

**Introduced by Senator Poochigian**

February 21, 2002

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An act to amend Section 19775.17 of, and to add Section 19775.18 to, the Government Code, to amend Sections 389, 395, 395.01, 399, and 399.5 of the Military and Veterans Code, and to add Sections 17053.67 and 23667 to the Revenue and Taxation Code, relating to military service, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1776, as introduced, Poochigian. Military service: benefits.

(1) Existing law provides that a state employee who, as a member of the California National Guard or a United States military reserve organization, is ordered to active duty by either a Presidential determination that it is necessary to augment the active forces for any operational mission, or in time of national emergency declared by the President or otherwise authorized by law, shall receive for the duration of the event, for a period not to exceed 180 days, as part of his or her compensation the difference between the amount of his or her military pay and the amount the person would have received as a state employee, and all benefits he or she would have received had he or she not served on active duty, as specified.

This bill would entitle any state employee, who, as a member of the California National Guard or a United States military reserve organization, is called up to active duty as a result of Operation Enduring Freedom or any successor military action on or after September 11, 2001, to receive similar compensation and benefits for a period not to exceed 365 days.

(2) Under existing law, a public employee who is a member of the reserve corps of the armed forces of the United States, or of the National

Guard or the Naval Militia, is entitled to a temporary military leave of absence for active military training, inactive duty training, encampment, naval cruises, special exercises, or similar activities for a period of 180 calendar days, if certain requirements are met. Existing law also grants an absolute right to the employee to be restored to his or her former office or position.

This bill would instead allow such a temporary military leave for a period of 365 calendar days. This bill would also grant additional rights to an employee in a public safety or emergency services office with respect to being restored to his or her former office or position.

(3) Existing law prohibited eviction or distress, except upon leave of court, with respect to premises, rented at or below a certain monthly rate, that are occupied by the spouse, children, or other dependents of reservists called into active duty as a result of the Iraq-Kuwait crisis. Existing law also required the court to issue stay for a specified period or make other prescribed orders, unless the court found that the ability to pay the rent was affected by that military service. Existing law made knowing eviction or distress, except as provided in the bill, a misdemeanor.

The bill would provide the same relief for reservists called to active duty generally, without regard to any monthly rental rate, and would impose a state-mandated local program by applying the existing misdemeanor provisions to the additional reservists. This bill would also provide relief from vehicle leases to members of the National Guard, upon their mobilization for any reason by the federal government.

(4) The Personal Income Tax Law and the Bank and Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2002, in an amount equal to 100% of the amount of benefits paid by the taxpayer during that taxable year, as provided, to qualified employees, as defined, who are on active military duty.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.



(6) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 19775.17 of the Government Code is  
2 amended to read:

3 19775.17. (a) In addition to the benefits provided pursuant to  
4 Sections 19775 and 19775.1, a state employee who, as a member  
5 of the California National Guard or a United States military  
6 reserve organization, is ordered to active duty by Presidential  
7 determination that it is necessary to augment the active forces for  
8 any operational mission, or when in time of national emergency  
9 declared by the President or otherwise authorized by law, shall  
10 have the benefits provided for in subdivision (b).

11 (b) Any state employee to which subdivision (a) applies, while  
12 on active duty, shall receive from the state, for the duration of the  
13 event as authorized pursuant to Sections 12302 and 12304 of Title  
14 10 of the United States Code, but not to exceed 180 calendar days,  
15 as part of his or her compensation both of the following:

16 (1) The difference between the amount of his or her military  
17 pay and allowances and the amount the employee would have  
18 received as a state employee, including any merit raises that would  
19 otherwise have been granted during the time the individual was on  
20 active duty. The amount an employee, as defined in Section 18526,  
21 would have received as a state employee, including any merit  
22 raises that would otherwise have been granted during the time the  
23 individual was on active duty, shall be determined by the  
24 Department of Personnel Administration.

25 (2) All benefits that he or she would have received had he or she  
26 not served on active duty unless the benefits are prohibited or  
27 limited by vendor contracts.

28 (c) Any individual receiving compensation pursuant to  
29 subdivision (b) who does not reinstate to state service following  
30 active duty, shall have that compensation treated as a loan payable  
31 with interest at the rate earned on the Pooled Money Investment  
32 Account. This subdivision shall not apply to compensation  
33 received pursuant to Section 19775.



