

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 type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

1.) The bill creates registration and training requirements for individuals and businesses that provide mold related services.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Molds can be found anywhere indoors and outdoors, and they can grow on virtually any substance when moisture is present. The Center for Disease Control (CDC) has reported that people who are exposed to mold may experience a variety of illnesses. Individuals exposed to mold commonly report problems such as: allergy symptoms, nasal and sinus congestion, cough, breathing difficulties, sore throat, skin and eye irritation, and upper respiratory infections.

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, possible health related illnesses and property damage due to mold exposure have caused a significant increase in the number of lawsuits filed throughout the country, sometimes resulting in multi-million dollar damage awards.

In Florida, there have been many lawsuits based on mold related illnesses and alleged “sick buildings.” Responsibility for mold related claims can include almost anyone involved in the construction and maintenance of a building, as well as real estate agents, prior owners, and management companies. Recovery of damages caused from mold depends on proof of actual damages and a determination of the cause of the mold contamination.

There are numerous companies throughout Florida that hold themselves out as “certified” mold remediators or having “qualified mold remediation programs.” Remediation is the process of removing and cleaning materials and belongings contaminated with mold, treating areas affected or potentially affected by the mold, and ensuring that mold does not reoccur after the remediation is done.

Effect of Proposed Changes

The bill creates the “Mold Remediation Registration Act.” The bill requires individuals or companies to hold a registration with the Department of Business and Professional Regulation (department) before the individual or the company engages or offers to engage in the business or profession of performing any mold related activity for compensation. The registration requirements do not apply to licensed engineers, contractors, or pest controllers when acting within the scope of their licenses.

“Mold assessment” means the performance of mold assessments or mold-related assessments, investigations, or surveys; the development of mold management plans or response actions; or the collection or analysis of mold samples.

“Mold remediation” means the removal, cleaning, or other treatment of mold or mold-contaminated matter, live or dead.

“Mold training provider” means a person or company that offers and conducts mold assessment or mold remediation training for the fulfillment of specific training requirements that are a prerequisite of registration under this act.

The bill provides that an individual or company may be registered under this act only if they complete all training required by board rule, including any education, experience or other requirements established. “Board” means the Construction Industry Licensing Board. The bill does not provide guidelines for creating training requirements.

Those that perform mold assessments for compensation will be registered as a mold assessment consultant or a mold analysis company. Those that perform mold remediation for compensation will be registered as a mold remediation contractor or a mold remediation company. Additionally, a person that offers and conducts mold assessment or mold remediation training for fulfillment of training requirements will be registered as a mold training provider.

The bill provides for an application process, which includes business name and address, personal history information, business records, and other facts required by the department, including, evidence of proof of compliance with the insurance and incorporation requirements provided under this act. It is unclear what the requirements are for compliance with the insurance and incorporation provisions, because the bill does not provide any requirements.

Registration fees will be set by the board but must not exceed \$600 dollars for each required registration, and the board may require other fees that are reasonable and necessary to administer this act. Fees collected will be deposited into the Professional Regulation Trust Fund.

Qualifications for registration include:

- Be at least 18 years of age and of good moral character;
- Have successfully met the requirements established under this act;
- Meet the eligibility requirements set by the American Industrial Hygiene Association, the Indoor Air Quality Association, the American Society of Safety Engineers, or an equivalent education program as determined by the board.
- If the applicant is a mold assessment company, a mold assessment consultant, or an individual performing mold assessments for a mold assessment company, demonstrate accreditation from a program recognized by the National Cooperation on Laboratory Accreditation (e.g. American Industrial Hygiene Assoc. Laboratory Accreditation Program).

A registrant must complete at least 15 hours of continuing education courses annually as prescribed by the board.

The bill prohibits a registrant from performing mold analysis and mold remediation on the same project. This provision protects against conflicts of interest and fraud.

After providing notice and an opportunity for a hearing, the department may reprimand those registrants that violate the criteria set by the board. Reprimands include the modification, suspension, or revocation of registration, and registrants that are suspended may be placed on probation.

The department will adopt rules necessary to administer this act. The board will adopt rules regarding the terms and conditions for registration.

The bill takes effect July 1, 2004.

C. SECTION DIRECTORY:

Section 1: Provides the popular name “Mold Remediation Registration Act.”

Section 2: Provides legislative purpose of protecting the safety and welfare of the state by regulating those that hold themselves out as qualified to perform mold-related activities.

Section 3: Provides that the act applies to any individual or company that performs mold-related activity for compensation, does not apply to engineers, contractors, or pest controllers.

