

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

January 26, 2017

1:32 p.m.

MEMBERS PRESENT

Representative Chris Tuck, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Justin Parish
Representative Ivy Spohnholz
Representative George Rauscher
Representative Dan Saddler

MEMBERS ABSENT

Representative Lora Reinbold

COMMITTEE CALENDAR

ORGANIZATIONAL DISCUSSION

HOUSE BILL NO. 3

"An Act relating to the employment rights of employees in the state who are members of the National Guard of another state, territory, or district of the United States."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 3

SHORT TITLE: NATL GUARD LEAVE/REEMPLOYMENT RIGHTS

SPONSOR(S): REPRESENTATIVE(S) TUCK

01/18/17	(H)	PREFILE RELEASED 1/9/17
01/18/17	(H)	READ THE FIRST TIME - REFERRALS
01/18/17	(H)	MLV, STA
01/26/17	(H)	MLV AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

MARK SAN SOUCI, Regional State Liaison
U.S. Department of Defense (DoD)
Lakewood, Washington

POSITION STATEMENT: Testified in support of HB 3.

ROBERT DOEHL, Deputy Commissioner
Department of Military & Veterans' Affairs (DMVA)
Anchorage, Alaska
POSITION STATEMENT: Testified in support of HB 3.

STEVEN WILLIAMS, Employment Security Analyst
Division of Employment & Training Services
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska
POSITION STATEMENT: Answered questions regarding HB 3.

ACTION NARRATIVE

[1:32:24 PM](#)

CHAIR CHRIS TUCK called the House Special Committee on Military and Veterans' Affairs meeting to order at 1:32 p.m. Representatives LeDoux, Parish, Spohnholz, Rauscher, Saddler, and Tuck were present at the call to order.

ORGANIZATIONAL DISCUSSION

[1:33:20 PM](#)

CHAIR TUCK announced that first order of business would be an organizational discussion about the procedure of the chair drafting and submitting committee bills on behalf of the whole committee. He stated it has been the procedure in the past, but it is proper to have a vote.

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REPRESENTATIVE SADDLER asked that each proposed committee bill be voted on by the committee rather than having a "blanket statement" for consent.

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REPRESENTATIVE LEDOUX moved to ask unanimous consent that Representative Tuck, the Chair of Military and Veterans' Affairs Committee, be delegated the duties and responsibilities in AS 24.08.060(a) during regular and special sessions of the Thirtieth Alaska State Legislature; this delegation remains in effect until withdrawn by the committee.

REPRESENTATIVE SADDLER objected, and stated the statute remains in effect regardless of what the committee does. He opined that

the statute offers the proper deference for the committee to decide the status of each bill. He reiterated his request for a vote by the committee on a bill by bill basis.

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CHAIR TUCK stated that he intends to keep all members included and informed as to what is going on in the committee before a bill is introduced.

REPRESENTATIVE LEDOUX pointed out that every committee member will have the opportunity to object to any bill, even a committee bill. She stated that in her experience in the legislature, chairs of committees have always introduced bill without asking permission from the committee to do so. She stated her motion clarifies that permission.

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The committee took an at-ease from 1:37 p.m. to 1:38 p.m.

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CHAIR TUCK clarified that the motion is a matter of efficiency to give the chair permission to start drafting legislation on behalf of the committee. Some requests for changes in legislation from the Department of Military & Veterans' Affairs (DMVA) will be coming before the committee. He stated his intent to draft the bills as committee bills instead of personal legislation.

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REPRESENTATIVE RAUSCHER asked if the committee is voting on the drafts or the final product.

CHAIR TUCK responded that the drafts will not be seen until he's given permission by the committee. He stated he will confer with the member's offices regarding drafting so that when a bill is introduced the committee will already know the intent of the bill.

REPRESENTATIVE SADDLER clarified his objection is due to the motion being too general; members would not see the draft before they would become committee bills. He asked that the committee consider each bill on its merits.

REPRESENTATIVE LEDOUX asked Representative Saddler if he asked permission from his committee before introducing a committee bill when he was the chair of the House Resources Committee.

REPRESENTATIVE SADDLER said "we can certainly go back and look at the record."

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A roll call vote began but was voided by the chair.

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A roll call vote was taken. Representatives Spohnholz, LeDoux, Parish, and Tuck voted in favor of the motion. Representatives Saddler and Rauscher voted against it. Therefore, the motion passed by a vote of 4-2.