1 (d) Benefits provided under paragraph (1) of subdivision (b)  
2 shall only be provided to a state employee who was not eligible to  
3 participate in a federally sponsored income protection program for  
4 National Guard personnel or military reserve personnel, or both,  
5 called into active duty, as determined by the Department of  
6 Personnel Administration. For a state employee eligible to  
7 participate in a federally sponsored income protection program,  
8 and whose monthly salary as a state employee was higher than the  
9 sum of his or her military pay and allowances and the maximum  
10 allowable benefit under the federally sponsored income protection  
11 program, the state employee shall receive the amount payable  
12 under paragraph (1) of subdivision (b), but that amount shall be  
13 reduced by the maximum allowable benefit under the federally  
14 sponsored income protection program. For individuals who  
15 elected the federally sponsored income protection program, the  
16 state shall reimburse for the cost of the insurance premium for the  
17 period of time on active duty, not to exceed 180 calendar days.

18 (e) For purposes of this section, “state employee” means an  
19 employee as defined in Section 18526 or an officer or employee  
20 of the legislative, executive, or judicial department of the state.

21 (f) This section ~~shall~~ *does* not apply to any state employee  
22 entitled to additional compensation or benefits pursuant to Section  
23 19775.16 or Section 19775.18 of this code, or Section 395.08 of  
24 the Military and Veterans Code.

25 SEC. 2. Section 19775.18 is added to the Government Code,  
26 to read:

27 19775.18. (a) In addition to the benefits provided pursuant to  
28 Sections 19775 and 19775.1, a state employee who, as a member  
29 of the California National Guard or a United States military  
30 reserve organization, is ordered to active duty on or after  
31 September 11, 2001, as a result of Operation Enduring Freedom  
32 or any successor military action, shall have the benefits provided  
33 for in subdivision (b).

34 (b) Any state employee to which subdivision (a) applies, while  
35 on active duty, shall receive from the state, for the duration of the  
36 event known as Operation Enduring Freedom or any successor  
37 military action, as authorized pursuant to Sections 12302 and  
38 12304 of Title 10 of the United States Code, but not to exceed 365  
39 calendar days, as part of his or her compensation both of the  
40 following:



1 (1) The difference between the amount of his or her military  
2 pay and allowances and the amount the employee would have  
3 received as a state employee, including any merit raises that would  
4 otherwise have been granted during the time the individual was on  
5 active duty. The amount an employee, as defined in Section 18526,  
6 would have received as a state employee, including any merit  
7 raises that would otherwise have been granted during the time the  
8 individual was on active duty, shall be determined by the  
9 Department of Personnel Administration.

10 (2) All benefits that he or she would have received had he or she  
11 not served on active duty unless the benefits are prohibited or  
12 limited by vendor contracts.

13 (c) Any individual receiving compensation pursuant to  
14 subdivision (b) who does not reinstate to state service following  
15 active duty, shall have that compensation treated as a loan payable  
16 with interest at the rate earned on the Pooled Money Investment  
17 Account. This subdivision does not apply to compensation  
18 received pursuant to Section 19775.

19 (d) Benefits provided under paragraph (1) of subdivision (b)  
20 shall only be provided to a state employee who was not eligible to  
21 participate in a federally sponsored income protection program for  
22 National Guard personnel or military reserve personnel, or both,  
23 called into active duty, as determined by the Department of  
24 Personnel Administration. For a state employee eligible to  
25 participate in a federally sponsored income protection program,  
26 and whose monthly salary as a state employee was higher than the  
27 sum of his or her military pay and allowances and the maximum  
28 allowable benefit under the federally sponsored income protection  
29 program, the state employee shall receive the amount payable  
30 under paragraph (1) of subdivision (b), but that amount shall be  
31 reduced by the maximum allowable benefit under the federally  
32 sponsored income protection program. For individuals who  
33 elected the federally sponsored income protection program, the  
34 state shall reimburse for the cost of the insurance premium for the  
35 period of time on active duty, not to exceed 365 calendar days.

