

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1794

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee, Military and Veterans' Affairs, Base Protection, and Spaceports Committee, and Senator Hill

SUBJECT: Military Service Family Relief

DATE: April 16, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers	Krasovsky	MS	Favorable/CS
2.	Gillespie	Maclure	CM	Favorable/CS
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 1794 creates the “First Sergeant Carey Baker Military Relief Act,” which authorizes an employer that pays a supplemental wage (i.e., difference between the employee’s prior salary and military salary) for a military reservist on active duty to claim tax credits against the corporate income tax and the sales and use tax for the amount of the supplemental wage. The committee substitute provides for the tax credits to be applied retroactively to January 1, 2003, authorizes credits to be granted until December 31, 2005, and allows a credit that is granted in one year to be carried forward for up to 5 years.

This committee substitute substantially amends sections 220.02 and 220.13, Florida Statutes. The committee substitute also creates ss. 212.0961 and 220.1881, F.S.

II. Present Situation:

Florida’s Military Service Compensation Laws

Under current law, public employees who are officers or enlisted personnel in the National Guard or a reserve component of the United States Armed Forces may be granted leave of absence from their respective offices and duties to perform active military service, the first 30 days of any such leave of absence to be with full pay (s. 115.09, F.S.). Similarly, current law also authorizes the state agencies and political subdivisions to supplement the military pay of their employees who are National Guard members or reservists called to active military service for the first 30 days with full pay and, thereafter, in an amount necessary to bring the reservists’ total salary, inclusive of their base military pay, to the level earned at the time they were called to

active military duty (s. 115.14, F.S.). The employing entity may, in its discretion, continue to provide any health insurance and other existing benefits to such officials and employees.

On September 25, 2001, the Governor and Cabinet adopted a resolution directing all state agencies to fully implement ss. 115.09 and 115.14, F.S., for all employees called to active duty. In presenting the resolution to the Cabinet, the Governor stated that “the resolution 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 According to the Florida League of Cities and the Florida Association of Counties, most counties and municipalities in the state currently extend this coverage to their employees.

Current law does not authorize tax credits for private-sector employers who provide supplemental pay for military reservists on active duty.

Federal Military/Employment Protection

Federal law does not require an employer to pay an employee who is on a military leave of absence. Nevertheless, many employers voluntarily offer differential pay or a specific number of paid military leave days to employees. The Uniformed Services Employment and Reemployment Rights Act, enacted in October 1994 and significantly revised in 1996 and 1998, provides job protection and rights of reinstatement to employees who participate in the National Guard and Reserve.

Similarly, the National Committee for Employer Support of the Guard and Reserve, an agency within the Office of the Assistant Secretary of Defense for Reserve Affairs, operates programs directed toward U.S. employers, employees, and communities to ensure understanding of the role of Reserve component members. This national committee encourages development of employer policies and practices to facilitate employee participation in the Reserve components through a network of 4,500 volunteers in 54 corresponding local committees.

First Sergeant Carey Baker

Representative Carey Baker is a member of the Florida House of Representatives, elected in 2000 from District 25, consisting of parts of Lake, Seminole, and Volusia counties. Representative Baker is first sergeant of the Alpha Company of the Florida National Guard’s 2nd Battalion, 124th Infantry Regiment, United States Army. A resident of Eustis, Representative Baker is currently deployed with Alpha Company, based in Leesburg, in the Persian Gulf as part of Operation Iraqi Freedom.

¹ Governor and Cabinet, *Cabinet Meeting Transcript 5-6* (Sept. 25, 2001), available at <http://www.myflorida.com/myflorida/cabinet/agenda01/0925/trans.html> (last visited Apr. 10, 2003).

III. Effect of Proposed Changes:

First Sergeant Carey Baker Military Relief Act

The committee substitute creates the “First Sergeant Carey Baker Military Relief Act,” which provides tax credits for employers that provide supplemental pay for military reservists on active duty. The committee substitute provides the tax credits to benefit any member of the National Guard or reserve forces of the United States Military who has been called to federal active duty and who is employed in Florida as part of a business unit located in this state. The committee substitute specifies that a “business unit” is an employing unit registered with the state for unemployment compensation purposes.

