

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.)

Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs and Space

BILL: CS/SB 620

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

SUBJECT: Military Affairs

DATE: April 4, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Caldwell	MS	Fav/CS
2.			IT	
3.			RC	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 620 provides a number of changes in law to benefit servicemembers and their families and to better protect military land interests and uses.

The bill specifically:

- 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 2-month period under the rental agreement, excluding prorated rent.
- Provides as an additional basis for a servicemember to terminate a rental agreement with a 1 month written notice a situation in which 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 may exchange certain information with local governments regarding compatibility of land development.
- Provides that a conservation easement, created to prevent encroachment to a military installation, survives a tax sale of property or the issuance of a tax certificate in foreclosure proceedings.
- Authorizes the Department of Economic Opportunity to award grants on a competitive basis to support activities related to the Florida Defense Reinvestment Grant Program and the Florida Defense Infrastructure Grant Program which include 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 an identified clear zone or an accident potential zone, or within Military Influence Planning Area 1 or 2 designated in the Joint Land Use Study of the installation.

- 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 a child's admission to all district-authorized programs.
- Specifies the point in time in which active duty members, spouses, and their dependents are classified as residents for tuition purposes.

II. Present Situation:

Rental Housing Agreements

In urban areas around Florida, particularly South Florida, affordable and sufficient housing is becoming more difficult to find for active military servicemembers stationed nearby. In addition to an expensive rental market, servicemembers report that some landlords require greater amounts of up-front deposits and rent from a tenant to secure a lease. Beyond prescribing how landlords retain and return deposits and prepaid rent, Florida statutes do not cap how much may be collected from a tenant.¹

An active servicemember may terminate a rental agreement by providing the landlord a 30 day written notice of termination upon receipt 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.²

Military Installations

Exchange of Information Between Local Governments and Military Installations

Section 163.3175(2), F.S., identifies major military installations that, due to their mission and activities, have a greater potential for experiencing compatibility and coordination issues than

¹ See s. 83.49, F.S.

² Section 83.682(1), F.S.

others, and also identifies proximate local governments that are required to address land development compatibility with military installations in their comprehensive plans. Currently, 14 military installations cooperate with local governments to encourage compatible land use, prevent incompatible encroachment, and facilitate the continued presence of major military installations in Florida.³

Each affected local government must transmit the following proposed comprehensive plan amendments, proposed land development regulations, and applications for development orders to the commanding officer of the relevant associated installation or installations:

- Information relating to proposed changes to the local government's comprehensive plan which, if approved, would affect the intensity, density, or use of the land adjacent to or in close proximity to the military installation;
- Information relating to proposed changes to 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.⁴

The commanding officer or his or her designee may provide advisory comments, data, and analyses to the affected local government on the affect the proposed changes may have on the mission of the military installation.⁵ In construing the information provided, 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, with the respect accorded private property rights and undue restrictions on those rights.⁶ All comments on comprehensive plan amendments must be forwarded to the state land planning agency.⁷

Continuation of Easement after Tax Sale or Deed Execution

Current law provides that an easement on land for conservation; a public service purpose, such as for a telephone, pipeline, power transmission; drainage; or ingress and egress survive and remain valid and enforceable even after a tax sale, tax deed, or tax certificate is recorded with the office of the clerk.⁸

Military Base Retention Grants Program

The Legislature established the Military Base Protection Program within the Department of Economic Opportunity (DEO)⁹ to:

- Secure nonconservation lands to serve as a buffer to protect military installations against encroachment; and

³ See s. 163.3175(2)(a)-(n), F.S.

⁴ Section 163.3175(4), F.S.

⁵ Section 163.3175(5), F.S.

⁶ Section 163.3175(6), F.S.

⁷ *Id.*

⁸ Section 197.572, F.S.

⁹ The 2012 Legislature established the Military Base Protection program (ch. 2012-159, L.O.F.; s. 288.980(2)(a), F.S.).

