

COMMITTEE REPORT
HOUSE

(11)

FURTHER:

1/23/85

Date: 1-28-85

The Committee on FINANCE has had HB14

"An Act making members of the Alaska Territorial Guard eligible for a death gratuity."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 14 (FIN) same title
 new title
- and recommends do pass
- AND attaches a "Letter of Intent" New Fiscal Note 3.0
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Lee Adams

John ...

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

Lee Adams

CHAIRMAN

**STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST

Bill/Resolution No. SHB14 (FIN)
 Title: Veterans Burial Allowance
Alaska Territorial Guard
 Sponsor: Fuller and Wallis
 Requestor: Military & Vets Affairs
 Date of Request: 16 January 1985

FISCAL DETAIL

Agency Affected: Military & Veterans Affairs
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected:
Veterans Affairs (Veterans Benefits)

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		3.0	3.0	3.0		
800 MISCELLANEOUS						
TOTAL OPERATING		3.0	3.0	3.0		

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		3.0	3.0	3.0		
FEDERAL FUNDS						
OTHER						
TOTAL		3.0	3.0	3.0		

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Amend Chapter 98 SLA 82 to add members of the Alaska Territorial Guard as those eligible to receive a State Burial Allowance of \$750. It is estimated that this bill would affect four families annually.

Prepared By: Richard L. Rountree, Director
 Division: Administrative & Support Services

Phone: 465-4600
 Date: 16 January 1985

Approved by Commissioner: MG Edward G. Pagano
 Agency: Dept. of Military & Veterans Affairs

Date: 16 January 1985

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

Original sponsors: Fuller and Wallis

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 14 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making members of the Alaska Territorial
7 Guard eligible for a death gratuity; and providing
8 for an effective date."

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

10 * Section 1. AS 26.10.080(d)(2) is amended to read:

11 (2) "veteran" means

12 (A) a person who served in a branch of the armed
13 services of the United States

14 (i) who at the time of entry into the service was
15 a resident of the territory or state, who had been a resi-
16 dent for not less than one year immediately before entry
17 into the service, and who returned to the territory or state
18 within one year after discharge as a resident with the
19 intention of remaining in the territory or state; or

20 (ii) who was a resident of the state for not less
21 than one year immediately preceding the time of death; or

22 (B) a person who served in the Alaska Territorial
23 Guard, the Alaska Army National Guard, the Alaska Air National
24 Guard, or the Alaska Naval Militia, or who served in a reserve
25 unit of the United States armed forces in Alaska if the reserve
26 unit required a minimum of one weekend of duty each month and 15
27 consecutive days of active duty training each year for not less
28 than three years.

29 * Sec. 2. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

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HB 14: VETERANS BURIAL ALLOWANCE, ALASKA TERRITORIAL GUARD

SUBJECT OF PROPOSED BILL: Amend SLA 1982 Chapter 98 to add members of the Alaska Territorial Guard as those eligible to receive the Veterans Burial Allowance of \$750.00.

THIS BILL CORRECTS WHAT APPEARS TO HAVE BEEN AN OVERSIGHT IN THE STATUTES. UNDER PRESENT LAW, VETERANS WHO ARE ELIGIBLE FOR A BURIAL ALLOWANCE ARE THOSE WHO SERVED IN THE U.S. ARMED FORCES, IN THE ALASKA ARMY NATIONAL GUARD, THE ALASKA AIR NATIONAL GUARD, THE ALASKA NAVAL MILITIA, OR IN A RESERVE UNIT OF THE U.S. ARMED FORCES IN ALASKA. ALASKA TERRITORIAL GUARDSMEN ARE OMITTED.

I WOULD SUSPECT THAT THE REASON FOR THE OMISSION WAS CONFUSION OVER THE IDENTITIES OF ALL THE VARIOUS MILITIAS IN THE STATE CREATED IN THE 1940'S. THE SEPTEMBER 14, 1984 ATTORNEY GENERAL'S OPINION CONTAINED IN YOUR BILL PACKETS EXPLAINS THAT THE STATUTES DEFINING WHO IS A VETERAN DO NOT EXPRESSEDLY INCLUDE MEMBERS OF THE ALASKA TERRITORIAL GUARD. IT APPEARS THAT THE LEGISLATURE MAY NOT HAVE BEEN AWARE OF THE DISTINCTION BETWEEN THE ALASKA TERRITORIAL GUARD AND THE ALASKA NATIONAL GUARD.

