

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 743 Real Property Fraud  
**SPONSOR(S):** Lopez-Cantera  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1116

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	<u>6 Y, 0 N</u>	<u>Holt/Bradford</u>	<u>Haug</u>
2) <u>Jobs &amp; Entrepreneurship Council</u>	<u></u>	<u></u>	<u></u>
3) <u>Policy &amp; 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>

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### SUMMARY ANALYSIS

Currently, Florida Statutes do not address the appraisal reassessment of real property involved in the crime of mortgage fraud.

HB 743 creates s. 193.133, F.S., and amends s. 817.545, F.S., related to the effect of mortgage fraud on property assessments. Provisions in the bill require law enforcement agencies, upon an incident of fraud, to notify the appropriate county property appraiser of the alleged fraudulent activity relating to real property. The appraiser of the county in which such property or properties are located is required to revisit the property assessment and consider the effect of the fraud on the property value. The property appraiser may use the information to adjust his assessment of the property retroactively. However, if the law enforcement notification jeopardizes or negatively impacts a continuing investigation, it may be postponed until a more appropriate time to convey. Also, a criminal penalty of a second degree felony is created by the bill for certain mortgage fraud violations.

The fiscal impact is indeterminate. This bill creates a second degree felony offense which may have an impact on prison beds. While the Criminal Justice Impact Conference (CJIC) has not met to consider the prison bed impact of this bill on the Department of Corrections, this analysis will be updated when CJIC has considered the bill.

This act takes effect July 1, 2008.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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 following clauses:

WHEREAS, certain types of mortgage fraud result in an artificial inflation in the value of residential property, which is directly correlated with an increase in the number of foreclosure filings, and

WHEREAS, this state is ranked number one in incidents of mortgage fraud and also has one of the highest foreclosure rates in the nation

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

Section 1: The bill creates s. 193.133, F.S., related to the effect of mortgage fraud on property assessments. Provisions in the bill require law enforcement agencies, upon an incident of fraud, to notify the appropriate county property appraiser of the alleged fraudulent activity relating to real property. The appraiser of the county in which such property or properties are located is required to revisit the property assessment and consider the effect of the fraud on the property value. The property appraiser may use the information to adjust his assessment of the property value retroactively. However, if the law enforcement notification jeopardizes or negatively impacts a continuing investigation, it may be postponed until a more appropriate time to convey.

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

Section 2: The bill amends s. 817.545, Mortgage Fraud.

Currently, subsection (5) of s. 817.545, F.S., 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., 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.

HB 473 amends subsection (5) of s. 817.545, F.S., to provide that a person who violates subsection (2) and the loan value stated on documents used in the mortgage lending process exceeds \$100,000, commits a felony of the second degree, punishable as provided in 775.082<sup>1</sup>, 775.083<sup>2</sup>, or s. 775.084<sup>3</sup>.

Section 3: 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 an effective date.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The fiscal impact is indeterminate. This bill creates a second degree felony offense which may have an impact on prison beds. While the Criminal Justice Impact Conference (CJIC) has not met to consider the prison bed impact of this bill on the Department of Corrections, this analysis will be updated when CJIC has considered the bill.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

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<sup>1</sup> (3) A person who has been convicted of any other designated felony may be punished as follows:

(c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

<sup>2</sup> (1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

(b) \$10,000, when the conviction is of a felony of the first or second degree.

<sup>3</sup> 775.084 Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms.—

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

**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:

None

D. STATEMENT OF THE SPONSOR

None

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

On February 21, 2008, the Committee on Financial Institutions adopted an amendment and an amendment to the amendment. The amendment removed sections 1-4 of the bill. The amendment provided in Section 1 deletion of the mandate on property appraisers to reassess upon notification by law enforcement of an incident of mortgage fraud. Additionally, this section changed the law enforcement reporting threshold from an "incident" to a "finding of probable cause." Section 2 of the amendment removed the two or more parcel provision regarding increased penalties. Section 3 of the amendment deleted the seven regional mortgage fraud councils and the statewide toll free mortgage fraud hotline.

The amendment to the amendment deleted Section 3 which provided for the creation of a statewide mortgage fraud council.