SUBJECT: Re-employment of members of the armed forces upon their return from duty

COMMITTEE: State, Federal and International Relations — favorable, without amendment

VOTE: 5 ayes — Hunter, Berman, Chavez, Najera, Raymond

0 nays

4 absent — P. Moreno, Elkins, Madden, Miller

SENATE VOTE: On final passage, March 22 — voice vote

WITNESSES: For — None

Against — None

On — Major General Daniel James III, Adjutant General's Department

BACKGROUND: Government Code, sec. 431.006 prohibits an employer from firing a permanent employee who is a member of the state military forces because the employee is ordered to authorized training or duty. An employee is entitled to return to the same position and may not lose time, efficiency rating, vacation time, or any benefit of employment during or because of the absence.

An employee who is illegally fired is entitled to damages in an amount up to six months of the employee's former salary and reasonable attorney fees. An employer may defend itself by claiming that the employer's circumstances have changed to the extent that re-employing the individual would be impossible or unreasonable.

The federal Uniform Services Employment and Reemployment Act (38 U.S.C. 4312) entitles an employee who must be absent from employment due to service in the uniformed services to re-employment rights and benefits at the same position upon return from service. An employer is not required to re-employ an individual if the employer's circumstances have changed so much as to make re-employing the individual impossible or unreasonable or

would impose an undue hardship on the employer. In any proceeding to determine whether a re-employment would be impossible, unreasonable, or impose an undue burden on an employer, the employer bears the burden of proof.

DIGEST:

SB 1140 would amend the Government Code to place the burden of proof on an employer to demonstrate that it would be impossible or unreasonable to re-employ an employee who was ordered to authorized military training or duty. An employer also would be prohibited from denying re-employment to this individual by demanding documentation of the obligation to duty or training that is not readily available.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001. The bill's provisions would apply only to litigation brought on or after that date.

SUPPORTERS SAY:

SB 1140 would help ensure that members of the armed forces who are ordered to training or duty are re-employed upon their return by placing the burden of proof on an employer to demonstrate that it would be impossible or unreasonable to rehire that employee. Despite current state and federal laws prohibiting an employer from refusing to re-hire these individuals, hundreds of Texas guardsmen in the Texas Army National Guard who were deployed to Bosnia were told by employers that they would no longer have a job upon their return. This bill would strengthen current law to force these employers to prove that re-hiring an individual would be impossible or unreasonable. This change would bring Texas in line with federal law and provide members of the military with a state remedy for these violations.

OPPONENTS SAY:

SB 1140 is unnecessary. State and federal law already provide adequate re-employment protection to members of the armed forces who are called to duty or training.