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SFA**BILL ANALYSIS**

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Senate Bill 994 (Substitute S-1 as enrolled)
Sponsor: Senator Art Miller, Jr.
Committee: Senior Citizens and Veterans Affairs

Date Completed: 2-21-02

RATIONALE

Public Act 133 of 1955 provides for the reemployment of employees after military service. Under that Act, an employee may not be denied a leave of absence for the purpose of being inducted into, entering, determining his or her physical fitness to enter, or performing training duty as an officer or enlisted member of the military or naval forces of the United States or this State. Following release from service, training duty, or rejection, the employee must be reinstated in his or her position without reduction in seniority, status, or pay, if he or she applies for reinstatement. Some people believe that the Act might not be sufficient to ensure that employees are not penalized with respect to opportunities for promotions and benefits when they temporarily leave their positions to serve in the military. In addition, some people believe that an employer should not have to keep a job open for returning military personnel if they served voluntarily for an extended period of time, or were discharged from the armed services dishonorably, court-martialed, or sentenced to imprisonment by a civilian court.

CONTENT

The bill would amend Public Act 133 of 1955 to prioritize the employment positions in which a person would be reemployed following active service or service for the United States; and to specify that a reemployed person would be entitled to the seniority and the seniority-based rights and benefits he or she otherwise would have had, as well as the nonseniority-based rights and benefits generally provided by the employer to employees on a leave of absence. The bill also would provide for circumstances under which a person would not be entitled to reemployment.

Currently, upon request, an employee may not be denied a leave of absence for the purpose of being inducted into, entering, determining his or her physical fitness to enter, or performing training duty as an officer or enlisted member of the military or naval forces of the United States or this State. The bill would retain this provision, but would refer to a leave for the purpose of "active service, active state service, or the service of the United States".

Under the Act, following release from service, training duty, or rejection, the employee must be reinstated in his or her position without reduction in seniority, status, or pay, within 15 days after the employee's service, release, or rejection, if he or she applies for reinstatement. Under the bill, instead of reinstatement without reduction in seniority, status, or pay, the employee would have to be reemployed in a position according to the following order of priority:

- Following service of one to 90 days, the position that the person would have held if his or her continuous employment with the employer had not been interrupted by service, if the person were qualified to perform the duties of that position.
- Following service of one to 90 days, the position that the person held on the date service began, only if he or she were not qualified for the position described above and after the employer had made reasonable efforts to qualify the person.
- Following service of 91 or more days, a position described above or any other position of lesser status or pay that the person was qualified to perform, only if he or she were not qualified and could not become qualified with reasonable efforts by the employer for the position he or she had when service began.



A person who was reemployed under these provisions would be entitled to the seniority and other rights and benefits that were determined by seniority, that he or she had when service began, plus the additional seniority and rights and benefits that the person would have attained if he or she had been continually employed.

In addition, the person would be entitled to rights and benefits, not determined by seniority, that the employer generally provided to employees with similar seniority, status, and pay who were on furlough or leave of absence under a contract, agreement, policy, practice, or plan that was in effect at the time service began or established while the person performed service.

An employee would not be entitled to reemployment under these provisions if he or she were absent by reason of active service, active state service, or the service of the United States and had a cumulative period of service in the "uniformed services", with respect to the employer relationship for which a person sought reemployment, that exceeded five years. Any period of service, however, would not include any of the following:

- Any service that was required, beyond five years, to complete an initial period of obligated service.
- Any service during which the person was unable to obtain orders releasing him or her from a period of service in the uniformed services before the end of the five-year period and the inability was through no fault of that person.
- Any service performed to meet Federal requirements for armed forces reserve or National Guard training (10 USC 10147 or 32 USC 502(a) or 503), or to fulfill additional training requirements determined and certified in writing by the appropriate "service secretary" to be necessary for professional development or for completion of skill training or retraining.

For purposes of the five-year cumulative service provision, a period of service also would not include any service performed by a member in active service, active state service, or the service of the United States, if the member were ordered to or retained on active duty, active service, or active state service under Federal requirements pertaining to any of the following:

- Retired military personnel ordered to active duty (10 USC 688).
- Military reserve components ordered into active duty in time of war or national emergency or when otherwise authorized by law (10 USC 12301(a)).
- A member of a military reserve component ordered to active duty because of his or her captive status and for up to 30 days after captive status was terminated (10 USC 12301(g)).
- Activation of reserve components, for up to 24 consecutive months, in time of national emergency declared by the President (10 USC 12302).
- Activation of reserve components, for up to 270 days, when the President determined that it was necessary to augment the active forces for any operational mission or if it were necessary to provide assistance in responding to an emergency involving a use or threatened use of a weapon of mass destruction (10 USC 12304).
- Presidential suspension of law relating to promotion, retirement, or separation applicable to any member of the armed forces during a period when members of a reserve component were serving on active duty (10 USC 12305).
- Various provisions for the activation of retired Coast Guard members, detention of enlisted Coast Guard members beyond their term of enlistment, and the activation of members of the Coast Guard reserve (10 USC 331, 332, 359, 360, 367, and 712).

In addition, for purposes of the five-year cumulative service provision, a period of service would not include any service performed by a member in active service, active state service, or the service of the United States, if any of the following occurred:

- The member was ordered to or retained on active duty, active service, or active state service, other than for training, under any provision of law because of a war or national emergency declared by the President, the Congress, or the Governor.
- The member was ordered to active duty, other than for training, in support of an operational mission for which personnel were ordered to active duty, as determined by the appropriate service secretary (10 USC 12304).
- The member was ordered to active duty in support of a critical mission or requirement of the uniformed services, as determined

by the appropriate service secretary.

