

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1399 Regulation of Building Inspection Professionals
SPONSOR(S): Domino and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2234

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------|-------------------|------------------|
| 1) <u>Committee on Business Regulation</u> | <u>9 Y, 0 N</u> | <u>Livingston</u> | <u>Liepshutz</u> |
| 2) <u>Jobs & Entrepreneurship Council</u> | <u></u> | <u>Livingston</u> | <u>Thorn</u> |
| 3) <u>Policy & Budget Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

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

The bill creates regulation of home inspectors and provides for the creation of a regulatory program to be located in the Department of Business and Professional Regulation (DBPR). Part XV of chapter 468, F.S., is created. The bill creates a regulatory scheme, provides definitions, scope of practice, employment guidelines, continuing education, accountability, rules, licensure, fees, and penalties.

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 state licensure or regulatory requirements to be a mold assessor or mold remediator.

The bill creates regulation of mold assessors or mold remediators and provides for the creation of a regulatory program to be located in the DBPR. Part XVI of chapter 468, F.S., is created. The bill creates a regulatory scheme, provides definitions, scope of practice, employment guidelines, continuing education, accountability, rules, licensure, fees, and penalties.

Wind mitigation assessors are not currently regulated by the state of Florida. The bill creates regulation of wind assessors and provides for the creation of a regulatory program to be located in the DBPR. Part XVII of chapter 468, F.S., is created. The bill creates a regulatory scheme, provides definitions, scope of practice, employment guidelines, accountability, rules, licensure, and penalties.

Section 11.62, F.S., the "**Sunrise Act**," establishes criteria for evaluating proposals to create the expansion of government regulation. The Act states that it is the intent of the Legislature that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; and no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation.

According to the Department of Business and Professional Regulation, the proposed legislation will generate revenues to the department of just over \$1 million and expenditures of approximately \$982,582 in Fiscal Year 2007-08. The projected annual expenditures of \$730,132, including 8.5 full-time equivalent (FTE) positions, will only be off-set by revenues every other year, as the legislation proposes biennial renewals. This creates a negative fiscal impact to the department. This analysis does not include revenues related to wind mitigation.

See III. D. of this analysis: STATEMENT OF THE SPONSOR

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 a new state regulatory program within the DBPR to license and regulate individuals and businesses as home inspectors, mold assessors, mold remediators, and wind mitigation assessors.

Ensure lower taxes – The bill creates a fee structure to fund the new regulatory programs. Civil and criminal penalties are provided for violations of the provisions of the bill by practitioners.

B. EFFECT OF PROPOSED CHANGES:

Sunrise Act - s. 11.62, F.S.

Section 11.62, F.S., the “Sunrise Act,” specifies that it is the intent of the Legislature that:

- No profession or occupation is subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and
- No profession or occupation is regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, s.11.62, F.S., requires the Legislature to consider several statutorily specified criteria.

Background - home inspections

Currently, home inspectors are not regulated. Although home inspectors are not regulated by statute, several professions dealing with construction are regulated. Regulated professions include construction contractors, architects, engineers, building code administrators, plans examiners, building code inspectors, 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 through the permitting process for the purpose of determining whether a structure complies with the appropriate building code standards. By contrast, a home inspection is a discretionary endeavor. A home inspection is typically conducted for a potential purchaser of a home, although home inspections are sometimes conducted for the current owner of a home to issue an opinion as to its condition. A home inspection is performed by private individuals rather than by local government inspectors.

Effect of proposed changes

The bill creates part XV of chapter 468, F.S. The bill defines various terms.

“Home” is defined to mean a residential real property, or manufactured or modular home, that is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit.

“Home inspector” is defined to mean a person who provides a home inspection for compensation.

“Home inspection” is defined to mean a limited visual examination of 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 an opinion of the condition of the home.

The bill requires licensure of a person who conducts home inspections. An applicant must be of good moral character, received a high school diploma [or equivalent], completed 120 hours of study, and passed a DBPR examination.

The bill provides for license renewal, continuing education requirements, inactive license status, and certification of corporations and partnerships and specifies exemptions from licensure requirements.

The bill requires written disclosures to be provided to customers prior to a home inspection. The statements must identify that the home inspector maintains a liability insurance policy, the scope of the home inspection, and identify 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 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 to address the opinions of the home inspector.

The bill prohibits various actions by a home inspector, including making repairs to a home on which the inspector or the inspector's company has prepared a home inspection report, inspecting property in which the inspector or the inspector's company has any financial interest, omitting information or preparing a report in which the inspection or the fee is contingent upon either the conclusions in the report or pre-established findings, among others.