36 (e) For purposes of this section, “state employee” means an  
37 employee as defined in Section 18526 or an officer or employee  
38 of the legislative, executive, or judicial department of the state.

39 (f) This section does not apply to any state employee entitled  
40 to additional compensation or benefits pursuant to Section



1 19775.16 or Section 19775.17 of this code, or Section 395.08 of  
2 the Military and Veterans Code.

3 (g) This section does not apply to any active duty served after  
4 the close of Operation Enduring Freedom or any successor  
5 military action.

6 SEC. 3. Section 389 of the Military and Veterans Code is  
7 amended to read:

8 389. (a) As used in this chapter, “temporary military leave of  
9 absence” means a leave of absence from public employment to  
10 engage in ordered military duty for a period which by the order is  
11 not to exceed ~~180~~ 365 calendar days including travel time for  
12 purposes of active military training, encampment, naval cruises,  
13 special exercises, or like activity as a member of the reserve corps  
14 or force of the armed forces of the United States, ~~or~~ the National  
15 Guard, or the Naval Militia.

16 (b) “Public employee” means any officer or employee of a  
17 public agency, except for those officers or employees of the state  
18 subject to the provisions of Chapter 11 (commencing with Section  
19 19770) of Part 2 of Division 5 of Title 2 of the Government Code.

20 (c) “Public agency” means the state, or any county, city and  
21 county, city, municipal corporation, school district, irrigation  
22 district, water district, or other district.

23 (d) “Armed forces” or “armed forces of the United States”  
24 means the “armed forces” as defined in Section 18540 of the  
25 Government Code.

26 (e) “Recognized military service” means service as defined in  
27 Section 18540.3 of the Government Code.

28 SEC. 4. Section 395 of the Military and Veterans Code is  
29 amended to read:

30 395. (a) Any public employee who is a member of the reserve  
31 corps of the ~~Armed Forces~~ *armed forces* of the United States ~~or of~~,  
32 the National Guard, or the Naval Militia is entitled to a temporary  
33 military leave of absence as provided by federal law while engaged  
34 in military duty ordered for purposes of active military training,  
35 inactive duty training, encampment, naval cruises, special  
36 exercises, or like activity, providing that the period of ordered duty  
37 does not exceed ~~180~~ 365 calendar days, including time involved  
38 in going to and returning from that duty.



1 (b) Notwithstanding subdivision (a), a local public agency  
2 may, but is not required to, provide paid military leave of absence  
3 for periods of inactive duty training.

4 (c) The employee has an absolute right to be restored to the  
5 former office or position and status formerly had by him or her in  
6 the same locality and in the same office, board, commission,  
7 agency, or institution of the public agency upon the termination of  
8 temporary military duty. If the office or position has been  
9 abolished or otherwise has ceased to exist during his or her  
10 absence, he or she shall be reinstated to a position of like seniority,  
11 status, and pay if a position exists, or if no position exists the  
12 employee shall have the same rights and privileges that he or she  
13 would have had if he or she had occupied the position when it  
14 ceased to exist and had not taken temporary military leave of  
15 absence. *Upon the termination of temporary military duty, an*  
16 *employee in a public safety or emergency services office or*  
17 *position has an absolute right to be restored to the former office or*  
18 *position and status, including shift assignment and duty*  
19 *assignment, formerly had by him or her in the same office, board,*  
20 *commission, agency, or institution of the public agency.*

21 (d) Any public employee who has been in the service of the  
22 public agency from which the leave is taken for a period of not less  
23 than one year immediately prior to the date upon which a  
24 temporary military leave of absence begins, shall receive the same  
25 vacation, sick leave, and holiday privileges and the same rights and  
26 privileges to promotion, continuance in office, employment,  
27 reappointment to office, or reemployment that the employee  
28 would have enjoyed had he or she not been absent therefrom;  
29 ~~excepting that.~~ *However, an uncompleted probationary period, if*  
30 *any, in the public agency, ~~must~~ shall be completed upon*  
31 *reinstatement as provided by law or rule of the agency. For the*  
32 *purposes of this section, in determining the one year of service in*  
33 *a public agency all service of the employee in recognized military*  
34 *service shall may be counted as public agency service.*

35 (e) If this section is in conflict with a memorandum of  
36 understanding reached pursuant to Chapter 12 (commencing with  
37 Section 3560) of Division 4 of Title 1 of the Government Code, the  
38 memorandum of understanding shall be controlling without  
39 further legislative action, except that if the memorandum of  
40 understanding requires the expenditure of funds, it ~~shall~~ may not



1 become effective unless approved by the Legislature in the annual  
2 Budget Act.

