

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Commerce and Consumer Services Committee

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BILL: CS/SB 1046

INTRODUCER: Regulated Industries Committee and Senator Bennett

SUBJECT: Mold Assessment and Mold Remediation

DATE: March 7, 2006

REVISED: 3/8/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Earlywine</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/2 amendments</u>
3.	<u></u>	<u></u>	<u>CJ</u>	<u></u>
4.	<u></u>	<u></u>	<u>GA</u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

## Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

### I. Summary:

The committee substitute provides legislative intent language to address the requirements of s. 11.62, F.S.

It provides authority to the Department of Business and Professional Regulation, Construction Industry Licensing Board (board), to regulate individuals and companies who hold themselves out to the public to perform mold assessment or mold remediation for compensation.

It exempts Division I and Division II contractors licensed under ch. 489, F.S., an individual in the manufactured housing industry who is licensed under ch. 320, F.S., or engineers licensed under ch. 471, F.S., and architects and interior designers licensed under part I, ch. 481, F.S., when engaged in mold-related activities incidental to activities within the scope of their respective licenses. It also exempts authorized employees of the federal, state, city and county governments performing mold assessment or mold remediation within the scope of their employment.

The committee substitute requires that the board shall provide, by rule, when and in what manner a licensee may perform both mold assessment and mold remediation on the same contract or project.

It provides for licensure of business organizations practicing mold assessment or mold remediation.

The committee substitute provides for an appropriation of \$294,776 from the Professional Regulation Trust Fund to implement provisions of this act.

The committee substitute creates Part IV of chapter 489, consisting of the following sections of the Florida Statutes: 489.601, 489.602, 489.603, 489.604, 489.605, 489.606, 489.607, 489.608, 489.609, 489.61, 489.611, 489.612, 489.613, 489.614, 489.615, 489.616, 489.617, and 489.618. The bill amends section 489.107 of the Florida Statutes.

## **II. Present Situation:**

### **2005 Regular Session**

During the 2005 Regular Session, SB 590 was introduced to provide for the regulation mold assessors and mold remediators under a new part IV of ch. 489, F.S. It provided for licensing by the Department of Business and Professional Regulation through the Construction Industry Licensing Board. The bill was substantially amended in the General Government Appropriations Committee to provide for certification of mold assessors and mold remediators, for insurance requirements, and for civil penalties under the Florida Deceptive and Unfair Trade Practices Act.<sup>1</sup> The provisions of this bill were adopted as an amendment to HB 315 on the floor of the Senate.

Governor Bush vetoed House Bill 315 which sought to provide public protection against the possibility of fraudulent practices in the unregulated fields of home inspection, mold assessment, and mold remediation.

The Governor stated his concern that the bill would have unintended consequences, including putting some legitimate and responsible employees out of business. Since the bill grandfathered some home inspectors but did not provide for the grandfathering of responsible and experienced mold assessors and remediators, the Governor stated that this will likely put employees and companies that cannot complete the bill's education and training requirements by January 1, 2006 out of business.

The Governor stated that the bill was somewhat ambiguous and lacked clear guidance to the industry in some areas including, a lack of clear educational and examination requirements. While the bill required training, the Governor stated that there were no specifics regarding the kind of curriculum and/or standards necessary for home inspectors, mold assessors, or mold remediators. The Governor further stated that the bill appears to arbitrarily require high school and college degrees while presenting no clear reasons for the requirements.

The Governor stated that there was some question about whether the mold-specific insurance policy required for mold assessors and a general liability insurance policy with a mold insurance pollution rider required for non-contracting mold remediators, both in an amount not less than \$1

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<sup>1</sup> Sections 501.201 – 501.213, F.S.

million, would be available by the required date of October 1, 2005. The Governor stated that there was a further concern that this will have the unintended effect of allowing insurers to deny payments for mold claims under a homeowner policy if work on a home has been performed by a mold assessor or remediator.

The Governor stated that he agreed with the bill's sponsors that additional consumer protection is warranted in these fields. He directed the Secretary of the Department of Business and Professional Regulation to work with the various stakeholders during the interim to develop proposed legislation. The department conducted workshops on mold assessment and remediation and a workshop on home inspections.<sup>2</sup> The workshops culminated in a report issued on February 2, 2006 regarding alternatives to licensure.<sup>3</sup>

### **2004 Regular Session**

The Senate President approved an interim project to review mold regulation during the 2004 interim. The staff report<sup>4</sup> indicated that there has been a heightened awareness of the effects of exposure to mold. The report attributed the heightened awareness, in part, to an increase in litigation over mold related issues, the insurance companies responding by limiting coverage for mold damage, and hundreds of businesses (just in South Florida) sprouting up and touting their services as mold remediators.

