

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 117 Mold Assessment and Mold Remediation
SPONSOR(S): Domino and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee		Shoemaker	Liepshutz
2) Insurance Committee			
3) Civil Justice Committee			
4) Commerce Council			
5) _____			

SUMMARY ANALYSIS

The bill is entitled "Mold Assessment and Mold Remediation." Currently, there is no specific regulation of mold-related activities under Florida law, however certain mold-related activities are limited to contractors licensed by the Construction Industry Licensing Board (CILB) of the Department of Business and Professional Regulation (DBPR) under Fla. Stat. Chapter 489. This bill explicitly regulates mold-related activities by requiring individuals or companies to be licensed with DBPR before the individual or company engages in the business or profession of performing any mold-related activity for compensation. However, the bill exempts the following entities from licensure:

- Licensed engineers, architects and interior designers, contractors, pest controllers, or insurance adjusters, when acting within the scope of their license;
- Authorized government employees, employees of public or private schools, or employees of a private business organization who have completed mold assessment or mold remediation training courses and who are conducting mold assessment or mold remediation within the scope of that employment, as long as the employees do not hold themselves out for hire; and
- Full-time employees engaged in routine maintenance of private buildings and who do not hold themselves out for hire.

Additionally, the bill prohibits a person from conducting both a mold assessment and mold remediation on the same project.

The bill is expected to have a fiscal impact on state government and the private sector and provides an effective date of October 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill creates licensure requirements, including education and training courses, for individuals and businesses that provide mold-related services. Currently, mold-related activity is not regulated.

B. EFFECT OF PROPOSED CHANGES:

Background

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 mold, and ensuring that mold does not reoccur after the remediation is done.

In considering whether to regulate individuals and companies that perform mold-related activities, the Legislature may consider Fla. Stat. §11.62, the "Sunrise Act," which sets forth the framework for the legislative review of proposed regulation of unregulated functions. Specifically, the Sunrise Act provides that "[i]t is the intent of the Legislature" "[t]hat no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose." Further, subsection (3) of the Sunrise Act requires the Legislature to consider five factors in determining whether to regulate a profession or occupation:

- (a) Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- (b) Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

- (c) Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- (d) Whether the public is or can be effectively protected by other means; and
- (e) Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Currently, individuals and companies that perform mold-related activities are not specifically regulated by state law; however, certain mold-related activities are limited to contractors licensed by the CILB under Fla. Stat. Chapter 489. That is, if the mold-related activity requires a person to act as a "contractor," as defined, in part, by Fla. Stat. § 489.105, to mean a "person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others," then licensure would be required under Fla. Stat. Chapter 489.

Major Changes to Current Law

The bill is entitled "Mold Assessment and Mold Remediation" and requires that individuals and companies conducting mold assessment and mold remediation for compensation to be licensed by the Department of Business and Professional Regulation (DBPR). However, the bill exempts the following entities from licensure:

- Licensed engineers, architects and interior designers, contractors, pest controllers, or insurance adjusters, when acting within the scope of their license;
- Authorized government employees, employees of public or private schools, or employees of a private business organization who have completed mold-assessment or mold-remediation training courses and who are conducting mold assessment or mold remediation within the scope of that employment, as long as the employees do not hold themselves out for hire; and
- Full-time employees engaged in routine maintenance of private buildings and who do not hold themselves out for hire.

Additionally, the bill provides two main definitions:

- "Mold assessment" means an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold; the development of a mold management plan or remediation protocol; or the collection or analysis of a mold sample.
- "Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventative activities, of mold or mold-contaminated matter that was not purposely grown at that location.

Further, an applicant for licensure must meet certain requirements before taking the licensure examination offered by DBPR. Application fees will be set by the Construction Industry Licensing Board (board), but may not exceed \$500.

If an applicant proposes to conduct mold-related activity as a business organization in any other name than the applicant's legal name, the business organization must apply for licensure through a qualifying agent. The bill provides application requirements for financially responsible officers and secondary qualifying agents for business organizations. Primary qualifying agents for a business organization are

jointly and equally responsible for supervision of all operations of the business organization, for all field work at all sites, and for financial matters, both for the organization in general and for each specific job. A financially responsible officer shall be responsible for all financial aspects of the business organization and may not be designated as the primary qualifying agent.

The bill provides, as a prerequisite to licensure, that the applicant must provide an affidavit attesting that the applicant has obtained workers' compensation insurance, public liability insurance, and property damage insurance in amounts determined by board rule. The insurance required must include coverage for an applicant's failure to properly perform mold assessment or mold remediation.

