

LEGAL SERVICES

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MEMORANDUM

March 16, 2009

SUBJECT: Exemption of the Alaska National Guard and the Alaska Railroad Corporation from disaster relief leave bill (CSHB 77(STA), Work Order No. 26-LS0250\P)

TO: Representative Charisse Millett
Attn: Jeff Turner

FROM: Dan Wayne 
Legislative Counsel

I spoke with Jeff Turner of your staff about whether or not the above-referenced bill would affect employees of the Alaska Railroad Corporation or the Alaska National Guard, and he asked that I summarize in a memorandum the legal points we discussed.

1. Alaska Railroad Corporation. The bill specifically exempts from its provisions the Alaska Railroad Corporation. You should also note that under AS 42.40.710(a) employees of the Alaska Railroad are employees of the corporation and not the state, and provisions of AS 39 other than AS 39.52 (the Executive Branch Ethics Act) do not apply to them. This means the bill, if adopted in its current form, would not give employees of the Alaska Railroad Corporation an opportunity to take leave without pay for disaster relief.

2. The Alaska National Guard. The Alaska National Guard is part of the organized militia of the state, established under AS 26.05.010, and the governor is commander in chief. The Guard functions as part of a state agency in the executive branch, the Department of Military and Veteran's Affairs. The Guard consists of two classes of members: persons who have voluntarily enlisted and persons who are commissioned officers or warrant officers who have qualifications prescribed by federal law and have been appointed and either commissioned or warranted by the governor. AS 39.20.200 - 39.20.350, the statutes governing leave by officers and employees of the state, do not include a generally applicable definition of "employee," the term used in the bill to designate who may take leave without pay for disaster relief. However, in *State v. Bowen*, 953 P.2d 888 (Alaska 1998), the Alaska Supreme Court held that a person working in the active state service of the state organized militia (which is comprised of the Alaska National Guard, the Alaska Naval Militia, and the Alaska Defense Force) is a state employee (although for exceptional reasons that the court determines applied at the time, the person was not to be regarded as subject to the State Personnel Act (AS 39.25)).

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Moreover, sec. 2 of the bill does include a definition of "employee" applicable only to the proposed disaster relief leave that could be interpreted as including members of the Alaska National Guard.

Mr. Turner has asked if this definition could be modified in such a way as to exclude members of the Alaska National Guard from employees who would be able to take leave without pay for disaster relief under sec. 2 of the bill. The answer is yes; as in the example I related to Mr. Turner, you could modify the definition to read:

(2) "employee" means an employee of a branch of state government, including the University of Alaska, whether the employee is a permanent, non-permanent, or temporary employee, but does not include civilian or enlisted members of the organized militia under AS 26.05.010.¹

The definition in this example would exclude members of the Alaska National Guard, the Alaska Naval Militia, and the Alaska Defense Force from the leave option created by the bill.

If I may be of further assistance, please advise.

DCW:plm
09-163.plm

¹ Before being added to a bill this language might need editing to ensure that it complies with the Manual on Legislative Drafting.