The bill provides criminal, civil, and administrative penalties for violations by the practitioner.

The bill has a “grandfather clause” to allow current home inspectors to continue to operate until January 1, 2009 if the inspector has a high school diploma or equivalent or has been in the business of home inspection services for at least 3 years, is of good moral character, and has not committed acts that would be prohibited had the person been licensed.

Background - mold

Molds can be found anywhere indoors and outdoors and 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, or 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.

There have been concerns about 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. The state does not license or regulate individuals who conduct mold assessment or mold remediation.

Effect of proposed changes

The bill creates part XVI of chapter 468, F.S. to provide licensure and regulation of those persons who conduct mold assessment, as defined to mean a process that includes the sampling and evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of mold growth.

The bill creates a program for licensure and regulation of persons who conduct “mold remediation” which is defined as the removal, cleaning, sanitizing, demolition, or other treatment, of mold or mold-contaminated matter.

An applicant for licensure as a mold assessor must pass a DBPR licensure examination, be of good moral character, and satisfy **one** of the following requirements:

- at least a 2-year degree in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of 1 year of field experience in conducting microbial sampling or investigations; **or**
- a high school diploma or the equivalent with a minimum of 4 years of field experience in conducting microbial sampling or investigations.

The bill also requires licensure of an applicant who qualifies to conduct mold remediation. An applicant must pass a DBPR licensure examination, be of good moral character, and satisfy **one** of the following requirements to be a mold remediator:

- at least a 2-year degree in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of 1 year of field experience in a field related to mold remediation; **or**
- a high school diploma or the equivalent with a minimum of 4 years of field experience in a field related to mold remediation.

The bill provides for license renewal, continuing education requirements, inactive license status, and certification of corporations and partnerships.

The bill requires an assessor to maintain general liability and errors and emissions insurance of not less than \$1m. It requires a remediator to maintain a general liability insurance policy of not less than \$1m with specific coverage for mold related claims.

The bill provides criminal, civil, and administrative penalties for violations of the requirements of the bill.

The bill has a “grandfather clause” to allow current operators to continue their activities until July 1, 2008 when licensure compliance with the regulatory provisions of the bill would be required.

Florida Comprehensive Hurricane Damage Mitigation Program

Section 215.5586, Florida Statutes, establishes the Florida Comprehensive Hurricane Damage Mitigation Program, also known as the My Safe Florida Home Program, within the Department of Financial Services (DFS). This program provides for free inspections to identify structural improvements (mitigation measures) that would reduce vulnerability to hurricane damage.

Wind mitigation assessors are not currently regulated by the state of Florida. However, to participate in the DFS program, assessors must have prior experience in residential construction or inspection and have received specialized training in hurricane mitigation procedures. The Federal Alliance for Safe Homes (FLASH) has designed a seven hour training program as a prerequisite for participating in the DFS program. Proficiency and satisfactory completion is determined by a one hour exam.

Effect of proposed changed

The bill creates part XVII of chapter 468, F.S., and provides statutory requirements to operate as a wind mitigation assessor. The bill provides various exemptions from the licensure and operating requirements.

This bill defines "property" to mean a residential or commercial real property that is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit.

The bill defines "wind mitigation assessor" to mean a person who for a fee or other compensation has been specially trained and licensed to render wind mitigation assessments.

The bill defines "wind mitigation assessment" to mean a limited visual examination of the structure, roof covering, exterior components, and site conditions that affect the ability of the property to withstand the effects of gale-force winds for the purposes of providing an opinion regarding any measures that may be taken by the owner to limit the damage such winds may cause to the property.

The bill specifies that the DBPR shall license any applicant who is qualified to practice wind mitigation assessment. The DBPR shall certify for licensure any person who satisfies the following requirements:

- Completion of classroom instruction in products, designs, and construction techniques to improve the structural soundness of a property. The classroom criteria and required number of hours shall be approved by the Department of Financial Services;
- Satisfactory completion of a background screening, using the level 2 standards set forth in chapter 435;
- Satisfactory completion of a drug-screen test; and
- Satisfactory results from a fingerprint-based criminal history check.

The bill specifies that a wind mitigation assessor shall maintain a commercial general liability insurance policy in an amount of not less than \$300,000. The bill specifies certain prohibited acts and provides penalties for violations.

C. SECTION DIRECTORY:

Section 1 creates part XV of chapter 468, F.S., and provides statutory requirements to operate as a home inspector.

Section 2 creates part XVI of chapter 468, F.S., and provides statutory requirements to operate as a mold assessor or mold remediator.

Section 3 creates part XVII of chapter 468, F.S., and provides statutory requirements to operate as a wind mitigation assessor.

