

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/CS/SB 2234

INTRODUCER: Criminal Justice Committee, Regulated Industries Committee, and Senator Wise

SUBJECT: Regulation of Building Inspection Professionals

DATE: April 18, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.	Clodfelter	Cannon	CJ	Fav/CS
3.			GA	
4.				
5.				
6.				

I. Summary:

Home Inspectors. The home inspector portion of the bill provides requirements for practice or persons who engage in home inspections that include:

- Establishing exemptions for governmental employees, certain licensed persons acting within the scope of their license and not holding themselves out to the public as licensed home inspectors, officers appointed by the courts, utility safety inspectors, and certified energy auditors.
- Establishing licensure fees and requirements. The bill provides that the application and examination fee shall be limited to \$125, plus the per-applicant cost of the examination to the department. The examination fee is refundable if the applicant is determined ineligible to sit for the examination. The initial license fee and biennial renewal fee may not exceed \$200.
- Licensure requirements that include the completion of a 120 hour course of study approved by the department. The Department of Business and Professional Regulation is authorized to establish examination and licensing fees by rule.
- Providing for licensure by endorsement, continuing education requirements, and the licensure of corporations and partnerships. The bill specifies the personal liabilities of corporate officers, partners, agents, employees, and owners for negligence, misconduct, or wrongful acts.
- Establishing prohibited acts that are considered misdemeanors of the first degree.
- Establishing prohibited acts that are subject to disciplinary action by the department. There is a maximum fine of \$5,000 per violation.

- Providing that the department shall reissue the license of disciplined home inspectors that have complied with final orders.
- Providing for the disclosure of certain information to consumers prior to the home inspector contracting or commencing a home inspection.
- Requiring home inspectors to maintain a commercial general liability policy in an amount not less than \$300,000.
- Establishing requirements for home inspection reports.
- Providing a grandfather clause that allows the department to issue to home inspectors, who meet certain conditions, licenses that would expire on January 1, 2007.
- Authorizes new positions and appropriates funds from department trust funds to carry out professional board activities and central administrative functions required by the bill.

Mold. The mold assessor and mold remediator portion of the bill provides requirements for practice or persons who engage in business as a mold assessor or mold remediator that include:

- Establishing definitions. The definition of mold assessment includes specific process requirements, which may or may not include laboratory analysis. The conditions defined by the Standard and Reference Guide for Professional Mold Remediation are defined. The definition of mold remediator specifies that mold remediators may not perform work that requires a license under chapter 489, F.S.
- Rule authority for application, examination, reexamination, licensing, and renewal fees. The application and examination fees each have a \$125 cap, plus a per applicant cost the department may add to the examination fee if the department purchases the examination. The fee for an initial license and biennial license renewal may not exceed \$200.
- Establishing examination and licensure requirements. An applicant must satisfy good moral character requirements and satisfy certain education and experience requirements. The department is required to approve courses of study in mold assessment and remediation.
- Providing for licensure by endorsement, renewals, and continuing education requirements.
- Certification of partnerships and corporations.
- Establishes personal liability standards for individuals, partners, officers, agents, and employees.
- Establishing prohibited acts that are second degree misdemeanors for first offenses, first degree misdemeanors for second offenses, and third degree felonies for third or subsequent offenses.
- Establishing disciplinary offenses and penalties, including a maximum fine of \$5,000 per count.

This bill creates parts XV and XVI of chapter 468 of the Florida Statutes.

II. Present Situation:

Mold

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.

2006 Regular Session

Senate Bills 2670 by Senator Crist and 1046 by Senator Bennett both addressed regulation of mold assessment and mold remediation but both died in the Senate Committee on Criminal Justice. Senate Bill 2670 was amended and reported favorably as a Committee Substitute by the Senate Regulated Industries Committee to include home inspectors under its purview. The bill was very similar to the HB 315 that was vetoed by the Governor on June 22, 2005. SB 1046 was a full licensure bill that was also reported favorably as a Committee Substitute by the Senate Regulated Industries Committee and favorably with one amendment by the Senate Commerce Committee.

