

**HB**

**493**

# HOUSE COMMITTEE REPORT

FILE

(11)

Date Referred: February 23, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/14/90

The FINANCE Committee considered:

HB 493

HOUSE BILL NO. 493

HB 493 MILITIA REEMPLOYMENT RIGHTS

"An Act relating to reemployment rights for members of the state's organized militia."

**RECOMMENDATIONS:**

- be replaced with CS HB 493 (LFC)  the same title
- have attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

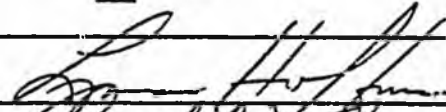
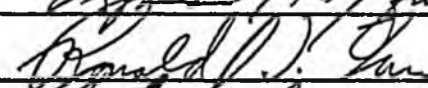
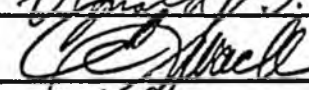
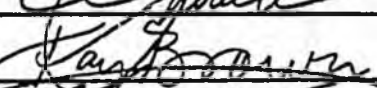
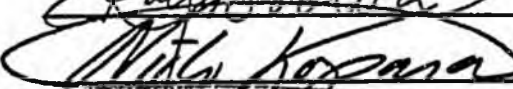
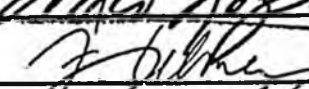
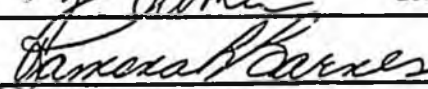
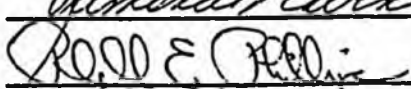
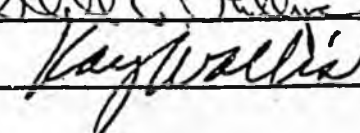
ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)


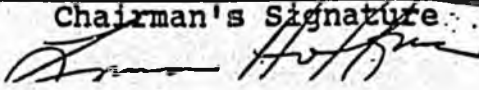
- fiscal impact \_\_\_\_\_  fiscal note(s) \_\_\_\_\_
- zero fiscal note \_\_\_\_\_  zero fiscal note(s) 2/23/90 / ADMIN
- zero with analysis \_\_\_\_\_  zero fn/analysis 3/23/90 / Labor

**SIGNING DO PASS:**

**SIGNING:**  
(Check approp. column)

Do Not Pass No Rec Amend

	Hoffman			
	Carson			
	Swackhammer			
	Brown			
	Koponen			
	Limer			
	Barnes			
	Phillips			
	Wallis			

 Carson  
 Chairman's Signature:  Hoffman

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to  
re-employment rights for members\*  
Sponsor: Kubina, Larsen, et. al.  
Requestor: \_\_\_\_\_

Agency Affected: Department of Administration  
BRU: Division of Personnel

Components: \_\_\_\_\_

\*of the states organized militia.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY92	FY93	FY94	FY95	FY96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

This bill will not have a fiscal impact on the Division of Personnel.

Prepared by: David K. F. Otto *DKFO*  
Division: Personnel

Phone: 465-4430  
Date: 2/15/90

Approved by Commissioner: Frank S. Baxter *Frank S. Baxter*  
Agency: Department of Administration

Date: 2/20/90

Distribution (by preparer) :

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

Adopted

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 493(L&C) No. 2  
PUBLISH DATE: HOUSE 2/23/90

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Labor  
 Title: "An Act relating to reemployment  
rights for members -- organized militia." BRU: Labor Standards & Safety  
 Sponsor: Kubina, Larson, Finkelstein Components: Wage & Hour  
 Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There is no fiscal impact in FY 90.

