

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 Community Affairs

BILL: SB 1102

INTRODUCER: Senator Gruters

SUBJECT: Specialty Contracting Services

DATE: February 6, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>IT</u>	Favorable
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

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.

The bill has no impact on state government.

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

II. Present Situation:

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 applicate trade.¹

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.² A contractor must be licensed by the Department of Business and Professional Regulation's Construction

¹ See ss. 489.101-489.146, F.S.

² 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.

Industry Licensing Board (board) or certified by the county in which he or she wishes to work.³ 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.⁴

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,⁵ a septic tank contractor,⁶ 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.⁷

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).⁸ 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.⁹

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

- A particular construction category adopted by board rule; and
- 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.].¹⁰

The board has adopted rules for the voluntary certification of swimming pool specialty contractors and residential pool/spa servicing contractors.¹¹ 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.

³ Sections 489.107(1), 489.113(1), and 489.117(1)(b), F.S.

⁴ 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.

⁵ See Part II, of ch. 489, F.S., relating to Electrical and Alarm System Contracting,

⁶ See Part III of ch. 489, F.S., relating to Septic Tank Contracting.

⁷ Section 489.113(2), F.S.

⁸ See ss. 489.105(7) and (8), F.S.

⁹ See ss. 489.105 (9) and (10), F.S.

¹⁰ Section 489.105(3)(q), F.S.

¹¹ 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).

Section 489.117(4)(d), F.S., similarly allows unlicensed persons to perform contracting services¹² related to the construction, remodeling, repair, or improvement of single-family residences and townhomes, under supervision by a certified or registered general, building, or residential contractor. The supervising contractor need not have a direct contract with the unlicensed person performing the contracting services. A legal challenge to the applicability of this exemption to local license requirements in St. Johns County was not successful.¹³

III. Effect of Proposed Changes:

Senate Bill 1102 amends s. 487.117(4), F.S., to exempt from local and state licensing for 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).¹⁴ 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.”¹⁵

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.¹⁶

The exemption from local contractor licensing and specialty contractor licensing created in the bill is similar to an exemption enacted in 1993.¹⁷ Section 489.117(4)(d), F.S., allows unlicensed persons to perform contracting services related to the construction, remodeling, repair, or improvement of single-family residences and townhomes, under supervision by a certified or registered general, building, or residential contractor. The supervising contractor need not have a direct contract with the unlicensed person performing the contracting services.

¹² The specified scopes of work are 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.

¹³ See *Florida Home Builders Ass'n v. St. Johns County*, 914 So.2d 1035 (Fla. 5th DCA 2005).

¹⁴ 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).

¹⁵ 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).

¹⁶ 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.

¹⁷ See ch. 93-154, s. 3, and ch. 93-166, s. 12, Laws of Fla. These provisions have been subsequently amended.

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 swimming pools, hot tubs, spas, or interactive water features.

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.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