3 SEC. 5. Section 395.01 of the Military and Veterans Code is  
4 amended to read:

5 395.01. (a) Any public employee who is on temporary  
6 military leave of absence for military duty ordered for purposes of  
7 active military training, inactive duty training, encampment, naval  
8 cruises, special exercises, or like activity as such member,  
9 provided that the period of ordered duty does not exceed ~~180~~ 365  
10 calendar days including time involved in going to and returning  
11 from the duty, and who has been in the service of the public agency  
12 from which the leave is taken for a period of not less than one year  
13 immediately prior to the day on which the absence begins, is  
14 entitled to receive his or her salary or compensation as a public  
15 employee for the first 30 calendar days of any such absence. Pay  
16 for those purposes may not exceed 30 days in any one fiscal year.  
17 For the purposes of this section, in determining the one year of  
18 public agency service, all service of a public employee in the  
19 recognized military service shall be counted as public agency  
20 service.

21 (b) Notwithstanding subdivision (a), a local public agency  
22 may, but is not required to, pay an employee during a period of  
23 inactive duty training.

24 (c) If the provisions of this section are in conflict with the  
25 provisions of a memorandum of understanding reached pursuant  
26 to Chapter 12 (commencing with Section 3560) of Division 4, of  
27 Title 1 of the Government Code, the memorandum of  
28 understanding shall be controlling without further legislative  
29 action, except that if those provisions of a memorandum of  
30 understanding require the expenditure of funds, the provisions  
31 shall not become effective unless approved by the Legislature in  
32 the annual Budget Act.

33 SEC. 6. Section 399 of the Military and Veterans Code is  
34 amended to read:

35 399. (a) Enlisted members of the National Guard called or  
36 ordered into active state service by the Governor pursuant to the  
37 provisions of Sections 143 or 146 for a period in excess of seven  
38 ~~(7)~~ days may, by sending a copy of their orders to any contract  
39 creditor, secure an extension of the time required for the payment  
40 of any contract obligation, including, but not limited to,



1 installment contracts, rent contracts, mortgage contracts, and  
2 insurance contracts, for a period of one month for each month or  
3 fraction thereof during which the enlisted member of the National  
4 Guard is in active state service pursuant to ~~such~~ *the* call or order  
5 of the Governor. If any creditor refuses to grant the extension  
6 referred to above, the enlisted member of the National Guard may  
7 secure a court order extending the time for payment, and the term  
8 of the contract, for a period computed as specified above. In  
9 addition, an enlisted member of the National Guard may, on  
10 request, secure a stay of any administrative or judicial proceedings  
11 for a comparable period.

12 *(b) Notwithstanding subdivision (a), upon federal*  
13 *mobilization, any enlisted member of the National Guard may*  
14 *terminate or cancel without penalty any automobile lease*  
15 *agreement into which he or she has entered.*

16 SEC. 7. Section 399.5 of the Military and Veterans Code is  
17 amended to read:

18 399.5. (a) No eviction or distress ~~shall~~ *may* be made during  
19 the period ~~of military service specified for which a member of the~~  
20 *United States Military Reserve of this state is called to active duty,*  
21 *but not to exceed the period described in Section 801, in respect*  
22 *to the agreed rent for any premises for which the agreed rent does*  
23 *not exceed one thousand two hundred dollars (\$1,200) per month,*  
24 ~~which~~ *that is occupied primarily for dwelling purposes by the*  
25 *spouse, children, or other dependents of a the reservist, as defined*  
26 ~~in Section 802,~~ *except upon leave of court granted upon*  
27 *application therefor or granted in an action or proceeding affecting*  
28 *the right of possession.*

29 (b) On any application or in any action under subdivision (a),  
30 the court may, on its own motion, and shall, on application, stay  
31 the proceedings for the period specified in ~~Section 801~~ *subdivision*  
32 *(a)* or rather than granting a complete stay, the court may require  
33 the tenant to make regular partial payments during the reservist's  
34 period of military service, or the court may make any other order  
35 that it may find to be just, unless the court finds that the ability of  
36 the tenant to pay the agreed rent is not materially affected by that  
37 military service.

