

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1659 w/CS Mold Remediation  
**SPONSOR(S):** Hogan  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 2746 (c)

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care	16 Y, 1 N w/CS	Chavis	Collins
2) Business Regulation			
3) Finance & Tax			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

HB 1659 creates an undesignated section for the regulation by the Department of Business and Professional Regulation (DBPR) of individuals and companies who hold themselves out to the public as qualified to perform mold-related activities. Engineers and contractors, who are licensed under ch. 471 or 489, F.S., are exempt from the provisions of the section when acting within the scope of their respective acts. In addition, the bill:

- Provides a "Legislative purpose" for the act;
- Specifies the scope of the act;
- Provides definitions;
- Requires registration for specified companies, consultants, contractors, and training providers;
- Requires training for registration;
- Specifies types of registrations;
- Specifies requirements related to application for registration;
- Gives rulemaking authority to DBPR to adopt a fee schedule;
- Provides requirements related to registration and continuing education;
- Prohibits specified multiple services;
- Provides for reprimand, modification, suspension, or revocation of registration; and
- Grants DBPR rulemaking authority necessary to administer this act.

The act takes effect July 1, 2003.

**Subsections (4) and (5) of s. 11.62, F.S., require the proponents of the legislation that provides for the regulation of an unregulated profession or occupation to provide to the state agency of jurisdiction, upon request of the agency, certain specified information, in writing, to the agency and to the legislative committees where the bill is referred. Such information has not been provided to the Committee on Health Care for review and consideration.**

**According to the Department for Business and Professional Regulation, the bill will have a fiscal impact on DBPR of approximately \$1 million the first year of implementation (\$649,857 in year two and \$616,979 in year three). The bill caps the registration fee at \$600 per licensee.**

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

**STORAGE NAME:** h1659a.hc.doc  
**DATE:** April 18, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

1. The bill creates a licensing process for individuals and businesses that provide mold-related services. The bill provides rulemaking authority for the Department of Business and Professional Regulation (DBPR). The department does not currently have licensure or regulatory authority over mold-related service providers.
2. According to DBPR, the bill will have a fiscal impact on DBPR of approximately \$1 million the first year of implementation, \$649,857 in year two, and \$619,979 in year three. The bill provides the registration fee to be capped at \$600 per licensee. In addition, the board may set other fees as needed to carry out the provisions of the bill.
3. Currently, this is an unregulated area of the market. According to the Department of Business and Professional Regulation, complaints regarding mold are probably the fastest growing category of grievance coming into the department. The bill would require currently unlicensed individuals and businesses to be licensed in accordance with certain minimum standards and requirements as established by DBPR.

#### B. EFFECT OF PROPOSED CHANGES:

HB 1659 creates an undesignated section to be cited as the “Mold Remediation Registration Act.” The bill creates a registration act for regulation of the mold remediation industry by the Department of Business and Professional Regulation (DBPR). In addition, the bill:

- Provides Legislative purpose for the act.
- Specifies the scope of the act and provides an exemption for licensed engineers or contractors licensed under ch. 471 or 489, F.S., acting within the scope of their licenses.
- Provides definitions of certain terms including “mold assessment” and “mold remediation.”
- Requires registration for individuals or businesses who purport to be engaged in a specified list of any mold related activity, as follows:
  - A mold assessment company;
  - A mold assessment consultant;
  - A mold remediation company;
  - A mold remediation contractor; or
  - A mold trainer provider.
- Provides qualifications for registration, including:
  - Be at least 18 years of age;
  - Be of good moral character;
  - Have successfully met the requirements for registration established under this act;
  - Meet the eligibility requirements set by the American Industrial Hygiene Association, the Indoor Air Quality Association; the American Society of Safety Engineers; or an equivalent education program as determined by the board; and

- If the applicant is a mold assessment company, a mold assessment consultant, or an individual performing mold assessments for a mold assessment company, demonstrate accreditation from a nationally recognized accrediting body or authority.
- Provides for reprimand, modification, suspension, or revocation of registration for violations of the act and provides minimum criteria including:
  - Commits fraud or deception in obtaining or attempting to obtain a registration or a contract to perform mold-related activities;
  - Fails at any time to meet the qualifications for registration
  - Violates a rule adopted under this act;
  - Violates an applicable federal or state standard for performance of mold related activities; or
  - Fails to maintain the records required by this act or rule of the board or fails to provide such records on request by DBPR.
- Provides rulemaking authority for DBPR necessary to administer this act.

The act takes effect July 1, 2003.

