

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Rules

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**BILL:** CS/SB 620

**INTRODUCER:** Committee on Military and Veterans Affairs and Space and Senator Broxson

**SUBJECT:** Military Affairs

**DATE:** April 22, 2019      **REVISED:** \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>MS</u>	<b>Fav/CS</b>
2.	<u>Wiehle</u>	<u>Imhof</u>	<u>IT</u>	<b>Favorable</b>
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 620 provides a number of benefits to servicemembers and their families and additional protections for military land interests and uses. The bill:

- Prohibits a landlord from requiring a servicemember to pay a security deposit or advance rent that exceeds, in the aggregate, the total sum of rent that would be due in a two-month period;
- Provides an additional basis for a servicemember to terminate a rental agreement with a one month written notice when a servicemember becomes eligible to live in and opts to move into privatized military housing;
- Adds two military installations to the list of those that designated local governments are required to coordinate with regarding compatibility of land development;
- Provides that a conservation easement created to prevent encroachment to a military installation survives a sale of property for nonpayment of taxes;
- Authorizes the Department of Economic Opportunity to award grants to support activities including marketing, advocacy, sponsorships, outreach, and military-related community support events;
- Adds to the list of prohibited activities on rural-lands protection easements and agricultural protection agreements the construction of structures or other activities that are incompatible with the mission of a military installation, if the land lies within specified types of areas;
- Requires school districts to accept a permanent change of station order as proof of residency for all public school programs including special academic programs; and
- Specifies the time at which active duty members, spouses, and their dependents are classified as residents for tuition purposes.

## II. Present Situation:

### Rental Housing Agreements

Florida law allows a residential landlord to require as a term of the lease that a tenant pay a deposit or advance rent. The statute does not cap how much may be collected from a tenant.<sup>1</sup>

An active servicemember may terminate a residential rental agreement by providing the landlord a thirty-day written notice of termination if:

- The servicemember is required, pursuant to a permanent change of station orders, to move 35 miles or more from the location of the rental premises;
- The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;
- The servicemember is released from active duty or state active duty after having leased the rental premises while on active duty or state active duty status and the rental premises is 35 miles or more from the servicemember's home of record before entering active duty or state active duty;
- After entering into a rental agreement, the servicemember receives military orders requiring a move into government quarters, or the servicemember becomes eligible to live in and opts to move into government quarters;
- The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders for a period of more than 60 days to an area 35 miles or more from the rental property; or
- The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area 35 miles or more from the rental property.<sup>2</sup>

### Military Installations

#### *Exchange of Information Between Local Governments and Military Installations*

Section 163.3175, F.S., provides the following legislative findings relating to land use around military installations:

- Incompatible development of land close to military installations can adversely affect the ability of such an installation to carry out its mission;
- Such development also threatens the public safety because of the possibility of accidents occurring within the areas surrounding a military installation;
- The economic vitality of a community is affected when military operations and missions must relocate because of incompatible urban encroachment; and
- Therefore, it is desirable for the local governments in the state to cooperate with military installations to encourage compatible land use, help prevent incompatible encroachment, and facilitate the continued presence of major military installations in this state.

The section identifies fourteen major military installations that, due to their mission and activities, have a greater potential for experiencing compatibility and coordination issues than

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<sup>1</sup> Section 83.49, F.S.

<sup>2</sup> Section 83.682(1), F.S.

others.<sup>3</sup> It also identifies proximate local governments and requires those local governments to transmit to the commanding officer of the relevant associated installation or installations the following:

- Information relating to proposed changes to the local government's comprehensive plan or land development regulations which, if approved, would affect the intensity, density, or use of the land adjacent to or in close proximity to the military installation; and
- At the request of the commanding officer, copies of applications for development orders requesting a variance or waiver from height or lighting restrictions or noise attenuation reduction requirements within areas defined in the local government's comprehensive plan as being in a zone of influence of the military installation.<sup>4</sup>

Each affected local government must provide the military installation an opportunity to review and comment on the proposed changes.<sup>5</sup> The commanding officer or his or her designee may provide to the affected local government advisory comments, data, and analyses on the effect the proposed changes may have on the mission of the military installation.<sup>6</sup> In making a determination on the proposed changes, the affected local government must consider and weigh the strategic mission of the base, public safety, and economic vitality associated with the base's operations, while also respecting private property rights and avoiding undue restrictions on those rights.<sup>7</sup> All comments on comprehensive plan amendments must be forwarded to the state land planning agency.<sup>8</sup> To facilitate the exchange of information, a representative of a military installation acting on behalf of all military installations within that jurisdiction serves as a nonvoting member of the county's or affected local government's land planning or zoning board.<sup>9</sup>

