



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill creates eight mortgage fraud councils (1 statewide and 7 regional) and provides for certain expense reimbursements.

Maintain public security: Criminal penalties are increased for certain incidents of mortgage fraud.

### B. EFFECT OF PROPOSED CHANGES:

HB 743 provides several whereas clauses, but its focus is conveyed in the last clause as follows:

WHEREAS, providing enhanced penalties for multiple or more egregious instances of mortgage fraud, providing a uniform form for quitclaim deeds, establishing a statewide and regional councils to coordinate investigations of and solutions to mortgage fraud, and allowing county property appraisers to disqualify fraudulent property appraisals when deriving just valuation will help combat and reduce the effect of mortgage fraud

#### **Section 1 of the bill amends Part I, Chapter 193, F.S., Assessments, General Provisions**

Section 1: The bill creates a new section 193.133, F.S., related to the effect of mortgage fraud on property assessments. The seven day provisions requires any state or local law enforcement agency to notify the appropriate property appraiser of mortgage fraud incidents or any other fraud involving real property that results in the artificial inflation of the property value.

Upon notification, the property appraiser shall revisit that property assessment by considering the effect of the fraud on the just valuation of the property. If appropriate, the property appraiser may retroactively adjust the property assessment back to the initial date of the fraud occurrence.

According to the Department of Revenue, there are currently no provisions under the property tax laws related to the effect mortgage fraud may have on assessments of property.

#### **Section 2 of the bill amends Part I, Chapter 817, False Pretenses and Fraud, Generally**

Section 2: The bill makes two amendments to s. 817.545, Mortgage Fraud. First, the caption is amended to read: Residential Mortgage Fraud. Subsection (5) of s. 817.545, F.S., currently reads:

(5) Any person who violates subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Subsection (2) of s. 817.545, F.S., currently reads:

2) A person commits the offense of mortgage fraud if, with the intent to defraud, the person knowingly:

(a) Makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process; however, omissions on a loan application regarding employment, income, or assets for a loan which does not require this information are not considered a material omission for purposes of this subsection.

(b) Uses or facilitates the use of any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the material misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process; however, omissions on a loan application regarding employment, income, or assets for a loan which does not require this information are not considered a material omission for purposes of this subsection.

(c) Receives any proceeds or any other funds in connection with the mortgage lending process that the person knew resulted from a violation of paragraph (a) or paragraph (b).

(d) Files or causes to be filed with the clerk of the circuit court for any county of this state a document involved in the mortgage lending process which contains a material misstatement, misrepresentation, or omission.

The second amendment to this section describes mortgage fraud and expands the penalties based on the number of parcels involved in the mortgage process and the total value of the loan:

(5)(a) If only one parcel of real property is subject to the mortgage lending process or the total value of the loan is \$100,000 or less, any person who violates subsection (2) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If two or more parcels of real property are subject to the mortgage lending process or the total value of the loan is greater than \$100,000, a person who violates subsection (2) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

### **Section 3 of the bill creates an un-numbered section relating to creation of a Statewide Mortgage Council**

Section 3: Creates the Statewide Mortgage Council within FDLE for the purpose of combating mortgage fraud. The council is composed of the following members:

1. The executive director of the FDLE shall chair the council.
2. The statewide prosecutor.
3. The Attorney General or a designee who is knowledgeable about economic crimes.
4. The Commissioner of Financial Regulation or a designee who is knowledgeable about mortgage lending and related financial institutions.
5. The executive director of the Department of Revenue or a designee who is knowledgeable about ad valorem property valuation.
6. A member of the Florida Real Estate Appraisal Board.

The bill outlines the duties of the council. Among those duties, the council in conjunction with other state agencies will develop standard training criteria. The council is responsible for identifying all resources and funding sources to support these efforts. An executive director appointed by the chair shall carry council tasks, and FDLE staff will provide administrative support.

Under the statewide council, there will be seven regional councils located in each of the seven operational regions of the FDLE. Dedicated support staff shall handle functions and activities of the regional councils. These councils will be co-chaired by the FDLE agent in charge of the operational region. Membership is to include various professionals and business leader familiar with all aspects of real property. The regional councils shall organize, coordinate and implement the directives of the Statewide Council.

Members of the councils are not compensated, but the bill provides for per diem and travel reimbursement in carrying out their duties. Additionally, subject to an appropriation, the establishment of a statewide toll-free hotline is created for reporting mortgage fraud and providing information and resources to the public.

Section 4: This act takes effect July 1, 2008,

C. SECTION DIRECTORY:

Section 1: Provides for law enforcement notification and property appraiser reassessment of real property.

Section 2: Provides for penalties.

Section 3: Provides for creation of Statewide Mortgage Fraud Council and regional councils

Section 4: Provides for an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

FDLE estimates the fiscal impact to the state will be \$399,509 from the General Revenue Trust Fund (GR) annually for the administration of the statewide council and toll-free hotline. An additional \$32,216 nonrecurring GR costs will be needed in the first year for set up costs. Although not authorized in the bill directly, FDLE estimates the need for 1 additional FTE position to administer the needs of the Council and 6 FTE positions to handle the workload of the toll-free hotline.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

3. The cost relating to administering to the Regional Councils is indeterminate at this time but is estimated by FDLE to be a significant drain on existing resources at both FDLE and local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There are no provisions for funding sources or additional staff within the bill therefore FDLE would be assuming the costs associated with the creation and administration of the councils and the hotline.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue provided the following comments:

Lines 53-55: Provides that the property appraiser shall consider the effect of the fraud on the just value of the property. This provision does not address any effect that the use of a potentially fraudulent sale may have had on the just valuation of other nearby similar properties. The language could be improved to say that the property appraiser must reconsider the just valuation of any parcels whose assessments were affected by a sale for which fraud was reported to the property appraiser under s. 193.133(1), F.S.

Lines 56-58: Subsection 193.133(3), F.S., provides that the property appraiser may adjust his or her assessment of the property retroactive to the initial date of the mortgage fraud. The determination of the extent to which mortgage fraud may have affected just valuation is an act of appraisal judgment. Current law provides limits on the time period in which a property appraiser may correct errors in judgment. Thus, this subsection would appear to be in conflict with existing law.

#### D. STATEMENT OF THE SPONSOR

None.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES