

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 965

Real Property Assessment

SPONSOR(S): McKeel

TIED BILLS:

IDEN./SIM. BILLS: SB 2160

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee		Fudge	Hoagland
2)	Finance & Tax Council			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Between 2004 and 2007, numerous homes were built with drywall imported from China. This imported drywall is now under investigation for causing harm to homes, personal possessions, and human health. The defective drywall, coupled with depreciating home values, has rendered some homes valueless and exacerbates the current housing crisis. Homes with defective drywall may even depress the property values of adjacent homes. The estimated cost of remediation is \$100,000. The extent of the defective drywall problem is unknown.

The bill requires property appraisers to adjust the assessed value of affected property by taking into consideration the presence of the defective building material or construction technique, including but not limited to tainted imported drywall, and the impact it has on the assessed value. If the building is not marketable without remediation or repair, the value of the remediation or repair shall be \$0.

Remediation or repair shall not be considered a change or improvement to the property. Moreover, the homestead property shall not be considered abandoned if an owner vacates the property during repairs and does not establish a new homestead.

The Revenue Estimating Conference Impact Conference has not reviewed this bill at this time. Therefore, the scope of impact on local governments is indeterminate at this time. Affected taxpayers are likely to receive a lower assessment value on their property.

**This bill may be a mandate requiring a two-thirds vote of the membership to be enacted.**

## 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:

##### **Current Situation**

Between 2004 and 2007, numerous homes were built with drywall imported from China. This imported drywall is now under investigation for causing harm to homes, personal possessions, and human health. The defective drywall is associated with a sulfurous odor (the smell of rotten eggs or fireworks), corrosion of household metals such as copper, and health complaints such as asthma, nosebleeds, coughing, headaches and insomnia. Homeowners with Chinese drywall have reported that they have had to replace their air conditioners and other appliances more frequently than would be necessary under normal conditions.

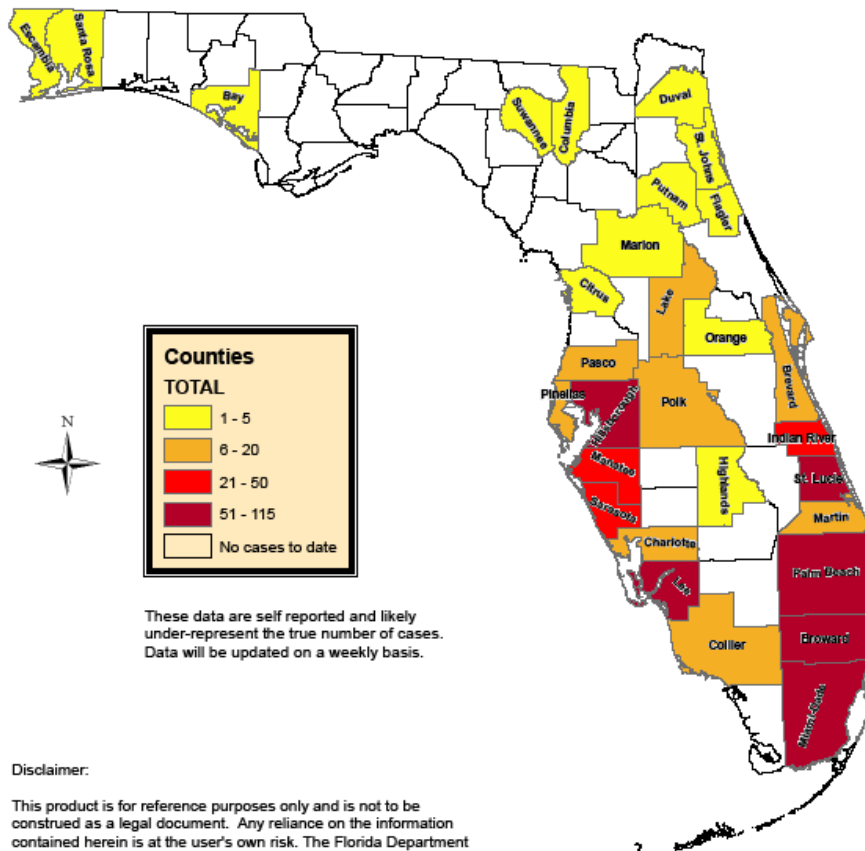
The defective drywall, coupled with depreciating home values, has rendered some homes valueless and exacerbates the current housing crisis.<sup>1</sup> Homes with defective drywall may even depress the property values of adjacent homes. The estimated cost of remediation is \$100,000. The extent of the defective drywall problem is unknown.

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<sup>1</sup> Florida Senate Committee on Community Affairs Issue Brief 2010-311 issued September 2009, available at [http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-311ca.pdf](http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-311ca.pdf), last visited March 11, 2010.

# Reports of Drywall "Cases" to DOH County Health Departments

March 1, 2010  
(N = 678 in 30 counties)



These data are self reported and likely under-represent the true number of cases. Data will be updated on a weekly basis.

**Disclaimer:**

This product is for reference purposes only and is not to be construed as a legal document. Any reliance on the information contained herein is at the user's own risk. The Florida Department of Health and its agents assume no responsibility for any use of the information contained herein or any loss resulting therefrom.