Section 4: Provides definitions.

Section 5: Provides registration requirements, training requirements, types of registrants, application requirements, fees, qualifications for registration, rules and orders, assignability, replacement certificate, continuing education requirements, and that multiple services are prohibited.

Section 6: Provides grounds for reprimand, and modification, suspension, or revocation of registration.

Section 7: Provides authority for the department to adopt rules.

Section 8: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

The Department of Business and Professional Regulation has stated that the bill will have a fiscal impact of approximately \$1 million the first year of implementation, \$649,857 year two, and \$616,979 in year three. The registration and application fees will need to be set at a level to cover the start-up costs as well as normal operating expenditures. It should be expected, and necessary to set the registration fee at the cap of \$600 for the first two years along with a \$150 application fee, which is similar to other boards for each licensee. In the third-year the registration fee most likely could be lowered to \$350 per licensee. It is suggested that registration fees be maintained at the cap through the second year to allow the Mold Remediation Board to “build-up” a positive cash-flow within the Professional Regulation Trust Fund – in order to avoid a deficit in the third or fourth year of regulation.

To implement and carry out the provisions of the bill, the department will need five additional positions. Other costs of the department are the development of testing and exams for licensure, data processing (licensing database) and departmental indirect overhead expenditures, which are spread to each board/profession, based on time usage of services of each board/profession.¹

¹ Information provided by the Department of Business and Professional Regulation impact statement (Jan. 13, 2004)

REVENUE			
	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
License Fees:	\$1,050,000	\$1,050,000	\$540,000
Taxes:	\$0	\$0	\$0
Other (identify):	\$0	\$0	\$0
TOTAL:	\$1,050,000	\$1,050,000	\$540,000

Note: The above revenue is based on 1,500 licensees: FY 2004-05 and FY 2005-06, application fee of \$150 and registration fee of \$600. In FY 2006-07, application fee of \$150 and registration fee of \$350. Application fee paid the first year by each application.

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Non-Recurring Effects	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
Operating Capital Outlay	\$7,500	\$0	\$0
Other Personal Services	\$0	\$0	\$0
Other (identify)	\$0	\$0	\$0
Subtotal	\$7,500	\$0	\$0

Operating Capital Outlay non-recurring costs include \$1,500 for 5 professional workstations. \$1,500 Standard Operating Capital Outlay package.

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Effects	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
Salaries/Benefits # of FTE's	\$176,269 5.0 FTE	\$181,557 5.0 FTE	\$187,004 5.0 FTE
Other Personal Services	\$15,000	\$15,000	\$15,000
Expenses	\$84,575	\$34,270	\$34,270
Data Processing (Licensure Database)	\$7,200	\$7,380	\$7,380
DBPR Overhead – Indirect charges	\$275,000	\$275,000	\$275,000
Exam Testing	\$350,000	\$75,000	\$75,000
Subtotal	\$908,044	\$588,207	\$593,654

\$15,000 for OPS staff (.5 FTE) included for additional workload in Customer Contact Center. \$9,915 Standard Expenses package for each of the 5.0 FTE, of which \$6,854 is recurring. Also, included for the first year is \$35,000 Expenses for exam development.

Non-Operating Expenditures	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
Service Charges (to General Revenue)	\$76,650	\$76,650	\$38,325
Other Indirect Costs	\$0	\$0	\$0
Subtotal	\$76,650	\$76,650	\$38,325

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, mold remediators and mold assessors are not regulated by the state - this bill requires the registration of such persons. Registration includes application fees, registration fees, and educational requirements as provided by the board.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not required the counties or cities to spend funds or take an action requiring the expenditure of funds.

2. Other:

B. RULE-MAKING AUTHORITY:

The department is granted rule making authority pursuant to the Administrative Procedure Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 22, 2004, the Subcommittee on Trades, Professions, & Regulated Business adopted a strike-all amendment.

The amendment; provides for the licensure of people and firms that conduct mold-related activities; provides a \$25,000 civil liability cap; provides for an additional member to be placed on the CILB; provides the applicant must obtain workers compensation insurance, public liability insurance, and property damage insurance; provides exemptions for engineers, contractors, pest control operators, full time employees engaged in routine maintenance of private buildings, and authorized employees of the government, public or private schools, or private business who have completed mold-activity training; provides that actions alleging defects be brought under Ch. 558 – Notice and Opportunity to Repair; provides that the CILB will adopt testing requirements and performance standards.