



EXECUTIVE SUMMARY

Statement:

There are 37,000 public pools and spas in Florida that provide an integral contribution to the Florida economy. These pools and spas require regulation to ensure proper construction and operational oversight to maintain health and safety standards. Over the past 91 years, the Florida Department of Health (DOH) has provided construction plan review (for new construction and modifications), routine site inspections, and code compliance enforcement for bather health and safety. Their code has been recognized nationally by the CDC as a model code for safety and sanitation.

Problem:

In April 2012, HB 1263 was passed and enacted, which eliminated the DOH from the construction plan review process. This task was switched solely to the local municipal building departments. While the building departments are qualified to assess the construction elements of a pool or spa, special knowledge and training was not provided for the evaluation of the health and safety items that are a vital part of a pool/spa proper operation (e.g. disinfection systems, safety equipment, etc.). Further, the DOH, while responsible for the oversight of the operation for the life of the pool/spa, is not involved in the pool/spa until *after* the construction is completed and the pool owner applies to the DOH for an operating permit.

The following are some of the unintended consequences of HB 1263 since its passage:

- Newly constructed pools and spas are being permitted, built improperly, failing DOH inspections and being denied operating permits. Construction mistakes require either a DOH Variance Board hearing, or the mistakes must be corrected before a DOH operating permit is issued.
 - Variance requests delay pool openings, thus causing hardship to pool owners, and loss of revenue for owners of income-producing pools (e.g. health clubs and hotels).
 - Remedial repairs to unapproved variance requests result in further delays and costs to pool owners.
- Municipalities' liability risk exposure has increased significantly.
- Florida pool and spa bathers' have increased risk for waterborne illnesses, injuries, and death.
- Responding to concerns and complaints from pool owners, commercial pool builders, engineers, and manufacturers, the United Pool and Spa Association (UPSA) has offered training and advice to building department officials throughout Florida. They have developed Continuing Education training classes for building officials in the areas of Plan Review and Final Inspection. While they have been a help and well received, they cannot transfer the 91 years of experience garnered by the DOH in two 2 hour classes.
- While this experience still resides with the DOH, it will soon be lost as the qualified people find other positions.

Proposed Solutions:

- Require a copy of the new construction or modification plans be sent to the DOH to review at the time of submission to the municipal building department for a permit. This will allow mistakes to be corrected before the pool/spa is built rather than afterwards when it becomes very costly. It will also make the DOH aware that a pool is being built and will need an Operating Permit.
- Notify the Contractor that an Operating Permit is required before the pool/spa can be used and require a copy of the application for an Operating Permit be included before receiving a Certificate of Completion.
- Allow DOH input in any future code modifications to ensure proper operation for the life of the pool/spa.

Summary:

The DOH has a significant impact on the safety and health of Florida public pool bathers. They must be involved in the plan review process before construction or modification of any public pool or spa.

The Florida Department of Health's mission statement is as follows... "To protect, promote and improve the health of all people in Florida through integrated State, County and Community efforts." More specifically to Swimming Pools and Spas... "Regulation of Public Swimming Pools and Bathing Places is considered by the Department as significant in the prevention of disease, sanitary nuisances and accidents by which the health or safety of an individual(s) may be threatened or impaired."

Toward this end the Department of Health (DOH) developed a Swimming Pool Code in 1921. It has been revised and updated multiple times since then to ensure that the now 37,000 Public Pools and Spas in our state are the safest in the nation. The code has been recognized nationally by the U.S. Centers for Disease Control and Prevention and the National Swimming Pool Foundation as a model code for Safety and Sanitation.

The ability to swim year round in much of the state and the transient nature of much of our population due to tourism, present the unique geographical and demographic factors that set Florida apart from all other states. Florida's economic reliance on tourism is crucial and we can ill afford any negative publicity brought about by illness or injury in our Public Pools and Spas.

An excellent example of how the DOH has set Florida apart from rest of the nation is in the area of suction entrapment. Most of you are familiar with the Virginia Graeme Baker Act (VGBA). The VGBA was passed by Congress in 2007 and enacted in 2008 after former Secretary of State James Baker's granddaughter, Virginia, drowned when she was entrapped in their backyard spa by a direct suction main drain. What many of you may not be aware of is that the DOH recognized this danger 30 years earlier and took action. Since 1977 the DOH has required Gravity Flow Main Drains on all public pools and on all spas since 1993. Of the approximately 31,000 pools and spas built since that time there have been zero reported incidents. Nationally, the Consumer Product Safety Commission also has no record of an entrapment incident on a gravity flow system.

Conversely, of the 6,000 pools and spas built before that time there have been six (6) fatalities. Statistically speaking, the change to gravity flow systems, required by the DOH, has saved approximately 31 lives in Florida and will continue saving lives in the future.

A move by the DOH in 2009, to modify the code and retrofit the older pools with a gravity system, unfortunately was blocked by the Florida Legislature in favor of other less expensive and less effective systems.

