

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1475 w/CS Uniformed Servicemembers Act

**SPONSOR(S):** Ambler

**TIED BILLS:** None.

**IDEN./SIM. BILLS:** HB 477, HB 505, 1st ENG/SB 482, CS/SB 1098

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Veterans' &amp; Military Affairs</u>	<u>5 Y, 0 N</u>	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
2) <u>Local Government &amp; Veterans' Affairs</u>	<u>14 Y, 0 N</u>	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
3) <u>Local Government &amp; Veterans' Affairs</u>	<u>16 Y, 0 N w/CS</u>	<u>Smith-Boggis</u>	<u>Highsmith-Smith</u>
4) <u>Judiciary</u>	<u></u>	<u>Havlicak</u>	<u>Havlicak</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

This bill creates the "Florida Uniformed Servicemembers Protection Act" which allows servicemen and women to cancel car leases, car insurance, cell phone contracts, residential rental leases, and real estate purchase contracts when they are deployed on active duty. This bill clarifies leave-of-absence provisions for state, county, and municipal officers and employees that are called to active duty or state active duty.

This bill exempts servicemembers from penalties for expiration of mobile home and motor vehicle registrations when the registrations expire while the servicemember is serving on active duty. This bill requires motor vehicle insurance companies to refund the entire unearned portion of a premium upon cancellation of motor vehicle insurance by a servicemember when the servicemember is required to move pursuant to specified orders.

This bill extends the eligibility period for the Florida Bright Futures Scholarship Program when students enlist in the armed services out of high school or are called to active duty while in college.

The bill adopts into Florida law the federal provisions of the Soldiers' and Sailors' Civil Relief Act and the Uniformed Services Employment and Reemployment Relief Act. This allows Florida's servicemembers the ability to use the state court system to remedy cases and controversies arising out of this bill.

This bill does not appear to have a fiscal impact on the state budget.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1475f.ju.doc

**DATE:** April 21, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

This bill creates the “Florida Uniformed Servicemembers Protection Act” which allows servicemen and women to cancel car leases, car insurance, cell phone contracts, residential rental leases, and real estate purchase contracts when they are deployed on active duty. This bill clarifies leave-of-absence provisions for state, county, and municipal officers and employees that are called to active duty or state active duty.

This bill exempts servicemembers from penalties for expiration of mobile home and motor vehicle registrations when the registrations expire while the servicemember is serving on active duty. This bill requires motor vehicle insurance companies to refund the entire unearned portion of a premium upon cancellation of motor vehicle insurance by a servicemember when the servicemember is required to move pursuant to specified orders.

This bill extends the eligibility period for the Florida Bright Futures Scholarship Program when students enlist in the armed services out of high school or are called to active duty while in college.

The bill adopts into Florida law the federal provisions of the Soldiers’ and Sailors’ Civil Relief Act (SSCRA) and the Uniformed Services Employment and Reemployment Relief Act (USERRA). This allows Florida’s servicemembers the ability to use the state court system to remedy cases and controversies arising out of this bill.

#### C. SECTION DIRECTORY:

Section 1. Creates Part IV of chapter 250, F.S., relating to Military Affairs, ss. 250.80 - 250.87, to be known as the “Florida Uniformed Servicemembers Protection Act”; provides legislative intent; provides definitions; provides applicability of specified federal laws to members of the Florida National Guard and Reserves when serving on active duty or state active duty; provides for jurisdiction of the courts with respect to causes of action under this act; provides in event of conflicts, SSCRA, USERRA or this act controls; provides for incorporation by reference of specified federal laws and various provisions of Florida Statutes within the Florida Uniformed Servicemembers Protection Act; provides civil relief for servicemembers on active duty or state active duty; provides that all servicemembers employed in the state who are also servicemembers, officers, or enlisted personnel in the National Guard or a reserve component of the Armed Forces of the United States will be granted leave of absence from their respective officers and duties to perform active duty or state active duty.