HB 3-NATL GUARD LEAVE/REEMPLOYMENT RIGHTS

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CHAIR TUCK announced that the final order of business would be House Bill 3, "An Act relating to the employment rights of employees in the state who are members of the National Guard of another state, territory, or district of the United States."

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CHAIR TUCK, sponsor of HB 3, paraphrased from the sponsor statement, which read as follows [original punctuation provided]:

House Bill 3 seeks to correct a deficiency in employment protections for Alaskans who are serving in the National Guard. This is a nationwide effort to ensure those who serve their nation for all 50 states when called to duty - regardless of their service location - will have reemployment rights to their Alaskan civilian job after completing the various critical duties when called by a governor for state active duty.

The National Guard is a hybrid state-federal entity. While National Guard members are subject to federal call to duty by the President of the United States, they can also be called up for state active duty by

the Governor to respond to state emergencies such as fires, tornadoes and floods.

The federal law Uniformed Services Employment and Reemployment Rights Act [of 1994] (USERRA) protects members of the Army or Air National Guard when they are called away from their civilian jobs for federal service. - HEARD AND HELD

However, USERRA does not apply when a National Guard member must leave their job for state active duty. If National Guard members are to have reemployment rights after state active duty, it must be through state law.

Alaska currently has a law that applies to employment protections to the public and private employees. However, it is explicitly limited to members of the Alaska Army or Air National Guard. There are several Alaskan residents who serve in the National Guard of another state. These Alaskans currently do not have the reemployment protections for their employment.

By passing House Bill 3, we will extend the employment protections to Alaskans who are serving in any National Guard. The Department of Defense has identified this legislation as a key quality of life issue and is actively seeking to make this policy change across the nation. So far, 28 other states have passed similar legislation and 3 other states are taking it up this session.

CHAIR TUCK added that 33 Alaskans would qualify, and the statistic comes from self-reporting, so the actual number could be much higher. The majority are in the Alaska National Guard, but some reported having served in other states, making 19 states total.

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CHAIR TUCK opened public testimony on HB 3.

[1:45:45 PM](#)

MARK SAN SOUCI, Regional State Liaison, U.S. Department of Defense (DoD), testified in support of HB 3. He added that 28 states have adopted legislation similar to HB 3, and three more states are considering it this session. The 33 Alaskans that

qualify have served in 19 states spread all across the nation. Although it doesn't seem like a lot, the legislation will improve the policy so members of the National Guards wouldn't be fired from their civilian jobs for their service.

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REPRESENTATIVE LEDOUX asked if there is reciprocity between National Guard units in other states - if members can transfer their National Guard position to their new state of residence.

MR. SAN SOUCI answered that he is not aware of reciprocity. He said the states are almost sovereign due to their respective organizations. Transfers between states are based on their job and rank. For example, a major in Oregon would have to find a job in Alaska as a major.

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ROBERT DOEHL, Deputy Commissioner, Department of Military & Veterans' Affairs (DMVA), reviewed that the National Guard is a reserve component of the Army and Air Force, which provide most of its funding. The National Guard is typically under the control of the governor, and each state has its own structure and positions. He clarified the interstate transfer (IST), which is a process that can take six to eight months and transfers qualifications and status from one military to another. There is a common recognition of training between states. The IST is available and is pivotal for the Alaska National Guard. He stated there are three duty types under the command of the governor: Title 32, United States (U.S.) Code covers organizing, training, and equipment for federal missions when needed by the federal government; Title 10, US Code covers operational uses such as the President calling guard members to go to Iraq or Afghanistan or respond to other national needs, which is also funded by the federal government; the third area is the only area HB 3 pertains to - state active duty for disaster response. Under state active duty, the state pays the bill, commands the National Guard, and decides what it will do and how it will do it. There are federal protections for the first two listed duties. He listed some historic uses of state National Guards, including: snow shoveling, hurricane preparedness and response, flood preparedness, and running prisons during an officer strike. There are no federal protections when serving in this role. State active duty is typically less than 5 days, but can be longer.

