

Date of Hearing: June 26, 2012

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS  
Paul J. Cook, Chair  
SB 807 (Correa) – As Amended: June 21, 2012

SENATE VOTE: 38-0

SUBJECT: State Militia

SUMMARY: This bill would specify that the state active duty force consists of service members in active state service when ordered by the Governor. This bill would specify and revise conditions for state active duty for service members, as provided, and would authorize the Adjutant General to promulgate regulations in conformity with these provisions. Specifically, this bill:

1. States that the state active duty force consists of service members in active state military service when ordered by the Governor in accordance with the Military and Veterans Code.
2. Requires an order to state active duty under for assignments of less than six years to be based on using the most qualified service member for the assignment.
3. Mandates that a service member's orders shall expire annually unless renewed or the service member is separated for cause.
4. Provides that a service member ordered to state active duty in accordance with this section who remains on state active duty for a cumulative total of six years shall be eligible for the career state active duty system and may remain on state active duty until the service member reaches 60 years of age or is separated for cause. At 60 years of age, a service member's orders shall be temporary and may be renewed annually.
5. Mandates that when a service member reaches 64 years of age, or when federal recognition of his or her grade or rank is withdrawn, whichever occurs later, the service member shall be retired from state active duty.
6. Requires that a new service member ordered to state active duty on or after January 1, 2013, with the Military Department pursuant to this section shall be a current member of the California National Guard, retired or otherwise honorably separated from federal active military or California National Guard service with current membership in the State Military Reserve, or be a current member of the State Military Reserve with a minimum of two years of state service. Service members on state active duty who retire federally from the California National Guard shall be automatically assessed into the State Military Reserve.
7. Directs that a commissioned officer on state active duty assigned to a general officer position who, previous to that duty, held a state active duty position at a lower grade may revert to the grade last held upon vacation of the general officer position, if a position is available.

8. Notwithstanding any other law, a service member who is on state active duty may be relieved from state active duty if the Adjutant General, acting in good faith and on behalf of the Governor, abolishes a position and assigns duties elsewhere.
9. Directs the Adjutant General, under the authority of the Governor as Commander in Chief, to promulgate regulations in conformity with this section.
10. Requires the Governor to direct the Adjutant General to make rules and regulations in conformity with this code which shall conform as nearly as practicable to those governing the United States Army, United States Air Force, and United States Navy.
11. Renames some of the offices within the Military Department. The office of the Adjutant General consists of one officer of the rank of lieutenant general who is the Adjutant General, one officer of the rank of brigadier general who is the Deputy Adjutant General, one officer who may be of the rank of brigadier general who is the Assistant Adjutant General, Army Division, one officer who may be of the rank of brigadier general who is the Assistant Adjutant General, Air Division, one officer who may be of the rank of brigadier general who is the Chief of Staff and Director of the Joint Staff.
12. Requires the Governor to appoint the Adjutant General on State Active Duty, in the Grade of Lieutenant General.
13. Provides that the Adjutant General will be paid and receive benefits in accord with Military and Veterans Code Section 320.
14. States that the Adjutant General may designate an officer to perform his/her duties in the event the Adjutant General is absent or unable to perform the same.
15. Repeals Military and Veterans Code Section 167.

#### EXISTING LAW

1. Contains references to permanent active duty positions within the office of the Adjutant General.
2. Specifies that those on permanent active duty may remain in that status until age 60, or until federal recognition of grade or rank as a member of the CNG is withdrawn.
3. Provides that the Governor may make rules and regulations in conformity with this code which shall conform as nearly as practicable to those governing the United States Army, United States Air Force and United States Navy. Such rules and regulations shall have the same force and effect as the provisions of this code.

FISCAL EFFECT: Unknown at this time. This bill was in a different form when analyzed by Senate Appropriations.

COMMENTS: In June of 2006, the Bureau of State Audits released a report entitled, "Military Department: It Has Had Problems With Inadequate Personnel Management and Improper

Organizational Structure and Has Not Met Recruiting and Facility Maintenance Requirements." Among other findings, the report concluded with regard to the Department that:

1. It has not effectively reviewed its state active duty positions, and as a result may be paying more for some positions than if they were converted to state civil service or federal position classifications.
2. It has convened a panel to review the propriety of its 210 state active duty positions and estimates it will take three to five years to implement the panel's recommendations.
3. It did not follow its regulations when it temporarily appointed many state active duty members to positions that do not appear to be temporary, failed to advertise some vacant positions as required, and inappropriately granted an indefinite appointment to one state active duty member after he reached the mandatory retirement age.

