

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 743 Real Property Fraud  
**SPONSOR(S):** Jobs & Entrepreneurship Council; 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>16 Y, 0 N, As CS</u>	<u>Holt/Topp</u>	<u>Thorn</u>
3) <u>Policy &amp; Budget Council</u>	<u>34 Y, 0 N</u>	<u>Diez-Arguelles</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Currently, Florida Statutes do not address the reassessment of real property involved in the crime of mortgage fraud. This bill creates s. 193.133, F.S., to require that upon the finding of probable cause of any person for the crime of mortgage or other real property fraud that has the potential to artificially inflate property values, the arresting agency is required to promptly notify the property appraiser of the county in which such property or properties are located. The property appraiser may use the information to adjust the assessment of the affected property. Upon a conviction of fraud the property appraiser shall, if necessary, reassess the properties affected by such fraud.

The bill specifies that if the law enforcement notification jeopardizes or negatively impacts a continuing investigation, the notification may be postponed.

Also, the bill increases the criminal penalty for mortgage fraud from a third degree felony to a second degree felony if the loan value used in the mortgage lending process exceeds \$100,000.

The fiscal impact is indeterminate. The provision of the bill creating a second degree felony offense may have an impact on the number of prison beds the state must maintain. The Criminal Justice Impact Conference (CJIC) has not met to consider the prison bed impact of this bill on the Department of Corrections.

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:

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

The bill creates s. 193.133, F.S., to require that upon the finding of probable cause of any person for the crime of mortgage or other real property fraud that may have artificially inflated property values, the arresting agency is required to promptly notify the property appraiser of the county in which such property or properties are located of the alleged fraud and the affected property. The property appraiser may use the information to adjust the assessment of the affected property. Upon a conviction of fraud the property appraiser shall, if necessary, reassess the properties affected by such fraud.

The bill specifies that if the law enforcement notification jeopardizes or negatively impacts a continuing investigation, the notification may be postponed.

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

Section 817.545, F.S., defines the offense of mortgage fraud, as follows:

(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.

Under current law, a person who violates s. 817.545, F.S., commits a felony of the third degree punishable by imprisonment of not more than 5 years, a fine of no more than \$5,000, and any applicable enhanced penalties as a habitual felony offender. Sec. 817.545(5), F.S.

This bill amends s. 817.545(5), F.S., to increase the penalty for mortgage fraud involving a loan value greater than \$100,000 to a second degree felony punishable by imprisonment of no more than 15 years, a fine of no more than \$10,000, and any applicable enhanced penalties as a habitual felony offender.

**Section 3 of the bill** provides an effective date of July 1, 2008,

C. SECTION DIRECTORY:

Section 1: Creates s. 193.133, F.S.

Section 2: Amends s. 817.545, F.S.

Section 3: Provides 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 at this time. This bill increases the penalty for certain mortgage fraud crimes to a second degree felony offense. The Criminal Justice Impact Conference (CJIC) has not met to consider the prison bed impact of this bill on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If the provisions of the bill result in the reassessment of property, property tax revenues will decline by an indeterminate, but minimal amount.

2. Expenditures:

None

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 a 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 voted to recommend an amendment and an amendment to the amendment. The amendment removed sections 1-4 of the bill. The amendment deleted the mandate on property appraisers to reassess property upon notification by law enforcement of an incident of mortgage fraud. Additionally, this amendment changed the law enforcement reporting threshold from an "incident" to a "finding of probable cause." The amendment also deleted the provisions creating seven regional mortgage fraud councils and the statewide toll free mortgage fraud hotline. The amendment to the amendment deleted the provisions of the bill creating a statewide mortgage fraud council.

On March 6, 2008, the Jobs & Entrepreneurship Council adopted the amendments recommended by the Committee on Financial Institutions.