

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

February 21, 2017

1:31 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

COMMITTEE CALENDAR

HOUSE BILL NO. 126

"An Act relating to workers' compensation benefits for members of the organized militia."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 126

SHORT TITLE: ORGANIZED MILITIA: WORKERS COMPENSATION

SPONSOR(S): MILITARY & VETERANS' AFFAIRS

02/15/17	(H)	READ THE FIRST TIME - REFERRALS
02/15/17	(H)	MLV, L&C
02/21/17	(H)	MLV AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

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

POSITION STATEMENT: Testified in support of HB 126.

SCOTT JORDAN, Director
Division of Risk Management
Department of Administration
Juneau, Alaska

POSITION STATEMENT: Answered questions regarding HB 126.

ACTION NARRATIVE

1:31:19 PM

CHAIR CHRIS TUCK called the House Special Committee on Military and Veterans' Affairs meeting to order at 1:31 p.m. Representatives Parish, Spohnholz, Rauscher, Reinbold, Saddler, and Tuck were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

HB 126-ORGANIZED MILITIA: WORKERS COMPENSATION

1:32:18 PM

CHAIR TUCK announced that the only order of business would be HOUSE BILL NO. 126, "An Act relating to workers' compensation benefits for members of the organized militia."

CHAIR TUCK stated that his office has been working with the Department of Military & Veterans' Affairs (DMVA) on changes to Title 26 and HB 126 is part of those changes. He noted that the bill would extend workers' compensation benefits to members of the organized [militia] while they are participating in training exercises. Currently, military members participating in exercises and drills are covered by workers' compensation but are not covered during training components. He relayed that the issue came to light during an incident when a member of the Alaska State Defense Force (ASDF) suffered a leg injury during a training exercise making him unable to work [at his/her civilian job]. Since workers' compensation does not extend to training exercises, the injury ultimately cost the state more than double the amount of the entire ASDF annual budget. He said that HB 126 is a cost-savings bill; extending workers' compensation during training would not cost the state additional money and has the potential to save the state money in the future.

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REPRESENTATIVE SADDLER mentioned that Alaska Statute allows a chair to introduce a bill as a committee bill if a motion to do so is supported by the committee. He asked when the committee voted to introduce HB 126 as a committee bill.

CHAIR TUCK responded that the vote was on a Tuesday. He stated that there was a blanket vote to allow the Title 26 bills to be committee bills. He recalled that he had allowed Representative Saddler time to consider before the vote.

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REPRESENTATIVE SADDLER voiced his opposition to the bill as a committee bill being introduced without having had a specific vote in favor of committee sponsorship.

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REPRESENTATIVE PARISH asked Mr. Robert Doehl if he supports HB 126.

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ROBERT DOEHL, Deputy Commissioner, Department of Military & Veterans' Affairs (DMVA), testified in support of HB 126. He stated that the bill would put the unpaid volunteers of ASDF - one of the most cost-effective mechanisms in the state for providing emergency services - on par with other first responders who are covered by workers' compensation while in a volunteer training status. He noted that the bill addresses the [lack of] parity by putting ASDF volunteers in the same category as volunteer firefighters and volunteer ambulance drivers. He offered his belief that HB 126 would increase participation and encourage members to come out on their own time, unpaid, to be trained to help their fellow Alaskans in a possible time of need. He stated that although injury issues are rare - the last one was in 2012 - HB 126 would provide a more expeditious and cost-effective resolution when such issues arise. The bill would avoid the costs of litigation such as attorneys' fees and compensation for pain and suffering that is not paid by workers' compensation.

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REPRESENTATIVE RAUSCHER asked for details about the vetting process for those in training. He stated his worry that [individuals in training] might report an existing injury as though it were received during training.

MR. DOEHL responded that the vetting process is two-fold: individuals are asked if they are fit to train, and they get a sports physical by a physician if any question arises about their fitness. He stated that the physicals are basic, similar to scout master physicals, which certify that an individual can perform a certain level of activity. He explained that in the application process and during his/her service, a person must

indicate whether he/she has any physical limitations to performing duties.

