

**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 Rules

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BILL: SB 222

INTRODUCER: Senator Gruters

SUBJECT: Swimming Pool Specialty Contracting Services

DATE: January 19, 2022

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Kraemer</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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## I. Summary:

SB 222 creates an exemption from local and state licensing requirements for persons under the supervision of a certified or registered pool contractor for the construction, remodeling, or repair of swimming pools, interactive water features, hot tubs, and spas. The supervising contractor need not employ or 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 is effective July 1, 2022.

## II. Present Situation:

The Legislature regulates the construction industry “in the interest of the public health, safety, and welfare,”<sup>2</sup> and has enacted ch. 489, F.S., to address requirements for construction contracting, electrical and alarm system contracting, and septic tank contracting, and requirements for qualified persons to be licensed if they have sufficient technical expertise in the applicable trade.<sup>3</sup>

More than 20 categories of persons are exempt from the contractor licensing requirements of ch. 489, F.S., including but not limited to:

- Contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the board and the Florida Department of Transportation;

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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. See also s. 489.505, F.S., for the certification and registration requirements for electrical and alarm system contracting.

<sup>2</sup> See s. 489.101, F.S.

<sup>3</sup> See parts I, II, and III, respectively, of ch. 489, F.S.

- Employees of licensed contractors, if acting within the scope of the contractor’s license, with that licensee’s knowledge;
- Certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances;
- Certain public utilities, on construction, maintenance, and development work by employees;
- Property owners, when acting as their own contractor and providing “direct, onsite supervision” of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding \$75,000;
- Work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.;
- Work falling under the so-called handyman exemption, meaning it is of a “casual, minor, or inconsequential nature,” and the total contract price for all labor, materials, and all other items is less than \$2,500, subject to certain exceptions;
- Registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.;
- Work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements;
- Certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements;
- Employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements; and
- Members of the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida when constructing chickees as described in s. 553.73(10)(i), F.S.<sup>4</sup>

### **Construction Contracting**

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.<sup>5</sup> The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.<sup>6</sup>

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<sup>4</sup> See s. 489.103, F.S., for additional exemptions.

<sup>5</sup> See s. 489.107, F.S.

<sup>6</sup> Section 489.105(3), F.S.

The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.<sup>7</sup>

Master septic tank contractors and septic tank contractors are regulated by the Department of Environmental Protection under part III of ch. 489, F.S.<sup>8</sup>

Construction contractors regulated under part I of ch. 489, F.S., and electrical and alarm contractors regulated under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.<sup>9</sup> The CILB and ECLB may deny a license application for any person found guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.<sup>10</sup>

A "specialty contractor" is 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.<sup>11</sup>

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

Section 489.105(3)(j), (k), and (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 which is valid in any county or municipality throughout the state. In addition to the state licenses described in s. 489.105(3)(j), (k), and (l), F.S., the DBPR also provides, by rule, the opportunity to obtain a voluntary specialty contractor license in specific areas of pool/spa construction.<sup>12</sup> However, these specialty contractors must work under the supervision of a state-licensed contractor.<sup>13</sup>

The voluntary certification rules adopted by the CILB apply to the following swimming pool specialty contractors and residential pool/spa servicing contractors, including contractor licenses for:<sup>14</sup>

- Swimming Pool Layout;
- Swimming Pool Structural;
- Swimming Pool Excavation;
- Swimming Pool Trim;
- Swimming Pool Decking;

<sup>7</sup> Section 489.507, F.S.

<sup>8</sup> See ss. 489.551-489.558, F.S. Prior to July 1, 2021, the Department of Health regulated septic tank contracting. See s. 50, ch. 2020-150, L.O.F.

<sup>9</sup> See ss. 489.113 and 489.516, F.S., respectively.

<sup>10</sup> Section 455.227(2), F.S.

<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.

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

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

- Swimming Pool Piping; and
- Swimming Pool Finishes.

### **Certification and Registration of Contractors**

Under current law, a “certified contractor” has met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR which allows the contractor to contract in any jurisdiction in the state without being required to fulfill the competency requirements in those jurisdictions.<sup>15</sup>

The term “registered contractor” means a contractor who has registered with the DBPR as part of meeting competency requirements for a trade category in a particular jurisdiction, which limits the contractor to contracting only in the jurisdiction for which the registration is issued.<sup>16</sup>

### ***Fees for Certification and Registration***

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed \$150, and, if an examination cost is included in the application fee, the combined amount may not exceed \$350. For an applicant for registration as a contractor, the initial application fee may not exceed \$100, and the initial registration fee and the renewal fee may not exceed \$200.<sup>17</sup> The initial application fee and the renewal fee is \$50 for an application to certify or register a business.<sup>18</sup>

Fees must be adequate to ensure the continued operation of the CILB, and must be based on the DBPR’s estimates of revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.<sup>19</sup>

### **Subcontractors**

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>20</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

<sup>15</sup> Sections 489.105(8) and 489.113(1), F.S.

<sup>16</sup> Sections 489.105(10) and 489.117(1)(b), F.S.

<sup>17</sup> Section 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by the DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by the DBPR.

<sup>18</sup> *Id.*

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

<sup>20</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.

