

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 117 CS 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) <u>Business Regulation Committee</u>	<u>16 Y, 1 N, w/CS</u>	<u>Shoemaker</u>	<u>Liepshutz</u>
2) <u>Insurance Committee</u>	<u>15 Y, 0 N, w/CS</u>	<u>Sayler</u>	<u>Cooper</u>
3) <u>Civil Justice Committee</u>	_____	_____	_____
4) <u>Commerce Council</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, there are numerous companies in Florida that hold themselves out to be "certified" mold remediators or have "qualified mold remediation programs." However, there are no state guidelines or educational requirements to be a mold remediator or assessor. Certain mold-related activities are regulated when those activities require that person to act in the capacity of a licensed contractor. In Florida, such activities are limited to contractors licensed by the Construction Industry Licensing Board (the board) of the Department of Business and Professional Regulation (DBPR) under Chapter 489.

This bill creates s. 489.1134, F.S., to be entitled "Mold remediation certification," and provides 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. In other words, if mold remediation is not the main business of that contractor, then they are not subject to the requirements of this subsection. Accordingly, contractors are not permitted to hold themselves out as emphasizing in mold or mold remediation unless they meet these educational requirements, and a contractor who is in violation of the provisions of this bill are subject to discipline under s. 489.129, F.S.

This bill creates ss. 501.933 and 501.934, F.S. Depending upon the field in which a person or business wishes to practice, the bill requires a certification in mold assessment or mold remediation. The certification may come from a non-profit organization that focuses upon indoor air quality or industrial hygiene or from a community college or university that provides such training or education in mold assessment or mold remediation.

This bill provides exemptions to certain groups from the requirements, but all others must be properly certified and maintain at least \$1,000,000 in liability insurance. Civil and criminal penalties are available for violations of the provisions relating to mold assessment and mold remediation.

This bill will fiscally impact contractors whose work is primarily mold remediation due to the mold education requirements. It will fiscally impact mold assessors and remediators because it requires mold certification and liability insurance. The cost for education, certification, and insurance is unknown at this time.

The bill provides an effective date of July 1, 2005.

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. This bill requires mold assessors and noncontracting mold remediators to be certified and to carry at least \$1,000,000 in liability insurance. According to Department of Business and Professional Regulation, this is a non-licensure alternative for regulating mold assessors and mold remediators

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 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. Certain mold-related activities are regulated when those activities require that person to act in the capacity of a licensed contractor. That is, if the mold-related activity requires a person to act as a "contractor," as defined, in part, by s. 489.105, F.S., 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." In Florida, such activities are limited to contractors licensed by the Construction Industry Licensing Board (the board) of the Department of Business and Professional Regulation (DBPR) under Chapter 489.

Changes to Current Law

This bill creates s. 489.1134, F.S., to be entitled "Mold remediation certification," and provides 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. In other words, if mold remediation is not the main business of that contractor, then they are not subject to the requirements of this subsection. Accordingly, contractors are not permitted to hold themselves out as emphasizing in mold

or mold remediation unless they meet these educational requirements, and a contractor who is in violation of the provisions of this bill are subject to discipline under s. 489.129, F.S.

Though the contractor need not meet the educational requirements of this bill, this bill requires that any other natural person employed by a licensed contractor to work on mold or perform mold remediation must take a mold education course approved by the Construction Industry Licensing Board. However, according to DBPR, this provision relating to employees of contractors performing mold remediation would only apply when a contractor is performing mold remediation that is not incidental to the scope of the contractor's license.

The bill states 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 s. 489.129, F.S.

The bill requires 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.

This bill requires a contractor, or any other natural person who is employed by a licensed contractor as defined by the section, to have the appropriate course work in order to perform mold or mold related activities. The type and number of 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.

This bill defines *mold* to mean "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," and *mold remediation* to mean "the business as a contractor related to mold or mold-contaminated matter."