- Section 2. Subsections (14), (15), and (16) are added to s. 83.43, F.S., relating to the Florida Residential Landlord and Tenant Act, defining “servicemember,” “active duty,” and “state active duty.”
- Section 3. Subsection (1) of section 83.64, F.S., relating to Retaliatory conduct, under Landlord and Tenant, is amended to prohibit retaliatory conduct by a landlord for termination of a rental agreement by a servicemember.
- Section 4. Section 83.67, F.S., relating to Prohibited practices, under the Florida Residential Landlord and Tenant Act, is amended to prohibit a landlord from discriminating against a servicemember in offering a dwelling unit for rent or in any of the terms of a rental agreement; providing for applicability of remedies to servicemembers who are prospective tenants and the subject of such discrimination.
- Section 5. Section 83.682, F.S., relating to Termination of rental agreement by a member of the United States Armed Forces, under the Florida Residential Landlord and Tenant Act, is amended to provide conditions under which a servicemember may terminate his or her rental agreement; revises terminology; revises liability of a servicemember in the event of early termination of a tenancy.
- Section 6. Section 115.02, F.S., relating to Governor to grant application; proviso., under Leaves of Absence to Officials and Employees, is amended to revise provisions with respect to the granting of a leave of absence to an officer.
- Section 7. Section 115.08, F.S., relating to definitions, under Leaves of Absence to Officials and Employees, is amended to revise the definition of “active military service” and “period of active military service”; provides a definition of “servicemember”.
- Section 8. Section 115.09, F.S., relating to Leave to public officials for military service, under Leaves of Absence to Officials and Employees, is amended to require the granting of leave of absence for state, county, and municipal officials who are servicemembers.
- Section 9. Section 115.10, F.S., relating to Leave to be granted by Governor, under Leaves of Absence to Officials and Employees, is repealed.
- Section 10. Section 115.12, F.S., relating to Rights during leave, under Leaves of Absence to Officials and Employees, is amended to revise provisions relating to rights during leave to provide that the employing authority must adhere to the provisions of the federal Uniformed Services Employment and Reemployment Rights Act, chapter 43 of Title 38, U.S.C., as amended.
- Section 11. Section 115.13, F.S., relating to Resumption of official duties, under Leaves of Absence to Officials and Employees, is amended to revise provisions relating to resumption of official duties in accordance with the limits provided under the federal Uniformed Services Employment and Reemployment Rights Act, chapter 43 of Title 38, U.S.C., as amended.
- Section 12. Section 115.14, F.S., relating to Employees, under Leaves of Absence to Officials and Employees, is amended to require the granting of leave of absence for state, county, and municipal employees; provides that the first 30 days of such leave of absence shall be with full pay; revises provisions with respect to supplemental pay for reservist officials and employees called to active military service; requires an employing authority to continue to provide all health insurance and other existing benefits.

- Section 13. Section 115.15, F.S., relating to Adoption of federal law for employees, under Leaves of Absence to Officials and Employees, is amended to provide for applicability of the federal Uniformed Services Employment and Reemployment Rights Act.
- Section 14. Section 320.07, F.S., relating to Expiration of registration; annual renewal required; penalties, under Motor Vehicle Licenses, is amended to exempt servicemembers from penalties for expiration of mobile home and motor vehicle registrations when such registrations expire while the servicemember is serving on active duty or state active duty.
- Section 15. Section 364.195, F.S., relating to Termination of telecommunications service contract by a servicemember, is created to provide requirements and procedures with respect to termination of a telecommunications service contract by a servicemember.
- Section 16. Section 520.14, F.S., relating to Termination of retail installment contract for leasing a motor vehicle by a servicemember, is created to provide requirements and procedures with respect to the termination of a retail installment contract for leasing a motor vehicle by a servicemember.
- Section 17. Subsection (5) is added to s. 627.7283, F.S., relating to Cancellation, return of premium, under Insurance rates and contracts, is amended to require motor vehicle insurance companies to refund the entire unearned portion of a premium upon cancellation of motor vehicle insurance by a servicemember when the servicemember is required to move pursuant to military orders.
- Section 18. Section 689.27, F.S., relating to Termination of agreement to purchase real property by a servicemember, is created to provide definitions; provide requirements and procedures with respect to the termination of an agreement to purchase real property by a servicemember.
- Section 19. Subsection (2) of s. 1009.531, F.S., relating to Florida Bright Futures Scholarship Program, student eligibility requirements for initial awards, under Educational Scholarships, fees, and financial assistance, is amended to extend the eligibility period for the Florida Bright Futures Scholarship Program for students who enlist in the armed forces or reserves immediately after completion of high school.
- Section 20. Subsection (1) of s. 1009.532, F.S., relating to Florida Bright Futures Scholarship Program, student eligibility requirements for renewal awards, under Educational Scholarships, fees, and financial assistance, is amended to provide eligibility for continuation of Florida Bright Futures Scholarships for students attending postsecondary institutions who are also Florida National Guard or United States Reserves servicemembers and are called to active duty or active state duty.
- Section 21. Provides that the act shall take effect upon becoming law.

