

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: CS/ SB 1694

SPONSOR: Regulated Industries Committee and Senator Haridopolos

SUBJECT: Swimming pool/spa contractors and service technicians

DATE: April 17, 2005 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Garner</u>	<u>Wilson</u>	<u>HE</u>	Pre-meeting
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for SB 1694 (CS) amends the definitions of “commercial pool/spa contractor,” “residential pool/spa contractor” and “swimming pool/spa servicing contractor” to require a state pool/spa servicing contractor’s license for persons engaged in the use of chemicals for water treatment and cleaning.

The CS provides for an one-year provisional license for pool/spa servicing contractors who have taken the 60-hour pool/spa servicing course but have yet to complete one year of experience in the trade. The provisional license would authorize the pool/spa servicing contractor to perform all work under the scope of the pool/spa servicing license, except for any work involving public swimming pools, hot tubs, or spas, interior refinishing of private pools, hot tubs or spas, and any draining of private pools, hot tubs, or spas for the purpose of repair or renovation.

The CS would authorize partial drainage of up to 75 percent of a private pool, hot tub or spa during the provisional licensure period. The bill requires the Department of Business and Professional Regulation (DBPR) to issue a license to the provisional licensee or business qualified by that individual at the end of the provisional period.

The CS eliminates the one-year experience requirement to take the swimming pool/spa servicing contractor’s licensure examination.

The CS requires service of public pools by licensees under paragraphs 489.105(3)(j), (k), or (l), F.S.; persons permitted as public pool operators under section 514.031, F.S., or certified pool service technicians employed by persons permitted as a public pool operator under section 514.031, F.S.

The CS provides that private pools and water therapy facilities connected with licensed massage therapy establishments are exempt from supervision under chapter 514, F.S.

The CS provides that direct infusion of chlorine gas in residential swimming pools does not require a license under chapter 489, F.S.

This CS substantially amends the following sections of the Florida Statutes: 489.105, 489.111, 514.075, and 514.0115.

The CS creates an unnumbered section of law.

II. Present Situation:

Health and Safety Issues Related to Swimming Pools and Spas

Swimming pools and spas can present a number of risks to health. The most immediate danger arises from accidental drowning. Another source of harm is the injuries, potentially serious or even fatal, that can arise from slipping and tripping or from becoming snagged in ropes and fences or fittings such as ladders and drains.

Beyond these risks, which account for the majority of medical emergencies related to swimming pools and spas, there are health and safety risks associated with infectious diseases transmitted to humans via swimming pools and spas and the hazardous chemicals used to prevent these diseases.

A number of infectious diseases can be acquired in swimming and spa pools and cause diarrhea or skin, ear, eye, and upper respiratory infections. Faecal-oral pathogens have commonly been associated with swimming pools and spas and are caused by pathogens entering with sewage contamination or from contamination released directly by infected bathers. One of the most important forms of such pathogens is *Cryptosporidium* which is resistant to even the highest levels of chlorine that are generally used for maintaining residual disinfection in pools. Nationally, thousands of cases of swimming-associated cryptosporidiosis have been reported and public swimming pools have been temporarily shut down as a result.

Where water quality and treatment have been inadequate, bacterial infections from *Shigella* and *Escherichia coli* O157:H7 have been associated with swimming pools and spas. Infections of surfaces such as skin and ears have been associated with spas where disinfection has been inadequate. These infections arise from opportunistic pathogens that are commonly present in water and soils. The swimming pool and spa environment is risky because it can both amplify the concentration of the hazard and facilitate exposure of humans to the hazard. *Pseudomonas aeruginosa* infection has been associated with a number of skin and ear infections arising from immersion in water with inadequate disinfection. Symptoms have included outer ear and ear canal infections (“Swimmer’s Ear” or “Otitis Externa”) and skin infections such as dermatitis and folliculitis. More recently, mycobacterial infections have been associated with pneumonitis linked to exposure to aerosols from swimming pools and spas.

The main method used to reduce the risk of these pathogens is disinfection. Disinfection is a process whereby pathogenic microorganisms are removed or inactivated by chemical (chlorination) or physical (filtration, UV radiation) means such that they represent no significant risk of infection. The choice of disinfectant depends on a variety of factors, including compatibility with the source water supply (hardness and alkalinity), bathing load, oxidation capacity, and margin between disinfectant action and adverse effects on human health. Chlorination is the most widely used pool water disinfection method, usually in the form of chlorine gas or sodium or calcium hypochlorite. Ozone in combination with chlorine or bromine is a very effective disinfection system but the use of ozone alone cannot ensure a residual disinfectant capacity throughout the swimming pool.

