

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

BILL: CS/SB 1120

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator
Abruzzo

SUBJECT: Military Affairs

DATE: March 26, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hoagland</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1120 prohibits a state agency from requiring an employee to work more than the hours in his or her established workday or work period during the time that his or her spouse is deployed on active duty military service.

The bill also requires a state agency to approve up to 4 working days of unpaid leave to the spouse of a deployed military member to attend to matters directly related to implementation of deployment orders. Leave taken under this provision would run concurrently with any qualifying exigency leave granted pursuant to the Family and Medical Leave Act.

II. Present Situation:

Military Related Leaves of Absence to Public Officials and Employees

The United States Code and the Florida Statutes both address leaves of absence by reason of service in the U.S. military. The federal Uniformed Services Employment and Reemployment Rights Act (USERRA) addresses the employment and reemployment rights of all uniformed service members.¹ Part IV of ch. 250, F.S., incorporates the USERRA and provides an additional

¹ 38 U.S.C. s. 4301-4335

civil penalty of not more than \$1,000 per violation.² In addition to the employment rights provided in USERRA for federal uniformed service, s. 250.482, F.S., provides similar protection for members of the National Guard who are ordered into state active duty.³

Chapter 115, F.S., also addresses leaves of absence to public officials and employees relating to military service. This chapter provides certain leave protections for state and local employees who are called to active military service. For example, all officers or employees of the state, counties, municipalities or political subdivisions of the state who are members of the U.S. Reserve Forces or the National Guard are entitled to leaves of absence from their respective duties, without loss of vacation leave, pay, time, or efficiency rating, on all days during which they are engaged in training ordered under the provisions of the United States military or naval training regulations for such personnel when assigned to active or inactive duty.⁴

Section 115.08, F.S., provides definitions for the chapter and defines the term “active military service” as signifying active duty in the Florida defense force or federal service in training or on active duty with any branch of the Armed Forces or Reservists of the Armed Forces, the Florida National Guard, 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 with the Armed Forces, and includes the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

Current law, however, does not provide special considerations in working conditions for an employee of the state or local government who is the spouse of a servicemember of the United States Armed Forces if the servicemember is deployed on active duty military service.

Federal Family and Medical Leave Act

The federal Family and Medical Leave Act (FMLA)⁵ contains two leave entitlements that benefit families of servicemembers in the United States Armed Forces, qualifying exigency leave and military caregiver leave.

For qualifying exigency leave, eligible employees who are the spouse, son, daughter, or parent of a military member may take up to 12 weeks of FMLA leave during any 12-month period to address the most common issues that arise when a military member is deployed to a foreign country, such as attending military sponsored functions, making appropriate financial and legal

² Section 250.905, F.S.

³ Subsection 250.01(21), F.S., defines “state active duty” as: full-time duty in active military service of the State of Florida when ordered by the Governor or Adjutant General in accordance with s. 250.06, s. 250.10, or s. 250.28 to preserve the public peace, execute the laws of the state, suppress insurrection, repel invasion, enhance security and respond to terrorist threats or attacks, respond to an emergency as defined in s. 252.34 or to imminent danger of an emergency, enforce the law, carry out counter-drug operations, provide training, provide for the security of the rights or lives of the public, protect property, or conduct ceremonies. The term includes the duties of officers or enlisted personnel who are employed under the order of the Governor in recruiting; making tours of instruction; inspecting troops, armories, storehouses, campsites, rifle ranges, or military property; sitting on general or special courts-martial, boards of examination, courts of inquiry, or boards of officers; or making or assisting in physical examinations. The term shall also include the period during which a person in active military service is absent from duty as a result of illness, being wounded, being on leave, or other lawful cause.

⁴ Subsection 115.07(1), F.S.

⁵ 29 U.S.C. s. 2601, *et seq.*

arrangements, and arranging for alternative childcare.⁶ For military caregiver leave, eligible employees who are the spouse, son, daughter, parent or next of kin of a covered servicemember may take up to 26 weeks of FMLA leave during a single 12-month period to care for the servicemember who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred or aggravated in the line of duty on active duty.⁷ These provisions apply to the families of members of both the active duty and reserve components of the Armed Forces.

An employer may require that an employee seeking leave under the FMLA provide certification to substantiate the reason for taking leave.⁸

In order to be considered an “eligible employee,” the employee must have at least 12 months of service with the employer and have worked at least 1,250 hours within the previous 12 months.⁹ Employers subject to the FMLA include all state and local public agencies and private employers with more than 50 employees.¹⁰

Covered active duty under the FMLA is defined by rule as follows:

- Covered active duty or call to covered active duty status in the case of a member of the Regular Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country. The active duty orders of a member of the Armed Forces will generally specify if the member is deployed to a foreign country.
- Covered active duty or call to covered active duty status in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.¹¹

Overtime, Extended Work Hours, and Public Employees

The federal Fair Labor Standards Act (FLSA)¹² provides that covered employees¹³ of public agencies¹⁴ who work in excess of the standard amount of hours in a given work period are entitled to either overtime pay or, if there is an applicable agreement, to special compensatory leave.¹⁵

⁶ 29 U.S.C. s. 2612(a)(1)(E).

