

**ALASKA STATE LEGISLATURE
HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 14, 2017

3:01 p.m.

MEMBERS PRESENT

Representative Jonathan Kreiss-Tomkins, Chair
Representative Chris Tuck
Representative Adam Wool
Representative Chris Birch
Representative DeLena Johnson
Representative Gary Knopp
Representative Andy Josephson (alternate)

MEMBERS ABSENT

Representative Gabrielle LeDoux, Vice Chair
Representative Chuck Kopp (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 91

"An Act relating to fees for certain persons filing disclosure statements or other reports with the Alaska Public Offices Commission; relating to a tax on legislative lobbyists; and providing for an effective date."

- HEARD & HELD

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 91

SHORT TITLE: APOC REGISTRATION FEES; LOBBYIST TAX

SPONSOR(S): REPRESENTATIVE(S) KITO

01/30/17	(H)	READ THE FIRST TIME - REFERRALS
01/30/17	(H)	STA, FIN
02/09/17	(H)	STA AT 3:00 PM GRUENBERG 120
02/09/17	(H)	Heard & Held

02/09/17 (H) MINUTE(STA)
02/14/17 (H) STA AT 3:00 PM GRUENBERG 120

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
02/02/17 (H) Moved CSHB 3(MLV) Out of Committee
02/02/17 (H) MINUTE(MLV)
02/03/17 (H) MLV RPT CS(MLV) 7DP
02/03/17 (H) DP: LEDOUX, SPOHNHOLZ, PARISH,
RAUSCHER, SADDLER, REINBOLD, TUCK
02/14/17 (H) STA AT 3:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE SAM KITO
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, responded to questions during the hearing on HB 91.

CRYSTAL KOENEMAN, Staff
Representative Sam Kito
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information and answered questions during the hearing on HB 91, on behalf of Representative Kito, prime sponsor.

HEATHER HEBDON, Executive Director
Alaska Public Offices Commission (APOC)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 91.

PAM GOODE
Rural Deltana, Alaska

POSITION STATEMENT: Testified in opposition to HB 91.

KENDRA KLOSTER, Staff
Representative Chris Tuck
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on HB 3 on behalf of Representative Tuck.

ROBERT DOEHL, Deputy Commissioner
U.S. Department of Military & Veterans' Affairs (DMVA)
Joint Base Elmendorf-Richardson (JBER), Alaska

POSITION STATEMENT: Testified in support of HB 3 and answered questions.

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

POSITION STATEMENT: Testified in support of HB 3.

ACTION NARRATIVE

[3:01:30 PM](#)

CHAIR JONATHAN KREISS-TOMKINS called the House State Affairs Standing Committee meeting to order at 3:01 p.m. Representatives Birch, Johnson, Josephson, Knopp, and Kreiss-Tomkins were present at the call to order. Representatives Tuck and Wool arrived as the meeting was in progress.

HB 91-APOC REGISTRATION FEES; LOBBYIST TAX

[3:03:18 PM](#)

CHAIR KREISS-TOMKINS announced that the first order of business would be HOUSE BILL NO. 91, "An Act relating to fees for certain persons filing disclosure statements or other reports with the Alaska Public Offices Commission; relating to a tax on legislative lobbyists; and providing for an effective date."

CHAIR KREISS-TOMKINS opened public testimony on HB 91. After ascertaining that there was no one who wished to testify, he closed public testimony.

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REPRESENTATIVE SAM KITO, Alaska State Legislature, as prime sponsor of HB 91, expressed his concern that it is not clear that revenue generated from the lobbyist tax proposed in HB 91

would directly benefit the Alaska Public Offices Commission (APOC). He mentioned that staff is working on changes to the bill to rectify this issue and make other improvements.

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CRYSTAL KOENEMAN, Staff, Representative Sam Kito, Alaska State Legislature, on behalf of Representative Kito, prime sponsor of HB 91, referred to discussions in the House State Affairs Standing Committee meeting of 02/09/17 regarding raising revenue for APOC to offset general fund dollars and doing so through a tax or a fee. She mentioned that amendments to HB 91 are forthcoming to respond to concerns expressed in the hearing.

MS. KOENEMAN referred to Section 1 of HB 91, which states that a candidate, group, or nongroup entity is required to file reports with APOC. She said that in response to a request from APOC, staff will add "persons" to that section to broaden the intent to include additional groups such as labor unions, corporations, and other individuals. She stated that a candidate's registration fee would be for the full election cycle instead of just 12 months. She also noted the addition of language specifying the civil penalties for non-payment of filer registration fees, which was inadvertently left out of one section of HB 91.

