

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 Mortgage Fraud
SPONSOR(S): Snyder and others
TIED BILLS: HB 791 IDEN./SIM. BILLS: SB 930

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, De La Paz, De La Paz. Row 2: Criminal & Civil Justice Policy Council. Row 3: Criminal & Civil Justice Appropriations Committee. Row 4: Full Appropriations Council on General Government & Health Care. Row 5: (Empty)

SUMMARY ANALYSIS

From 2006 through the second quarter of reporting for 2008, Florida has been ranked first in the nation for reported incidents of mortgage fraud against lenders. According to FBI statistics, the number of mortgage fraud cases reported increased from 17,127 in 2004, to 46,717 in 2007, more than a 175% increase.

HB 733 creates the Statewide Mortgage Fraud Task force within the Department of Legal Affairs for the purpose of combating mortgage fraud throughout Florida. The statewide task force is composed of 21 members as specifically listed in the bill. The bill assigns the Attorney General or the designee of the Attorney General to serve as the chair of the statewide task force and assigns the executive director of the Department of Law Enforcement to serve as the vice chair.

In addition to the statewide task force, the bill requires the Attorney General to designate seven operational regions within which a regional mortgage fraud task force shall be established for each region.

Staffing for the task forces is to be provided by the Department of Legal Affairs. The Department of Legal Affairs has indicated that "[t]here would be significant costs to the Department of Legal Affairs in establishing a Statewide Mortgage Fraud Task Force."

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Mortgage Fraud

From 2006 through the second quarter of reporting for 2008, Florida has been ranked first in the nation for reported incidents of mortgage fraud against lenders.¹

The Federal Bureau of Investigation (FBI) defines mortgage fraud as a material misstatement, misrepresentation or omission relied upon by an underwriter or lender to fund, purchase or insure a loan. According to FBI statistics, the number of mortgage fraud cases reported increased from 17,127 in 2004, to 46,717 in 2007, more than a 175% increase.

The FBI breaks mortgage fraud down into in two distinct areas: *fraud for profit* and *fraud for housing*. *Fraud for profit* is sometimes referred to as "Industry Insider Fraud," and the motive is to revolve equity, falsely inflate the value of the property, or issue loans based on fictitious properties. Based on existing FBI investigations and mortgage fraud reporting, eighty percent of all reported fraud losses involve collaboration or collusion by industry insiders. *Fraud for housing* represents illegal actions perpetrated solely by the borrower. The simple motive behind this fraud is to acquire and maintain ownership of a house under false pretenses. This type of fraud is typified by a borrower who makes misrepresentations regarding his income or employment history to qualify for a loan. With regard to *Fraud for Profit* the FBI describes the common schemes as follows:²

Property Flipping - Property is purchased, falsely appraised at a higher value, and then quickly sold. What makes property flipping illegal is that the appraisal information is fraudulent. The schemes typically involve one or more of the following: fraudulent appraisals, doctored loan documentation, inflating buyer income, etc. Kickbacks to buyers, investors, property/loan brokers, appraisers, and title company employees are common in this scheme. A home worth \$20,000 may be appraised for \$80,000 or higher in this type of scheme.

Silent Second - The buyer of a property borrows the down payment from the seller through the issuance of a non-disclosed second mortgage. The primary lender believes the borrower has invested his own money in the down payment, when in fact, it is borrowed. The second mortgage may not be recorded to further conceal its status from the primary lender.

¹ Mortgage Asset Research Institute, Quarterly Fraud Report, December 2, 2008.

² FBI website: http://www.fbi.gov/publications/financial/fcs_report2007/financial_crime_2007.htm#mortgage.

Nominee Loans/Straw Buyers - The identity of the borrower is concealed through the use of a nominee who allows the borrower to use the nominee's name and credit history to apply for a loan.

Fictitious/Stolen Identity - A fictitious/stolen identity may be used on the loan application. The applicant may be involved in an identity theft scheme: the applicant's name, personal identifying information, and credit history are used without the true person's knowledge.

Inflated Appraisals - An appraiser acts in collusion with a borrower and provides a misleading appraisal report to the lender. The report inaccurately states an inflated property value.

