

HB

14

COMMITTEE REPORT
SENATE

FURTHER: FINANCE

2/7/85

Date 3/26/85

Mr. President

The Committee on STATE AFFAIRS considered CSHB 14(Fin)

making members of the Alaska Territorial Guard eligible for a death gratuity; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" [] NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Edna H. ...
V. J. ...
Tom Kelly

MEMBERS HAVING
OTHER RECOMMENDATIONS

[Signature]
 Chairman

[Signature]
 Chairman recommendation

REQUEST

Bill/Resolution No.: HB14
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)

fiscal note Dept MA

7/1/84

EXPLANATION OF FISCAL NOTE: *HB-14*

The Territorial Guard was in existence from 1941 until 1947, with about 5,000 individuals on the roster. The members constituted approximately 10% of the population. These people would now be in their mid- to late-70's.

According to Labor statistics, Alaska has approximately 5,000 people over 75 today. If we assume that the Territorial Guardsmen would also number 10% of that population, then there may be about 50 of them left. This figure assumes that none died, moved away, or entered another branch of service with eligibility for the burial allowance. And, of course, many of the individuals in the state over 75 today likely were not here in the early 40's.

You can see that the figure of 50 is a rough estimate, and in all likelihood much larger than it ought to be, but it does represent the Department's best guess as to how many members of the former Alaska Territorial Guard are surviving today. There is no way of figuring the exact number. Therefore, an assumption of four members a year applying for the burial allowance may be high, but the total cost is low, only \$3,000, and we can easily make a budget adjustment after the first year.

explanation of fiscal note

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

Rep. Fuller's testimony

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.

HB 14

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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1st NATIONAL CENTER
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POUCH K - STATE CAPITOL
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PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

AG's opinion

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

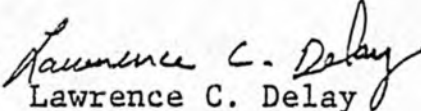
September 14, 1984
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Militia. While the Territorial Guard received federal sanction under the 1941 Act, was subject to regulations of discipline in training prescribed by the U.S. Secretary of War and received federal arms and equipment, 1941 Act, § 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

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF MILITARY
AND VETERANS AFFAIRS**

OFFICE OF THE ADJUTANT GENERAL

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September 18, 1984

Representative Al Adams
P.O. Box 333
Kotzebue, Alaska 99752

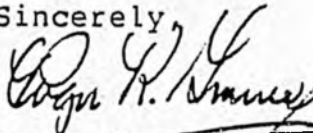
Dear Representative Adams:

I am in receipt of a copy of the letter dated 14 September from Mr. Delay of the Attorney General's office where he discusses the Alaska Territorial Guardsmen and the Veterans Burial Allowance Program as provided by AS 26.10.080. Unfortunately as presently written, the statute does not include Alaska Territorial Guardsmen.

Prior to Mr. Delay's research and the Attorney General's opinion, Major General Edward G. Pagano, the Adjutant General and Commissioner of the Department of Military and Veterans Affairs, submitted to the Governor the department's legislative packet which contained a bill that would amend AS 26.10.080 to include members of the Alaska Territorial Guard. A copy is attached for your reference.

It is this department's opinion that members of the Alaska Territorial Guard made a significant contribution to the Territory and State of Alaska and should be included along with other veterans in the state's Death Benefit Program.

Sincerely,



Roger W. Graves, Director
Division of Veterans Affairs
Department of Military &
Veterans Affairs

RKG/bs

Attachment