the part of the pool/spa specialty contractor. The bill mandates that the local registration program require the specialty registrant provide proof of compliance with workers compensation laws and to operate only under a contract with a state certified or registered pool/spa contractor.

The bill requires the Florida Building Commission to establish the Swimming Pool and Solar Technical Advisory Committee for the purpose of advising the commission on matters relating to Building Code standards for swimming pools, spas, and solar equipment.

Costs associated with the issuance of a local registration would be incurred as the specialty contractors would be required to obtain registration and pay applicable fees. This bill appears to require counties or municipalities to take an action requiring the expenditure of funds. There does not appear to be a significant fiscal impact at the state government level.

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

**STORAGE NAME:** h0261b.br.doc

**DATE:** March 29, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

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

1. Reduce government?
2. Lower taxes?
3. Expand individual freedom?

The bill requires the Florida Building Commission to establish the Swimming Pool and Solar Technical Advisory Committee. The bill requires a municipality or county to establish a local registration program for specialty pool/spa contractors. The bill authorizes a local registration fee to be imposed in an amount not to exceed \$150. The bill requires the specialty registrant to provide proof of compliance with workers compensation requirements and to operate only under a contract with a state certified or registered pool/spa contractor. A person who is exempted from local specialty license requirements is required to be under the supervision of a state certified or state registered pool/spa contractor acting within the scope of his or her license.

#### 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 state certification or state 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 state certified or state registered pool/spa contractor acting within the scope of his or her license.

The bill mandates that a municipality or county must issue a local registration to a specialty pool and spa contractor if a local license is not otherwise required in that particular local jurisdiction. The bill authorizes a local registration fee to be imposed in an amount not to exceed \$150. The bill prohibits local government from requiring any evidence of competency on the part of the pool/spa specialty contractor. The bill mandates that the local registration program require the specialty registrant provide proof of workers compensation coverage or proof of exemption from workers compensation coverage and to operate only under a contract with a state certified or registered pool/spa contractor.

The bill requires the Florida Building Commission to establish the Swimming Pool and Solar Technical Advisory Committee (committee) to advise the Florida Building Commission on any matters relating to Building Code standards for swimming pools, spas, and solar equipment

The committee must consist of no fewer than ten persons who represent the swimming pool and solar construction industry. The chairperson of the Florida Building Commission must annually designate a committee member to serve as the chairperson of the committee. Committee members must be appointed for two-year terms and may be reappointed at the discretion of the Florida Building Commission.

### C. SECTION DIRECTORY:

Section 1. Amends s. 489.117, F.S. to allow a person who is not licensed, either by state certification or state 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; mandates that a municipality or county must issue a local registration to a specialty pool/spa contractor if a local license is not otherwise required in that particular local jurisdiction; creates the Swimming Pool and Solar Technical Advisory Committee.

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:  
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 a local license would no longer be incurred as the specialty contractors would be exempt from local licensure and the payment of applicable fees. Costs associated with the issuance of a local registration would be incurred as the specialty contractors would be required to obtain registration and pay applicable fees where a local license is not otherwise required in that particular local jurisdiction. Possible enforcement costs associated with unlicensed activity in this area could be incurred at the local level. There does not appear to be a significant fiscal impact at the state government level.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

The bill 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.

This bill appears to require counties or municipalities to take an action requiring the expenditure of funds. The bill requires a municipality or county to issue a local registration to a specialty pool/spa contractor if a local license is not otherwise required in that particular local jurisdiction. As a result, the bill appears to constitute a mandate as defined in Article VII, Section 18(a) of the Florida Constitution:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills important state interest and unless; funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such

county or municipality on February 1, 1989 ...the law requiring such expenditure is approved by two-thirds of the membership of each house of the Legislature...

Article VII, Section 18(d) of the Florida Constitution, provides for an **exemption** for laws having insignificant fiscal impacts from the requirements of the section. For purposes of legislative application of Article VII, Section 18 of the Florida Constitution, the term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. If the bill meets this standard, the bill is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None noted.

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

The CS:

Specifies a municipality or county must issue a local registration to a specialty pool/spa contractor if a local license is not otherwise required in that particular local jurisdiction.

Authorizes a local registration fee to be imposed in an amount not to exceed \$150.

Prohibits local government from requiring evidence of competency on the part of the pool/spa specialty contractor.

Mandates that the local registration program require the specialty registrant provide proof of workers compensation coverage or proof of exemption from workers compensation coverage and to operate only under a contract with a state certified or registered pool/spa contractor.

Requires the Florida Building Commission to establish the Swimming Pool and Solar Technical Advisory Committee for the purpose of advising the commission on matters relating to Building Code standards for swimming pools, spas, and solar equipment.