

**ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON MILITARY AND
VETERANS' AFFAIRS**

April 15, 2003
3:12 p.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Beverly Masek, Vice Chair
Representative Hugh Fate
Representative Bruce Weyhrauch
Representative Sharon Cissna
Representative Max Gruenberg

MEMBERS ABSENT

Representative Nancy Dahlstrom

COMMITTEE CALENDAR

HOUSE BILL NO. 245

"An Act relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia; relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire management and firefighting activities; and providing for an effective date."

- MOVED CSHB 245(MLV) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 10

Requesting the United States Congress to support the speedy deployment of a national missile defense system.

- MOVED HJR 10 OUT OF COMMITTEE

HOUSE BILL NO. 228

"An Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date."

- HEARD AND HELD

HOUSE JOINT RESOLUTION NO. 14

Relating to urging that the 2006 National Veterans Wheelchair Games be held in Anchorage, Alaska.

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 245

SHORT TITLE: SUITS & CLAIMS: MILITARY/FIRE/DEFENSE

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
04/04/03	0777	(H)	READ THE FIRST TIME - REFERRALS
04/04/03	0777	(H)	MLV, JUD, FIN
04/04/03	0778	(H)	FN1: ZERO(LAW)
04/04/03	0778	(H)	FN2: ZERO(DNR)
04/04/03	0778	(H)	FN3: INDETERMINATE(ADM) FORTHCOMING
04/04/03	0778	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/04/03	0778	(H)	REFERRED TO MLV
04/08/03	0859	(H)	FN3: INDETERMINATE(ADM) RECEIVED
04/11/03		(H)	JUD AT 1:00 PM CAPITOL 120
04/11/03		(H)	<Bill Hearing Postponed>
04/15/03		(H)	MLV AT 3:00 PM CAPITOL 124

BILL: HJR 10

SHORT TITLE: NATIONAL MISSILE DEFENSE SYSTEM

SPONSOR(S): REPRESENTATIVE(S) MCGUIRE

Jrn-Date	Jrn-Page		Action
02/05/03	0130	(H)	READ THE FIRST TIME - REFERRALS
02/05/03	0130	(H)	MLV
02/05/03	0130	(H)	REFERRED TO MLV
02/07/03	0152	(H)	COSPONSOR(S): LYNN
04/15/03		(H)	MLV AT 3:00 PM CAPITOL 124

BILL: HB 228

SHORT TITLE: STATE EMPLOYEES CALLED TO MILITARY DUTY

SPONSOR(S): REPRESENTATIVE(S) KERTTULA

Jrn-Date	Jrn-Page		Action
03/31/03	0712	(H)	READ THE FIRST TIME - REFERRALS
03/31/03	0712	(H)	MLV, STA, FIN
03/31/03	0712	(H)	REFERRED TO MLV
04/07/03	0831	(H)	COSPONSOR(S): LYNN

WITNESS REGISTER

GAIL VOIGTLANDER, Assistant Attorney General
Special Litigation Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Presented HB 245, which was sponsored by the House Rules Standing Committee by request of the governor; answered questions on Version H.

BRAD THOMPSON, Director
Division of Risk Management
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 245, Version H.

ROBERT DOEHL, Assistant Attorney General
Special Litigation Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Explained reasons for how Sections 3-6 of HB 245, Version H, are constructed.

DEAN BROWN, Deputy Director
Division of Forestry
Department of Natural Resources (DNR)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 245.

HEATH HILYARD, Staff
to Representative Lesil McGuire
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HJR 10 on behalf of Representative McGuire, sponsor.

STACEY FRITZ
No Nukes North
Fairbanks, Alaska

POSITION STATEMENT: Expressed concerns about HJR 10 and that the missile defense system does not and cannot work, noting that she'd recently completed her master's thesis on the subject of missile defense.

RYAN TINSLEY, Member
Fairbanks Coalition for Peace and Justice
Fairbanks, Alaska

POSITION STATEMENT: During hearing on HJR 10, asked what the cost will be for this still-unworkable missile defense system and how it will affect social services including health care, education, and social security; suggested money spent on foreign aid might alleviate some of the need for this system.

STEVE CLEARY, Organizer
Citizens Opposed to Defense Experimentation (CODE);
Executive Director
Alaska Public Interest Research Group (AkPIRG)
Anchorage, Alaska

POSITION STATEMENT: During hearing on HJR 10, related concerns about dangers to Alaska and a false sense of security; suggested money would be better spent helping veterans and meeting homeland security needs.

REPRESENTATIVE BETH KERTTULA
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified as sponsor of HB 228.

TRACY WENDT, Intern
for Representative Beth Kerttula
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 228 on behalf of Representative Kerttula, sponsor; answered questions.

CHRIS HONSE, Lieutenant Commander, Director
U.S. Coast Guard Auxiliary for District 17
Juneau, Alaska

POSITION STATEMENT: Testified on HB 228 and answered questions.

JULIE BENSON
Ketchikan, Alaska

POSITION STATEMENT: Testified in support of HB 228 as the wife of a man who is a state trooper and a member of the Air National Guard; called it essential legislation for state employees who make the difficult choice to serve both their state and country.

DEBRA GERRISH
Juneau, Alaska

POSITION STATEMENT: Testified on HB 228 as the wife of an officer in the Army National Guard who has served for 22 years; emphasized the need for health benefits.

BUTCH STEIN

Fairbanks, Alaska

POSITION STATEMENT: Testified on HB 228, emphasizing how USERRA applies to military personnel and that people in the Guard and reserves should not be discriminated against either when going into active duty or returning from that service.

ACTION NARRATIVE

TAPE 03-6, SIDE A

Number 0001

CHAIR BOB LYNN called the House Special Committee on Military and Veterans' Affairs meeting to order at 3:12 p.m. Representatives Lynn, Masek, Fate, and Gruenberg were present at the call to order. Representatives Weyhrauch and Cissna arrived as the meeting was in progress.

HB 245-SUITS & CLAIMS: MILITARY/FIRE/DEFENSE

Number 0111

CHAIR LYNN announced that the first order of business would be HOUSE BILL NO. 245, "An Act relating to certain suits and claims by members of the military services or regarding acts or omissions of the organized militia; relating to liability arising out of certain search and rescue, civil defense, homeland security, and fire management and firefighting activities; and providing for an effective date." [HB 245 was sponsored by the House Rules Standing Committee by request of the governor.]

Number 0134

REPRESENTATIVE MASEK moved to adopt the proposed committee substitute (CS), Version 23-GH1025\D, as a work draft.

CHAIR LYNN announced that Version D was adopted without objection.

