

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 965 Real Property Assessment
SPONSOR(S): Finance & Tax Council; Military & Local Affairs Policy Committee; McKeel
TIED BILLS: **IDEN./SIM. BILLS:** SB 2160

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	13 Y, 0 N, As CS	Fudge	Hoagland
2)	Finance & Tax Council	16 Y, 0 N, As CS	Diez-Arguelles	Langston
3)	Economic Development & Community Affairs Policy Council		Fudge	Tinker
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 per home. The extent of the defective drywall problem is unknown.

The bill requires Property Appraisers to adjust the assessed value of affected single-family residential property by taking into consideration the presence of imported drywall and the impact it has on the assessed value. If the building cannot be used for its intended purpose without remediation or repair, the value of the building shall be \$0.

If the affected property is homestead property, it will not be considered abandoned if the owner vacates the property during repairs and does not establish a new homestead.

The bill contains a provision that the law will be repealed on July 1, 2017, unless reviewed and reenacted by the Legislature before that date.

The Revenue Estimating Impact Conference has estimated that the provisions of this bill will have an indeterminate negative impact on local government revenues.

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

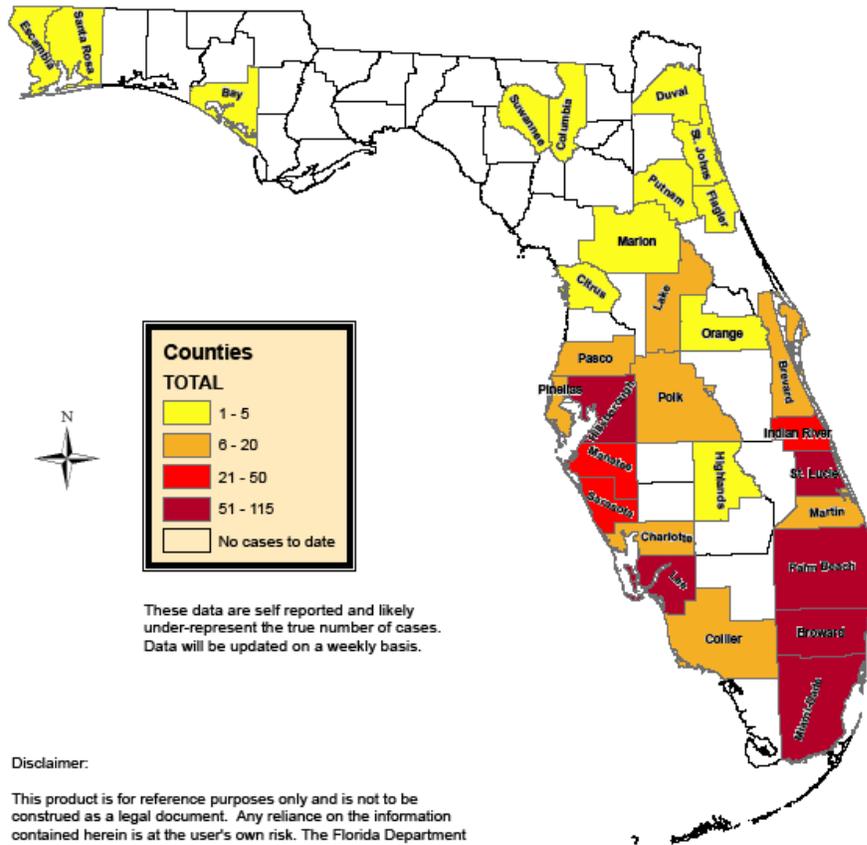
Between 2004 and 2007, numerous homes were built with drywall imported from China. This imported drywall is now under investigation for causing harm to homes, personal possessions, and human health. The defective drywall is associated with a sulfurous odor (the smell of rotten eggs or fireworks), corrosion 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.¹ Homes with defective drywall may even depress the property values of adjacent homes. The estimated cost of remediation is \$100,000 per home. The extent of the defective drywall problem is unknown.