38 (c) Any person who knowingly takes part in any eviction or  
39 distress other than as provided in subdivision (a), or who attempts  
40 to do so, is guilty of a misdemeanor.



1 SEC. 8. Section 17053.67 is added to the Revenue and  
2 Taxation Code, to read:

3 17053.67. (a) For each taxable year beginning on or after  
4 January 1, 2002, there shall be allowed as a credit against the “net  
5 tax,” as defined in Section 17039, an amount equal to 100 percent  
6 of the benefits paid by the taxpayer during the taxable year to a  
7 qualified employee who is called to active military duty and is on  
8 active duty during that taxable year. For purposes of this  
9 subdivision, benefits paid on or after September 11, 2001, and  
10 before January 1, 2002, shall be deemed have been paid during the  
11 2002 calendar year.

12 (b) For purposes of this section:

13 (1) A “qualified employee” is an employee who, as a member  
14 of the California National Guard or a United States military  
15 reserve organization, is ordered to active duty on or after  
16 September 11, 2001, as a result of Operation Enduring Freedom  
17 or any successor military action.

18 (2) “Benefits” means the difference between the amount of his  
19 or her military pay and allowances and the amount the employee  
20 would have received as an employee, including any raises that  
21 would otherwise have been granted during the time the individual  
22 was on active duty.

23 (c) In the case where the credit allowed by this section exceeds  
24 the “net tax,” the excess may be carried over to reduce the “net  
25 tax” in the following year, and succeeding years if necessary, until  
26 the credit is exhausted.

27 SEC. 9. Section 23667 is added to the Revenue and Taxation  
28 Code, to read:

29 23667. (a) For each taxable year beginning on or after  
30 January 1, 2002, there shall be allowed as a credit against the  
31 “tax,” as defined in Section 23036, an amount equal to 100  
32 percent of the benefits paid by the taxpayer during the taxable year  
33 to a qualified employee who is called to active military duty and  
34 is on active duty during that taxable year. For purposes of this  
35 subdivision, benefits paid on or after September 11, 2001, and  
36 before January 1, 2002, shall be deemed to be paid during the 2002  
37 calendar year.

38 (b) For purposes of this section:

39 (1) A “qualified employee” is an employee who, as a member  
40 of the California National Guard or a United States Military



1 Reserve organization, is ordered to active duty on or after  
2 September 11, 2001, as a result of Operation Enduring Freedom  
3 or any successor military action.

4 (2) “Benefits” means the difference between the amount of his  
5 or her military pay and allowances and the amount the employee  
6 would have received as an employee, including any raises that  
7 would otherwise have been granted during the time the individual  
8 was on active duty.

9 (c) In the case where the credit allowed by this section exceeds  
10 the “tax,” the excess may be carried over to reduce the “tax” in  
11 the following year, and succeeding years if necessary, until the  
12 credit is exhausted.

13 SEC. 10. No reimbursement is required by this act pursuant  
14 to Section 6 of Article XIII B of the California Constitution  
15 because the only costs that may be incurred by a local agency or  
16 school district will be incurred because this act creates a new crime  
17 or infraction, eliminates a crime or infraction, or changes the  
18 penalty for a crime or infraction, within the meaning of Section  
19 17556 of the Government Code, or changes the definition of a  
20 crime within the meaning of Section 6 of Article XIII B of the  
21 California Constitution.

22 SEC. 11. This act is an urgency statute necessary for the  
23 immediate preservation of the public peace, health, or safety  
24 within the meaning of Article IV of the Constitution and shall go  
25 into immediate effect. The facts constituting the necessity are:

26 In order that economic relief may be provided as soon as  
27 possible to California members of the United States Military  
28 Reserve who were called into active duty as a result of the terrorist  
29 attacks in America, it is necessary that this act take effect  
30 immediately.

