

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1116

INTRODUCER: Community Affairs Committee and Senator Margolis and others

SUBJECT: Real Property Fraud

DATE: March 18, 2008 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Herrin | Yeatman | CA | Fav/CS |
| 2. | Cellon | Cannon | CJ | Favorable |
| 3. | | | JU | |
| 4. | | | FT | |
| 5. | | | JA | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute (CS) requires law enforcement agencies to promptly notify the property appraiser if the agency makes a finding of probable cause of the crime of mortgage fraud or other fraud involving real property that could affect its value. Notification may be delayed if it would jeopardize or negatively affect the investigation. The property appraiser may reassess the real property considering the effect of the fraud on the property's valuation. Upon a conviction of mortgage fraud or other fraud involving real property, the property appraiser shall, if necessary, reassess the properties affected by the fraud. The CS also increases the penalty for mortgage fraud involving a loan value greater than \$100,000 from a third degree felony to a second degree felony.

This CS creates section 193.133 and amends section 817.545 of the Florida Statutes.

II. Present Situation:

Property Appraisal

Section 193.011, F.S., requires property appraisers to consider a number of factors in arriving at just valuation, including the following: present cash value of the property, highest and best use of

the property in the immediate future, present use of the property, location of the property, quantity or size of the property, cost of the property, replacement value of improvements on the property, and income from the property. Currently, Florida Statutes do not require a property appraiser to reassess any real property involved in mortgage fraud.

Mortgage Fraud

Mortgage fraud is divided into two types: fraud for property and fraud for profit. Fraud for property is a misrepresentation made by a borrower or other party in order to qualify for a mortgage loan.¹ The applicant may alter or falsify tax returns or misrepresent income or expenses. Parties to fraud for profit schemes generally perpetuate the transaction by using fictitious, forged, or altered documents, fraudulently transferring deeds, grossly inflating the value of purchased homes, and submitting fraudulent escrow letters or other documents to mortgage companies. This type of fraud may involve numerous gross misrepresentations regarding the true identity of the buyer or seller, income, assets, collateral, and employment. Documents relating to title insurance that confirm the stated owner's title and right to transfer the property can also be altered to change the financial institution lender or omit prior liens.

In 2007, the Legislature created the offense of mortgage fraud in s. 817.545, F.S., if a person, with the intent to defraud, knowingly:

- Makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intent that such information would be relied upon by a party to the mortgage lending process;
- Uses or facilitates the use of any material misstatement, misrepresentation, or omission, with the intention that the misstatement, misrepresentation, or omission will be relied on by a party to the mortgage lending process;
- Receives any proceeds or other funds in connection with a mortgage lending process that the person knew resulted from such a misstatement, misrepresentation, or omission; or
- Files with the clerk of the court for any county in Florida a document related to a mortgage lending process which contains a material misstatement, misrepresentation, or omission.

Under s. 817.545, F.S., the offense of mortgage fraud may not be predicated solely upon information lawfully disclosed under federal laws, regulations, or interpretations related to the mortgage lending process. Any person who violates s. 817.545, F.S., commits an unranked third-degree felony, punishable by imprisonment for no more than five years, a fine of no more than \$5,000, and any applicable enhanced penalties as a habitual felony offender. Also, the proceeds of fraudulent mortgage activities may be subject to civil forfeiture under ch. 895, F.S., because mortgage fraud is a criminal violation of ch. 817, F.S., which is also a racketeering activity under ch. 895, F.S.

¹ FEDERAL BUREAU OF INVESTIGATION, OPERATION QUICK FLIP,
<http://www.fbi.gov/page2/dec05/operationquickflip121405.htm> (last visited March 3, 2008).

III. Effect of Proposed Changes:

Section 193.133, F.S., is created to require law enforcement agencies to promptly notify the property appraiser when the agency finds probable cause that mortgage fraud or other fraud has inflated or could artificially inflate the value of real property. The law enforcement agency must inform the property appraiser of the nature of the fraud and the real property that is affected. However, the notification may be delayed if it would jeopardize or negatively affect a continuing investigation. The property appraiser may adjust the assessment of any affected real property. Based upon a conviction of mortgage fraud or other fraud affecting the value of real property, the property appraiser shall, if necessary, reassess the properties affected by the fraud.

Section 817.545, F.S., is amended to increase the penalty for mortgage fraud involving a loan value, as stated on documents used in the lending process, that is greater than \$100,000 from a third degree felony to a second degree felony. (Such violation of s. 817.545, F.S., would constitute an unranked second degree felony punishable by imprisonment for no more than 15 years, a fine of no more than \$10,000, and any applicable enhanced penalties as a habitual felony offender.)

The CS takes effect July 1, 2008.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

A reduction in fraudulent mortgage loans, as a result of the increased penalty in this CS, could reduce the number of mortgage loan defaults.

C. Government Sector Impact:

The Criminal Justice Impact Conference discussed this bill on March 14, 2008 and determined that its effect on the prison population would be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on 3/6/08:

The CS revises the language requiring law enforcement agencies to notify the property appraiser of mortgage fraud so that the notification is made promptly after a finding of probable cause. Notification may be delayed if it would jeopardize or negatively affect the investigation. The property appraiser may reassess the affected real property based on the notification, but is required to reassess, if necessary, the affected real property after a conviction of mortgage fraud or other fraud that could inflate the property value.

The CS deletes a requirement for the property appraiser to reassess property affected by mortgage fraud retroactive to the date when the fraud began. It also deletes language prescribing a form for and limiting the use of quitclaim deeds. The CS removes the increased criminal penalty for mortgage fraud involving two or more parcels. Finally, it deletes language that would have created a Statewide Mortgage Fraud Council.

B. Amendments:

None.