

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/SB 1794

SPONSOR: Military and Veterans' Affairs, Base Protection, and Spaceports and Senator Hill

SUBJECT: Military service family relief

DATE: April 1, 2003 REVISED: _____

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

I. Summary:

This CS, referred to as the “First Sergeant Cary Baker Military Relief Act”, authorizes Florida employers to claim a credit against corporate income and sales tax liabilities for salaries paid to military reservists while on active duty.

The CS substantially amends sections 220.02 and 220.13 of the Florida Statutes. The CS creates sections 212.0961 and 220.1881 of the Florida Statutes.

II. Present Situation:

Florida’s Military Service Compensation Laws - Chapter 115, F.S., establishes requirements governing leaves of absence for military service. Section 115.09, F.S., provides that public employees who are officers or enlisted personnel in the National Guard or a reserve component of the Armed Forces of the United States 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.

Similarly, s. 115.14, F.S., provides the state and its political subdivisions may 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. The employing entity may, at its discretion, continue to provide any health insurance and other existing benefits to such officials and employees.

In September of 2001, the Florida Cabinet adopted a resolution which directed all state agencies to fully implement the provisions of ss. 115.09 and 115.14, F.S., for all employees called to active duty. Representatives from the Florida League of Cities and Florida Association of Counties report that most of their members currently extend this same coverage to their employees.

State law does not currently 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 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 (USERRA), enacted October of 1994 and significantly updated 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 (ESGR), 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. ESGR encourages development of employer policies and practices to facilitate employee participation in the Reserve components through a network of 4,500 volunteers in 54 local ESGR committees.

III. **Effect of Proposed Changes:**

This CS implements a program to provide tax credits for Florida employers who provide supplemental pay for military reservists on active duty.

Section 1 provides that this act may be cited as the “First Sergeant Carey Baker Military Relief Act”.¹

Section 2 creates s. 220.1881, F.S., which provides that a corporation may claim a credit against any corporate income tax liability equal to the amount of salary paid to an active duty military reservist by the corporation. This tax credit is limited to 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, special duty pay, and housing allowance. The corporation claiming this credit must substantiate their eligibility for this credit, and the amount of credit claimed. Credits may be carried forward for a period of 5 years.

Section 3 creates s. 212.0961, F.S., which provides sales tax credits for the amount of salary paid to military reservists while on active duty. This sales tax credit is limited to 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, special duty pay, and housing allowance. The taxpaying entity is required to provide documentation of the income and military pay of such person. Credits may be carried forward for a period of 5 years.

¹ Florida Representative Carey Baker is currently serving with the United States Army in the Persian Gulf.

The CS provides that a taxpaying entity may claim credit for salary paid to each military reservist under either the corporate income tax provision or sales tax provision, or both, provided that the total credit claimed for each reservist does not exceed the actual salary paid. The tax credit provisions contained in the CS expire December 31, 2005.

Section 4 amends s. 220.02, F.S., revising the legislative intent relating to the income tax code to include credits against either the corporate income tax or the franchise tax and the applicability of such credit for salaries paid to military reservists while on active duty.

Section 5 amends s. 220.13, F.S., to add corporate income tax credits authorized pursuant to this CS as allowable taxable income for purposes of calculating the “adjusted federal income”.

Section 6 provides for an appropriation of \$200,000 from the General Revenue Fund to the Department of Revenue for purposes of administering the provisions contained in this CS.

Section 7 authorizes the Department of Revenue to adopt emergency rules to implement the requirements of the CS. Emergency rules are to remain in effect for a period of 6 months following the date of adoption.

Section 8 provides that the CS shall take effect upon becoming a law and shall operate retroactively to January 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The CS authorizes corporate income tax credits and sales tax credits for employers who provide certain salary payments to military reservists while on active duty.

B. Private Sector Impact:

Employers who elect to participate in this program will receive a credit toward their corporate income tax liability or sales tax liability in an amount equal to the salary paid to military reservists while on active duty.

C. Government Sector Impact:

The amount of the reduction in tax liability is contingent on the number of private-sector employers who elect to participate in this program. The fiscal impact of the corporate income tax credit and sales tax credit provisions of the CS on state revenue is indeterminate.

The CS provides for an appropriation of \$200,000 from the General Revenue Fund to the Department of Revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Revenue, the CS's retroactivity could be problematic. Sales tax returns covering periods after January 1, 2003, have already been filed. As a result, taxpayers may have to file amended returns. Similarly, some corporate income tax returns covering periods after January 1, 2003, may be filed before this CS becomes law.

VIII. Amendments:

None.