REPRESENTATIVE RAUSCHER asked if the aforementioned case [of injury] is the only case in history.

MR. DOEHL answered that this is the only case the department is aware of where a claim was made, although there have been scrapes and bruises along the way. He remarked, "Our goal in looking at this claim is to address this impediment for the future ... before it could get very costly very fast in the event of a more serious injury."

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REPRESENTATIVE LEDOUX asked how many people HB 126 would cover through workers' compensation. She remarked, "I'm always concerned about doing what's right for the ... worker. And as an attorney who represented workers, I was often looking for a way to get somebody out of workers' compensation because the benefits provided by workers' compensation are so much less than the benefits provided through common law negligence." She asked if most people are currently able to get compensated for their injuries.

MR. DOEHL responded, "I think we recognize there's always that balance between workers' compensation to a worker that provides certainty of recovery compared to litigation and ... a tort action which would provide for a potential greater recovery." He expressed that with litigation there is a gamble in what a jury would decide. He offered his belief that the number of injury cases that would be litigated would be minimal. He opined that [HB 126] would be more equitable in providing recovery for injuries of ASDF members that are not economically viable in tort.

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CHAIR TUCK drew attention to the second paragraph of the foot note of the Department of Administration's fiscal note, identified as HB126-DOA-DRM-02-16-17, which read as follows [original punctuation provided]:

The organized militia has approximately 76 members and DMVA anticipates 2 days a month for training as well as 4 days a year for exercises. This limited exposure should add very little, if any, additional risk to the

division's workers' compensation self-insured program; therefore, Risk Management submits a zero fiscal note.

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REPRESENTATIVE SADDLER asked how much of an ASDF member's time is considered training and what the other conditions of service are.

MR. DOEHL responded that in terms of this discussion, statuses for an ASDF member would be: state active duty such as an operational mission, for which workers' compensation already applies; uncompensated weekend training including travel to and from the training event; and volunteer time in preparation for training or administrative functions for ASDF. He stated that ASDF has many members who volunteer their time so weekend training events are more effective; he noted that it is a minimal amount of time.

REPRESENTATIVE SADDLER asked for clarification whether someone activated through state active duty is covered by workers' compensation and someone training or traveling to or from training is not covered by workers' compensation because he/she is not compensated for that time.

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MR. DOEHL answered, "That is correct under the status quo."

REPRESENTATIVE SADDLER asked for clarification whether the volunteer status is also uncompensated and is not covered by workers' compensation.

MR. DOEHL responded, "That is correct."

REPRESENTATIVE SADDLER asked whether the bill would provide workers' compensation coverage for weekend training.

MR. DOEHL answered yes.

REPRESENTATIVE SADDLER asked how often members go to weekend training. He asked what portion of a person's participation in ASDF the bill would cover.

MR. DOEHL answered that most individuals train one weekend a month - 24 days a year - and go into state active duty less than

once every year. The bill would extend coverage for 24 days per year per ASDF member.

REPRESENTATIVE SADDLER asked if that amount is the same as the Alaska National Guard.

MR. DOEHL answered that although the guard is also part of the organized militia, [guard members] do not qualify for workers' compensation benefits while drill training because there is a federal process comparable to workers' compensation in the event of an injury.

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CHAIR TUCK pointed out that Sections 2 and 3 of HB 126 include workers' compensation for any time a member of the organized militia is compensated with pay.

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REPRESENTATIVE RAUSCHER noted that in the private industry there are different hourly rates of workers' compensation depending on the task performed. He asked how much the workers' compensation coverage under HB 126 would cost the Department of Military & Veterans' Affairs per hour, per member.

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SCOTT JORDAN, Director, Division of Risk Management, Department of Administration, answered questions regarding HB 126. He stated that it is difficult to determine [the cost] because the members of the organized militia would be part of a group with limited exposure. He remarked, "We don't have a mechanism to charge them any premium other than if they have a claim, then we can put it on their claims experience premium. But as far as just an exposure of these individuals, there is no ... mechanism for us to charge a premium." He explained that the organized militia members would be in the same group as public safety, search and rescue, ambulance drivers, or [Emergency Medical Technicians] (EMTs) in unincorporated cities. He noted that the members would be covered but there would not be a premium per individual. In response to a question, he clarified that there is no premium charged for this group.

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REPRESENTATIVE SADDLER asked whether ASDF members are currently covered by the State of Alaska's self-insurance.

MR. JORDAN responded, "That's correct."

REPRESENTATIVE SADDLER asked how HB 126 would change that.

MR. JORDAN answered that under HB 126, ASDF members would be covered during training missions, which are currently not covered.

REPRESENTATIVE SADDLER asked if ASDF members are compensated for training time.

MR. JORDAN stated that he does not know.

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CHAIR TUCK drew attention to HB 126, page 1, line 13, to page 2, line 5, which read as follows:

A member of the organized militia who, while performing duties under 14 AS 26.05.070 or training under AS 26.05.100, including transit to and from the member's home of record, suffers an injury or disability in the line of duty is entitled to all compensation and benefits available under AS 23.30 (Alaska Workers' Compensation Act). For a member of the Alaska State Defense Force, compensation and benefits under this subsection are provided as though the member were a state employee.

CHAIR TUCK noted that Sections 2 and 3 of HB 126 clarify that compensation and benefits are provided as though the member were a state employee.

REPRESENTATIVE SADDLER noted that AS 26.05.100 describes times when ASDF is activated. He stated his doubt that the benefit of protection against risk could come without a cost.

MR. JORDAN responded that [the coverage] isn't without a cost. He remarked,

Our premiums ... are calculated by what we call exposure and experience; exposure is just the individuals. These individuals ... have very limited times where they are covered by the State of Alaska as

employees. ... They don't show up as [full-time equivalencies] (FTEs) on the department's ... budget each year, so there's no way for us to calculate a premium for these individuals. If they have a claim, however, that claim amount will then show up as experience on ... our cost of risk allocation out to the department. That cost of risk allocation is 80 percent of the premium. So, if there is a claim, then yes they would get a premium - they'd see a premium in the next year, but they don't see a premium just for having these 76 individuals on a limited basis as state employees.

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REPRESENTATIVE SPOHNHOLZ offered her understanding that the members of ASDF are unpaid volunteers.

REPRESENTATIVE SADDLER responded that the members are currently volunteers while in training, but if the governor activates the ASDF, then they are paid.

REPRESENTATIVE SPOHNHOLZ outlined that during training, members of ASDF are not paid and there is not a formula to determine compensation or risk experience. She noted that because the bill deals with a small amount [of workers' compensation coverage], there is no fiscal impact. She expressed her desire to ensure that members are cared for, especially in the event of an individual getting injured while in the service for the State of Alaska enough to not be able to work. She acknowledged that there is ambiguity in the future costs of HB 126, but she stated that a zero fiscal note is accurate without knowledge of future costs.

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MR. JORDAN responded that on the experience side, members would have medical and time-loss [coverage]. He explained that there is a calculation process for injured individuals which could come up with a time-loss compensation amount and medical coverage amounts to "just what the medicals cost."

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REPRESENTATIVE LEDOUX assessed that there is a zero fiscal note because the state is self-insured, meaning that the state does not really get charged anything. She noted that if someone gets

hurt, then the state would pay benefits and medical expenses. She offered her understanding that paying a lot of workers' compensation claims could cost less than one major personal injury claim. She noted that it might "all wash out in the end," which could be why the fiscal notes don't mention the costs. She indicated that the fiscal notes account for paying insurance, although the state doesn't actually pay for it, but the notes don't take into account what the state would pay if there is a claim. She expressed her confusion about the zero fiscal note.

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REPRESENTATIVE SADDLER offered his understanding that the fiscal notes accurately describe costs in the first year but there could be additional costs in the following years which are not reflected in any fiscal note.