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MR. DOEHL explained how someone might live in Alaska and move across the nation to serve elsewhere. When traveling to other states for drills and training, the guard member pays. He noted this happens when one's military career is "out of sync" with one's civilian, professional, or personal life, and is usually temporary. This involves students, military spouses, airline pilots, or participants in industries not located in Alaska. Opportunities to transfer give the guard member a chance to serve in positions Alaska doesn't have. Alaska doesn't have senior positions, so attaining those positions in other states and transferring back to Alaska is a means of career development. He related his experience as an armor officer at times living out of state. If he would have been called to active duty, then he would have needed to travel back to his home state. He related other experiences he had where travel between states was necessary for training and advancement. Such travel costs are a tremendous expense for Alaskans due to the distance. Mr. Doehl stated that DMVA supports the proposed bill as it is overall conducive to developing a professional militia in Alaska. The bill allows for continuity of service for Alaskans whose life plans require them to spend time outside of the state.

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MR. DOEHL stated that the bill incentivizes new Alaskans to remain engaged with the military through a prior affiliation, to keep their readiness current by continuing until there is a position for them in the Alaska National Guard, and to train as necessary. It supports developing a more capable force for Alaska by capitalizing on those out-of-state positions that cannot be replicated in Alaska. He remarked:

Alaska may have a transient population, but we are confident we will gain or regain Alaskans affiliated with another state's National Guard given the challenges of time, distance, and cost of outside affiliation. This bill increases their recruitability and retainability by avoiding breaks in service, and their readiness when they do come to us.

MR. DOEHL stated that the proposed bill would maintain or increase the National Guard's ability to serve Alaskans in time of disaster and all Americans in time of war when mobilized. He said HB 3 would save tax payers the high cost of either

retraining back up to proficiency after a break in service or training someone brand new after a separation from service. He recognized this is a complex area of legislation.

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REPRESENTATIVE LEDOUX asked if someone usually goes one weekend a month for drill activities.

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MR. DOEHL answered that typically outside units have an expectation of one weekend a month, plus at least a two week training period. Those periods have become more frequent for additional required training. The typical obligation is one weekend a month and one, two-week annual training period.

REPRESENTATIVE LEDOUX asked if riot control would be federal or state.

MR. DOEHL stated riot control is usually under state active duty, with one exception in 1963.

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REPRESENTATIVE SADDLER asked if a guard member be less likely to want a spot with the Alaska National Guard since the bill would allow a lower risk for private employment with an IST.

MR. DOEHL acknowledged the bill removes one basis for incentivizing coming to the Alaska National Guard, but stated his belief that it keeps someone wanting to be involved in the military with less cost and inconvenience, which offsets that overall.

REPRESENTATIVE SADDLER asked if an IST is temporary.

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MR. DOEHL stated an IST is a permanent change of affiliation.

REPRESENTATIVE SADDLER asked how long someone from Minnesota could serve in the Alaska National Guard slot before joining the Alaska National Guard.

MR. DOEHL stated that a person can only be a member of one National Guard at a time. To become a member of the Alaska

National Guard he/she would be released from the other state's National Guard.

REPRESENTATIVE SADDLER asked how long could someone go without being discharged from Minnesota.

MR. DOEHL stated he/she could not start as an Alaska Guard member until they are done being a Minnesotan Guard member.

REPRESENTATIVE SADDLER asked if there would be any obligation for a person to terminate his/her relationship with the Minnesota service.

MR. DOEHL answered that if the person's duties to Minnesota can accommodate the longer response time entailed for the position, then there is no set limit.

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REPRESENTATIVE PARISH asked if adoption of HB 3 would help other states adopt similar legislation.

MR. DOEHL stated he is hopeful it would support the national effort. He remarked, "As a nation, the longer that we can keep individuals with a military affiliation ... the more we save as tax payers in ... training new recruits off the street; the more we also gain as Americans in having folks with more experience and training when we do have to put them in harm's way."

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REPRESENTATIVE SADDLER asked if a guard member and his/her dependents living in Alaska but serving in another state's National Guard Unit would qualify for the Permanent Fund Dividend (PFD).

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CHAIR TUCK stated the question is outside the scope of this legislation.

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REPRESENTATIVE SADDLER asked who the "organized militia" mentioned on page 1, line 6, of the proposed bill refers to.

MR. DOEHL stated the "organized militia" constitutes the Air National Guard, the Army National Guard, the Alaska Air National Guard, the Alaska Army National Guard, the Alaska State Defense Force, and the Alaska Naval Militia, under Title 26 of Alaska Statute.

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CHAIR TUCK closed public testimony on HB 3.

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REPRESENTATIVE RAUSCHER asked about the requirement in HB 3 to rehire the on-duty individual if the employer is not able to offer the same position.

CHAIR TUCK asked how the reduction of force with a company is handled.

