

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.)

BILL: CS/SB 1586

SPONSOR: Regulated Industries Committee and Senator Constantine

SUBJECT: The Florida Building Commission

DATE: February 10, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable</u>
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	_____	_____	<u>CM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill amends s. 489.117, F.S., to permit a person who is not required to obtain a registration or certification pursuant to s. 489.105(3)(a)-(i) or (m)-(o), F.S., to perform specialty contracting services for the construction, remodeling, repair, or improvement of a swimming pool or spa without obtaining a local professional license. The bill requires that the person exempted from local licensure requirements must be supervised by a certified or registered commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor (hereafter collectively referred to as swimming pool/spa contractor) acting within the scope of the supervising contractor's license.

The bill requires local authorities to allow registration in lieu of any local specialty contractor license or a local certificate of competency requirement related to swimming pool/spa services. The local authority may charge a fee for the registration, but the fee may not exceed the fee for the local specialty contractor license or the local certificate of competency. The local authority may not require proof of competency for the local registration, but it can require proof of worker's compensation coverage or a valid exemption from that coverage. The bill further provides that local registration shall require the local registrant to contract with a certified or registered commercial pool/spa contractor, residential pool/spa contractor, or swimming pool/spa servicing contractor.

The bill creates s. 553.8414, F.S., to require the Florida Building Commission (commission) to establish the Swimming Pool and Solar Technical Advisory Committee for the purpose of advising the commission on any matters relating to Building Code standards for swimming pools, spas, and solar equipment. The commission must appoint members of the commission in the same manner as members are appointed to the commission's other technical advisory boards.

The bill would take effect on July 1, 2004.

This bill amends section 489.117, Florida Statutes.

This bill creates section 553.8414, Florida Statutes.

II. Present Situation:

Section 489.107, F.S., establishes the Construction Industry Licensing Board (board) within the Department of Business and Professional Regulation (department). The board enforces the provisions of part I of ch. 489, F.S., relating to construction contracting.

Section 489.113, F.S., requires any person who desires to engage in contracting on a statewide basis to be certified by the board. Each certified contractor specialty has education and experience requirements, and must pass an examination administered by the board. Unless certified, s. 489.117, F.S., requires any person engaged in the business of contracting in the state to be registered in the proper classification.

Section 489.113, F.S., prohibits any person from to engaging in the business of contracting in this state if he or she is not 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 provided that 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 s. 489.105(3)(d)-(o).

Division II Contractors

Section 489.105(3)(d)-(o), F.S., specifies categories of licensure to include general, building, residential, sheet metal, roofing, air-conditioning, mechanical, swimming pool, plumbing, underground utility and excavation, and solar contractors. These contractors are defined as Division II contractors.¹

The swimming pool categories include commercial pool/spa contractor, residential pool/spa contractor, and swimming pool/spa servicing contractor (hereafter collectively referred to as swimming pool/spa contractors), as provided in s. 489.105(3)(j)-(l), F.S.

Local Licensure

Counties and municipalities may require local professional or occupational licenses for certain specialty contracting services that are not specifically defined in s. 489.105(3), F.S., and, therefore, do not require board certification or registration.

Section 489.117(4)(e), F.S., provides an exception to these local professional licenses. It provides that any person who is not required to obtain a registration or certification pursuant to s. 489.105(3)(d)-(o), F.S., may perform specialty contracting services for the construction,

¹ Section 489.105(3), F.S., defines contractors defined in s. 489.105(3)(d)-(q), F.S., as Division II contractors.

remodeling, repair, or improvement of a single-family residence without obtaining a local professional license, if such person is under the supervision of a certified or registered general, building, or residential contractor. The term “supervision” is defined to not require the existence of a direct contract between the certified or registered contractor and the person performing the specialty contracting services. This exception does not apply to swimming pool/spa construction.

Florida Building Commission

The Florida Building Commission (commission) is created in s. 553.74, F.S., to adopt and update the Florida Building Code. The commission is located within the Department of Community Affairs for administrative purposes, and consists of 23 members who are appointed by the Governor and confirmed by the Senate.

