

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: CS/SB 1102

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Specialty Contracting Services

DATE: February 10, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>IT</u>	<b>Favorable</b>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1102 creates an exemption from local and state licensing for persons under the supervision of a certified or registered pool contractor for the construction, remodeling, or repair of swimming pools, hot tubs, and other water features. The supervising contractor need not have a direct contract with the unlicensed person performing the specialty contracting services. The exemption is not available for persons required to be certified or registered as contractors for specified trade categories described in current law.<sup>1</sup>

The bill also expands an existing licensure exemption in s. 487.117(4)(d), F.S., to allow unlicensed persons to perform certain contracting services for the construction, remodeling, repair, or improvement of *clubhouses* or *recreation buildings* in a residential development without obtaining a local license. Such persons must be under the supervision of a licensed general, building, or residential contractor. Currently, this licensure exemption applies only to certain contracting services on *single-family residences*, including townhouses.

The bill provides an effective date of July 1, 2020.

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<sup>1</sup> See ss. 489.105(3)(a) through (i) and (m) through (o), F.S. The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, plumbing contractor, underground utility and excavation contractor, and solar contractor.

## II. Present Situation:

### Construction Contracting

Part I of ch. 489, F.S., dealing with Constructing Contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade.<sup>2</sup>

A contractor is a person who undertakes a job or submits a bid to construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure for others, and whose job scope is substantially similar to one of 17 specified scopes of work.<sup>3</sup> A contractor must be licensed by the Department of Business and Professional Regulation's Construction Industry Licensing Board (board) or certified by the county in which he or she wishes to work.<sup>4</sup> In most circumstances, a contractor must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work unless the contractor holds a state certificate or registration in the appropriate trade category.<sup>5</sup>

A subcontractor who does not have a state certificate or registration may work under the supervision of a licensed or certified contractor, if:

- The work of the subcontractor falls within the scope of the contractor's license; and
- The subcontractor is not engaged in construction work that would require specified contractor licensing (i.e., licensure as an electrical contractor,<sup>6</sup> a septic tank contractor,<sup>7</sup> a sheet metal contractor, roofing contractor, Class A, B, or C air-conditioning contractor, mechanical contractor, commercial pool/spa contractor, residential pool/spa contractor, swimming pool servicing contractor, plumbing contractor, underground utility and excavation contractor, or solar contractor.<sup>8</sup>

The term "certification" means the act by a contractor obtaining or holding a geographically unlimited certificate of competency from the Department of Business and Professional Regulation (DBPR).<sup>9</sup> A contractor "registered" with the DBPR has fulfilled competency requirements only in those jurisdictions in which the registration is issued, and registered contractors may contract only in those jurisdictions.<sup>10</sup>

The term "specialty contractor" means a contractor whose scope of practice is limited to:

- A particular construction category adopted by board rule; and

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<sup>2</sup> See ss. 489.101-489.146, F.S.

<sup>3</sup> See s. 489.105(3)(a) through (q), F.S. The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, commercial pool/spa contractor, residential pool/spa contractor, swimming pool servicing contractor, plumbing contractor, underground utility and excavation contractor, solar contractor, pollutant storage systems contractor, and specialty contractor.

<sup>4</sup> Sections 489.107(1), 489.113(1), and 489.117(1)(b), F.S.

<sup>5</sup> Section 489.113(3), F.S. Various exceptions for general, building, residential, and solar contractors are set forth in s. 489.113(3)(a) through (g), F.S.

<sup>6</sup> See Part II, of ch. 489, F.S., relating to Electrical and Alarm System Contracting,

<sup>7</sup> See Part III of ch. 489, F.S., relating to Septic Tank Contracting.

<sup>8</sup> Section 489.113(2), F.S.

<sup>9</sup> See ss. 489.105(7) and (8), F.S.

<sup>10</sup> See ss. 489.105 (9) and (10), F.S.

- A subset of the [trade categories for contractors listed in s. 489.105(3)(a) through (p), F.S., such as roofing, air-conditioning, plumbing, etc.].<sup>11</sup>

### ***Swimming Pool/Spa Contractors***

Section 489.105(3)(j) – (l), F.S., provides three categories of pool/spa contractors in the construction industry. These contractor categories include commercial pool/spa, residential pool/spa, and swimming pool/spa servicing. If an individual’s scope of work involves, but is not limited to, the construction, repair, and servicing of these types of swimming pools and spas, one must obtain a state license from the DBPR and is valid in any county or municipality throughout the state. In addition to the state licenses described in s. 489.105(3)(j) – (l), F.S., the DBPR also provides the ability to obtain a voluntary specialty contractor license in specific areas of pool/spa construction pursuant to Florida Administrative Code Rule 61G4-15.032.<sup>12</sup> However, these specialty contractors must work under the supervision of a state licensed contractor.<sup>13</sup>

Pursuant to Florida Administrative Code Rule 61G4-15.032, the DBPR’s licensing board has adopted specific rules for the voluntary certification of swimming pool specialty contractors and residential pool/spa servicing contractors.<sup>14</sup> Licenses for these contractors include those for:

- Swimming Pool Layout;
- Swimming Pool Structural;
- Swimming Pool Excavation;
- Swimming Pool Trim;
- Swimming Pool Decking;
- Swimming Pool Piping; and
- Swimming Pool Finishes.

