

Recent Legislative Background

Florida law does not currently license or specifically regulate home inspectors or mold assessors/remediators. For the past several years, the Florida Legislature has considered bills relating to home inspectors as well as bills relating to mold assessors/remediators. In addition, the Committee on Regulated Industries of the Florida Senate conducted a “Review of Mold Legislation” in Interim Project Report 2004-158. In this review, the report acknowledged the ubiquitous nature of mold; described some of the health consequences that may be experienced after exposure to mold; examined some of the litigation surrounding mold; and considered potential legislative responses to mold. However, the report stopped short of recommending the regulation of mold assessors and mold remediators; rather, the report only stated that the Legislature should *consider* such regulation.

In 2005, the Florida Legislature again considered bills relating to home inspectors and mold assessors/remediators. The bills relating to home inspection services and mold assessors and remediators were ultimately combined into one bill, House Bill 315, relating to building assessment and remediation. The combined version of House Bill 315 passed the Florida Senate on May 5, 2005, and passed the Florida House of Representatives on May 6, 2005.

However, Florida Governor Jeb Bush, vetoed House Bill 315 on June 22, 2005. While Governor Bush stated his support for the public protection and standards provided in House Bill 315 in his veto message, he also expressed concern regarding potential unintended consequences, ambiguities and insurance requirements of the bill. As such, Governor Bush directed the Department of Business and Professional Regulation (DBPR) to work with various stakeholders during the interim to develop proposed legislation. Governor Bush also encouraged legislators to participate in this process with the “hope that they will work with the department to find a solution that protects the public while providing a constructive business climate in which legitimate and responsible Florida businesses can compete.”

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Sunrise Act

In considering the regulation of individuals and companies that perform home inspection or mold-related activities, the “Sunrise Act” in section 11.62, Florida Statutes, sets forth the framework for the legislative review of proposed regulation of unregulated functions. Specifically, the Sunrise Act provides 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 that the police power of the state be exercised only to the extent necessary for that purpose.” Subsection (3) of the Sunrise Act also requires the Legislature to consider five factors in determining whether to regulate a profession or occupation:

(a) 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;

(b) 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;

(c) 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;

(d) Whether the public is or can be effectively protected by other means; and

(e) Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

DBPR believed that the 2005 legislative proposals did not clearly satisfy either the legislative intent [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] or all of the required factors of the Sunrise Act [particularly paragraphs (d) and (e) of subsection 3]. As such, DBPR worked with the stakeholders and bill sponsors to develop an “alternative to licensure.”

Alternative to Licensure

The alternative to licensure concept was developed from two sources: (1) section 501.937, Florida Statutes (2005), which regulates the use of certain industrial hygienist and safety professional titles; and (2) prior home inspection legislation which treated violations as a deceptive and unfair trade practice.

The alternative to licensure concept focused on establishing certain “requirements for practice” which would have to be met in order to work as a home inspector, mold assessor or mold remediator. Definitions, exemptions, prohibited acts, penalties and insurance requirements were also established along with these requirements for practice. Failure to meet the requirements for practice could be a violation of part II of chapter 501, Florida Statutes, the Florida Unfair and Deceptive Trade Practices Act (FUDTPA).

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DBPR Stakeholder Meetings

In response to direction provided in the Governor’s veto message for House Bill 315, DBPR scheduled a series of stakeholder meetings. Three of the stakeholder meetings considered the separate aspects of building assessment and remediation provided in House Bill 315: home inspection, mold assessment and mold remediation. The focus of the mold remediation workshop was on remediation which can be done without having to be licensed as a construction

or electrical contractor under chapter 489, Florida Statutes. A fourth meeting addressed mold inspection and testing, an area that was raised by some stakeholders towards the end of the 2005 legislative session.

Each of the workshops was held at 9:00 a.m. and covered the following topics:

- August 16, 2005: Alternatives to licensure and consumer protection in the field of home inspection.
- August 23, 2005: Alternatives to licensure and consumer protection in the field of mold assessment.
- August 30, 2005: Alternatives to licensure and consumer protection in the field of mold remediation.
- September 6, 2005: Alternatives to licensure and consumer protection in the field of mold inspection or testing.

Each of these workshops was held in Tallahassee at DBPR's main office on North Monroe Street. Each workshop also had a call-in number for those who wished to participate in the meeting via the telephone.

