

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1073 Military Support
SPONSOR(S): Civil Justice Subcommittee; Van Zant and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Bond	Bond
2) Local & Federal Affairs Committee	13 Y, 0 N, As CS	Renner	Kiner
3) Judiciary Committee			

SUMMARY ANALYSIS

America's servicemembers face many challenges related to their service to the country. One of these challenges relates to the approval timeframe related to the processing of rental applications. This timeframe can sometimes exceed the 10 days of temporary lodging expense (TLE) that is afforded to servicemembers for transfers within the continental United States. Increasingly, landlords are requiring every prospective tenant to submit to one or more reviews, including:

- A criminal history background check;
- Sexual offender check;
- Credit check; or
- Employment verification.

This bill addresses these challenges related to leasing a new residence where an application is required.

Specifically, the bill requires that, if a rental application for a residential property is required for a prospective tenant who is a servicemember, it must be completed within 7 days. Within that 7-day period, the servicemember must be notified in writing of an application approval or denial and the reason for the denial. Absent a timely denial of the rental application, within 7 days of the rental application submission, a landlord, condominium association, cooperative association, or homeowner association must offer to lease the property to the servicemember.

To prevent coercion by landlords and associations, the bill provides that its provisions may not be waived or modified by the agreement of the parties under any circumstances.

The bill does not appear to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Residential tenancies are governed by Part II of ch. 83, F.S., known as the Florida Residential Landlord and Tenant Act. The Act generally applies to the rental of a dwelling unit, but does not apply to residence or detention in a facility, temporary occupancy related to a contract for purchase and sale, transient occupancy in a hotel or motel, a mobile home park tenancy, or occupancy by the owner of a cooperative or condominium.¹

While the Act regulates portions of the landlord-tenant relationship, many parts of that relationship are unregulated and left to the marketplace to regulate. One such area is that of rental application and tenant review prior to the landlord agreeing to offer a lease to a prospective tenant. Increasingly, landlords may require every prospective tenant to submit to one or more reviews, including:

- A criminal history background check;
- Sexual offender check;
- Credit check; or
- Employment verification.

The United States Department of Defense (USDOD) 2015 Strength Figures indicates a total active duty military population of 1.3 million worldwide. Florida has a large military population with more than 61,000 active duty military personnel.²

America's servicemembers face many challenges related to their service to the country. One such challenge is related to the frequent transfers between bases that are common to all servicemembers, referred to as a Permanent Change of Station (PCS). Relevant to this bill, the military will only authorize 10 days of temporary lodging expense (TLE) for transfers within the continental United States to the servicemember searching for new housing pursuant to a PCS.³ When landlords do not approve the servicemember's rental application while awaiting results of a background check or checks, servicemembers report these delays sometimes far exceed the days authorized for TLE reimbursement.

A servicemember may terminate a rental agreement by providing a landlord with a written notice of termination effective on the date stated in the notice that is at least 30 days after the landlord's receipt of the notice if any of the following criteria are met:⁴

- 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;⁵
- The servicemember is prematurely or involuntarily discharged or released from active duty or state active duty;⁶
- 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 prior to entering active duty or state active duty;⁷

¹ ss. 83.41 and 83.42, F.S.

² Information obtained from Florida Department of Military Affairs staff. On file with Local & Federal Affairs Committee.

³ <http://www.defensetravel.dod.mil/site/fagpcs.cfm> (last accessed January 28, 2016).

⁴ s. 83.682(1), F.S.

⁵ s. 83.682(1)(a), F.S.

⁶ s. 83.682(1)(b), F.S.

⁷ s. 83.682(1)(c), F.S.

- After entering into a rental agreement, the servicemember receives military orders requiring him or her to move into government quarters or the servicemember becomes eligible to live in and opts to move into government quarters;⁸
- The servicemember receives temporary duty orders, temporary change of station orders, or state active duty orders to an area 35 miles or more from the location of the rental premises, provided such orders are for a period exceeding 60 days;⁹ or
- The servicemember has leased the property, but prior to taking possession of the rental premises, receives a change of orders to an area that is 35 miles or more from the location of the rental premises.¹⁰

Effect of Proposed Changes

This bill creates s. 83.683, F.S., to provide that, if a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of the rental application submitted by a prospective tenant who is a servicemember within 7 days after submission of the application. Within that 7-day period, the landlord must notify the servicemember in writing of an application approval or denial and the reason for the denial. Absent a timely denial of the rental application, the landlord must lease the rental unit to the servicemember provided that all other terms of the application and lease are complied with.¹¹

Many community associations (condominium associations, cooperative associations, and homeowners associations) require review and approval of a prospective tenant of a condominium unit, cooperative unit, or parcel within the association's control. Similar to landlords, associations may require a rental application and review process. The bill provides that a community association must process the rental application submitted by a prospective tenant who is a servicemember within 7 days after submission. Within that 7-day period, the association must notify the servicemember in writing of an application approval or denial and the reason for the denial. Absent a timely denial of the rental application, the association must allow the unit or parcel owner to lease to the servicemember and the landlord must lease the rental unit to the servicemember provided that all other terms of the application and lease are complied with.

To prevent coercion by landlords and associations, the bill provides that its provisions may not be waived or modified by the agreement of the parties under any circumstances.

Any right or duty declared in the Florida Residential Landlord and Tenant Act is enforceable by civil action.¹² If either the landlord or the tenant fails to comply with the requirements of the rental agreement, the aggrieved party may recover the damages caused by the noncompliance.¹³ Additionally, the party in whose favor a judgment or decree has been rendered may recover reasonable attorney fees and court costs from the nonprevailing party.¹⁴

The bill itself does not provide a civil remedy for breach of contract if the application is not processed within 7 days for a servicemember. However, similar contract remedies typically result in the court awarding a cause of action for damages or a suit for specific performance.¹⁵

B. SECTION DIRECTORY:

⁸ s. 83.682(1)(d), F.S.

⁹ s. 83.682(1)(e), F.S.

¹⁰ s. 83.682(1)(f), F.S.

¹¹ Other requirements typically include signing of the lease, payment of a security deposit, and payment of initial rent. These requirements are not waived or excluded by the bill.

¹² s. 83.54, F.S. A right or duty enforced by civil action under this section does not preclude prosecution for a criminal offense related to the lease or leased property.

¹³ s. 83.55, F.S.

¹⁴ s. 83.48, F.S.

¹⁵ Specific performance is an order of a court which requires a party to perform a specific act, usually what is stated in a contract. As it pertains to the bill, the court would order the residential landlord to allow a servicemember to move in.

Section 1 creates s. 83.683, F.S., regarding rental application by a servicemember.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removal of a provision that would have prohibited a residential landlord from charging an application fee

to a servicemember, adding that a residential landlord must approve or deny a rental application of a servicemember within 7 days, and adding cooperatives to provisions regarding condominium and homeowner associations.

On February 17, 2016, the Local & Federal Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment specifies that the landlord or association must notify the servicemember in writing of the application approval or denial and the reason for the denial within the 7-day approval period.

The bill analysis is drafted to the committee substitute as passed by the Local & Federal Affairs Committee.