2005 Regular Session

During the 2005 Regular Session, SB 590 by Senator Bennett was introduced to provide for the regulation of mold assessors and mold remediators under a new part IV of ch. 489, F.S. It provided for licensing by the Department of Business and Professional Regulation through the Construction Industry Licensing Board. The bill was substantially amended in the General Government Appropriations Committee to provide for certification of mold assessors and mold remediators, for insurance requirements, and for civil penalties under the Florida Deceptive and Unfair Trade Practices Act.¹ The provisions of this bill were adopted as an amendment to HB 315 by Representative Allen on the floor of the Senate.

Governor Bush vetoed House Bill 315 which sought to provide public protection against the possibility of fraudulent practices in the unregulated fields of home inspection, mold assessment, and mold remediation.

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 would likely put employees and companies that cannot complete the bill's education and training requirements by January 1, 2006, out of business.

The Governor 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 and/or standards necessary for home inspectors, mold assessors, or mold remediators. The Governor further stated that the bill appeared to arbitrarily require high school and college degrees while presenting no clear reasons for the requirements.

¹ Sections 501.201 – 501.213, F.S.

The Governor stated that there was some question about 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 will 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 remediator.

The Governor stated that he agreed with the bill's sponsors that additional consumer protection was 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.² The workshops culminated in a report issued on February 2, 2006, regarding alternatives to licensure.³

2004 Regular Session

The Senate President approved an interim project to review mold regulation during the 2004 interim. The staff report⁴ indicated that there has been a heightened awareness of the effects of exposure to mold. The report attributed the heightened awareness, in part, to an increase in litigation over mold related issues, the insurance companies responding by limiting coverage for mold damage, and hundreds of businesses (just in South Florida) sprouting up and touting their services as mold remediators.

According to a report issued by the Centers for Disease Control and Prevention (CDC), molds are ubiquitous in nature and grow almost anywhere indoors and outdoors.⁵ The report states that more than 1,000 different kinds of indoor molds have been found in U.S. homes. Mold spores are easily spread because they are small, light-weight and able to survive a long time and under most conditions. Mold growth is stimulated by warm, damp, and humid conditions.

Mold is defined as a typical fungus which consists of a mass of branched, tubular filaments enclosed by a rigid cell wall. The filaments, called hyphae, branch repeatedly into complicated radially-expanding networks called mycelium, which makes up the body of the typical fungus. The mycelium grows by utilizing nutrients from the environment and, upon reaching a certain stage of maturity, forms – either directly or in special fruiting bodies – reproductive cells called spores.⁶

Toxic substances produced from the fungus are called “mycotoxins.” They occur in great numbers and variety and the effects can include hallucination, skin inflammation, severe liver

² http://www.myflorida.com/dbpr/os/hot_topics/home_inspec_mold_wkshop.shtml (last visited February 5, 2006).

³ The Department of Business and Professional Regulation issued a report on February 2, 2006, entitled *Alternatives to Licensure Stakeholder Workshops on Home Inspectors and Mold Assessment and Remediation*.

⁴ *Review of Mold Regulation*, Report No. 2004-158, Committee on Regulated Industries, Florida Senate, December 2003.

⁵ *State of the Science on Molds and Human Health, Statement of Stephen C. Redd, M.D.*, Chief, Air Pollution and Respiratory Health Branch National Center for Environmental Health, July 18, 2002.

⁶ *Encyclopedia Britannica* website < <http://www.britannica.com/eb/article?tocId=57951> (last visited February 2, 2006).

damage, hemorrhages, abortion, convulsions, neurological disturbances, and death in livestock and humans.⁷

The CDC is currently working with federal, state, local, and tribal governments to investigate and respond to mold-related problems. It has assisted the U.S. Environmental Protection Agency (EPA) Indoor Environments Division in the development of a guide for mold remediation in schools and large buildings and is developing a brief guide to mold for homeowners.

