

SENATE STATE GOVERNMENT, WAGERING, TOURISM &
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO
SENATE, No. 1375

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 7, 2015

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably and with committee amendments Senate Bill No. 1375.

This bill makes various changes to the laws concerning termination, compensation, and leaves of absence of certain active and retired members of the United States military, the reserves, and the National Guard who are public employees.

N.J.S.A.38:23-1 requires a public employer to provide a paid leave of absence for federal active duty to public employees who are members of the reserves of the United States military, including the National Guard of other states. The employer must provide paid leave for 30 work days per year. Leave after 30 days is provided without pay. Also, N.J.S.A.38A:4-4 requires a public employer to provide a paid leave of absence for State or federal active duty to public employees who are members of the New Jersey National Guard. The employer must provide paid leave for 90 work days per year. Leave after 90 days is provided without pay. This bill provides that the public employee would be entitled to pay for the days over 30 or the days over 90, as appropriate, if pay is provided in an applicable collective negotiations agreement in effect at the time of the leave of absence. If an applicable collective negotiations agreement is not in effect or does not address this matter or a person is not covered by a collective negotiations agreement, the officer or employee will be entitled to pay only if the public employer decides to provide it.

Also for the purposes of N.J.S.A.38A:4-4, the bill permits a public employee to use, at the employee's sole discretion, accrued paid leave for State and federal active duty as a member of the New Jersey National Guard and the employer cannot require an employee to use that time for leave.

For the purposes of N.J.S.A.38:23-1, this bill entitles a public employee, during the leave of absence, to payment by the public employer, on behalf of the employee, of any contribution required of the officer or employee to a retirement system or program and to a

health care benefits plan or program, in addition to any contribution or payment required of the public employer.

For the purposes of N.J.S.A.38:23-1, this bill entitles a public employee to: (1) leave for one travel day to the active duty location if the officer or employee resides 50 or more miles from the location of duty and checks in to lodgings at or near the duty location for the purpose of resting prior to undertaking the military service obligation; and (2) leave, prior to undertaking the military service obligation, of five days if the length of service will be 30 to 180 days, and of ten days if the length of service will be 181 days or more.

Also for the purposes of N.J.S.A.38:23-1, the bill defines “Federal active duty” to mean:

the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority, including active duty, active duty for training, initial active duty for training, and inactive duty training;

service on a full time basis in the National Guard;

time for medical appointments and consultations, surgery, counseling for post traumatic stress disorder, recuperation, rehabilitation, and recovery from an injury sustained or aggravated as a result of military service; and

time for an examination to determine fitness for performing funeral honors duty as authorized by federal law.

N.J.S.A.38:23-4.1 defines “emergency” for the purposes of N.J.S.A.38:23-4, which provides that a public employee who enters the active military service of the United States or of this State in time of war or emergency must be granted a leave of absence for that service and for three months after receiving a discharge from service. If the public employee is incapacitated by injury or sickness at the time of discharge, the leave must be extended until three months after the employee’s discharge, or until the expiration of two years from the date of discharge. N.J.S.A.38:23-4 also provides that during the leave, the employee cannot be terminated or laid off if entry into the military occurred in time of war or emergency. During the period of leave, the employee is entitled to all the rights, privileges and benefits of the public employment. The leave may be granted with or without pay. The employee is entitled to resume the employment if he applies before the expiration of the leave. The bill defines “emergency” for the purposes of this statute to include any period of time from September 11, 2001 until the termination of the Global War on Terrorism as declared by the President of the United States.

Finally, the bill requires public employers to prepare and maintain written policies and procedures to be followed with regard to leaves of absence by officers and employees who are members of the Armed Forces of the United States and the reserve components thereof, including the National Guard. The policies must specify documentation requirements for leave, and the receipt of required

documentation must be acknowledged in writing by the public employer. The policies and procedures must be applied in a uniform and fair manner. Notice of any changes to the policies and procedures must be given promptly to all affected officers and employees and training must be provided to ensure proper implementation and administration. Upon receipt of a request for a leave or absence by an officer or employee, the public employer must inform an officer or employee in writing, within 90 days after the receipt, of any issues or matters regarding the leave request. If the employer does not notify the officer or employee within such time period, the employer will be permanently barred from raising any such issue or matter, or charging the officer or employee with an administrative violation. A public employer must provide a full accounting to an officer or employee of all matters regarding pay within a reasonable period of time and in a reasonable manner. All records for each officer or employee must be maintained by the public employer for a period of not less than 10 years. If in any action brought in a court of law by an officer or employee, a public employer is found to be in violation of any statutes concerning the employment, compensation, or leave of absence of a public officer or employee who served as a member of the United States Armed Forces or the National Guard, the court must award to the officer or employee reasonable attorney's fees and other fees and costs.

COMMITTEE AMENDMENTS

The committee amended the bill to: 1) delete the provision that would have provided that a public employee who served in the United States military would continue to receive compensation and benefits during a period of suspension, provided that the person has not been charged with a criminal offense; and 2) delete the provision that would have removed a limitation on the amount of money a public employee engaged in State or federal military service would receive from his or her public employer and from his or her military salary for such service.