

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 156

INTRODUCER: Community Affairs Committee; and Senator Detert

SUBJECT: Swimming Pools and Spas

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Fav/CS
2.	Kraemer	Imhof	RI	Fav/1 amendment
3.			AGG	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 156 would create a new mandatory licensing requirement for residential pool cleaning in Florida. The bill revises the definition for contractor, adding “maintenance for water treatment” to the overall definition of contracting, and includes cleaning, maintenance, and water treatment of swimming pools and spas within the licensure scope for commercial pool/spa contractor, residential pool/spa contractor, and swimming pool/spa servicing contractor. The bill removes current licensure exemptions for individuals and businesses that provide only pool and spa cleaning, maintenance and water treatment services. The bill also removes the one year of experience requirement for swimming pool/spa service contractors and instead requires 20 hours of in-field, hands-on instruction. The bill provides an exemption from licensure requirements for owners or operators, or their direct employees, who maintain a public swimming pool or spa for the purpose of water treatment.

This bill substantially amends sections 489.103, 489.105 and 489.111, Florida Statutes.

II. Present Situation:

Pool Cleaning in Florida

Currently, the practice of pool contracting is regulated by the Florida Department of Business and Professional Regulation (DBPR) under the auspices of the Construction Industry Licensing Board (CILB). Pursuant to sections 489.105(3)(j), (k) and (l), F.S., mandatory licensure is required for commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors respectively to construct or repair pools. Contractors must maintain one of these licenses to contract for the installation, repair, or servicing of commercial or residential pools, spas and hot tubs. However, each of these categories specifically exempts persons who offer only cleaning, maintenance and water treatment of pools, spas and hot tubs from mandatory licensing, so long as the work contracted does not affect the structural integrity of the pool, spa or hot tub or require installation, modification or replacement of its permanently attached equipment. This exemption was added by the legislature in 1996.¹

While DBPR does not currently require licensure for persons offering only pool cleaning services, the Florida Department of Health (DOH) has responsibility under s. 514.075, F.S., to certify public pool service technicians. Public pool service technicians must demonstrate knowledge of pool maintenance and water treatment by passing a 16-hour course approved by DOH. Persons holding a current commercial pool/spa contractor, residential pool/spa contractor, and/or swimming pool/spa servicing contractor license from DBPR are exempt from certification under s. 514.075, F.S.

The Florida Department of Health estimates that there are approximately 37,000 public pools in Florida that use the services of 12,000 certified pool service technicians.² According to the DOH's estimate, there are currently 14,000 certified pool servicing technicians.³ Pool service technicians may or may not be direct employees of an owner or operator of a public pool.

Currently, applicants for commercial swimming pool/spa contractor and/or residential pool/spa contractor license are eligible to sit for the state certification examination if he or she has at least 4 years of experience in the required licensure category. Applicants may substitute up to three years of college credits in lieu of years of experience but must have at least one year of experience as a foreman in the license category sought. Pursuant to s. 489.111(2)(c)6.d., F.S., a person is qualified to sit for the swimming pool/spa servicing contractor's examination if they possess one year of experience in swimming pool service work and complete 60 hours of instruction in course work approved by the Construction Industry Licensing Board. All applicants must also establish that they are 18 years of age, of good moral character, and meet minimum financial stability requirements.

¹ Ch. 96-365, L.O.F.

² 2013 Legislative Analysis for SB 156, Department of Health, dated January 7, 2013.

³ 2013 Legislative Analysis for CS/SB 156 as amended, Department of Health, dated March 7, 2013.

III. Effect of Proposed Changes:

Section 1 exempts an owner or operator of public swimming pools⁴ and spas permitted by the Department of Health, or his or her direct employees, who undertake to maintain the swimming pool or spa for the purpose of water treatment from the licensing requirement of the bill. Pool service technicians for public swimming pools who are employed by or associated with subsidiary entities or third party contractors are not exempted from the licensing requirement.

Section 2 amends s. 489.105(3)(j)-(l), F.S., to add the phrase “maintain for purposes of water treatment” to the definition of contracting, specifically including such work within the mandatory licensure requirements of commercial pool/spa contractors, residential pool/spa contractors, and swimming pool/spa servicing contractors. The bill removes the current exemption for businesses and individuals who engage only in pool/spa cleaning, maintenance and water treatment services from s. 489.105(3)(j)-(l), F.S., requiring any businesses or individuals who provide such services to obtain either a commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor license.

Section 3 reduces the experience requirements for the swimming pool/spa service contractor’s license under s. 489.111(2)(c)6.d., F.S., from one year of verifiable experience in swimming pool/spa service work to 20 hours of infield, hands-on instruction. However, all applicants for state certification would be required to pass the certification examination prior to licensure. In addition, all applicants for licensure would be required to meet all other licensure requirements, including the requirements to be at least 18 years old, be of good moral character, and meet biennial renewal requirements.

Section 4 provides an effective date of October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ Section 514.011(2), F.S., defines a public swimming pool as a watertight structure . . . located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment . . . [including] a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Florida Department of Health estimates that there are approximately 37,000 public pools in Florida that use the services of 12,000 certified pool service technicians.⁵ According to the DOH's estimate, there are currently 14,000 certified pool servicing technicians.⁶ All those pool service technicians that are not direct employees of an owner or operator of a public pool will not be exempt from the licensing requirement.