Swimming Pool and Spa Disinfection Hazards

Swimming pool and spa chemicals may become a hazard when they become wetted by a small quantity of water or when they are improperly mixed, such as with other chemicals or reactive materials. The main health and safety issues associated with swimming pool/spa chemical treatments include poisoning caused by ingestion of mild acids in liquid form, ingestion of solid chlorine tablets, acid burns to the skin, or inhalation of chlorine dust or fumes. Chlorine is more likely to cause serious toxicity than the acids. Some of the symptoms of poisoning from these treatments include the following:

1. For acids:
 - Skin - burns or allergic reaction
 - Respiratory - breathing difficulty because of throat swelling
 - Gastrointestinal - severe abdominal pain; vomit containing dark colored blood; nausea; and vomiting

2. For chlorine:
 - Respiratory - breathing difficulty (from inhalation); throat swelling (which may also cause breathing difficulty)
 - Eyes, ears, nose, and throat - severe pain in the throat; severe pain or burning in the nose, eyes, ears, lips, or tongue; loss of vision
 - Gastrointestinal - severe abdominal pain; vomiting; burns of the esophagus (food pipe); vomiting blood; blood in the stool
 - Heart and blood vessels - hypotension (low blood pressure) which develops rapidly
 - Skin – irritation; burns; necrosis (holes) in the skin or underlying tissues
 - Blood - severe change in pH (too much or too little acid in the blood, which leads to damage in all of the body organs)

No statistics were available to determine the incidence of chemical poisoning or other injuries.

Construction Contracting and Specialty Contracting

Section 489.107, F.S., establishes the Construction Industry Licensing Board (CILB) within DBPR. The board enforces the provisions of part I of chapter 489, F.S., relating to construction contracting.

Section 489.105(3), F.S., defines “contractor” to mean a person:

who is qualified for, and shall only be responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the subsequent paragraphs of this subsection. For the purposes of regulation under this part, “demolish” applies only to demolition of steel tanks over 50 feet in height; towers over 50 feet in height; other structures over 50 feet in height, other than buildings or residences over three stories tall; and buildings or residences over three stories tall. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q).¹

Section 489.113(1), F.S., requires any person who desires to engage in contracting on a statewide basis to demonstrate competency by passing an examination to be certified by CILB. Any person who desires to engage in contracting on other than a statewide basis must be registered under part I of chapter 489, F.S.

Unless an applicant is certified, section 489.117, F.S., regarding registration of specialty contractors, requires any person engaged in the business of contracting in the state to be registered in the proper classification. Each registered contractor specialty requires a certain level of education and experience, and an applicant must also pass an examination administered by the board.

Section 489.113(2), F.S., prohibits any person from engaging in the business of contracting in this state unless he or she is certified or registered. However, this provision permits a person who is not certified or registered to perform construction work under the supervision of a person who is certified or registered, if the work is within the scope of the supervisor’s license and if the person being supervised is not engaged in construction work which would require a license as a contractor under any of the categories listed in paragraphs 489.105(3)(d)-(o), F.S.

Division II Contractors

¹ Division I contractors include: general, building, and residential contractors. Division II contractors include sheet metal, roofing, class A-C air-conditioning, mechanical, commercial pool/spa, residential pool/spa, swimming pool/spa servicing, plumbing, underground utility and excavation, solar, pollutant storage systems, and specialty contractors.

As provided in paragraphs 489.105(3)(j)-(l), F.S., swimming pool contracting categories include commercial pool/spa contractor, residential pool/spa contractor, and swimming pool/spa servicing contractor (swimming pool/spa contractors).

The scope of work for each category specifically excludes water treatment and cleaning, unless such cleaning or treatment involves construction, modification, or replacement of equipment. Those statutes also provide that a license is not required for any pool or spa cleaning that does not affect the structural integrity of the pool, spa, or associated equipment.

The scope of work of the pool/spa servicing contractor's license includes the repair and servicing of any swimming pool, hot tub, or spa, whether public or private. The scope of work includes the repair and replacement of existing equipment, cleaning, or equipment sanitizing, which requires at least partial disassembly (excluding filter changes). The scope of work also includes installation of new equipment, interior refinishing, reinstallation or addition of pool heaters, repair or replacement of all perimeters and filter piping, repair of equipment rooms/housings, and the complete or substantial draining of the pool, hot tub, or spa for the purpose of any repair or renovation.

In 1995, the Second District Court of Appeal reversed an order of the CILB in part, which held that pool cleaning, in the absence of other repair or replacement activity, was contracting as defined in paragraphs 489.105(3)(k) and (l), F.S.²

In 1996, "water treatment" was amended out of the scope of work for commercial or residential pool/spa contractors or swimming pool/spa servicing contractors.³ According to DBPR, the CILB had previously ruled that the introduction of chemicals into a pool by pouring liquid directly into the pool or broadcasting particulates into the water was not a regulated function - notwithstanding the words "water treatment" in the statute.

Section 489.111, F.S., requires, in part, four years of active experience in order for an applicant to obtain a commercial or residential pool/spa license. The statute requires completion of a 60-hour pool/spa servicing course and one year of active experience in order for an applicant to qualify for licensure as a pool/spa servicing contractor.

