

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

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

Policy Committee:	Public Employment and Retirement	Vote:	6 - 0
	Military and Veterans Affairs		8 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill revises when a state employee in the California National Guard or U.S. military reserve organization receives active-duty compensation and benefits, by referring to provisions in state law, instead of federal law, to identify qualifying events.

FISCAL EFFECT:

Likely negligible state costs, as this bill clarifies existing statute and codifies current practice.

COMMENTS:

1) **Military Leave and Differential Pay for State Employees.** Existing law provides a state employee on active duty, for the duration of the qualifying event, but no longer than 180 calendar days, the following “differential pay” compensation:

- (a) The difference between the state employee’s military pay and the amount the employee would otherwise have received as a state employee, including any merit raises, while the state employee was on active duty.
- (b) All benefits the state employee would have otherwise received, had the employee not served on active duty, unless otherwise prohibited.

This bill strikes the provision of existing law granting differential pay only when the qualifying event is specifically authorized pursuant to Sections 12302 and 12304 of Title 10 of the United States Code. Thus, this bill clarifies differential pay is triggered when the state employee is ordered to active duty: (a) by determination by the President of the United States that it is necessary to augment the active forces for any operational mission; (b) when in time of national emergency declared by the President or otherwise authorized by law.

2) **Purpose.** According to the author:

Differential 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....Despite the clear reason for activation, [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....[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.

This bill is sponsored by the California Correctional Peace Officers Association.

- 3) **Prior Legislation.** AB 1032 (Cooper), of this Legislative Session, would have extended the period of differential pay compensation from 180 calendar days to 365 calendar days and allowed the Governor to further extend the period up to an additional 1,460 calendar days. AB 1032 was referred to, but was not heard by, the Assembly Military and Veterans Affairs Committee.

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