### ***Licensure Exemption in s. 489.117(4)(d), F.S.***

Section 489.117(4)(d), F.S., commonly referred to as the “Jim Walter” exemption, was enacted in 1993<sup>15</sup> and allows unlicensed persons to perform contracting services for the construction, remodeling, repair, or improvement of single-family residences and townhouses<sup>16</sup> without obtaining a local license. The person must be under the supervision of a certified or registered general, building, or residential contractor, and the work may not be work that requires licensure in the areas of roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor.<sup>17</sup> The supervising contractor need not have a direct contract with the unlicensed person performing the contracting services.

Florida’s Fifth District Court of Appeals has addressed the applicability of this exemption to a local building contractor licensing requirement in a St. Johns County ordinance.<sup>18</sup> In this case,

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<sup>11</sup> Section 489.105(3)(q), F.S.

<sup>12</sup> See Fla. Admin. Code R. 61G4-15.032 and 61G4-15.040 (2020), available at: <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61G4-15> (last visited Jan. 14, 2020).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See ch. 93-154, s. 3, and ch. 93-166, s. 12, Laws of Fla. These provisions have been subsequently amended.

<sup>16</sup> “Townshouses” was added to the exemption in 2003. See ch. 2003-257, s.5, Laws of Fla.

<sup>17</sup> Section 489.117(d), F.S.

<sup>18</sup> See *Florida Home Builders Ass’n v. St. Johns County*, 914 So.2d 1035 (Fla. 5<sup>th</sup> DCA 2005).

the court found that under s. 489.117(4)(d), F.S., the county's ordinance requiring all non-certified contractors to obtain a local license conflicted with state law.<sup>19</sup>

Another example of the applicability of this exemption is contained in a 2001 Attorney General Opinion. In this opinion, Florida's Attorney General, Robert A. Butterworth, explained that a county may not enact an ordinance that requires local certification of drywall installers. Mr. Butterworth reasoned that, under the exemption in s. 489.117(4)(d), F.S., "the county may not require certification of persons performing drywall installation on single-family residences when such persons are working under the supervision of a certified or registered general, building, or residential contractor."<sup>20</sup> Drywall installation fits the local licensing exemption because one does not have to obtain registration or certification under s. 489.105(3)(d)-(o), F.S., to perform this aspect of construction; thus, drywall installers are exempt from local regulations that provide otherwise.

### III. Effect of Proposed Changes:

CS/SB 1102 amends s. 487.117(4), F.S., to expand the circumstances under which unlicensed persons may perform certain construction contracting services.

First, the bill expands the licensure exemption in s. 487.117(4)(d), F.S., to allow unlicensed persons to perform contracting services for the construction, remodeling, repair, or improvement of *clubhouses* or *recreation buildings* in a residential development without obtaining a local license. As is imposed under current law, such unlicensed persons must be under the supervision of a licensed general, building, or residential contractor, and the work may not be work that requires licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor. Currently, this licensure exemption applies only to eligible construction activities on *single-family residences*, including townhouses.

Second, the bill creates s. 487.117(4)(e), F.S., to exempt from local and state licensing persons under the supervision of a certified or registered commercial pool/spa contractor, a residential pool/spa contractor, or a swimming pool/spa servicing contractor (a licensed pool contractor) for the performance of certain specialty contracting services. The bill provides a contractual relationship between the supervising contractor and those performing the specialty contracting services is not required (i.e., the performance of such contracting services is outside the business of contracting and need not be undertaken through a contractor/subcontractor relationship).

The services that may be performed by unlicensed persons under the supervision of a licensed pool contractor include the construction, remodeling, repair, or improvement of swimming pools, hot tubs, spas, and interactive water features, as defined in the Florida Building Code (code).<sup>21</sup>

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<sup>19</sup> *Id.* at 1037

<sup>20</sup> See Op. Atty. Gen. 2001-25, March 28, 2001, available at: <http://www.myfloridalegal.com/ago.nsf/Opinions/4C31D4CAE5F162BF85256A1E00532DAC> (last visited February 11, 2020).

<sup>21</sup> The term "swimming pool" is defined as "[a]ny structure intended for swimming, recreational bathing or wading that contains water over 24 inches (610 mm) deep. This includes in-ground, aboveground and on-ground pools; hot tubs; spas and fixed-in-place wading pools." See ch. 2 of the 2017 Florida Building Code (Sixth Edition), available at <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited Jan. 14, 2020).

Of those terms, the current code does not appear to define “interactive water features.” However, the described scope of work for “swimming pool piping specialty contractor” includes “decorative or interactive water displays or areas.”<sup>22</sup>

The exemption is not available for persons required to be certified or registered as contractors for specified trade categories described in s. 489.105(3), F.S.<sup>23</sup>

The bill takes effect on July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who are not licensed as contractors in a trade and have not been eligible to engage in such work may now, under the supervision of certified or registered contractors whose licenses cover such work, construct, remodel, repair, or improve clubhouses or recreational buildings in a residential development, and swimming pools, hot tubs, spas, or interactive water features.

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<sup>22</sup> See Fla. Admin. Code R. 61G4-15.032(2)(f), relating to certification of swimming pool piping specialty contractors, available at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61G4-15> (last visited Jan. 14, 2020).

<sup>23</sup> See s. 489.105(3)(a) through (i) and (m) through (o), F.S. The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, plumbing contractor, underground utility and excavation contractor, and solar contractor.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 489.117 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

**CS by Community Affairs on February 10, 2020:**

The committee substitute expands the licensing exemption in s. 487.117(4)(d), F.S., to include work on *clubhouses* or *recreation buildings* in a residential development.

B. Amendments:

None.