

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1399 Regulation of Building Inspection Professionals
SPONSOR(S): Jobs & Entrepreneurship Council, 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>10 Y, 0 N, As CS</u>	<u>Livingston</u>	<u>Thorn</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
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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.

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.

The April 6, 2007 Revenue Estimating Conference adopted a recurring revenue estimate of \$300,000 to the Professional Regulation Trust Fund within the DBPR. The bill provides an appropriation of \$196,160 and 3 FTE positions.

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

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, and mold remediators.

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 the following readily accessible installed systems and components of a home: 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.

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. Effective date - July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The April 6, 2007 Revenue Estimating Conference adopted a recurring estimates of \$300,000 in the Professional Regulation Trust Fund. This assumption assumes the grandfathered licensees pay the same amount as other licensees.

2. Expenditures:

The legislation contains an appropriation of \$157,475 in recurring funds and \$38,685 in nonrecurring funds, and 3 FTE positions.

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:

The April 6, 2007 Revenue Estimating Conference adopted a recurring revenue estimate of \$300,000 in the Professional Regulation Trust Fund within the DBPR. The bill provides an appropriation of \$196,160 and 3 FTE positions.

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.

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;

On April 12, 2007, the Jobs & Entrepreneurship Council adopted a Council Substitute and reported the CS out of Council by unanimous vote.

The CS differs from the original bill by including the actions noted above by the Committee on Business Regulation.

The CS also provides an appropriation of \$196,160 and 3 FTE positions.