According to DBPR, it is estimated that the proposed legislation could generate 18,000 new licensees. The associated initial license fee, application fee, and exam fee would be approximately \$236 per licensee.

B. Private Sector Impact:

According to DBPR, the current licensure scope for commercial pool/spa contractor, residential pool/spa contractor, and swimming pool/spa servicing contractor includes many activities that exceed the normal work of a pool/spa cleaner, and those that have difficulty in passing the state examination due to the extensive nature of the subject matter will not be permitted to engage in the pool cleaning profession and will be placed out of business.⁷

C. Government Sector Impact:

The Department of Business and Professional Regulation will see an increase in examination requests and licensure applications resulting in additional fees for examination, initial licensure and biennial renewals. The number of new licensees is indeterminate, however, DBPR estimates that 18,000 new licensees who are not familiar with DBPR's licensure requirements could be generated. The increase in calls and additional tasks is estimated by DBPR to require a total of two additional Full Time Equivalent (FTE)⁸ and two Other Personal Services (OPS) positions in the Division of Service Operations. This includes one additional FTE and two OPS positions⁹ (Regulatory Specialist II) in the Bureau of Central Intake and Licensure to process new licensure and renewal applications, and one additional FTE (Regulatory Specialist II) position in the Customer Contact Center to handle increased call volume.

According to DBPR, and as reflected in the following Fiscal Analysis Chart prepared by DBPR¹⁰ the impact of the new mandatory licensing for water treatment services and the reduction in eligibility requirements for the swimming pool/spa servicing contractors' examination will be an estimated \$5,144,361 in net revenues for FY 2014-15, with

⁵ See *supra* note 2.

⁶ See *supra* note 3.

⁷ 2013 Legislative Analysis for CS/SB 156, Department of Business and Professional Regulation, dated March 20, 2013)

⁸ FTE, an acronym for full-time equivalent, is a unit that indicates the workload of an employee for comparison purposes.

⁹ The period of staffing the two OPS pos

¹⁰ *Id.*

estimated expenses payable by the department of \$47,957 in FY 2015-16, and estimated net revenue of \$3,697,363 in FY 2016-17.¹¹

REVENUE (PROFESSIONAL REGULATION TRUST FUND)			
	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
Exam Fees	1,503,000	83,500	83,500
Application Fees:	720,000	40,000	40,000
Initial License Fees:	3,600,000	100,000	200,000
License Renewal - Individual	0	0	3,800,000
Unlicensed Activity	90,000	5,000	5,000
Unlicensed Activity - Renewal	0	0	95,000
Building Commission Fee	72,000	4,000	4,000
Building Commission Fee -Renewal	0	0	76,000
TOTAL:	5,985,000	232,500	4,303,500

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Recurring Budget	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
Salaries/Benefits # of FTE’s (5 FTE’s)	228,220	228,220	228,220
Salary Rate	157,173	157,173	157,173
Other Personal Services	0	0	0
Expenses	31,867	31,867	31,867
Contract Services	0	0	0
Transfer to DMS – HR Services	1,770	1,770	1,770
Subtotal	261,857	261,857	261,857

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Non-Recurring Budget	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
Other Personal Services	29,694	0	0
Expense	36,052	0	0
Operating Capital Outlay	0	0	0
Examination and Testing Services (BET 100106)	34,000	0	0
Transfer to DMS – HR Services OPS	236		
Subtotal	99,982	0	0

Non-Operating Expenditures	<u>FY 2014-15</u>	<u>FY 2015-16</u>	<u>FY 2016-17</u>
Service Charge to GR (8% of revenue)	478,800	18,600	344,280
Indirect Costs (DBPR Administrative Overhead)	0	0	0
Other/Transfers	0	0	0
Subtotal	478,800	18,600	344,280

Net Revenue Over/(Under) Expenditures	\$5,144,361	(\$47,957)	\$3,697,363
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VI. Technical Deficiencies:

None.

¹¹ *Id.*

VII. Related Issues:

Consideration of the factors outlined in s. 11.62, F.S., (the Sunrise Act) may be appropriate for regulation of the occupation of pool maintenance and cleaning as currently exempted from all licensing requirements. A Sunrise Act review has not been conducted.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 7, 2013:

Exempts owner or operator of public swimming pools and spas, or his or her direct employees, from the licensing requirement of the bill. Provides the Department of Business and Professional Regulation with the authority to adopt rules, rather than the Construction Industry Licensing Board. Changed the effective date to October 1, 2013.

B. Amendments:**Barcode 269142 by the Regulated Industries Committee on April 9, 2013:**

The amendment deletes the requirement that persons engaged in water treatment, cleaning or maintenance of swimming pools and spas must be licensed as contractors under the provisions of s. 489.105(3)(j), (k), or (l), F.S. The amendment requires that in order to be eligible to take the swimming pool/spa servicing contractors' examination, an applicant may not have engaged in activities reserved to commercial pool/spa contractors, residential pool/spa contractors and swimming pool/spa servicing contractors, without being properly licensed. Section 489.1131 is created to provide that persons who clean a pool or spa in a way that affects the structural integrity of the pool or spa or its associated equipment without being properly licensed is subject to the provisions of s. 489.127, F.S. The effective date is changed from October 1, 2013 to October 1, 2014.