#### ***Continuation of Easement after Tax Sale or Deed Execution***

Specified types of easements, and the rights of the owners of those easements, survive and are enforceable after lands subject to an easement are sold for nonpayment of taxes to the same extent as though the land had been conveyed by voluntary deed. To preserve the easement, it must be evidenced by written instrument recorded in the office of the clerk of the circuit court in the county where the land is located before the recording of the tax deed or master's deed, or otherwise physically evidenced, as provided.<sup>10</sup>

#### ***Military Base Retention Grants Program***

The Legislature established the Florida Defense Infrastructure Grant Program (FDIGP) to support local infrastructure projects considered to positively impact the military value of installations in the state. Fundable infrastructure projects include those related to encroachment,

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<sup>3</sup> Section 163.3175(2)(a)-(n), F.S.

<sup>4</sup> Section 163.3175(4), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 163.3175(5), F.S.

<sup>7</sup> Section 163.3175(6), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 163.3175(7), F.S.

<sup>10</sup> Section 197.572, F.S.

transportation and access, utilities, communications, housing, environment, and security. A grant award may not be used to fund on-base military construction.<sup>11</sup>

The Legislature established the Military Base Protection Program within the Department of Economic Opportunity (DEO)<sup>12</sup> to:

- Secure nonconservation lands to serve as a buffer to protect military installations against encroachment; and
- Support local community efforts to engage in service partnerships with military installations.<sup>13</sup>

The Legislature established the Florida Defense Reinvestment Grant Program (FDRGP) to work with defense-dependent communities in developing and implementing strategies to support the missions of military installations, and develop and implement alternative strategies to transition from a defense-based to a nondefense economy.<sup>14</sup> A local governmental entity may apply to the FDRGP for a grant to support a community-based activity that:

- Protects existing military installations;
- Diversifies the economy of a defense-dependent community; or
- Develops a plan for the reuse of closed or realigned military installations.<sup>15</sup>

The DEO awards grants on a competitive basis from available funds to support activities related to the FDRGP and the FDIGP.<sup>16</sup> The term “activities” means studies, presentations, analyses, plans, and modeling. Additionally, for the FDIGP, a qualifying activity also includes construction, land purchases, and easements. Travel costs and costs incidental to a grant qualify, while staff salaries do not.<sup>17</sup>

### ***Rural-Lands-Protection Easements***

On behalf of the Board of Trustees of the Internal Improvement Trust Fund, the Department of Agriculture and Consumer Services may allocate moneys: to acquire perpetual, less-than-fee interest in land; to enter into agricultural protection agreements; and to enter into resource conservation agreements for the following purposes:

- Promotion and improvement of wildlife habitat;
- Protection and enhancement of water bodies, aquifer recharge areas, wetlands, and watersheds;
- Perpetuation of open space on lands with significant natural areas; or
- Protection agricultural lands threatened by conversion to other uses.<sup>18</sup>

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<sup>11</sup> Chapter 2004-230, Laws of Fla.; s. 288.980(5), F.S.

<sup>12</sup> Chapter 2012-159, Laws of Fla.; s. 288.980(2)(a), F.S., established the Military Base Protection program.

<sup>13</sup> Chapter 2013-222, Laws of Fla., provided the functions of the Military Base Protection Program.

<sup>14</sup> Chapter 2012-159, Laws of Fla.; s. 288.980(4), F.S.

<sup>15</sup> Section 288.980(4)(a)-(c), F.S.

<sup>16</sup> Chapter 2012-159, Laws of Fla.; Section 288.980(3)(a), F.S.

<sup>17</sup> Section 288.980(3)(b), F.S.

<sup>18</sup> Section 570.71(1), F.S.