The board may license any applicant who the board certifies is qualified to practice mold assessment or mold remediation and who meets specified board requirements. Training courses and training course providers will be approved by the board. The board, by rule, must establish criteria for approving training courses. The board may enter into agreements with other states for the reciprocal approval of training courses or providers of training courses.

A licensee must annually complete 15 hours of continuing education courses as prescribed by board rule. The board will be responsible for adopting rules for license renewal and license reactivation.

The board may revoke, suspend, or deny the issuance or renewal of a license, reprimand, censure, or place on probation any mold assessor or mold remediator; require financial restitution to a consumer; impose an administrative fine not to exceed \$5,000 per violation; require continuing education; or assess costs associated with any investigation and prosecution, if the mold assessor or mold remediator is found guilty of violating any provision prescribed by this act. The board may specify the acts or omissions that constitute violations of the section. In addition, a person may not:

- Falsely hold himself or herself or a business organization out as a licensee;
- Falsely impersonate a licensee;
- Present as his or her own the license, or certificate of authority of another;
- Knowingly give false or forged evidence to the board or a member thereof;
- Use or attempt to use a license that has been suspended or revoked;
- Engage in the business or act in the capacity of a mold assessor or mold remediator or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a mold assessor or mold remediator without being duly licensed;
- Operate a business organization engaged in mold assessment or mold remediation after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent, except as provided by this act; or

For purposes of this subsection, a person or business organization operating on an inactive or suspended license, or certificate of authority, is considered unlicensed.

An unlicensed person who violates the preceding commits a misdemeanor of the first degree, punishable by up to 1 year in prison and up to a \$1,000 fine. An unlicensed person who commits a violation of the preceding after having been previously found guilty of such a violation or commits a violation during the existence of a state of emergency declared by executive order of the Governor commits a felony of the third degree, punishable by up to 5 years in prison and up to a \$5,000 fine.

The bill prohibits a person from conducting both a mold assessment and mold remediation on the same project.

The bill provides that actions alleging defects against mold remediators or mold assessors be brought under the Notice and Opportunity to Repair provision enacted by the Florida legislature last year (s. 558.004, F.S.). Currently, this chapter of law is applied to actions alleging construction defects against contractors.

The bill provides a 1 year statute of limitations after exhausting the remedies under the Notice and Opportunity to Repair provision.

The bill adds an additional member to the board who is primarily engaged in business as a mold remediator or mold assessor, bringing the total to 19 members.

C. SECTION DIRECTORY:

Section 1 creates the title "Mold Assessment and Mold Remediation."

Section 2 creates Fla. Stat. § 489.601 and provides a legislative purpose.

Section 3 creates Fla. Stat. § 489.602 and defines the scope of the statute.

Section 4 creates Fla. Stat. §489.603 and provides exemptions to the statute.

Section 5 creates Fla. Stat. § 489.604 and defines "board," "business organization," "department," "mold," "mold assessment," "mold assessor," "mold remediation," "mold remediator," "primary qualifying agent," and "secondary qualifying agent."

Section 6 creates Fla. Stat. § 489.605 and fees associated with the activities of the statute.

Section 7 creates Fla. Stat. § 489.606 and provides examination procedures for licensure.

Section 8 creates Fla. Stat. § 489.607 and provides licensure guidelines.

Section 9 creates Fla. Stat. § 489.608 and provides for the licensure of business organizations and qualifying agents.

Section 10 creates Fla. Stat. § 489.609 and delineates responsibilities for business organizations and qualifying agents.

Section 11 creates Fla. Stat. § 489.61 and imposes continuing education requirements.

Section 12 creates Fla. Stat. § 489.611 and outlines approval of mold assessor and mold remediator training courses and providers.

Section 13 creates Fla. Stat. § 489.612 and supplies license renewal guidelines.

Section 14 creates Fla. Stat. § 489.613 and prescribes procedures for reactivating a license.

Section 15 creates Fla. Stat. § 489.614 and details disciplinary proceedings.

Section 16 creates Fla. Stat. § 489.615 and provides prohibitions and penalties.

Section 17 creates Fla. Stat. § 489.616 and prohibits a licensee from performing more than one mold activity on the same project.

Section 18 creates Fla. Stat. § 489.617 and provides notice and opportunity to repair.

Section 19 amends Fla. Stat. § 489.107 to add an additional member to the Construction Industry Licensing Board.

Section 20 provides a severability clause.

Section 21 provides an effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

Although it is difficult to estimate the exact number of persons or business organizations that will want to be licensed under this bill, there is a fiscal impact that often results when implementing a new licensing framework.

Previously, the Department of Business and Professional Regulation (DBPR) estimated that anywhere from 1500 (in 2003) to 2500 (in 2004) persons or business organizations might seek licensure. However, DBPR now recognizes that these numbers seem disproportionately high when compared with the number of licensees in Texas, which implemented a similar program in 2003.