Other examples of the DOH's progressive thinking can be seen in the use of advanced technologies such as Ultraviolet Light and ORP Controllers as well as requiring all Pool Operators to be certified. This has resulted in no major outbreaks of waterborne illnesses in a state with possibly the most prolific use of pools in the nation. This cannot be said of many states, such as Utah, New York and Georgia with only a fraction of the pools and that are limited to only seasonal use.

In 1998, the Building Code and Health Code were merged to form the Unified Building Code. At that time, plans for new pool and spa construction and modifications to existing pools and spas were first submitted to the DOH, where they were reviewed for all the components covered by the Health Code. The plans were then sent to the local municipal Building Department, where they were reviewed for other issues pertaining to the Building Code such as the deck and the bathrooms. A Building Permit was subsequently issued, and the pool was built. After the final inspections, a Certificate of Completion was issued by the Building Department and an Operating Permit was issued by the DOH. There was a lot of overlap; however, this worked very well for years giving the process continuity and a system of checks to help prevent oversights and costly mistakes.

Then in 2012, HB1263 passed the Legislature and became law. The DOH was stripped of many of its duties in an effort to cut the budget. These duties were wide-ranging, from closing the Tuberculosis Hospital in Ft Lauderdale to eliminating the statewide septic tank mandate passed in 2010.

In regards to swimming pools though, it eliminated the DOH's responsibility for reviewing construction plans. With a stroke of the Governor's pen on April 25, those duties were transferred solely to the municipal Building Department. Incredibly, there was no transition period and no education for the Building Inspectors as to what the DOH's responsibilities were. More incredibly, the DOH, who would be responsible for their proper operation, consistently safe water quality and functionality, would have no say in how they were built. Ninety-one years of experience was eliminated from the process. All of this, in a state where as was previously mentioned, swimming pools play such a large part of peoples' everyday lives and our economy.

Unfortunately this change has not reduced costs to the state or the pool industry; to the contrary, it has increased them. It has brought plan reviews to a crawl while Inspectors try their best to learn "on the job", the complexities of a pool construction plan, causing delays and resubmissions of plans that is unnecessary. It has lead to a dramatic increase in the number of mistakes found when the DOH goes out to issue an Operating Permit. This in turn has lead to an increase in the number of Variances being granted for things that would have never made it through the plan review process before. It has also dramatically increased the liability for the municipalities which will be detailed later.

In response to this, the United Pool and Spa Association has developed two Continuing Education Classes for municipal Building Inspectors, one on Plan Review and one on Final Inspection. They were developed by Mark Pabst of the Department of Health who has thirty-three years experience in both areas. We offered the first class at the Building Officials Association of Florida (BOAF) Conference in Daytona and then classes for the individual chapters around the state. They have been very well received; and every time we have given a class, the response is the same. The building inspectors are amazed at what goes into a proper plan review and inspection and feel they cannot achieve the proper level of expertise to do this

job with a couple of two (2) hour classes. All agree that the things they are looking for and the reasons for their importance clearly fall under the purview of the DOH.

Then, when informed of the liability incurred by being the “Engineer of Record”, having signed off on the plans, they all agree they would like to have another set of eyes and the expertise and experience the DOH brings to the table.

Consider the Connecticut entrapment drowning case of Zachery Archer Cohen from 2007 that was settled for in 2011 for 40 million dollars. The Pool Builder, who was actually arrested for manslaughter in the case, was responsible for 11 million dollars. The equipment manufacturers were responsible for 15 million dollars. The Engineering Firm and the General Contractor each settled for 2 million dollars. The remaining 10 million dollar judgment was paid by the Town of Greenwich because their building department had approved the plan the way it was designed. Why would the state burden the local municipalities with such a liability?

Neither the Building Inspectors nor the DOH want to see the DOH removed from the construction Plan Review process. The Pool Owners, General Contractors, Aquatic Engineers, Pool Builders and Manufacturers are also of one voice regarding this change. The change made during the 2012 Legislative session has driven up the cost and time it takes to build a pool or spa. It has reduced the level of safety in the pools. It has increased the liability on our Municipalities dramatically. It has absolutely no benefit and is only a detriment.

We recommend that a copy of all new construction and modification plans be sent to the Department of Health upon submission to the Building Department for a permit. We also recommend that the entity submitting the plans (Engineer, Owner, and Contractor ECT) be made aware that they will have to obtain an Operating Permit from the DOH before opening the pool/spa. In addition, that it be a requirement to get a Certificate of Completion that the Operating Permit has been applied for. Currently there are pools/spas being operated without Operating Permits and the DOH only receives a plan when they show up to do the inspection. It is foolhardy for the DOH to be on site after the pool is built, only to discover any mistakes at that point.

It is imperative to our industry to be able to utilize the DOH’s experience and expertise on the front end of the construction process. The experienced people who were previously involved in construction plan reviews are still at the DOH performing other duties, but this will not always be the case. If we do not act quickly these qualified people will move on and this valuable experience will be lost.

The United Pool and Spa Association (UPSA) supports Governor Scott’s efforts to reduce the costs of doing business in Florida, but not if it sacrifices safety. We are very proud of our industry and feel we build the safest pools and spas in the country. The Florida Department of Health has played a lead role in that, and we believe it should be allowed to continue.