Introduced: 2/9/90
Referred: Labor & Commerce, and Finance

BY REP. KUBINA, Larson, Finkelstein, Gruenberg

1 IN THE HOUSE

2 HOUSE BILL NO. 493

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to reemployment rights for members
7 of the state's organized militia."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. The legislature declares that it is the policy of the
10 state to encourage membership in Alaska's organized militia and to minimize
11 adverse employment consequences that might result from participation in
12 active state service under AS 26.05.070.

13 * Sec. 2. AS 26.05 is amended by adding a new section to read:

14 Sec. 26.05.075. REEMPLOYMENT RIGHTS OF THE ORGANIZED MILITIA.
15 (a) An employer shall grant to an employee who is a member of the
16 organized militia a leave of absence to perform active state service
17 under AS 26.05.070.

18 (b) When an employee is released from a period of active state
19 service under AS 26.05.070 or discharged from hospitalization that
20 arose from active state service, the employee is entitled to return to
21 the employee's former position, or a comparable position, at the pay,
22 seniority, and benefit level the employee would have had if the em-
23 ployee had not been absent as a result of active state service. An
24 employee, other than an employee who has been hospitalized, shall
25 report for work at the beginning of the workday following the last
26 calendar day necessary to travel from the site of active state service
27 to the employee's work site. An employee who has been hospitalized
28 shall report for work at the beginning of the workday following the
29 last calendar day necessary to travel from the hospital or place of

1 recuperation to the employee's work site. If the employee fails to
2 return to work at that time, the employer may impose whatever disci-
3 pline is provided by the employer's rules of conduct for unexcused
4 absence from work.

5 (c) If an employee is not qualified to perform the duties of the
6 employee's position as a result of permanent disability sustained
7 because of the employee's active state service but is qualified to
8 perform the duties of another position with the employer, the employer
9 shall offer an employee who requests reemployment the available,
10 vacant position that most closely approximates the pay and benefits of
11 the employee's previous position and that the employee is qualified
12 for and capable of performing. An employee loses the right to reem-
13 ployment under this subsection unless the employee requests reemploy-
14 ment within 30 days after receiving a statement from the employee's
15 treating physician indicating both that the employee has reached
16 maximum recovery and that the employee is released to return to full-
17 time work.

18 (d) For employees other than state employees, the Department of
19 Labor shall enforce this section by appropriate regulations. For
20 state employees, the division of personnel in the Department of Admin-
21 istration shall enforce this section. Regulations adopted under this
22 section may provide for orders of reinstatement and back pay if appro-
23 priate. For employees other than state employees, contested cases
24 arising under this section are to be handled under AS 44.62.330 -
25 44.62.630. Appeals involving state employees must be made to the
26 personnel board under the procedure set out in the state's personnel
27 rules for grievances.

28 (e) Notwithstanding (f) of this section, a person aggrieved
29 under this section may bring an action in superior court no sooner

than 30 days after giving notice to the Department of Labor, or, in the case of a state employee, to the director of the division of personnel. The action must be brought within two years after the claim arose.

(f) A collective bargaining agreement entered into in the state after the effective date of this Act may not contain provisions contrary to this subsection.

(g) This section does not affect AS 39.20.340 or 39.20.350 governing paid leave and reinstatement of state and local employees for certain military activities.

* Sec. 3. AS 23.40.075 is amended to read:

Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties may not negotiate terms contrary to

(1) the reemployment rights for injured state employees under AS 39.25.158; or

(2) the reemployment rights of the organized militia under AS 26.05.075.

* Sec. 4. AS 44.62.330(a) is amended by adding a new paragraph to read:

(55) Department of Labor as to functions related to employment rights of the organized militia under AS 26.05.075.