Foreclosure Schemes - The perpetrator identifies homeowners who are at risk of defaulting on loans or whose houses are already in foreclosure. Perpetrators mislead the homeowners into believing that they can save their homes in exchange for a transfer of the deed and up-front fees. The perpetrator profits from these schemes by remortgaging the property or pocketing fees paid by the homeowner. The three most used foreclosure schemes are identified as: phantom help; bust-out; and the bait and switch.

Equity Skimming - An investor may use a straw buyer, false income documents, and false credit reports to obtain a mortgage loan in the straw buyer's name. Subsequent to closing, the straw buyer signs the property over to the investor in a quit claim deed which relinquishes all rights to the property and provides no guaranty to title. The investor does not make any mortgage payments and rents the property until foreclosure takes place several months later.

Air Loans - This is a non-existent property loan where there is usually no collateral. An example of an air loan would be where a broker invents borrowers and properties, establishes accounts for payments, and maintains custodial accounts for escrows. They may set up an office with a bank of telephones, each one used as the employer, appraiser, credit agency, etc., for verification purposes.

With respect to *Fraud for Housing*, the Mortgage Asset Research Institution (MARI), tracks incidents of mortgage fraud primarily by the type of misrepresentation or nondisclosure occurring during the application process.³ According to their report for the second quarter of 2008, sixty-five percent of reported incidents were attributed to "general application misrepresentation" which MARI defines as "when information is misrepresented on an application such as when an incorrect name is used, or occupancy or assets are misrepresented."⁴

The Mortgage Fraud Task Force

HB 733 creates the Statewide Mortgage Fraud Task force within the Department of Legal Affairs for the purpose of combating mortgage fraud throughout Florida (Statewide Task force). The statewide Task force is composed of 21 members as follows:

- The Lieutenant Governor or his or her designee;
- The Attorney General or his or her designee;
- The executive director of the Department of Law Enforcement;
- The Commissioner of Financial Regulation or his or her designee;
- The chair of each regional task force;
- Seven representatives from the business community, Florida Credit Union League, the Florida Bankers Association, the Florida Association of Mortgage Brokers, the Florida Real Estate Commission, the appraisal community, and the title insurance industry, as designated by the chair; and
- Three citizens chosen by the chair.

The bill assigns the Attorney General or the designee of the Attorney General to serve as the chair of the statewide task force and assigns the executive director of the Department of Law Enforcement to serve as the vice chair.

³ The Mortgage Asset Research Institute also tracks incidents involving identity theft.

⁴ Mortgage Asset Research Institute, Quarterly Fraud Report, December 2, 2008.

Under the bill the statewide task force is staffed by the Department of Legal Affairs and the Attorney General is required to appoint an executive director to carry out the duties of the statewide task force. The bill specifies the duties of the statewide task force as follows:

- Collect data about and serve as a resource and clearinghouse for information relating to mortgage fraud, including ongoing investigations and prosecutions around the state which involve mortgage fraud.
- Coordinate and initiate statewide or regional mortgage fraud investigations through the statewide prosecutor or local state attorneys.
- Within available resources, establish a statewide toll-free telephone hotline for reporting mortgage fraud, providing information and resources to the public regarding mortgage fraud, and routing reports of mortgage fraud to the appropriate law enforcement agencies, and prosecutorial agencies, and the regional task forces.
- In conjunction with the state agencies responsible for determining training needs and establishing training standards for law enforcement officers, state attorneys, and regulatory personnel, identify and make recommendations relating to equipment and training which must include continued training for state licensure or certification. In making these recommendations, which shall be aimed at ensuring that the needs of this state with regard to preparing, equipping, and training law enforcement officers, state attorneys, and regulatory personnel to combat mortgage fraud are identified and addressed, the task force shall identify all resources and funding sources that may be available to support and fund such efforts.
- Propose legislation to eliminate and prevent mortgage fraud, including measures that close loopholes in procedures for making mortgage loans and prevent practices by property appraisers which provide opportunities for mortgage fraud.
- Make recommendations to the Legislature regarding detection, monitoring, prediction, and control of mortgage fraud in this state.