- The member was called into Federal service as a member of the National Guard under provisions of Federal law pertaining to any of the following: an insurrection in any state against its government (10 USC 331); use of the militia of any state to enforce Federal authority against unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States (10 USC 332); use of the militia or the armed forces to suppress, in any state, any insurrection, domestic violence, unlawful combination, or conspiracy that hindered the execution of the state's laws or opposed or obstructed the execution of the laws of the United States or impeded the course of justice under U.S. law (10 USC 333); the calling of the National Guard into Federal service upon invasion, or danger of invasion, of the United States or any of its territories, commonwealths, or possessions by a foreign nation, when there was a rebellion or danger of a rebellion against the authority of the U.S. government, or when the President was unable to execute the laws of the United States with the regular armed forces (10 USC 12406).

An employee would not be entitled to reemployment benefits if his or her service in any of the uniformed services were terminated under any of the following circumstances:

- A separation from the uniformed service or National Guard with a dishonorable or bad conduct discharge.
- A separation from the uniformed service or National Guard under other than honorable conditions, as characterized pursuant to regulations prescribed by the appropriate service secretary.
- A dismissal of a commissioned officer, under Federal law, by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President (10 USC 1161(a)).
- A dropping from the rolls of the armed forces, by the President, pursuant to Federal law, of any commissioned officer who had been absent without authority for at least three months; who could be separated by reason of a sentence to confinement adjudged by a court-martial; or who was sentenced to confinement in a Federal or State prison after having been

found guilty of an offense by a court other than a court-martial or other military court, and whose sentence had become final (10 USC 1161(b)).

The bill would define "service" as active service, active state service, or in the service of the United States. "Active service" would mean service, including active state service or special duty required by law or regulation, or pursuant to an order of the Governor. The term would include continuing service of an active member of the National Guard and the defense force in fulfilling that member's commission, appointment, or enlistment.

"Active state service", as applied to the National Guard and the defense force, would mean military service in support of civil authorities, at the request of local authorities, including support in the enforcement of laws prohibiting the importation, sale, delivery, possession, or use of a controlled substance, if ordered by the Governor or as otherwise provided in the Act.

"Service secretary" would mean the Secretary of the Army, Secretary of the Navy, or Secretary of the Air Force.

"Uniformed service" would mean the armed forces, the reserve component of the armed forces, the National Guard in active service or active state service, the commissioned corps of the Public Health Service, and any other category of person designated by the President or Governor in time of war or national emergency.

MCL 32.273

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

While current law specifies that an employer may not deny a leave of absence to an employee for the purpose of performing military service, and that an employee returning from military service is entitled to reemployment in his or her former position, the bill would offer further protections to employees who served. It would ensure not only that an employee who left his or her position for the purpose of fulfilling military

service had a job when that service concluded, but that the employee would not have to forego opportunities for promotion and earned benefits during the time that he or she served in a military capacity. By establishing a priority system for determining the capacity in which an employee returning from military service would be reemployed, the bill would ensure that the employee would be fairly treated in regard to both job placement and promotions and other benefits that would have accrued if the employee had not taken a leave to perform military duty.

Supporting Argument

In addition to offering employment protection to returning service members, the bill proposes a degree of protection for employers. For instance, it would not require the reemployment of military service personnel who were dishonorably discharged, court-martialed, or convicted of a criminal offense in a civilian court and sentenced to prison. Also, the bill would set a five-year cumulative limit on service time, after which the employer would not be required to offer reemployment. The five-year cumulative period would not include numerous situations involving mandatory service, however, such as activation to duty and extension of enlistment periods, so that, essentially, the five-year limit would apply only to an employee's voluntary service. Under this provision, employers would not have to maintain a position for an absent service member for an unreasonable amount of time.

Opposing Argument

The bill might be unnecessary, as the Federal Uniformed Service Employment and Reemployment Rights Act (USERRA) fairly provides reemployment protection for employees who leave their jobs temporarily in order to perform military service under provisions substantially similar to those in the bill (38 USC 4301 through 4333).

Response: The Federal law specifies that it does not supersede or diminish any state law that establishes a right or benefit that is more advantageous to, or in addition to, a right or benefit provided under the Federal statute. Although the protections offered by that law are extensive, it applies to service in the "uniformed services", which means "the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned

corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency" (38 USC 4303). The bill also would apply to active state service or special duty required by law, regulation, or pursuant to an order of the Governor.

Opposing Argument

The bill should not limit the duration of employment protection. An employer whose employee leaves for active military service or training should be committed to returning that person to full employment and benefits regardless of the amount of time served in the military.

Response: The USERRA establishes a five-year cumulative total on military service with a single employer, with certain exceptions for call-ups during emergencies, reserve drills and annually scheduled active duty for training, and other types of mandatory service. The Federal Act also allows an employee to complete an initial period of active duty that exceeds five years and still receive reemployment protection (e.g., the Navy's nuclear power program requires a six-year period of service for enlistees). The bill's exceptions to the five-year limit are consistent with those in USERRA.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The potential fiscal impact of this bill on State and local government is indeterminate. The cost would depend upon factors such as the number of people leaving State or local government employment for service, their individual salaries, their expected employment advancement, how long each person would be in active service, and what positions would be available upon the person's return to State or local government employment. According to the Office of the State Employer, 35 to 40 people have left State employment for active service since September 1, 2001.

Fiscal Analyst: Jessica Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.