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REPRESENTATIVE BIRCH expressed that he doesn't support an income tax, but wouldn't oppose a flat rate, whether it be per lobbyist or per client. He opined that the flat fee is more manageable, and it is fair and equitable.

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REPRESENTATIVE WOOL asked for the number of lobbyists.

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HEATHER HEBDON, Executive Director, Alaska Public Offices Commission (APOC), responded that the five-year average number of registered lobbyists is approximately 132.

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REPRESENTATIVE TUCK referred to the addition of "persons" to Section 1 of HB 91 and said that "persons" is one of the reasons

we have Citizens United. He added that the courts haven't differentiated between natural beings and artificial beings; therefore, corporations have First Amendment rights and the ability to use their general funds for unlimited contributions.

REPRESENTATIVE TUCK offered that the burden of overseeing the finances of lobbyists with larger revenue streams is greater than for the smaller groups, so it makes sense to have a fee structure based on revenue.

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REPRESENTATIVE BIRCH cited the information on page 2 of the Department of Revenue's (DOR's) fiscal note: the average total fees paid to lobbyists were about \$17 million and a 2.5 percent tax would generate about \$425,000 in annual revenue. He asked for an explanation of the discrepancy between the amounts of anticipated revenue - \$425,000 listed on the DOR fiscal note and \$244,000 listed on the sponsor statement. He offered that 130 lobbyists, each paying a \$2,000 fee, would generate an amount like that proposed.

REPRESENTATIVE KITO explained that the sponsor statement was based on APOC information from a year and a half ago and DOR used current information. He stated that the DOR estimate of \$425,000 does not acknowledge the removal of the existing lobbying fee proposed by HB 91, which amounts to about \$106,000. He said deducting \$106,000 from \$425,000 yields about \$380,000. He promised a revised sponsor statement with the committee substitute (CS).

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REPRESENTATIVE KNOPP offered that besides passing legislation to raise revenue, it is the responsibility of legislators to examine how departments conduct their business and then consider modifications. He asserted that the legislative body has not had that discussion, nor has it taken a balanced approach to the budget process. He suggested that APOC fees and reporting requirements discourage candidates and appointees of boards and commissions from seeking public office.

REPRESENTATIVE KNOPP referred to the sponsor statement, which states that APOC's budget was reduced from \$1.3 million in fiscal year 2015 (FY 15) to \$866,000 in FY 16. He asserted that the reduced amount occurred only in that one year. He referred to the APOC funding document in the committee packet, titled

"Multi-year Allocation Totals with Funding - Operating Budget - FY 2017 Conf Committee Structure," and noted funding for 2017 at \$1.033 million, with \$1,050 million in the FY 18 governor's budget. He reiterated his belief that the legislature needs to have discussions about conducting business and a balanced approach to the budget, not just for APOC but for all the state's agencies and departments. He asked if those discussions have taken place.

REPRESENTATIVE KITO asserted that APOC's budget was reduced and the agency is struggling to meet its statutory obligations. He said that the legislature authorized additional program receipts - the \$1,033 million figure on the document - which represents what the legislature considered to be the appropriate level of funding for APOC. He went on to say that his primary motivation for introducing HB 91 is to create a mechanism for APOC to collect receipts more than \$106,000 and up to the \$240,000 authorized by the legislature. His secondary motivation, he said, is to increase APOC staff in Juneau to provide adequate oversight of lobbying activities.

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REPRESENTATIVE KNOPP expressed his concern that there would be additional oversight requirements for APOC and fees would escalate.

REPRESENTATIVE KITO responded that APOC operated at a stable staffing level before reductions put pressure on its ability to do some of the audits. He mentioned that he did not foresee uncontrolled growth for the organization. He said that the legislature would continue to review the APOC budget and assess APOC's performance annually through the Department of Administration (DOA). He added that the legislature may audit the agency to determine if it is performing the statutorily designated functions. He emphasized the importance of allowing APOC to collect revenue up to the receipt authority amount and the need for additional support to perform its lobbying oversight activities.

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CHAIR KREISS-TOMKINS asked what oversight activities APOC has been unable to fulfill.

REPRESENTATIVE KITO replied that his understanding is there is a need to hire a professional who can understand and interpret

statute and provide advice to lobbyists filing reports. Currently there is just a clerk performing those duties.

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REPRESENTATIVE JOHNSON asked if Representative Kito anticipated that taxes on other professions would be "imbedded" in statute. She expressed her concern with maintaining simplicity regarding taxes in state law.

