

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
CONSTRUCTION INDUSTRY LICENSING BOARD

In re: Florida Pool & Spa Association, Inc. d/b/a  
the Florida Swimming Pool Association  
and John Nance Garner, Sr.

Petition to Initiate Rulemaking

CASE NO. \_\_\_\_\_

**PETITION TO INITIATE RULEMAKING**  
**Section 120.54(7), Florida Statutes**

Petitioner, **FLORIDA POOL & SPA ASSOCIATION, INC. d/b/a the FLORIDA SWIMMING POOL ASSOCIATION** and **JOHN NANCE GARNER, Sr.**, by and through undersigned counsel and pursuant to Section 120.54(7)(a) and (b), Florida Statutes, hereby requests that the Board Initiate Rulemaking regarding: (1) the definition of “pool equipment” as that term is used in sections 489.105(3) (j), (k) and (l) as “pool lighting, pool pumps, motors, controllers, time clocks, sanitizing systems and pool water heaters;” and, (2) the scope of work that can be performed by a Certified Pool and Spa Contractor to include the installation, repair and replacement of pool equipment (as defined) consisting of pool lighting, pool pumps, motors, controllers, time clocks, sanitizing systems and pool water heaters, as set forth herein. In support thereof, Petitioner states as follows:

Identification of the Agency

1. The name and address of the agency affected are:

Florida Department of Business and Professional Regulation,  
Construction Industry Licensing Board (the “board”)  
1940 North Monroe Street  
Tallahassee, Florida 32399-0751

Identification of Petitioner

2. The name of the Petitioners and their address for purposes of this petition, are:

Florida Pool & Spa Association, Inc. (“FSPA”)  
and John Nance Garner, Sr. (“Garner”)  
C/o Jennifer Hatfield, Esq.  
Attorney at Law (Fla. Bar #16598)  
411 Lenore Court  
Rockledge, Florida 32955-4713  
941-345-3263  
[jen@jhatfieldandassociates.com](mailto:jen@jhatfieldandassociates.com)

3. The name, address for service, and telephone number of the Petitioners’ attorney are set forth at the end of this petition.

Identification of Specific Rule to be Initiated

4. Petitioner requests that a new rule be enacted by the board to define pool equipment as well as the scope of licensure of pool and spa contractors, currently defined in Section 489.103(j), (k) and (l).

5. It is proposed that the board adopted a rule:

A. defining “pool equipment” to include, but not limited to: pool lighting, pool pumps, motors, controllers, time clocks, sanitizing systems and pool water heaters; and,

B. clarifying the scope of a certified pool contractor’s license to include the installation, repair and replacement of pool equipment, up to and including the electrical connection on the demand side of the power source.

Explanation of How the Petitioner's Substantial Interests Will Be Affected

6. Petitioner Garner is and has been a Certified Pool/Spa Contractor in Florida for 27 years, currently holding active licenses CPC1457486 and CPC049389 issued by the board, who

is subject to regulation by the board, regularly installs, repairs or replaces pool equipment, consisting of pool lighting, pool pumps, motors, controllers, time clocks, sanitizing systems and pool water heaters, and would be adversely impacted if the proposed rule is not adopted by becoming subject to possible civil, criminal and administrative liability and proceedings, including, but not limited to: revocation or suspension of his license, imposition of fines and costs, service of probation period, or other sanctions that could be imposed on him.

7. Petitioner FSPA is a Florida non-profit corporation whose substantial membership is composed of pool/spa contractors also licensed and regulated by the board, many of whom also regularly install, repair or replace pool equipment, consisting of pool lighting, pool pumps, motors, controllers, time clocks, sanitizing systems and pool water heaters, and all of whom could be adversely impacted if the proposed rule is not adopted by becoming subject to possible civil, criminal and administrative liability and proceedings, including, but not limited to: revocation or suspension of license, imposition of fines and costs, service of probation period, or other sanctions that could be imposed. As one of its main purposes, FSPA maintains an active state lobbying presence, and both monitors and attempts to influence proposed legislative and rule changes that affect its licensed members, including those proposals that would affect the scope of those licenses.

8. Without the proposed rule, Petitioner Garner and a substantial number of the members of Petitioner FSPA may suffer economic hardship by having to change many years of business practices that have involved the installation, repair and replacement of pool equipment as described in the proposed rule. Such economic hardship is the type of injury-in-fact the statutory licensure scope was meant to avoid by providing a clear and unambiguous statement of

the board's policies with regard to such activities, so that licenses would be able to avoid civil, criminal and administrative disciplinary actions.

#### Reason for Requested Relief

9. Sections 120.54(7) (a) and (b) authorizes the filing of this petition to initial any rule, as follows:

(7) PETITION TO INITIATE RULEMAKING.—

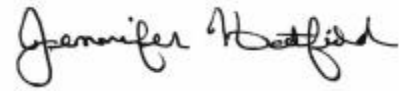
(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. **Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.** [Emphasis added]

(b) If the petition filed under this subsection is directed to an unadopted rule, **the agency shall, not later than 30 days following the date of filing a petition, initiate rulemaking, or provide notice in the Florida Administrative Register that the agency will hold a public hearing on the petition within 30 days after publication of the notice.** The purpose of the public hearing is to consider the comments of the public directed to the agency rule which has not been adopted by the rulemaking procedures or requirements of this chapter, its scope and application, and to consider whether the public interest is served adequately by the application of the rule on a case-by-case basis, as contrasted with its adoption by the rulemaking procedures or requirements set forth in this chapter. [Emphasis added]

#### Relief Requested

10. Petitioner respectfully requests that the Board initial rulemaking proceedings to enact a rule defining "pool equipment," as well as a rule defining the scope of a pool/spa contractor, as identified herein.

Respectfully submitted,



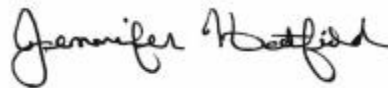
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Attorney for Petitioners,  
Florida Pool & Spa Association, Inc. d/b/a  
Florida Swimming Pool Association and  
John Nance Garner, Sr.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original of this pleading has been provided via electronic mail to: DBPR Agency Clerk ([AGC.Filing@myfloridalicense.com](mailto:AGC.Filing@myfloridalicense.com)), and to Daniel Biggins ([Daniel.Biggins@myfloridalicense.com](mailto:Daniel.Biggins@myfloridalicense.com)), Executive Director of the board, both at Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, FL 32399-1027, and that a copy of the foregoing has been provided via electronic mail to Douglas Dolan ([Douglas.Dolan@myfloridalegal.com](mailto:Douglas.Dolan@myfloridalegal.com)), Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, all on this 28th day of June, 2016.



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Jennifer Hatfield, Esq.