A fifth workshop was scheduled in conjunction with a meeting of the Construction Industry Licensing Board in Naples, Florida, on September 15, 2005, at 6:00 p.m. The purpose of this workshop was to address the creation of s. 489.1134, F.S., which provides educational and procedural requirements for mold remediation certification, as proposed in House Bill 315. A call-in number was provided for those who wished to participate in the meeting via the telephone.

Notices announcing the workshops were published in the *Florid Administrative Weekly*. An announcement letter was sent to all of those who contacted DBPR regarding House Bill 315 during the 2005 legislative session or after its veto. This stakeholder list was expanded throughout the process to include those who contacted DBPR as well as any workshop participants. Reminders about upcoming workshops were sent via e-mail to all those who provided e-mail addresses. Press releases were also distributed announcing the meetings.

Workshop Facilitation and Participation

Each workshop was conducted using an open-response, facilitative format. The topic of discussion for each day's agenda was announced and comments were taken from those in attendance in person and on the phone. The discussions covered:

- Definitions and categories;
- Requirements for practice;
- The scope of potential exemptions;

- The scope, type and appropriateness of any prohibited acts and corresponding penalties;
- The scope, type, appropriateness and availability of insurance;
- The manner in which violations would be enforced (FUDTPA); and
- The scope, type, appropriateness and need for grandfathering.

Summary of Workshops

A summary of the workshops follows. The summary is divided into sections based on area and addresses topics such as: education requirements, insurance, disclosure and exemptions. The specific provisions in HB 315 have been included as well as the provisions from the 2006 bill(s) that had been filed at the time this report was published.

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Home Inspectors

Education

HB 315 (2005)	HB 153 (2006) Home Inspection Services
Complete no less than 60 course hours of study; 8 hours of continuing education annually; disclosure to customer of meeting education, insurance, and experience requirements; must also disclose scope and that they are not regulated by a state agency	Complete no less than 80 course hours of study; 8 hours of continuing education annually; disclosure to customer of meeting education, insurance, and experience requirements; must also disclose scope and that they are not regulated by a state agency

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Concerns

- What constitutes a valid examination?
- 60 hours not enough?

Consensus

- Yes – Third party accreditation could be a viable option (see next section below)

Veto Message

- This area was addressed in the Governor’s veto message of HB 315. Proponents of potential legislation might consider making education requirements clear in order to address the Governor’s concerns.

Continuing Education

HB 315 (2005)	HB 153 (2006) Home Inspection Services
8 hours of continuing education annually	8 hours of continuing education annually

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Concerns

- Amount of hours

Consensus

- None, as some agreed to 20 hours other felt 20 hours is too much.

Veto Message

- In the Governor's veto message of HB 315, he expressed concern regarding the ambiguity of who is to establish educational requirements. During the various workshops, the notion of a third party serving to accredit education and exam requirements was discussed. If realistic, third party accreditation might be a credible process by which such requirements are approved.

3rd Party Accreditation

HB 315 Requirements

- Not addressed in bill text.

Concerns

- Whether continuing education programs would need third-party accreditation;
- Whether in-house programs could meet the continuing education requirement; or
- Whether approval by a licensing board such as the Construction Industry Licensing Board could be recognized for continuing education purposes.

Consensus

- A home inspector would meet the educational requirements by taking a course which has been recognized by an independent and impartial organization which meets certain accrediting body standards. The third-party accrediting organization then serves as a check in the process, while still minimizing the level of involvement by state government.

Disclosure

HB 315 Requirements

- Meets the educational and examination requirements

- Maintains the required commercial general liability insurance policy
- The scope and any exclusions of the home inspection
- A statement of experience which includes the approximate number of home inspections the home inspector has performed for a fee or the number of years of experience the home inspector has.
- A statement that home inspectors are not regulated by any state agency, however failure to comply with the statutory requirements may constitute an unfair and deceptive trade practice under part II of chapter 501, Florida Statutes.