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MR. DOEHL explained that the department can pay for [injuries] through workers' compensation or litigation. The department has determined that it is cheaper to pay with workers' compensation for the reasons highlighted by Representative LeDoux and has assessed a zero cost impact. He noted that there has only been one injury in the last five years.

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REPRESENTATIVE PARISH considered that because workers' compensation would only be extended to a small population, HB 126 would have no cost without an injury and would cost the state less [in the event of an injury] than the current process of litigation. He asked how much the last claim cost the State of Alaska.

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MR. JORDAN answered that the previous claim was \$63,000 and is the only claim of which he is aware.

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REPRESENTATIVE RAUSCHER referred to a previous comment that the state would pay [for compensation for an injury] through workers' compensation or litigation. He noted that the last claim cost the state \$63,000, and he asked what the state would

have paid [had the injury been paid] through workers' compensation.

MR. JORDAN responded that he can't answer the question because the Division of Risk Management was not involved in the settlement. He offered his understanding that the settlement involved medical and time-loss expenses.

REPRESENTATIVE RAUSCHER reiterated his question: What would the state have paid had the injury gone through workers' compensation?

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CHAIR TUCK explained that the state currently doesn't pay anything until an injury is litigated; the legal costs, medical claims, restitution, and possible retraining vary on a case-by-case basis. He stated that HB 126 would cover ASDF members during training. He noted that there may never be a set rate for the coverage because members of ASDF would be part of a larger group of employees, which would make it hard to isolate the effect of one set of individuals.

REPRESENTATIVE RAUSCHER noted that the process is different from the private industry where payment is always in advance.

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REPRESENTATIVE LEDOUX responded to Representative Parish's comment. She explained that if an individual is covered by workers' compensation, then there is no option for litigation later on: Workers' compensation is the sole remedy. She noted that workers' compensation is supposed to be guaranteed - a benefit over litigating a claim where damages might be larger but are uncertain. She remarked, "In reality, workers' compensation, in my experience, has not been a sure thing. I've never seen a claim which was not controverted almost automatically." She said she is not impressed with the workers' compensation system on behalf of employees and acknowledged it has problems for employers as well.

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REPRESENTATIVE SADDLER offered his understanding that Alaska's workers' compensation costs are among the highest in the nation. He noted that the administration's stated goal is to add 250

more members to ASDF. He asked if the additional members would cause different predictions in the cost to the state.

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MR. JORDAN answered probably not. He explained that it would depend whether the new members do more training and exercises than members are doing. The members are currently covered if called [to active duty] by the governor. He reemphasized that HB 126 would extend workers' compensation to the limited number of days of additional training.

REPRESENTATIVE SADDLER offered his understanding that the administration envisions adding three battalions in the Bush farther from emergency services, where risks would be higher. He asked what provisions are currently in place to address the death of a member during training and how those provision might change under HB 126.

MR. JORDAN explained that if a member died during a call-out by the governor, he/she would be covered by workers' compensation death benefits. He noted that members in training are currently not covered by workers' compensation; therefore, a fatal accident in training would not be covered.

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REPRESENTATIVE RAUSCHER asked whether rates would increase if there is an injury in the future.

MR. JORDAN answered yes.

REPRESENTATIVE RAUSCHER asked if the [legislature] can revoke coverage in the future if rates become too high.

MR. JORDAN responded that if HB 126 passes, the state would be required to cover members of ASDF during training missions.

REPRESENTATIVE RAUSCHER noted that injuries have happened and could happen again.

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CHAIR TUCK explained that the state is self-insured and pays the direct costs as injuries happen. He asked whether covering injuries through workers' compensation is the preferred way to pay.

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CHAIR TUCK opened public testimony on HB 126. After ascertaining that there was no one who wished to testify, he closed public testimony.

2:09:25 PM

CHAIR TUCK announced that HB 126 was held over.

2:10:03 PM

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Military and Veterans' Affairs meeting was adjourned at 2:10 p.m.