An individual, company, or employee of the United States, state, city, and county government that engages or offers to engage in the business or profession of performing any mold-related activity for compensation is not regulated in the state. However, engineers and persons engaging in the business of pest control under chs. 471 and 482, F.S., who perform mold-related activities in the scope of their licensure, are regulated.

The regulation of construction contracting is governed by part I of ch. 489, F.S., and is administered by the Construction Industry Licensing Board within the Department of Business and Professional Regulation. Contractors are divided into Division I and II categories. Division I contractors include general, building, and residential contractors. Division II contractors are those contractors typically referred to as “subcontractors” that include professions such as plumbing, mechanical, and air-conditioning contracting.

Licensed engineers practicing engineering is defined, in part, by s. 471.005, F.S., to mean a person engaged in any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services, insofar as they involve safeguarding life, health, or property.

The United States Environmental Protection Agency has prepared information to assist individuals in determining when the mold situation may be handled in-house by a person responsible for building maintenance or when an outside contractor should be contacted.⁸

Home Inspectors

Current Florida law does not license or regulate the practice of home inspectors. There are an estimated 3,000 home inspection entities in Florida.⁹ Generally, the home inspector provides an inspection to a buyer just prior to the sale of the home. The home inspector looks for visually obvious problems with the home and reports any problems to the buyer who may consider having them corrected by the seller before closing the sale. A home inspector is not required to report to the customer possible conflicts of interest and is under no obligation to maintain the confidentiality of a home inspection report.

⁷ *Encyclopedia Britannica* website <http://www.britannica.com/eb/article?tocId=9054528> (last visited February 2, 2006).

⁸ *Mold Remediation in Schools and Commercial Buildings*, U. S. Environmental Protection Agency, Office of Air and Radiation, Indoor Environments Division, EPA 402-K-01-001, March 2001, <http://www.cdc.gov/mold/default.htm> (last visited, February 2, 2006).

⁹ The Department of Business and Professional Regulation obtained this information from the Florida Association of Building Inspectors.

The existence and level of home inspector regulation varies from state to state.¹⁰ For example, Georgia law requires home inspectors to provide written documents to customers containing certain information, including the scope of the inspection, the structural elements and systems to be inspected, that the inspection is a visual inspection, and that the home inspector will notify, in writing, the person on whose behalf such inspection is being made of any defects noted during the inspection.¹¹ In Alabama the rules require individuals performing home inspections to be licensed by the Alabama Building Commission.¹² The Alabama Standards of Practice and Code of Ethics are adopted from the American Society of Home Inspectors (ASHI) Standards of Practice and Code of Ethics.¹³ The Alabama law also outlines educational and experience requirements to become licensed, sets license fees and insurance requirements, and defines penalties under which licensure may be suspended or revoked.¹⁴ Louisiana created the “Louisiana Home Inspectors Licensing Act” in 1999. It creates a state board within the Department of Economic Development and requires the board to establish minimum qualification for licensing.¹⁵

2006 Regular Session

As originally introduced, SB 2670 by Senator Crist provided for the practice of home inspection services under a new s. 501.935, F.S. The bill provided definitions of terms and established requirements for the practice of home inspection services. It provided exemptions for certain persons from the provisions of the bill and it prohibited certain acts. The bill required home inspectors to maintain liability insurance and provided for the enforcement of violations as a deceptive and unfair trade practice. The bill was amended in the Senate Regulated Industries Committee to include provisions dealing with mold assessment and mold remediation.

2005 Regular Session

During the 2005 Regular Session, SB 1830 by Senator Argenziano was introduced to provide for the regulation of home inspectors under a new s. 501.935, F.S. It provided for statements of practice to be established by the Department of Business and Professional Regulation. The bill provided for licensure for professional home inspectors. It provided eligibility criteria that included courses of study and examination requirements. The bill provided for exemptions and a grandfathering provision. It prohibited certain acts and provided for licensing fees. It required a general liability insurance policy in the amount of \$300,000, prohibited home inspectors from providing cost estimates, provided reciprocity, and established continuing education requirements. It provided that violations of the provisions of the act constituted a deceptive and unfair trade practice under part II of ch. 501, F.S.¹⁶

The bill was substantially amended in the Senate Regulated Industries Committee to delete provisions providing for an advisory council, licensure requirements, administrative complaints and discipline, fees, continuing education, and reciprocity with other states. It provided that

¹⁰ The National Association of Certified Home Inspectors (NACHI) reports that there are at least 17 states that license home inspectors.

