

STORAGE NAME: h0009B.sa.doc
DATE: October 23, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 9B
RELATING TO: Public Official/Active Military Svc.
SPONSOR(S): Representative(s) Alexander & others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON STATE ADMINISTRATION
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

On September 25, 2001, Governor Bush offered a resolution "requiring all state agencies to guarantee that employees serving in the Florida National Guard and Reservists will not be faced with a cut in pay while they are on active duty in the aftermath of the terrorist attacks." This resolution was unanimously passed by the Cabinet.

Current law provides that public officials who are officers or personnel in the National Guard or a reserve component of the Armed Forces of the United States are entitled to leaves of absence for activity military duty. State employees are also entitled to such leaves for absence.

Current law additionally provides that both public officials and state employees may receive their full civilian pay during the first 30 days of active military duty, at the discretion of their employing authority. However, current law is unclear as to who is eligible to receive supplemental pay after this initial 30-day period. The particular provision in statute that pertains to supplemental income after this initial 30-day period mentions only *reservists* as being eligible; it does not mention officers or personnel in the National Guard. "Reservists" is not defined in the Florida Statutes.

This bill clarifies that both officers and personnel in the National Guard and reserve components of the Armed Forces of the United States are entitled to receive additional pay after the first 30 days of active military duty, at the discretion of the employing authority. Following the first 30 days, the employing authority may supplement the military pay in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time such officials and employees were called to active military duty. The employing authority may also continue to provide any health insurance and other existing benefits to such officials and employees.

Additionally, this bill replaces the term "reservists" with "reserve component of the Armed Forces of the United States."

The fiscal impact of this bill is indeterminate. Please see the "Fiscal Analysis and Economic Impact Statement."

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

On Tuesday, September 25, 2001, Governor Bush offered a resolution "requiring all state agencies to guarantee that employees serving in the Florida National Guard and Reservists will not be faced with a cut in pay while they are on active duty in the aftermath of the terrorist attacks."¹ This resolution was unanimously passed by the Cabinet.

Chapter 115, F.S., pertains to leaves of absence for state officials and employees. More specifically, this chapter discusses leaves of absence for officials and employees who request leave from their current position to serve in the volunteer forces of the United States, the National Guard of the State, or in the regular Army or Navy of the United States.

Section 115.07, F.S., pertains to officer and employee leaves of absence for reserve or guard *training*. Section 115.07(1), F.S., states that all officers or employees of the State, and of the counties, municipalities, or political subdivisions of the State who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or members of the National Guard, are entitled to leaves of absence from their respective duties for training purposes. Such absences are without loss of vacation leave, pay, time, or efficiency rating, on all days during which they are engaged in training. Leaves of absence for reserve or guard training granted under this statutory provision must not exceed 17 working days in any one annual period. Administrative leaves of absence for additional or longer periods of time must be without pay, yet must also be without loss of time or efficiency rating.

Section 115.09, F.S., discusses leaves of absence for public officials² for military service. These are public officials who are also officers or enlisted personnel in the National Guard³ or a reserve component of the Armed Forces of the United States.⁴ This section states that these public officials

¹ *Governor Bush Offers Resolution to Assist National Guard and Reservists*, press release, September 25, 2001, received on-line at http://sun6.dms.state.fl.us/eog_new/eog/library/releases/2001/september/national_grd-09-25-01.html

² Public officials include all officials of the state, the several counties of the state, the municipalities or political subdivisions of the state, and district school and community college officers. Section 115.09, F.S.

³ 32 United States Code Annotated, s. 101, Chapter 1 – Organization, defines "National Guard" as the Army National Guard and the Air National Guard. "Army National Guard" is defined as that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive.

⁴ 32 United States Code Annotated, s. 101, Chapter 1 – Organization defines "armed forces" to include the Army, Navy, Air Force, Marine Corps, and Coast Guard. "Army National Guard of the United States" means the reserve component of the Army all of whose members are members of the Army National Guard.

may be granted leaves of absence from their respective offices and duties to perform active military service⁵, the first 30 days of any such leave of absence to be with full pay. There is no provision for any supplemental pay outside of this initial 30-day period.

Section 115.10, F.S., requires that the application for any leave of absence must be made to the Governor of the State and may be granted or denied by the Governor at his or her discretion, as the public interest may require.

Section 115.12, F.S., discusses the rights of officials during any leaves of absence for active military service. During such leave, public officials are entitled to preserve all seniority rights, efficiency ratings, promotional status, and retirement privileges. The period of active military service⁶ must, for purposes of computation to determine whether such official may be entitled to retirement under the laws of the State, be deemed continuous service in the office of said official. Accordingly, while absent on leave without pay, such official is not required to make any contribution to any retirement fund.

