

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 691 CS Military Personnel on Duty
SPONSOR(S): Seiler and others
TIED BILLS: HB 747 **IDEN./SIM. BILLS:** SB 72

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Military & Veteran Affairs Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Marino</u>	<u>Carter</u>
2) <u>Economic Development, Trade & Banking Committee</u>	<u></u>	<u>Sheheane</u>	<u>Carlson</u>
3) <u>Transportation & Economic Development Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill directs the Agency for Workforce Innovation to establish the Citizen Soldier Matching Grants Program. The program would provide matching grants to Florida private-sector employers that pay wages to their employees who are Florida residents serving on federal active duty in the United States Armed Forces Reserves or the Florida National Guard for active duty served after January 1, 2005 in the form of reimbursements.

The bill limits each grant to one-half of the monthly wages paid to the employee at the level paid before the employee was called to federal active duty, minus the employee's active duty base pay, housing and variable allowances, and subsistence allowance.

The bill does not provide an appropriation for these grants but specifies that the program shall be funded by legislative appropriations. The bill's companion, HB 747, creates a trust fund.

The bill requires the Agency for Workforce Innovation to develop a plan to administer the application and payment procedures for the program. The plan is subject to the notice, review, and objection procedures in s. 216.177, F.S., which require the Agency to submit the plan to the Chair and Vice Chair of the Legislative Budget Commission (s. 216.177(2)(a), F.S.).

The bill provides an effective date of July 1, 2005. Although the bill does not specify that the program established by the Agency for Workforce Innovation must apply retroactively, the bill authorizes grants to be paid for monthly wages paid for actual federal active duty served on or after January 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill creates a new Citizen Soldier Matching Grants Program and authorizes the Agency for Workforce Innovation to establish guidelines to administer the application and payment procedures for the matching grant program.

Empower Families - Military families are the most vulnerable to financial problems resulting from a family member's federal activation and deployment, which sometimes causes them to lose pay they would otherwise receive had they remained in their civilian job. The bill may help remedy this situation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Florida's Military Service Compensation Law

Sections 115.14 and 115.09, F.S. provide that public officials and employees of the state, several counties of the state, and the municipalities or political subdivisions of the state are to receive full pay for the first 30 days of their leave of absence granted upon being called to active military service. In addition, the employing authority may supplement the military pay of its officials and employees 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 service. The employing authority shall also continue all their health insurance and other benefits.

On September 25, 2001, as a result of the terror attacks just weeks before, the Governor and Cabinet adopted a resolution directing all state agencies to fully implement ss. 115.09 and 115.14, F.S., for all state employees called to active duty. In presenting the resolution to the Cabinet, the Governor stated that "the [r]esolution encourages private employers, to the extent that they're able, to take similar actions. And we will also send out a notice to all local governments for their – for their action as well."¹

Neither federal nor state law currently requires private-sector employers to pay wages to employees absent from work while serving on active military duty.

Federal Uniformed Services Employment and Reemployment Rights Act (USERRA)

The USERRA² specifies that while an individual is absent from work while performing military service, he or she is deemed to be on furlough or leave of absence. The federal act generally provides for returning service members to be reemployed in the job that they would have attained had they not been absent for military service (commonly cited as the "escalator" principle) with the same seniority, status, and pay, as well as other rights and benefits determined by seniority (e.g., pension benefits).

The law does not address differences between civilian pay and active military service pay while a Armed Forces Reserve or National Guard service member is called up for duty.

¹ Governor and Cabinet, "Governor Bush Offers Resolution to Assist National Guard and Reservists: Florida Cabinet Votes to Supplement Pay of State Employees Who Are Called to Duty," myflorida.com, September 25, 2001, http://sun6.dms.state.fl.us/eog_new/eog/library/releases/2001/september/national_grd-09-25-01.html (February 18, 2005).

² *Uniformed Services Employment and Reemployment Rights Act of 1994*, Pub. L. No. 103-353 (1994) (codified at 38 U.S.C. ss.4301-4333).

In 2003, Senator Mary Landrieu (D-LA) introduced a bill that would provide pay protection for members of the National Guard and Reserve. The bill would have mandated that federal agencies would pay the difference between a federal civilian employee's pay and their military pay and allowances (similar to Florida's Military Service Compensation Law) when called to active military service. In addition, civilian businesses would receive a tax credit equal to 50% of the compensation paid to a Guard or Reserve member on active duty if they paid the difference between their employee's pay and active duty military pay and allowances. The bill was not passed.

The idea was introduced and modified as an amendment to H.R. 1779, Guardsmen and Reservists Financial Relief Act of 2004. H.R. 1779 would:

1. Allow reservists and National Guard members called to active military service for more than 6 months for reasons other than training to be able to make tax-free and penalty-free withdrawals from their retirement accounts;
2. Provide a 50% tax credit to small businesses on the pay differential they pay their activated employees (with a cap of \$15,000 or \$30,000 in salary); and
3. Provide a \$6,000 tax credit for any temporary employees hired to fill jobs of activated employees.