¹¹ Ga. Code Unann. s. 8-3-331 (2001).

¹² Alabama Building Commission, Alabama Home Inspectors Registration Program, *Chapter 170-x-24-.03*.

¹³ *Id.* at *Chapter 170-x-25-02*.

¹⁴ Al. Code s. 34-14B-1 – 9 (1975).

¹⁵ Chapter 17-A of Title 37, La. Code.

¹⁶ Florida Deceptive and Unfair Trade Practices Act, ss. 501.201-501.213, F.S.

home inspectors were not regulated by any state agency, but that violations of the section could be actionable as an unfair and deceptive trade practice under part II of ch. 501, F.S. It provided for exemptions for certain licensed professionals, requirements for liability insurance, training, continuing education requirements, and restrictions on the use of the term “home inspector.” It provided for criminal penalties for certain violations of the section.

The bill was amended on the floor of the Senate to add the certification of mold assessors and mold remediators. The companion bill, HB 315 was passed that included the certification for both professions.

Sunrise Analysis

Section 11.62, F.S., sets forth the criteria for the legislative review of proposed regulation of unregulated functions. It provides that the intent of the Legislature is not to regulate a profession unless:

- It is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power be exercised only to the extent necessary for that purpose; and
- Regulation does not unnecessarily restrict entry into the practice of the profession or occupation or adversely affect the availability of the professional or occupational services to the public.

The section requires that the Legislature consider five factors in determining whether to regulate a profession or occupation:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The Senate Regulated Industries Committee sent Sunrise Questionnaires to interested groups on regulation of mold remediation and assessment and home inspectors.¹⁷ Provided are some of the responses of the proponents of mold remediator and assessor regulation and home inspector regulation.

¹⁷ Copies of the questionnaires are on file in the Senate Regulated Industries Committee.

- The National Association of Home Inspectors (NAHI) claimed that there is real danger in having unregulated home inspectors due to the increased risk associated with buying and selling a home, continually increasing home values in Florida, level of homes being bought and sold, the complexity of systems and components of a home and the inability of realtors to advise clients on specific systems and components of a home.
- NAHI claims that there are approximately 3,000 to 3,500 individuals or businesses that would be subject to regulation.
- Proponents of home inspector regulation cited to a 1994 House of Representatives Study which concluded that there was a need for regulation of home inspectors. The 1994 study estimated that there were 600-1000 persons practicing home inspection. The proponent states that it is reasonable to assume that that number has grown since Florida's population has grown from 14.2 million in 1994 to 18.1 million in 2007. Permits for new construction on single family homes have increased from 120,000 in 1994 to 200,000 in 2006. The proponent states that these facts in addition to the increased number of hurricanes are reasons for the increased need of regulation.
- Concerned comments came from one home inspector who stated that in an unregulated profession of home inspectors the consumer realizes that it is a caveat emptor (buyer beware) environment. The danger arises when the state creates a low bar regulation that lulls the public into believing that all regulated home inspectors are qualified when they have only taken a 150 hour class. The inspector did state that successful passing of tests with an experience requirement might work if the right tests were used.
- Proponents of mold regulation stated that with the increased number of hurricanes and storm surges over the last several years there has been an increased prevalence of mold in buildings in Florida. Consumers are financially harmed due to the ability of unscrupulous individuals to overcharge for mold assessments or remediations.
- Proponents of regulation of mold remediation and assessment claim that reasonable regulation will drive out unscrupulous or untrained persons who could harm the public, and as a result, an environment of trust will be created between the public and the industry.