Section 115.14., F.S., pertains to employees of the State and of the counties, municipalities, or political subdivisions of the State. Such employees may, at the discretion of the employing authority, be granted a leave of absence. If an employee is granted a leave of absence, the employee must enjoy the same rights and privileges as granted to officials, as provided for in s. 115.12, F.S. This section further states that *notwithstanding the provisions of s. 115.09, F.S.*, (which provides public officials who are officers or enlisted personnel in the National Guard or a reserve component of the Armed Forces of the United States with full compensation for the first 30 days of active military service) the employing authority *may* supplement the military pay of its officials and employees who are *reservists* called to active military service for the first 30 days with full pay. Following this initial 30 days, the employing authority *may* supplement the military pay of such reservists in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time they were called to active military duty. The employing authority *may* also, at its discretion, continue to provide any health insurance and other existing benefits to such officials and employees who are classified as reservists.

It is important to note that the intent of s. 115.14., F.S., in regards to who is eligible for supplemental pay after the 30-day period is unclear. Section 115.14., F.S., provides that *notwithstanding the provisions of s. 115.09, F.S.*, the employing authority may provide supplemental income for its officials and employees who are *reservists* called to active military service both during and after the initial 30-day period. There is no mention of officers or enlisted personnel of the National Guard in this particular provision. However, s. 115.09, F.S., provides that officials, who are officers or enlisted personnel in the *National Guard or a reserve component of the Armed Forces of the United States*, may be granted a leave of absence with full pay for 30 days. Section 115.09, F.S., does not provide for any supplemental income after the first 30 days. Therefore, it is unclear as to why s. 115.09, F.S., mentions both “reservists,” which is not a defined term, and National Guard members as being eligible for full pay during the first 30 days of active military duty, and why s. 115.14., F.S., mentions only reservists as being eligible for supplemental income after the initial 30-day period.

⁵ Section 115.08(1), F.S., defines “active military service” as “active duty in the Florida defense force or federal service in training or on active duty with any branch of the Army of the United States, the United States Navy, the Marine Corps of the United States, the Coast Guard of the United States, and service of all officers of the United States Public Health Service detailed by proper authority for duty either with the army or the navy, and shall include the period during which a person in military service is absence from duty on account of sickness, wounds, leave, or other lawful case.”

⁶ Section 115.08(2), F.S., states that the “period of active military service” begins “with the date of entering upon active military service, and shall terminate with death or a date 30 days immediately next succeeding the date of release or discharge from active military service, or upon return from active military service, whichever shall occur first.”

The Department of Military Affairs (DMA) states that National Guard members and reservists fall under the same classification.⁷ Therefore, according to DMA, current law provides that National Guard members are eligible for supplemental income after the 30-day period.

C. EFFECT OF PROPOSED CHANGES:

Current law provides that public officials who are officers or personnel in the National Guard or a reserve component of the Armed Forces of the United States are entitled to leaves of absence for activity military duty. State employees are also entitled to such leaves for absence.

Current law additionally provides that both public officials and state employees may receive their full civilian pay during the first 30 days of active military duty, at the discretion of their employing authority. However, current law is unclear as to who is eligible to receive supplemental pay after this initial 30-day period. The particular provision in statute that pertains to supplemental income after this initial 30-day period mentions only *reservists* as being eligible; it does not mention officers or personnel in the National Guard. "Reservists" is not defined in the Florida Statutes.

HB 9B amends s. 115.14, F.S., by adding clarifying language that provides that an employing authority of the State may supplement the military pay of its officials and employees who are "officers or enlisted personnel in the National Guard" who are called to active military service. Currently, s. 115.14, F.S., allows for such supplemental pay for "reservists." HB 9B replaces the term "reservists" with "reserve component of the Armed Forces of the United States."

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments" section.

⁷ Pursuant to a conversation with staff of the Department of Military Affairs' legislative affairs office, October 23, 2001.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact of HB 9B on state agencies, counties, and municipalities is indeterminate. It is not known how many reservists or National Guard members will be called to active duty⁸, nor is it known what the military pay of these individuals will be. Additionally, the bill does not require state agencies, counties, and municipalities to provide additional compensation; it says that such entities "may" provide supplemental pay.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This proposed committee bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This proposed committee bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This proposed committee bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

⁸ There are 839 state employees who are eligible to be called to active duty. Pursuant to a list received from the Fiscal Responsibility Council on October 23, 2001.

STORAGE NAME: h0009B.sa.doc

DATE: October 23, 2001

PAGE: 6

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Lauren Cyran, M.S.

J. Marleen Ahearn, Ph.D., J.D.