

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1215 w/CS Relating to Mold Remediation

SPONSOR(S): Domino

TIED BILLS: **IDEN./SIM. BILLS:** SB 1350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Subcommittee on Trades, Professions, & Regulated Business</u>	<u>8 Y, 1 N</u>	<u>Gallen</u>	<u>Liepshutz</u>
2) <u>Business Regulation</u>	<u>27 Y, 4 N w/CS</u>	_____	_____
3) <u>Insurance</u>	_____	_____	_____
4) <u>Finance & Tax</u>	_____	_____	_____
5) <u>Subcommittee on Commerce & Local Affairs Appropriations</u>	_____	_____	_____
6) <u>Appropriations</u>	_____	_____	_____

SUMMARY ANALYSIS

Currently there is no regulation of mold related activities in Florida, but there are numerous individuals and companies that hold themselves out as certified mold remediators.

The bill is entitled "Mold Assessment and Mold Remediation."

The bill requires individuals or companies to be licensed with the Department of Business and Professional Regulation before the individual or company engages in the business or profession of performing any mold related activity for compensation.

The bill exempts from licensure:

- Licensed engineers, architects and interior designers, contractors, pest controllers, or insurance adjusters when acting within the scope of their license.
- Authorized government employees, employees of public or private schools, or employees of a private business organization who have completed mold assessment or mold remediation training courses and who are conducting mold assessment or mold remediation within the scope of that employment, as long as the employees do not hold themselves out for hire.
- Full-time employees engaged in routine maintenance of private buildings and who do not hold themselves out for hire.

The bill prohibits a person from conducting both a mold assessment and mold remediation on the same project.

The Department of Business and Professional Regulation estimates \$900,000 in start-up costs to implement this program.

The bill takes effect October 1, 2004.

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

STORAGE NAME: h1215b.br.doc

DATE: April 2, 2004

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 type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

1.) The bill creates licensure requirements, including education and training courses, for individuals and businesses that provide mold related services. Currently mold related activity is not regulated.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

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 (CDC) 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.

Effect of Proposed Changes

The bill is entitled “Mold Assessment and Mold Remediation.” The bill requires that individuals and companies conducting mold assessment and mold remediation for compensation to be licensed by the Department of Business and Professional Regulation (department).

The bill exempts from licensure:

- Licensed engineers, architects and interior designers, contractors, pest controllers, or insurance adjusters when acting within the scope of their license.
- Authorized government employees, employees of public or private schools, or employees of a private business organization who have completed mold assessment or mold remediation

training courses and who are conducting mold assessment or mold remediation within the scope of that employment, as long as the employees do not hold themselves out for hire.

- Full-time employees engaged in routine maintenance of private buildings and who do not hold themselves out for hire.

“Mold assessment” means an inspection, 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; the development of a mold management plan or remediation protocol; or the collection or analysis of a mold sample.

“Mold remediation” means the removal, cleaning, sanitizing, demolition, or other treatment, including preventative activities, of mold or mold-contaminated matter that was not purposely grown at that location.

An applicant for licensure must meet certain requirements before taking the licensure examination offered by the department. Application fees will be set by the board but may not exceed \$500.

If an applicant proposes to conduct mold related activity as a business organization in any other name than the applicant’s legal name, the business organization must apply for licensure through a qualifying agent. The bill provides application requirements for financially responsible officers and secondary qualifying agents for business organizations. Primary qualifying agents for a business organization are jointly and equally responsible for supervision of all operations of the business organization, for all field work at all sites, and for financial matters both for the organization in general and for each specific job. A financially responsible officer shall be responsible for all financial aspects of the business organization and may not be designated as the primary qualifying agent.

The bill provides, as a prerequisite to licensure, that the applicant must provide an affidavit attesting that the applicant has obtained workers compensation insurance, public liability insurance, and property damage insurance in amounts determined by board rule. The insurance required must include coverage for an applicant’s failure to properly perform mold assessment or mold remediation.