Tax Credits

The committee substitute allows an employer to claim tax credits against the corporate income tax (ch. 220, F.S.) or the sales and use tax (ch. 212, F.S.) for the salary paid to a military reservist while on active duty, less the military reservist’s active duty base pay, special duty pay, and housing allowance. Each of the tax credits is limited based on the salary paid to the military reservist on the first full month of employment before activation. The committee substitute permits an employer to claim the tax credits for the corporate income tax, the sales and use tax, or for both, but limits the combined tax credits to the limit imposed in both tax credits (salary paid while on active duty, less active duty base pay, special duty pay, and housing allowance).

Each employer claiming either tax credit must substantiate its eligibility for and amount of the tax credit by providing records. A tax credit granted in one year may be carried forward for up to 5 years. Both the tax credits expire December 31, 2005, but continue to allow an employer to carry the credits forward for up to 5 years after that date.

Conforming Provisions for Corporate Income Tax

Under current law, a legislative intent provision designates the order in which credits against the corporate income tax or the franchise tax should be applied (s. 220.02(8), F.S.). The committee substitute adds to the end of this list of tax credits the tax credit against the corporate income tax for employers that provide supplemental pay for military reservists while on active duty. The committee substitute has the effect of providing legislative intent that the corporate income tax credit created by the committee substitute should be applied after the previously authorized credits included on the list.

For the purpose of calculating a taxpayer’s liability for the corporate income tax, current law provides a definition of “adjusted federal income,” which includes specified adjustments from the taxpayer’s taxable income (s. 220.13, F.S.). These adjustments include a list of additions, which increase a taxpayer’s adjusted federal income by adding specified amounts to the taxpayer’s taxable income (s. 220.13(1)(a), F.S.). The committee substitute adds to this list of additions any tax credit against the corporate income tax for employers that provide supplemental pay for military reservists while on active duty.

Emergency Rulemaking

The committee substitute authorizes the Department of Revenue to adopt emergency rules to implement the committee substitute, notwithstanding any contrary provisions in the Administrative Procedure Act (ch. 120, F.S.). The committee substitute specifies that these emergency rules shall remain in effect for 6 months after the rules are adopted.

Appropriation

The committee substitute provides an appropriation of \$200,000 from the General Revenue Fund to the Department of Revenue for the purpose of administering the committee substitute during fiscal year 2003-2004.

Effective Date with Retroactive Application

The committee substitute provides that it takes effect upon becoming a law, but specifies that the committee substitute shall operate retroactively to January 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the State Constitution, prohibits the Legislature from enacting, amending, or repealing any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority existed on February 1, 1989, except upon the approval of each house of the Legislature by a two-thirds of the membership. Section 18(d), Article VII of the State Constitution, exempts those “laws having insignificant fiscal impact” from this requirement. According to current legislative practice, a fiscal impact is deemed “insignificant” if it does not exceed the average statewide population for the applicable fiscal year multiplied by \$0.10.² According to the Florida Demographic Estimating Conference, the estimated average state population for fiscal year 2003-2004 is 17.2 million people.³ Consequently, an estimated fiscal impact to counties and municipalities is considered to be insignificant if it does not exceed \$1.72 million.

Based on an analysis of SB 1794 by the Revenue Impact Conference, the committee substitute is estimated to reduce revenues raised by local governments by approximately \$5.7 million during fiscal year 2003-2004. Consequently, the committee substitute would likely require a two-thirds vote of the membership of each house of the Legislature to be enacted in accordance with s. 18(b), Art. VII of the State Constitution.

² Legislative Committee on Intergovernmental Relations, *2002 Intergovernmental Impact Report 4* (Feb. 2003), available at <http://fcn.state.fl.us/lcir/reports/mndate02.pdf> (last visited Apr. 10, 2003).

³ Florida Demographic Estimating Conference, *Conference Held February 14, 2003* (Feb. 2003), available at http://www.state.fl.us/edr/Conferences/Population/FDEC0302_Longrun.pdf (last visited Apr. 10, 2003).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Commerce Clause

The Commerce Clause of the United States Constitution provides that:

The Congress shall have Power ... To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.⁴

Though phrased as a grant of regulatory power to Congress, the Commerce Clause has long been understood to have a “negative” aspect that denies states the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce.⁵ This negative aspect is commonly cited as the “dormant” Commerce Clause.

