

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1659 Mold Remediation
SPONSOR(S): Hogan
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2746 (c)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care		Chavis	Collins
2) Business Regulation			
3) Finance & Tax			
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 1659 creates chapter 387, F.S., relating to "Mold Remediation." The bill creates a licensing act for regulation of the mold remediation industry by the Department of Health (department). In addition, the bill:

- Specifies the scope of the chapter, definitions, and rulemaking authority for the department necessary to: discharge its powers and duties under the chapter, establish specified procedures; and effect reciprocity agreements with other states;
- Provides the department contracting authority for conducting inspections and requires the adoption of specified rules;
- Provides for the creation of a public education program, and creates licensure requirements and provides exemption, establishes minimal training requirements, and issuance of specified types of licenses;
- Provides requirements for application for licenses, license fees and other fees reasonably necessary to implement the provisions of the chapter (provides caps on such fees), and specifies license qualifications requirements;
- Provides for certificates of incorporation and insurance;
- Provides for subjecting licenses to departmental rules and orders; that licenses are not assignable; replacement licenses; provisional licenses, and for registration for trainees;
- Requires examination, provides for notification of examination results, and provides a continuing education requirement;
- Provides for license renewal and expired licenses by both resident and nonresident licensees;
- Creates a duty to ensure employee qualifications and protection, prohibits multiple services that create a conflict of interest;
- Requires specified records, a scope of work analysis, and work plan to be prepared for each project;
- Regulates advertising or competitive bidding, notification of mold-related activities, and specifies standard operation procedures;
- Specifies code of ethics;
- Specifies requirements for mold training providers, specifies criteria for withdrawal of course approval by the department, provides for reprimand, modification, suspension, or revocation of license, including: notice, administrative hearing, appeal, and specifies that compliance with standards is not a defense;
- Provides for civil penalty, injunction, administrative penalty, and **criminal penalty** (first offense – fine not to exceed \$20,000 or confinement in jail not to exceed 6 months or both; second or subsequent offense – fine not to exceed \$25,000 or confinement in jail not to exceed two years or both); and
- Requires adoption of rules by the department no later than January 1, 2004.

The act takes effect July 1, 2003.

Subsections (4) and (5) of s. 11.62, F.S., require the proponents of the legislation that provides for the regulation of an unregulated profession or occupation to provide to the state agency of jurisdiction, upon request of the agency, certain specified information, in writing, to the agency and to the legislative committees where the bill is referred. Such information has not been provided to the Committee on Health Care for review and consideration.

According to the Department of Health, total estimated non-recurring and recurring expenses for this bill will be \$433,125 for Year 1, \$434,676 for Year 2, and \$339,616 for Year 3.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1659.hc
DATE: April 14, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. The bill creates a licensing process for individuals and businesses that provide mold-related services. The bill provides rulemaking authority for the Department of Health (department). The department does not currently have licensure or regulatory authority over mold-related service providers.
2. According to the department, the total estimated non-recurring and recurring expenses for this program is \$433,125 for Year 1, \$434,676 for Year 2, and \$339,616 for Year 3. The total estimated revenue anticipated to be generated by the fees and licenses is: \$433,125 for Year 1, \$375,375 for Year 2, and \$317,250 for Year 3.
3. Currently, this is an unregulated area of the market. According to the Department of Business and Professional Regulation, complaints regarding mold are probably the fastest growing category of grievance coming into the division. The bill would require currently unlicensed individuals and businesses to be licensed in accordance with certain minimum standards and requirements as established by the department.

B. EFFECT OF PROPOSED CHANGES:

HB 1659 creates chapter 387, F.S., relating to "Mold Remediation." The bill creates a licensing act for regulation of the mold remediation industry by the Department of Health (department). In addition, the bill:

- Specifies the scope of the chapter, definitions, and rulemaking authority for the department necessary to: discharge its powers and duties under the chapter, establish specified procedures; and effect reciprocity agreements with other states;
- Provides the department contracting authority for conducting inspections and requires the department to adopt specified rules relating to: specified procedures, requirements; standards, medical monitoring, and documentation;
- Provides for the creation of a public education program, and creates licensure requirements and provides exemption, establishes minimal training requirements, and issuance of specified types of licenses;
- Provides requirements for application for licenses, license fees and other fees reasonably necessary to implement the provisions of the chapter, and specifies license qualifications requirements, including caps on such fees;
- Provides for certificates of incorporation and insurance;
- Provides for subjecting licenses to departmental rules and orders; that licenses are not assignable; replacement licenses; provisional licenses, and for registration for trainees;
- Requires examination, provides for notification of examination results, and provides a continuing education requirement;
- Provides for license renewal and expired licenses by both resident and nonresident licensees;