According to a report issued by the Centers for Disease Control and Prevention (CDC), molds are ubiquitous in nature and grow almost anywhere indoors and outdoors.<sup>5</sup> The report states that more than 1,000 different kinds of indoor molds have been found in U.S. homes. Mold spores are easily spread because they are small, light-weight and able to survive a long time and under most conditions. Mold growth is stimulated by warm, damp, and humid conditions.

Mold is defined as a typical fungus which consists of a mass of branched, tubular filaments enclosed by a rigid cell wall. The filaments, called hyphae, branch repeatedly into complicated radially-expanding networks called mycelium, which makes up the body of the typical fungus. The mycelium grows by utilizing nutrients from the environment and, upon reaching a certain stage of maturity, forms – either directly or in special fruiting bodies – reproductive cells called spores.<sup>6</sup>

Toxic substances produced from the fungus are called “mycotoxins.” They occur in great numbers and variety and the effects can include hallucination, skin inflammation, severe liver damage, hemorrhages, abortion, convulsions, neurological disturbances, and death in livestock and humans.<sup>7</sup>

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<sup>2</sup> [http://www.myflorida.com/dbpr/os/hot\\_topics/home\\_inspec\\_mold\\_wkshop.shtml](http://www.myflorida.com/dbpr/os/hot_topics/home_inspec_mold_wkshop.shtml) (last visited February 5, 2006).

<sup>3</sup> The Department of Business and Professional Regulation issued a report on February 2, 2006, entitled *Alternatives to Licensure Stakeholder Workshops on Home Inspectors and Mold Assessment and Remediation*.

<sup>4</sup> *Review of Mold Regulation*, Report No. 2004-158, Committee on Regulated Industries, Florida Senate, December 2003.

<sup>5</sup> *State of the Science on Molds and Human Health, Statement of Stephen C. Redd, M.D.*, Chief, Air Pollution and Respiratory Health Branch National Center for Environmental Health, July 18, 2002.

<sup>6</sup> *Encyclopedia Britannica* website < <http://www.britannica.com/eb/article?tocId=57951> (last visited February 2, 2006).

<sup>7</sup> *Encyclopedia Britannica* website <http://www.britannica.com/eb/article?tocId=9054528> (last visited February 2, 2006).

The CDC is currently working with federal, state, local, and tribal governments to investigate and respond to mold-related problems. It has assisted the U.S. Environmental Protection Agency (EPA) Indoor Environments Division in the development of a guide for mold remediation in schools and large buildings and is developing a brief guide to mold for homeowners.

An individual, company, or employee of the United States, state, city, and county government that engages or offers to engage in the business or profession of performing any mold-related activity for compensation is not regulated in the state. However, engineers and persons engaging in the business of pest control under chs. 471 and 482, F.S., who perform mold-related activities in the scope of their licensure, are regulated.

The regulation of construction contracting is governed by part I of ch. 489, F.S., and is administered by the Construction Industry Licensing Board within the Department of Business and Professional Regulation. Contractors are divided into Division I and II categories. Division I contractors include general, building, and residential contractors. Division II contractors are those contractors typically referred to as “subcontractors” that include professions such as plumbing, mechanical, and air-conditioning contracting.

Licensed engineers practicing engineering is defined, in part, by s. 471.005, F.S., to mean a person engaged in any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services, insofar as they involve safeguarding life, health, or property.

The United States Environmental Protection Agency has prepared information to assist individuals in determining when the mold situation may be handled in-house by a person responsible for building maintenance or when an outside contractor should be contacted.<sup>8</sup>

### **Sunrise Analysis**

Section 11.62, F.S., requires the Legislature to consider the following factors when determining whether to regulate a profession.

(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;

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<sup>8</sup> *Mold Remediation in Schools and Commercial Buildings*, U. S. Environmental Protection Agency, Office of Air and Radiation, Indoor Environments Division, EPA 402-K-01-001, March 2001, <http://www.cdc.gov/mold/default.htm> (last visited, February 2, 2006).

(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.