- Support local community efforts to engage in service partnerships with military installations.¹⁰

In 2004, the Legislature established the Florida Defense Infrastructure Grant Program (FDIGP).¹¹ The purpose of the FDIGP is 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, transportation and access, utilities, communications, housing, environment, and security. A grant award may not be used to fund on-base military construction.¹²

In 2012, 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.¹³ 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.¹⁴

The Department of Economic Opportunity awards grants on a competitive basis from available funds to support activities related to the FDRGP and the FDIGP.¹⁵ 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.¹⁶

Rural-Lands-Protection Easements

On behalf of the Board of Trustees of the Internal Improvement Trust Fund, the Department of Agriculture and Consumer Services (department) may allocate moneys to acquire perpetual, less-than-fee interest in land, to enter into agricultural protection agreements (APA). The department may also enter into resource conservation agreements that:

- Promote and improve wildlife habitat;
- Protect and enhance water bodies, aquifer recharge areas, wetlands, and watersheds;
- Perpetuate open space on lands with significant natural areas; or
- Protect agricultural lands threatened by conversion to other uses.¹⁷

Rural-lands-protection easements (RLPE) are a perpetual right or interest in agricultural land which is appropriate to retain the land in predominantly its current state and to prevent the

¹⁰ Chapter 2013-222, L.O.F., provided the functions of the Military Base Protection Program.

¹¹ Chapter 2204-230, L.O.F.; s. 288.980(5), F.S.

¹² *Id.*

¹³ Chapter 2012-159, L.O.F.; s. 288.980(4), F.S.

¹⁴ Section 288.980(4)(a)-(c), F.S.

¹⁵ Chapter 2012-159, L.O.F.; Section 288.980(3)(a), F.S.

¹⁶ Section 288.980(3)(b), F.S.

¹⁷ Section 570.71(1), F.S.

subdivision and conversion of the land into other uses. This right or interest in property prohibits only the following:

- 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.¹⁸

Agricultural protection agreements (APA) are valid for 30-year terms 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.¹⁹ 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.²⁰

Students of Military Families

Transfers of K-12 students

Children in active-duty military families face unique educational challenges. The average military child transfers to a different state or school district six to nine times during kindergarten through 12th grade. When a parent is reassigned, military children may be affected by:²¹

- transfer of records;
- course sequencing;
- graduation requirements;
- exclusion from extracurricular activities;
- redundant or missed entrance/exit tests;
- kindergarten and first grade entrance age variations; and
- power of custodial parents while parents are deployed.²²

¹⁸ Section 570.71(3), F.S.

¹⁹ Section 570.71(5), F.S.

²⁰ Section 570.71(5)(a), F.S.

²¹ Council of State Governments, Interstate Compact on Educational Opportunity for Military Children, available at https://www.cgs.org/programs/policyprograms/NCIC/interstatecompact_militarychildren_edop.aspx (last visited March 28, 2019).

²² *Id.*

The Interstate Compact on Educational Opportunity for Military Children (Compact) assists member states in uniformly addressing educational transition issues faced by active-duty military families. The Compact governs member states in several areas, including school placement, enrollment, records transfer, participation in academic programs and extracurricular activities, and graduation. The Compact was developed by the Council of State Governments, in cooperation with the U.S. Department of Defense (DoD).²³

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:²⁴

- 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;
- 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.

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.²⁵

Finally, dependent children of active duty military personnel who otherwise meet the eligibility criteria for special academic programs²⁶ 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.²⁷

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 “D” or “F” school based on exceeded capacity at the actual time of arrival.²⁸

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.”²⁹ Students who are not classified as

²³ *Id.*

²⁴ Section 1003.05(1), F.S.

²⁵ Section 1003.05(2), F.S.

²⁶ 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.*

²⁷ Section 1003.05(3), F.S.

²⁸ 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).

²⁹ Section 1009.01(1), F.S.

“residents for tuition purposes”³⁰ 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.”³¹ Institutions are authorized, and sometimes required to provide exemptions and/or waivers³² 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.³³ As it relates to service in the U.S. Armed Services, persons who qualify as the following are considered residents for tuition purposes in Florida:

- 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;³⁴ and
- 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.³⁵

III. Effect of Proposed Changes:

CS/SB 620 contains a number of provisions to benefit servicemembers and their families and to better protect military land interests and uses.