Number 0210

GAIL VOIGTLANDER, Assistant Attorney General, Special Litigation Section, Civil Division (Anchorage), Department of Law, presented HB 245 to the committee. She explained that it discusses four areas of immunity for the state. The first is to immunize search and rescue (SAR) activities conducted by the Alaska State Troopers, which conducts approximately 400 of those a year. This bill immunizes the Alaska State Troopers for both the decision about when or if to commence a SAR activity and how the activity is conducted. Ms. Voigtlander said it is consistent with Alaska case law that immunizes negligent investigation by the Alaska State Troopers or other police agencies.

Number 0350

MS. VOIGTLANDER told members the second area relates to tort claims by members of the Alaska National Guard and other military members of the state militia. The bill adopts what is known as the Feres doctrine. Taken from the name of a plaintiff in a [U.S. Supreme Court case] and adopted by the federal government and many states, the Feres doctrine says there cannot be intramilitary torts between members of the military; for example, a private cannot sue his sergeant in tort for an injury sustained that is incident to military service. Thus the bill puts into law that the Feres doctrine is applicable to bar claims against the state.

MS. VOIGTLANDER asserted that those military members aren't left without remedies. A member on active state duty and carrying active state orders who is injured has workers' compensation under the state. A member serving under federal orders - which is the majority of the time - who is injured pursuant to those orders has federal remedies that are the equivalent of workers' compensation as well.

Number 0482

MS. VOIGTLANDER went on to say that this bill overrides Himsel, a lawsuit filed as a result of an air crash outside of Juneau some years ago; the parties included families of National Guard members. She explained:

In that case, we won at the trial court level. It was reversed on appeal, and our supreme court said that they would not apply the Feres doctrine; they would look to see whether ... what the action involved was uniquely military and say, if it's not uniquely

military, they will allow the claim. Under the Feres doctrine, the test is "incident to military service."

That opinion was a 3-2 opinion. ... The two justices who dissented pointed out that the Feres doctrine is founded on sound public policy, which is that the courts should not involve themselves in second-guessing military decisions, and also that it was poor for military morale to allow intramilitary tort suits. The dissent also went on to explain that that test of discarding the "incident to military service" test in favor of what our supreme court was saying, ... whether it was uniquely military, was going to be very difficult to interpret; it was not a bright line. And so this section of the bill would deal with that issue and bring Alaska back to the Feres doctrine concept, which is, if you are injured, you have your workers' [compensation] remedy.

MS. VOIGTLANDER, noting that Himsel settled after it was remanded for trial, commented, "It will be appearing in the capital budget later this session, and the state's share of that judgment is \$2.75 million."

Number 0678

MS. VOIGTLANDER reported that the third portion of the bill relates to suits and claims arising from civil defense and homeland security. Noting that currently Title 26 provides immunity for civil defense, she offered her reading that "civil defense" appears to have become a somewhat archaic term. Since [the terrorist attacks of September 11, 2001] Alaska and other states have moved into the "homeland defense" and "emergency management" areas, for which the bill therefore extends immunity. She told members that the original civil defense statute has an exception to provide for certain claims, and said an exception has been carried over in this portion of the bill.

Number 0775

MS. VOIGTLANDER turned attention to the state's duties and obligations. She said she'd been told that after September 11, 2001, because of the related activities that must be conducted in addition to emergency management, the federal government cannot do everything and thus states are picking up more [of these responsibilities]. She went on to say the federal government was immune when it did activities; this is to carry

that [policy] over now that the state is picking up what used to be considered civil defense but now has been expanded into homeland defense.

Number 0826

MS. VOIGTLANDER told members the last portion of the bill deals with suits arising from fire management and firefighting activities; it would immunize "the state and employees and others who work on these firefighting activities" from lawsuits. She referred to Angnabooguk and a companion case, Bartek, noting that the Alaska Supreme Court ruled in 2001 that while many activities the state conducts in firefighting may be "immune decisions," there may be decisions that aren't immune and thus lawsuits can be filed.

MS. VOIGTLANDER said this [portion of the bill] is to immunize that activity "to help conserve the resources of firefighting so the firefighters are on the line fighting fires and doing fire management and forest protection, rather than being pulled off into civil litigation, which is very time-consuming for them as well." Noting that AS 09.65.070 has immunity for municipal firefighters, she said this would be consistent with "looking at the fact that you need to have these people available to fight fire, rather than defending civil lawsuits." She added, "Also, it is to be more consistent with 9th Circuit [Court of Appeals] law and general federal law, which immunizes firefighting activities as well. Several other states as well immunize firefighting activities."

Number 0970

REPRESENTATIVE MASEK referred to page 6, lines 8-13, and asked how the bill would impact the current lawsuit over the Miller's Reach fire of 1996.

MS. VOIGTLANDER specified that this bill wouldn't have retroactive effect and wouldn't apply to the pending case. It would only have prospective effect for future claims that might occur after the effective date of the legislation.

Number 1052

REPRESENTATIVE FATE referred to proposed language on page 3, lines 22-25, which read:

A person is not entitled to death benefits as specified in AS 23.30.215 for a member of the organized militia who dies as a result of an injury or disability suffered in the line of duty but who had not been ordered into active state service by the governor under AS 26.05.070.

REPRESENTATIVE FATE posed a scenario in which a lieutenant orders a private to do something that results in severe injury or death for the private. That person would be acting in the line of duty? If the governor hadn't ordered that unit into state service, he asked, would the state be waived from liability for the person who died as a result of a direct order in the line of duty.

Number 1162

MS. VOIGTLANDER said she believed the provision referred to is "the homeland security," but that she would answer in regard to the Alaska National Guard because she believed that was what Representative Fate's question addressed. She said:

People who are serving in the Alaska ... militia or the Alaska National Guard are going to be responding either to a state call-out and have state orders, or a federal call-out and have federal orders. So if they are injured incident to duty because they're on that call-out, then if it's a state order they will have state workers' compensation remedies; if ... they're carrying federal orders, they have federal workers' compensation benefits.

Number 1223

REPRESENTATIVE FATE pointed out that it just says "organized militia". He then referred to page 5 [lines 7-8], which adds the language "vaccination and other actions to protect public health" under "civil defense". He posed a situation in which a response to a vaccination results in death because of not knowing the person's history to the extent of knowing there was an allergy. He asked whether liability would be waived in that instance.

MS. VOIGTLANDER said that provision is under the homeland security provisions, under which the person wouldn't have a claim unless the exception on page 4, lines 8-10, applied. However, a person who was an employee that was injured because

of the vaccination, if the vaccination was necessary for employment, would have workers' compensation benefits available; what entity that person was employed by would determine whose workers' compensation would kick in.