Concerns

- Legal requirement to disclose the approximate number of home inspections conducted by the home inspector
- Number of years of experience that the home inspector has

Consensus

- None

Exemptions

HB 315 (2005)	HB 153 (2006) Home Inspection Services
Licensees under chapters 489, 481, 471, Part XII of Chapter 468, or Part II of Chapter 475; inspectors reporting solely for the benefit of the FHA or Veterans Admin.; an inspector for wood-destroying organisms; fire safety inspectors; insurance adjusters licensed under Part VI of Chapter 626; a court-appointed officer; a master septic tank contractor licensed under Part III of Chapter 489; an energy auditor or mobile home manufacturer, dealer or installer licensed under Chapter 320	Licensees under chapters 489, 481, 471, Part XII of Chapter 468, or Part II of Chapter 475; inspectors reporting solely for the benefit of the FHA or Veterans Admin.; an inspector for wood-destroying organisms; fire safety inspectors; insurance adjusters licensed under Part VI of Chapter 626; a court-appointed officer; a master septic tank contractor licensed under Part III of Chapter 489; an energy auditor or mobile home manufacturer, dealer or installer licensed under Chapter 320

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Concerns

- None

Consensus

- N/A

Prohibited Acts

HB 315 (2005)	HB 153 (2006) Home Inspection Services
Cannot offer, for an additional fee, to make repairs for which a report has been prepared; cannot inspect for a fee, property in which inspection company has a financial interest; cannot offer an inducement for referrals; cannot prepare a report based on pre-established findings	Cannot offer, for an additional fee, to make repairs for which a report has been prepared; cannot inspect for a fee, property in which inspection company has a financial interest; cannot offer an inducement for referrals; cannot prepare a report based on pre-established findings
Violators commit a misdemeanor of the second degree for a first violation; a misdemeanor of the first degree for a second violation; a felony of the third degree for a third or subsequent violation; all punishable as provided by s. 775.082 or 775.083 or 775.084	Violators commit a misdemeanor of the second degree for a first violation; a misdemeanor of the first degree for a second violation; a felony of the third degree for a third or subsequent violation; all punishable as provided by s. 775.082 or 775.083 or 775.084

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Concerns

- Additional prohibitive acts
- A person who does not meet the requirements for practice should be prohibited from advertising for home inspection services.
- Suggestions related to the tensions that exist between home inspectors and real estate agents, and home inspectors and new home builders.

Consensus

- Yes on HB 315 Language.

Insurance

HB 315 (2005)	HB 153 (2006) Home Inspection Services
Must maintain a commercial general liability insurance policy valued at no less than \$300,000	Must maintain a commercial general liability insurance policy valued at no less than \$300,000

Concerns

- Linking the value of home to the insurance required.
- Suggestion to use professional liability insurance rather than commercial general liability insurance. Errors and omissions insurance were also discussed.

Consensus

- None

Veto Message

- This area was addressed in the Governor's veto message of HB 315. Proponents of potential legislation may need to document the insurance industry's available products and if they are not available, explore the industry's willingness to provide them.

Repair Cost Estimates

HB 315 Requirements

- Not required to provide estimates related to the cost of repair of an inspected property.

Concerns

- If home inspectors do provide estimates, then they need to be able to justify that estimate.
- Other stakeholders indicated that "ballpark" estimates are often given as part of an inspection, but are not included in the report given to the homeowner.

Consensus

- Generally, workshop participants did not favor a requirement to provide repair cost estimates.

Statute of Limitation

HB 315 Requirements

- Refers to chapter 95, Florida Statutes, which governs when an action to enforce an obligation, duty or right arising under this section must be commenced.

Concerns

- Is the language necessary?

Consensus

- Some liked having the language for clarity.

Enforcement

HB 315 (2005)	HB 153 (2006) Home Inspection Services
Violations constitute deceptive and unfair trade practices	Violations constitute deceptive and unfair trade practices

Note: this topic was not discussed at the workshops.

Grandfathering

HB 315 (2005)	HB 153 (2006) Home Inspection Services
Until January 2007: individuals having successfully completed high school or its equivalent or having 5 years in home inspection business, been engaged in home inspecting for compensation for at least 3 years prior to January 1, 2006, and having performed not fewer than 250 home inspections for compensation	Not included

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Concerns

- The criteria identified.

Consensus

- None

Veto Message

- This area was addressed in the Governor's veto message of HB 315. In order to address the Governor's concerns, proponents of potential legislation might consider grandfathering rules being sensitive to the issue of putting established, responsible people out of business.

Two-Tiers of Home Inspectors

Creating two tiers of home inspectors is another idea which received significant discussion as a way to address some of the concerns with the requirements for practice set forth in HB 315. During the workshop, proponents for having two-tiers argued that it provides more public protection than having a single, minimal-level tier. Others, however, did not believe that a two-tiered system should be part of any proposed legislation.

