

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 755 Sexual Offenders and Sexual Predators
SPONSOR(S): Safety & Security Council; Nelson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2236

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>11 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Cunningham/Davis</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

CS/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 because of his or her status as a sexual offender or sexual predator to, within five days after the date that the individual 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 willfully violate the above provisions are liable for a civil penalty that may not exceed \$10,000 for each violation. The bill specifies that the civil penalty may be recovered in any action brought in circuit court by the Attorney General and that any civil penalty collected shall accrue to the state and be deposited in the General Revenue Fund unallocated.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty – The bill requires landlords who knowingly solicit a person who is registered as a sexual offender or sexual predator to rent or lease a dwelling unit to take 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 state¹

Sexual offenders and sexual predators are required to provide specified information when they register, including their current address.² 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.³

Effect of the Bill

CS/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 because of his or her status as a sexual offender or sexual predator to, within five days after the date that the individual 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 willfully violate the above provisions are liable for a civil penalty that may not exceed \$10,000 for each violation. The bill specifies that the civil penalty may be recovered in any action brought in circuit court by the Attorney General and, if a civil penalty is assessed against a landlord, the Attorney General is entitled to recover reasonable attorney's fees. The bill also specifies that any civil penalty collected shall accrue to the state and be deposited as received in the General Revenue Fund unallocated.

The bill defines "dwelling unit,"⁴ "landlord,"⁵ "rent,"⁶ and "tenant"⁷ 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:

¹ See, ss. 775.21 and 943.0435, F.S.

² *Id.*

³ s. 943.043, F.S.

⁴ 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:

See "Fiscal Comments."

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Due to the requirements and civil penalty created by the bill, landlords who knowingly solicit registered sexual offenders or sexual predators to rent or lease a dwelling unit because of their status as a 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:

The bill specifies that the civil penalty may be recovered in any action brought in circuit court by the Attorney General. While indeterminate, there may be a workload impact on the Attorney General.

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."

⁵ Section 83.43, F.S., defines "landlord" as "the owner or lessor of a dwelling unit."

⁶ 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."

⁷ Section 83.43, F.S., defines "tenant" as "any person entitled to occupy a dwelling unit under a rental agreement."

Landlords who willfully violate the above-described provisions are liable for a civil penalty that may not be more than \$10,000 for each violation. The civil penalty may be recovered in any action brought in circuit court by the Attorney General. The bill specifies that any civil penalty collected shall accrue to the state and be deposited in the General Revenue Fund unallocated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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.

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

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.

On April 9, 2008, the Safety & Security Council adopted a substitute amendment and reported the bill favorably as a council substitute. The substitute amendment provides a civil penalty instead of a criminal penalty. This analysis is drafted to the council substitute.