



## 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 \$1m in liability insurance. According to DBPR, 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 CILB of the DBPR under Chapter 489.

##### Effect of proposed changes

This bill creates s. 489.1134, F.S., to provide 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 CILB. However, according to the 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 CILB to ensure that they have been provided equitably across the state. Further, the CILB 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 CILB.

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 creates s. 501.933, F.S., and s. 501.934, F.S., relating to mold assessors and 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 exemption for individuals in the manufactured housing industry.

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 \$1m 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 a statement of intent.

Section 5 provides an effective date of July 1, 2006.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Committee has not received an updated fiscal statement from the DBPR and as a result no fiscal information regarding the impact of this bill is available at this time. However, it could be anticipated that the fiscal impact on the DBPR would not be outside their scope of normal operations.

2. Expenditures:

Expenditures relating to the implementation of these new criteria are unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

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 specified by the CILB. 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 \$1m 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:

The bill specifies that a contractor shall take the courses or the number of course hours determined by the CILB.

The bill specifies that a person who is employed by a contractor shall take a course approved by the CILB.

C. DRAFTING ISSUES OR OTHER COMMENTS:

During the 2005 Regular Session, HB 315 was adopted to provide for certification of mold assessors and mold remediators, provide for insurance requirements, and provide for civil penalties under the Florida Deceptive and Unfair Trade Practices Act. Governor Bush vetoed House Bill 315

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 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 DBPR's Secretary 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. The workshops culminated in a report issued on February 2, 2006 regarding alternatives to licensure.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**