A rural-lands-protection easement is a perpetual, right or interest in agricultural land appropriate to retain the land in predominantly its current state and to prevent the subdivision and conversion of the land into other uses. The easement prohibits:

- Construction or placing of buildings, roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads necessary for the agricultural operations on the land or structures necessary for other activities allowed under the easement, and certain linear facilities;
- Subdivision of the property;
- Dumping or placing of trash, waste, or offensive materials; and
- Activities that affect the natural hydrology of the land or that detrimentally affect water conservation, erosion control, soil conservation, or fish or wildlife habitat, except those required for environmental restoration; federal, state, or local government regulatory programs; or best management practices.<sup>19</sup>

An agricultural protection agreement must have a term of thirty years and provide payments to landowners having significant natural areas on their land. Public access and public recreational opportunities may be negotiated at the request of the landowner.<sup>20</sup> For the length of the agreement, the landowner agrees to prohibit:

- Construction or placing of buildings, roads, billboards or other advertising, utilities, or structures, except those structures and unpaved roads necessary for the agricultural operations on the land or structures necessary for other activities allowed under the easement, and certain linear facilities;
- Subdivision of the property;
- Dumping or placing of trash, waste, or offensive materials; and
- Activities that affect the natural hydrology of the land, or that detrimentally affect water conservation, erosion control, soil conservation, or fish or wildlife habitat.<sup>21</sup>

A resource conservation agreement is a contract for services providing annual payments to landowners for services that actively improve habitat and water restoration or conservation on their lands over and above that which is already required by law or that provide recreational opportunities. Property owners are eligible to enter into a resource conservation agreement only after entering into a conservation easement or rural lands protection easement.<sup>22</sup>

## **Students of Military Families**

### ***Transfers of K-12 students***

The Legislature recognizes the challenges faced by military students and requires the Florida Department of Education (department) to assist in the transition of these students in military families by:

- Improving the timely transfer of records;
- Developing systems to ease student transition during the first two weeks of enrollment;
- Promoting practices which foster access to extracurricular programs;

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<sup>19</sup> Section 570.71(3), F.S.

<sup>20</sup> Section 570.71(5), F.S.

<sup>21</sup> Section 570.71(5)(a), F.S.

<sup>22</sup> Section 570.71(4), F.S.

- Establishing procedures to lessen the adverse impact of moves;
- Encouraging or continuing partnerships between the military base and the school system;
- Providing services for transitioning students when applying to and finding funding for postsecondary study; and
- Providing other assistance as identified by the department, school, and military personnel.<sup>23</sup>

The department is further required to facilitate the development and implementation of memoranda of agreement between school districts and military installations which address strategies for assisting students who are the children of active duty military personnel in the transition to Florida schools.<sup>24</sup>

Finally, dependent children of active duty military personnel who otherwise meet the eligibility criteria for special academic programs<sup>25</sup> offered through public schools must be given first preference for admission to these programs even if the program is offered through a public school other than the school to which the student would generally be assigned.<sup>26</sup>

According to the Department of the Navy, in some school districts in Florida, military families miss special program application deadlines because their Permanent Change of Station orders are not considered proof of residency. Consequently, the child has been relegated to a lower performing “D” or “F” school based on exceeded capacity at the actual time of arrival.<sup>27</sup>

### ***Residency Status for Tuition purposes***

Florida law defines “tuition” as “the basic fee charged to a student for instruction provided by a public postsecondary educational institution in the state.”<sup>28</sup> Students who are not classified as “residents for tuition purposes”<sup>29</sup> are required to pay the full cost of instruction at a public postsecondary institution. This additional charge is known as the “out-of-state fee.”<sup>30</sup> Institutions are authorized, and sometimes required to provide exemptions and/or waivers<sup>31</sup> of the out-of-state fee to students who meet specified criteria.

Current law provides eleven categories in which individuals who meet certain criteria are automatically considered residents of Florida for tuition purposes, including the following criteria for servicemembers:

- Active duty members of the U.S. Armed Services residing or stationed in Florida and their spouses and dependent children, and active drilling members of the Florida National Guard; and

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<sup>23</sup> Section 1003.05(1), F.S.

<sup>24</sup> Section 1003.05(2), F.S.

<sup>25</sup> Special academic programs include magnet schools, advanced studies programs, advanced placement, dual enrollment, Advanced International Certificate of Education, and International Baccalaureate. *See* s. 1003.05(3), F.S.

<sup>26</sup> Section 1003.05(3), F.S.

<sup>27</sup> Letter from Navy Region Southeast Commander, B. Bolivar, to Governor Rick Scott (Aug. 9, 2018) (on file with the Committee on Military and Veterans Affairs and Space).

<sup>28</sup> Section 1009.01(1), F.S.

<sup>29</sup> Section 1009.21(1)(g), F.S.

<sup>30</sup> Section 1009.01(2), F.S.

<sup>31</sup> Sections 1009.25 and 1009.26, F.S.

- Active duty members of the U.S. Armed Services and their spouses and dependents attending a public college or state university within 50 miles of the military establishment where they are stationed, if the military establishment is within a county contiguous to Florida.<sup>32</sup>

### **III. Effect of Proposed Changes:**

The bill provides benefits to servicemembers and their families and additional protections for military land interests and uses.

