
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT**Senator Dave Cortese, Chair****2021 - 2022 Regular**

Bill No:	AB 1768	Hearing Date:	June 8, 2022
Author:	Cooper		
Version:	February 2, 2022		
Urgency:	No	Fiscal:	Yes
Consultant:	Glenn Miles		

SUBJECT: State employees: active duty compensation and benefits

KEY ISSUE

Should the Legislature clarify when specified military differential pay benefits apply to state employee members of the California National Guard or military reserve by eliminating references to federal code and instead reference state law?

ANALYSIS

Existing law:

Federal

- 1) Establishes that during a time of national emergency declared by the President after January 1, 1953, or otherwise authorized by law, the Secretary of Defense or the Secretary's designee may, without the consent of persons concerned, order any unit (and any 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. (10 United States Code § 12302)
- 2) Allows the President to 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, as specified, to active duty for no more than 365 consecutive days if the President determines that it is necessary to augment the active forces for any named operational mission or 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. (10 USC § 12304)
- 3) 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. (38 USC § 4301 et seq.)

State

- 1) Requires the state to provide specified benefits to any state employee member of the California National Guard or a United States military reserve organization when the government orders that employee to active duty by Presidential determination to augment active forces for any operational mission or in time of national emergency declared by the President or otherwise authorized by law. (Government Code § 19775.17 (a))
- 2) Includes military differential pay (i.e., the difference between the employee's military pay and allowances and what the employee's state compensation would have been had the employee not been activated) for the duration of the activation event as authorized pursuant to 10 USC § 12302 and § 12304, but not more than 180 days. (GC § 19775.17 (b) (1))
- 3) Excludes those benefits if vendor contracts prohibit or limit them. (GC § 19775.17 (b) (2))
- 4) Treats compensation provided under these provisions as a loan payable, as specified, by any individual who does not reinstate to state service following active duty. (GC § 19775.17 (c))
- 5) Limits military differential pay to employees not eligible for specified income protection insurance products; but where the employee is eligible for the insurance product, current law limits military differential pay to an amount reduced by the amount payable by the insurance products maximum allowable benefit. (GC § 19775.17 (d))
- 6) Requires the state to reimburse the employee for the income protection insurance premium for the period the employee is on active duty, not to exceed 180 calendar days. (GC § 19775.17 (d))
- 7) Defines "state employee" to mean a civil service employee or an officer or employee of the legislative, executive, or judicial branches. (GC § 19775.17 (e))
- 8) Excludes the benefits provided by this provision from employees receiving other specified benefits authorized under provisions related to service in Afghanistan and the War on Terror. (GC § 19775.17 (f))

This bill: strikes the provision of existing law granting differential pay only when the government specifically orders the qualifying event pursuant to Sections 12302 and 12304 of Title 10 of the United States Code. Thus, this bill clarifies the law triggers differential pay when the government orders the state employee 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; or (b) when in time of national emergency declared by the President or otherwise authorized by law.

COMMENTS

1. Need for this bill?

According to the author:

"Differential pay owed to state employees who are servicemembers in the California National Guard or US 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 13th of 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 Resources (CalHR) had denied requests for differential pay until finally reversing that decision on February 1st, 2021, nearly a year after they 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 GOV 19775.17. 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.”

Committee comments

Under existing law, the state provides state employee Ready Reserve members with 30 days of salary protection when activated for duty and other benefits, as specified, related to specific activations or operations. According to information from CalHR, existing state law triggers extended payments of up to 180 days under § 19775.17 to state employees who are activated for active duty when two conditions are met: the President declares a national emergency (or identifies an operational mission) and second, the President invokes the specific statutory authority that authorizes activation of service members. This bill would appear to eliminate the second prong of this 2-part test and potentially either provide the 180 days extended pay anytime there is a general emergency proclamation or activation or, at a minimum, create confusion as to when the state must provide the 180-day extended pay benefit.

2. Proponent Arguments

According to the author:

“AB 1768 makes it clear that all activations due to presidential declarations of emergency are eligible for differential pay and removes the possibility for any future confusion by state agencies when processing claims.”

According to the California Correctional Peace Officers Association:

“AB 1768 is an important step to safeguarding the financial security of California Correctional Officers and other state employees who are called to serve in response to a national emergency. This bill accomplishes this by removing unnecessary references to U.S. Code that caused confusion and substantial delays in payment.”

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 1032 (Cooper, 2021) would have extended the benefit period under the Government Code's military pay differential provisions from 180 calendar days to 365 calendar. The bill passed the Assembly Public Employment and Retirement Committee but died in the Assembly Military and Veterans Affairs Committee.

5. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and the Senate Military and Veterans Affairs Committee.

SUPPORT

California Correctional Peace Officers Association (Sponsor)

OPPOSITION

None received.

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