In addition to the statewide task force, the bill requires the Attorney General to designate seven operational regions within which a regional mortgage fraud task force (regional task force) shall be established for each region. The bill requires that each regional task force be chaired by "the special agent of the Department of Law Enforcement who is in charge of the operational region in which the task force is located." Although the bill does not expressly require it, it implicitly requires that the Department of Law Enforcement designate someone to be in charge of each region. The regional task forces consist of 15 members each. Aside from the chairman, eleven other members are citizens from a region's operational area whom are selected by the chairman. The remaining three members are selected by the Attorney General who must appoint a sheriff, a police chief, and a state attorney from the jurisdiction located within each respective region. (See Drafting Issues or Other Comments).

The regional task forces are to be staffed from the Department of Legal Affairs but shall have as their sole responsibility to support the operations of the regional task forces. The bill authorizes the chair of a regional task force to appoint committees and committee chairs necessary to address law enforcement, regulatory agency, business partnership, and educational organization issues related to the various agencies and organizations represented by members of the task force.

With oversight and direction provided by the statewide taskforce, the bill specifies the duties of the regional task forces as follows:

- Meet with local law enforcement agencies, sheriff's departments, and state attorneys to coordinate local initiatives to address mortgage fraud.
- Coordinate efforts with law enforcement agencies to enforce s. 817.545, Florida Statutes, and other related state and federal laws, to ensure that the efforts are not fragmented or unnecessarily duplicative.
- Coordinate training for local and state personnel relating to mortgage fraud and other related state and federal laws.
- Coordinate the collection and dissemination of state and local investigative information relating to mortgage fraud within each region of operation.

- Incorporate other objectives reasonably related to the goal of enhancing the state's ability to detect, prevent, and respond to mortgage fraud within or affecting the state. Each regional task force shall take into account the unique conditions and resources within its region.

The nongovernmental members of the statewide task force and the regional task forces serve on a voluntary basis without compensation, but are authorized to receive reimbursement for per diem and travel expenses. The bill also specifies that all expenses for nongovernmental members of all task forces are to be reimbursed from the Statewide Mortgage Fraud Task Force Trust Fund. (See HB 791).

B. SECTION DIRECTORY:

Section 1. Establishes the Statewide Mortgage Fraud Task Force and provides for the creation of seven regional mortgage fraud task forces.

Section 2. Provides and effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent sheriff's offices and police departments are assigned to carry out responsibilities associated with the work of the statewide and regional task forces these agencies will incur additional costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill requires the appointment of an executive director for the statewide task force. In addition the bill requires the statewide task force to be staffed with personnel from the Department of Legal Affairs. Although, the bill does not specify the number of staff to be provided, given the considerable scope of duties the statewide task force is responsible for it is probable that more than one full time employee (FTE) will be required but the exact number is indeterminate. The Department of Legal Affairs is also to staff the regional task forces with employees who must have as their sole responsibility to support the operations of the task force. By the bill's express terms, it would require a minimum seven FTEs (one for each regional task force) to be provided, but the precise number above that staffing minimum is indeterminate. HB 791 establishes the Statewide Mortgage Fraud Task Force Trust Fund, but it has no specific source of revenue. The Department of Legal Affairs has indicated that "[t]here would be significant costs to the Department of Legal Affairs in establishing a Statewide Mortgage Fraud Task Force."

In addition, there is an anticipated minor but indeterminate fiscal impact that will be incurred due to the per diem and travel reimbursements authorized for nongovernmental members of the task forces. The bill does not specify where the meetings of the task forces shall take place, or how many times each task force is to meet. Also, additional expenses will be incurred with respect to activities undertaken by any committees working at the direction of the regional task forces.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

With respect to the bill's requirement for the Attorney General to appoint a sheriff, a police chief and a state attorney for each regional task force, it does not authorize a sheriff, police chief or state attorney to select his or her designee to serve on the task force as a representative from their respective offices.

This bill appoints the executive director or the Department of Law Enforcement as a member of the statewide task force to serve as its vice chair. Currently head of the Department of Law Enforcement is its Commissioner and there is no position for an "executive director."

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES