

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 161 CS
SPONSOR(S): Domino and others
TIED BILLS:

Building Assessment and Remediation
IDEN./SIM. BILLS: SB 1046

REFERENCE	ACTION	ANALYST	STAFF
DIRECTOR			
1) <u>Business Regulation Committee</u>	<u>15 Y, 1 N, w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Insurance Committee</u>	<u>19 Y, 0 N, w/CS</u>	<u>Cooper</u>	<u>Cooper</u>
3) <u>State Administration Appropriations Committee</u>	<u>9 Y, 0 N</u>	<u>Rayman</u>	<u>Belcher</u>
4) <u>Commerce Council</u>	<u>10 Y, 0 N, w/CS</u>	<u>Livingston</u>	<u>Randle</u>
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, there are numerous companies in Florida that hold themselves out to be **mold assessors or mold remediators** or conduct mold related services. There are no licensure or regulatory requirements to be a mold assessor or mold remediator.

This bill provides education guidelines and certification for those who engage in business as a mold assessor or mold remediator. By January 1, 2007, the bill requires an assessor "to maintain general liability and errors and omissions insurance coverage of not less than \$250,000." It requires a remediator "to maintain a general liability insurance policy of not less than \$500,000 with specific coverage for mold related claims." The bill does not require disclosure to the customer of compliance with the statutorily specified credentials to become a mold assessor or mold remediator. The bill requires that a contract to perform mold assessment or mold remediation must be signed or otherwise authenticated by the parties.

The bill provides various exemptions from the guidelines and operating requirements. Civil and criminal penalties are provided for violations. The bill has a "grandfather clause" to allow current operators to continue until July 1, 2008, without complying with the guidelines and operating requirements.

Currently, **home inspectors** are not regulated. "Home inspection" means a limited visual examination of systems and components for the purpose of providing a written professional opinion of the condition of a home.

The bill states that a person may not work as a home inspector unless that person "has successfully completed a course of study of not less than 80 hours which requires a passing score on a psychometrically valid examination in home inspections." The course of study "must be accredited by a nationally recognized third-party independent accrediting entity."

The bill requires written disclosures be provided to customers. The statements must identify that the home inspector meets education and examination requirements and maintains commercial general liability insurance [\$300,000], as well as, the scope of the home inspection and the approximate number of inspections conducted for a fee or the number of years of experience as a home inspector.

The bill will not have a significant fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - The bill creates statutory certification and operational requirements for those who engage in the businesses of mold assessment, mold remediation, or home inspection.

Ensure lower taxes - Civil and criminal penalties are provided for violations of the guidelines. Persons who engage in business with a focus on mold assessment or mold remediation or operate as a home inspector will incur the costs of education, insurance, certification, and operation requirements, as specified by the bill.

B. EFFECT OF PROPOSED CHANGES:

Background—Mold

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.

Currently, there are companies in Florida that hold themselves out to be mold assessors or mold remediators or conduct mold related services. However, there are no state guidelines or educational requirements to be a mold assessor or mold remediator. However, certain mold-related activities are regulated when those activities require that person to act in the capacity of a licensed contractor. In Florida, contractors are licensed by the Construction Industry Licensing Board (CILB) of the Department of Business and Professional Regulation (DBPR) under chapter 489, F.S.

Effect of Proposed Changes

This bill creates part XV of chapter 468, F.S., to provide guidelines for those who engage in business as a mold assessor or mold remediator.

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.”

The bill defines “mold assessment” as the collection or analysis of a mold sample; the development of a mold-management plan or mold-remediation protocol; or an 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.

“Mold remediation” is defined as the removal, cleaning, sanitizing, demolition, or other treatment, of mold or mold-contaminated matter.

This bill provides education guidelines and certification for those who engage in business as a mold assessor or mold remediator. A person operating as a mold assessor or mold remediator must have evidence of specified credentials or conduct business under the supervision of a person who has evidence of at least a 2-year degree in microbiology, engineering, architecture, industrial hygiene, or a related field of science from an accredited institution, and

- evidence of a minimum of 1 year of experience in conducting microbial sampling or investigations [for a mold remediator the experience must be related to mold remediation], **or**
- evidence of a high school diploma, a GED, or the equivalent

with a minimum of 2 years of documented field experience in conducting microbial sampling or investigations [for a mold remediator the experience must be related to mold remediation].

The supervisor, or operator, must also show evidence of certification. The certification may come from “a not-for-profit industry association, society or [other] certification body or by a college or university that offers mold assessment training or education.”

The bill states that “qualified certification programs” shall be accredited “by a nationally recognized independent accrediting entity that sets programs and standards that comply with American Society for Testing and Materials Standard E1929-98, Standard Practice for Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria, or the equivalent.”

The bill requires an assessor to “maintain general liability and errors and emissions insurance of not less than \$250,000.” It requires a remediator to “maintain [a] general liability insurance policy of not less than \$500,000 with specific coverage for mold related claims.”

The bill provides various exemptions from the guidelines and operating requirements. 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; certain licensed professionals, such as contractors or engineers; those working on behalf of an insurer; individuals in the manufactured housing industry; or an employee of a governmental entity or school, who does not engage in mold assessment or remediation.

A disclosure to the customer of compliance with the statutorily specified credentials to become an assessor or remediator is not required by the bill. The bill does require a contract to perform mold assessment or mold remediation to be signed or otherwise authenticated by the parties and authorizes electronic contracts as well as hard copies.

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 violations

of the guidelines. The bill has a “grandfather clause” to allow current operators to continue until July 1, 2008, when compliance with the guidelines is required.

Background—Home Inspections

Currently, home inspectors are not regulated. Although home inspectors are not regulated by any statute or agency, several professions dealing with construction are regulated. Regulated professions include construction contractors, architects, engineers, building code administrators, plans examiners, building code inspectors, and appraisers, among others.

A building inspection is often confused with a home inspection. A building inspection is a legally required act, performed by a local governmental entity for the purpose of determining whether a structure complies with the appropriate building code at the time of construction. By contrast, a home inspection is a discretionary endeavor, often contracted for after construction is complete. A home inspection is typically contracted for by a potential purchaser of a home, although home inspections are sometimes contracted for by the current owner of a home to determine its condition, by a homeowner about to sell a home who wishes to avoid potential problems, or by a purchaser of a new home who wants to ensure that the house was constructed properly. A home inspection is performed by private industry, rather than by local government.

Effect of Proposed Changes

The bill creates part XVI of chapter 468, F.S. The bill defines various terms, including:

- “Home” means any residential real property, or manufactured or modular home, that is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit. The term does not include the common areas of condominiums or cooperatives.
- “Home inspector” means any person who provides or offers to provide a home inspection for a fee or other compensation.
- “Home inspection” means a limited visual examination of one or more of the readily accessible installed systems and components of a home, including the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

The bill states that “a person may not work as a home inspector unless that person has successfully completed a course of study of not less than 80 hours and passes a psychometrically valid examination in home inspections.” The course of study “must be accredited by a nationally recognized third-party independent accrediting entity.”

The bill requires written disclosures to be provided to customers prior to contracting for or commencing a home inspection. The statements must identify that: the home inspector meets the education and examination requirements of the bill; the home inspector maintains the commercial general liability insurance policy required by the bill; the scope or parameters of the home inspection; and identify the approximate number of home inspections the home inspector has performed for a fee or the number of years of experience as a home inspector.

A business entity may not provide home inspection services or use the title of home inspector(s) unless each of the home inspectors employed by the business satisfies the requirements of the bill.

The bill specifies numerous exemptions from the requirements being imposed. These include,

1. A construction contractor licensed under chapter 489;
2. An architect licensed under chapter 481;
3. An engineer licensed under chapter 471;
4. A building code administrator, plans examiner, or building code inspector licensed under part XII of chapter 468;
5. A certified real estate appraiser, licensed real estate appraiser, or registered real estate appraiser licensed under part II of chapter 475;
6. An inspector whose report is being provided to, and is solely for the benefit of, the Federal Housing Administration or the Veterans Administration;
7. An inspector conducting inspections for wood-destroying organisms on behalf of a licensee under chapter 482;
8. A fire safety inspector certified under s. 633.081;
9. An insurance adjuster licensed under part VI of chapter 626;
10. An officer appointed by the court;
11. A master septic tank contractor licensed under part III of chapter 489;
12. A certified energy auditor performing an energy audit of any home or building conducted under chapter 366 or rules adopted by the Public Service Commission; and
13. Individuals in the manufactured housing industry.

The bill further specifies that a home inspector must maintain a commercial general liability insurance policy in an amount of not less than \$300,000. The bill allows a home inspector to provide estimates related to the cost of repair of an inspected property.

The bill prohibits various actions by a home inspector, including: any repairs to a home on which the inspector or the inspector's company has prepared a home inspection report; inspect for a fee any property in which the inspector or the inspector's company has any financial interest; pay for the referral of any business to the inspector or the inspection company; and make an omission or prepare a report in which the inspection or the fee is contingent upon either the conclusions in the report, pre-established findings, or the close of escrow.

It provides criminal and civil penalties for violations. The bill has a "grandfather clause" to allow current home inspectors to continue to operate until January 1, 2008, if the inspector:

- has successfully completed high school or its equivalent or has been in the business of home inspection services for at least 5 years;
- has been engaged in the practice of home inspection for compensation for at least 3 years prior to January 1, 2007; and
- has performed not fewer than 250 home inspections for compensation.

The bill specifies that compliance with the new statutory guidelines is required as of January 1, 2008.

The effective date of the bill, except as otherwise provided, is July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Creates part XV of chapter 468, F.S., and provides statutory requirements to operate as a mold assessor or mold remediator.

Section 2. Creates part XVI of chapter 468, F.S., and provides statutory requirements to operate as a home inspector.

Section 3. Provides an effective date of July 1, 2006, although some provisions of the bill have a different effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None anticipated.

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 with a focus on mold assessment or mold remediation or operate as a home inspector will incur the costs of education, certification, insurance, and operation requirements, as specified by the bill. These costs are unknown at this time.

D. FISCAL COMMENTS:

It is not anticipated that the bill would have a significant fiscal impact on state or local governments.

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:

During the 2005 Regular Session, HB 315 was adopted to provide for certification of mold assessors and mold remediators, as well as, home inspectors. It also provided for statutory operational requirements, for insurance requirements, and authorized civil penalties under the Florida Deceptive and Unfair Trade Practices Act. Governor Bush vetoed HB 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 also 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 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.

Another question raised by the Governor was 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 could 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 mediator.

Finally, the Governor indicated 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. The workshops culminated in a report issued on February 2, 2006, which highlighted the workshop discussions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2006, the Business Regulation Committee adopted a strike all amendment which modified the bill in the following manner and reported the bill favorably with committee substitute.

Includes home inspectors in the bill with similar credential requirements as the mold provisions;

Requires successful completion of a course of study of not less than 80 hours and passage of a psychometrically valid examination in home inspections; requires disclosures of credentials as a home inspector to the customer.

Provides for a breach of contract penalty rather than an Unfair and Deceptive Practice Act violation for mold operators;

Removes provisions relating to construction contractors conducting mold assessment and noncontracting mold remediators.

Reduces insurance coverage for mold assessors from \$1 million to \$250,000 and requires mediator coverage of \$500,000.

At its April 5, 2006 meeting, the House Insurance Committee adopted several amendments to the bill. The major changes in the amendments include:

- Separating the education requirements for mold assessors from the requirements for mold remediators and specifying different requirements for each profession;
- Requiring mold assessors and remediators to purchase the required liability and errors and omissions insurance by January 1, 2007;
- Authorizing electronic and hard copies of contracts from mold assessors and remediators; and
- Changing the effective date from January 1, 2008, to July 1, 2006, except as otherwise provided in the bill.

This analysis has been updated to reflect the changes made by the amendments adopted by the Insurance Committee.

On April 20, 2006, the Commerce Council adopted six amendments which modified the bill in the following manner and reported the bill favorably with committee substitute.

Amendment 1 by Rep. Domino[assessment] and **Amendment 2** by Rep. Domino [remediation] are designed to clarify that a maintenance company acting as a sub or subsub can conduct routine maintenance on commercial property and not be considered in the business of mold assessment or mold remediation.

Amendment 3 by Rep. Domino is technical to include a reference to mold remediation where it was inadvertently left out.

Amendment 4 by Rep. Domino removes a reference to “licensee” and uses the correct term of a “mold assessor.”

Amendment 5 by Rep. Attkisson [remediation] and **amendment 6** [assessment] adds a two year degree in “safety” to the list of college degrees that may be used to meet practice requirements. (the other two year degrees include: microbiology, engineering, architecture, industrial hygiene; any other related field of science).