### **III. Effect of Proposed Changes:**

The committee substitute provides legislative intent language to address the requirements of s. 11.62, F.S., which requires the Legislature to consider the following factors when determining whether to regulate a profession:

- 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;
- 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;
- 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;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The committee substitute creates part IV of ch. 489, F.S., entitled “Mold Assessment and Mold Remediation.” It provides that the Legislature finds it necessary for the public health, safety, and welfare to regulate individuals and companies that hold themselves out to the public as qualified to perform mold-related activities in residential, institutional, governmental, and commercial buildings.

### **Exemptions**

Section 489.603, F.S., exempts from the provisions of this act Division I and Division II contractors licensed under ch. 489, F.S., an individual in the manufactured housing industry who is licensed under ch. 320, F.S., engineers licensed under ch. 471, F.S., and architects and interior designers licensed under part I, ch. 481, F.S., when engaged in mold-related activities incidental to activities within the scope of his or her license. It also exempts authorized employees of the federal, state, city and county government, or other political subdivisions, public or private schools, or private business organizations performing mold assessment or mold remediation within the scope of their employment and full-time employees engaged in routine maintenance

of public and private buildings, structures, and facilities as long as the employee does not hold out for hire or otherwise engage in mold assessment or mold remediation.

While not specifically stated, those employees who encounter mold in the normal course of their duties, i.e. insurance adjustors, would not need to be licensed since their employment does not involve mold assessment nor mold remediation as defined in this act.

## Definitions

Section 489.604, F.S., defines the following terms relating to mold assessment and mold remediation:

- **Board** means the Construction Industry Licensing Board.
- **Business organization** means any partnership, corporation, business trust, joint venture, or other business organization.
- **Department** means the Department of Business and Professional Regulation.
- **Mold** means an organism of the class fungi that causes disintegration of organic matter and produces spores, and includes any spores, hyphae, and secondary metabolites produced by mold.
- **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, development of a remediation protocol and a post abatement evaluation of a property;
  - The collection or analysis of a mold sample; and
  - The evaluation of a property for moisture damage or moisture incursion conditions likely to result in fungal growth. A pre-purchase evaluation of a property that includes an assessment of moisture incursion and fungal growth.
- **Mold assessor** means any person or business organization that performs a mold assessment.
- **Mold remediation** means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at that location.
- **Mold remediator** means any person or business organization that performs mold remediation. A mold remediator may not perform any work that requires a license under any other part of ch. 489, F.S., unless the mold remediator is also licensed under that part.
- **Primary qualifying agent** means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility to supervise, direct, manage, and control the mold assessment or mold remediation activities of the business organization with which he or she is connected; who has the responsibility to supervise, direct, manage, and control mold assessment or mold remediation activities; and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.
- **Secondary qualifying agent** means a person who possesses the requisite skill, knowledge, and experience, and has the responsibility to supervise, direct, manage, and

control mold assessment and mold remediation activities, and whose technical and personal qualifications have been determined by investigation and examination as provided in this part, as attested by the department.

### **Fees**

Section 489.605, F.S., provides the board shall, by rule, establish reasonable fees to be paid for applications, examinations, licensing and renewal, recordmaking, and recordkeeping. Fees for application, initial licensure, license renewal, for mold assessors or mold remediators may not exceed \$500 per applicant. The board may, by rule, establish late renewal penalty fees, in an amount not to exceed the initial licensure fee.

### **Examination**

Section 489.606, F.S., provides the examination requirements for persons desiring to be licensed as a mold assessor or mold remediator with the department. The applicant may take the licensure examination if they are of good moral character, a graduate of an approved course of study in mold assessment or mold remediation, and has a specific experience record as prescribed by rule.

### **Licensure**

Section 489.607, F.S., provides that the department shall license any applicant who the board certifies is qualified to practice mold assessment or mold remediation and who:

- Pays the initial licensing fee;
- Submits with the application for licensure as a mold assessor or a mold remediator evidence that he or she has successfully completed the board-approved courses as prescribed by rule;
- Provides evidence of financial stability; and
- Passes a department-approved examination of qualifications and knowledge relating to mold assessment and mold remediation; or
- In lieu of passing a department-approved examination, shows proof that he or she has been certified by an organization that requires the same testing and examination as the department requires.

