

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 755  
**SPONSOR(S):** Nelson  
**TIED BILLS:**

Sexual Offenders and Sexual Predators  
**IDEN./SIM. BILLS:** SB 2236

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security &amp; Public Safety</u>	<u>11 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety &amp; Security Council</u>	<u></u>	<u>Cunningham</u>	<u>Havlicak</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
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**SUMMARY ANALYSIS**

HB 755 requires landlords who knowingly solicit a person who is registered as a sexual offender or sexual predator to rent or lease a dwelling unit, or who knowingly rent or lease a dwelling unit to a person who is registered as a sexual offender or sexual predator to, within five working days after the date that the individual known to be a registered sexual offender or sexual predator occupies the dwelling unit as a tenant:

- Conduct a search for the tenant's name in the sexual offender database;
- Confirm that the address of the tenant identified as a sexual offender or sexual predator is correctly reflected on the sexual offender database; and
- Notify the sheriff of the county in which the dwelling is located if the address of a tenant identified as a sexual offender or sexual predator is not correctly reflected on the sexual offender database.

Landlords who violate the above provisions commit a 2<sup>nd</sup> degree misdemeanor. The bill provides an affirmative defense to the above offense if the landlord used due diligence and was unable to determine that a tenant was a sexual offender or sexual predator.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Safeguard Individual Liberty** – HB 755 makes it a crime for a landlord to knowingly solicit a person who is registered as a sexual offender or sexual predator to rent or lease a dwelling unit, or to knowingly rent or lease a dwelling unit to a person who is registered as a sexual offender or sexual predator, without taking certain actions.

#### B. EFFECT OF PROPOSED CHANGES:

##### *Sexual Offender/Predator Registration*

Florida statutes contain numerous registration requirements for sexual offenders and sexual predators. For example, sexual offenders and sexual predators must register in person at the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state<sup>1</sup>

Sexual offenders and sexual predators are required to provide specified information when they register, including their current address.<sup>2</sup> This information is ultimately conveyed to the Florida Department of Law Enforcement (FDLE), which maintains the statewide registry of all sexual predators and sexual offenders. This registry is available to the public and can be used to determine a sexual offender or sexual predator's current address.<sup>3</sup>

##### *Effect of the Bill*

HB 755 requires landlords who knowingly solicit a person who is registered as a sexual offender or sexual predator to rent or lease a dwelling unit, or who knowingly rent or lease a dwelling unit to a person who is registered as a sexual offender or sexual predator to, within five working days after the date that the individual known to be a registered sexual offender or sexual predator occupies the dwelling unit as a tenant:

- Conduct a search for the tenant's name in the sexual offender database.
- Confirm that the address of the tenant identified as a sexual offender or sexual predator is correctly reflected on the sexual offender database.
- Notify the sheriff of the county in which the dwelling is located if the address of a tenant identified as a sexual offender or sexual predator is not correctly reflected on the sexual offender database.

Landlords who violate the above provisions commit a 2<sup>nd</sup> degree misdemeanor<sup>4</sup>. The bill provides an affirmative defense to the above offense if the landlord used due diligence and was unable to determine that a tenant was a sexual offender or sexual predator.

The bill defines "dwelling unit,"<sup>5</sup> "landlord,"<sup>6</sup> "rent,"<sup>7</sup> and "tenant"<sup>8</sup> in accordance with s. 83.43, F.S., and defines the terms "sexual offender" and "sexual predator" in accordance with ss. 943.0435, and s. 775.21, F.S., respectively. The bill creates the following definitions:

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<sup>1</sup> See, ss. 775.21 and 943.0435, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> s. 943.043, F.S.

<sup>4</sup> A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a \$500 fine. See ss. 775.082 and 775.083, F.S.

<sup>5</sup> Section 83.43, F.S., defines "dwelling unit" as "a structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household.; a mobile home rented by a tenant, or a

- "Sexual offender database" means the database of registration information regarding sexual predators and sexual offenders maintained by the department under s. 943.043.
- "Solicit" means to initiate contact with a sexual offender or sexual predator for the purpose of attempting to rent or lease a dwelling unit, where such sexual offender or sexual predator has expressed no previous interest in renting or leasing the dwelling unit.

C. SECTION DIRECTORY:

**Section 1.** Creates s. 943.04355, F.S., relating to dwelling rental or solicitation; sexual offenders and predators.

**Section 2.** This bill takes effect July 1, 2008.

**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:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Due to the requirements and criminal penalty created by the bill, landlords who solicit sexual offenders or sexual predators to rent a dwelling unit and landlords who knowingly rent dwelling units to sexual offenders or sexual predators may not continue to do so. Landlords who do will be required to use the sex offender database to confirm the sexual offender's address and notify the sheriff if such address is incorrect.

D. FISCAL COMMENTS:

This bill makes it a 2<sup>nd</sup> degree misdemeanor for certain landlords to fail to take specified actions. While indeterminate, this could have a jail bed impact.

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structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons."

<sup>6</sup> Section 83.43, F.S., defines "landlord" as "the owner or lessor of a dwelling unit."

<sup>7</sup> Section 83.43, F.S., defines "rent" as "the periodic payments due the landlord from the tenant for occupancy under a rental agreement and any other payments due the landlord from the tenant as may be designated as rent in a written rental agreement."

<sup>8</sup> Section 83.43, F.S., defines "tenant" as "any person entitled to occupy a dwelling unit under a rental agreement."

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits a landlord from *knowingly soliciting* an individual who is registered as a sexual offender or sexual predator to rent or lease a dwelling unit without taking certain actions. If the intent is to prohibit a landlord from soliciting a person *whom the landlord knows to be a sexual offender or sexual predator* to rent or lease a dwelling unit, the language could be amended in such a manner.

#### D. STATEMENT OF THE SPONSOR

HB 755 addresses a troubling situation in which landlords solicit sexual predators, recently released from prison, to lease living units because of their status as a registered offender. In cases such as this, HB 755 proposes that landlords would be required to verify the offender's correct address registration in the Sexual Offender Database and report to the sheriff of the county if the correct address is not listed in the database.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 19, 2008, the Homeland Security & Public Safety Committee adopted an amendment and reported the bill favorably as amended. The amendment removes an affirmative defense and specifies that the requirements of the bill only apply to landlords who solicit people that the landlord knows to be sexual offenders to rent or lease a dwelling unit.