Mold Assessors

Definitions and Categories

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Included	Included	Included

House Bill 315 defined “mold” as “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 also defined the three activities which constitute “mold assessment” by a “mold assessor” for purposes of having to meet the requirements for practice set forth by the bill: “(1) 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; (2) the development of a mold-management plan or remediation protocol; or (3) the collection or analysis of a mold sample.”

Although there was discussion at the workshop regarding possibly addressing the causation aspect of mold (water) and adding a category for laboratories, there did not appear to be strong consensus or support for these additions.

Education

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Certification from a community college or university that provides mold assessment training/education, or a nonprofit organization with focus on indoor air quality or industrial hygiene that requires a person to have a 2-year degree in a scientific/building science field and 3 years of documented experience, or requires a 4-year degree in a scientific/ building science field; and requires a person to	Licensure and good moral character required; must satisfy examination requirements and courses to be established by the CILB; must provide evidence of financial stability and pass a department-approved exam related to mold knowledge; in lieu of passing department-approved exam, must show proof of certification of an organization requiring same testing as department; licensees must annually complete 15 hours of	Certification from a community college or university that provides mold assessment training/education, or a nonprofit organization with focus on indoor air quality or industrial hygiene that requires a person to have a 2-year degree in a scientific/building science field and 3 years of documented experience, or requires a 4-year degree in a scientific/ building science field; and requires a person to

pass an examination on mold knowledge	continuing education (courses to be approved by CILB) and renew their license annually; the board can reactivate and revoke a license	pass an examination on mold knowledge
	Licenses can be issued to individuals who want to practice in their own name, or	
	Licenses can be issued to individuals operating in a business not using their own name if the business applies through a qualifying agent or the individual applies under the fictitious name; licensure of a business organization requires proof of worker's compensation insurance, public liability insurance, and property damage insurance in amounts to be determined by the board; also requires proof of financial responsibility	

Concerns

- Use of third party accreditation
- Education requirements – must have at least a 2 year degree.

Consensus

- None

Veto Message

- This area was addressed in the Governor's veto message of HB 315. Proponents of potential legislation might consider making education requirements clear in order to address the Governor's concerns.
- Governor Bush also expressed concerns regarding the ambiguity of who is to establish educational requirements. During the various workshops, the notion of a third party serving to accredit education and exam requirements was discussed. If realistic, third party accreditation might be a credible process by which such requirements are approved.

Continuing Education

HB 315 Requirements

- Not addressed

Consensus

- Third-party accreditation mechanism
- Continuing education programs need to be recertified periodically
- The amount of continuing education should be reasonable

Veto Message

- In the Governor’s veto message of HB 315, he expressed concern regarding the ambiguity of who is to establish educational requirements. During the various workshops, the notion of a third party serving to accredit education and exam requirements was discussed. If realistic, third party accreditation might be a credible process by which such requirements are approved.

3rd Party Accreditation

HB 315 Requirements

- Not addressed

Concerns

- Education requirements – must have at least a 2 year degree
- What organizations might serve as third-party accreditors

Consensus

- Yes

Exemptions

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Residential property owner on his own property; owner, tenant or managing agent performing mold assessment on property owned or leased by the owner or tenant; an employee of a licensee performing only under direct supervision of mold assessor; licensees practicing under the scope of their respective	Division I and Division II contractors licensed under chapter 489, manufactured housing licensees, and engineer licensees, when practicing within scope of license; any individual who has completed mold assessment training courses approved by the board and who is practicing within	Residential property owner on his own property; owner, tenant or managing agent performing mold assessment on property owned or leased by the owner or tenant; an employee of a licensee performing only under direct supervision of mold assessor; licensees practicing under the scope of their respective

licenses; an authorized public employee practicing under the scope of his employment	scope of employment and not otherwise engaged in mold assessment/remediation; full-time employees engaged in routine maintenance of buildings/structures that do not otherwise engage in mold assessment/remediation	licenses; an authorized public employee practicing under the scope of his employment
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Concerns

- Whether or not construction contractors who are licensed pursuant to part I of chapter 489, Florida Statutes, should be exempted from the requirements if acting in the scope of their construction license and if they have appropriate additional training and education.

Consensus

- Yes to HB 315 Requirements; no regarding the concern noted above.