REPRESENTATIVE KITO responded that the lobbying profession regulated under APOC is a unique function and is not related to other professions that are regulated under the Department of Commerce, Community & Economic Development (DCCED). He said that the professions performing licensing activities and investigations under DCCED are already required to "pay their own way," and the fees are adjusted every other year for those professions. All the activities associated with the boards are paid for by the licensees and registrants. He said that APOC has been supported by general fund revenue and the \$250 per client fee, which has generated a little over \$100,000 historically. He asserted that nothing requires that APOC operations are supported entirely by the professions that they regulate. He offered that such a requirement would greatly increase APOC fees. He maintained that HB 91 was proposed to raise revenue just to the level of program receipts authorized by the legislature and to provide for better oversight in the lobbying office. He speculated that requiring the professions regulated by APOC to pay their own way would result in much higher fees than those proposed in HB 91.

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REPRESENTATIVE WOOL cited the financial disclosure reporting fee of \$50 in HB 91 and asked what the current fee was for financial disclosure.

REPRESENTATIVE KITO responded that there is not currently a fee for financial disclosure reporting.

REPRESENTATIVE WOOL asked what the current candidate fee was for filing with APOC.

REPRESENTATIVE KITO replied that there is currently not an APOC candidate fee. The \$100 filing fee in HB 91 would be a new fee.

REPRESENTATIVE WOOL suggested that other professional groups with similar membership size are self-funded, and fees include investigations; whereas, APOC's expenses are higher because investigations are ongoing. He offered that investigations involving the other boards are performed as needed.

REPRESENTATIVE KITO responded that he does not believe APOC's oversight of regulation or licensing functions is comparable to the Division of Corporations, Business, and Professional Licensing (CBPL). He stated that there are two components to APOC activity: one is oversight of the 132 lobbyists representing the 400-plus clients accessing the legislature; and the other is oversight of the group of candidates running for political office. He said that for oversight of all the registered candidates and groups, the estimated revenue is less than \$20,000. He attested that APOC would not have enough money for candidate review and would still need general funds. He offered that through HB 91, there would be an opportunity to generate funds from professional lobbying to pay for the oversight of their reporting requirements.

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CHAIR KREISS-TOMKINS opened public testimony on HB 91.

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PAM GOODE testified that she opposes HB 91. She expressed her belief that APOC should be downsized, as it has a very bad reputation among anyone running for office. She opined that APOC discourages "good" people from running for office. She mentioned that when APOC was formed in 1976, there were no computers, and now it is in violation of Article I, Section 22. She asserted that APOC requests information that is not even required by the IRS and publishes it on the Internet. She opined that "the reason APOC is overloaded is because they do petty things." She mentioned that APOC has wasted her time on very simple matters, and it audits filings that are less than \$100. She offered that instead of looking for ways to fund agencies, the legislature should look at ways "to release them of the pettiness." She asserted that APOC is supposed to be "going after the bad guys" and not deterring people from participating. She opined that people running for office and commissioners "won't step up" because of what is required from APOC. She mentioned that her husband warned her against running for office because of what APOC is doing. She relayed that she

let APOC "violate" her privacy so that she could "do the right thing" and run for office.

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CHAIR KREISS-TOMKINS closed public testimony on HB 91.

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REPRESENTATIVE JOSEPHSON commented that his experience with APOC has not been unfavorable, nor did he think the commission's requirements unreasonable. He expressed his alarm over the level of funding for APOC in the budget that was before him last March [2016] and said he appreciated that some of the money was restored. He opined that it would be impossible for the agency to perform its work successfully with that [reduced] level of funding.

REPRESENTATIVE JOSEPHSON cited the U.S. District Court decision of 2016 upholding the constitutionality of Alaska's \$500 annual personal campaign contribution limit, which has now been appealed. He mentioned that the presence of money in campaigns is only going to increase and "soft" money is growing every election cycle. He stated the importance of information to the public. He suggested that there be a waiver system for candidate filing fees in the case of a plea of poverty. He contended that in such a case, the money could not be raised prior to filing. He expressed the need for creative funding and for a fiscal plan.

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REPRESENTATIVE BIRCH stated that \$17 million in average annual fees paid to lobbyists comes to \$266,000 per legislator. He asked for the number of lobbyist clients.

MS. HEBDON answered that there are 480 clients, and APOC raises about \$120,000 per year through the \$250 per client registration fee.

REPRESENTATIVE BIRCH asked if the client pays the \$250 fee.

