

DIFFERENTIAL PAY FOR MILITARY SERVICE

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House Bill 4117 (Substitute H-1)

Sponsor: Rep. John Proos

Committee: Local Government and Urban Policy

First Analysis (2-11-05)

BRIEF SUMMARY: The bill would permit local governmental units to provide differential pay for their employees who enter into active military service.

FISCAL IMPACT: There would be no state revenue impact. The cost to local units would depend on how they chose to implement the program.

THE APPARENT PROBLEM:

Michigan has approximately 2,200 members of the National Guard and 425 members of the reserve forces serving on active duty in response to the war on terrorism. These individuals and their families sacrifice a great deal to defend the nation. When called into active duty, they often lose civilian pay, although they do receive pay for their military service. However, the military pay often does not make up for the lost civilian pay, and families suffer drops in income and purchasing power while their expenses remain constant or even increase.

To assist military families, many employers (including governmental units) provide employees called into active duty with "gap" pay, to make up the difference between lost civilian pay and lower military pay. Late last year, a police officer in St. Joseph Charter Township (Berrien County) was called into active duty with his National Guard unit for deployment to Iraq, and requested that the township provide his family with gap pay. While many employers and governmental units – including Berrien County and the City of St. Joseph – provide gap pay, the township believed at the time that it was unable to do so for the officer. The township had recently ended a policy of providing gap pay that had been in place since the 1980's following a periodic review of township policies. Township officials determined that the township did not have the authority, express or implied, under the Charter Township Act and other applicable state laws, to pay the officer for services not actually rendered.

Subsequently, in mid-November, the township board, amid strong public pressure, voted to provide the police officer with gap pay, notwithstanding the apparent restrictions in state law. The provision of funds to the officer and his family was contingent upon the state attorney general's approval of the pay plan. However, the attorney general did not render an opinion on the plan and, in mid-December, the township board approved the officer's pay anyway — a move that the township's attorney believed was in violation of state law. In January, the township board approved a resolution to provide gap pay to any

full time employee who is on the township payroll and a member of the U.S. armed forces prior to December 31, 2004.

Legislation has been introduced in response to this situation to allow local governmental units to provide employees with "gap" pay.

THE CONTENT OF THE BILL:

House Bill 4117 would amend Public Act 133 of 1955 (MCL 32.271 et al), which provides for the granting of military leave and re-employment protection for officers and enlisted personnel, to allow a local unit of government to establish a differential pay program for employees who request or are required to take a leave of absence to enter active uniformed service.

The bill would define "differential pay program" to mean a program through which the local unit of government agrees to pay during the leave of absence all or a part of the difference between the amount the employee is paid by the local unit of government and the amount the employee receives through military service.

The bill specifies that a local unit of government (a city, village, township, or county) can provide, by ordinance or resolution or through a personnel policy, for a differential pay program, or for a specific number of paid days of leave, for those employees of the government who take a leave of absence to enter into active service in a uniformed service.

The act defines "uniformed service" to mean the armed forces, the reserve component, the National Guard in active service or active state service, the commissioned corps of the public health service, and any other category of persons designated by the president or governor in time of war or national emergency.

BACKGROUND INFORMATION:

Military Family Relief Fund

Last session, the legislature and governor established a Military Family Relief Fund, which is to be funded through an income tax check-off. The fund, established by Public Act 363 of 2004 (Senate Bill 1269), provides assistance grants to the families of members of a reserve component of the U.S. Armed Forces based in the state or the families of residents serving in a reserve component based in another state who are called into active duty in response to the September 11th attacks or a national emergency. The families must have to have a documented need for financial assistance, and the grants are capped at \$2,000 per year, but can be increased in extreme cases.

The income tax check-off, found on line 28 of the 2004 Michigan MI-1040 income tax return, was established by Public Act 364 of 2004 (House Bill 5953) and allows taxpayers to designate contributions of \$1 or more to the Military Family Relief Fund.

Employment Protections

Members of the military called into active service are provided employment protections under Public Act 133 of 1955 and under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), codified at 38 USC 4301 et seq. Public Act 133 applies when individuals are called into state service by the governor, and the USERRA applies when individuals are called into federal service. Both laws, which are quite similar, generally apply an "escalator principle", meaning that upon their return to the workforce, members of the military assume the position they would have attained had their employment not been interrupted by their military duties.

ARGUMENTS:

For:

The bill would clarify state law as it relates to the authority of townships (and other local governments) to provide "gap" pay to their employees who have entered into active military service. The state constitution generally provides that as an instrumentality of the state, townships have only the powers and authority provided them by law. Further, over the years, the attorney general has concluded on several occasions that in the absence of statutory authority (expressly authorized or necessarily implied), a township may not lawfully expend funds. It is questionable that a township, in the absence of clear authority, could pay its employees for services not actually performed for the township. Given that there is currently no clear state statute permitting townships to provide differential pay to employees actively serving in the military, this legislation is needed to allow townships to assist their employees legally.

POSITIONS:

The Michigan Townships Association supports the bill. (2-9-05)

St. Joseph Charter Township supports the bill. (2-9-05)

The Michigan Municipal League is neutral on the bill. (2-9-05)

Legislative Analyst: Mark Wolf
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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.