

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

February 2, 2017

1:53 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

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."

- MOVED CSHB 3(MLV) OUT OF COMMITTEE

**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
01/26/17	(H)	Heard & Held
01/26/17	(H)	MINUTE(MLV)
02/02/17	(H)	MLV AT 1:30 PM GRUENBERG 120

**WITNESS REGISTER**

ROBERT DOEHL, Deputy Commissioner  
Department of Military & Veterans' Affairs (DMVA)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions about HB 3.

DAN WAYNE, Attorney  
Legislative Council  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions about HB 3.

**ACTION NARRATIVE**

[1:53:23 PM](#)

**CHAIR CHRIS TUCK** called the House Special Committee on Military and Veterans' Affairs meeting to order at 1:53 p.m. Representatives LeDoux, Parish, Spohnholz, Rauscher, Reinbold, and Tuck were present at the call to order. Representative Saddler arrived as the meeting was in progress.

**HB 3-NATL GUARD LEAVE/REEMPLOYMENT RIGHTS**

[1:54:15 PM](#)

CHAIR TUCK announced that the only order of business would be 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."

CHAIR TUCK stated that the bill would correct a deficiency in the employment protections for Alaskans serving in the National Guard. He noted that HB 3 is part of a nationwide effort driven by the U.S. Department of Defense (DoD) to make sure those who serve in the National Guard have reemployment rights to their civilian jobs after completing their duties.

[1:55:03 PM](#)

REPRESENTATIVE RAUSCHER moved to adopt Amendment 1 [labeled 30-LS0073\A.1, Martin/Wayne, 1/27/17], which read as follows:

Page 2, line 12:  
Delete "a new subsection"  
Insert "new subsections"

Page 2, following line 12:  
Insert a new subsection to read:

"(h) An employer is not required to allow a member of the National Guard to return to work under this section if

(1) the employer's circumstances have changed, making employment impossible or unreasonable; or

(2) employment would impose an undue hardship on the employer."

Reletter the following subsection accordingly.

CHAIR TUCK objected for discussion purposes.

[1:55:19 PM](#)

REPRESENTATIVE RAUSCHER drew attention to language in HB 3, beginning on page 1, line 13, through page 2, line 2, which read as follows:

discharged from hospitalization that arose from that active [STATE] service, the employee is entitled to return to the employee's former position, or a comparable position, 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

REPRESENTATIVE RAUSCHER expressed concern that ["if the employee had not been absent as a result of active state service"] would lock the employer into all previous [employment commitments]. He mentioned that the concept for the amendment came from a conversation with Deputy Commissioner Robert Doehl. He urged the committee to support Amendment 1.

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ROBERT DOEHL, Deputy Commissioner, Department of Military & Veterans' Affairs (DMVA), stated that the language proposed in Amendment 1 reflects the common law precedent, which has looked to federal [Uniformed Services Employment and Reemployment Rights Act of 1994] (USERRA) laws US 38.4301-4335. The language mirrors what the courts have interpreted as an impossibility situation: the employee can't go back to the job because it no longer exists or is not economically viable for the employer due to changes in conditions that occurred since the individual was mobilized. He noted that currently, there is no state law precedent on the matter. State courts interpreting HB 3 could

follow the federal approach, but might not. Amendment 1 would leads the courts to follow the federal example and have more predictable results for employers and employees.

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REPRESENTATIVE RAUSCHER stated that the reason for Amendment 1 is to avoid future litigation.

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REPRESENTATIVE PARISH stated that the analogous federal law has been consistently interpreted to have the same effect as Amendment 1 - that [the employee] would have the position, pay, seniority, and benefit level the employee would have had if he/she had not been absent as a result of state service. He noted that state service is likely to be brief. He asked if the amendment's language would reduce risk of litigation, add complexity to latch onto for litigation, or dismiss people's claims unreasonably.

[2:01:14 PM](#)

MR. DOEHL stated his belief that being more explicit concerning the situation removes the potential for litigation testing the state's approach. He mentioned two instances where the state has not followed the federal approach, and he stated that the lack of predictability has resulted in extensive litigation for the state. He offered his opinion that aligning state [statute] to the federal approach reduces the probability of litigation; but he acknowledged that anyone can sue if he/she chooses.

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REPRESENTATIVE LEDOUX asked for clarification regarding the language of Amendment 1, and stated it is ambiguous and confusing. She asked if Amendment 1 should read "an employer is not required to rehire" as opposed to "allow".

[2:03:15 PM](#)

REPRESENTATIVE RAUSCHER added that the amendment [grants flexibility] if the employer's circumstances change.

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CHAIR TUCK wondered if the amendment would be better with the language adjusted.

[2:05:18 PM](#)

REPRESENTATIVE PARISH suggested a conceptual amendment to parallel language from HB 3, on page 1, line 14, which would read "the employee is not entitled to return to work under this section if".

[2:05:46 PM](#)

REPRESENTATIVE REINBOLD suggested a conceptual amendment and she stated that her amendment is similar to Representative Parish's amendment. It would read "employer is not mandated to rehire a member of the National Guard if".

CHAIR TUCK asked if any member wished to make a motion.