Prohibited Acts

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Cannot perform without complying with section requirements; cannot perform assessments on structures he previously assessed during the last 12 months; cannot inspect for a fee property in which assessor's company has financial interests; cannot offer any inducements for referrals; cannot make omissions or prepare a report based on pre-established findings	Cannot practice without a license; cannot falsely hold self or business out as a licensee; cannot use someone else's license; cannot give false/forged evidence to the board; cannot use a revoked or suspended license; must report change in qualifying agent within 60 days	Cannot perform without complying with section requirements; cannot perform assessments on structures he previously assessed during the last 12 months; cannot inspect for a fee property in which assessor's company has financial interests; cannot offer any inducements for referrals; cannot make omissions or prepare a report based on pre-established findings
	A licensed assessor/remediator cannot lend out his license number to be used by an unlicensed person	
Violators commit a	Unlicensed person who	Violators commit a

misdemeanor of the second degree for a first violation; a misdemeanor of the first degree for a second violation; a felony of the third degree for a third or subsequent violation; all punishable as provided by s. 775.082 or 775.083 or 775.084	violates prohibitions commits a misdemeanor of the first degree and commits a felony of the third degree if previously found guilty of violating a prohibition; an unlicensed person who violates a prohibition during a state of emergency as declared by executive order commits a felony of the third degree;	misdemeanor of the second degree for a first violation; a misdemeanor of the first degree for a second violation; a felony of the third degree for a third or subsequent violation; all punishable as provided by s. 775.082 or 775.083 or 775.084
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Concerns

- Whether or not it is appropriate or necessary to prohibit mold remediation.

Consensus

- N/A

Insurance

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Mold assessors must maintain a mold-specific policy in an amount not less than \$1 million	Not included	Mold assessors must maintain a mold-specific policy in an amount not less than \$1 million

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Concerns

- Comments on insurance varied as participants were not in agreement:
 - the requirement should be deleted, it is not available
 - the requirement should just be for general liability
 - the companies offering are far too restrictive
 - it is available, and the cost has doubled

Note: No representatives from the insurance industry were identified as being present.

Consensus

- None

Veto Message

- This area was addressed in the Governor’s veto message of HB 315. Proponents of potential legislation may need to document the insurance industry’s available products and if they are not available, explore the industry’s willingness to provide them.

Repair Cost Estimates

HB 315 Requirements

- Not required to provide estimates related to the cost of repair of an inspected property.

Concerns

- None

Consensus

- Yes

Statute of Limitation

HB 315 Requirements

- Chapter 95, Florida Statutes, governs when an action to enforce an obligation, duty or right arising under this section must be commenced.

Concerns

- Mold can be an on-going problem.

Consensus

- None

Grandfathering

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Not included	Not included	Not included

Concerns

- An experience clause could be used

- Insurance companies will play a role in determining the minimum level of experience for grandfathering
- Similar to what it was for construction contractors
- Grandfathering needs to be fair, feasible, and practical
- If there is a test, there should be adequate time to take the test.
- There should a be transition period and some requirements could be implemented more immediately than other requirements.

Veto Message

- This area was addressed in the Governor’s veto message of HB 315. In order to address the Governor’s concerns, proponents of potential legislation might consider establishing grandfathering rules; to be sensitive to the issue of not putting established, responsible people out of business.

Enforcement

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Violations constitute deceptive and unfair trade practices	Construction Industry Licensing Board and DBPR	Violations constitute deceptive and unfair trade practices

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Concerns

- Potential exposure for mold assessors and the potential for abuse
- A suggestion for disclosure similar to that proposed for home inspectors in House Bill 315
- Providing a right to cure

Consensus

- Yes

Mold Remediation (Contracting/Non Contracting)

Education

Non Contracting:

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Certification from a	Not included	Certification from a

community college or university that provides mold assessment training/ education, or a nonprofit organization with focus on remediation that requires a person to have a high school diploma and 2 years experience in a field related to mold rediation; requires a person to complete training related to mold and mold remediation; and requires a person to pass an examination on mold knowledge		community college or university that provides mold assessment training/ education, or a nonprofit organization with focus on remediation that requires a person to have a high school diploma and 2 years experience in a field related to mold rediation; requires a person to complete training related to mold and mold remediation; and requires a person to pass an examination on mold knowledge
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Contracting:

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Any contractor or contractor employee who wishes to engage in business with a focus or emphasis on mold remediation not included in the scope of their license must take courses approved by the board	Not included	Any contractor or contractor employee who wishes to engage in business with a focus or emphasis on mold remediation not included in the scope of their license must take courses approved by the board

Concerns

- Value of requiring a high school diploma - the equivalency of a high school diploma should be acceptable.
- Requirements for practice included: employees must have training records which should be kept on file; employees must meet the standards of the Occupational Safety and Health Administration; and must use third-party accreditation.
- Questions with regard to where non-contracting mold remediation would end and contracting mold remediation would begin.
- Potential issue if the Construction Industry Licensing Board were to disagree that additional education was warranted for contracting.