⁷ See 29 C.F.R. s. 825.126(b) for a more detailed list of exigent circumstances that entitle an eligible employee to FMLA military leave.

⁸ 29 U.S.C. s. 2613.

⁹ 29 U.S.C. ss. 2611(2)(A).

¹⁰ 29 U.S.C. s. 2611(4)(A)(iii), defining “public agency” by cross-reference to 29 U.S.C. s. 203(x) .

¹¹ See 29 C.F.R. s. 825.126(a).

¹² 29 U.S.C. s. 201, *et seq.*

¹³ Certain classes of employees, such as those working in executive and professional capacities, are excluded from the wage and hour provisions of the FLSA. 29 U.S.C. s. 213.

¹⁴ 29 U.S.C. s. 203(x), defining “public agency” as “the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State; or any interstate governmental agency.”

¹⁵ 29 U.S.C. s. 207.

Florida law governing compensation and work hours of state employees is controlled by the requirements of the FLSA. Career service employees are entitled to special compensatory leave for overtime hours worked; however, senior management service and selected exempt service employees are expected to work the hours necessary to complete their tasks, and generally are not entitled to overtime pay.¹⁶ Counties, municipalities, or other political subdivisions likewise are bound by the FLSA. Counties, municipalities, or other political subdivisions may require executive and professional workers to work extended hours as necessary absent an agreement or ordinance to the contrary.

“Employing Agency” Defined

Subsection 110.107(24), F.S., defines “employing agency” to mean any agency authorized to employ personnel to carry out the responsibilities of the agency under the provisions of ch. 20, F.S., or other statutory authority. Chapter 20, F.S., provides for the organization of state departments created in the executive branch and specifically creates the following departments: Department of State, Department of Legal Affairs, Department of Financial Services, Department of Agriculture and Consumer Services, Department of Education, Board of Governors of the State University System, Department of Business and Professional Regulation, Department of Children and Families, Agency for Persons with Disabilities, Department of Law Enforcement, Department of Revenue, Department of Management Services, Department of Transportation, Department of Highway Safety and Motor Vehicles, Department of Environmental Protection, State Board of Administration, Department of Citrus and the Florida Citrus Commission, Department of Corrections, Department of Juvenile Justice, Department of the Lottery, Parole Commission, Fish and Wildlife Conservation Commission, Department of Veterans’ Affairs, Department of Elderly Affairs, Agency for Health Care Administration, Department of Health, and Department of Economic Opportunity.¹⁷

III. Effect of Proposed Changes:

The bill creates s. 115.135, F.S., to prohibit an employing agency, as defined in s. 110.107(24), F.S., from requiring an employee to work more than the hours in his or her established workday or work period during the time that his or her spouse is deployed on active military service.

The bill also requires an employing agency to approve requests for up to 4 working days of unpaid leave for an employee whose spouse is deployed on active military service to attend to matters directly related to implementation of deployment orders for each deployment. Leave taken under this provision would run concurrently with any qualifying exigency leave granted pursuant to the Family and Medical Leave Act of 1993, as amended. The practical effect of the bill would be to extend protected leave to employees not otherwise eligible under the FMLA (i.e., employees that do not have 12 months of service with the employer or employees that have not worked 1,250 hours in the previous 12 months).

The bill clarifies that active military service does not include active duty training and provides that a servicemember must be deployed at a location other than the servicemember’s permanent duty station.

¹⁶ Rule 60L-34.0031(3), Fla. Admin. Code.

¹⁷ See ch. 20, F.S.

The Department of Management Services (DMS) is authorized to adopt rules to administer the provisions in the bill.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Prohibiting state agencies from requiring a spouse of a deployed service member from working extended or overtime hours and having to provide up to a maximum of four days of leave without pay may have an indeterminate negative fiscal impact.

The economic impact cannot be estimated at this time. On January 31, 2014, deployment numbers indicate that 5,333 servicemembers were deployed from Florida, while 12,380 deployed servicemembers claimed Florida as their place of residence.¹⁸ Neither of these numbers factor in marital status.¹⁹ In order to estimate the impact, a determination would need to be made as to how many spouses will be located in Florida during the deployment. The number of spouses in Florida would need to be reduced by those not working for a state agency.

¹⁸ Data provided by Florida Department of Military Affairs. March, 20, 2013. (On file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

¹⁹ Based on national data, approximately 44 percent of servicemembers deployed are not married. (Data provided by Florida Department of Military Affairs. March, 20, 2013.)

The Department of Management Services may incur some expenses in adopting procedural rules for certain state personnel.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 115.135 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military and Veterans Affairs, Space, and Domestic Security on March 25, 2014:

The committee substitute:

- Limits the bill to certain state agencies as defined in s. 110.107(24), F.S., thus removing impacts on local government employers;
- Removes the finding of important state interest;
- Exempts active duty training from the provisions of the bill;
- Clarifies that the servicemember must be deployed at a location other than the servicemember's permanent duty station; and
- Broadens the DMS rulemaking authority to address administration of all provisions of the bill.

- B. **Amendments:**

None.