[2:06:23 PM](#)

REPRESENTATIVE PARISH [moved to adopt] Amendment 1 to Amendment 1, to strike from Amendment 1 "An employer is not required to allow a member of the National Guard to return to work under this sections if" and add "The employee is not entitled to return to work under this section if".

[2:07:09 PM](#)

The committee took an at-ease from 2:07 p.m. to 2:08 p.m.

[2:08:40 PM](#)

CHAIR TUCK stated the committee would take another at ease to contact a bill drafter.

The committee took an at-ease from 2:09 p.m. to 2:23 p.m.

[2:23:52 PM](#)

CHAIR TUCK noted that Dan Wayne of Legislative Legal and Research Services was online to answer questions about amendment language. He recapped Amendment 1 to Amendment 1. He asked Representative Parish to withdraw his motion.

[2:24:45 PM](#)

REPRESENTATIVE PARISH withdrew his motion to adopt Amendment 1 to Amendment 1.

REPRESENTATIVE PARISH moved to adopt [Amendment 2] to Amendment 1, to delete lines 7 and 8 [as numbered in] Amendment 1 and add "(h) An employee is not entitled to return to the employee's former position or comparable position at the pay, seniority, and benefit level the employee would have had if".

[2:25:25 PM](#)

REPRESENTATIVE SADDLER asked where the language would be inserted.

CHAIR TUCK stated that the language of Amendment 2 to Amendment 1 would be inserted in Amendment 1, page 1, in lines 7 and 8 [as numbered in Amendment 1].

[2:25:49 PM](#)

REPRESENTATIVE LEDOUX objected to Amendment 2 to Amendment 1 for purposes of discussion, and asked for a response from Legislative Legal and Research Services.

[2:26:16 PM](#)

REPRESENTATIVE PARISH again read Amendment 2 to Amendment 1, and he stated that the proposed language parallels the language from HB 3, page 1, line 13, through page 2, line 3.

[2:27:23 PM](#)

DAN WAYNE, Attorney, Legislative Legal and Research Services, stated that to say "an employee is not entitled" could be interpreted so that the employer couldn't [rehire the employee] even if he/she wanted to do so. He suggested an employee could ask for his/her old job, and the employer could respond by saying, "Well you are not entitled, but I'll think about it and I might give it to you."

REPRESENTATIVE LEDOUX referenced paragraphs 1 and 2 of Amendment 1, which read:

- (1) the employer's circumstances have changed, making employment impossible or unreasonable; or
- (2) employment would impose an undue hardship on the employer."

REPRESENTATIVE LEDOUX observed that the new language wouldn't preclude the employer from rehiring the person any more than the amendment's former language.

MR. WAYNE stated that he agrees.

REPRESENTATIVE LEDOUX asked if Amendment 2 to Amendment 1 accomplishes "what the preface ... with respect to [subsection] (h) was intended to accomplish."

MR. WAYNE stated his belief that it does.

[2:30:36 PM](#)

REPRESENTATIVE LEDOUX removed her objection to the motion to adopt Amendment 2 to Amendment 1. There being no further objection, Amendment 2 to Amendment 1 was adopted.

[2:30:59 PM](#)

REPRESENTATIVE PARISH stated his support of Amendment 1, as amended.

[2:31:15 PM](#)

REPRESENTATIVE SADDLER asked if the current statute forces an employer to return a National Guard member returning from active state service to a job that doesn't exist, exposing [the employer] to hardship. He asked for Mr. Wayne's opinion on whether there is a problem in current statute that needs to be remedied.

[2:32:20 PM](#)

MR. WAYNE stated that he needs to look at the statute again.

REPRESENTATIVE SADDLER asked Mr. Doehl whether [Amendment 1, as amended] solves an existing problem in statute, as opposed to a problem that may not exist.

[2:33:10 PM](#)

MR. DOEHL stated his belief that the proposed amendment reduces ambiguity that could be difficult for a small business to overcome in litigation. He stated his belief that Amendment 1, [as amended], corrects a weakness in HB 3.

REPRESENTATIVE SADDLER stated he does not want to impose a "business breaking obligation" on an employer, and stated his support of "this amendment as currently drafted."

[2:33:50 PM](#)

CHAIR TUCK removed his objection to Amendment 1, [as amended]. There being no further objections, Amendment 1, as amended, was adopted.

[2:34:12 PM](#)

REPRESENTATIVE SADDLER mentioned a description of ways to improve veteran laws in the letters of support [included in the committee packet]. One element [in the description] relates to returning employment rights - basically what this bill accomplishes. The other was to make sure that there was a "right of action" should this right be denied. He asked if the bill needs to be amended to include a right of action, or if statute already includes a right of action.

[2:35:28 PM](#)

MR. DOEHL stated that he hasn't researched that aspect.

REPRESENTATIVE SADDLER stated that he would let the issue go. He suggested that a future bill could address the issue if further research shows a gap [in right of action].

[2:36:08 PM](#)

REPRESENTATIVE LEDOUX moved to report HB 3, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

[2:36:26 PM](#)

CHAIR TUCK clarified that there are two zero fiscal notes. There being no further objection CSHB 3 (MLV) was moved out of committee.

[2:37:02 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 2:37 p.m.