Prepared by: Tom Stuart, Director *Stuart* Phone: 465-2712  
 Division: Labor Standards & Safety Date: 2/14/90  
 Approved by Commissioner: Jim Sampson *Sampson* Date: 2/14/90  
 Agency: Department of Labor

Distribution (by preparer) :  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Adopted

FISCAL NOTE

REQUEST:

Revision Date: February 12, 1990  
Title: An Act relating to employment rights for the organized militia.  
Sponsor: Rep. Kubina  
Requestor: \_\_\_\_\_

Agency Affected: DMVA  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill will have no fiscal impact on DMVA

Prepared by: Jeff Morrison, Director Phone: 465-4600

Division: Administrative & Support Services, DMVA Date: 2/12/90

Approved by Commissioner: MG John Schaeffer Date: 2/12/90

Agency: Department of Military & Veterans Affairs

Distribution (by preparer):

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

Adopted

Original sponsor(s): REP. KUBINA, Larson, Finkelstein, Gruenberg

1 IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 493 (L&C)

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. AS 26.05 is amended by adding a new section to read:

10 Sec. 26.05.075. REEMPLOYMENT RIGHTS OF THE ORGANIZED MILITIA.

11 (a) An employer shall grant to an employee who is a member of the  
12 organized militia a leave of absence to perform active state service  
13 under AS 26.05.070.

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

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

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

24 (e) Notwithstanding (f) of this section, a person aggrieved  
25 under this section may bring an action in superior court no sooner  
26 than 30 days after giving notice to the Department of Labor, or, in  
27 the case of a state employee, to the director of the division of  
28 personnel. The action must be brought within two years after the  
29 claim arose.

1           (f) A collective bargaining agreement entered into in the state  
2 after the effective date of this Act may not contain provisions con-  
3 trary to this subsection.

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

7 \* Sec. 2. AS 23.40.075 is amended to read:

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

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

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

14 \* Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

15                 (55) Department of Labor as to functions related to employ-  
16 ment rights of the organized militia under AS 26.05.075.

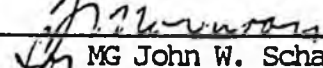
DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

POSITION PAPER  
HB 493

Summary of Bill: The proposed legislation would allow reemployment rights to members of the organized militia who are called to State Active Duty by the Governor. The organized militia consists of the Alaska National Guard, the Alaska Naval Militia, and the Alaska State Militia (also known as the Alaska State Defense Force). State Active Duty is used by the Governor to activate the militia for State purposes such as state-declared disasters (i.e., not declared by the President) or civil disturbances, and is authorized by A.S. 26.05.070. Reemployment rights for National Guard and Naval Militia members who are called to federal service or who are training for their military jobs are protected by federal legislation. Under provisions of the bill, the Department of Labor will enforce the reemployment rights by appropriate regulations for all but state employees. The Department of Administration will enforce the reemployment rights for state employees.

Impact of Bill on Department of Military and Veterans Affairs: There will be no administrative impact on DMVA as a result of passage of this bill. However, we expect that the members of the organized militia will be very appreciative of the fact that their civilian jobs will be secure for them in the event that they are called to state active duty.

Departmental Position on Bill: The department strongly supports this bill.

Approved:  Date: 2/10/90  
MG John W. Schaeffer

STEVE COWPER, GOVERNOR

**DEPARTMENT OF MILITARY  
AND VETERANS AFFAIRS**

OFFICE OF THE ADJUTANT GENERAL

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TELEFAX (907) 243 1444

Administrative & Support  
Services Division  
P.O. Box L  
Juneau, AK 99811

March 9, 1990

The Honorable Gene Kubina  
Alaska State Representative  
P.O. Box V  
Juneau, AK 99811

Dear Representative Kubina,

In the discussions concerning HB493, concerning reemployment rights for members of the state militia, several questions have come up which you have requested me to address. This letter will attempt to answer those questions for you.

1. Should there be a time limit applied to the time that a person is on state active duty before they lose the reemployment rights addressed in HB493?