#### **Rental Housing**

The bill creates two benefits for servicemembers who are residential tenants.

First, the bill prohibits a residential landlord from requiring a servicemember to pay a security deposit or advance rent that exceeds, in the aggregate, the total sum of rent that would be due in a two-month period under the rental agreement.

Second, the bill identifies a new basis for a servicemember to terminate a residential rental agreement with a one-month written notice when a servicemember becomes eligible to live in and opts to move into privatized military housing.

#### **Military Installations**

##### ***Exchange of Information Between Local Governments and Military Installations***

The bill adds the following military installations as being among those having a greater potential for experiencing compatibility and coordination issues, and the following local governments as among those required to include the military installations in their comprehensive and land development planning:

- Naval Support Activity Orlando, including Bugg Spring and the Naval Ordnance Test Unit, associated with Orange County and the city of Orlando; and
- United States Southern Command, associated with Miami-Dade County and the city of Doral.

##### ***Continuation of Easement after Tax Sale or Deed Execution***

The bill adds to the list of easements that remain valid after a tax sale or the issuance of a tax certificate in foreclosure proceedings an easement to prevent an encroachment of military installations.

##### ***Military Base Retention Grants Program***

The Department of Economic Opportunity may award grants on a competitive basis from the Florida Defense Reinvestment Grant Program and the Florida Defense Infrastructure Grant Program for certain activities. The bill adds to the list of these activities marketing, advocacy, sponsorships, outreach, and military-related community support events.

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<sup>32</sup> Section 1009.21(10), F.S.

***Rural-Lands-Protection Easements and Agriculture Protection Agreements***

The bill adds to the list of activities that are prohibited under a rural-lands-protection easement or an agricultural protection agreement the construction of structures or other activities that are incompatible with the mission of a military installation when the land lies within an area identified as a clear zone or an accident potential zone or within Military Influence Planning Area 1 or 2 as established in the Joint Land Use Study of the installation.

**Students of Military Families*****Transfers of K-12 students***

The bill requires school districts to accept a permanent change of station order as proof of residency of each dependent school child listed in the order for the child's admission to all public school programs including special academic programs.

***Residency Status for Tuition purposes***

Current law classifies active duty members and their families as residents for tuition purposes in certain instances.

The bill specifies that active duty members of the U.S. Armed Services and their spouses and dependent children are classified as residents for tuition purposes if they reside or are stationed in Florida at the time of acceptance to a public college or state university.

Additionally, active duty members of the U.S. Armed Services and their spouses and dependents attending a public college or state university within 50 miles of the military establishment where they are stationed are classified as residents for tuition purposes at the time of acceptance to a public college or state university if the military establishment is within a county contiguous to Florida.

Therefore, a student who qualifies for in-state tuition at a Florida university or college at the time of acceptance into the university or college will continue to qualify even if the servicemember receives orders to move before the dependent enrolls in the university or college.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

The bill prohibits a landlord from requiring more than the total sum of rent that would be due in a two-month period only if the tenant is a servicemember. This provision could possibly be challenged as constitutionally suspect under the equal protection clause of the state constitution.<sup>33</sup> A classification that impedes a fundamental right or restricts a suspect class triggers the highest level of judicial scrutiny, followed by intermediate-level scrutiny for certain protected classes. As renting property is not considered a fundamental right, and a non-military member is not part of a suspect or otherwise protected class, a court would apply the lowest level of judicial review, that of rational basis. The rational basis test requires that a statute bear a rational and reasonable relationship to a legitimate state objective, and cannot be arbitrarily or capriciously imposed.<sup>34</sup> Still, a legislature may establish a classification without presumably violating equal protection,<sup>35</sup> and courts have upheld some level of disparate treatment as constitutional.<sup>36</sup> In its review, a court will consider whether similarly situated persons are treated similarly.<sup>37</sup>

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Military members and their families may benefit from the bill in the areas of private property rentals and education.

First, servicemembers will not have to come up with as much cash up front when signing a lease. A servicemember also will not be penalized for breaking a lease if he or she becomes eligible to live in and opts to move into privatized military housing.

Second, active duty members of the Armed Services and their spouses and dependents will receive the benefit of in-state tuition if the active duty member receives a relocation order after accepting admission but before enrolling at a public postsecondary institution.

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<sup>33</sup> Art. 1, s. 2, of the state constitution provides: "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property. No person shall be deprived of any right because of race, religion, national origin, or physical disability."