### **Licensure of business organizations; qualifying agents**

Section 489.608, F.S., provides that if an individual proposes to engage in mold remediation or mold assessment in that individual's own name, the license may be issued only to that individual. If an applicant proposes to engage in mold remediation or mold assessment as a business organization in any name other than the applicant's legal name, the business organization must apply for licensure through a qualifying agent or the individual applicant must apply for licensure under the fictitious name. It also provides for application requirements for financially responsible officers and secondary qualifying agents for business organizations.

### **Responsibilities**

Section 489.609, F.S., provides for the responsibilities of qualifying agents and financially responsible officers for business organizations. All 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.

Upon approval by the board, a business organization may designate a financially responsible officer for purposes of licensure. 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.

### **Continuing education**

Section 489.61, F.S., provides that a licensee must annually complete 15 hours of continuing education courses as prescribed by board rule. The courses must be offered and provided by mold training providers licensed under this act and must be approved by the board. The licensee must submit proof of compliance with the continuing education requirements along with their application for license renewal.

### **Approval of mold assessor and mold remediator training courses and providers**

Section 489.611, F.S., provides that the board:

- Shall approve training courses and the providers of such courses.
- Shall approve training courses and the providers of such courses who offer training for persons who are exempt from licensure.
- Shall, by rule, prescribe criteria for approving training courses and course providers and may, by rule, modify the required training.
- May enter into agreements with other states for the reciprocal approval of training courses or the providers of training courses.
- Shall, by rule, establish reasonable fees in an amount not to exceed the cost of evaluation, approval, and recordmaking and recordkeeping of training courses and providers of training courses.
- May impose against a provider of training courses any penalty that it may impose against a licensee under this part or s. 455.227, F.S., may decline to approve courses, and may withdraw approval of courses proposed by a provider who has, or whose agent has, been convicted of, pled guilty or nolo contendere to, or entered into a stipulation or consent agreement relating to, without regard to adjudication, any crime or administrative violation in any jurisdiction which involves fraud, deceit, or false or fraudulent representations made in the course of seeking approval of or providing training courses.

### **Renewal of license**

Section 489.612, F.S., provides that the department shall renew a license upon receipt of the renewal application and fee, upon proof of compliance with the continuing education requirements of s. 489.61, F.S., and, if a demonstration of competency is required by law or rule, upon certification by the board that the licensee has satisfactorily demonstrated his or her



competence in mold assessment and mold remediation. The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

### **Reactivation**

Section 489.613, F.S., provides that the board shall prescribe, by rule, continuing education requirements for reactivating a license which may not exceed 15 classroom hours for each year the license was inactive and shall adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses and shall prescribe a fee not to exceed \$50 for reactivation or renewal.

### **Disciplinary proceedings**

Section 489.614(1), F.S., provides that 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 the following acts:

- Obtaining a license or certificate of authority by fraud or misrepresentation.
- Being convicted or found guilty of, or entering a plea of nolo contendere regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of mold assessment or mold remediation or the ability to practice mold assessment or mold remediation.
- Violating any provision of ch. 455, F.S., the general provisions dealing with business and professional regulation.
- Performing any act which assists a person or entity in engaging in the prohibited unlicensed practice of mold assessment or mold remediation, if the licensee knows or has reasonable grounds to know that the person or entity was unlicensed.
- Knowingly combining or conspiring with an unlicensed person by allowing his or her license, or certificate of authority to be used by the unlicensed person with intent to evade the provision of this part. When a licensee allows his or her license to be used by one or more business organizations without having any active participation in the operations, management, or control of such business organizations, such act constitutes prima facie evidence of intent to evade the provisions of this part.
- Acting in the capacity of a mold assessor or mold remediator under any license issued under this chapter except in the name of the licensee as set forth on the issued license.
- Committing mismanagement or misconduct in the practice of mold assessment or mold remediation that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:
  - Valid liens have been recorded against the property of a mold assessor's or mold remediator's customer for supplies or services ordered by the mold assessor or mold remediator for the customer's job; the mold assessor has received funds from the customer to pay for the supplies or services; and the mold assessor or

