

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: Regulated Industries Committee

BILL: CS/ SB 1694

SPONSOR: Regulated Industries Committee and Senator Haridopolos

SUBJECT: Swimming pool/spa contractors and service technicians

DATE: April 12, 2005

REVISED: _____

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

I. Summary:

The committee substitute amends the definitions of “commercial pool/spa contractor”, “residential pool/spa contractor” and “swimming pool/spa servicing contractor” in ss. 489.105(3)(j),(k), and (l), F.S., respectively, by requiring a state pool/spa servicing contractor’s license for persons engaged in the use of chemicals for water treatment and cleaning.

The committee substitute amends s. 489.111, F.S., to eliminate the one-year experience requirement to obtain a pool/spa servicing contractor’s license. It creates s. 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 committee substitute would authorize partial drainage 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 to issue a license to the provisional licensee or business qualified by that individual at the end of the provisional period.

The committee substitute amends s. 514.075, F.S., to require service of public pools by licensees under ss. 489.105(3)(j), (k), or (l), F.S., persons permitted as public pool operators under s. 514.031, F.S., or certified pool service technicians employed by persons permitted as public pool operator under s. 514.031, F.S.

The committee substitute amends s. 514.0115, F.S., to provide that licensed massage therapy establishments are exempt from supervision under ch. 514, F.S.

The committee substitute provides that direct infusion of chlorine gas in residential swimming pools does not require a license.

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

The committee substitute creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Construction Contracting and Specialty Contracting

Section 489.107, F.S., establishes the CILB within the Department of Business and Professional Regulation (DBPR). The board enforces the provisions of part I of ch. 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 the board. Any person who desires to engage in contracting on other than a statewide basis must be registered under part I of ch. 489, F.S.

Unless an applicant is certified, s. 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

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.

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 ss. 489.105(3)(d)-(o), F.S.

Division II Contractors

As provided in ss. 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 perimeter 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 ss. 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 the Department of Business and Professional Regulation, 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-

² *Cepot Corp. v. Dep't of Bus. & Prof. Reg.*, 658 So. 2d 1092 (Fla. 2d DCA 1995).

³ Chapter 96-365, L.O.F.

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. 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 ss. 489.105(3)(j),(k), or (l), F.S. This does not apply to public pool operators or their employees.

Massage establishments are licensed by the Department of Health in accordance with rules adopted by the Board of Massage Therapy.⁴ An “establishment” is defined in s. 480.033(7), F.S. to mean “a site or premises, or portion thereof, wherein a massage therapist practices massage.” A massage 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 the Department of Business and Professional Regulation under ch. 489, F.S. Chlorine gas is registered with the United States Environmental Protection Agency and the department for use as a disinfectant and algicide in residential swimming pools.

III. Effect of Proposed Changes:

The committee substitute amends the definitions of “commercial pool/spa contractor”, “residential pool/spa contractor” and “swimming pool/spa servicing contractor” in ss. 489.105(3)(j),(k), and (l), F.S., respectively, by persons engaged in the use of chemicals for water treatment and cleaning to be licensed in one of the above categories. This would require that persons engaged in the use of chemicals for the purpose of water treatment and cleaning obtain a state pool/spa servicing contractor’s license.

The committee substitute amends s. 489.111(2)(c)5.d., F.S. to eliminate the one-year experience requirement to obtain a pool/spa servicing contractor’s license.

The committee substitute creates s. 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.

⁴ Section 480.043, F.S.

⁵ Section 480.033(4), F.S.

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

The committee substitute amends s. 514.075, F.S., to require that public pools be serviced by licensees under ss. 489.105(3)(j), (k), or (l), F.S., persons permitted as public pool operators under s. 514.031, F.S., or certified pool service technicians employed by persons permitted as public pool operators under s. 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.

The committee substitute amends s. 514.0115, F.S., to provide that licensed massage therapy establishments are exempt from supervision under ch. 514, F.S.

The committee substitute provides that direct infusion of chlorine gas in residential swimming pools does not require a license.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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 the 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 (i.e.-management companies).

C. Government Sector Impact:

The DBPR estimates that the number of potential swimming pool technician licensees is 300. These additional licensees will have an insignificant fiscal impact on the 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 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 the Department of Health, enactment of this bill will cause the Department of Health to amend one of its existing pool rules. Department of Health 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 the DBPR under ss. 489.105(3)(j), (k), or (l), F.S."

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.