Number 1443

MS. VOIGTLANDER, in response to questions from Representative Weyhrauch, reiterated that under the existing case law in Himsel, a member of the military - if that person is not considered a state employee but is a federal employee - could have a tort claim against the state. However, this bill draws a bright line by saying that if the injury is incident to military service, then whoever is injured cannot sue the state on any theory - either direct or vicarious liability - for damages. People would be limited to workers' [compensation] or other benefits, either through the state or through the federal government, depending on what papers they're carrying.

MS. VOIGTLANDER, in further response to Representative Weyhrauch about how many states have adopted that bright-line test, said there are several states and that the Himsel case - in the dissent section written by Chief Justice Matthews and Justice Eastaugh at note 13, page 45, of the opinion - cites to the federal cases as well as state cases that adopt the Feres doctrine.

Number 1593

REPRESENTATIVE WEYHRAUCH asked, if this bill became law and a military person was injured through negligence at the hand of a state official, whether that person could recover under other sorts of doctrines or theories [of law].

MS. VOIGTLANDER answered, "If it's for personal injury - it's a bodily injury or death - the answer would be no.

REPRESENTATIVE WEYHRAUCH asked whether, except for workers' compensation or other insurance that may be available to the person, that would be the extent of recovery.

MS. VOIGTLANDER said she believed so, unless there was a third party involved.

Number 1678

REPRESENTATIVE MASEK asked about the title change from the original bill and why it now relates to workers' compensation and death benefits for members of the organized militia.

MS. VOIGTLANDER surmised that those are editing changes from legislative legal counsel, saying she hadn't spoken with anyone about why that title change occurred. She went on to say that she'd gone through [Version H] and found that nothing in the bill changes workers' compensation benefits under existing statute; however, there is reference within the bill to workers' compensation "because of the intramilitary tort discussion we've had, saying that you can't sue in court but you do have workers' compensation benefits." She referred to Sections 12 and 13 and noted that the legislative drafters also had changed "civil liability" to "civil immunity" in the titles for those sections.

Number 1903

MS. VOIGTLANDER, in response to Representative Gruenberg, explained that Section 2 has the search-and-rescue provisions, Sections 3-6 have to do with the Feres doctrine issue, Sections 7-11 deal with homeland defense immunity, and Sections 12-13 deal with firefighting activities. She said because these are grafted onto existing statutes, the bill required a number of changes, and hence so many sections are implicated.

Number 2008

MS. VOIGTLANDER, in response to a question from Representative Gruenberg, affirmed that Sections 12 and 13 are the same. However, [Section 12 amends] AS 41.25, which governs protection of forestland from fire and other destructive agents, whereas [Section 13 amends] AS 41.17, which is the Alaska Forest Resources and Practices Act.

Number 2062

REPRESENTATIVE GRUENBERG asked whether these people will have any remedy.

MS. VOIGTLANDER answered that a person killed because of a wildfire wouldn't have a remedy against the state for tort damages if this passes.

REPRESENTATIVE GRUENBERG asked what remedy they would have, and whether their families would go homeless and hungry.

MS. VOIGTLANDER answered, "In terms of bodily injury, they would not have a remedy against the state." She added, "In many immunity provisions, it does result in someone being without a remedy."

REPRESENTATIVE GRUENBERG asked what plan the state has to take care of these people and their survivors.

MS. VOIGTLANDER said it is more a policy issue than a legal one. As a matter of legal interpretation of statutes, she said she didn't know what other programs or benefits existed, but offered to find out. She said federal programs kick in when there are wildfires; for example, the Federal Emergency Management Agency (FEMA) offers assistance to individuals and municipalities. Noting that normally it's an issue of property damage, she said that normally the remedy is that people have a fire-insurance policy, but that she didn't know whether it would cover a death.

Number 2180

REPRESENTATIVE GRUENBERG asked whether this bill immunizes the state against property owners and civilians, just firefighters, or everybody.

MS. VOIGTLANDER answered that it immunizes the state from tort lawsuits "from whatever source, so it would be tort lawsuits from someone who was injured through the fire." She reiterated that a firefighter who was injured would have workers' compensation remedies.

REPRESENTATIVE GRUENBERG referred to Section 2 and search-and-rescue personnel. He asked whether this immunizes them from suits by the victim or personnel or both.

MS. VOIGTLANDER responded, "This immunizes them from suits from third parties." She reiterated that state personnel would have workers' compensation remedies.

Number 2259

REPRESENTATIVE GRUENBERG inquired about volunteers. He recalled a supreme court case that arose from the 1964 earthquake: a volunteer who went to Seward was swept out to sea, and it was held that the person [didn't qualify for] workers' compensation. Thus Representative Gruenberg said he'd offered an amendment [during an previous legislative session] to cover such a person, which passed. He asked whether this bill would roll that back

so a volunteer and any survivors would [not even qualify for that benefit].

MS. VOIGTLANDER said she didn't know enough about workers' compensation to respond, but would research the issue. She said she knows there are some situations in which volunteers are covered by workers' compensation.

Number 2354

BRAD THOMPSON, Director, Division of Risk Management, Department of Administration, responded that the statutory benefit for workers' compensation isn't affected by this legislation. He added that the state has a policy of extending benefits - not through statute, but through operating agreements - to volunteers that help with SAR activities. He explained:

We have a volunteer service agreement; it's basically a contract. It allows the person that helps us help the public a remedy such that if they are not already protected by either workers' [compensation] - because many of them do have [workers' compensation coverage] because they come to us in their employment - or ... other remedies from their employer, we will protect and pay their medical bill and, in fact, commit to give them the basic minimums of workers' compensation benefits. Now, that's a contractual obligation that we have extended to the volunteer in respect and response to them coming forward and helping us. And that, again, is not affected by this legislation.

Number 2414

REPRESENTATIVE GRUENBERG asked whether each individual has to sign the contract.

MR. THOMPSON answered that as they are signed up by the SAR coordinator, usually the officer in command, they are signed on. "Often, the rosters are completed following the search, to be quite candid," he added. "But at least then we know who's in or who's out of this arrangement."

Number 2425

CHAIR LYNN asked, if the practice is to sign up afterwards, what happens if [the person is killed before being able to sign].

MR. THOMPSON replied, "We've not yet faced that, but we do know it is a commitment from the state to protect these individuals. And we would extend that commitment."

CHAIR LYNN inquired about any statutory commitment to that.

MR. THOMPSON said it is policy and practice. He added that during a declaration of disaster, people who volunteer are covered by the statutory definition of employment that [Representative Gruenberg's amendment to a bill in a previous legislature] addressed. He clarified that he was speaking about SAR volunteers and other individuals who help the state perform its duties.

Number 2495

REPRESENTATIVE GRUENBERG referred to Representative Fate's earlier question about the militia. Specifying that he was looking at the [new proposed] language in Sections 5 and 6, he offered his understanding that it relates not to the National Guard, but to the organized militia.