- mold remediator has not had the liens removed from the property, by payment or by bond, within 75 days after the date of such liens;
- The mold assessor or mold remediator has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the mold assessor or mold remediator as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or
  - The mold assessor's or mold remediator's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the mold assessor or mold remediator, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the mold assessor or mold remediator and the customer.
- Being disciplined by any municipality or county for an act or violation of this part.
  - Failing in any material respect to comply with the provisions of this part, or violating a rule or lawful order of the department.
  - Abandoning a mold assessment or mold remediation project in which the mold assessor or mold remediator is engaged or under contract as a mold assessor or mold remediator. A project may be presumed abandoned after 20 days if the mold assessor or mold remediator terminates the project without just cause and without proper notification to the owner, including the reason for termination; if the mold assessor or mold remediator fails to reasonably secure the project to safeguard the public while work is stopped; or if the mold assessor or mold remediator fails to perform work without just cause for 20 days.
  - Signing a statement with respect to a project or contract falsely indicating that the work is bonded; falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or mold assessor or mold remediator; or falsely indicating that the insurance coverage required under this act is or has been provided.
  - Committing fraud or deceit in the practice of mold assessment or mold remediation.
  - Committing incompetency or misconduct in the practice of mold assessment or mold remediation.
  - Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property in the practice of mold assessment or mold remediation.
  - Failing to satisfy, within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession.

Section 489.614(2), F.S., provides that if a mold assessor or mold remediator disciplined under s. 489.614(1), F.S., is a qualifying agent for a business the board may impose an additional administrative fine not to exceed \$5,000 if the violation was performed in connection with any mold remediation, or mold remediation-related activities, or mold assessment or mold assessment-related activities.

Section 489.614(3), F.S., provides that the board may, by rule, specify the acts or omissions that constitute violations of the section.

Section 489.614(4), F.S., provides that in recommending penalties in any proposed recommended final order, the department shall follow the penalty guidelines established by the board by rule. The department shall advise the administrative law judge of the appropriate penalty, including mitigating and aggravating circumstances, and the specific rule citation.

Section 489.614(5), F.S., provides that the board may not reinstate the license or certificate of authority of, or cause a license or certificate of authority to be issued to, a person or business organization that the board has determined is unqualified or whose license or certificate of authority the board has suspended, until it is satisfied that the person or business organization has complied with all the terms and conditions set forth in the final order and is capable of competently engaging in the business of mold assessment or mold remediation.

Section 489.614(6), F.S., provides that the board may assess interest or penalties on all fines imposed under this chapter against any person or business organization which has not paid the imposed fine by the due date established by rule or final order. The provisions of ch. 120, F.S., do not apply to such assessment. Interest rates to be imposed shall be established by rule and shall not be usurious.

Section 489.614(7), F.S., provides that the board shall not issue or renew a license, or certificate of authority to any person or business organization that has been assessed a fine, interest, or costs associated with investigation and prosecution, or has been ordered to pay restitution, until such fine, interest, or costs associated with the investigation and prosecution or restitution are paid in full or until all terms and conditions of the final order have been satisfied.

Section 489.614(8), F.S., provides that any person licensed pursuant to this part who has had his or her license revoked shall not be eligible to be a partner, officer, director, or trustee of a business organization defined by this section or be employed in a managerial or supervisory capacity for a 5-year period. Such person shall also be ineligible to reapply for certification or registration under this part for a period of 5 years after the effective date of the revocation.

Section 489.614(9), F.S., provides that if a business organization or any of its partners, officers, directors, trustees, or members is or has previously been fined for violating s. 489.614(2), F.S., the board may, on that basis alone, revoke, suspend, place on probation, or deny issuance of a license to a qualifying agent or financially responsible officer of that business organization.

Section 489.614(10), F.S., provides that when an investigation of a mold assessor or mold remediator is undertaken, the department shall promptly furnish to the mold assessor or mold remediator or the mold assessor's or mold remediator's attorney a copy of the complaint or document that resulted in the initiation of the investigation. The department makes the complaint and supporting documents available to the mold assessor or mold remediator. The complaint or supporting documents contains information regarding the specific facts that serve as the basis for the complaint. The mold assessor or mold remediator may submit a written response to the information contained in such complaint or document within 20 days after service to the mold assessor or mold remediator of the complaint or document. The mold assessor's or mold

remediator's written response is considered by the probable cause panel. The right to respond does not prohibit the issuance of a summary emergency order, if necessary, to protect the public. However, if the secretary, or the secretary's designee, and the chair of the board or the chair of the probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to a mold assessor or mold remediator if the act under investigation is a criminal offense.

### **Prohibitions; penalties**

Section 489.615, F.S., provides that 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 in ss. 489.608 and 489.609, F.S.; 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.

