

GOVERNOR'S VETO
AB 1768 (Cooper)
As Enrolled August 9, 2022
2/3 vote

SUMMARY

Remove 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.

- 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, the bill would refer to and generally rely on Presidential determinations or declarations regarding these employees ordered to active duty to augment U.S. forces, national emergency efforts, or those that are otherwise authorized by law.

Governor's Veto Message

"This bill intends to remedy an important issue that arose from a misinterpretation of COVID-19 orders by clarifying that all activations of state employees who are members of the CNG or U.S. military reserve organization, due to presidential declarations of emergency, are eligible for differential pay.

"However, [the] CalHR has already worked with state departments and the military on an administrative solution that provides clarity and issued new guidance to their Military Leaver policy to prevent any further confusion. I am confident that this issue has been resolved making this bill unnecessary."

COMMENTS*1) General and Brief Background: Military Leave for State Employees*

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

Generally, 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.

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.

*2) Please see the respective policy committee analyses for a full discussion of this bill.***According to the Author**

"Differential pay owed to state employees who are service members in the CNG 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 U.S. 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 had denied requests for differential pay until finally reversing that decision on February 1, 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 [existing California law]. 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."

Arguments in Support

Among other things, the California Correctional Peace Officers Association states that, "[This bill] is an important step in safeguarding the financial security of California correctional officers and other state employees who are called to serve in response to a national emergency. [It does so] by removing unnecessary references to [federal law] that caused confusion and substantial delays in payment."

Arguments in Opposition

None on file.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, this bill would result in likely negligible state costs, as this bill clarifies existing statute and codifies current practice.

This bill was passed by the Senate Appropriations Committee pursuant to Senate Rule 28.8.

VOTES**ASM PUBLIC EMPLOYMENT AND RETIREMENT: 6-0-0**

YES: Cooper, Voepel, Calderon, Cooley, O'Donnell, Lackey

ASM MILITARY AND VETERANS AFFAIRS: 8-0-1

YES: Ramos, Voepel, Boerner Horvath, Daly, Mathis, Muratsuchi, Petrie-Norris, Smith

ABS, ABST OR NV: Salas

ASM APPROPRIATIONS: 14-0-2

YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Seyarto, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

ABS, ABST OR NV: Gabriel, Eduardo Garcia

ASSEMBLY FLOOR: 65-0-13

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Megan Dahle, Daly, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Robert Rivas, Salas, Santiago, Seyarto, Smith, Stone, Ting, Villapudua, Voepel, Waldron, Akilah Weber, Wicks, Wilson, Wood, Rendon

ABS, ABST OR NV: Boerner Horvath, Cunningham, Davies, Gray, Grayson, Kiley, Lackey, Lee, Quirk-Silva, Rodriguez, Blanca Rubio, Valladares, Ward

SENATE FLOOR: 36-0-4

YES: Allen, Archuleta, Atkins, Bates, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Borgeas, Dahle, Gonzalez, Roth

UPDATED

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