- The subcontractor is not engaged in construction work that would require specified contractor licensing, i.e., licensure as an electrical contractor,<sup>21</sup> septic tank contractor,<sup>22</sup> 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>23</sup>

***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>24</sup> and allows unlicensed persons to perform contracting services for the construction, remodeling, repair, or improvement of single-family residences and townhouses<sup>25</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.<sup>26</sup> The supervising contractor need not have a direct contract with the unlicensed person performing the contracting services.

Florida’s Fifth District Court of Appeal addressed the applicability of this exemption to a local building contractor licensing requirement in a St. Johns County ordinance.<sup>27</sup> The court found the county’s ordinance requiring all non-certified contractors to obtain a local license conflicted with state law (s. 489.117(4)(d), F.S.).<sup>28</sup>

Another example of this exemption’s applicability 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>29</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.

**The Florida Building Code**

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private

<sup>21</sup> See Part II, of ch. 489, F.S., relating to Electrical and Alarm System Contracting.

<sup>22</sup> See Part III of ch. 489, F.S., relating to Septic Tank Contracting.

<sup>23</sup> Section 489.113(2), F.S.

<sup>24</sup> See ch. 93-154, s. 3, and ch. 93-166, s. 12, Laws of Fla. These provisions have been subsequently amended.

<sup>25</sup> The term “townhouses” was added to the exemption in 2003. See ch. 2003-257, s. 5, Laws of Fla.

<sup>26</sup> Section 489.117(4)(d), F.S.

<sup>27</sup> See *Florida Home Builders Ass’n v. St. Johns County*, 914 So.2d 1035 (Fla. 5<sup>th</sup> DCA 2005).

<sup>28</sup> *Id.* at 1037.

<sup>29</sup> See Op. Att’y. Gen. Fla. 2001-25 (2001), available at

<http://www.myfloridalegal.com/ago.nsf/opinions/4c31d4cae5f162bf85256a1e00532dac> (last visited Oct. 27, 2021).

buildings, structures, and facilities in the state.<sup>30</sup> The building code must be applied, administered, and enforced uniformly and consistently throughout the state.<sup>31</sup> The building code is adopted, updated, interpreted, and maintained by the commission, and is enforced by authorized state and local government agencies.<sup>32</sup> The Florida Building Commission (commission), housed within the DBPR, adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.<sup>33</sup>

### III. Effect of Proposed Changes:

SB 222 amends s. 487.117(4), F.S., to expand the circumstances under which unlicensed persons may perform certain specialty contracting services.

Under the bill, an exemption from local and state licensing is created for all persons performing certain specialty contracting services 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). The bill provides the supervising contractor is responsible for the work, however an employment or 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 an employer/employee or 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, interactive water features, as defined in the Florida Building Code (code),<sup>34</sup> hot tubs, and spas. 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>35</sup>

Under the bill, the work to be performed using exempted personnel may not include work that requires certification or registration in a specified trade category, including services required to be performed by certified or registered:

- Sheet metal contractors, as defined in s. 489.105(3)(d), F.S;

<sup>30</sup> See s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the “Florida Building Codes Act.” See s. 552.70, F.S. The Florida Building Code, 7th Edition, available at [https://www.floridabuilding.org/bc/bc\\_default.aspx](https://www.floridabuilding.org/bc/bc_default.aspx) (last visited Oct. 27, 2021).

<sup>31</sup> See s. 553.72(1), F.S.

<sup>32</sup> See s. 553.72(3), F.S.

<sup>33</sup> See s. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

<sup>34</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 Oct. 27, 2021).

<sup>35</sup> See Fla. Admin. Code R. 61G4-15.032(2)(f), relating to certification of swimming pool piping specialty contractors, whose scope of work “is limited to the installation of piping or the installation of circulating, filtering, disinfecting, controlling, or monitoring equipment and devices used in the construction of pools, spas, hot tubs, and decorative or interactive water displays or areas.” *Id.*

- Roofing contractors, as defined in s. 489.105(3)(e), F.S.;
- Class A, Class B, or Class C air conditioning contractors, as defined in s. 489.105(3)(f)(g), and (h), F.S.;
- Mechanical contractors, as defined in s. 489.105(3)(i), F.S.;
- Plumbing contractors, as defined in s. 489.105(3)(m), F.S.;
- Underground utility and excavation contractors, as defined in s. 489.105(3)(n), F.S.;
- Solar contractors, as defined in s. 489.105(3)(o), F.S.; or
- Electrical and alarm system contractors, as defined in s. 489.505, F.S.

The exemption created by the bill does not limit any of the exemptions in existing law that are provided in s. 489.103, F.S.<sup>36</sup>

The bill further provides the exemption may not be construed to expand the scope of a contractor required to be certified or registered as contractors for the trade categories described in s. 489.105(3)(j), (k), or (l), F.S, i.e., the servicing of commercial pools/spas, residential pools/spas, and swimming pools/spas) to provide plumbing or electrical services for which certification or registration is required by part I (Construction Contracting) or part II (Electrical and Alarm System Contracting) of ch. 489, F.S., relating to Contracting.

The bill is effective July 1, 2022.

#### **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.

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<sup>36</sup> *Supra* n. 4, and *see* the accompanying text regarding exemptions under current law.

**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, interactive water features, hot tubs, or spas.

An unlimited number of unlicensed persons may be supervised by a contractor licensed to construct, remodel, repair, or improve swimming pools, interactive water features, hot tubs, or spas, although the contractor is responsible for the work that is performed. This may increase the availability of work for those who are not licensed, or in the process of becoming licensed.

**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.