The department believes that the existence of a time limit would not serve a useful purpose. Militia members who are called to state active duty, and whose return to employment would be protected by this bill, are rotated in and out of their state active duty when possible to prevent their being gone from their routine employment any longer than necessary. In a few instances, the skills of certain individuals or groups of individuals (e.g. helicopter pilots) are such that such rotation is not possible or may be severely restricted. However, in all instances, the call of members to state active duty is needed to respond to an emergency situation (e.g. the Exxon Valdez), and members are only called up for as long as the emergency situation exists. In the unforeseen occurrence of a situation requiring extensive periods of state active duty, we do not believe it would be in the best interest of the state and the communities that are benefitting from the militia call-up to have the members concerned about whether or not they had a job when the emergency was over. There is no limit on the call-up time for the federal reemployment rights when members of the National Guard are called up for federal emergency duty, and we believe that the state should follow suit when protecting its militia members when called up for state emergency duty.

2. What happens if a member is called up to state active duty from a seasonal job (e.g. construction), and the seasonal job is not there when his emergency service is over?

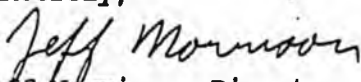
An employer would not be required to create a job that did not exist because of the seasonal nature of the employment. However, the member would be eligible to return to his job at the start of the next season as if he had not been absent for the state active duty, and would not suffer any loss of seniority for his time away from the job. This specific case would probably be addressed in the regulations to be adopted by the Department of Labor as authorized on page 2, lines 14-15 of HB 493.

3. What are the likely penalties that would be levied against employers who violate the reemployment rights to be enacted by HB493?

On page 2 of HB493, lines 17-19, the bill authorizes the Department of Labor to order reinstatement and payment of back pay if appropriate. This would not be the first action taken in the event a member was denied reemployment, and would only be used as a last resort. The first steps in regaining employment for a militia member who was denied a return to his former place of work would be: 1) the member's commanding officer and other military officers in the member's chain of command would call on the employer and attempt to convince the employer to reinstate the militia member; 2) a representative from the Employer's Support of the Guard and Reserve (ESGR) would talk to the employer; 3) a representative from the Department of Labor, Division of Labor Standards and Safety would talk to the employer. Only when all attempts to convince the employer to comply with the law have proved fruitless would the Department of Labor issue an order of reinstatement and back pay. If an employer contested the order, he would be able to appeal the action under the Administrative Adjudication section of the Administrative Procedure Act (A.S. 44.62.330-630). If an appeal were not filed in a timely manner, the Department of Labor has the authority under A.S. 44.62.590 to file in superior court, where an employer could be found in contempt of court for failure to comply with the order issued by the Department of Labor. The Department of Military and Veterans Affairs certainly hopes that these events never come to pass, but the law does have teeth to ensure the reemployment rights if needed.

I hope this information has been helpful in addressing some of the concerns raised about this bill. I will be present during the hearing in House Finance Committee on March 14 to attempt to answer any other questions that may be raised.

Sincerely,

  
Jeff Morrison, Director

cc: COL Joseph Beans, Deputy Commissioner, DMVA  
Tom Stuart, Director, Labor Standards and Safety, Department of Labor  
Eileen Plate, Legislative Liaison, Department of Labor  
Bob Evans, Deputy Chief of Staff, Office of the Governor  
Kathleen Strasbaugh, Assistant Attorney General, Department of Law  
David Otto, Director of Personnel, Department of Administration  
Sioux Plummer, Legislative Liaison, Department of Administration

STEVE COWPER, GOVERNOR

**DEPARTMENT OF MILITARY  
AND VETERANS AFFAIRS**

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Administrative & Support  
Services Division  
P.O. Box L  
Juneau, AK 99811

March 9, 1990

The Honorable Gene Kubina  
Alaska State Representative  
P.O. Box V  
Juneau, AK 99811

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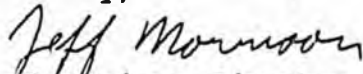
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