The Construction Industry Licensing Board (board) may license any applicant who the board certifies is qualified to practice mold assessment or mold remediation and who meets specified board requirements. Training courses and training course providers will be approved by the board. The board, by rule, must establish criteria for approving training courses. The board may enter into agreements with other states for the reciprocal approval of training courses or providers of training courses.

A licensee must annually complete 15 hours of continuing education courses as prescribed by board rule. The board will be responsible for adopting rules for license renewal and license reactivation.

The board may revoke, suspend, or deny the issuance or renewal of a license, reprimand, censure, or place on probation any mold assessor or mold remediator; require financial restitution to a consumer; impose an administrative fine not to exceed \$5,000 per violation; require continuing education; or assess costs associated with any investigation and prosecution, if the mold assessor or mold remediator is found guilty of violating any provision prescribed by this act. The board may specify the acts or omissions that constitute violations of the section.

In addition, a person may not:

- Falsely hold himself or herself or a business organization out as a licensee,
- Falsely impersonate a licensee;
- Present as his or her own the license, or certificate of authority of another;
- Knowingly give false or forged evidence to the board or a member thereof;

- Use or attempt to use a license that has been suspended or revoked;
- Engage in the business or act in the capacity of a mold assessor or mold remediator or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a mold assessor or mold remediator without being duly licensed;
- Operate a business organization engaged in mold assessment or mold remediation after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent, except as provided by this act;
- For purposes of this subsection, a person or business organization operating on an inactive or suspended license, or certificate of authority is considered unlicensed.

An unlicensed person who violates the preceding commits a misdemeanor of the first degree, punishable by up to 1 year in prison and up to a \$1,000 fine. An unlicensed person who commits a violation of the preceding after having been previously found guilty of such a violation or commits a violation during the existence of a state of emergency declared by executive order of the Governor commits a felony of the third degree, punishable by up to 5 years in prison and up to a \$5,000 fine.

The bill prohibits a person from conducting both a mold assessment and mold remediation on the same project.

The bill provides that actions alleging defects against mold remediators or mold assessors be brought under the Notice and Opportunity to Repair provision enacted by the Florida legislature last year.¹ Currently this chapter of law is applied to actions alleging construction defects against contractors. The bill provides a one year statute of limitations after exhausting the remedies under the Notice and Opportunity to Repair provision.

The bill adds an additional member to the board who is primarily engaged in business as a mold remediator or mold assessor, bringing the total to 19 members.

The provisions of the bill are severable. The bill takes effect October 1, 2004.

C. SECTION DIRECTORY:

Section 1: Provides the popular name "Mold Remediation Registration Act."

Section 2: Creates s. 489.601; providing the legislative purpose.

Section 3: Creates s. 489.602; provides scope of act.

Section 4: Creates s. 489.603; provides exemptions to licensure.

Section 5: Creates s. 489.604; provides definitions.

Section 6: Creates s. 489.605; provides fees requirements.

Section 7: Creates s. 489.606; provides examination requirements.

Section 8: Creates s. 489.607; provides licensure requirements.

Section 9: Creates s. 489.608; provides requirements for licensure of business organization; qualifying agents.

¹ s. 558.004, F.S.

Section 10: Creates s. 489.609; provides qualifying agents responsibilities.

Section 11: Creates s. 489.61; provides continuing education requirements.

Section 12: Creates s. 489.611; provides that mold assessor and mold remediator training courses and providers must be approved by the board.

Section 13: Creates s. 489.612; provides for license renewal.

Section 14: Creates s. 489.613; provides for license reactivation.

Section 15: Creates s. 489.614; provides for disciplinary proceedings; penalties.

Section 16: Creates s. 489.615; provides prohibitions; penalties.

Section 17: Creates s. 489.616; provides that multiple services are prohibited.

Section 18: Creates s. 489.617; provides a notice and opportunity to repair.

Section 19: Provides that provisions are severable.

Section 20: Amends Subsection (2) of s. 489.107; providing an additional member to the board.