- Suggested that there is a need for more education and regulations at the assessor and remediator levels.

Consensus

- N/A

Veto Message

- This area was addressed in the Governor’s veto message of HB 315. Proponents of potential legislation might consider making education requirements less restrictive in order to address the Governor’s concerns.
- Governor Bush also expressed concern regarding the ambiguity of who is to establish educational requirements. During the various workshops, the notion of a third party serving to accredit education and exam requirements was discussed. If realistic, third party accreditation might be a creditable process by which such requirements are approved.

Continuing Education
HB 315 Requirements

- None

Concerns

- 14 hours every two years was proposed with discussion as to whether that should be all related to mold or might include other topics such as workers’ compensation

Consensus

- None

Veto Message

- In the Governor’s veto message of HB 315, he expressed concerns regarding the ambiguity of who is to establish educational requirements. During the various workshops, the notion of a third party serving to accredit education and exam requirements was discussed. If realistic, third party accreditation might be a creditable process by which such requirements are approved.

Exemptions

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Residential property owner	Not included	Residential property owner

on his own property; owner, tenant or managing agent performing mold assessment on property owned or leased by the owner or tenant; an employee of a licensee who performs non-contracting mold remediation performing only under direct supervision of the non-contracting mold remediator; licensees practicing under the scope of their respective licenses; an authorized public employee practicing under the scope of his employment		on his own property; owner, tenant or managing agent performing mold assessment on property owned or leased by the owner or tenant; an employee of a licensee who performs non-contracting mold remediation performing only under direct supervision of the non-contracting mold remediator; licensees practicing under the scope of their respective licenses; an authorized public employee practicing under the scope of his employment
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Concerns

- Exemption for the residential property owner is too broad
- Shopping centers are concerned about the residential owners or owner/tenant exemptions; the bill should not focus on residential owners or owners/tenants, but on the activities of mold assessors and mold remediators
- Need to keep the exemptions for the listed licensees or it will create opposition to the bill
- Portions of the exemption language need to be clarified
- Contracting mold remediators need to be better addressed

Consensus

- None

Prohibited Acts

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Cannot perform without complying with section requirements; cannot perform or offer to perform mold assessments; cannot remediate for a fee, property in which remediator's company has financial	Not included	Cannot perform without complying with section requirements; cannot perform or offer to perform mold assessments; cannot remediate for a fee, property in which remediator's company has financial

interests; cannot offer or accept any inducements for referrals		interests; cannot offer or accept any inducements for referrals
Violators commit a misdemeanor of the second degree for a first violation; a misdemeanor of the first degree for a second violation; a felony of the third degree for a third or subsequent violation; all punishable as provided by s. 775.082 or 775.083 or 775.084	Not included	Violators commit a misdemeanor of the second degree for a first violation; a misdemeanor of the first degree for a second violation; a felony of the third degree for a third or subsequent violation; all punishable as provided by s. 775.082 or 775.083 or 775.084

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Concerns

- Whether there should be a strict division between mold assessors and mold remediators: post-assessment is a common and important part of mold remediation and might be prohibited by this type of language
- Such a division is not necessary at all – not just as it relates to post-assessment
- The division could be subject to waiver as post assessments are not free and the cost is often passed onto the homeowner whether there is a post-assessment should be up to the homeowner.

Consensus

- None

Insurance

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Non-contracting mold remediators must maintain a general liability policy with a mold insurance pollution rider of no less than \$1 million	Not included	Non-contracting mold remediators must maintain a general liability policy with a mold insurance pollution rider of no less than \$1 million

Concerns

- Insurance is not a proxy for education requirements
- This type of policy is too difficult for contractors to get
- The policies are available to *assessors* and *remediators* (difference from contractors is meeting the requirements of the insurance company) through at least five different sources
- It appears to be readily available by another who had researched

Consensus

- None

Veto Message

- This area was addressed in the Governor’s veto message of HB 315. Proponents of potential legislation may need to document the insurance industry’s available products and if they are not available, explore the industry’s willingness to provide them.

Statute of Limitation

HB 315 Requirements

- Refers to chapter 95, Florida Statutes, governs when an action to enforce an obligation, duty or right arising under this section must be commenced.