The provisions in H.R. 1779 are retroactive to September 11, 2001. The measure is currently back with the U.S. House.

Employers Support Reserve and National Guard Members

In September of 2004, Sears, Roebuck and Co. announced it would expand its military pay differential and benefits program for activated employees from three to five years to cover the "pay gap" they may experience as a result of federal active military service. Activated employees may also continue participating in life insurance, medical and dental programs, merit pay increases, incentive pay, and stock options. Sears' pay differential program started in 1990 for activated employees who served in Operation Desert Shield-Storm³.

Florida National Guard Foundation

In 2000, the Florida National Guard Foundation was designated a Direct Support Organization by the Florida Legislature. This placed the Foundation under the authority of the Adjutant General of the Florida National Guard and allowed it to use the resources, office space, and personnel of the Department of Military Affairs. According to the Foundation's website, one of the goals of the Foundation is to provide for the care and benefit of Guard members and families. The Foundation repeatedly assists families with financial difficulties, especially when a family member is called to active duty.

The Foundation was founded in 1983 as a 501(c)(3) tax-exempt public organization. The Foundation receives only private donations, and its Board of Directors is comprised of volunteer, active and retired National Guard members.

Rhode Island Military Family Relief Fund

Signed into law by the Rhode Island Governor on July 2, 2004, the Rhode Island Military Family Relief Fund assists that state's Reserve and National Guard members and their families in times of crisis caused by mobilization and deployment, when the situation can be remedied by a one time loan or grant. All funding for this Fund is received by charitable and private donations. This fund is similar to Florida's National Guard Foundation in that it is administered by that state's Adjutant General.

³ Sears, Roebuck and Co., "Commitment to Military Families Fact Sheet," n.d., <http://www.searsmedia.com/aboutsears/military.htm> (February 18, 2005).

The Agency for Workforce Innovation

The Florida Legislature created the Agency for Workforce Innovation (AWI) in October 2000 with the passage of the Workforce Innovation Act. AWI serves as the administrator of Florida's workforce development system, under contract with WFI, which provides policy direction and guidance to the State's twenty-four Regional Workforce Boards (RWB). The RWBs contract with public and private entities for the operation of over 150 full-service and satellite One-Stop Career Centers. All customers, including veterans, non-veterans, employers, etc., can access a complete menu of workforce services at a single site or via the One-Stop Career Center Internet-based delivery system.⁴

Effects of Proposed Changes:

The bill directs the Agency for Workforce Innovation to establish the Citizen Soldier Matching Grants Program. The program would provide matching grants to Florida private-sector employers that pay wages to their employees who are Florida residents serving on federal active duty in the United States Armed Forces Reserves or the Florida National Guard for active duty served after January 1, 2005, in the form of reimbursements.

The bill limits each grant to one-half of the monthly wages paid to the employee at the level paid before the employee was called to federal active duty, minus the employee's active duty base pay, housing and variable allowances, and subsistence allowance.

The bill does not provide an appropriation for these grants but specifies that the program shall be funded by legislative appropriations. The bill's companion, HB 747, creates a trust fund.

The bill requires the AWI to develop a plan to administer the application and payment procedures for the program. The plan is subject to the notice, review, and objection procedures in s. 216.177, F.S., which require the Agency to submit the plan to the Chair and Vice Chair of the Legislative Budget Commission (s. 216.177(2)(a), F.S.). Within 14 days after the plan is submitted, the Chair and Vice Chair of the Legislative Budget Commission or the President of the Senate and the Speaker of the House of Representatives may object to the plan (s. 216.177(2)(b), F.S.). If the objections are received, the Agency for Workforce Innovation must void the plan until the Legislative Budget Commission or the Legislature addresses the issue.

The bill does not specifically mention any new full-time employees, but it is possible the AWI may need to add staff to administer this monthly grant program, which may be compared to a payroll system.

The bill provides an effective date of July 1, 2005. Although the bill does not specify that the program established by the AWI must apply retroactively, the bill authorizes grants to be paid for monthly wages paid for actual federal active duty served on or after January 1, 2005.

C. SECTION DIRECTORY:

Section 1. Creates the Citizen Soldier Matching Grant Program to be administered by the Agency for Workforce Innovation, which provides employers reimbursement for continuing to pay

⁴ AWI's Veterans' Program web site, www.floridajobs.org/pdg/vets, contains all relevant Veterans' Program information, including Veterans' Program Letters, Veterans' Staff Directory, Veterans' Program legislation, including Title 38, United States Code (USC), Chapters 41 and 42, Public Law 107-288 (Jobs for Veterans Act), links to other veteran-focused web sites, i.e. the Veterans' Employment and Training Services (VETS), the Florida Department of Veterans Affairs (FDVA), etc., and other important information. Upon approval, the Veterans' Program Plan of Services will also be posted to this web site. This web site delivers information on Florida's Veterans' Program to its workforce providers and partners.

U.S. Armed Forces Reservists and National Guard members from Florida while on federal active duty.