MS. VOIGTLANDER replied:

These are amendments to the existing statutes, AS 26, and so Section 4 relates to the military service as well as the Alaska militia; Section 5 relates to the organized militia, presumably - and I don't have the statutes in front of me - because the section that is amended is the section that relates to the organized militia. The only amendment to that section is that final language at lines 12-15. And Section 6, again, is the organized militia. And the only change to that is lines 22-25. ... But the change that we're talking about is reflected in Sections 3-6, to pick up both the Alaska National Guard and members of the organized militia.

Number 2615

REPRESENTATIVE GRUENBERG said he was focusing on the organized militia here. He noted that Section 5 says that members of the organized militia who haven't been ordered into active state service aren't entitled to workers' compensation, and that Section 6 says the same people aren't entitled to death benefits. He asked what remedies they or their survivors have

if they're on an emergency assignment but haven't been called up by the governor.

MS. VOIGTLANDER answered, "My limited understanding of the organized militia is that they would be called out through a governor's order."

REPRESENTATIVE GRUENBERG suggested there must be certain circumstances when that isn't the case, however; otherwise, these amendments wouldn't have been offered.

MS. VOIGTLANDER said what she doesn't know is whether "they have a federal counterpart." She noted that there was someone from "that agency" present who perhaps could answer.

Number 2679

REPRESENTATIVE CISSNA asked about people who are reacting to a terrorist activity, for example, immediately afterwards. She expressed amazement at how much isn't covered, and echoed concerns that people won't be taken care of.

MS. VOIGTLANDER surmised that Representative Cissna's concern wasn't so much about tortious conduct of the state, but about whether volunteers who respond to an emergency are covered. She said that is a slightly different issue because it isn't necessarily an issue of being harmed through state action. In the 1964 earthquake, for example, if someone was injured while trying to pull someone from a crevasse, there wouldn't be a tort mechanism against the state because the crevasse wasn't of the state's making. As to whether such a volunteer would have some compensation for an injury, she said that isn't an issue she could address. "This is defensive activity; yours is more offensively what would the state provide," she suggested.

REPRESENTATIVE CISSNA clarified, to the contrary, that her concern arises from talking with numerous people through the years who are trying to get workers' compensation to work for them, trying to prove something [in order to qualify for benefits]. She said this feels as if more attorneys are needed for each person in order to ensure coverage. She sought assurance that it isn't so.

REPRESENTATIVE GRUENBERG referred to page 5, line 7 [Section 9].

TAPE 03-6, SIDE B

Number 2983

REPRESENTATIVE GRUENBERG surmised, if a health care worker were treating someone and contracted the disease, that this would immunize the state against [a lawsuit]. He also asked whether [workers' compensation] would be the only remedy, no matter how negligent the state had been.

MS. VOIGTLANDER referred to Section 7, subsection (b), which proposes an exception "when malice or reckless indifference to the interests, rights, or safety of others is shown by clear and convincing evidence."

REPRESENTATIVE GRUENBERG observed that "clear and convincing evidence" is a much higher standard than the normal standard of proof.

MS. VOIGTLANDER said it is intermediate between "preponderance of ... evidence" and "beyond a reasonable doubt."

Number 2886

REPRESENTATIVE GRUENBERG asked Ms. Voigtlander whether she is aware of any other area of tort law, aside from punitive damages, where such a high standard of proof is required. He suggested this would be a bold new step in Alaska or anywhere in the country.

MS. VOIGTLANDER said she could only address statutes she is familiar with, including the requirement for the higher standard for punitive damages. She indicated she believes there may be a few other provisions in civil law that require this higher standard, including some areas of statutory and common law in Alaska, but couldn't say what they were.

REPRESENTATIVE GRUENBERG pointed out that this is the same standard used for terminating a person's parental rights. "It's a very, very high standard," he added.

Number 2801

ROBERT DOEHL, Assistant Attorney General, Special Litigation Section, Civil Division (Anchorage), Department of Law, referred to Sections 3-6 and suggested the concern about the language relates to the fact that this will be pasted into existing statutes, under which the organized militia is defined as consisting both the Alaska National Guard, which has both a federal and state role, as well as the Alaska state defense

force, which only has a state role. That is why, throughout Sections 3-6, the language addresses what happens in a state capacity, he said. In the case of the national guard, there would be a federal capacity wherein individuals would have federal remedies; in the case of the Alaska state defense force, they only would have state remedies.

Number 2717

DEAN BROWN, Deputy Director, Division of Forestry, Department of Natural Resources (DNR), noted that part of the division handles wildland firefighting, a major public service and public safety issue for the state. Mentioning the current Miller's Reach litigation [which was decided by a jury in favor of the state shortly after this hearing], she said most people are aware that the state faces major liability in these areas. She emphasized the importance she believes the bill has for the state with regard to delivering these services. Noting that the fire season was declared two weeks early this year, Ms. Brown reported that the division already has responded to 64 fires. Firefighters in Southcentral Alaska responded to numerous fires from high winds, and then still had to respond in court. She stressed the desire to focus the division's emergency personnel towards their job of fighting fires. She echoed comments by Ms. Voigtlander about workers' compensation availability and urged support for the bill.

Number 2549

REPRESENTATIVE CISSNA spoke about the state's obligation to its public servants and suggested lawsuits are filed if someone believes a wrong has been done. She voiced concern that if people risk their lives for others, the state should feel responsible for them and their families, and said workers' compensation, "in my book, doesn't look really good." She said she wants some assurances that the state is providing for these people who work in danger's way, and expressed concern about removing the tools that exist through the court system that provide justice. "We as a state shouldn't be ... a worse employer than the private sector," she remarked. She asked Ms. Brown whether there is adequate coverage or if some special program covers someone who dies in the line of duty.

MS. BROWN replied that she cannot address the adequacy because it isn't her area. She said these firefighters have extensive training and experience; they meet national standards, and other states and the federal government use these individuals.

However, in performing their duties, they make decisions based on the best information they have at that time. This bill would provide immunity if decisions are made that later are [seen as erroneous]. She asserted that it gives additional protection to individuals performing this emergency response. Indicating the division responds to 500-700 fires a year, she said every one "could be open to extreme liability under tort immunity." She added that she doesn't believe this removes individual protection because workers' compensation remains.

Number 2297

REPRESENTATIVE CISSNA asked about the need for the bill, noting that fires aren't new to the state. She asked whether there has been a lot of tort legislation because of Alaska's fires.

MS. BROWN mentioned a Tok fire, but said the Miller's Reach fire was the first major fire and litigation. She surmised, however, that Alaska will see what other Western states have seen, increased litigation associated with wildland fires. She suggested Alaska is a number of years behind other states. She agreed there aren't more fires. Specifying that it is her personal opinion, she suggested [introduction of the bill] is related to how litigious society has become.