<sup>34</sup> *Estate of McCall v. U.S.*, 134 So.3d 894, 901 (Fla. 2014).

<sup>35</sup> *Progressive American Insurance Co. v. Eduardo J. Garrido D.C. P.A.*, 211 So.3d 1086, 1090-1091 (Fla. 3rd DCA 2017).

<sup>36</sup> *Duncan v. Moore*, 754 So.2d 708, 712 (Fla. 2000).

<sup>37</sup> *Id.* at 712.

**C. Government Sector Impact:**

Orange County, Miami-Dade County, and the city of Doral will have to engage in an information exchange with proximate military installations and address in their comprehensive plans land development compatibility, so the bill may result in an unknown fiscal impact on those local governments.<sup>38</sup>

According to the Department of Agriculture and Consumer Services, the bill's provisions on conservation easements and agricultural protection agreements will likely cause an increase in contracting costs.<sup>39</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:****Easements on Land**

According to the Department of Agriculture and Consumer Services (department):<sup>40</sup>

Rural-Lands-Protection Easement(s) (RLPE) and Agricultural Protection Agreement(s) (APA) make it financially feasible for landowners to keep the land from becoming developed thereby preserving Florida's natural environment and agricultural activities. Easements are attached to the deed and follow the property regardless of ownership. The utilization restrictions are uniform between RLPE and APA, except RLPEs enable a landowner to affect the hydrology of the land, if it is required for environmental restoration. The current requirements already prohibit and/or limit construction, subdivision of property, storage of waste or other offensive materials, and activities that affect hydrology. The department, which remains cognizant of the importance of the relationship amongst the state, the military and the landowner, currently negotiates reasonable use requirements that reconcile the landowner's and the military department's interests for properties situated near military installations. The FDACS has formed a strategic partnership with the Department of Defense, which has allowed the state to receive federal funds to enact easements in areas where encroachment on military installations is possible.

In addition to the restrictions discussed above, the statutory revisions will prohibit RLPE or APA landowners from constructing structures that are incompatible with the mission of the military, if the land lies within a clear zone, an accident potential zone, or a Military Influence Planning Area 1 or 2. The bill does not define "incompatible with the mission of a military installation," meaning that numerous interpretations are possible;

<sup>38</sup> Although the city of Orlando is referenced as being associated with the military installation of Naval Support Activity Orlando, the military installation is located in unincorporated Orange County. Therefore, a fiscal impact on the city of Orlando is not anticipated.

<sup>39</sup> Department of Agriculture and Consumer Services, *Agency Bill Analysis for SB 620* (Feb. 11, 2019) (on file with the Senate Committee on Military and Veteran Affairs and Space).

<sup>40</sup> *Id.*

therefore, further clarification may be required to limit applicability, to identify who makes such determinations and to provide the details required for accurately interpreting the effects of the legislation. The effect that these unknowns will have on easements is discussed below.

The proposed provision will create ambiguity related to each party's rights, unless each individual agreement explicitly specifies what activities are incompatible with the mission of the military beyond a statutory prescription. A statutory prohibition may prohibit the department from exercising reasonable judgment when easement agreements involve military considerations if the definition of "incompatible with the mission of a military installation" is disputed. Historically, the department has utilized this reasonable judgment to create universally beneficial outcomes; therefore, limiting the department's ability to serve as an intermediary may lead to fewer landowners entering into easement agreements, more developed lands and more encroachment challenges for the military.

### **Residency for Tuition Purposes**

Section 8 of the bill specifies that the time at which active duty members or their spouses or dependents are classified as residents for tuition purposes is at the time of acceptance of an admissions offer to a public postsecondary institution. Current law does not specify a time, so this provision may have the unintended consequence of narrowing a servicemember's access to in-state tuition.

### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 83.49, 83.682, 163.3175, 197.572, 288.980, 570.71, 1003.05, and 1009.21.

### **IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS by Military and Veterans Affairs and Space on April 3, 2019:**

- Revises from a 60-day to a 2-month period, excluding prorated rent, the cap on the sum of rent that would be due during that time for payment of an advance security deposit or rent required from a servicemember;
- Revises from a 30 day to a 1 month period the minimum period of notice a qualifying servicemember must provide to a landlord through receipt of a written termination of a rental agreement;
- Revises from 60 days to 2 months the minimum period of time a military relocation order must specify that a servicemember has been relocated to an area at least 35 miles from the rental property for the servicemember to terminate the rental agreement.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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