Section 4. Effective date - July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

| EXPENDITURES – FUNDING SOURCE (TRUST FUND) | | | |
|---|-------------------|-------------------|-------------------|
| Recurring Effects | <u>FY 2007-08</u> | <u>FY 2008-09</u> | <u>FY 2009-10</u> |
| Salaries/Benefits 8.5 FTE | \$400,434 | \$400,434 | \$400,434 |
| Expenses | \$ 57,182 | \$ 57,182 | \$ 57,182 |
| Operation of Motor Vehicles | \$ 3,000 | \$ 3,000 | \$ 3,000 |
| Transfer to DMS HR Services | \$ 3,609 | \$ 3,609 | \$ 3,609 |
| Other Personal Services | \$ 0 | \$ 15,000 | \$ 15,000 |
| Application Management Fee - .41/account in LicenseEase / month through 12/08 | \$ 45,338 | \$ 22,669 | \$ 0 |
| Subtotal | \$509,563 | \$501,894 | \$479,225 |

The

department estimates the following revenues, based on biennial renewals provided in the legislation:

| REVENUE | | | |
|--------------------------------------|--------------------|-------------------|-------------------|
| | <u>FY 2007-08</u> | <u>FY 2008-09</u> | <u>FY 2009-10</u> |
| License Fees: | \$643,000 | 0 | \$643,000 |
| Taxes: | 0 | 0 | 0 |
| Other (identify): Application Fee | \$428,750 | 0 | 0 |
| TOTAL: | \$1,071,750 | None | \$643,000 |

2. Expenditures:

The department anticipates the following expenditures, including the addition of 8.5 FTE positions:

| EXPENDITURES – FUNDING SOURCE (TRUST FUND) | | | |
|--|-------------------|-------------------|-------------------|
| Non-Recurring Effects | <u>FY 2007-08</u> | <u>FY 2008-09</u> | <u>FY 2009-10</u> |
| Operating Capital Outlay | \$ 11,700 | | |
| Other Personal Services | \$189,000 | | |
| Expenses | \$ 30,341 | | |
| Acquisition of Motor Vehicles | \$ 14,000 | | |
| Subtotal | \$245,041 | None | None |

| Non-Operating Expenditures | <u>FY 2007-08</u> | <u>FY 2008-09</u> | <u>FY 2009-10</u> |
|--------------------------------------|-------------------|-------------------|-------------------|
| Service Charges (to General Revenue) | \$78,238 | \$0 | \$46,939 |
| Other Indirect Costs | \$150,000 | \$150,000 | \$150,000 |
| Subtotal | \$228,238 | \$228,238 | \$228,238 |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The public may benefit from improved health and safety.

D. FISCAL COMMENTS:

According to the Department of Business and Professional Regulation, the proposed legislation will generate approximately \$1 million in revenues and expenditures of \$982,582 in Fiscal Year 2007-08. In Fiscal Year 2008-09, the department does not project any license or application fees, meaning the estimated annual expenses of \$730,132 will not be supported. The department also predicts a need for 8.5 FTE positions, to be located in the Division of Professions, the Division of Regulation, and the Division of Service Operations. The analysis provided by the department does not provide for revenues associated with the wind mitigation provisions of the legislation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill specifies that the DBPR adopt rules for fees, determination of good moral character, license renewal, continuing education, and inactive license status.

The bill appears to authorize the Department of Financial Services to adopt rules to specify classroom criteria and required number of hours to be licensed as a wind mitigation assessor.

C. DRAFTING ISSUES OR OTHER COMMENTS:

NA

D. STATEMENT OF THE SPONSOR

Currently there are no practice requirements, minimum standards or prohibitions to be a home inspector, mold assessor or mold remediator. Due to the lack of regulation, homeowners who wish to resolve problems with their home have no assurances who they hire are competent or trustworthy. As a result, many Floridians have been harmed financially when they have hired untrained or unscrupulous persons.

The Legislature has grappled with this issue for several years. Now is the time to establish a balanced regulatory approach for these services in order to protect consumers.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 29, 2007, the Committee on Business Regulation adopted a strike-all amendment and passed the bill out of committee by unanimous vote. The amendment:

- removes provisions of the bill relating to the licensure and regulation of wind mitigation assessors;
- amends the definition of inspection to limit the home inspection services to specifically listed inspection components of a home;
- removes provisions which would have created liability of a business organization for actions of a home inspector, mold assessor, or mold remediator when providing services;
- creates an additional disclosure of a home inspectors' report to include systems or components of a home that are self-evident as to why they are deficient or near the end of their service life.