¹ 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, last visited March 11, 2010.

Reports of Drywall "Cases" to DOH County Health Departments

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



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<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.² 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;³ (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;⁴ (3) the

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

³ § 193.011(1), F.S.

⁴ § 193.011(2), F.S.

location of the property;⁵ (4) the quantity or size of the property;⁶ (5) the cost of the property and the replacement value of the improvements on the property;⁷ (6) the condition of the property;⁸ (7) the income from the property;⁹ and (8) the net proceeds from the sale of the property.¹⁰

In determining fair market value, the Property Appraiser 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.¹¹

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%.

The annual assessments of homestead property may not increase more than the lesser of 3% or the change in the Consumer Price Index.¹² However, Section 193.155(4), F.S., provides that changes, additions, or improvements to homestead property must be assessed at fair market value on January 1 after completion. An exception to this fair market value standard applies to changes, additions and improvements made to homestead property as a result of misfortune or calamity, if the square footage of the homestead does not exceed 110 percent of the square footage prior to the misfortune or calamity.

Effect of Proposed Changes

The bill provides that the term "imported drywall" means drywall that contains elevated levels of elemental sulfur that results in corrosion of certain metals.

The bill directs Property Appraisers to adjust the assessed value of single-family residential property affected by imported drywall by taking into consideration the presence of the drywall and the impact it has on the assessed value. If the building cannot be used for its intended purpose without remediation or repair, the value of the building must be assessed at \$0. To qualify, a home must have imported drywall that has a significant impact on the just value of the property and the purchaser was not aware of the presence of tainted imported drywall at the time of purchase.

The bill provides that homestead property to which the provisions of the bill apply must be considered damaged by misfortune or calamity under the provisions of S. 193.155(4)(b), thereby resulting in the remediation and repairs not increasing the assessed value of the property, so long as the square footage limitations are followed. Moreover, the homestead property will not be considered abandoned if an owner vacates the property during repairs and does not establish a new homestead.

Once the remediation and repairs have been complete, affected properties will be assessed as if the imported drywall had not been present.

The provisions of the bill will be repealed on July 1, 2017, unless reviewed and reenacted by the Legislature before that date

B. SECTION DIRECTORY:

⁵ § 193.011(3), F.S.

⁶ § 193.011(4), F.S.

⁷ § 193.011(5), F.S.

⁸ § 193.011(6), F.S.

⁹ § 193.011(7), F.S.

¹⁰ § 193.011(8), F.S.

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

¹² § 193.155, F.S.

Section 1: Creates s. 193.1552, F.S., which prescribes a method for assessing properties affected by tainted imported drywall and provides for repeal on July 1, 2017, unless reviewed and reenacted by the Legislature before that date.

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:

1. Revenues:

The Revenue Estimating Conference Impact Conference has estimated that the provisions of the bill will have an indeterminate negative fiscal impact on local governments.

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.

An exemption from the mandates provision would apply if the expected fiscal impact of the bill were less than \$1.9 million. For a number of reasons, including the uncertainty regarding the number of properties affected and a clear understanding of how different Property Appraisers are dealing with the issue under existing law, a precise estimate cannot be developed. As a guide, however, if it turns out that more than 5,000 properties are affected and each property's assessment is reduced by \$22,500 below what the Property Appraiser would have otherwise reduced the assessment, the \$1.9 million threshold will be exceeded.

Therefore, in an abundance of caution, the legislature should consider passing this bill by a two-thirds vote.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Finance and Tax Council adopted an amendment to the bill. The amendment provided a definition of "imported drywall," limited the applicability of the bill's provisions to single-family residential property, replaced the phrase "is not marketable" with "cannot be used for its intended purpose" as a qualification for a building to receive a \$0 assessment, and provided that improvements to qualifying homestead property shall be assessed pursuant to s. 193.155(4)(b), F.S.