- Creates a duty to ensure employee qualifications and protection, prohibits multiple services that create a conflict of interest;
- Requires specified records, a scope of work analysis, and work plan to be prepared for each project;
- Regulates advertising or competitive bidding, notification of mold-related activities, and specifies standard operation procedures;
- Specifies code of ethics;
- Specifies requirements for mold training providers, specifies criteria for withdrawal of course approval by the department;
- Provides for reprimand, modification, suspension, or revocation of license, including: notice, administrative hearing, appeal, and specifies that compliance with standards is not a defense;
- Provides for civil penalty, injunction, administrative penalty, and criminal penalty (first offense – fine not to exceed \$20,000 or confinement in jail not to exceed 6 months or both; second or subsequent offense – fine not to exceed \$25,000 or confinement in jail not to exceed two years or both); and
- Requires adoption of rules by the department no later than January 1, 2004.

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The Sunrise Act

Prior to the 1970s, occupational regulation in Florida was administered through several autonomous, independent boards appointed by the Governor. In the late 1970s, all occupational regulation was centralized in Florida's Department of Professional Regulation (DPR). However, substantial departmental reorganization moved oversight of health professions from DPR to the Agency for Health Care Administration to the Department of Health.

The Sunrise Act, s. 11.62(3), F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act requires that all legislation proposing regulation of a previously unregulated profession or occupation be reviewed by the Legislature based on a showing of the following:

- That substantial risk of harm to the public is a risk of no regulation which is recognizable and not remote;
- That the skills the profession requires are specialized and readily measurable;
- That the regulation will not have an unreasonable effect on job creation or job retention;
- That other forms of regulation do not or cannot adequately protect the public; and
- That the overall cost effectiveness and economic impact of the proposed regulation is favorable.

In addition, the act requires that, upon request, the proponents of regulation of a previously unregulated profession provide the agency that is proposed to have jurisdiction over the regulation and the legislative committees of reference information concerning the effect of proposed legislation. The Department of Health has not requested this information.

Section 11.62(4), F.S., requires the proponents of the legislation to provide, in writing, to the agency with proposed jurisdiction, and to the legislative committees to which the legislation is referred to, the following information:

- The number of individuals or businesses that would be subject to the regulation;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years;

- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

Information, as required by this section has not been provided to the Health Care Committee for review and consideration.

Basic information about molds

Molds can be found almost anywhere; they can grow on virtually any substance when moisture is present. Outdoors, many molds live in the soil and play a key role in the breakdown of leaves, wood, and other plant debris. Molds break down plant materials by digesting them, using the plant material for food.

Molds produce tiny spores to reproduce, just as plants produce seeds. Mold spores waft through the indoor and outdoor air continually. When mold spores land on a damp spot indoors, they may begin growing and digesting whatever they are growing on in order to survive. There are molds that can grow on wood, paper, carpet, foods, even dynamite. When excessive moisture or water accumulates indoors, mold growth will often occur, particularly if the moisture problem remains undiscovered or unaddressed. There is no practical way to eliminate all mold and mold spores in the indoor environment; the way to control indoor mold growth is to control moisture.

Adverse Human Health Effects Associated with Molds in the Indoor Environment

[Note: The following information was obtained from the U.S. Department of Health and Human Services.¹]

Mold can affect the health of people who are exposed to it. People are mainly exposed to mold by breathing spores or other tiny fragments. People can also be exposed through skin contact with mold contaminants (for example, by touching moldy surfaces) and by swallowing it. The type and severity of health effects that mold may produce are usually difficult to predict. The risks can vary greatly from one location to another, over time, and from person to person. The most common health problems caused by indoor mold are allergy symptoms. Although other and more serious problems can occur, people exposed to mold commonly report problems such as:

- Nasal and sinus congestion;
- Cough;
- Wheeze/breathing difficulties;

¹ U.S. Department of Health and Human Services, "Statement for the Record Before the Subcommittees on Oversight and Investigations and Housing and Community Opportunity Committee on Financial Services United States House of Representatives," July 18, 2002. [<http://www.cdc.gov/nceh/airpollution/images/moldsci.pdf>]

- Sore throat;
- Skin and eye irritation; and
- Upper respiratory infections (including sinus)

There is wide variability in how different people are affected by indoor mold. However, the long term presence of indoor mold growth may eventually become unhealthy for anyone. The following types of people may be affected more severely and sooner than others:

- Infants and children;
- Elderly people;
- Individuals with respiratory conditions or sensitivities such as allergies and asthma; and
- Persons having weakened immune systems (for example, people with HIV infection, chemotherapy patients, and organ transplant recipients).

Mold Remediation

Remediation is more than just repairing structural damage caused by mold. Remediation is also the process of removing and cleaning materials and belongings contaminated with mold, treating other areas affected - or potentially affected - by the mold, and ensuring that mold does not reoccur after work is done.

Mold Regulation

To date, there are no federal or state standards for acceptable mold levels in buildings or homes and no pure scientific evidence that mold poses a lethal health threat; however, the mold scare has prompted some states to enact mold-related legislation. In addition, Rep. John Conyers, Jr. (Mich. – Dem), has introduced a bill in the U.S. House of Representatives that would require the Environmental Protection Agency and the Department of Housing and Urban Development to establish guidelines addressing mold inspection, testing and remediation - a largely unregulated industry. H.R. 5040, The United States Toxic Mold Safety and Protection Act of 2002, also known as the Melina Bill, sponsored by Conyers, also would create a national toxic mold insurance program run by the Federal Emergency Management Agency that is similar to a FEMA-administered national flood insurance pool.²

States' Mold-Related Legislation

California's Senate Bill 732--dubbed the Toxic Mold Protection Act--was passed on January 1, 2002, and is considered the most comprehensive piece of mold legislation enacted to date. The law demands written disclosure of the presence and location of any existing mold infestation to prospective tenants or purchasers of commercial or residential property.

In Maryland, the state Senate passed Senate Bill 283 in April 2001 to establish a task force to study the location, nature and extent of environmental and health risks posed to workers as a result of molds, spores and other toxic organisms found in HVAC systems. Maryland released the findings of the study in July 2002, recommending that primary statutory authority for regulating indoor air quality be granted to the Maryland Department of the Environment, as well as establishing an Office of Indoor Air Quality.

Texas, during regular session 2001, enacted House Bill 2008, requiring the State Board of Health to establish voluntary guidelines for indoor air quality in government office buildings. However, at this time, the State of Texas does not license or certify inspectors, remediators, "pack-out" companies and others that consumers may deal with when responding to a mold problem.³

² For the actual text of H.R. 5040, see: http://www.irem.org/i05_conf/assets/applets/LPP-Ex4-hr5040.pdf

³ Attorney General of Texas, Office of Consumer Protection, "What Consumers Should Know About Mold."
http://www.oag.state.tx.us/consumer/mold_remed.shtml#remed

In addition, according to the National Association of Mutual Insurance Companies, eight states are currently considering twenty-two bills relating to some aspect of mold (standards, remediation, licensing of mold removal contractors, and caps on property insurance related to mold damage.⁴ During the 2001 and 2002, legislative sessions, ten states introduced twenty-three bills related to mold.⁵

Florida

According to the department, these types of businesses and individuals are unregulated. The department does not currently have licensure or regulatory authority over mold-related service providers.

Section 381.006(2), F.S.

Under s. 381.006(2), F.S., the department and its county health departments (CHDs) have responded to indoor air quality issues since the early 1970's. These response activities are intended to provide homeowners and other inquires clear policy and direction on eliminating a variety of indoor air quality related issues, and to aid against inappropriately spent investigation and remediation dollars and litigation.

C. SECTION DIRECTORY:

Section 1. Creates Chapter 387, F.S., relating to "mold remediation." Provides as follows: scope of chapter; definitions; adoption of rules; standards for mold-related activities; mold remediation procedures; licenses and exemption; training requirements; issuance and types of licenses; application of licenses; license fees and other fees; qualifications for license; certificates of incorporation and insurance; licenses subject to rules and orders; nonassignability of licenses; license replacement; provisional license; registration of trainees; examination requirements; notification of examination results; continuing education requirement; license renewal; expired license; renewal of expired license by nonresident licensees; prohibition on multiple services that create conflict of interest; required records; scope of work analysis and work plan; required notification of mold-related activities; standard operating procedures for mold; code of ethics; mold training providers; rulemaking authority for the Department of Health; withdrawal of course approval; reprimand and modification, suspense, or revocation of license; notice, administrative hearing, and appeal; compliance with standards not a defense; civil penalty and injunction; administrative penalty; and criminal penalty.

Section 2. Requires the Department of Health to adopt rules authorized by this act by no later than January 1, 2004.

Section 3. Provides an effective date of July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

According to the Department of Health (department), the department must be provided start-up funding, positions, and budget to carry out the many provisions of the proposed legislation. Without a regulatory paradigm to serve as a reference point, the creation of appropriate administrative rules, minimum standards and operating procedures, a resource intensive effort will be required by the department to meet the requirements of this bill.

⁴ National Association of Mutual Insurance Companies, "MoldUpdate.Com," Last Updated April 9, 2003. <http://www.moldupdate.com/legislation.htm>.

⁵ *Ibid.*

1. Revenues:

	<u>Amount Year 1</u>	<u>Amount Year 2</u>	<u>Amount Year 3</u>
75% x average of statutory fee cap			
(\$385 x 1,500 licenses (Year 1))	\$ 433,125		
(\$385 x 1,300 licenses (Year 2))		\$375,375	
(\$385 x 1,100 licenses (Year 3))			\$317,250

This decline predicts a reduction in total licensees as the industry matures.

2. Expenditures:

According to the department, start-up funding is necessary for the creation and validation of licensure examinations, professional standards, and training criteria. Estimates for the examination development, construction, and validation necessary to carry out provisions of the bill were \$1,273,000 from Professional Examination Services (a leading examination production company) and \$708,000 from Florida State University.

Recurring funding and budget must be established for staff, travel, training, and public education on indoor air quality. Staff requirements will include:

- An Environmental Manager to direct the entire program and provide technical and administrative leadership;
- Two Environmental Specialists III's will be required as lead workers – one for certification efforts and activities and the other for the public education component.
- Two Environmental Specialist II's are required for the daily operations of the certification component and assistance in the creation of the outreach efforts and public information.
- An Administrative Assistant is needed to provide overall support to the administrative and certification components of the program.
- A Senior Clerk will supply support to the public outreach component.

The Senior Clerk and one Environmental Specialist II will be employed OPS for the first partial and second fiscal year only. Those positions will be deleted during the third fiscal year.

Funds are required for the creation and adoption of the rules and procedures of a licensure program.

a. Non-Recurring and First-Year Start-Up Effects	<u>Amount Year 1</u>	<u>Amount Year 2</u>	<u>Amount Year 3</u>
EXPENSES:			
Contract with FSU to create, develop, and validate five licensure examinations including overhead costs	\$ 708,000	0	0
Standard Expense Package:			
5 professionals @ \$3,061	\$ 15,305	0	0
2 support staff @ \$2,603	<u>\$ 5,206</u>	0	0
Total Expense	\$ 728,511	0	0

OCO:

5 professional workstations @ \$1,500	\$ 7,500
2 support workstations @ \$2,000	<u>\$ 4,000</u>

Total OCO	\$ 11,500
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Total Non-Recurring	\$ 740,011
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b. **Recurring** and Annualized Continuation Effects:

Salaries/Benefits:

Environmental Manager	\$ 49,516	\$ 68,001	\$70,041
Environmental Specialist III (1 st year = 9 months)	\$ 43,715	\$ 60,035	\$ 61,836
Environmental Specialist III (1 st year = 9 months)	\$ 43,715	\$ 60,035	\$ 61,836
Environmental Specialist II (1 st year – 9 months)	\$ 38,932	\$ 53,467	\$ 55,071
Environmental Specialist II (OPS – year 1 and 2 only, 1 st year = 9 months)	\$ 31,512	\$ 43,276	\$ 0
Administrative Secretary (1 st year = 9 months)	\$ 21,209	\$ 29,127	\$ 30,001
Senior Clerk (OPS – year 1 and 2 only; 1 st year = 9 months)	\$ 16,462	\$ 22,608	0

EXPENSES:

Professional expense package with max travel @ \$16,208 + 3% increase per FY each professional	\$ 81,040	\$ 83,471	\$ 51,585
Support staff expense package @ \$5,415 + 3% Increase per FY each staff	\$ 10,832	\$ 11,156	\$ 5,746
Examination Costs (1 st year higher as all businesses and personnel would need to be tested).	\$ 10,000	\$ 3,500	\$ 3,500
Total Recurring Costs	\$ 346,933	\$434,676	\$339,616

c. **Total Estimated Non-recurring and Recurring Expenses**

	\$1,086,944	\$434,676	\$339,616
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B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to the Department of Health, it is expected that this bill would significantly impact many state and local agencies, including public school districts, as it requires that mold-related assessment and remediation activities be performed per new requirements set by law and administrative rule. Public employers that require their employees to perform mold analysis, assessment, and remediation services on behalf of their agency would bear the costs of certification, notification, and meeting minimum requirements set by the bill and department rules.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This will increase overhead costs for approximately 1,500 businesses and individuals providing these services. Cost will include: application fee; training; examination; and other incidental licensure costs and fees. These "additional costs" will likely be passed on to those who contract for these services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Health rulemaking authority to:

- a. Adopt rules necessary to discharge its powers and duties under the chapter (s. 387.051(1), F.S.);
- b. Establish procedures to be followed, if in the opinion of the department following a site inspection, there is a danger or potential danger to the occupants of a building, workers in a building or facility, or the general public (s. 387.051(2), F.S.);
- c. Adopt rules to effect reciprocity agreements with other states (s. 387.051(3), F.S.);
- d. Adopt minimum standards for conducting mold-related activities (s. 387.052, F.S.);
- e. Adopt mole-remediation rules (s. 386.053, F.S.), including requirements for: additional procedures for standard operating procedures; scope of work analysis; work plans; containment procedures; safety standards, equipment and equipment maintenance standards, periodic medical monitoring of licenses; and project documentation;
- f. Adopt rules related to issuance and types of licenses (s. 387.103, F.S.);
- g. Adopt a schedule of license fees and other fees;
- h. Adopt a system under which licenses expire on various dates during the year (s. 397.202, F.S.);
- i. Adopt rules to enforce rules relating to enforcing provisions related to advertising or competitive bidding (s. 387.255, F.S.);
- j. Develop a code of ethics (s. 387.258, F.S.);
- k. Adopt rules reasonable and necessary to implement s. 387.301(2) and (3), F.S. and s. 387.303, F.S. and to adopt any other rules necessary to implement and monitor the mold training program (s.387.301, F.S.); and
- l. Adopt rules to reprimand or modify, suspend, or revoke a license (s. 387.351, F.S.).

The bill requires the department to adopt rules implementing chapter 387, F.S., no later than January 1, 2004.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 387.356, F.S., provides a criminal penalty, subsection (2)(b) establishes a second or subsequent offense penalty of confinement in jail for a period of not more than two years. According to a definition used by the U.S. Bureau of Justice Statistics, jails are locally-operated correctional facilities that confine persons before or after adjudication. Inmates sentenced to jail usually have a sentence of 1 year or less. Jails also incarcerate persons in a variety of other categories, such as persons being held pending arraignment, trial, conviction, or sentencing; those who have been returned to custody following violation of the terms of their release on probation or parole; and persons being transferred to the custody of other criminal justice/correctional authorities. Prisons are operated by either a state or the federal government, and they confine only those individuals who have been sentenced to 1 year or more of incarceration. Generally, persons sentenced to prison have been convicted of a felony offense. A technical amendment on line 814 of the bill to insert the words "or prison" after the word jail should be considered.

The Department of Health suggests that the exception from the requirements of chapter 837, F.S., for certified industrial hygienists be deleted on page 2, lines 31-34 and on page 6, lines 158-159.

There is a scrivener's error on page 6, line 162. The citation currently reads "s. 387.101(a)" but should read "s. 387.101(1)."

Other Comments

The American Society of Safety Engineers (ASSE) opposes the bill. According to the ASSE, the bill would provide a loophole for Certified Industrial Hygienists (CIHs) to avoid consumer protection provisions that mold licensing is intended to provide and CIHs a government-sanctioned competitive advantage over a professional activity over other safety, health, environmental and engineering professionals now providing such services.⁶

The Indoor Air Quality Association is, in general, in favor of programs to license people in mold assessment and remediation," however, questions the exemption of CIHs from certain licensing.⁷

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

⁶ American Society of Safety Engineers press release, April 10, 2003. <http://www.asse.org/press281.htm>

⁷ American Indoor Air Quality Council, P1m.com, "News Brief," April 2003. <http://www.p1m.com/Default.htm>