Number 2178

CHAIR LYNN asked whether anyone else wished to testify. He then closed public testimony.

REPRESENTATIVE GRUENBERG told members this is the first bill he has intended to vote against moving from committee, and that he believes it sends the wrong message to people who put their lives on the line. "These are the people this committee should be protecting and this state should be protecting," he said. Representative Gruenberg went on to say he'd looked carefully and couldn't see a single section of the bill he supports.

Number 2127

REPRESENTATIVE MASEK moved to report CSHB 245, Version 23-GH1025\D, out of committee with individual recommendations and the accompanying fiscal notes; she requested unanimous consent.

Number 2092

REPRESENTATIVE GRUENBERG objected.

A roll call vote was taken. Representatives Masek, Fate, and Lynn voted in favor of moving CSHB 245, Version 23-GH1025\D, out of committee. Representatives Cissna, Gruenberg, and Weyhrauch voted against it. Therefore, CSHB 245(MLV) failed to be reported from committee by a vote of 3-3.

Number 2037

REPRESENTATIVE WEYHRAUCH asked for reconsideration to be taken up the same day.

CHAIR LYNN responded, "Yes, without objection."

REPRESENTATIVE WEYHRAUCH explained that he'd voted "no" because of serious concerns about "the bright-line statement we're making here that they're absolutely immune from liability for the kind of people that we're asking to serve this country, and the people who live here." He said he believes limited liability ought to be available, but isn't sure there should be complete immunity. He expressed the desire to move the bill on to the House Judiciary Standing Committee, but said he wants the bill amended to reflect his concerns.

Number 1982

REPRESENTATIVE FATE said he doesn't like to hold any bill up, but had questions and would amend this to at least clarify what "organized militia" is, since the bill deals with the organized militia in large part; he noted that the bill uses the terms "military", "civil defense", and "homeland security". He also suggested the need for clarification and perhaps amendment to the provisions relating to vaccinations.

Number 1900

REPRESENTATIVE GRUENBERG announced that despite his own reservations, he'd offer amendments in the House Judiciary Standing Committee on behalf of members of the current committee.

Number 1874

REPRESENTATIVE MASEK expressed faith that the House Judiciary Standing Committee and the House Finance Committee would work out issues brought up this date.

Number 1815

REPRESENTATIVE MASEK again moved to report CSHB 245, Version 23-GH1025\D, out of committee with individual recommendations and the accompanying fiscal notes.

Number 1806

REPRESENTATIVE CISSNA objected. She expressed concern that speeding legislation along isn't in anyone's best interest, and said this process is meant to be deliberative and slow. She cautioned that there is no big rush, and said this committee needs to do as much as possible to get a good piece of legislation together that as many members as possible can feel good about.

Number 1712

CHAIR LYNN said he shares some of these concerns, but that it is going to the House Judiciary Standing Committee, where one member of the current committee sits and will offer amendments on behalf of members.

A second roll call vote was taken. Representatives Fate, Masek, Weyhrauch, and Lynn voted in favor of moving CSHB 245, Version 23-GH1025\D, out of committee. Representatives Cissna and Gruenberg voted against it. Therefore, CSHB 245(MLV) was reported from the House Special Committee on Military and Veterans' Affairs by a vote of 4-2.

HJR 10-NATIONAL MISSILE DEFENSE SYSTEM

CHAIR LYNN announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 10, Requesting the United States Congress to support the speedy deployment of a national missile defense system.

Number 1595

HEATH HILYARD, Staff to Representative Lesil McGuire, Alaska State Legislature, presented HJR 10 on behalf of Representative McGuire, sponsor. Turning attention back to approximately 1989, he offered that the fall of the Union of Soviet Socialist Republics (USSR) [officially dissolved in 1991], while ultimately a good thing, had an incredibly destabilizing effect on world politics. He said a geopolitical system governed by two competing superpowers and the nuclear policy of mutually

assured destruction, while tenuous and disquieting, had created a great deal of stability in nuclear proliferation. Since collapse of the USSR, however, the world has been confronted by a new threat of so-called rogue nations that now possess nuclear, biological, and chemical capabilities; the closest of these new threats to Alaska, in particular, is North Korea.

MR. HILYARD cited an interview in the Capital City Weekly in which U.S. Senator Ted Stevens said about North Korea that its new missile is capable of going a lot farther than [North Korea] has acknowledged, that it has made warheads that carry chemical and biological weapons, and that this is cause for worry. Mr. Hilyard also quoted President Bush as saying [during his 2000 campaign] that America's development of a missile defense is a search for security, not a search for advantage.

MR. HILYARD pointed out that committee packets include a copy of H.R. 1453, sponsored by Congressman David Vitter of Louisiana, which Mr. Hilyard said [HJR 10] essentially mirrors. He read the body of the congressional bill, which stated:

The Secretary of Defense shall direct the Director of the Missile Defense Agency of the Department of Defense to design and deploy as soon as technologically possible a land-based and sea-based missile defense system capable of defending the national territory of the United States against ballistic missile attack.

MR. HILYARD said this is one of the White House's priorities in terms of revitalizing the national military.

Number 1415

STACEY FRITZ, No Nukes North, informed members that No Nukes North is a 503(c)(3) nonprofit organization that seeks to promote educated opposition to missile defense. She explained that she'd recently finished her graduate thesis on the subject of missile defense at the [University of Alaska Fairbanks]. Agreeing with much of what was stated about the end of the Cold War and the subsequent instability and nuclear proliferation, she also agreed that North Korea poses a nuclear threat and that terrorists in rogue nations are acquiring nuclear weapons. She said, however:

What I see as a main problem with this entire debate is that no one's been asked the question, "What is the

best way to address those threats?" They simply assume that building a missile defense system is the best way to do that, and I would certainly argue that that is not the case.

Number 1335

MS. FRITZ highlighted the fact that the first "WHEREAS" clause in HJR 10 relates to the 1972 Anti-Ballistic Missile Treaty (ABM) and says the USSR no longer exists. She told members:

I think it's curious that it was included in this resolution because, as many people know, the United States has already unilaterally abandoned this treaty. And I think that it's also, even though the treaty no longer exists, still worth pointing out that [with regard to] this logic for abandoning this treaty - stating that it was signed by the country that no longer exists - certainly President Bush Sr. affirmed that Russia ... inherited the treaties that the USSR had signed.

And if we were to apply this kind of logic to all the treaties that the USSR had signed, Russia would no longer have to abide by World War II boundary agreements or the Geneva Protocol of 1925. So while people might argue that there are reasons for abandoning the ABM, "that the USSR does not exist" I don't think is a very good one. And I would argue that the reasons that we signed the treaty in 1972 are just as strong today as they were then, and that was to prevent an unstoppable and very expensive arms race. ...