Concerns

- Is the language necessary?

Consensus

- None, as some participants liked having the language for clarity.

Grandfathering

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Not included	Not included	Not included

Consensus

- The bill allow that for the next two years, anyone who has been in the industry for three years should be grandfathered in
- All those in the field should ultimately be required to meet the same standards

Veto Message

- This area was addressed in the Governor’s veto message of HB 315. In order to address the Governor’s concerns, proponents of potential legislation might consider establishing grandfathering rules; to be sensitive to the issue of putting established, responsible people out of business

Enforcement

HB 315 (2005)	SB 1046 (2006) Mold Assessment/ Remediation	HB 161 (2006) Mold Assessment/ Remediation
Violations constitute deceptive and unfair trade practices	Not included	Violations constitute deceptive and unfair trade practices

Concerns

- None

Consensus

- N/A

Additional Workshop Information

During the fifth workshop, “alternatives to licensure and consumer protection in the field of mold inspection or testing,” several noteworthy topics arose. The participants discussed separate categories for mold inspection and testing; the type of training for each category; a definition of mold levels; separation of sampling and testing; and the role of home inspectors. Although the discussions did not directly relate to items addressed in HB 315, these comments have been included for your consideration.

The workshop began with a general discussion regarding the need to have a separate category for mold inspection and testing. Comments included:

- Testing and inspection is part of mold assessment.
- Mold inspection and testing is being done by those in real estate.
- You must be certified in moisture management in order to obtain insurance and it is heading to a national certification.

- Question of whether testing should be done depends on the amount of mold.
- There is a distinction between assessing and testing and there should be requirements for testing.
- Given the amount of consumer harm in this area, there should not be people who just do testing; some of this issue is related to the laboratories and laboratories should be certified.
- Inspectors/samplers should be required to have the same insurance as mold assessors and mold remediators.
- Licenses are required for taking samples of radon or asbestos so where was question as to why mold should be any different.
- Having a separate category for mold inspectors would specialize things too much and just lead to additional costs.
- It is important for those taking samples to be trained, but it does not require a rocket scientist.
- It is not possible to remediate without inspecting and because you should not differentiate between inspection and remediation.
- There should be training requirements.
- The quantity (large amount versus small amount) and setting (residential versus hospital) is an important part of this issue.
- A basic level of certification is necessary.
- Quantity of mold as used in New York should be used as continuity is important; square footage of mold is problematic in that you cannot always determine how much mold there will be until you get into the job.
- Square footage is not a good way to make the determination; many contractors stop working when they come across mold and call an assessor.
- Mold inspectors should not do mold assessments.
- And home inspectors should not be sampling or assessing.

There was also discussion regarding the type of training that would be appropriate if there were to be a mold inspector and tester category. This portion of discussion included the following comments:

- Needs to be a point where the home inspector needs to back out of any mold issue and call a mold assessor.
- Needs to be approved by the state.
- There are requirements for taking samples, but hiring someone just to come in and take samples seems strange.
- Need to be careful in saying that only certain people can come in and do testing; do not believe there needs to be different levels.
- If nothing is carved out for inspection/testing, then likely will have to meet same requirements as mold assessors.
- Need to add exemptions for home inspectors or contractors.
- Testers need to have training and education.
- Home inspectors are going to take samples.
- Bill will be vetoed if there is not an exemption for home inspectors - even though they should not be doing the testing.

- There should be a provision for home inspectors to do “screening” and they should be required to go through training.
- The problem is the fear that mold has generated.
- Home inspectors are trained to look at everything in a home.
- It depends on why you are there – if someone is sick, then you may need an industrial hygienist.
- If you have obtained mold training as a home inspector, this should not be a problem.
- Need to have two levels – one for testing and one for remediation.
- If home inspectors are smart, they will turn it over to a mold person.
- It all depends on the credentials that you are using to do the work.
- Not sure how we can do this without setting levels.

There was discussion regarding the criteria that might be used for setting these levels which included the following comments:

- There are already rules in place that can be used as guidelines.
- Square footage is arbitrary, but not sure of a better way; larger square footage should require a hygienist.
- The square footage requirements in New York are for remediation, not testing.
- One participant offers a one day, eight hour seminar that would work for the inspection and testing level.
- Others disagreed that someone would be sufficiently trained after an eight hour course.
- Other courses are four days with an exam by an independent tester on the fifth day.
- Microbiology and standards of practice need to be part of a course.
- Certification is not an appropriate requirement, need requirements that everyone can live with.
- Much of the problem with testing is that labs are popping up everywhere and offering eight hour courses.

