

HB

493

CS HR 493. An Act relating to reemployment rights for members of the state's organized militia. Sponsored by Representative Kubina, this bill would allow reemployment rights to AK National Guard, AK Naval Militia and AK State Militia members who are called to state active duty by the Governor. It would require an employer to grant a leave of absence to a member of the organized militia and upon release from active duty, allow that person to return to their former position or a comparable position. CSHB 493 also requires the employee to meet certain deadlines for reporting back to work after completing active duty.

CS HB 493

4.9.90

KELLY: small business worried about
reemployment but ^{Kelly} now supports
this bill

FAIKS: NEED?

KUBINA: Instances

FAIKS: Louisiana — 80% - 90% call out

KUBINA: 220 people — average call 9 days.
Exxon Valdez

FAIKS: Problem?

Jeff Morrison: NO one has lost a job.
Negotiations have gone to assure
return.

Other states/MD - Louis - Carolina -

SENATE COMMITTEE REPORT

DATE: 3/23/90

FURTHER:

DATE TURNED INTO OFFICE: _____

State Affairs

Committee considered

CSHB 493 (L&C)

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

and recommended:

- replace with _____ CS _____
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted

- same title
- new title
- technical title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

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

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:

fiscal note(s) Dept/Date: _____

zero fiscal note(s) DOA 2-20-90

Det Labor 2-14-90

DmVA 2-12-90

Governor's bill w/fiscal note

SIGNING DO PASS:

Tom Kelly

OTHER RECOMMENDATIONS:

Jim Fark No Rec.

Pat Fanchett no rec

Chair: Signature and Recommendation

**DEPARTMENT OF MILITARY
AND VETERANS AFFAIRS**

OFFICE OF THE ADJUTANT GENERAL

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?

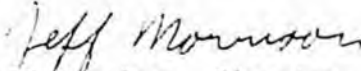
An employer would not be required to create a job that did not exist because of the seasonal nature of the employment. However, the member would be eligible to return to his job at the start of the next season as if he had not been absent for the state active duty, and would not suffer any loss of seniority 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.

2. 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

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: 465-1600
 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)

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 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|------------------------|----------|----------|----------|----------|----------|----------|
| 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 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

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 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)

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: 3/1/70

MG John W. Schaeffer

BRIMFROST 01/18-02/04

31 individuals called out

shortest call out 1 day

longest call out 6 days

average call out 3.5 days

Total active duty pay \$9,739.33

Average pay per individual \$314.71

COLD WEATHER EMERGENCY 01/30-02/12

4 individuals called out

shortest call out 5 days

longest call out 7 days

average call out 6.5 days

total active duty pay \$2,468.54

average pay per individual \$617.14

PETERS CREEK TRAIL 06/12-09/29

8 individuals called out

shortest call out 8 days

longest call out 39 days

average call out 11.3 days

total active duty pay \$26,246.30

average pay per individual \$3,280.35

EXXON VALDEZ OIL SPILL 03/23-06/10

222 individuals called out

shortest call out 1 day

longest call out 75 days

average call out 9 days

total active duty paid \$180,910.44

average pay per individual \$814.91

Alaska Statutes

Title 26. Military Affairs and Veterans.

Military Code of Alaska (§§ 26.05.010, 26.05.224, 26.05.228, 26.05.260, 26.05.265)
Veterans (§ 26.10.080)
Veterans Loans (§§ 26.15.040, 26.15.060)
Alaska Disaster Act (§ 26.23.230)

Chapter 05. Military Code of Alaska.

Section

260. Pay and allowances

265. Reenlistment bonus

Alaska militia established

Retirement benefits

Accounting and investment

26.05.010. Alaska militia established. (a) The militia of the state consists of all able-bodied citizens of the United States and all able-bodied persons who have declared their intention to become citizens of the United States, who reside in the state, who are at least 17 years of age, and who are eligible for military service under the laws of the United States or this state.

The militia is divided into two classes:

(1) the organized militia, consisting of the Alaska National Guard, the Alaska Naval Militia, and the Alaska State Militia, and

(2) the unorganized militia, consisting of all qualified persons available for service but not serving in the organized militia.

The adjutant general may, by regulation, prescribe the maximum age for eligibility in the militia. (§ 2 ch 150 SLA 1955; am § 1 ch 144 SLA 1968; am § 1 ch 141 SLA 1972; am § 1 ch 5 SLA 1987)

History of amendments. — The 1987 amendment in subsection (a) substituted "at least 17 years of age, and who

are eligible" for "and who are between the ages of 17 and 59 years, inclusive, and are eligible"; and added subsection (c).

26.05.224. Retirement benefits. (a) An active member of the Alaska National Guard, or a former member who was an active member on or after January 1, 1969, or a member of the Alaska Naval Militia on or after July 1, 1980, is eligible for a retirement pension (1) upon voluntary retirement from the Alaska National Guard or Alaska Naval Militia after a total of 20 years or more of satisfactory