Section 21: Provides an effective date of October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

The Department of Business and Professional Regulation has stated that the bill will have a fiscal impact of approximately \$900,000 the first year of implementation, \$572,184 year two, and \$541,800 in year three. The bill provides that the registration fee is capped at \$500 per licensee. It should be expected and necessary to set the registration fee at the cap of \$500 for the first two years along with a \$150 application fee. In the third-year 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, the department will need five additional positions. Other costs of the department are the 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.²

² Information provided by the Department of Business and Professional Regulation impact statement (Jan. 13, 2004)

REVENUE			
	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
License Fees:	\$1,000,000	\$1,000,000	\$540,000
Taxes:	\$0	\$0	\$0
Other (identify):	\$0	\$0	\$0
TOTAL:	\$1,000,000	\$1,000,000	\$540,000

Note: The above revenue is based on 2,500 licensees: FY 2004-05 and FY 2005-06, application fee of \$150 and license fee of \$400. In FY 2006-07, application fee of \$150 and license fee of \$400. Application fee paid the first year by each application.

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Non-Recurring Effects	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
Operating Capital Outlay	\$4,500	\$0	\$0
Other Personal Services	\$0	\$0	\$0
Other (identify)	\$0	\$0	\$0
Subtotal	\$4,500	\$0	\$0

Operating Capital Outlay non-recurring costs include \$1,500 for 3 professional workstations. \$1,500 Standard Operating Capital Outlay package.

EXPENDITURES – FUNDING SOURCE (PROFESSIONAL REGULATION TRUST FUND)			
Recurring Effects	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
Salaries/Benefits # of FTE's	\$103,439 3.0 FTE	\$106,542 3.0 FTE	\$109,738 3.0 FTE
Other Personal Services	\$15,000	\$15,000	\$15,000
Expenses	\$64,745	\$20,262	\$20,262
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
Subtotal	\$815,384	\$499,184	\$502,380

\$15,000 for OPS staff (.5 FTE) included for additional workload in Customer Contact Center. \$9,915 Standard Expenses package for each of the 3.0 FTE, of which \$6,854 is recurring. Also, included for the first year is \$35,000 Expenses for exam development.

Non-Operating Expenditures	<u>FY 2004-05</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>
Service Charges (to General Revenue)	\$73,000	\$73,000	\$39,420
Other Indirect Costs	\$0	\$0	\$0
Subtotal	\$73,000	\$73,000	\$39,420

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, mold remediators and mold assessors are not regulated by the state - this bill requires the licensure of such persons. Licensure includes application fees, license fees, and educational requirements as provided by the board.

The bill requires mold assessors and mold remediators to maintain liability insurance; therefore, those acquiring insurance may be subjected to elevated insurance premiums depending upon the extent of the monetary civil damage awards that have historically been awarded in mold related litigation.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not required the counties or cities to spend funds or take an action requiring the expenditure of funds.

2. Other:

B. RULE-MAKING AUTHORITY:

The department is granted rule making authority pursuant to the Administrative Procedure Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 13, 2004, the Committee on Business Regulation adopted a committee substitute to HB 1215. The committee substitute substantially modifies the original bill while maintaining the purpose of the original bill.

The committee substitute is different from the original bill in that the committee substitute:

- provides for the *licensure* of people and firms that conduct mold-related activities.
- modifies the definition of mold.
- provides for an additional member to be placed on the Construction Industry Licensing Board.
- provides that an applicant must obtain workers compensation insurance, public liability insurance, and property damage insurance.
- clarifies the insurance requirements by expressly providing that insurance must include coverage for an applicant's failure to properly perform mold assessment or mold remediation and applicants must provide continuing proof of insurance coverage.
- provides exemptions for engineers, contractors, pest control operators, landscape architects, interior designers, and insurance adjusters, or full time employees engaged in routine maintenance of private buildings, and authorized employees of the government, public or private schools, or private business who have completed mold-activity training.
- provides that actions alleging defects be brought under Ch. 558 – Notice and Opportunity to Repair.
- provides that the board will adopt testing requirements and performance standards.
- prohibits a person from conducting both a mold assessment and mold remediation on the same project.