III. Effect of Proposed Changes:

Home Inspectors

The bill provides for the licensure and regulation of private home inspection services and creates part XV of Chapter 468, F.S.

Exemptions

It establishes exemptions for:

- An authorized government employee of the United States, Florida, or any municipality, county or other political subdivision who conducts home inspections within the scope of that employment;
- A person acting within their authorized scope of practice as licensed under federal, state, or local codes or statutes, except when they hold themselves out for hire to the public as a home inspector;
- Officers appointed by the courts;

- Safety inspectors for utility companies under the Public Service Commission jurisdiction; and
- Certified energy auditors performing energy audits under ch. 366, F.S.

Definitions

“Home inspection services” is defined to mean 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 purpose of providing a written professional opinion.

Fees

The bill establishes licensure fees and requirements. The application and examination fee may not exceed \$125, plus the per-applicant cost to the department to purchase the examination. The examination fee is refundable if the applicant is determined ineligible to sit for the examination. The initial license fee, licensure by endorsement fee, change of status application fees and biennial renewal fee may not exceed \$200. The fee for applications from providers of continuing education may not exceed \$500.

The department states that this section does not make clear that the fee is \$125 for application and examination.

Examinations

The bill provides examination requirements for licensure that include the completion of a 120 hour course of study approved by the department that includes:

- Structure;
- Electrical system;
- HVAC system;
- Roof covering;
- Plumbing system;
- Interior components;
- Exterior components; and
- Site conditions that affect the structure.

Licensure

To become a licensed home inspector a person can either pass the licensure exam or receive a license by endorsement from another state or territory of the United States. It permits renewal of a license upon proof that continuing education requirements have been satisfactorily completed. It allows for licenses to be placed on inactive status upon application to the department. Upon application and the prescribed fee (not to exceed \$200) a license can be reactivated.

Continuing Education

The bill provides for 14 hours of continuing education every two years and allows the department to prescribe by rule additional continuing education hours not in excess of 25 percent of the total hours required, for failure to complete the required hours for renewal.

Certificates of Authority

It allows the department to issue certificates of authority to corporations or partnerships that practice or offer home inspection services to the public through their licensed employees and requires renewal every two years.

Prohibitions

It prohibits a licensee from:

- Practicing or offering home inspection services without being properly licensed;
- Using the title “certified home inspector” or similar titles without being licensed;
- Using the license of another;
- Knowingly giving false or forged evidence to the department;
- Using a suspended or revoked license;
- Offering to perform repairs prior to closing if the licensee prepared the home inspection report;
- Inspecting properties that the licensee or the licensee’s company has any financial interest in;
- Inducing a broker or agent to refer homeowners to the licensee or the licensee’s company; and
- Falsifying a report for a fee.

Persons in violations of these provisions commit a first degree misdemeanor, which is punishable by up to a year imprisonment and a \$1000 fine.

The bill establishes prohibited acts that are subject to disciplinary action by the department. It allows the department to deny a licensure application, to suspend or revoke a license, to issue fines of not more than \$5,000, to reprimand, to place on probation, and to restrict the scope of practice.

It provides that the department reissue the license of disciplined home inspectors that have complied with final orders.

Disclosures

The bill requires the home inspector to provide certain disclosures before contracting or commencing a home inspection. These include producing a copy of their license and a disclosure of whether they maintain the required liability insurance, scope and any exclusions of the inspection and a statement of their experience that includes the number of years of experience.

Insurance

Home inspectors would be required to maintain a commercial general liability policy in an amount not less than \$300,000 and establishes requirements for home inspection reports.

Home Inspection Report

The bill requires a home inspection report on inspected systems and components that are significantly deficient or near the end of their service lives.

Grandfathering

The bill includes a grandfather clause that allows the department until January 1, 2009, to issue a license to any person who has received a high school diploma or its equivalent, been engaged in the practice of home inspection for compensation for at least 3 years before July 1, 2007, is of good moral character, and has not committed any acts that would be grounds for disciplinary actions.

Mold Assessors and Remediators

The bill provides requirements for licensure and regulation of mold assessment and remediation and creates Part XVI of Chapter 468, F.S.