The Florida Building Code

Section 553.73(2), F.S., requires that the code contain provisions or requirements for

public and private buildings, structures, and facilities relative to structural, mechanical, electrical, plumbing, energy, and gas systems, existing buildings, historical buildings, manufactured buildings, elevators, coastal construction, lodging facilities, food sales and food service facilities, health care facilities, including assisted living facilities, adult day care facilities, and facilities for the control of radiation hazards, public or private educational facilities, swimming pools, and correctional facilities and enforcement of and compliance with such provisions or requirements.

In addition, the code must include standards and criteria for residential swimming pool barriers, pool covers, latching devices, and door and window exit alarms. The code is required to be adopted by the rulemaking pursuant to ss. 120.536(1) and 120.54, F.S.

Workers’ Compensation

Section 440.03, F.S., requires every employer and employee as defined in s. 440.02, F.S., to be bound by the workers’ compensation provisions of ch. 440, F.S. Section 440.02(15)(b), F.S., permits a corporation engaged in the construction industry to elect to exempt no more than three of its officers from the workers’ compensation requirement. Chapter 2003-422, L.O.F., applies the right to elect an exemption from workers’ compensation to no more than three members owning at least 10 percent of a limited liability company.

Section 440.103, F.S., requires every employer, as a condition to applying for and receiving a building permit, to show proof and certify to the permit issuer that it has secured compensation for its employees under ch. 440, F.S. The required proof of compensation must be in the form of any of the following documentation:

- a certificate of coverage issued by the carrier,
- a valid exemption certificate approved by the Department of Financial Services, or
- a copy of the employer's authority to self-insure.

The documentation must be presented each time the employer applies for a building permit, and each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221, F.S. Pursuant to s. 440.10, F.S., a contractor must require a subcontractor to provide evidence of workers' compensation insurance or an exemption from that insurance.

III. Effect of Proposed Changes:

Section 1. The bill amends s. 489.117, F.S., to permit person who is not required to obtain registration or certification pursuant to s. 489.105(3)(a)-(i) or (m)-(o), F.S., to perform specialty contracting services for the construction, remodeling, repair, or improvement of a swimming pool or spa without obtaining a local professional license. This exception to local licensure would not apply to any person who is required to obtain certification or registration as a swimming pool/spa contractor pursuant to s. 489.105(3)(j)-(l), F.S.

In order to be exempted from local licensure requirements the person must be "supervised by a certified or commercial pool/spa contractor, residential pool/spa contractor, and swimming pool/spa servicing contractor (hereafter collectively referred as swimming pool/spa contractor) acting within the scope of the supervising contractor's license." It is not clear whether the intent of this provision is that the person practicing under this exception must be acting within the scope of the supervising contractor's license or whether supervising contractor must be acting within the scope of his own contractor's license.

The bill requires local authorities to allow registration in lieu of a local specialty contractor license or a local certificate of competency requirement related to swimming pool/spa services. The local authority may charge a fee for the registration, but the fee may not exceed the fee for the local specialty contractor license or a local certificate of competency. The local authority may not require proof of competency for the local registration, but it can require proof of worker's compensation coverage or a valid exemption from that coverage. The bill does not specify the type of documentation of workers' compensation coverage that may be required.

The bill further provides that local registration shall require the local registrant to contract with the swimming pool/spa contractor. The bill does not specify the nature of the contract or require that the supervising contractor must be a party to that contract.

Section 2. The bill creates s. 553.8414, F.S., to require the commission to establish the Swimming Pool and Solar Technical Advisory Committee (committee) to advise the commission on any matters relating to Building Code standards for swimming pools, spas, and solar equipment. The commission must appoint members of the commission in the same manner as members are appointed to the commission's other technical advisory boards. Rule 9B-3.004, F.A.C. provides that the chairperson of commission appoints all technical advisory committees, and further requires that the chairperson review the technical advisory committees and reappoint or replace members annually.

The committee must consist of no fewer than ten persons who represent the swimming pool and solar construction industry. The chairperson of the commission must annually designate a commission member to serve as the chairperson of the committee. Committee members must be appointed for two-year terms and may be reappointed at the discretion of the commission.

Section 3. The bill would take effect on July 1, 2004.

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:

Local licensing authorities may charge a fee for local registration which does not exceed the fee for the local specialty contractor license or local certificate of authority.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.