<http://www.doh.state.fl.us/environment/community/indoor-air/drywall.html>



As indicated in the diagram, the data is self-reported and likely under-represents the true number of cases. For example, in Lee County there were 113 cases reported to the Department of Health, while there were over 1,000 claims filed with the Lee County Property Appraiser with corresponding adjustments based on those claims.

## Just Valuation

Article VII, s. 4 of the Florida Constitution mandates the Legislature to prescribe regulations that “shall secure a just valuation of all property for ad valorem taxation.” The term “just valuation” and “fair market value” have been used interchangeably to mean what a willing buyer and willing seller would agree upon as a transaction price for the property.<sup>2</sup> This requirement is implemented by section 193.011, F.S., and requires property appraisers to consider the following factors in determining just valuation: (1) the present cash value of the property;<sup>3</sup> (2) the highest and best use to which the property can be expected to be put in the immediate future and the present use of the property;<sup>4</sup> (3) the location of the property;<sup>5</sup> (4) the quantity or size of the property;<sup>6</sup> (5) the cost of the property and the

<sup>2</sup> Walter v. Schuler, 176 So.2d 81, 85-86 (Fla.1965)

<sup>3</sup> § 193.011(1), F.S.

<sup>4</sup> § 193.011(2), F.S.

<sup>5</sup> § 193.011(3), F.S.

<sup>6</sup> § 193.011(4), F.S.

replacement value of the improvements on the property;<sup>7</sup> (6) the condition of the property;<sup>8</sup> (7) the income from the property;<sup>9</sup> and (8) the net proceeds from the sale of the property.<sup>10</sup>

In determining fair market value, the assessor must consider, but not necessarily use, each of the enumerated factors. The method of valuation, and the weight assigned to each factor, is at the assessor's discretion, and his determination will not be disturbed on review as long as each factor has been lawfully considered and the assessed value is within the range of reasonable appraisals.<sup>11</sup>

Property appraisers have examined the "condition of the property" when determining the effects of fire, flood, and hurricanes. For example, assessments on homes damaged by hurricanes were reduced by the cost to repair the home, called the "cost to cure".

Based on the documentation submitted and the extent of the damage, some property appraisers have made adjustments for defective drywall. Some property appraisers begin with a 50% reduction on homes affected with defective drywall and increase that amount based on estimated remediation costs. Other property appraisers grant reductions of up to 70%.

### **Effect of Proposed Changes**

The bill provides relief to homeowners affected by defective building materials or construction techniques that have a significant negative impact on the just value of their property. Property appraisers are required to adjust the assessed value of the property by taking into consideration the presence of the defective building material or construction technique and the impact it has on the assessed value. If the building is not marketable without remediation or repair, the value of the remediation or repair shall be \$0. To qualify, a home must have a defective product or construction technique that has a significant impact on the just value of the property and the purchaser was not aware of the defective product or construction technique at the time of purchase.

Remediation or repair shall not be considered a change or improvement to the property. Moreover, the homestead property shall not be considered abandoned if an owner vacates the property during repairs and does not establish a new homestead.

#### **B. SECTION DIRECTORY:**

Section 1: Prescribes method for assessing homes affected by defective building materials or construction techniques, including but not limited to, tainted imported drywall.

Section 2: Provides an effective date of upon becoming law and applies to the 2010 and subsequent assessment rolls.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

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

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<sup>7</sup> § 193.011(5), F.S.

<sup>8</sup> § 193.011(6), F.S.

<sup>9</sup> § 193.011(7), F.S.

<sup>10</sup> § 193.011(8), F.S.

<sup>11</sup> See *Blake v. Xerox Corp.*, 447 So.2d 1348 (Fla. 1984).

1. Revenues:

The Revenue Estimating Conference Impact Conference has not reviewed this bill at this time. Therefore, the scope of impact on local governments is indeterminate at this time.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Affected taxpayers are likely to receive a lower assessed value on their property.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that municipalities and counties have to raise revenue as that authority existed on February 1, 1989. The reduction in authority comes from the decline in the tax base caused by a reduction in just value. The bill does not appear to qualify for an exception or exemption.

If the mandates provision applies, and in the absence of an applicable exemption or exception, Article VII, section 18(b), of the Florida Constitution provides that, "except upon approval by a two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989."

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill states that "[i]f the building is not marketable without remediation or repair, the value of such remediation or repair shall be assessed at the nominal just value of \$0." The bill should state that the value of the building should be assessed at \$0 not the remediation or repair. The bill does not specify who has the burden to show knowledge of the defective product or construction at the time of purchase.

The bill states that a homestead property shall not be considered abandoned when a homeowner vacates the property for remediation or repair. A similar provision in s. 196.031(6), F.S., provides that:

When homestead property is damaged or destroyed by misfortune or calamity and the property is uninhabitable on January 1 after the damage or destruction occurs, the homestead exemption may be granted if the property is otherwise qualified and if the property owner notifies the property appraiser that he or she intends to repair or rebuild the property and live in the property as his or her primary residence after the property is repaired or rebuilt and does not claim a homestead exemption on any other property or otherwise violate this section. Failure by the property owner to commence the repair or rebuilding of the homestead property within 3 years after January 1 following the

property's damage or destruction constitutes abandonment of the property as a homestead.

The Florida Association of Property Appraisers states that the property owner should be required to provide verifiable documentation of the defective building materials or construction technique and an estimate of the cost to remediate or repair the defect.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**