WHEN ERNEST GRUENING WAS GOVERNOR IN 1941, HE WORKED WITH THE FEDERAL GOVERNMENT TO CREATE THE ALASKA NATIONAL GUARD. AT THAT TIME, THE FEDERAL GOVERNMENT SAID THAT THE TERRITORY OF ALASKA HAD THE AUTHORITY TO ORGANIZE A TERRITORIAL GUARD. IN 1941, THE TERRITORY APPROPRIATED MONIES TO THE NATIONAL GUARD OF ALASKA, AND IN 1949 THE ALASKA TERRITORIAL MILITIA WAS CREATED, WHICH WAS REFERRED TO AS THE ALASKA NATIONAL GUARD. SO WE HAD THE ALASKA NATIONAL GUARD, CREATED BY THE FEDERAL GOVERNMENT, AND THE ALASKA TERRITORIAL GUARD, CREATED BY THE TERRITORY OF ALASKA. ALTHOUGH THE FEDERAL ACT CREATING THE NATIONAL GUARD GAVE PERMISSION TO THE GOVERNOR OF ALASKA TO CREATE THE

TERRITORIAL GUARD, THIS DOES NOT MEAN THAT THE ATG WAS A PART OF THE NATIONAL GUARD, AND SO REFERENCE TO THE TERRITORIAL GUARD WOULD NEED TO BE SPELLED OUT IN THE STATUTES.

IF MY EXPLANATION HAS CONFUSED YOU, THEN YOU WILL UNDERSTAND HOW THE TERRITORIAL GUARDSMEN COULD EASILY HAVE BEEN OVERLOOKED IN DEFINING VETERANS ELIGIBLE FOR THE BURIAL ALLOWANCE. THE TERRITORIAL GUARDSMEN REMAINED IN ALASKA WHEN THE TERRITORY WAS ACTUALLY OCCUPIED BY ENEMY FORCES. THESE PEOPLE DESERVE TO HAVE THE BENEFITS EXTENDED TO OTHER MEMBERS OF THE NATIONAL GUARD.

AS YOU CAN SEE, THE FISCAL NOTE ON THIS BILL IS QUITE SMALL, JUST \$3,000.

5. The Alaska Territorial Guard was composed of members of the State Defense Force who remained in Alaska during armed hostilities when the enemy forces actually occupied the Territory of Alaska. These people no less than other veterans or members of the National Guard served the State in a defense role and should be accorded the burial allowance accorded other members of the National Guard.

Hein
1/25/85✓

KEY:
— additions

Original sponsors: Fuller and Wallis

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IN THE HOUSE

BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 14 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making members of the Alaska Territorial Guard eligible for a death gratuity; and providing for an effective date."

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

* Section 1. AS 26.10.080(d)(2) is amended to read:

(2) "veteran" means

(A) a person who served in a branch of the armed services of the United States

(i) who at the time of entry into the service was a resident of the territory or state, who had been a resident for not less than one year immediately before entry into the service, and who returned to the territory or state within one year after discharge as a resident with the intention of remaining in the territory or state; or

(ii) who was a resident of the state for not less than one year immediately preceding the time of death; or

(B) a person who served in the Alaska Territorial Guard, the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia, or who served in a reserve unit of the United States armed forces in Alaska if the reserve unit required a minimum of one weekend of duty each month and 15 consecutive days of active duty training each year for not less than three years.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.-

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10.070(c).

voluntarily submitted to the bureau by veterans of all persons who are bona fide residents of Alaska and who actively served in the Alaska Territorial Guard, Alaska National Guard, organized reserve units, United States Army, Navy, Air Force, Marine Corps or Coast Guard since April 6, 1917. The record shall contain the name, age and place of residence at the time of entering service, place and date of commission, enlistment or induction, branch of service, record of service and the date, place and nature of discharge. (§ 44-2-2 ACLA 1949; am § 1 ch 75 SLA 1955; am § 2 ch 35 SLA 1981)

Cross references. — As to copies of public records for veterans, see AS 09.25.121.

Effect of amendments. — The 1981 amendment designated the existing section as subsection (b) and added subsection (a). The amendment, in subsection (b), substituted "keep" for "compile" preceding "a record," added "from copies of reports received under (a) of this section and from information voluntarily submitted to the bureau by veterans" preceding "of all persons," substituted "are" for "were" preceding "bona fide residents," deleted

"the territory of" preceding "Alaska," added "Alaska Territorial Guard, Alaska National Guard, organized reserve units" preceding "United States Army," added "Air Force" following "Navy," substituted "Coast Guard since" for "between" preceding "April," deleted "and November 11, 1918" following "April 6, 1917" and deleted the former second sentence which read "The record shall be kept on file at the office of the bureau and shall be available and open to the inspection of anyone desiring to inspect it."

