

**HB**

**3**

<TARGET><BILL>HB 3</BILL><SUBJECT>HB  
3</SUBJECT><COMM>HMLV30</COMM></TARGET>



# Representative Chris Tuck

## House Majority Leader

Serving House District 23 • Dimond Estates, Foxridge, Taku, Campbell, Northwood, and Windemere

### Sponsor Statement House Bill 3 National Guard Leave/Reemployment Rights

House Bill 3 seeks to correct a deficiency in employment protections for Alaskans who are serving in the National Guard. This is a nationwide effort to ensure those who serve their nation for all 50 states when called to duty – regardless of their service location - will have reemployment rights to their Alaskan civilian job after completing the various critical duties when called by a governor for state active duty.

The National Guard is a hybrid state-federal entity. While National Guard members are subject to federal call to duty by the President of the United States, they can also be called up for state active duty by the Governor to respond to state emergencies such as fires, tornadoes and floods.

The federal law Uniformed Services Employment and Reemployment Rights Act (USERRA) protects members of the Army or Air National Guard when they are called away from their civilian jobs for federal service.

However, USERRA does not apply when a National Guard member must leave their job for state active duty. If National Guard members are to have reemployment rights after state active duty, it must be through state law.

Alaska currently has a law that applies to employment protections to the public and private employees. However, it is explicitly limited to members of the Alaska Army or Air National Guard. There are several Alaskan residents who serve in the National Guard of another state. These Alaskans currently do not have the reemployment protections for their employment.

By passing House Bill 3, we will extend the employment protections to Alaskans who are serving in any National Guard. The Department of Defense has identified this legislation as a key quality of life issue and is actively seeking to make this policy change across the nation. So far, 28 other states have passed similar legislation and 3 other states are taking it up this session.

Please join me in supporting House Bill 3 by making this important change to protect those who are honorably serving our nation.

Session (January-April):  
State Capitol, Room 204  
Juneau, AK 99801-1182  
Phone (907) 465-2095

Rep.Chris.Tuck@akleg.gov  
www.RepChrisTuck.com  
Toll-Free (866) 465-2095

Interim (May-December):  
1500 W Benson Blvd, Ste 217  
Anchorage, AK 99503  
Phone (907) 269-0240

# Fiscal Note

State of Alaska  
2017 Legislative Session

Bill Version: HB 3  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB003-MVA-COM-1-19-17  
Title: NATL GUARD LEAVE/REEMPLOYMENT RIGHTS  
Sponsor: TUCK  
Requester: (H) MLV

Department: Department of Military and Veterans' Affairs  
Appropriation: Military and Veterans' Affairs  
Allocation: Office of the Commissioner  
OMB Component Number: 414

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

**Change in Revenues**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2017) cost:** 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2018) cost:** 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

**Why this fiscal note differs from previous version:**

Not applicable; initial version.

Prepared By: <u>Brian P. Duffy</u>	Phone: <u>(907)428-7210</u>
Division: <u>Administrative Services</u>	Date: <u>01/19/2017 04:00 PM</u>
Approved By: <u>Laurel J. Hummel</u>	Date: <u>01/20/17</u>
Agency: <u>Office of the Commissioner</u>	

**FISCAL NOTE ANALYSIS**

**STATE OF ALASKA  
2017 LEGISLATIVE SESSION**

**BILL NO. HB 3**

**Analysis**

This bill will have no impact on the employees and services provided by the Department. We expect no increase in personnel paperwork associated with the passage of this bill, and since processing of transfers, deployments, etc. is part of the Department's everyday operations, this bill will have zero fiscal impact on the Department of Military and Veterans' Affairs.

# Fiscal Note

State of Alaska  
2017 Legislative Session

Bill Version: HB 3  
Fiscal Note Number: \_\_\_\_\_  
( ) Publish Date: \_\_\_\_\_

Identifier: HB003-DOLWD-WHA-01-22-17  
Title: NATL GUARD LEAVE/REEMPLOYMENT RIGHTS  
Sponsor: TUCK  
Requester: (H) MLV

Department: Department of Labor and Workforce Development  
Appropriation: Labor Standards and Safety  
Allocation: Wage and Hour Administration  
OMB Component Number: 345

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates					
			FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

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None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Estimated SUPPLEMENTAL (FY2017) cost:** 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2018) cost:** 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable; initial version.

Prepared By:	Deborah Kelly, Director	Phone:	(907)269-4961
Division:	Labor Standards and Safety	Date:	01/21/2017 04:30 PM
Approved By:	Heidi Drygas, Commissioner	Date:	01/22/17
Agency:	Department of Labor and Workforce Development		

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2017 LEGISLATIVE SESSION

BILL NO. HB 3

**Analysis**

This legislation provides that employment rights be extended to residents of the state who are active National Guard of another state. There is no action required by the department resulting from this legislation; therefore, there is no fiscal impact to the department anticipated as a result of this legislation.