We could argue all day about whether or not the ... missile defense system should be deployed. But I think that the main thing that should concern Alaskans, if our state is going to support this system, is whether or not this system works. And I think it has been made very clear, through the testing program, that it does not work. And I would go ... so far as to say that it cannot work.

And I'm not a physicist. However, there were 15 Nobel laureates who signed a letter to Congress affirming that this system would never work. It's a technical loser because it cannot defend us against very simple

countermeasures. So it will never be technologically feasible in the real world.

Certainly, we have demonstrated, in a few of the tests ... that were not completely rigged, that we do have the capability to intercept [an] enemy missile with hit-to-kill technology, but that doesn't say anything about this system working in the real world.

CHAIR LYNN asked that Ms. Fritz limit her testimony to another minute.

Number 1120

MS. FRITZ agreed to try to sum it up, but emphasized the importance of this issue. She said the system as it is, with the kinetic hit-to-kill interceptor, is incapable of defending against (indisc.) and countermeasures that could be within an enemy missile. In order to be "militarily realistic," she proposed the need to recognize that there will be serious consideration of returning to the use of nuclear tips on these interceptors. She cautioned that if this resulted in having nuclear-tipped interceptors at Fort Greely, the use of those would spread radiation.

CHAIR LYNN interjected and thanked Ms. Fritz for her testimony.

Number 1081

RYAN TINSLEY, Member, Fairbanks Coalition for Peace and Justice, testified on the fiscal aspects of this [missile defense] system. Noting that since 1983 the U.S. has spent \$95 billion on mission defense deployment and still has no workable system, he told members that the "Star Wars" system envisioned by President Bush will cost at least \$200 billion more - with more estimates by the Bush Administration itself already as high as \$258 billion.

MR. TINSLEY mentioned the current federal fiscal [deficit] and reminded members that Congress has cut veteran-disability funding, while more than \$400 billion a year is spent on [defense]. He mentioned social services including health care, education, and social security, as well as funding for what he considers more reasonable defense systems. He said [U.S. Senator] Ted Stevens has asked police and fire departments to work overtime without pay. Mr. Tinsley concluded by asking, "When we are spending so much on defense and we have no money

for social services, ... what cost does this national missile defense system come with? What are we going to be defending when we have no education, no health care, and no social services?"

Number 0947

STEVE CLEARY, Organizer, Citizens Opposed to Defense Experimentation (CODE); Executive Director, Alaska Public Interest Research Group (AkPIRG), informed the committee that CODE, a 10-member coalition, has been bringing up the dangers the missile defense system will pose to Alaska. He noted Alaska's long history of use as a military test site - as seen at Amchitka in the late 1960s and 1970s - and as a toxic dump, since more than 600 military toxic sites are yet to be cleaned up. He told the committee:

We're worried that bringing an unproven technology to this state will expose Alaska and Alaskans to potential threats. We saw ... a botched launch from Kodiak have to be exploded a minute after takeoff. Well, if that happens out near Fort Greely, we know the pipeline's only a few miles away from there, and it might put one of our major infrastructure systems ... in jeopardy.

We're also concerned that it's going to give the U.S. a false sense of security, since, as you've heard, ... the missile defense system has not been proven effective. And also, as Mr. Tinsley was saying, there are other threats and other needs to be addressed. The CIA [Central Intelligence Agency] even suggests that this is ... the least likely threat, an intercontinental ballistic missile. So I believe our money would be better spent on helping veterans who have already - and are already - suffering, and with other unmet homeland security needs.

I was disappointed to see the legislature pass a resolution in support of a railroad [to Fort Greely], again, ... that we might have to fund to Fort Greely when we don't know that this system is proven and we don't know where that money is coming from.

Number 0801

CHAIR LYNN asked whether anyone else wished to testify; he then closed public testimony.

REPRESENTATIVE FATE offered that from the information he'd received, there are no nuclear-tipped weapons. He asked what level of expertise Ms. Fritz has in talking about highly technical areas.

MS. FRITZ answered that she isn't a physicist, but has spent the past four years researching this subject for her master's degree, which she has received. With regard to nuclear tips, she reported that she works closely with Michael Roston, an analyst with the Russian American Nuclear Security Advisory Council in Washington, D.C.; he has informed her that although within the missile defense budget it is no longer legal for study of nuclear-tipped interceptors to go on, study does continue in other (indisc.). She offered to obtain more information for the committee.

Number 0649

REPRESENTATIVE FATE asked Mr. Tinsley what he would consider a reasonable national defense system.

MR. TINSLEY acknowledged the complexity of that question, and said he believes a more realistic threat would be something that comes into the ports; he said the money would be better spent in beefing up port security, for one thing. He also expressed concern about removing money from potential foreign aid, which he indicated perhaps could change the views of terrorists and others in foreign countries; he suggested that perhaps disseminating some of this money to have-nots in other countries might keep the U.S. from needing to defend and fortify itself against them.

REPRESENTATIVE FATE asked how much foreign aid the U.S. should have given Osama bin Laden to prevent [the terrorist attacks of September 11, 2001].

MR. TINSLEY answered:

I think that, first of all, maybe the CIA should have considered not training Osama bin Laden and not funding the Taliban, as well as not funding ... and putting Saddam Hussein into power [in Iraq] and not selling him the chemical weapons and not okaying the use of chemical weapons in [the] Iran-Iraq war with

the [United Nations (UN)] resolution. ... I think that we need to seriously consider how we conduct ourselves in ... foreign affairs.

Number 0425

CHAIR LYNN asked whether there was any committee discussion; none was offered.

Number 0414

REPRESENTATIVE MASEK moved to report HJR 10 out of committee with individual recommendations and the accompanying fiscal note; she requested unanimous consent. There being no objection, HJR 10 was reported from the House Special Committee on Military and Veterans' Affairs.

HB 228-STATE EMPLOYEES CALLED TO MILITARY DUTY

[Contains discussion relating to SB 26, the companion bill in the Senate, and to HJR 18]

CHAIR LYNN announced that the final order of business would be HOUSE BILL NO. 228, "An Act relating to state employees who are called to active duty as reserve or auxiliary members of the armed forces of the United States; and providing for an effective date."

Number 0334

REPRESENTATIVE BETH KERTTULA, Alaska State Legislature, sponsor of HB 228, thanked Senator Elton for the original legislation on the Senate side [SB 26, also sponsored by Senator Taylor]. She deferred to Tracy Wendt to present the legislation.