According to DBPR, Texas currently regulates mold assessors and remediators, and its regulation appears to be comparable in scope to this bill in terms of who is required to obtain a license and who is exempt. Since Texas has a population of approximately 23 million people and Florida is populated by approximately 16 million people, and assuming that all other factors remain constant, DBPR would expect the Florida license base to be 16/23, or .7, of that of Texas.

Based on DBPR's assumptions, the possible licensee base in Florida would be:

License	Texas	Texas x 0.7 = Florida
Mold Assessment/Consultant	277	194
Mold Remediator	30	21
Total	307	215

Therefore, DBPR estimates this bill to have a total fiscal impact on the department of \$895,977 in the first year of implementation (\$520,080 in year two and \$591,075 in year three). However, based on the projected number of licensees (215 the first year), it is estimated that the revenue receipts will be \$215,000 in FY 2005-06, \$50,000 in FY 2006-07, and \$117,500 in FY 2007-08. This is because the bill provides that application fees, initial licensure fees, licensure renewal fees and licensure reactivation fees cannot exceed \$500. Accordingly, the revenue projections are based on setting the application fee and licensure fee at \$500.

To implement and carry out the provisions of this bill, DBPR estimates needing three additional positions. Other costs to DBPR would potentially include: development of testing and exams for licensure, data processing (licensing database), and departmental indirect overhead expenditures, which are spread to all boards/professions, based on time usage of services of each board/profession.

The following data is the breakdown of potential state revenues and expenditures as estimated by DBPR:

REVENUE			
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Application Fees	\$107,500	\$25,000	\$5,000
License Fees	\$107,500	\$25,000	\$112,500
Other (identify):	\$0	\$0	\$0
TOTAL:	\$215,000	\$50,000	\$117,500

Note: The above revenue is based on 215 licensees: FY 2005-06 and FY 2006-07, application fee of \$150 and license fee of \$350. Application fee paid the first year by each applicant.

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Non-Recurring Effects	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Expenses	\$44,690	\$0	\$0
Operating Capital Outlay	\$5,400	\$0	\$0
Other (identify)	\$0	\$0	\$0
Subtotal	\$50,090	\$0	\$0

Operating Capital Outlay non-recurring costs include \$1,800 for 3 professional workstations, Standard Operating Capital Outlay package. \$9,743 Standard Expenses package for each of the 3.0 FTE positions, of which \$3,230 is non-recurring. Also, included for the first year are \$35,000 Expenses for exam development.

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Recurring Effects	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Salaries/Benefits # of FTE's	\$92,782 3.0 FTE	\$123,598 3.0 FTE	\$127,306 3.0 FTE
Other Personal Services	\$15,000	\$15,000	\$15,000
Expenses	\$14,654	\$19,539	\$19,539
Data Processing Licensure Database	\$7,380	\$7,380	\$7,380
Exam Testing	\$350,000	\$75,000	\$75,000
Subtotal	\$479,637	\$240,517	\$244,225

\$15,000 for OPS staff (.5 FTE) included for additional workload in Customer Contact Center. \$9,743 Standard Expenses package for each of the 3.0 FTE positions, of which \$6,513 is recurring.

Non-Operating Expenditures	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Service Charge (to General Revenue)	\$91,250	\$4,563	\$71,850
Indirect Costs – Transfer to Admin. T.F.	\$275,000	\$275,000	\$275,000
Subtotal	\$366,250	\$279,563	\$346,850

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 specifically regulated by the state. Because this bill requires the licensure of such persons, entities who seek licensure will incur the costs of application fees, license fees, and educational requirements, as provided by the board, that they do not presently have.

Further, the bill requires mold assessors and mold remediators to maintain liability insurance. Accordingly, those acquiring insurance may be subjected to elevated insurance premiums depending upon the extent of the monetary civil damage awards that have historically been awarded in mold-related litigation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DBPR is granted rulemaking authority pursuant to the Administrative Procedure Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to an analysis of this bill supplied by the Department of Business and Professional Regulation (DBPR), this bill would place regulatory responsibility for mold assessors and mold remediators under the Construction Industry Licensing Board (CILB). While the CILB previously voted, in July 2003, to request that any legislation requiring *registration* be assigned to the CILB, this bill requires *licensure*. Additionally, since the 2003 vote, the membership of the CILB has significantly changed, and during its March 2005 meeting, the CILB voted to oppose HB 117 in its current form. Accordingly, DBPR stated that given the nature of the regulation and the cost of this regulation to the department, the Legislature should carefully evaluate whether the requirements of the Sunrise Act, Fla. Stat. § 11.62, have been met.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES