

Date of Hearing: March 16, 2022

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT

Jim Cooper, Chair

AB 1768 (Cooper) – As Introduced February 2, 2022

SUBJECT: State employees: active duty compensation and benefits

SUMMARY: Removes specific references to federal law and instead refers to provisions in California law that identify events (i.e., Presidential determination necessary to augment forces for any operational mission, or during a time of national emergency declared by the President, or as otherwise authorized by law) which establish certain rights to compensation and benefits while a state employee is on active duty as a member of the California National Guard (CNG) or United States (U.S.) military reserve for purposes of establishing how long affected state employees are required to receive active duty compensation and benefits, among other nonsubstantive changes. Specifically, **this bill:**

- 1) Removes references to federal law that:
 - a) Establish that during a time of national emergency declared by the President after January 1, 1953, or otherwise authorized by law, an authority designated by the Secretary of Defense may, without the consent of persons concerned, order any unit and member not assigned to a unit organized to serve as a unit, in the Ready Reserve to active duty for no more than 24 consecutive months, among other provisions.
 - b) Provide that when the President determines that it is necessary to provide assistance to respond to an emergency involving a use or threatened use of a weapon of mass destruction or a terrorist attack or threatened terrorist attack in the U.S. that results, or could result, in significant loss of life or property, may authorize the Secretary of Defense and the Secretary of Homeland Security with respect to the U.S. Coast Guard when not operating as a service in the U.S. Navy, to order any unit of the Selected Reserve or Individual Ready Reserve designated as essential to active duty for no more than 365 consecutive days.
- 2) In removing the references to federal law, refers to and generally relies on Presidential determinations or declarations regarding these employees ordered to active duty to augment forces, as specified, or national emergencies, also as specified, or those that are otherwise authorized by law.
- 3) Makes other nonsubstantive changes.

EXISTING LAW:1) Federal

- a) Establishes that during a time of national emergency declared by the President after January 1, 1953, or otherwise authorized by law, an authority designated by the Secretary of Defense may, without the consent of persons concerned, order any unit and member not assigned to a unit organized to serve as a unit, in the Ready Reserve to active duty for no more than 24 consecutive months, among other provisions.¹
- b) Provides that when the President determines that it is necessary to provide assistance to respond to an emergency involving a use or threatened use of a weapon of mass destruction or a terrorist attack or threatened terrorist attack in the U.S. that results, or could result, in significant loss of life or property, may authorize the Secretary of Defense and the Secretary of Homeland Security with respect to the U.S. Coast Guard when not operating as a service in the U.S. Navy, to order any unit of the Selected Reserve or Individual Ready Reserve designated as essential to active duty for no more than 365 consecutive days.²
- c) Establishes the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 to: encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service; minimize the disruption to the lives of persons performing service in the uniformed service as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and prohibit discrimination against persons because of their service in the uniformed services.³

2) State

- a) Provides that an employee who, as a member of the CNG or a U.S. military reserve organization, is ordered to active duty by Presidential determination that is necessary to augment active forces for any operational mission, or during a national emergency declared by the President or otherwise authorized by law, must receive as part of their compensation limited to 180 calendar days both of the following:
 - i) The difference between the amount of military pay and allowances and the amount the employee would have received as a state employee, including any merit increases that would have granted during the time the individual was on active duty. Here, the

¹ Section 12302 of Title 10 of the United States Code.

² Section 12304, *ibid.*

³ Section 4301 et seq. of Title 38, United States Code.

- amount that the employee would have received (including merit increases that would have been granted during the period of active duty) must be determined by the California Department of Human Resources (CalHR).
- ii) All benefits that the employee would have received had the employee not served on active duty, unless the benefits are prohibited or limited by vendor contracts.⁴
- b) Establishes certain conditions or limitations, as specified, relating to the aforementioned entitlements such as:
- i) If an employee who receives such compensation does not reinstate to active state service following active duty, the compensation must be treated as a loan payable with interest at the rate earned in the Pooled Money Investment Account. However, this does not apply to a state employee who was not eligible to participate in a federally sponsored income protection program for National Guard personnel, military personnel, or both, called to active duty, and as determined by the CalHR.
 - ii) If a state employee who is eligible to participate in a federally sponsored income protection program, and whose monthly salary as a state employee was higher than the sum of their military pay and allowances and the maximum allowable benefit under the federally sponsored income protection program, the state employee must receive the difference in their military pay and allowances and the amount the employee would have received as a state employee (including merit increases during the leave of absence), but that amount must be reduced by the maximum allowable benefit under the federally sponsored income protection program. In addition, for those who elected the federal sponsored income protection program, the state must reimburse the costs of the insurance premium for the period of time on active duty, not to exceed 180 calendar days.⁵

These provisions do not apply to state employees who are entitled to additional compensation or benefits who served in the CNG or U.S. military reserve organization during the Bosnia crisis and those who served in the CNG, U.S. military reserve organization, or active duty military on or after September 11, 2001, as a result of the War on Terrorism.

In addition, for these specific purposes, “state employee” is defined to mean a person who is legally holding a position in the State civil service, or an employee or officer of the legislative, executive, or judicial departments of the state.⁶

⁴ Section 19775.17 of the Gov. Code.

⁵ Id.

⁶ Sections 18526, 19775.16, and 19775.18 of the Gov. Code, respectively.

- c) Requires a leave of absence to be granted for members of the CNG for military service, rights and benefits accrued during that service, and reinstatement to state employment after that service by their appointing power on the same basis as members of the National Guard or other military reserve personnel.⁷
- d) Requires that an employee who is granted a long-term military leave of absence and who, for a period of not less than one year immediately prior to the effective date active duty begins has had continuous state service which is not broken by a permanent separation, is entitled to receive their salary or compensation for the first 30 calendar days of active duty served during the absence.⁸
- e) Requires that an employee who is granted a short-term military leave of absence for active, but not inactive, duty (including, but not limited to scheduled reserve drill periods), and who for a period of not less than one year immediately prior to the effective date of the active duty has had continuous state service that is unbroken by permanent separation, or who has had continuous state service immediately prior to the effective date of military duty not broken by permanent separation and sufficient recognized military service that does not need to be contiguous to equal one year must be entitled to receive their salary or compensation for the first 30 calendar days of active duty served during the absence.

In addition, an employee who is a member of the National Guard and is on leave from employment for “emergency military leave” during a state of extreme emergency or insurrection pursuant to a proclamation by the Governor must receive their salary or compensation as a state employee while going to, engaging in, and returning from the duty. However, the employee must not receive a salary or compensation for more than 30 days each time the employee is granted the emergency military leave.⁹

FISCAL EFFECT: Unknown. This bill is flagged fiscal by Legislative Counsel.

COMMENTS: According to the author, “[d]ifferential pay owed to state employees who are service members in the California National Guard or U.S. military reserves and were activated in response to COVID was delayed for nearly a year as a result of confusion and varying interpretations of existing statute.

Since March 13, 2020, the United States has been operating under a presidential declaration of emergency as a result of the COVID-19 pandemic. Since that time, state employees who are serving in the National Guard and Reserves have been activated across the state in response to the declaration. Despite the clear reason for activation, the California Department of Human

⁷ Section 19771.5 of the Gov. Code.

⁸ Section 19775, *ibid*.

⁹ Section 19775.1, *ibid*.

Resources (CalHR) had denied requests for differential pay until finally reversing that decision on February 1, 2021, nearly a year after [these employees] should have been receiving the differential pay.

“The reason for the delay in benefits was due to a misinterpretation of the federal authority provision contained in subdivision (b) of section 19775.1 of the Government Code. Despite the confusion being currently resolved, it is only a temporary fix. There is nothing stopping state agencies from, again, incorrectly interpreting the statute and delaying, or denying, the differential pay promised to our reserve and guard service members.”

The author further states that, “[c]urrent law authorizes state employees who are currently serving in the National Guard or U.S. military reserves to receive the difference between the amount of their military pay and the amount of their civilian state pay for up to 180 days if they are activated in response to a presidential declaration of emergency. [This bill] makes it clear that all activations due to presidential declarations of an emergency are eligible for this benefit and removes any confusion for state agencies when processing claims.”

1) Dual Referral

The committee is informed that this bill is also referred to the Assembly Committee on Military and Veterans Affairs. Therefore, this analysis only covers those matters that are germane to the jurisdiction of the Assembly Committee on Public Employment and Retirement.

2) Military Leave for State Employees

There are different types of military leave: long- or short-term, emergency, and war or national emergency.

Generally, and as stated under “Existing Law” above, civil service employees of the state are entitled to receive their salary for the first 30 calendar days, including weekends, while on long- or short-term military leave for active duty, provided that they meet the qualifying service criteria for military leave taken. This includes salary adjustments (e.g., general, labor market, merit increases, special in-grade, and range changes).

If these employees have a right of return to state civil service employment, they may have rights to civil service status, benefits, seniority where the time on military leave counts as though the employee had remained in the position, and vacation and sick leave where the employee receives the same vacation and sick leave credits as though they had remained in the position.¹⁰

¹⁰ Sections 19784 and 19775.3 of the Gov. Code.

For employees who were serving a probationary period at the time they went on military leave, they must complete the time remaining to be served on probation upon a return to their former position.¹¹

Additional information regarding these leaves and other applicable information can be found on the CalHR's website.¹²

3) Prior or Related Legislation

Assembly Bill 1032 (Cooper, 2021) proposed to extend the period of compensation (i.e., pay, benefits, and reimbursement of the insurance premium for a federally sponsored income protection program) that a state employee, who is a member of the California National Guard or U.S. military reserve organization and ordered to active duty by the U.S. President, as specified, is entitled to receive from 180 calendar days to 365 calendar days, among other provisions. This bill was passed by the Assembly Committee on Public Employment and Retirement (7-0), but held in the Assembly Committee on Military and Veterans Affairs.

Chapter 665, Statutes of 2012 (Senate Bill 1308, Committee on Public Employment and Retirement) made statutory changes included in the Governor Plan (GRP 1, 2011) to consolidate the DPA and the State Personnel Board into a single agency: the Department of Human Resources. The section proposed to be amended (i.e., Section 19775.17 of the Gov. Code) by the current bill was included in section 84 of Senate Bill 1308.

Gov. Reorg. Plan 1 (GRP 1, 2011), and specifically, section 94 of GRP 1, included Section 19775.17 of the Gov. Code, which is proposed to be amended by the current bill.

Chapter 62, Statutes of 2003 (Senate Bill 600, Committee on Judiciary) was an Omnibus Bill for purposes of maintaining the various California codes, including the section proposed to be amended (i.e., Section 19775.17 of the Gov. Code) by the current bill.

Chapter 5, Statutes of 2002 (Senate Bill 711, Dunn) provides salary and benefit compensation for various state employees who are called to active military services as a result of the war on terrorism.

Chapter 157, Statutes of 1998 (Senate Bill 1365, Ayala) provided, among other provisions, additional compensation for states employees who, as a member of the California National Guard or United States military reserve, is ordered to active duty as a result of an operational mission or national emergency declared by the President of the United States.

¹¹ Section 19775.3, *ibid*.

¹² [CalHR Manual on Military Leave](#)

REGISTERED SUPPORT / OPPOSITION:

Support

California Correctional Peace Officers Association (*Sponsor*)

Opposition

None on file.

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