Section 514.075, F.S., provides for the certification of public pool service technicians licensed by the Department of Health (DOH). The statute provides that the department may require that a public pool be serviced by a person certified as pool service technician. To be certified, the statute requires that an individual demonstrate knowledge of public pools, including cleaning; general maintenance; source of water supply, bacteriological, chemical, and physical qualities of water; water purification, testing, treatment, and disinfecting procedures. The department is authorized to adopt rules for certification courses. A person certified by a nationally recognized course or licensed under paragraph 489.105(3)(j),(k), or (l), F.S. This does not apply to public pool operators or their employees.

² *Cepot Corp. v. Dept. of Bus. & Prof. Reg.*, 658 So. 2d 1092 (Fla. 2d DCA 1995).

³ Chapter 96-365, L.O.F.

Massage establishments are licensed by DOH in accordance with rules adopted by the Board of Massage Therapy.⁴ An “establishment” is defined in section 480.033(7), F.S. to mean “a site or premises, or portion thereof, wherein a massage therapist practices massage.” A message therapist is “person licensed as required by this act, who administers massage for compensation.”⁵

Section 487.0437, F.S., provides that direct infusion of chlorine gas in residential swimming pools is regulated by the Department of Agriculture and Consumer Services and not DBPR under chapter 489, F.S. Chlorine gas is registered with the United States Environmental Protection Agency and the department for use as a disinfectant and algacide in residential swimming pools.

III. Effect of Proposed Changes:

Section 1. Amends the definitions of “commercial pool/spa contractor,” “residential pool/spa contractor” and “swimming pool/spa servicing contractor” in paragraphs 489.105(3)(j),(k), and (l), F.S., respectively, to require persons engaged in the use of chemicals for water treatment and cleaning to be licensed in one of the above categories.

The CS creates section 489.105(20), F.S., which provides for a one-year provisional license for pool/spa servicing contractors who have taken the 60-hour pool/spa servicing course but have yet to complete one year of experience in the trade. The provisional license would authorize the pool/spa servicing contractor to perform all work under the scope of the pool/spa servicing license, except for any work involving public swimming pools, hot tubs, or spas, interior refinishing of private pools, hot tubs or spas, and any draining of private pools, hot tubs, or spas for the purpose of repair or renovation.

The CS would authorize partial drainage of up to 75 percent of a private pool, hot tub or spa during the provisional licensure period. The bill requires DBPR to issue a license to the provisional licensee or business qualified by that individual at the end of the provisional period.

Section 2. Amends section 489.111(2)(c)6.d., F.S., to eliminate the one-year experience requirement to take the swimming pool/spa servicing contractors’ licensure examination.

Section 3. Amends section 514.075, F.S., to require that public pools be serviced by licensees under paragraph 489.105(3)(j), (k), or (l), F.S.; persons permitted as public pool operators under section 514.031, F.S.; or certified pool service technicians employed by persons permitted as public pool operators under section 514.031, F.S. Currently, public pools may be serviced by pool service technicians. This provision would only allow the pool service technicians to service a public pool if they are an employee of a public pool operator.

Section 4. Amends section 514.0115, F.S., to provide that private pools and water therapy facilities connected with licensed massage therapy establishments are exempt from supervision under chapter 514, F.S.

⁴ Section 480.043, F.S.

⁵ Section 480.033(4), F.S.

Section 5. Provides that direct infusion of chlorine gas in residential swimming pools does not require a license under chapter 489, F.S.

Section 6. Provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Department of Health states that pool contractors and servicing technicians should be better trained to effectively service pools. The department indicates that there may be savings to pool owners as a result of more efficient pool operations. Those persons licensed by DBPR will gain service contracts at all private pools that currently have an unlicensed service person, and at those public pools/spas currently operated by indirect employees of the owner (management companies).

C. Government Sector Impact:

The Department of Business and Professional Regulation estimates that the number of potential swimming pool technician licensees is 300. These additional licensees will have an insignificant fiscal impact on DBPR. Any fiscal impact would be offset by licensure fees of \$309 biannually. It is assumed the license fees will be the same as other contractors. However, the department states that the bill does not provide any details regarding collection of fees during the provisional licensure period.

The Department of Health states that persons currently certified by a 16-hour training course (\$300-\$500 cost) that service multiple public pools will be required to attend a 60-hour training course (cost \$1450-\$2500) and become licensed by DBPR if they wish to continue their current operations. Persons servicing private pools will need to attend the 60-hour training and obtain a DPBR license. All pool owners will likely have their service fee increased to recapture these costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to DOH, enactment of this bill will cause the department to amend one of its existing pool rules. DOH Rule 64E-9.018, F.A.C. (Public Pool Service Technician Certification) currently states, "An individual who services a public pool by maintaining the cleanliness, water quality and chemical balance of public pools shall be certified...Certification does not imply any licensure and specifically not that of contractor as regulated by DBPR under paragraph 489.105(3)(j), (k), or (l), F.S."

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