The section provides that any unlicensed person who violates any of the provisions noted above:

- Commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.
- After having been previously found guilty of such violation, commits a felony of the third degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.
- During the existence of a state of emergency declared by executive order of the Governor, commits a felony of the third degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

The section also provides that a licensed mold assessor or mold remediator may not:

- Enter into an agreement, oral or written, whereby his or her license number is used, or to be used, by a person who is not licensed as provided for in this chapter, or used, or to be used, by a business organization that is not duly qualified as provided for in this chapter to engage in the business, or act in the capacity, of a mold assessor or mold remediator.
- Knowingly allow his or her license number to be used by a person who is not licensed as provided for in this chapter, or used by a business organization that is not qualified as

provided for in this chapter to engage in the business, or act in the capacity of, a mold assessor or mold remediator.

### **Multiple services**

Section 489.616, F.S., provides that the board shall, by rule, provide when and in what manner a licensee may perform both mold assessment and mold remediation on the same contract or project.

### **Presumption**

Section 489.618, F.S., provides that in a civil action alleging mold or fungal injuries to persons or damages to property against a licensed mold assessor or remediator, there is a rebuttable presumption that any work performed in accordance with all applicable building codes and remediation standards adopted by the board is not negligent. This presumption applies to any person or entity that, in return for compensation, obtains and relies on the opinion of a person or entity duly licensed under and in compliance with the requirements of this part.

There is also a rebuttable presumption that any work not performed in accordance with all applicable building codes and all assessment and remediation standards adopted by the board is negligent per se.

The presumptions provided do not apply to actions alleging gross negligence. Negligence per se “is established as a matter of law, so that breach of the duty is not a jury question. Negligence per se usually arises from a statutory violation.”<sup>9</sup> A presumption is a legal inference or assumption that a fact exists. A rebuttable presumption is an inference from certain facts that establish a prima facie case, but it may be overcome by the introduction of contrary evidence.<sup>10</sup> A prima facie case is one where enough evidence is introduced to allow the fact-finder to rule in a party’s favor.<sup>11</sup>

### **Severability**

This section provides that if any provision of the act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

### **Construction Industry Licensing Board**

Section 489.107, F.S., is amended to add an additional member to the board who is primarily engaged in business as a mold assessor or mold remediator, bringing the total to 19 members.

### **Appropriation**

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<sup>9</sup> Black’s Law Dictionary (8<sup>th</sup> Edition, 2004).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

This section provides an appropriation of \$294,776 from the Professional Regulation Trust Fund and three positions to the department for the purpose of conducting licensing and regulatory activities associated with mold assessment and remediation.

**Effective date**

The bill provides that the act shall take effect October 1, 2006.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

Application fees, initial licensure fees, licensure renewal fees and licensure reactivation fees cannot exceed \$500. The board may, by rule, establish late renewal penalty fees, in an amount not to exceed the initial licensure fee.

B. Private Sector Impact:

Persons who engage in business as a contractor with a focus on mold or mold remediation that is not incidental to the scope of licensure will incur the costs of the educational requirements as determined by the board. These costs are unknown at this time.

To the extent that the regulation of this profession reduces the availability of mold assessment and remediation services, the cost of providing such services to consumers may increase.

However, the regulation of this profession may save consumers the costs associated with inadequate or poor service related to mold assessment and remediation.

C. Government Sector Impact:

There is an appropriation of \$294,776 from the Professional Regulation Trust Fund.

According to the department, although there is some difficulty in estimating the exact number of persons or business organizations that will want to be licensed under the bill, there will be a fiscal impact on the department in implementing a new licensing framework for individuals and businesses that perform mold related activities. The department estimates that the bill will require an operating appropriation of \$230,185 and non-operating of \$65,695, for a total of \$295,880 and the revenue generated from fees will provide only \$215,000 in available cash-flow. *The \$215,000 estimate is based on an estimated 215 number of licensees and a licensure fee at \$500.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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## **VIII. Summary of Amendments:**

**Barcode 160080 by the Commerce and Consumer Services Committee:**

The amendment deletes the requirement that a pre-purchase evaluation of a property must include an assessment of moisture incursion and fungal growth.

**Barcode 601440 by the Commerce and Consumer Services Committee:**

The amendment prohibits a licensee from being a mold assessor and a remediator on the same project.

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