### **The Sunrise Act**

Prior to the 1970s, occupational regulation in Florida was administered through several autonomous, independent boards appointed by the Governor. In the late 1970s, all occupational regulation was centralized in Florida's Department of Professional Regulation (DPR). However, substantial departmental reorganization moved oversight of health professions from DPR to the Agency for Health Care Administration to the Department of Health.

The Sunrise Act, s. 11.62(3), F.S., requires the Legislature to consider specific factors in determining whether to regulate a new profession or occupation. The act requires that all legislation proposing regulation of a previously unregulated profession or occupation be reviewed by the Legislature based on a showing of the following:

- That substantial risk of harm to the public is a risk of no regulation which is recognizable and not remote;
- That the skills the profession requires are specialized and readily measurable;
- That the regulation will not have an unreasonable effect on job creation or job retention;
- That other forms of regulation do not or cannot adequately protect the public; and
- That the overall cost effectiveness and economic impact of the proposed regulation is favorable.

In addition, the act requires that, upon request, the proponents of regulation of a previously unregulated profession provide the agency that is proposed to have jurisdiction over the regulation and the legislative committees of reference information concerning the effect of proposed legislation. The Department of Health has not requested this information.

Section 11.62(4), F.S., requires the proponents of the legislation to provide, in writing, to the agency with proposed jurisdiction, and to the legislative committees to which the legislation is referred to, the following information:

- The number of individuals or businesses that would be subject to the regulation;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;

- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

***Information, as required by this section has not been provided to the Health Care Committee for review and consideration.***

### **Basic information about molds**

Molds can be found almost anywhere; they can grow on virtually any substance when moisture is present. Outdoors, many molds live in the soil and play a key role in the breakdown of leaves, wood, and other plant debris. Molds break down plant materials by digesting them, using the plant material for food.

Molds produce tiny spores to reproduce, just as plants produce seeds. Mold spores waft through the indoor and outdoor air continually. When mold spores land on a damp spot indoors, they may begin growing and digesting whatever they are growing on in order to survive. There are molds that can grow on wood, paper, carpet, foods, even dynamite. When excessive moisture or water accumulates indoors, mold growth will often occur, particularly if the moisture problem remains undiscovered or un-addressed. There is no practical way to eliminate all mold and mold spores in the indoor environment; the way to control indoor mold growth is to control moisture.

### Adverse Human Health Effects Associated with Molds in the Indoor Environment

[Note: The following information was obtained from the U.S. Department of Health and Human Services.<sup>1</sup>]

Mold can affect the health of people who are exposed to it. People are mainly exposed to mold by breathing spores or other tiny fragments. People can also be exposed through skin contact with mold contaminants (for example, by touching moldy surfaces) and by swallowing it. The type and severity of health effects that mold may produce are usually difficult to predict. The risks can vary greatly from one location to another, over time, and from person to person. The most common health problems caused by indoor mold are allergy symptoms. Although other and more serious problems can occur, people exposed to mold commonly report problems such as:

- Nasal and sinus congestion;
- Cough;
- Wheeze/breathing difficulties;
- Sore throat;

<sup>1</sup> U.S. Department of Health and Human Services, "Statement for the Record Before the Subcommittees on Oversight and Investigations and Housing and Community Opportunity Committee on Financial Services United States House of Representatives," July 18, 2002. [<http://www.cdc.gov/nceh/airpollution/images/moldsci.pdf>]

- Skin and eye irritation; and
- Upper respiratory infections (including sinus)

There is wide variability in how different people are affected by indoor mold. However, the long term presence of indoor mold growth may eventually become unhealthy for anyone. The following types of people may be affected more severely and sooner than others:

- Infants and children;
- Elderly people;
- Individuals with respiratory conditions or sensitivities such as allergies and asthma; and
- Persons having weakened immune systems (for example, people with HIV infection, chemotherapy patients, and organ transplant recipients).

### Mold Remediation

Remediation is more than just repairing structural damage caused by mold. Remediation is also the process of removing and cleaning materials and belongings contaminated with mold, treating other areas affected - or potentially affected - by the mold, and ensuring that mold does not reoccur after work is done.

### **Mold Regulation**

To date, 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, the mold scare has prompted some states to enact mold-related legislation. In addition, Rep. John Conyers, Jr. (Mich. – Dem), has introduced a bill in the U.S. House of Representatives that would require the Environmental Protection Agency and the Department of Housing and Urban Development to establish guidelines addressing mold inspection, testing and remediation - a largely unregulated industry. H.R. 5040, The United States Toxic Mold Safety and Protection Act of 2002, also known as the Melina Bill, sponsored by Conyers, also would create a national toxic mold insurance program run by the Federal Emergency Management Agency that is similar to a FEMA-administered national flood insurance pool.<sup>2</sup>

### States' Mold-Related Legislation

California's Senate Bill 732--dubbed the Toxic Mold Protection Act--was passed on January 1, 2002, and is considered the most comprehensive piece of mold legislation enacted to date. The law demands written disclosure of the presence and location of any existing mold infestation to prospective tenants or purchasers of commercial or residential property.