Sec. 26.10.080. Death gratuity. (a) The Department of Military and Veterans' Affairs shall pay, upon application, a death gratuity in the amount of \$750 to the surviving spouse of a veteran whose burial in the state occurs on or after May 13, 1984 and who was a resident of the state at the time of death. If the veteran has no surviving spouse, the gratuity shall be paid to the personal representative of the veteran.

(b) A death gratuity may be paid for a veteran otherwise eligible under (a) of this section even if the veteran died while temporarily absent from the state.

(c) The Department of Military and Veterans' Affairs may not pay a death gratuity unless the veteran for whom payment is made received an honorable discharge or a general discharge under honorable conditions.

(d) In this section

(1) "personal representative" includes administrator, executor, special administrator, successor personal representative, and persons who perform substantially the same function under the law governing their status;

(2) "veteran" means

(A) a person who served in a branch of the armed services of the United States

(i) who at the time of entry into the service was a resident of the territory or state, who had been a resident for not less than one year immediately before entry into the service, and who returned to the territory or state within one year after discharge as a resident with the intention of remaining in the territory or state; or

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(B) a person who served in the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia, or who served in a reserve unit of the United States armed forces in Alaska if the reserve unit required a minimum of one weekend of duty each month and 15 consecutive days of active duty training each year for not less than three years. (§ 1 ch 98 SLA 1982; am § 14 ch 67 SLA 1983; am § 1 ch 7 SLA 1984; am E.O. No. 58, § 12 (1984))

Revisor's notes. — In subsection (c) of this section, "Department of Military and Veterans' Affairs" was substituted for "division of veterans' affairs" under § 27, E.O. 58, in 1984.

Effect of amendments. — The 1983 amendment, deleted "and had been a resident of the territory or state for at least

five years" following "time of death" in subparagraph (d)(1)(B).

The first 1984 amendment substituted "Department of Military and Veterans' Affairs" for "division of veterans' affairs" in subsection (a).

The second 1984 amendment rewrote the section.

Chapter 15. Veterans Loans.

Section

- 30. Powers and duties of Department of Commerce in general
- 40. Veterans' loans
- 70. Sale or transfer of mortgages and notes
- 100—120. [Repealed]

Section

- 130. Eligibility for loans
- 150. [Repealed]
- 160. Extension of chapter to veterans of Korea and Viet Nam
- 170. [Repealed]

NOTES TO DECISIONS

Transfer of property to nonveteran. — A contract transferring property financed by a veterans' loan to a nonveteran was not expressly prohibited or illegal, and was not void as against public policy. *Currington v. Johnson*, Sup. Ct. Op. No. 2828 (File No. 7387), P.2d (1984).

Option contract transferring property financed by a veterans' loan to a

nonveteran was not voidable under the doctrine of frustration of purpose because the veterans' loan could be called due since the veteran's deed of trust provided for such event, and the veteran therefore clearly had reason to know of the possibility of acceleration of his veterans' loan at the time the option contract was formed. *Currington v. Johnson*, Sup. Ct. Op. No. 2828 (File No. 7387), P.2d (1984).

Sec. 26.15.030. Powers and duties of Department of Commerce in general. (a) The Department of Commerce shall formulate general policies and adopt rules and regulations.

(b) The department may hold hearings and subpoena witnesses and documents, and administer oaths in connection with hearings.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

September 14, 1984

Mr. Al Adams, Chairman
House Finance Committee
Pouch V
Juneau, AK 99811

Re: Territorial Guardsmen; burial allowance provided
by AS 26.10.080

Dear Mr. Adams:

In your letter of September 5, 1984, you requested an opinion from this office as to whether former members of the Alaska Territorial Guard (ATG) may be eligible for burial allowances under AS 26.10.080 (.080). The following analysis and historical review of the ATG's status under .080 is submitted in response to your request. In our opinion, former members of the ATG are not eligible for burial allowances under that provision.

The statute in question provides that burial allowances will be paid to a qualifying veteran. The statute then defines a veteran, in pertinent part in AS 26.10.080(d)(1), as a person who is serving or has served in a branch of the armed services of the United States, and in (d)(2) of that section, as a person who had served in the Alaska Army National Guard, the Alaska Air National Guard, or the Alaska Naval Militia, or who had served in a reserve unit of the United States Armed Forces in Alaska. AS 26.10.080. The ATG is not expressly included within the definition of veteran in .080. On the face of .080, therefore, former members of the ATG are ineligible for burial allowances provided by that statute.