MS. HEBDON responded that lobbyists pay the \$250 for each of their clients.

REPRESENTATIVE BIRCH asked if lobbyists pay an additional fee.

MS. HEBDON responded no.

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REPRESENTATIVE WOOL asked if "\$250 per client per lobbyist" means that if a client hires four lobbyists, then four times \$250 is paid.

MS. HEBDON responded that is correct.

REPRESENTATIVE WOOL asked if HB 91 and a state income tax together would result in the "double taxing" of lobbyists.

REPRESENTATIVE KITO conceded that to be one of the complications of two taxes. He stated that the gross receipts that would be taxed at 2.5 percent would be independent of the income a lobbyist claims on his tax form, which is subject to income adjustments. He asserted that a forthcoming CS will address the issue of the 2.5 percent income tax in HB 91 to avoid the perception of double taxation.

[HB 91 was held over.]

HB 3-NATL GUARD LEAVE/REEMPLOYMENT RIGHTS

[3:40:25 PM](#)

CHAIR KREISS-TOMKINS announced that the final 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."

[Before the committee was committee substitute (CS) for HB 3 (MLV).]

[3:40:58 PM](#)

REPRESENTATIVE TUCK presented HB 3, as prime sponsor. He relayed that HB 3 would allow for employment rights of employees of the state who are members of the National Guard of another state, territory, or district of the United States. He paraphrased from the Sponsor Statement, which read [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 (USERRA) protects members of the Army or Air National Guard when they are called away from their civilian jobs for federal service.

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.

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REPRESENTATIVE BIRCH asked for an explanation as to why an Alaskan would be serving in another state's National Guard and

not Alaska's. He also asked how many people would be impacted by HB 3.

REPRESENTATIVE TUCK responded that there are many Alaskan workers, who live and raise families in Alaska, but are members of the National Guard in other states. He asserted that if those guard members are called back to the state in which they serve, then HB 3 would enable them to resume their employment in Alaska upon return, like a Guard member who was called to serve overseas by the President of the United States.

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KENDRA KLOSTER, Staff, Representative Chris Tuck, Alaska State Legislature, on behalf of Representative Tuck, prime sponsor of HB 3, relayed that recent data from the U.S. Department of Defense (DoD) identified 33 individuals in Alaska who serve in the National Guard in 19 other states. She conceded that this number is the result of self-reporting, and there may be more.

REPRESENTATIVE BIRCH asked for clarification on how this situation occurs. He asked if someone, who served in the National Guard of another state and moved to Alaska, would have the opportunity to transfer his/her National Guard affiliation to Alaska.

MS. KLOSTER responded that there is a process for transferring to another state's National Guard, and some members are called back to the original state of service before the process is complete.

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ROBERT DOEHL, Deputy Commissioner, Department of Military & Veterans' Affairs (DMVA), cited reasons why members of the National Guard would be living in one state and performing guard duty in another. He explained that often the civilian professional personal life of a guard member "gets out of sync" with his/her military career. He relayed that this situation occurs most often with students, military spouses, and those with civilian careers requiring frequent work out of state. He stated that for professional reasons, guard members go out of state to get training and experience that cannot be obtained in Alaska. He added that this situation also occurs due to the time it takes to get into the Alaska National Guard (ANG). He contended that when he moved to Alaska, getting into ANG was an 11-month process. He mentioned that guard members leave the

state for professional development. An Alaska guard member may start his/her career Outside in a position not available in Alaska, which would make him/her far more valuable to ANG upon return.

MR. DOEHL related three personal examples in which his military career was out of sync with his personal life. After graduating from college, he moved to another state for a job while continuing to "drill" in his original state. After getting off active duty and finishing law school, he continued to affiliate with the [Army] Reserve in the Midwest while living in Washington, D.C., to finish command tour of the unit and transition for two years. When he moved to Alaska and was in the process of transferring to ANG, he continued to travel to Newport News, Virginia, to command a unit and maintain pilot proficiency.

MR. DOEHL noted the money spent by the United States training him as a military pilot, which was "well into six figures." He also noted the money saved because he maintained his pilot proficiency in another state while he was in the process of joining the Alaska Air National Guard (AK ANG). He offered that "cross-state affiliation" may be common Outside, where one can drive across three states in an hour; however, for the guard member living in Alaska, the time, distance, and cost factors of an Outside National Guard affiliation highly incentivizes finding a path into ANG. He emphasized that DMVA supports HB 3 because it would be conducive to developing a professional militia in Alaska; it would allow a continuity of service for those Alaskans whose life plans require them to move Outside for a period; and it also would incentivize new Alaskans to remain engaged with the military from a prior affiliation, until they can become a member of ANG. He concluded that maintaining the participation and readiness of these guard members supports recruitment, saves money, and provides for a more capable National Guard serving Alaskans.