Exemptions

The bill establishes certain exemptions including:

- A residential property owner who performs mold assessment on his or her own property;
- A person who performs mold assessment on property owned or leased by that person, the person's employer, or an affiliate of the employer as long as the persons are not engaging in the business of performing mold assessment for the public;
- A full-time employee engaged in routine maintenance of public and private buildings, structures, and facilities, which does not otherwise hold him/her out for hire;
- Employees of mold assessors and remediators while directly supervised by the mold assessor or remediation;
- Division I and Division II contractors licensed under ch. 489, F.S.;
- Engineers licensed under ch. 471, F.S.;
- Architects and interior designers licensed under part I of ch. 481, F.S.;
- Pest control organizations and persons licensed pursuant to ch. 482;
- Persons acting on behalf of an insurer pursuant to part VI of ch. 626, F.S., when acting within the scope of their licenses and not holding themselves out to the public as mold assessors or words to that effect;
- Individuals working in the manufactured housing industry licensed under ch. 320, F.S.; and
- Authorized employees of the United States, the State of Florida, or any municipality, county, or other political subdivision, or public or private school.

Definitions

The bill establishes definitions. "Mold assessment" is the process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than ten square feet.

"Mold remediation" is defined to mean the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities of mold or mold-contaminated matter of greater than ten square feet that was not purposely grown at that location. It specifies that mold remediators may not perform work that requires a license under ch. 489, F.S.

Fees

The bill provides the department with rule authority for application, examination, reexamination, licensing, and renewal fees. The application and examination fees each have a \$125 cap, plus a per applicant cost the department may add to the examination fee if the department purchases the examination. The fee for an initial license and certificate of authorization may not exceed \$200. The biennial license renewal and certificate of authorization may not exceed \$400. The fee for licensure by endorsement and reactivation of an inactive license may not exceed \$200. The fee for application for inactive status may not exceed \$100. The application fee from providers of continuing education may not exceed \$500.

Examinations

An applicant must satisfy good moral character requirements and for a mold remediator, have at least a two-year degree in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of one year of document field experience in a field related to mold remediation and satisfy certain education and experience requirements.

A mold assessor must have at least a two year degree in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution and a minimum of one year of documented field experience in conducting microbial sampling or investigations and satisfy certain education and experience requirements.

If the applicant satisfies all these requirements but is found to lack good moral character the department must provide a complete record of evidence on which the determination was based.

Licensure

The bill provides that for a person to be licensed they must meet the educational requirements, be of good moral character and pass the licensing exam.

It allows for licensure by endorsement if the person:

- Has met the educational requirements;
- Is of good moral character;
- Has passed a certification examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation which has been approved by the department as substantially equivalent to the requirements of this section and s. 455.217; or
- Holds a valid license to practice mold assessment or mold remediation by another state or territory of the United States.

The bill provides for the certification of partnerships and corporations, but specifies that a corporation cannot hold a license to practice mold assessment or remediation.

It establishes personal liability standards for individuals, partners, officers, agents, and employees.

It establishes prohibited acts that are second degree misdemeanors for first offenses, first degree misdemeanors for second offenses, and third degree felonies for third or subsequent offenses. A second degree misdemeanor is punishable by no more than 60 days imprisonment and a \$500 fine, a first degree misdemeanor is punishable by no more than a year imprisonment and a \$1000 fine, and a third degree felony is punishable by imprisonment not exceeding five years and a \$5000 fine. Conviction of a felony also results in loss of civil rights.

It establishes disciplinary offenses and penalties, including a maximum fine of \$5,000 per count. The bill does not authorize the department to assess costs associated with investigation or prosecution.

Insurance

The bill requires that mold assessors and remediators maintain general liability and errors and omissions insurance coverage in an amount of not less than \$1 million.

Contracts

Contracts to perform mold assessment or mold remediation must be in document or electronic record, signed or otherwise authenticated by the parties. The contracts are not required to provide estimates.