The reason for the omission of the ATG is not clear, however, and may have been either intentional or accidental. That the omission may have been intentional is evident when comparing .080 with AS 26.05.225 (.225), which provides credit to former members of the ATG for the purpose of determining eligibility for retirement pay. The provision of a benefit to former members of the ATG through .225 implies that the legislature was aware of the existence of the ATG, and hence the omission of the ATG from .080 appears to be deliberate.

In the alternative, the omission of the ATG from benefits under .080 may have been accidental because the legislature may not have been aware of the distinction between

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the ATG and the Alaska National Guard. The reason for this confusion will be discussed in the paragraphs following. AS 26.05.225 indicates that it was the legislature's intent to provide at least certain benefits to former members of the ATG. It is therefore possible to imply that the legislature would have included burial allowances as well under .080 but did not only by reason of accident.

Mr. Ernest Gruening, the territorial governor of Alaska, notes that when he took office in 1939 there had never been a National Guard in Alaska, that he took steps to organize one and that he requested federal authorization to do so. Gruening, Introduction to M. Marston, Men of the Tundra, at 3, 1972. On December 31, 1941, presumably as a result of Mr. Gruening's efforts, the U.S. Congress approved an act to establish a military code for the territory of Alaska, H. Res. 5822, 77th Cong., 1st Sess., ch. 644, Dec. 31, 1941 (1941 Act). That Act declared that the militia of the territory of Alaska was to be divided into two classes: the Organized Militia, known as the Alaska National Guard, and the Unorganized Militia. 1941 Act, § 1. The Act further provided that the governor of the territory of Alaska had authority to organize a Territorial Guard. 1941 Act, § 6. In apparent support of the federal act, the legislature of the territory of Alaska appropriated certain monies to the National Guard of Alaska. 1941 Alaska Sess. Laws, ch. 60, H.B. 122; 1943 Alaska Sess. Laws, chs. 26, 27, H.B. 55, 56; 1945 Alaska Sess. Laws, ch. 64, H.B. 65. Finally, in 1949 the territory of Alaska created an Alaska Territorial Militia which the territorial legislature referred to as the Alaska National Guard. 1949 Alaska Sess. Laws, ch. 120, H.B. 22.

Confusion may have arisen in the legislature over the separate identities of the various militias which had been created in the 1940's. If such confusion existed, it may have led to the omission of the ATG in .080. To prevent further confusion, therefore, it is recommended that when a former member of a militia in the territory of Alaska claims burial allowances under .080, it should be ascertained at the outset whether that person was a member of the federally created Alaska National Guard, which is expressly covered under .080, or whether that individual was a member of the ATG organized by the governor of Alaska, which is not covered under .080.

Unless strong evidence to the contrary is found, a member of the ATG does not fall within the purview of .080(1) or (2) on the strength of the 1941 Act. This is based in large part on the fact that the 1941 Act does not expressly state that the Territorial Guard is a part of the Alaska National Guard and does not expressly describe the Territorial Guard either as a branch of the federal armed forces or as a part of the Unorganized

Mr. Al Adams, Chairman
House Finance Committee

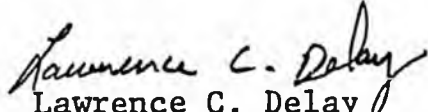
September 14, 1984
Page 3

Militia. While the Territorial Guard received federal sanction under the 1941 Act, was subject to regulations of discipline in training prescribed by the U.S. Secretary of War and received federal arms and equipment, 1941 Act, § 7, the Territorial Guard, was nonetheless a body organized by the territory of Alaska and existed independently of the Alaska National Guard and other branches of the federal armed forces.

In conclusion, whether by accident or by intent, the legislature which enacted .080 did not expressly provide burial allowances to ATG members through that section. Furthermore, a review of the federal act which sanctioned the Alaska National Guard and gave permission to the governor of Alaska to create the ATG does not lead to the conclusion that the ATG was either a part of the National Guard or otherwise a part of the federal armed forces of the United States. The ATG does not therefore fall within the purview of AS 26.10.080(d)(1) or (2) as it is not a part of the National Guard or any branch of the U.S. armed services. A former member of the ATG is therefore not eligible to receive burial allowances under AS 26.10.080.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Lawrence C. Delay
Assistant Attorney General

LCD:ihr

Introduced: 1/14/85
Referred: State Affairs and
Finance

1 IN THE HOUSE

BY FULLER AND WALLIS

2

HOUSE BILL NO. 14

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

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