Number 0284

TRACY WENDT, Intern for Representative Beth Kerttula, Alaska State Legislature, informed members that HB 228 gives the governor the authority to instate pay and benefits for [state employees who are] members of the armed forces who are called to active duty or who are on call. The intent is to provide benefits and any difference between [active-duty pay] and the full salary that the employee would have received from the state. Thus the bill ensures that families aren't left having to deal with financial obligations for their loved ones who are away fighting in a war. She said one concern with the bill was

the desire not to intentionally eliminate any group. Therefore, the desire is to have it apply to anyone that the governor chooses [to have it apply to]; however, this is optional and isn't mandated.

Number 0151

REPRESENTATIVE KERTTULA brought attention to Amendment A.1, labeled 23-LS0894\A.1, Craver, 4/14/03, which read:

Page 1, line 1, following "duty":

Insert "**or ordered to full-time service**"

Page 1, lines 9 - 11:

Delete "including the organized militia of Alaska, consisting of the Alaska National Guard, the Alaska Naval Militia, and the Alaska State Defense Force,"

Page 1, line 11, following "duty":

Insert "or ordered to full-time service"

MS. WENDT explained that there had been concern about omitting some groups such as the U.S. Coast Guard, but the intent isn't to do that. Therefore, Amendment A.1 restates the language broadly enough that the bill applies to any armed forces [branch] or auxiliary of the armed forces.

Number 0076

REPRESENTATIVE GRUENBERG [moved to adopt] Amendment A.1.

CHAIR LYNN indicated Amendment A.1 was adopted without objection.

MS. WENDT, in response to a question from Chair Lynn, said people would get their state pay or less. She said this is really more for benefits.

REPRESENTATIVE MASEK offered her belief that this will have a fiscal impact because of the way it is written.

TAPE 03-7, SIDE A

Number 0001

REPRESENTATIVE KERTTULA said that is right if the governor chooses to implement this. That's why there is an indeterminate fiscal note.

REPRESENTATIVE MASEK said that is why she has a problem with the bill. Saying she appreciates that state employees volunteer, she reiterated concern about a budgetary impact.

CHAIR LYNN agreed that it seems there will be a fiscal impact.

REPRESENTATIVE KERTTULA explained that people who volunteer, when they go to active duty, may suddenly lose their benefits, as will their families. They definitely, in many cases, lose pay as well. She emphasized that these people are volunteering "for us." She said, "We felt that we should allow the governor the authority to go ahead and do this if he felt like it. The reason it's an indeterminate amount is, as with many other bills we're seeing this session, they just don't know." She mentioned an estimate on similar legislation last year of \$80,000 that it would have cost the state.

CHAIR LYNN noted that everyone wouldn't be called to duty.

Number 0220

REPRESENTATIVE FATE asked what would happen with regard to benefits if someone were killed while on military duty. He also asked what would happen if the person decided to remain on military duty with the regular state pay and other benefits for 30 years. He asked whether there is any remedy for this.

REPRESENTATIVE KERTTULA said she would double check. She then remarked that if a person weren't covered under state benefits, those easily could be lost.

CHAIR LYNN said this is a valid point, but suggested hearing testimony and then holding the bill over. He called upon Lieutenant Commander Honse, thanking him for service to his country.

Number 0439

CHRIS HONSE, Lieutenant Commander, Director, U.S. Coast Guard Auxiliary for District 17, told members the U.S. Coast Guard is simultaneously an armed service of the United States under 10 U.S.C. 101 and a law enforcement agency under 14 U.S.C. 89. As the lead federal agency for maritime homeland security, it is

responsible for upholding America's maritime security against terroristic threats, with the imperative of preserving fundamental liberties and economic well-being. It has active-duty, civilian, reserve, and auxiliary personnel. As its missions and responsibilities continue to expand under the Department of Homeland Security, the dependence on every component of the U.S. Coast Guard's forces grows correspondingly.

LIEUTENANT COMMANDER HONSE noted that the Alaska Coast Guard reserve component includes 42 (indisc.) reserves and 28 "inactive ready reserves." Of the 80 U.S. Coast Guard reserves serving currently under "Title 10" orders throughout Alaska, 38 reside permanently in Alaska; of those, 6 are state employees. He reported that current reserve members serve as sea marshals and provide protection. He noted that the statutory purpose of the U.S. Coast Guard Auxiliary was expanded under the Coast Guard authorization Act of 1996.

LIEUTENANT COMMANDER HONSE said currently there are 403 U.S. Coast Guard Auxiliary members in Alaska. Although they cannot be called to active duty, commonly they are placed on "official orders" to provide support in executing search-and-rescue missions, responding to environmental pollution, "backfilling" active-duty positions, and conducting low-risk harbor patrols. As volunteers, they receive no monetary compensation. Continuation of pay and benefits would assist these members, he said, since it would help alleviate financial concerns, add stability, and reduce uncertainty while these people are deployed away from their families.

Number 0703

REPRESENTATIVE WEYHRAUCH asked how many U.S. Coast Guard members would be affected by this bill.

LIEUTENANT COMMANDER HONSE said 6 for the reserves, and estimated 20 to 30 on the auxiliary side.

REPRESENTATIVE WEYHRAUCH noted that Section 3 says this is retroactive to September 11, 2001, but that Section 4 also says this Act takes effect immediately. He asked about the former and suggested that a retroactive date to September 11, 2001, would take care of some of the indeterminate nature of the fiscal impact, since the impact since that date can be determined.

REPRESENTATIVE KERTTULA said it's a good point and could provide at least a range. Referring to Representative Fate's questions and surmising that the issue is whether someone could abuse the system and double-dip, she asked whether there have been such instances.

LIEUTENANT COMMANDER HONSE said he wasn't aware of any.

CHAIR LYNN remarked that most people who retire from the military after 20 years cannot live on military retirement, whatever their rank, with a few exceptions "who wear stars."

Number 0898

JULIE BENSON testified as the wife of a man who is a state trooper and a member of the Air National Guard. She told members:

This bill is important to our family specifically. My husband has been a trooper for four years, and we're currently stationed in Ketchikan. We have one daughter, with another child due in July. After six years of active military service, Adam joined the Alaska Air National Guard as a KC-135 crew chief in 1997.

Last year, after the tragic events of September 11th, Adam's unit, the 168th Air Refueling Wing based at Eielson Air Force Base, was activated. For this family, activation means that Adam is taken away from us for as long as the United States government needs his services. Last year, Adam was gone for six months. There is no way for us to know when the Guard will call again or for how long Adam will be gone the next time.

I would like to help you understand that HB 228 is essential legislation for state employees who make the difficult choice to serve not only their state, but also their country. When my husband was activated last summer, our benefits through his employment as a trooper were immediately discontinued. This resulted in lost retirement contributions as well as the loss of certain pay raises he would have received had he remained employed by the state. Adam and I feel that any loss of pay and benefits due to his activation just is not right.

The individuals who choose to perform service to their country as well as their state are exemplary public servants and should not be penalized by the state, especially at a time of significant national crisis. These people are federal and state servants because, as you've noted, they choose to be - not because they have to be.