Grandfathering

The bill includes a grandfather clause that allows the department to license mold assessors or remediators that meet licensure requirements by July 1, 2008.

Appropriation and Positions

The bill provides \$196,161 from the General Revenue Fund and authorizes three full-time equivalent positions to carry out professional board activities and administrative functions provided for in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons seeking to meet the statutory requirements for practicing mold assessment, mold remediation, and home inspections will incur costs for licensing, education, and insurance.

C. Government Sector Impact:

According to the department, it has been estimated by the Florida Association of Building Inspectors that there could be as many as 3,000 home inspection entities in Florida and 215 mold inspection applications (based on the number of mold assessors and remediators in Texas). The department states that the bill also requires the licensure of each employee performing inspection services and therefore the ultimate number of home inspectors is indeterminate. The department estimates the following revenues, based on biennial renewals provided in the legislation:

The department states that there will be an impact to the Divisions of Professions, Regulation, and Service Operations associated with examination development and administration, application processing, investigations, prosecutions, rulemaking, and administrative overhead. The department estimates that for FY 2007-08 revenues will total \$1,071,750 and expenditures will total \$685,575. However on a recurring basis in a biennial licensing period revenue would be projected to be \$686,000 and expenses \$703,954.

REVENUE			
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
Initial License Fees:	\$643,000	0	0
Application/Exam Fees	\$428,750	0	0
Biennial Renewal Fee	0	0	\$686,000
TOTAL:	\$1,071,750	None	\$686,000

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	\$ 6,500		
Examination Services	\$234,000		
Expenses	\$ 14,924		
Acquisition of Motor Vehicles	\$ 15,000		
Subtotal	\$ 270,424	None	None

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Effects	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
Salaries/Benefits – 4.5 FTE	\$188,333	\$188,333	\$188,333
Expenses	\$ 27,982	\$ 27,982	\$ 27,982
Other – Operation of Motor Vehicles	\$ 3,000	\$ 3,000	\$ 3,000
Examination Services-maintenance		\$ 15,000	\$ 15,000
Other –Transfer to DMS HR Services	\$ 1,805	\$ 1,805	\$ 1,805
Application Management - .41 per licensee/month	\$ 15,818	\$ 15,818	15,818
Subtotal	\$236,938	\$251,938	\$251,938

Non-Operating Expenditures	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
Service Charges (to General Revenue)	\$ 78,213	0	\$ 50,078
Other Indirect Costs – Admin Assessment	\$100,000	\$75,000	\$ 75,000
Subtotal	\$178,213	\$75,000	\$125,078

According to the responses from Sunrise Questionnaires, the home inspector industry estimates that there will be approximately 3,000 to 3,500 licensees. The mold industry representatives, however, estimated that there will be approximately 2,000 licensees. This discrepancy in the number of mold licensees would increase the amount of revenue by \$223,125 for the application fees, \$223,125 for the examination fee, and \$357,000 for the initial licensing fee. This is a total increase of \$803,250.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The department provided the following comments about the bill:

- The bill does not contain a provision that would list these professions within the Division of Professions pursuant to s. 20.165(4)(a), F.S. The addition of these professions to the Division of Professions would trigger the applicability of ch. 455, F.S., and provide for licensure and disciplinary processes that are consistent with the department’s current operating procedures.
- The bill provides a licensure exemption for employees who are supervised by licensed mold remediators; however, under “Certification of partnerships and corporations,” the bill requires licensure for all personnel who act as mold remediators.

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- The bill does not authorize fees for the issuance of grandfather licenses. The grandfather clause for mold assessment and remediation anticipates prospective qualification by July 1, 2008. The intent of this provision is not clear.
 - The department indicated that the fees as estimated would not be adequate to support the cost of regulation. Though the deficit is small it requires the fees to be charged, at the initiation of the regulation, to be at the rate set in statute with no ability to increase or decrease fees by rule to maintain the financial integrity of the account.
 - The July 1, 2007, effective date does not allow sufficient time to effectively implement these programs.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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