Section 2. Provides effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There are no known or expected fiscal impacts on state government revenues.

2. Expenditures:

The total cost of the program can be estimated at **\$1,862,961 annually**. This includes the \$1,693,601 annual estimated cost of the matching grants and \$169,360 administrative cost, using the AWI's estimate⁵ that it would take ten percent of that figure for the agency to administer the program. AWI is currently working on a revised estimate as well.

The committee staff estimate was arrived at using a combination of facts and assumptions regarding military pay, civilian pay, and number of servicemembers who could benefit from the program. The information is pulled from many sources and tries to best reflect the effect on servicemembers in the best position to take advantage of the provisions of this bill. The estimate also assumes all employers would use the program for their deployed employees.

The estimate was calculated based on the following facts, figures, and assumptions:

- **1,233:** Number of Florida residents who could benefit from this program;
 - assume all their employers participate;
 - 5,800 average Reserve and National Guard mobilized on federal active duty in 2005⁶;
 - 41 percent of mobilized Reserve and National Guard who earn less than their civilian pay⁷;
 - 54 percent of mobilized Reserve and National Guard are non-governmental workers, as estimated by the Department of Military Affairs, and do not benefit from laws which cover pay differential for government employees; and,
 - 96 percent of mobilized Reserve and National Guard are employed prior to deployment.
- **\$31,851.36:** The average military wage in Florida based on 2005 military pay charts calculated using 80/20 ratio of servicemembers with dependents to those without dependents;
 - E-4 with four years - most likely to fall into the 41 percent of the servicemembers which lose pay when mobilized;
 - \$30, 281.76 = total military compensation for E-4 with four years without dependents;

⁵ Agency for Workforce Innovation, "2004 Bill Analysis, SB 72," Jan, 5, 2005 (on file with Committee on Military and Veteran Affairs).

⁶ See email from Glenn Sutphin, Florida Department of Military Affairs (February 24, 2005) (on file with Committee on Military and Veteran Affairs).

⁷ United States, Government Accountability Office, DOD Needs More Data to Address Financial and Health Care Issues Affecting Reservists, September 2003, page 7.

- Base: \$22,532.40 + Basic Housing Allowance w/o Dependents: \$4543.20 + Subsistence Allowance for Enlisted: \$3,206.16 (Variable Housing Allowance assumed \$0⁸); and,
 - \$32,243.76 = total military compensation for E-4 with four years with dependents
 - Base: \$22,532.40 + Basic Housing Allowance w/ Dependents: \$6505.20 + Subsistence Allowance for Enlisted: \$3,206.16 (Variable Housing Allowance assumed \$0).
- **\$34,599.03:** The approximate average annual state wage for 2005 derived by projecting the percentage difference between 2003 and 2004 wages estimates;
 - \$33,553: The approximate average annual state wage for 2003 according to the Agency for Workforce Innovation's Labor Market Information section; and,
 - \$34,072: The approximate annualized state wage based on 2004 second quarter wage data according to the Agency for Workforce Innovation's Labor Market Information section.
- **\$1,373.83:** The estimated average for each grant based on a maximum of half of the difference between civilian and military pay, as stated in this bill;
 - \$2,747.56: difference between the average estimated civilian and military wages in Florida for 2005.
- **\$1,693,600.96:** The estimated annual cost of matching grants.
 - Number of servicemembers who could benefit from program multiplied by half the difference in estimated 2005 annual state wage in Florida and estimated 2005 military compensation for an E-4 with four years of service.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There are no known or expected fiscal impacts on local government revenues.

2. Expenditures:

There are no known or expected fiscal impacts on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Any employer that pays wages to covered employees serving on active federal duty in the United States Armed Forces Reserves or the Florida National Guard would receive matching grants per employee from the Agency for Workforce Innovation for up to one-half of these wages paid to supplement the employee's active duty base pay and benefit package.

D. FISCAL COMMENTS:

The bill's companion, HB 747 by Representative Seiler, creates the trust fund to which monies appropriated for this grant program are to be credited.

⁸ The zero assumption is based on a Congressional Budget Office report (Housing Prices, Housing Choices, and Military Housing Allowances, Section 6, Figure 5, October 1998) which uses Jacksonville, Florida, with its heavy military population, to compare variable housing costs with other cities with military populations. Jacksonville was right at the median cost of the chart so it is unlikely that variable housing allowances are paid to servicemembers in that area. This assumption was applied to the entire state in the staff estimate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

There does not appear to be any constitutional issues with this bill.

B. RULE-MAKING AUTHORITY:

The bill appears to give AWI sufficient rule-making authority to administer the application and payment procedures for the matching grant program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 23, 2005, the Committee on Military and Veteran Affairs amended this bill then voted to favorably report the bill. The amendment defines and clarifies the components of military compensation to be used in determining the pay differential between the active duty pay and the private sector pay for members of the Reserve or National Guard when they are activated to federal duty. The committee then voted to report the bill favorably with committee substitute by a vote of 7 to 0.