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STEVEN WILLIAMS, Employment Security Analyst, Division of Employment & Training Services, Department of Labor & Workforce Development (DLWD), stated he cannot answer Representative Rauscher's question as it pertains to the bill or the current statute, but stated there is a similar law under USERRA. The Veterans' Employment and Training Services (VETS), a part of the U.S. Department of Labor, is responsible for investigating claims under USERRA, and their director might be better able to answer the question.

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REPRESENTATIVE RAUSCHER referred to lines 1 and 2, on page 2 of HB 3, which read: "at the pay, seniority, and benefit level the employee would have had if the employee had not been absent as a result of active state service or National Guard service in another state." He asked if the guard member would be coming back as a temporary employee at a part-time salary.

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CHAIR TUCK clarified that the question is regarding the existing statute, and asked Mr. Doehl to describe how it currently works.

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MR. DOEHL stated that he will confirm with the Employer Support of the Guard and Reserve (ESGR), but he believes that the statute involves a minimum threshold on company size. He offered his understanding that when someone returns after a long deployment, if a company has downsized and the position no longer exists, it is impossible to fill it with the returned guard member. This circumstance removes the obligation to re-employ him/her in the same position. He stated he has encountered similar situations.

REPRESENTATIVE RAUSCHER asked whether the position would still exist, as pertains to the statute, if the employer hires a "temp" to fill the position.

MR. DOEHL responded that if the company downsized, then there is no obligation to rehire the guard member. If the company brings in a replacement, he/she would be a temporary hire. The replacement should understand that the position is temporary. Typical state active duty is 3-5 days, and most companies would not advertise, screen, and hire someone in that time. He stated that the solution is often to go to temporary staffing companies for an "immediate fill," with the understanding that the position is temporary. He stated he would contact ESGR to see about applicability to size of companies.

CHAIR TUCK stated the existing language has been in practice for many years.

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REPRESENTATIVE PARISH stated that he expects this bill would affect a small number of people, and it's been a successful section of law across the nation. He referred to Representative Rauscher's concerns, and asked how similar legislation has played out elsewhere.

MR. DOEHL stated that he is not aware of these provisions having ever been invoked. He listed three circumstances that must align for the statute to come into effect: a person must be affiliated with a National Guard of a different state from which they are a resident; the person must be called to state active duty, which is rare; and the service must trigger a potential adverse action from an employer in Alaska. He recognized it is a small set of people affected.

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REPRESENTATIVE SADDLER asked for historical perspective on the percentage of guard members who have been affiliated with National Guards outside of Alaska.

MR. DOEHL stated that DMVA has no access to the data, so any information he could offer would be speculative.

REPRESENTATIVE SADDLER asked Mr. Doehl whether the IST process tends to benefit Alaska or if Alaska loses guard members due to this statute.

MR. DOEHL stated that overall Alaska gains the experience and training of individuals. He stated his belief that Alaska signs more ISTs coming in than going out.

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REPRESENTATIVE LEDOUX asked if a regular drill weekend considered active state service.

MR. DOEHL answered no. The regular drill weekends are pursuant to Title 32, U.S. Code, which is protected by USERRA for adverse employment actions.

REPRESENTATIVE LEDOUX asked how travel to and time for training is covered by this statute or USERRA. A service person coming to and from Alaska would necessitate missing Friday and Monday of work.

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MR. DOEHL stated from experience that he would leave Thursday night and be at work Monday morning. USERRA does provide protections for the time reasonably necessary to get to and from drills as well as the drill itself. He stated that most employees find a way to "make that up" to [the employer] by adjusting hours or working longer. Usually that is worked out by two people talking.

REPRESENTATIVE LEDOUX asked if there is a provision for protection in the bill or USERRA if an agreement is not reached - if the job is protected if the company cannot accommodate the travel schedule.

MR. DOEHL stated there are exceptions under USERRA for that scenario, but it has not come up. He explained that litigation would be involved to determine the regulation.

REPRESENTATIVE LEDOUX asked whether travel time is protected by USERRA if people are going to their drills.

MR. DOEHL answered that is correct. Reasonable travel time and the drill weekend would be protected by USERRA.

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REPRESENTATIVE SADDLER clarified that being called to active state duty might be for floods, tremendous snowfall, etc. whereas "being federalized" would include circumstances such as [being deployed] to Afghanistan.

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MR. DOEHL stated that is his understanding as well.

[HB 3 was held over.]

[2:26:05 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 2:26 p.m.