Under the dormant Commerce Clause, “[s]tate laws discriminating against interstate commerce on their face are ‘virtually *per se* invalid.’”⁶ A law that discriminates against nonresidents on its face may overcome the virtually *per se* invalid test if the state demonstrates that the statute advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory means.⁷

In *Camps Newfound/Owatonna, Inc., v. Town of Harrison, Maine*, the United States Supreme Court construed a Maine law that provided a property tax exemption to benevolent and charitable institutions conducted or operated principally for the benefit of Maine residents.⁸ *Camps Newfound*, a summer camp that served mostly nonresidents, sued the Town of Harrison, alleging that it was entitled to the property tax exemption.⁹ The Court noted that it had not previously determined whether the dormant Commerce Clause of the federal constitution permits disparate tax treatment based on the residence of the consumers served.¹⁰ The typical issue presented in cases construing the dormant Commerce Clause is whether a law unconstitutionally discriminates against an out-of-state industry for the benefit of a state’s domestic industry, rather than discrimination against another state’s consumers.¹¹ In examining this new issue, the Court determined

⁴ Clause 3, s. 8, Art. I of the United States Constitution.

⁵ *Oregon Waste Systems, Inc. v. Department of Environmental Quality*, 511 U.S. 93, 98 (1994).

⁶ *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine*, 520 U.S. 564, 575 (1997); see also *Department of Revenue v. Kuhnlein*, 646 So. 2d 717, 722 (Fla. 1994).

⁷ *Camps Newfound*, 520 U.S. at 581; *Kuhnlein*, 646 So. 2d at 724-25.

⁸ *Camps Newfound*, 520 U.S. at 567-71.

⁹ *Id.*

¹⁰ See *id.* at 572.

¹¹ See, e.g., *O’Connell v. Kontojohn*, 179 So. 802 (Fla. 1938).

that “[prohibited] [e]conomic protectionism is not limited to attempts to convey advantages on local merchants; it may include attempts to give local consumers an advantage over consumers in other States.”¹²

The Court concluded that the law limiting property tax exemptions to benevolent and charitable institutions conducted or operated principally for the benefit of Maine residents violated the dormant Commerce Clause of the United States Constitution. The Court also noted that the goal of subsidizing the attendance of Maine children at summer camp could have been achieved in a nondiscriminatory manner. Maine could have offered direct financial support to parents of resident children, and it might have been permissible to subsidize Maine camps directly to the extent that they serve residents.¹³ The Court rejected the town’s argument that Maine’s property tax exemption statute should be viewed as an expenditure of government money designed to lessen its social service burden and to foster the societal benefits provided by charitable organizations.¹⁴ The Court also rejected the town’s argument that the tax exemption fell within the market participant exception to the dormant Commerce Clause as a purchase of certain charitable services.¹⁵

The committee substitute may potentially avoid challenge under the Commerce Clause because:

- The committee substitute authorizes the tax credits for any taxpayer (employer), regardless of whether the employer is domiciled in Florida or in another state; and
- The committee substitute provides for a taxpayer to receive tax credits for the supplemental wages paid to any military reservist on active duty who is employed in Florida as part of a business unit located in this state, regardless of whether the reservist is a Florida resident or a resident of another state.

Although the committee substitute requires the military reservist to be employed in Florida as part of a business unit located in this state, the committee substitute is distinguishable from the circumstances described in *Camps Newfound* because the tax credits are not provided solely for the benefit of Florida residents. However, because the committee substitute limits the tax credits to benefit military reservists who are employed in Florida, the committee substitute may continue to be subject to challenge under the dormant Commerce Clause of the United States Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The committee substitute provides tax credits against the corporate income tax and the sales and use tax for employers that provide supplemental pay for military reservists on active duty. On March 28, 2003, the Revenue Impact Conference reviewed SB 1794. The

¹² *Camps Newfound*, 520 U.S. at 577-78.

¹³ *Id.* at 582 n.16.

¹⁴ *Id.* at 588-89.

¹⁵ *Id.* at 592-94.

original bill limited the tax credits to an amount “not greater than the salary paid to [the military reservist] prior to being called to active duty minus the amount of the military reservist’s active duty base pay and benefit package.” Senate Bill 1794 did not delineate those items included in a benefit package. Accordingly, the Revenue Impact Conference based its estimate on the presumption these benefits included combat pay, housing allowance, and food allowance. Based on these assumptions, the conference estimated the bill would cause a negative \$42.8 million impact on state and local revenues (*See* Table 1, below.)

