

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

Currently, there are numerous companies in Florida that hold themselves out to be **mold assessors or mold remediators** or conduct mold related services. There are no state licensure or regulatory requirements to be a mold assessor or mold remediator.

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

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

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

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

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

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

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates a new state regulatory program within the DBPR to license and regulate individuals and businesses as home inspectors, mold assessors and mold remediators, and wind mitigation assessors.

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

B. EFFECT OF PROPOSED CHANGES:

Background - home inspections

Currently, home inspectors are not regulated. Although home inspectors are not regulated by any statute or agency, several professions dealing with construction are regulated. Regulated professions include construction contractors, architects, engineers, building code administrators, plans examiners, building code inspectors, and 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, often contracted for after construction is complete. A home inspection is typically contracted for by a potential purchaser of a home, although home inspections are sometimes contracted for by the current owner of a home to determine its condition, by a homeowner about to sell a home who wishes to avoid potential problems, or by a purchaser of a new home who wants to ensure that the house was constructed properly. A home inspection is performed by private industry, rather than by local government.

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. The term does not include the common areas of condominiums or cooperatives.

“Home inspector” means a person who provides a home inspection for a fee or other compensation.

“Home inspection” means 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 purposes of providing an opinion of the condition of the home.

The bill requires licensure of an applicant who qualifies to conduct home inspection services. An applicant must be of good moral character, received a high school diploma [or equivalent], completed 120 hours of study, and passed the DBPR examination.

The bill provides for licensure by endorsement from another state, license renewal, continuing education requirements, inactive license status, and certification of corporations and partnerships. The bill specifies numerous exemptions from the requirements being imposed.

The bill requires written disclosures to be provided to customers prior to contracting for or commencing a home inspection, including a copy of the license. 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 further 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.

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.

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 they 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, 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.

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. However, certain mold-related activities are regulated when those activities require that person to act in the capacity of a licensed contractor. Contractors are licensed by the Construction Industry Licensing Board (CILB) of the DBPR under chapter 489, F.S.

Effect of proposed changes

This bill creates part XVI of chapter 468, F.S. to provide licensure and regulation of those persons who engage in business as a mold assessor or mold remediator. The bill provides various exemptions from the licensure and operating requirements.

This bill defines mold to mean “an organism of the class fungi that causes disintegration of organic matter and produces spores and includes any spores, hyphae, and mycotoxins produced by mold.”

The bill defines “mold assessment” as 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.

“Mold remediation” is defined as the removal, cleaning, sanitizing, demolition, or other treatment, of mold or mold-contaminated matter.

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

- 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 requires licensure of an applicant who qualifies to conduct mold assessment or mold remediation. An applicant must pass the DBPR licensure examination, be of good moral character, and has satisfied **one** of the following requirements for 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.

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

- 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 provides for licensure by endorsement from another state, 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 requires that a contract to perform mold assessment or mold remediation must be signed or otherwise authenticated by the parties.

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

The bill has a "grandfather clause" to allow current operators to continue until July 1, 2008 when license compliance would be required.

Florida Comprehensive Hurricane Damage Mitigation Program

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

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

Effect of proposed changed

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

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

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

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

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

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

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

Sunrise Act - s. 11.62, F.S.

According to s. 11.62, F.S., the "Sunrise Act," 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.

C. SECTION DIRECTORY:

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

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

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

Section 4. Effective date - July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

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

2. Expenditures:

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

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Non-Recurring Effects	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
Operating Capital Outlay	\$ 11,700		
Other Personal Services	\$189,000		
Expenses	\$ 30,341		

EXPENDITURES – FUNDING SOURCE (TRUST FUND)			
Recurring Effects	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
Salaries/Benefits 8.5 FTE	\$400,434	\$400,434	\$400,434
Expenses	\$ 57,182	\$ 57,182	\$ 57,182
Operation of Motor Vehicles	\$ 3,000	\$ 3,000	\$ 3,000
Transfer to DMS HR Services	\$ 3,609	\$ 3,609	\$ 3,609
Other Personal Services	\$ 0	\$ 15,000	\$ 15,000
Application Management Fee - .41/account in LicenseEase / month through 12/08	\$ 45,338	\$ 22,669	\$ 0
Subtotal	\$509,563	\$501,894	\$479,225
Acquisition of Motor Vehicles	\$ 14,000		
Subtotal	\$245,041	None	None

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The public may benefit from improved health and safety.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

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

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

NA

D. STATEMENT OF THE SPONSOR

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

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

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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

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