## EMPLOYMENT PROTECTIONS DURING STATE-SPONSORED ACTIVATION

*Members of the National Guard who work outside of the state where they mobilize may not have employment protections during a state-sponsored activation.*

**KEY MESSAGE:** State statutes that cover Guard members during state-sponsored mobilizations impact employers within the state. States can modify their statutes to strengthen enforcement mechanisms for members of the National Guard returning to jobs in their affiliated state and protect the employment rights of members of the National Guard who are employed outside of their affiliated state at the time of state-sponsored activations.



### DISCUSSION POINTS:

- The Uniformed Services Employment and Reemployment Rights Act (USERRA)<sup>1</sup> does not apply when a National Guard member is called-up by their Governor to serve state active duty to respond to state emergencies such as fires, hurricanes, tornadoes, floods, etc.
- Every state has a statute that protects their civilian jobs for National Guard members on state active duty; however:
  - Several states have weak enforcement mechanisms that do not provide the member an adequate private right of action, or another recourse, in the event the member believes the employer has denied their right for reemployment.
  - The majority of states have laws only protecting the employment of members of the National Guard assigned to that specific state.
    - Many National Guard members have civilian jobs in states other than the state of their National Guard membership.
    - Unless state law covers the person who works in that state but is assigned to another state's National Guard, they have no reemployment rights after completing state active duty.
- States can adopt legislation to strengthen their state USERRA statute by providing protections that include these substantive points:
  - An effective enforcement mechanism through private right of action, or another recourse, for members of the National Guard.
  - Employment protection to members of the National Guard of another state by revising wording in existing statute to recognize "members of the National Guard of this state or any other state."

Many states are strengthening their statutes to protect the reemployment rights of members of their National Guard. Eighty percent of all states in their respective statute currently provide an effective enforcement mechanism. Just over half of the states have a state law that includes the key seven words of "this state or of any other state" or language we believe is sufficient to provide enforceable reemployment rights. This provision will provide protection to a member of the National Guard of another state who holds a civilian job in the state with the desired provision.

<sup>1</sup> USERRA is a federal statute that covers the employment and reemployment of a person who leaves a civilian job (federal, state, local, or private sector) for voluntary or involuntary services in the uniformed services. USERRA protects the civilian jobs of National Guard members after military training or service under Title 10 or Title 32 of the United States Code when they are called-up by the President of the United States.



MANPOWER AND  
RESERVE AFFAIRS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
1500 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-1500

January 11, 2017

The Honorable Chris Tuck  
Majority Leader  
Alaska House of Representatives  
State Capitol, Room 204  
Juneau, AK 99801

Dear Majority Leader Tuck,


On behalf of the Deputy Assistant Secretary of Defense, Military Community and Family Policy, I want to thank you for your support of Service members in private sector hiring, as evidenced by your sponsorship of House Bill 3 (HB 3) in the 2017 Alaska legislative session. This key Department of Defense issue for 2017 simply provides employment protections to Alaskans serving in the National Guard in other states when mobilized outside the state during state-sponsored activation.

This effort will strengthen existing statutes to protect reemployment rights to members of the National Guard, because in Alaska as in many states, employment protection laws only protect the members of the National Guard assigned to their state. Many Alaskans with civilian jobs in Alaska, who serve in the National Guard of another state, risk losing those jobs when mobilized by the state where they serve. By revising wording in your existing state statute to recognize "members of the National Guard of this state and any other state" this problem can be alleviated.

Thus far, three other states are considering this provision in their 2017 legislative session and we hopeful there will be several others. If the policy change, as represented in HB 3 is successful, Alaska will join 28 other states already providing this help to members of the National Guard members in their states.

We greatly appreciate that the Alaska legislature has been a champion in addressing our key military family quality of life issues for the past ten years. As always, Mark San Souci, our Northwest Regional Liaison, who you know, stands ready to support where he can. If you have questions or need assistance, please do not hesitate to contact me at 571.372.5357, or Mark at 571.309.4622, [mark.b.sansouci.civ@mail.mil](mailto:mark.b.sansouci.civ@mail.mil).

Sincerely,

  
Marcus J. Beauregard  
Director, Defense State Liaison Office

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE RAUSCHER

TO: HB 3

1 Page 2, line 12:

2 Delete "a new subsection"

3 Insert "new subsections"

4

5 Page 2, following line 12:

6 Insert a new subsection to read:

7 ~~"(h) An employer is not required to allow a member of the National Guard to~~  
8 ~~return to work under this section if~~ . . . . .

9 (1) the employer's circumstances have changed, making employment  
10 impossible or unreasonable; or

11 (2) employment would impose an undue hardship on the employer."  
12

13 Reletter the following subsection accordingly.

*Delete Lines 7 + 8 and  
replace with:*

*propose to  
is*

*An employee ~~is~~ not entitled to return to the employee's  
former position, or a comparable position, at the pay,  
seniority, and benefit level the employee would have had  
if*

AMENDMENT

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TO: HB 3

BY REPRESENTATIVE RAUSCHER

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