

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 432.

SHORT TITLE: N.C.N.G. Mobilization Lessons/AB.

SPONSOR(S): Representatives Baddour, Justus, and Sexton (Cosponsors).

FISCAL IMPACT

Yes (X) No () No Estimate Available ()

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES

Scenario 1*

No Additional Revenues

Scenario 2**

	\$493,071	\$845,265	\$845,265	\$845,265	\$845,265
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EXPENDITURES

Scenario 1*

	\$35,495	\$60,848	\$60,848	\$60,848	\$60,848
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Scenario 2**

	\$164,357	\$281,755	\$281,755	\$281,755	\$281,755
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POSITIONS: None.

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: North Carolina National Guard.

EFFECTIVE DATE: December 1, 1997.

- * **Scenario 1:** These additional expenditures are based on 1995 Actual Costs paid to National Guardsmen of the rank of E-6 and below. Reviewing each year from 1992 to 1995, 1995 represents a typical year regarding the total cost of State Duty Pay for Guardsmen.
- ** **Scenario 2:** These additional expenditures are based on 1996 Actual Costs paid to National Guardsmen of the rank of E-6 and below. 1996 represents a **worst case** scenario regarding State Duty Pay. The reason for the large increase in State Duty Pay from 1995 to 1996 is due to Hurricanes Fran and Bertha in which the North Carolina National Guard was called into service on both accounts. It should be further noted that federal matching funds for federal emergencies/disasters declarations pay for 75% of the total costs for State Duty Pay.

BILL SUMMARY:

NAT. GUARD MOBILIZATION LESSONS. TO IMPLEMENT THE LESSONS LEARNED FROM HURRICANE FRAN WITH RESPECT TO THE MOBILIZATION OF THE NORTH CAROLINA NATIONAL GUARD. Adds new GS 127A-202.1 to provide that a member of NC National Guard (Guard) who performs, applies to perform, or has obligation to perform service in Guard may not be denied initial employment, reemployment, retention in employment, promotion, or benefit of employment by employer based on that membership, obligation, etc. Provides that employer is considered to have denied Guard member initial employment, reemployment, etc. in violation of section if member's membership, obligation, etc. is "motivation factor" in employer's action, unless employer can prove that action would have taken place in absence of such membership, obligation, etc. Provides that employer may not discriminate in employment against Guard member because Guard member has taken action to enforce these provisions. Requires Comm'r of Labor to enforce provisions.

Amends GS 127A-105 (pay for state service) and 127A-107 (pay for other service) to increase minimum pay for Guard members from 12 to 18 times minimum hourly wage per day. Amends GS 127A-106 to include payment for leave earned as result of more than 30 days of continuous service within pay of militia ordered by Governor into state service.

Adds new GS 127A-111 to provide that member of Guard called into service by Governor has right to take leave without pay from civilian employment, and may not be forced to use or exhaust vacation or other accrued leaves from civilian employment for period of active service. Adds new GS 127A-41.1 to provide that court actions or proceedings involving Guard member who is called into service by Governor (1) may be stayed by court on its own motion during the period of service or within 60 days after conclusion of active service; and (2) shall be stayed during such period on application by member or person acting on member's behalf, unless court determines that plaintiff's ability to prosecute action or defendant's ability to conduct defense is not materially affected by reason of military service. Effective Dec. 1, 1997.¹

ASSUMPTIONS AND METHODOLOGY:

This bill changes the rations and pay on State service when the North Carolina National Guard is called into State service by the Governor. Presently, the law states that when the North Carolina National Guard is called into service by the Governor no such officer or enlisted member shall receive less than 12 times the minimum hourly wage per day as provided for in G.S. 95-25.3. G.S. 95-25.3 dictates the State minimum wage as \$4.25 per hour. This bill proposes changing the wage factor from **12 times the State minimum wage to 18 times the State minimum wage.**

In calculating the associated costs in changing the wage factor from 12 times the State minimum wage to 18 times the State minimum wage, two scenarios were examined. These scenarios are provided as background for estimating the potential fiscal impact of this bill. They are outlined, in detail, on the following page.

STATE DUTY PAY SCENARIOS FOR NATIONAL GUARD BACKGROUND INFORMATION USED FOR DETERMINING COSTS

¹ *Daily Bulletin*, Institute of Government, UNC-Chapel Hill: Vol. 1997, No. 23A.

As previously noted, the State minimum wage is \$4.25 per hour. Under the proposed legislation, Guardsmen, when called into duty by the State, will have an increase in wages per day from \$51.00 per day (\$4.25 X 12) to \$72.50 per day (\$4.25 X 18). Increasing the wage factor from 12 to 18 will cause an increase of 50% or \$25.50 for Guardsmen with the ranks of E-6 or below. According to the National Guard, the wage factor primarily effects Guardsmen with the rank of E-6 or below. Guardsmen with a rank above E-6 (officers) are not affected by the wage factor. The calculation of the proposed and present wage factor can be seen below.

1996 Minimum Wage (\$4.25) X 12 = \$51.00 Per Day
1997 Minimum Wage (\$4.25) X 18 = \$76.50 Per Day (Proposed Legislation)

50.00 % Increase from 1996 Minimum Wage Factor to 1997 Proposed Minimum Wage Factor.

To highlight the potential cost of the increase in the wage factor from 12 to 18, Fiscal Research staff outlines two scenarios. **Scenario 1** represents the actual costs the State paid in total duty pay for National Guardsmen at the rank of E-6 and below for 1995. Reviewing years from 1992 to 1995, 1995 represents a typical year of state duty pay for the National Guard. This is based on an average over this time frame that 463 Guardsmen at the rank of E-6 and below are called into service each year. In most years, it is expected state duty pay costs will be similar to the costs shown below for 1995. State duty pay costs will increase under the proposed legislation on average of \$60,848 per year. The calculation for this estimate can be seen below.

Scenario 1: 1995 State Duty Pay Costs (Typical Year)

	State Duty Pay 1995	State Duty Pay Proposed Legislation
1995 Total State Cost	\$121,696*	\$182,544*

Increase of \$60,848

* Represents total of State Duty Pay for Ranks of E-6 and Below.
 This bill will primarily effect these ranks.

As stated, Scenario 1 represents a typical year for state duty pay for North Carolina National Guardsmen. **Scenario 2** represents a worst case example of the additional cost that could be associated with an increase in the wage factor. During 1996, Guardsmen were called into service more frequently than the previous four years because of Hurricanes Fran and Bertha. State duty pay for National Guardsmen at the rank of E-6 and below was \$2,254,040 for 1996. It should be noted, the National Guard was called into service by the Governor because Hurricanes Fran and Bertha both received Presidential declarations as national disasters. For this reason, the State was able to receive funding for 75% of the salaries paid for the National Guardsmen called

into service. The State paid the remaining 25% of the salary total. Even though state duty pay totaled \$2,254,040, the State only had to pay \$563,510 of this amount. Using 1996 as a worst case scenario, there could be an overall increase of \$1,127,020 because of the change in the wage factor from 12 to 18. However, the State would only be responsible for 25% of the total amount for salaries (\$3,381,060). This would equate to the State paying an additional \$281,755 above the amount paid for in 1996, if the National Guard experienced another year similar to 1996. The calculation for this estimate can be seen below.

<u>Scenario 2: 1996 State Duty Pay Costs (Abnormal/Worst Case Year)</u>		
	State Duty Pay	State Duty Pay
	<u>1996</u>	<u>Proposed Legislation</u>
1996 Total State Cost	\$2,254,040*	\$3,381,060*
Increase of \$1,127,020		
* Represents total of State Duty Pay for Ranks of E-6 and Below. This bill will primarily effect these ranks.		
Note: In 1996, the Federal Government paid 75% of the State Duty Pay (\$2,254,040). The State only had to pay 25% of this amount (\$563,510). Reviewing the State Duty Pay under the Proposed Legislation, even though there is an increase of \$1,127,020, the State would only be responsible for 25% of the total (\$3,381,060). This would equate to the State paying an additional \$281,755 above the amount paid for 1996 if the Wage Factor was 18 instead of 12. This Scenario represents when the Guard was called into duty for both Hurricanes Fran and Bertha.		

A specific cost cannot be determined due to the uncertainty of when the National Guard will be called into service by the Governor. However, Fiscal Research staff can estimate the associated cost for the increase in the wage factor from 12 to 18 could mean additional expenditures fall into a range \$60,848 per year for a typical year to \$281,755 for an abnormal/worst case year.

TECHNICAL CONSIDERATIONS: None.

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Signed Copy Located in the NCGA Principal Clerk's Offices