That was followed by discussion regarding separating the areas of testing and sampling which included the following comments:

- The person taking the samples must be trained.
- No reason why a home inspector could not take the training and do the sampling.
- In order for the legislation to pass, home inspectors will have to be able to take mold inspection to a point and then call in a mold assessor.
- Two categories are needed.
- Needs to be definition in the language to state the difference between inspectors and remediators.
- Levels should come in during the remediation process, not inspection.
- The role of the state should be guiding the consumer in finding qualified professionals.
- Much of this is already in the bill.
- The education requirement has been a problem in the past.

The last area of discussion addressed whether home inspectors should be allowed to inspect or assess and included the following comments:

- The proposed bill should not prohibit an inspector from doing an assessment.
- The definition of mold inspector should be expanded.
- Need a definition of inspection.
- Should be an exemption for home inspectors to perform mold inspections within the scope of the work.
- Third-party accreditation has been suggested for other areas and should be used here; and the curriculum should include training on building science.
- There is a distinction between doing a mold assessment and someone doing a moisture investigation.
- There is a difference between mold screenings or samplings.
- Need additional training and a certification for taking the samples.
- Need to be careful in authorizing what home inspectors can do versus what home inspectors/contractors who take a one day seminar are authorized to do.
- Screening and testing and assessment are not the same thing.
- Need a screening provision that makes a distinction between someone who just indicates that further investigation is warranted and one who does the sampling.
- Not just exempting, requiring to have additional training.
- There should be requirements for those who work under the supervision of a person.
- Do not need to address sampling because already part of the educational requirements in the bill.
- Just need an exemption as to the level where an inspector needs to refer the rest of the job to a mold assessor.
- Language could read: a home inspector in a home who has taken an approved certification course which meets industry standards.
- Under exemptions, just put home inspectors and the statute that governs them.
- There are concerns about the current requirements for mold assessors which are too stringent and will put too many people out of work.
- Working under the supervision of another is problematic because if something happens to the supervisor, then people are out of work.
- A lab should not do its own certification.

Insurance

After the workshops, additional research was done regarding the topic of insurance. Attached is a document written by Dave Dybdahal, CPCU, American Risk Management Resources Network, LLC entitled “The Availability of Pollution Insurance for Restoration Contractors”. This document mentions that there are several qualifications a firm must meet in order to be insured. One of those criteria is completion of accredited training courses by a recognized provider of training such as the Institute of Inspection Cleaning and Restoration Certification or the Indoor Air Quality Association. Without this accredited training, it will be difficult to obtain coverage.

Additional Legislative Background Information

Committee on Regulated Industries of the Florida Senate “Review of Mold Legislation” in Interim Project Report 2004-158 (December 2003), available at:

http://www.flsenate.gov/data/Publications/2004/Senate/reports/interim_reports/pdf/2004-158ri.pdf.

Past bills related to home inspectors:

Fla. CS for SB 1902 (2003) requiring the Department of Agriculture and Consumer Services to adopt standards of practice, mandating certain disclosures, and treating violations as a deceptive and unfair trade practice.

Fla. HB 979 w/CS (2004) requiring the Florida Department of Business and Professional Regulation (DBPR) to appoint a Home Inspection Services Study Group.

Fla. SB 2016 (2004) requiring DBPR to license home inspectors and treating violations as a deceptive and unfair trade practice.

As filed, Fla. SB 1830 (2005) and Fla. HB 315 (2005) required DBPR to license home inspectors and treated violations as a deceptive and unfair trade practice.

Past bills related to mold assessors/remediators:

CS for SB 2746 (2003) and Fla. HB 1659 w/ CS (2003) requiring the Construction Industry Licensing Board to register mold assessment companies, mold assessment consultants, mold remediation companies, mold remediation contractors, and mold training providers.

Fla. CS for CS for CS for SB 1350 (2004) and Fla. HB 1215 w/ CS (2004) requiring the Construction Industry Licensing Board to license mold assessors and mold remediators.

As filed, Fla. SB 590 (2005) and Fla. HB 117 (2005) required DBPR to license mold assessors and mold remediators.

All bills filed in the Florida Legislature and associated analyses are available at

<http://www.leg.state.fl.us/Welcome/index.cfm>.