Fiscal Year 2003-2004							
General Revenue		State Trust Funds		Local Government		Total	
<u>1st Year</u>	<u>Recurring</u>	<u>1st Year</u>	<u>Recurring</u>	<u>1st Year</u>	<u>Recurring</u>	<u>1st Year</u>	<u>Recurring</u>
(\$37.8M)	-0-	(\$0.1M)	-0-	(\$4.9M)	-0-	(\$42.8M)	-0-

In addition, the Revenue Impact Conference estimated the bill would cause a negative \$49.8 million impact on state and local revenues if the food allowance was excluded. (*See* Table 2, below.) On March 31, 2003, the Committee on Military and Veterans’ Affairs, Base Protection, and Spaceports adopted amendments to the bill which comprised CS/SB 1794. The committee substitute included combat pay (cited in the committee substitute as “special duty pay”) and the housing allowance, but excludes the food allowance. The committee substitute would consequently cause the greater revenue impact on state and local revenues of negative \$49.8 million.

Fiscal Year 2003-2004							
General Revenue		State Trust Funds		Local Government		Total	
<u>1st Year</u>	<u>Recurring</u>	<u>1st Year</u>	<u>Recurring</u>	<u>1st Year</u>	<u>Recurring</u>	<u>1st Year</u>	<u>Recurring</u>
(\$44.1M)	-0-	(\$0.1M)	-0-	(\$5.7M)	-0-	(\$49.8M)	-0-

Although the published estimates by the Revenue Impact Conference do not depict a recurring impact of SB 1794, they do reflect these estimates were prepared based on an impact of 12 months. Because the committee substitute authorizes tax credits to be granted until December 31, 2005, and allows the tax credits to be carried forward for up to 5 years after that date, it is likely the committee substitute would have a recurring revenue impact that is not reflected in the conference’s 12-month estimate.

On April 14, 2003, the Committee on Commerce, Economic Opportunities, and Consumer Services further amended CS/SB 1794. These amendments, which comprise this committee substitute, changed the eligibility of the tax credits from benefiting any military reservist called to active duty who is a *Florida resident* to any military reservist called to active duty who is *employed in Florida as part of a business unit located in this state*. Although these two eligibility criteria are practically similar and are anticipated to

¹⁶ Revenue Impact Conference, *Impact Conference Results* (Apr. 4, 2003), available at http://www.state.fl.us/edr/Conferences/Revenue_Impact/imporsort2003.pdf (last visited Apr. 10, 2003); Revenue Impact Conference, *Backup Materials* (Mar. 28, 2003), available at http://www.state.fl.us/edr/Conferences/Revenue_Impact/Impact_pdf/2003/impact0328.pdf (last visited Apr. 10, 2003).

¹⁷ *Id.*

encompass roughly the same population without any significant difference, the precise revenue impact of this committee substitute will not be known until the Revenue Impact Conference subsequently reviews the committee substitute.

B. Private Sector Impact:

An employer that elects to participate in the program would be granted tax credits against the corporate income tax and the sales and use tax for supplemental wages paid to military reservists on active duty. A military reservist employed by an employer participating in the program would benefit by averting a reduction in his or her family income caused by earning an active duty military salary at a rate that is less than the employee's prior salary.

C. Government Sector Impact:

The Department of Revenue reviewed SB 1794 and estimated the bill did not cause any fiscal impact on the department. However, because the bill operates retroactively to January 1, 2003, the department estimated it might experience a slight workload increase as a result of taxpayers filing amended returns for the sales and use tax in order to request refunds of previously paid taxes back to that date. The amendments adopted by the Committee on Military and Veterans' Affairs, Base Protection, and Spaceports, which comprise this committee substitute, do not appear to increase the department's operational costs as compared to the original bill.

The committee substitute provides an appropriation of \$200,000 from the General Revenue Fund to the Department of Revenue for the purpose of administering the committee substitute during fiscal year 2003-2004.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Revenue, the committee substitute may be difficult to administer because it operates retroactively to January 1, 2003. Accordingly, the department cites that many taxpayers would be required to file amended returns for the sales and use tax in order to request refunds of previously paid taxes back to that date. In addition, the department cites that additional returns, including returns for the corporate income tax, would likely be filed before the committee substitute becomes a law and takes effect.

VIII. Amendments:

None.