The bill also regulates mold assessors and remediators. According to DBPR, this is an innovative, non-licensure alternative for regulating mold assessors and mold remediators.

This bill provides definitions for mold assessment, mold assessor, noncontracting mold remediation, and noncontracting mold remediators. Noncontracting mold remediators are persons performing mold remediation work that does not require licensure under Chapter 489.

Depending upon the field in which a person or business wishes to practice, the bill requires a certification in mold assessment or mold remediation. The certification may come from a non-profit organization that focuses upon indoor air quality or industrial hygiene, so long as the certification meets certain requirements. The certification may also come from a community college or university that provides such training or education in mold assessment or mold remediation.

The bill provides exemptions to these requirements if the person performing the assessment or remediation satisfies one of the following criteria: a residential property owner working on his or her own property; an owner, tenant, managing agent, or employee that works on owned or leased property; employee working for and supervised by the certified person; those working on behalf of an insurer; or an employee of a governmental entity or school, who does not engage in mold assessment or remediation. The bill provides an additional mold assessor exemption for individuals in the manufactured housing industry, but not for a concomitant exemption for mold remediators.

The bill provides prohibitions on who may perform mold assessment or remediation. The bill prohibits mold assessors from performing mold remediation or holding an interest in a mold remediation company, and vice versa. It provides criminal and civil penalties for violating the bill's prohibitions.

The bill requires at least \$1,000,000 in liability insurance for those performing mold assessment or remediation.

The bill provides for a statute of limitations for commencing actions and provision for enforcing violations as provided by part II of chapter 501.

C. SECTION DIRECTORY:

Section 1 creates s. 489.1134, F.S., and provides mold remediation certification guidelines for contractors licensed under Chapter 489.

Section 2 creates s. 501.933, F.S., and provides certification guidelines, insurance requirements, and penalty provisions mold assessors.

Section 3 creates s. 501.934, F.S., and provides certification guidelines, insurance requirements, and penalty provisions mold remediators not licensed under Chapter 489.

Section 4 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On April 6, 2005, the Business Regulation Committee adopted a strike-all amendment to HB 117 and reported the bill favorably with a CS. On April 14, 2005, the Insurance Committee adopted two amendments relating to mold assessors and mold remediators. Because the bill as amended no longer requires licensure for contractors, mold assessors, or noncontracting mold remediators, the fiscal impact is expected to be substantially different. However, since neither Committee has received an updated Fiscal 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.

In an email from DBPR, the department did not expect a fiscal impact outside their scope of normal operations.

2. Expenditures:

Department of Business and Profession Regulation expenditures relating to the implementation of these new criteria are unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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. These costs are unknown at this time.

Persons who engage in business as a mold assessor or mold remediators would be required to be certified and carry at least \$1,000,000 in liability insurance. The cost for the certification and liability insurance requirements is unknown.

D. FISCAL COMMENTS:

See comments above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although contractors need not meet the educational requirements of this bill, this bill does require that any other natural person employed by a licensed contractor to work on mold or perform mold remediation must take a mold education course approved by the Construction Industry Licensing Board. However, according to DBPR, this provision relating to employees of contractors performing mold remediation would only apply when a contractor is performing mold remediation that is not incidental to the scope of the contractor's license.

In the amendment to the amendment offered on April 14, 2005, a mold assessor exemption was added for "individuals in the manufactured housing industry who are licensed under chapter 320," but not for mold remediators. It is not known whether this was an intentional omission or an oversight.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 14, 2005, HB 117 CS was amended to add two sections relating to mold assessors and mold remediators. An amendment to the amendment was added to provide an exemption for mold assessors, but not for mold remediators. According to DBPR, this amendment is a non-licensure alternative for regulating mold assessors and mold remediators. The first draft of HB 117 was thought to have a significant civil justice impact because it changed certain presumptions. According to DBPR, the civil justice impact has been reduced significantly. This analysis reflects the current CS of the bill.