Rental Housing

The bill assists servicemembers who are tenants of private property in two ways.

First, 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 2-month period under the rental agreement.

Additionally, the bill identifies as a new basis for a servicemember to terminate a rental agreement with a 1 month written notice a situation in which 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

Current law identifies a number of military installations that may exchange certain information with local governments regarding the compatibility of land development. Associated local governments are required to address land development compatibility with military installations in their comprehensive plans. The bill adds to the list of military installations:

³⁰ Section 1009.21(1)(g), F.S.

³¹ Section 1009.01(2), F.S.

³² Sections 1009.25 and 1009.26, F.S.

³³ Section 1009.21(10), F.S.

³⁴ Section 1009.21(10)(a), F.S.

³⁵ Section 1009.21(10)(b), F.S.

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

Continuation of Easement after Tax Sale or Deed Execution

Current law provides that certain easements on land survive after a tax sale or the issuance of a tax certificate in foreclosure proceedings. The bill adds to the list of easements that remain valid 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 activities that can be supported by a grant those that include marketing, advocacy, sponsorships, outreach, and military-related community support events.

Rural-Lands-Protection Easements and Agriculture Protection Agreements

Current law specifies a list of rights or interests that may be prohibited in rural-lands-protection easements (RLPEs) and agricultural protection agreements (APAs). The bill adds to the list 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

School districts will be required 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 district-authorized programs. This provision will help families that have received a permanent order to, but have not yet relocated, and are otherwise denied admission based on lack of residency.

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 2-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.³⁶ 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, nor is a non-military member 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.³⁷ Still, a legislature may establish a classification without presumably violating equal protection,³⁸ and courts have

³⁶ 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.”

³⁷ *Estate of McCall v. U.S.*, 134 So.3d 894, 901 (Fla. 2014).

³⁸ *Progressive American Insurance Co. v. Eduardo J. Garrido D.C. P.A.*, 211 So.3d 1086, 1090-1091 (Fla. 3rd DCA 2017).

upheld some level of disparate treatment as constitutional.³⁹ In its review, a court will consider whether similarly situated persons are treated similarly.⁴⁰

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 will also not be penalized for breaking a lease if he or she becomes eligible to live in and opts to move into privatized military housing.

Additionally, 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.

C. Government Sector Impact:

To the extent that 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, the bill may result in a local fiscal impact.⁴¹ Fiscal impact, however, is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Easements on Land

According to the Department of Agriculture and Consumer Services (department):

Rural Lands Protection Easements (RLPEs) and Agriculture Protections Agreements (APAs) 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. Use

³⁹ *Duncan v. Moore*, 754 So.2d 708, 712 (Fla. 2000).

⁴⁰ *Id.* at 712.

⁴¹ 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.

restrictions are uniform between RLPE and APA, except that RLPEs enable a landowner to affect the hydrology of the land, if required for environmental restoration. Current requirements already prohibit or limit construction, subdivision of property, storage of waste or other offensive materials, and activities that affect hydrology. The department negotiates reasonable use requirements that reconcile the landowner's and the military department's interests for properties situated near military installations. The department has also 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.⁴²

Local governments must work with identified military installations to address issues related to land use and land development on property adjacent to or in proximity to the installation.⁴³

The language in the bill 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. However, the bill does not define "incompatible with the mission of a military installation," meaning that numerous interpretations are possible.

Further, the proposed legislation will create ambiguity related to each party's rights, unless incompatible activities are identified in each individual agreement. If the definition of incompatibility is disputed, the department's ability to exercise reasonable judgment as an intermediary may be compromised. As such, 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. Therefore, further clarification may be needed to limit applicability, identify who makes the determination, and provide greater detail so that legislation may be accurately interpreted.

Residency for Tuition Purposes

Section 8. of the bill specifies that the point in time in 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 point in time. Therefore, 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.

⁴² 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).

⁴³ *Id.*

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.