

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill creates certification requirements for those who engage in business as a contractor with a focus on mold or mold remediation that is not incidental to the scope of his or her license.

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.

Currently, 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 is required under Fla. Stat. Chapter 489.

Changes to Current Law

This bill creates Fla. Stat. § 489.1134, to be entitled "Mold remediation certification," and provides certification guidelines for those who engage in business as a contractor with a focus on mold¹ or mold remediation² that is not incidental to the scope of his or her license. Currently, certain mold-related activities are limited to contractors licensed by the Construction Industry Licensing Board (the board) of the Department of Business and Professional Regulation (DBPR) under Fla. Stat. Chapter 489. This bill requires such a person, or any other natural person who is employed by a licensed contractor as

¹ Mold is defined in the bill as "an organism of the class fungi that causes disintegration of organic matter and produces spores and includes any spores, hyphae, and mycotoxins produced by mold.

² The bill defines mold remediation as "the business as a contractor related to mold or mold-contaminated matter."

defined by the section, to have the appropriate course work in order to perform mold or mold related activities.³ Accordingly, contractors are not permitted hold themselves out as emphasizing in mold or mold remediation unless they meet this requirement, and a contractor who is in violation of the provisions of this bill are subject to discipline under Fla. Stat. § 489.129, "Disciplinary proceedings."

The bill goes on to state that it is the responsibility of the contractor licensed under this part of the statute to ensure that members of his or her workforce who are engaging in business as a contractor with a focus or emphasis on mold or mold remediation that is not incidental to the scope of the contractor's license are in compliance with the provisions of this bill. If workforce members are not in compliance with the bill's certification guidelines, the contractor is again subject to discipline under Fla. Stat. § 489.129.

Finally, the bill stipulates that training programs must be evaluated annually by the board to ensure that they have been provided equitably across the state. Further, the board should periodically review the content and instruction quality of the required training and respond to complaints involving said programs.

C. SECTION DIRECTORY:

Section 1 creates Fla. Stat. § 489.1134 and provides mold certification guidelines.

Section 2 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

On March 31, 2005, the Business Regulation Committee adopted a strike-all amendment to HB 117 and reported the bill favorably with a CS. Because the bill as amended no longer requires licensure, but simply provides that those who engage in business as a contractor with a focus on mold or mold remediation that is not incidental to the scope of his or her license must meet certain certification requirements, the fiscal impact is expected to be substantially different. Accordingly, because the Business Regulation Committee has not received an updated Impact Statement from the Department of Business and Professional Regulation, no fiscal information regarding the impact on state government of this bill as amended is available at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Revenues:

None.

³ The type and number courses that will be required of those who engage in business as a contractor with a focus on mold or mold remediation is left to the discretion of the board.

2. Expenditures:

Persons who engage in business as a contractor with a focus on mold or mold remediation that is not incidental to the scope of his or her license will incur the costs of educational requirements, as provided by the board, that they do not presently have.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 31, 2005, the Business Regulation Committee adopted a strike-all amendment to HB 117 and reported the bill favorably with a CS. The strike-all amendment substantially changed the bill, as the original version of the bill provided licensure requirements for mold assessors and mold remediators, and the bill as amended simply implements certification guidelines for those who engage in business as a contractor with a focus on mold or mold remediation that is not incidental to the scope of his or her license. Accordingly, the strike-all amendment removed the following provisions of HB 117:

- The bill no longer explicitly relates to mold assessment and mold remediation, but to mold remediation only. Therefore, the bill is no longer entitled "Mold Assessment and Mold Remediation." Further, the bill now creates Fla. Stat. § 489.1134 rather than pt. IV of Chapter 489.
- The bill no longer defines "board," "business organization," "department," "mold assessment," "mold assessor," "mold remediator," "primary qualifying agent," and "secondary qualifying agent."
- The bill no longer 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).
- Because the bill no longer requires licensure of mold assessors and mold remediators, the bill no longer outlines licensure requirements and fees.

- The bill no longer provides that an applicant for licensure 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.⁴
- The bill no longer requires that a licensee must annually complete 15 hours of continuing education courses as prescribed by board rule. Instead, the bill as amended leaves the required courses and number of course hours to the discretion of the board.
- Because the bill no longer requires licensure of mold assessors and mold remediators, the bill no longer outlines penalties for violating licensure requirements. Instead, the bill as amended states that persons who do not adhere to the mold remediator certification requirements will be subject to the discipline provisions of Fla. Stat. § 489.129.
- The bill no longer prohibits a person from conducting both a mold assessment and mold remediation on the same project.
- The bill no longer requires 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 (Fla. Stat. § 558.004).
- The bill no longer adds an additional member to the Construction Industry Licensing Board who is primarily engaged in business as a mold remediator or mold assessor. Instead, the bill as amended leaves board membership at eighteen members.

Additionally, the original bill was expected to have a total fiscal impact on the Department of Business and Professional Regulation of \$895,977 in the first year of implementation (\$520,080 in year two and \$591,075 in year three) due to the substantive licensure requirements and provided an effective date of October 1, 2005.

Because this staff analysis has been updated to reflect the strike-all amendment, the mold remediator certification requirements that are now required by the bill are reflected in the "substantive analysis" section above. Further, no state fiscal impact information is currently available and the strike-all amendment provided an effective date of July 1, 2005.

⁴ The previously required insurance had to include coverage for an applicant's failure to properly perform mold assessment or mold remediation.