Just last Friday, House Joint Resolution 18 was transmitted to the Office of the Governor, and as I understand it, HJR 18 calls for full support of the men and women who are currently protecting not only our freedom, but the freedom of citizens abroad. This resolution is a wonderful show of support. However, these words don't mean very much when the same administration denied my husband his annual pay increase based on the grounds that he had, quote, "failed to demonstrate a greater value to the state", end quote. He was unable to demonstrate a greater value to the state because he had been deployed to the Middle East in support of Operation Enduring Freedom.

Number 1088

MS. BENSON continued:

My husband is a unique individual who feels compelled to serve in every aspect of his professional life. When he left the Army, there was never a question of whether or not he would continue to serve his country. He immediately joined an active Air Guard unit that is frequently deploying its members worldwide. Though we understood the potential sacrifice of this decision, it was never up for debate. Civil service is what Adam is all about. And despite the family compromises that we make, I'm so thankful for the men and women like my husband, and I'm very proud to be his wife.

The passage of this bill is the right thing to do. Under current state policy, the men and women who are called to service are punished by their employer, the State of Alaska. I doubt that the passage of this bill will change any of their decisions to continue their voluntary military service. It's just what they do because it's the right thing for them to do.

The right thing for the rest of us to do is to use every avenue available to support them as they and their families make incredible sacrifices to protect and to defend. Please support the men and women who choose to serve our great nation and our great state, by supporting House Bill 228.

CHAIR LYNN noted that he'd sponsored HJR 18. He asked Ms. Benson to [thank her husband for his service].

Number 1248

MS. BENSON, in response to questions from Representative Fate, said her husband only receives payment for being in the Guard or the reserves when he is there working for them. There is no supplement to his state trooper pay just because he chooses to be in the Guard.

REPRESENTATIVE FATE asked whether Mr. Benson was on leave from the troopers while serving with the Guard.

MS. BENSON said he was on military leave.

REPRESENTATIVE FATE surmised that Mr. Benson had one salary, either from the troopers or the Guard.

MS. BENSON affirmed that.

Number 1330

DEBRA GERRISH began by addressing a question posed by Representative Fate earlier. She said the federal law called USERRA [Uniformed Services Employment and Reemployment Rights Act of 1994] provides for holding an employee's job for only five years. After that five years is up, the person's job is gone. Noting that she is the wife of an officer in the Army National Guard who has served for 22 years, Ms. Gerrish agreed with Ms. Benson's testimony that these people serve because they feel it is the right thing to do.

MS. GERRISH told members she is very interested in this bill and has done a lot of research on it. She noted that Tennessee has done something similar through Executive Order 4. Also noting that she'd testified on a similar bill last session that didn't pass, she told members she'd looked at what she could remove from the bill, if necessary, in order that it could pass. She reported that when her husband is deployed, the family loses

\$15,000 to live on, but can survive [on the salary]. However, she must have the health benefits. Her family has two asthmatics and cannot afford to lose those benefits. Therefore she asked that the health-benefits aspect be retained above all.

MS. GERRISH provided an example. Her husband is deployed on the 26th of a month, called to active duty. The [state] benefits extend to the end of that month. Then, according to Alaska law, he can ask for another month of health benefits. After that month is over, however, the family has nothing. She pointed out that when someone is called up by the Army, the person must be called up for a particular number of days before dependents are covered. She said there were people called up [following the terrorist attacks of September 11, 2001] whose kids had no insurance for months. She stressed the need to look at how the different laws work together.

MS. GERRISH reported that she'd called Tennessee, where many National Guard members who also are state workers are covered by [Tennessee's executive order that is similar to this legislation]. She concluded by saying she can scrape by on military pay, although it is difficult for some others. However, loss of health benefits is hard on everybody. She pointed out that people making \$15,000 or less a year cannot afford COBRA [Comprehensive Omnibus Budget Reform Act] payments for insurance.

Number 1623

BUTCH STEIN began by referring to USERRA, suggesting that everyone read Title 38, Chapter 43 [of the United States Code (U.S.C.)]. He suggested that would address some of Representative Fate's questions, for instance. He agreed with Ms. Gerrish that the maximum [for an employer to have to hold an employee's job] is five years. He then told members:

The reason I want to talk to the group is not on the monetary side. I'm just talking about the parts that USERRA addresses, which is, one, that you cannot deny a person employment because of their activity in the uniformed services, and you cannot discriminate ... or take any actions against them ... because they're members of the uniformed services.

You cannot charge them vacation time. Now, the State of Alaska authorizes, I believe, it's 16 days of military leave per year. But if they are activated,

some employers would like to say they have to use their personal vacation or leave time while they are gone. That is not correct; that's against the federal law.

All benefits available at the time of call up to duty are immediately available upon return to work. There's no waiting period involved. You're entitled to, day one, when you get back to work, ... all your benefits in return.

Number 1710

MR. STEIN suggested there may be a violation involved in the situation described by Ms. Benson with respect to her husband, suggesting his anniversary date may have been changed, which directly affects benefits, retirement, and so forth. He said this flies in the face of the federal law, and he again encouraged looking at the federal law. He reiterated that he was addressing not the monetary aspects, but the protections that people should have while serving in the military and upon their return.

MR. STEIN said 50 percent of the U.S. military are Guard or reserve members, and shouldn't be penalized for participating and protecting the rights of others. Referring to earlier discussion, he agreed this service is voluntary, but pointed out that a person can be called to active duty for as long as five years; although he recalled that it was only two [years] for any one campaign, he noted that campaigns can change [rapidly], such as the change from Afghanistan to Iraq. He said these volunteers love their state and country, and "represent us 100 percent." He added, "To think of them in any other light would be a real miscarriage of justice as far as how we think about these people. These people are true patriots."

MR. STEIN offered that HJR 18 seems to really support the troops, and suggested that is the direction to continue. He mentioned collective bargaining and labor agreements, and said all of them should be brought in line with the federal law. He again emphasized his desire that people in the Guard and reserves not be discriminated against, either when going into active duty or when returning from that service.

Number 1864

MR. STEIN closed by referring to an article he'd read recently that said if a military person expires while on duty, the spouse receives \$90 a month until remarriage, the children get \$250 [apiece] a month until age 18, and there is a lump-payment settlement of about \$8,000. He suggested that isn't much money. He pointed out that the people who suffered on September 11, 2001, averaged about \$1.2 million as a settlement. He said there is something askew here, and questioned the ability to put a monetary value on a patriot's service.

Number 1913

CHAIR LYNN thanked participants and asked whether anyone else wished to testify; he then closed public testimony. Chair Lynn announced that HB 288 would be held over.

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 5:14 p.m.