In Maryland, the state Senate passed Senate Bill 283 in April 2001 to establish a task force to study the location, nature and extent of environmental and health risks posed to workers as a result of molds, spores and other toxic organisms found in HVAC systems. Maryland released the findings of the study in July 2002, recommending that primary statutory authority for regulating indoor air quality be granted to the Maryland Department of the Environment, as well as establishing an Office of Indoor Air Quality.

Texas, during regular session 2001, enacted House Bill 2008, requiring the State Board of Health to establish voluntary guidelines for indoor air quality in government office buildings. However, at this time, the State of Texas does not license or certify inspectors, remediators, "pack-out" companies and others that consumers may deal with when responding to a mold problem.<sup>3</sup>

<sup>2</sup> For the actual text of H.R. 5040, see: [http://www.irem.org/i05\\_conf/assets/applets/LPP-Ex4-hr5040.pdf](http://www.irem.org/i05_conf/assets/applets/LPP-Ex4-hr5040.pdf)

<sup>3</sup> Attorney General of Texas, Office of Consumer Protection, "What Consumers Should Know About Mold."  
[http://www.oag.state.tx.us/consumer/mold\\_remed.shtml#remed](http://www.oag.state.tx.us/consumer/mold_remed.shtml#remed)

In addition, according to the National Association of Mutual Insurance Companies, eight states are currently considering twenty-two bills relating to some aspect of mold (standards, remediation, licensing of mold removal contractors, and caps on property insurance related to mold damage.<sup>4</sup> During the 2001 and 2002, legislative sessions, ten states introduced twenty-three bills related to mold.<sup>5</sup>

### Florida

According to the department, these types of businesses and individuals are unregulated. The department does not currently have licensure or regulatory authority over mold-related service providers.

### Section 381.006(2), F.S.

Under s. 381.006(2), F.S., the department and its county health departments (CHDs) have responded to indoor air quality issues since the early 1970's. These response activities are intended to provide homeowners and other inquires clear policy and direction on eliminating a variety of indoor air quality related issues, and to aid against inappropriately spent investigation and remediation dollars and litigation.

#### C. SECTION DIRECTORY:

**Section 1.** Provides a popular name for the act as the "Mold Remediation Registration Act."

**Section 2.** Provides Legislative purpose to regulate individuals and companies that perform mold-related activities.

**Section 3.** Provides the scope of the act.

**Section 4.** Provides definitions.

**Section 5.** Provides registration requirements, qualifications, and training.

**Section 6.** Provides penalties, reprimand, modification, suspension, or revocation of registration.

**Section 7.** Provides DBPR rulemaking authority to administer the act.

**Section 8.** Provides that the act shall take effect on July 1, 2003.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

**Department of Business and Professional Regulation (DBPR):** The bill will have a fiscal impact on DBPR of approximately \$1 million the first year of implementation, \$649,857 in year two, and \$616,979 in year three. The registration and application fees will need to be set at a level to cover the start-up costs as well as normal operating expenditures. The bill provides that the registration fee is capped at \$600 per licensee. In addition, the board may set other fees as needed to carry out the provisions of the bill.

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<sup>4</sup> National Association of Mutual Insurance Companies, "MoldUpdate.Com," Last Updated April 9, 2003. <http://www.moldupdate.com/legislation.htm>.

<sup>5</sup> *Ibid.*

According to DBPR, it should be expected (and necessary) to set the registration fee at the cap of \$600 for the first two years along with a \$150 application fee (similar to other boards) for each licensee. In the third-year (or the first renewal period) the registration fee most likely could be lowered to \$350 per licensee. It is suggested that registration fees be maintained at the cap through the second year to allow the Mold Remediation Board to “build- up” a positive cash-flow within the Professional Regulation Trust Fund – in order to avoid a deficit in the third or fourth year of regulation. To implement and carry out the provisions of the bill, DBPR will need five additional positions. Other costs to DBPR will include:

- Development of testing and exams for licensure;
- Data processing (licensing database); and
- Departmental indirect overhead expenditures, which are spread to each board/profession, based on time usage of services of each board/profession.