In the approximately eighteen months past there have been a substantial number of allegations of misconduct at the Department, allegations raised in multiple venues, including via the press, to legislators and staff, through formal complaints, and through whistleblower allegations, among others. Some of these allegations concerned the use of the State Active Duty (SAD) program.

The bill is intended to codify ambiguities concerning the SAD program and alter some aspects of it which have been controversial, including some aspects noted in the report by the Bureau of State Audits.

**STATUS OF SAD MEMBERS AS MILITARY-** This bill clarifies that there is a status known as SAD. To the extent that there is any ambiguity as to whether SAD members are military (and not, for example, civil service employees), this bill resolves that ambiguity in favor of military status.

**SAD MEMBERS MUST BE COMPETITIVELY SELECTED-** Servicemembers ordered to SAD will be selected using a military competitive selection process. This responds to allegations that servicemembers have been placed on SAD status without being qualified or in otherwise improper fashion.

**SAD "TENURE" SYSTEM REFORM- AS PROPOSED TO BE AMENDED-** Under current law, servicemembers on "permanent" active duty with the office of the adjutant general generally may remain on active duty until age 60. One concern with the present system is that it does not discuss whether a servicemember may be removed for cause or during a reduction in force. The author will offer an amendment in committee that contains a specific allowance for career state active duty (the equivalent under the bill of the present tenure/permanent SAD system) servicemembers to be removed for cause. The bill also contains provisions (discussed more fully below) for those on career SAD to be removed in the event of a reduction in force.

**ELIGIBILITY FOR SAD-** To address concerns that SAD members have not always been held to minimum military experience qualifications, the bill proposes certain eligibility requirements. In order to be eligible for SAD, a servicemember must be a current member of the California National Guard, retired or otherwise honorably separated from federal active military or California National Guard service with current membership in the State Military Reserve, or be a current member of the State Military Reserve with a minimum of two years of service.

Current Guard, retired, or honorably service separated personnel will have completed required basic military training at some point in their military careers, so their level of military training is of minimal concern. Primary concerns have arisen in terms of using the State Military Reserve as a conduit to bring people onto SAD who have had no military training. According to the author the bill will prevent such practices because State Military Reserve (SMR) personnel receive a minimum amount of military training:

The Basic Orientation Course is 4 days and is required for everyone within two years. It takes the place of Basic Training, and has some of the same course content, without land navigation and weapons training.

Then there are scaled down versions of BNCOC (Basic NCO [Non-Commissioned Officer] Course), ANCOC (Advanced NCO [Non-Commissioned Officer] Course), and SGM [Sergeant Major] Course. All are intensive over one or more weekends at Camp Parks....

New Officers have to graduate from OCS [Officer Candidate School], which is a 12 month course that requires at least 1000 hours of work. ...

While there are minimum training standards for SMR personnel, these do not seem equivalent to the training completed in in the traditional service components and the Guard. For example, Regular Army enlisted personnel must attend a 9 week basic training course and then a follow on Advanced Individual Training of varying length. The total length for an army infantry soldier is approximately 14 weeks. The bill does provide for a two year minimum SMR time-in-service requirement, so the SMR could not easily be used as a quick end-around minimum military experience requirements.

**REDUCTIONS IN FORCE/ABOLISHMENT OF POSITION-** Without regard to whether a SAD member has attained permanent/career status, the bill provides for reductions in force of such members. "Notwithstanding any other law, a service member who is on state active duty may be relieved from state active duty if the Adjutant General, acting in good faith and on behalf of the Governor, abolishes a position." Also, in the event of a reduction in force or abolishment of a position, the department will attempt to place the servicemember in a job for which the servicemember is qualified. This latter provision is similar to some protections offered to civil service employees.

**REGULATIONS FOR SAD-** The statute mandates that, pursuant to an order from the Governor, SAD regulations must conform as nearly as possible to those applicable to active duty military. As stated by the author, "This section applies not only to the regulations that govern of the SAD force, but also those regulations that apply to rest of the Department's activities and operations. This is necessary to ensure that the Department uses Department of Defense rules and regulations, which represent best business practices for managing a military force, whenever possible." The clear directive in the bill to conform SAD regulations as closely as possible to federal regulation removes permissive language in the existing statutes.

**ADJUTANT GENERAL AS REGULAR SAD MEMBER-** The bill amends section 164.1 to clarify that the Adjutant General serves on SAD and shall receive the same pay and benefits

pursuant to Section 320, as all other SAD members. This resolves any ambiguities concerning the pay and benefits to which the Adjutant General is entitled.

REGISTERED SUPPORT / OPPOSITION:

Support

California Military Department

Opposition

None on file.

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