## **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: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

#### Unlawful Delegation

Article II, section 3 of the Florida Constitution provides: "No person belonging to one branch [of state government] shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The Florida Supreme Court has ruled that this separation-of-powers provision prevents the Legislature from delegating legislative power.<sup>1</sup> The power to legislate is defined as "involv[ing] the exercise of discretion as to the content of the law, its policy, or what it shall be[.]"<sup>2</sup>

Pursuant to this constitutional provision, the Legislature may not adopt in advance or otherwise attempt to incorporate federal law that is not yet enacted, because this would be a delegation of its legislative power to the federal government. In *State v. Welch*,<sup>3</sup> the Florida Supreme Court considered the constitutionality of a Florida statute which purported to prohibit certain criminal acts by reference to federal law. Specifically, the law declared that the Legislature's intent was to include under Florida's Drug Abuse Law, "all drugs controlled by the drug abuse laws of the United States, now or in the future," in addition to those specified under Florida law.<sup>4</sup> In *Welch*, the Court held that the Legislature may adopt provisions of federal law that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act that Congress might see fit to adopt in the future.<sup>5</sup>

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<sup>1</sup> See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998); *Board of Architecture v. Wasserman*, 377 So.2d 653 (1979).

<sup>2</sup> *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719, 720-21 (Fla. 1937). See also *B. H. v. State*, 645 So.2d 987 (Fla. 1994); *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260 (Fla. 1991).

<sup>3</sup> See *State v. Welch*, 279 So.2d 11 (Fla. 1973);

<sup>4</sup> See s. 404.515, F.S. (Supp. 1972).

<sup>5</sup> *Welch*, 279 So.2d at 476.

The CS out of Local Government & Veterans' Affairs Committee in several places adopts federal law "as amended".<sup>6</sup> Adopting SSCRA and USERRA as those federal laws currently exist may be acceptable. However, should those federal laws be subsequently amended by Congress, the changes would not be effective under this Act's adoption of the federal law because that could, under the holding in *We/ch*, constitute an unlawful delegation of legislative authority.

**B. RULE-MAKING AUTHORITY:**

None.

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

- To keep the Florida Uniformed Servicemembers Protection Act gender neutral, the word "wife" on line 630 of the CS out of Local Government & Veterans' Affairs Committee should be changed to "spouse."
- Paragraph (c) on line 794 of the CS out of Local Government & Veterans' Affairs Committee provides a criminal fine and imprisonment by referencing Title 18 U.S.C. The United States Code reference should be eliminated, and the following language should be added to make the Act internally consistent: "commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083."
- References to "citizens" and "citizenship" on lines 416 and 420 should be replaced with "residents" and "residency."

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

Comment by the staff of the Committee on Local Government & Veterans' Affairs:

The sponsor of the bill offered a strike-all amendment on March 25, 2003, which was withdrawn. The strike-all amendment would have done the following: In section 1 of the bill, section 250.83 - changing the language relating to the applicability of federal law and removing the direct "adopted by reference" language. Section 250.85(1) - changing the format from a single paragraph to a series of paragraphs, this allows for better readability and adding new language reflecting the new additions to the bill. Section 250.85(2) - easing the requirement for DMA to provide the information on the act. Adding a new section to the bill, section 320.07 - adds new language providing an exemption from penalties and fees for late renewal of a motor vehicle or mobile home registration for servicemembers on active duty. In section 17 of the bill, section 520.14 - removing provisions from the bill that do not relate to car leases. Adding a new section to the bill, section 627.7382 - adds new language to allow for a full refund of unearned auto insurance premiums for servicemembers called to active duty. Adding a new section to the bill, section 1009.531 - adds new language to extend the window of opportunity for Bright Futures scholarships for students who are called to active duty or enlist.

The sponsor of the bill will be offering a strike-all amendment to replace the withdrawn amendment discussed at the Subcommittee on Veterans' & Military Affairs meeting. The strike-all amendment incorporates several changes to the amendment previously offered and withdrawn.

The Committee on Local Government & Veterans' Affairs adopted the strike-all amendment on April 8, 2003. The amendment adopted the provisions described above and codified into Florida law some of the federal provisions of the Soldiers' and Sailors' Civil Relief Act to clearly indicate that these provisions apply to Florida

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<sup>6</sup> Lines 266-278 adopts the Soldiers' and Sailors' Civil Relief Act (as amended) and the Uniformed Services Employment and Reemployment Rights Act (as amended). The latter federal law with the "as amended" language is also referenced in the CS on lines 1084-1101 and on lines 1361-1363.

servicemembers when serving federal and state active duty. The amendment required Florida servicemembers and employers to conform to the requirements of the Uniformed Services Employment and Reemployment Rights Act. The section on the applicability of federal law was changed to reflect these two additions.