<b>REVENUE</b>			
	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>
License Fees:	\$1,050,000	\$1,050,000	\$540,000
Taxes:	\$0	\$0	\$0
Other (identify):	\$0	\$0	\$0
<b>TOTAL:</b>	<b>\$1,050,000</b>	<b>\$1,050,000</b>	<b>\$540,000</b>

Note: The above revenue is based on 1,500 licensees: FY 2003-04 and FY 2004-05, application fee of \$150 and registration fee of \$600. In FY 2005-06, application fee of \$150 and registration fee of \$350.

<b>EXPENDITURES – FUNDING SOURCE (TRUST FUND)</b>			
<b>Non-Recurring Effects</b>	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>FY 2005-06</u>
Operating Capital Outlay	\$7,500	\$0	\$0
Other Personal Services	\$0	\$0	\$0
Other (identify)	\$0	\$0	\$0
<b>Subtotal</b>	<b>\$7,500</b>	<b>\$0</b>	<b>\$0</b>

Operating Capital Outlay non-recurring costs include \$1,500 for 5 professional workstations. \$1,500 Standard Operating Capital Outlay package.

<b>EXPENDITURES – FUNDING SOURCE (TRUST FUND)</b>			
<b>Recurring Effects</b>	<u>FY 2003-04</u>	<u>FY 2004-5</u>	<u>FY 2005-6</u>
Salaries/Benefits	\$176,269	\$181,557	\$187,004
# of FTE's	5.0 FTE	5.0 FTE	5.0 FTE
Expenses	\$84,575	\$34,270	\$34,270
Data Processing (Licensure Database)	\$7,200	\$7,380	\$7,380
DBPR Overhead – Indirect charges	\$275,000	\$275,000	\$275,000
Exam Testing	\$350,000	\$75,000	\$75,000
<b>Subtotal</b>	<b>\$893,044</b>	<b>\$573,207</b>	<b>\$578,654</b>

\$9,915 Standard Expenses package for each of the 5.0 FTE, of which \$6,854 is recurring. Also, included for the first year is \$35,000 Expenses for exam development.

<b>Non-Operating Expenditures</b>	<u>FY 2003-4</u>	<u>FY 2004-5</u>	<u>FY 2005-6</u>
Service Charges (to General Revenue)	\$76,650	\$76,650	\$38,325
Other Indirect Costs	\$0	\$0	\$0
Subtotal	\$76,650	\$76,650	\$38,325

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

This bill may significantly impact many state and local agencies, including public school districts, as it requires that mold-related assessment and remediation activities be performed per new requirements set by law and administrative rule. Public employers that require their employees to perform mold analysis, assessment, and remediation services on behalf of their agency would bear the costs of certification, notification, and meeting minimum requirements set by the bill and department rules.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

This will increase overhead costs for approximately 1,500 businesses and individuals providing these services. Cost will include: application fee; training; examination; and other incidental licensure costs and fees. These “additional costs” will likely be passed on to those who contract for these services.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill requires the Construction Industry Licensing Board of the Department of Business and Professional Regulation to establish rules for:

- Requirements for registration;
- Forms for registration;

- Adopt a schedule of fees as required by the section;
- Adopt other fees that are reasonable and necessary to administer the act;
- Adopt rules relating to continuing education;
- Criteria for departmental action for reprimand, modification, suspension, or revocation of registration; and
- Criteria for disciplinary action against a registrant under specified conditions.

Section 7 of the bill grants rulemaking authority necessary to administer this act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 15, 2003, the Health Care Committee adopted two amendments and reported the bill favorably with a CS. The CS substantially differs from the bill as filed. Significant differences are as follows:

HB 1659 – As Filed	HB 1659 w/CS
Creates s. 387.001, F.S., “Mold Remediation Licensing Act.”	Creates an undesignated section of Florida Statutes known as the “Mold Remediation Registration Act.”
Licensing under the authority of the Department of Health	Regulation under the authority of the Department of Business and Professional Regulation.
Exemption for Certified Industrial Hygienists	No exemption for Certified Industrial Hygienists. Exemption for engineers licensed under ch. 471, F.S., and contractors licensed under ch. 489, F.S.
Creation of Public Education Program by Department of Health regarding the importance of and ways to improve indoor air quality in buildings, including the importance of and ways to recognize, prevent, control, and mitigate mold occurrence and other indoor air quality factors that have an adverse impact on human health.	No public education program created.
Fiscal impact: \$433,125 for Year 1, \$434,676 for Year 2, and \$339,616, for year 3.	Fiscal impact: Approximately \$1 million for Year 1, \$649,857 for Year 2, and \$616,979 for Year 3.