

## **BILL ANALYSIS**

S.B. 1766  
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Defense & Veterans' Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

S.B. 1766 seeks to comply with provisions of the federally enacted Uniform Code of Military Justice and eliminate current inconsistencies between state and federal laws by updating provisions of the Texas Code of Military Justice, including provisions relating to nonjudicial and court-martial punishments.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1766 amends the Government Code to redefine, for purposes of the Texas Code of Military Justice, "commanding officer," "officer," "officer candidate," and "state military forces." The bill defines "duty" for those purposes and defines "day" to mean a calendar day and specifies that the term is not synonymous with unit training assembly or any other accounting for training. The bill establishes that a punishment authorized under the Texas Code of Military Justice that is measured in terms of days means calendar days.

S.B. 1766, in a provision making the Texas Code of Military Justice applicable to all members of the state military forces who are not in federal service, specifies that the code applies to all members of the state military forces who are not in federal service under federal law relating to the armed forces.

S.B. 1766 authorizes any commanding officer, under regulations as may be prescribed, to impose disciplinary punishments for minor offenses without the intervention of a court-martial in accordance with Texas Code of Military Justice provisions relating to nonjudicial punishment. The bill establishes that there is no right to trial by court-martial in lieu of nonjudicial punishment imposed under these provisions. The bill specifies that only the governor, the adjutant general, or an officer of a general or flag rank in command may delegate the powers of punishment under these provisions to a principal assistant who is a member of the state military forces. The bill removes provisions authorizing limitations, under regulations that the governor may prescribe, to be placed on the powers of punishment granted to a commanding officer with respect to nonjudicial punishment.

S.B. 1766 requires any accused person who is facing discipline under provisions relating to a commanding officer's nonjudicial punishment to be afforded the opportunity to be represented by defense counsel having certain prescribed qualifications, if such a counsel is reasonably available, rather than if such a counsel is available. The bill removes language making the requirement apply if disciplinary punishment other than admonition is to be imposed. The bill clarifies that the accused may also be represented by civilian counsel at no expense to the state.

S.B. 1766 establishes the nonjudicial punishments that may be imposed on enlisted members or

officers, as applicable, in the command of any commanding officer, any commanding officer of the grade of O-4 or above, or the governor, the adjutant general, an officer exercising general court-martial convening authority, or an officer of a general or flag rank in command. The bill includes among the punishments a reprimand, a specified fine, and a reduction in pay grade, as applicable. The bill removes provisions establishing certain nonjudicial punishments for minor offenses without the intervention of a court-martial, including arrest in quarters, correctional custody, extra duties, and restriction. The bill removes a provision authorizing an officer in charge to impose certain nonjudicial punishments that the governor specifically prescribes by regulation. The bill authorizes an officer who imposes an authorized punishment or the officer's successor in command to at any time suspend, set aside, reduce, or remit any part or amount of the punishment and removes provisions authorizing the officer to suspend probationally a reduction in grade or fine or forfeiture. The bill removes a provision authorizing a commanding officer to delegate authority to make a reduction in pay grade to the commanding officer's executive officer, chief of staff, or vice commander.

S.B. 1766, in a provision authorizing a person punished under provisions relating to a commanding officer's nonjudicial punishment who considers the punishment unjust or disproportionate to the offense to appeal to the next superior authority through the proper channel, specifies that the person is authorized to appeal not later than the 15th day after the date the punishment is either announced or sent to the accused, as the commanding officer determines. The bill authorizes the authority who is to act on the appeal to refer the case to a judge advocate for consideration and advice before acting on an appeal. The bill removes provisions requiring the authority, before acting on an appeal from certain punishments, to refer the case to a judge advocate or legal officer of the state military forces for consideration and advice.

S.B. 1766 establishes that the imposition and enforcement of disciplinary punishment under the bill's provisions for any act or omission is not a bar to trial by a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under the bill's provisions relating to a commanding officer's nonjudicial punishment. The bill, in a provision authorizing regulations to prescribe the form of records to be kept of disciplinary proceedings, specifies that the regulations are authorized to prescribe that certain categories of those proceedings are required to be in writing.

S.B. 1766, in provisions establishing the three kinds of courts-martial in each of the state military forces, removes a special court-martial consisting of not fewer than three members. The bill establishes that the Texas Army National Guard and the Texas Air National Guard have court-martial jurisdiction over all enlisted members subject to the Texas Code of Military Justice.

S.B. 1766, in a provision listing the punishments that a general court-martial may, under certain limitations, adjudge under the Texas Code of Military Justice, increases from \$1,000 to \$10,000 the maximum fine and increases from 360 days to five years the maximum period of confinement that the court may adjudge. The bill adds to the punishments the reduction of any enlisted member to any lower rank and removes the reduction of a noncommissioned officer to the ranks. The bill adds bad conduct discharge to the authorized punishments of a general court-martial.

S.B. 1766, in a provision establishing that a special court-martial has the same powers of punishment as a general court-martial with a certain exception, increases from \$500 to \$4,000 the maximum fine and increases from 180 days to one year the maximum period of confinement that a special court-martial may impose for a single offense. The bill prohibits a bad conduct discharge, rather than a dishonorable discharge, from being adjudged by a special court-martial unless certain conditions are met. The bill increases from \$200 to \$1,000 the maximum fine that a summary court-martial may impose for a single offense and clarifies that a sentence may include the reduction of a noncommissioned officer to any lower, rather than to the ranks.

S.B. 1766 authorizes any commander in the state military forces not in federal service who is in the grade of O-5 or higher, rather than in the grade of lieutenant colonel or higher, to convene a special court-martial and authorizes any commander in the grade of O-4 or higher, rather than in the grade of major or higher, to convene a summary court-martial.

S.B. 1766, in a provision establishing that a state commissioned officer in a duty status is eligible to serve on a court-martial, removes the specification that the court-martial be for the trial of a person who may lawfully be brought before the court for trial.

S.B. 1766 redefines "unit" for purposes of provisions relating to the eligibility of an enlisted member of the state military forces in a duty status who is not a member of the same unit as the accused to serve on general and special courts-martial.

S.B. 1766, in a provision relating to certain persons who are not eligible to act as military judge of a court martial, establishes that a person who is a witness in a case, rather than a person who is a witness for the prosecution in a case, is not eligible to act as a military judge in the same case.

S.B. 1766 prohibits trial counsel or defense counsel detailed for a general court-martial from being under the supervision or command of the other counsel unless the accused and the prosecution expressly waive this restriction.

S.B. 1766 prohibits a person subject to the Texas Code of Military Justice from considering or evaluating the performance of duty of a member of the state military forces as a witness in a court-martial in making certain advancement, transfer, or retention determinations about the member. The bill establishes that a person subject to the Texas Code of Military Justice who commits an offense under the Penal Code is considered to violate the Texas Code of Military Justice and is subject to punishment under that code. The bill adds a fine or forfeiture imposed by nonjudicial punishment to provisions relating to the payment of fines and costs under the Texas Code of Military Justice.

S.B. 1766 makes conforming and nonsubstantive changes.

**EFFECTIVE DATE**

September 1, 2011.