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REPRESENTATIVE BIRCH asked if there are employers who won't take back employees who have been serving in the National Guard in another state.

MR. DOEHL answered that since there is currently no mechanism in place to address this situation, no incidents have been brought to the attention of DMVA. He mentioned that USERRA protects [the employment of] guard members who have been mobilized for

periods of service for federal duties. He mentioned that most state active duty is of short duration; however, in the case of [the after effects of] Hurricane Katrina, guard duty lasted for months, resulting in difficult decisions and adverse actions by employers.

REPRESENTATIVE BIRCH asked for confirmation that currently there are no guard members who have been denied the opportunity to return to his/her job. He suggested that HB 3 was introduced to be proactive and not to address any current situations.

MR. DOEHL responded that is correct.

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REPRESENTATIVE WOOL asked if a member of the National Guard serves one weekend per month and two weeks per year. He asked if a guard member, who is currently living in Alaska but is a member of another state's National Guard, flies back to that state with that frequency.

REPRESENTATIVE TUCK responded yes.

MR. DOEHL answered that the bare minimum participation averages one weekend per month and two weeks of continuous training. He offered that National Guard duty has not been at that "bare minimum" level of training since [the terrorist attacks of September 11, 2001]. He added that in his case, to maintain flight proficiency, monthly and twice monthly training periods were required. He said that depending on the military occupational skills, some guard members can go out once a quarter for six days to fulfill the training requirements rather than monthly, to save time and expense. He added that there are already federal protections in place for drill weekends and annual training. He asserted that HB 3 would apply to state active duty for specific disasters and state needs.

REPRESENTATIVE WOOL mentioned that he didn't realize there was so much specialized training associated with the National Guard. He offered that by joining other states that allow the [employment] protection, Alaska would increase the number of guard members joining ANG, as opposed to maintaining their membership in another state's National Guard. He suggested that a guard member from another state would move to Alaska and keep up his/her out-of-state National Guard membership until he/she could transition to ANG.

MR. DOEHL responded that the protections [in HB 3] would allow an individual to continue to participate with an Outside organization. He maintained, however, that travel time and cost incentivize affiliation in ANG for those guard members and added that Alaska is the best place to train.

[3:56:18 PM](#)

CHAIR KREISS-TOMKINS opened public testimony on HB 3.

MARK SAN SOUCI, Regional State Liaison, U.S. Department of Defense (DoD), testified that 28 states are providing the protection that would be offered in HB 3 and three other states have introduced legislation. He offered the example of an Alaskan resident, who is a member of the National Guard in Washington or Oregon, being called up for 30 days to fight a forest fire. He suggested that without the protection that would be offered under HB 3, he/she might be fired because of his/her absence. He mentioned that DoD addressed this as a key issue three years ago. He reiterated that there are 33 self-reported guard members in Alaska serving in 19 other states. He went on to list the states: Alabama, Arkansas, California, Florida, Hawaii, Massachusetts, Minnesota, Missouri, Montana, North Carolina, North Dakota, Nevada, New York, Oregon, Tennessee, Texas, Utah, Washington, and West Virginia. He added that these guard members are serving in the other states either for professional development or because they are in the process of transferring to ANG. He concluded that the intent of HB 3 is to protect those Alaskans who are doing that "good duty" of serving in the National Guard in other states.

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CHAIR KREISS-TOMKINS closed public testimony on HB 3.

REPRESENTATIVE KNOPP asked if HB 3 would apply to people who work two weeks on and two weeks off in Alaska and are members of a National Guard in another state.

REPRESENTATIVE TUCK replied yes, because their place of employment is in Alaska. The proposed legislation would apply to Alaskan employers.

REPRESENTATIVE TUCK mentioned that HB 3 was amended in the House Special Committee on Military and Veterans' Affairs meeting [of 2/2/2017] to insert a new subsection (h) under Section 3, which states that there would be an exemption for the reemployment

rights of a guard member "if the employer's circumstances have changed, making employment impossible or unreasonable, or the employment would impose any undue hardship on the employer." He asserted that this amendment created a balance: making sure that a National Guard member, serving honorably, would have the ability return to his/her job if it didn't create any hardship on the employer at the same time.

[HB 3 was held over.]

[4:02:52 PM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 4:02 p.m.