

SUBJECT: Public and state employee military leave

COMMITTEE: Defense Affairs and State-Federal Relations — committee substitute recommended

VOTE: 5 ayes — Corte, Campbell, Berman, Merritt, Seaman
0 nays
4 absent — Delisi, Mabry, Moreno, Noriega

WITNESSES: For — None
Against — None
On — Michael G. Blalock, Adjutant General's Department; (*Registered, but did not testify:*) Floyd Quinn, State Auditor's Office

BACKGROUND: In a memorandum to state agency heads dated November 21, 2001, the governor, lieutenant governor, and House speaker encouraged state agencies to allow all employees called to active military duty to use emergency leave so that they would not experience a reduction in total pay or benefits. The memo stated that leave should be used to make up the difference between an employee's military pay and state salary, but no more. The memorandum left implementation at the discretion of agency heads but stated that any such policy, if adopted, should be implemented by December 1, 2001. The memo further pointed out that it might be necessary to clarify policies through statutory changes during the next legislative session.

DIGEST: CSHB 3361 would amend the Government Code to revise military leave provisions for public and state employees. It would establish that a public officer or employee of the state, a municipality, a county, or another political subdivision of the state who was a member of the state military forces or reserves would be paid leave for not more than 15 work days in a federal fiscal year. A public employee who was a member of the state military forces or reserves and who was ordered to duty would be restored, once relieved, to the position previously held by the employee.

A state employee would be entitled to paid emergency leave for state active duty without loss of military leave or annual leave.

A state agency would have to provide an employee activated to military service as a member of the armed forces reserves a statement containing the balance of the employee's accrued state compensatory time and allow the employee to use that balance before it expired.

Under a National Guard emergency, a state employee who was called to federal active duty as a member of the state military forces could not also receive a state salary.

During a national emergency, a state employee called to active duty in the U.S. Armed Forces could accrue state service credit for purposes of longevity pay while on military duty but not accrue vacation or sick leave during an unpaid leave of absence. Leave earned while in a state-paid status would be credited to the employee's balance when the employee returned to active state employment. The employee could use any accrued vacation leave, earned compensatory leave, or overtime leave under the Fair Labor Standards Act of 1938 to maintain benefits for the employee or the employee's dependents while on military duty.

Before a state employee left for military service, the employee's state agency would review with the employee any issues relating to maintaining state health insurance coverage during the employee's military duty. The employee could continue to accrue service credit with the Employees Retirement System of Texas (ERS) by receiving at least one hour of state pay during each month of active service, including any combination of paid leave, such as compensatory time, overtime leave, annual leave, military leave, or approved agency differential pay, to qualify for state pay.

The administrative head of the agency could grant sufficient emergency leave as differential pay to a state employee on unpaid military leave if the employee's military gross pay was less than the employee's state gross pay. The combination of emergency leave and military pay, however, could not exceed the employee's actual state gross pay.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 3361 would clarify laws relating to military leave for public employees generally and amend and clarify those specifically applicable to state employees' military leave. The bill especially would help state employees during times of national emergency. It would allow them to structure their leave arrangements to minimize any financial hardship their military service might cause them or their families. By requiring state agencies to offer information as to compensatory time and health benefits, employees would have little doubt as to how military service might affect their state benefits.

In addition, the bill would require the agency to discuss issues related to maintaining health insurance coverage before the employee went on active duty. This would enable the employee to plan to use any combination of available leave or compensatory pay to ensure that the employee received at least one hour of state pay per month of military service, thus keeping health insurance and retirement benefits through ERS intact.

Finally, the bill would authorize an agency to grant emergency leave as differential pay to help a state employee on unpaid military leave maintain the same level of pay as with the state. This would prevent many state employees in military service from suffering economic hardship as a result of lower military pay that did not keep up with ongoing expenses.

This bill would offer a comprehensive, flexible state policy regarding military leave without a fiscal impact to the state, and would support those called to military service without diminishing or devaluing benefits offered to other state employees.

**OPPONENTS
SAY:**

Citizens engaged in active military duty are critical to homeland security and national defense, but the state must not lose sight of its obligations regarding the efficient and cost-effective operations of public and state offices. While this bill would serve a noble purpose to keep state employees "whole" during military leave, it also could pose problems for agencies, particularly for small ones that depend on a limited number of key employees to run smoothly.

NOTES:

The committee substitute differs from bill as introduced by conforming it to Texas Legislative Council drafting style, and by specifying an effective date. In addition, it would require that a state agency review various issues relating

to health coverage with an employee prior to that employee's departure for military service.

A similar bill, SB 1800 by Van de Putte, passed the Senate on the Local and Uncontested Calendar on May 6.