

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on January 12, 1995,
at 8:00 AM.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: Rep. Jon Ellingson

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 114
Executive Action: HB 114

HEARING ON HB 114

Opening Statement by Sponsor:

REP. CHRIS AHNER, HD 51, Lewis & Clark Co., said this bill was an act clarifying that members of the organized militia are entitled to an unpaid leave of absence during any period of state service

during a state emergency and are entitled to re-employment after the emergency.

Proponents' Testimony:

B.G. Gary Hindoien, Assistant Adjutant General for Air, State of Montana and also representing **Department of Military Affairs** said this legislation came out of the Governor's committee. He stated that they also supported the amendment. The bill was patterned after the federal law that protects the guardsmen while they are in federal status. The department for years has made the assumption the federal law covered all cases. Two oaths of office are administered - an oath is made to the federal government because the department is a federally recognized reserve and the other is an oath taken to the Governor. This division is completely different from the rest of the reserves because they pledged allegiance to the Governor and the state. There is now protection for the reservists but if there were legal action pending and it becomes a real contest the reservist would not win. If the state is the user of the individual during the emergency and the fact that the individual has volunteered to serve their state, we as a state should afford them that job protection. In most cases the state active duty is not a lengthy amount of time. The longest these people have been kept on duty during the last 33 years was about 15 days. He distributed a paper from the Department of Defense regarding the rights and responsibilities to employers. **EXHIBIT 1**

Frank Tobel, Colonel, Air National Guard and representing an organization called **Employer Support of the Guard and Reserve** said in the United States Code entitled Veterans Re-employment Rights, it provides civilian job protection for any individual including any member of the National Guard who may be called to serve the military in a federally active duty status. The enforcement of the provisions of the veterans rights is a charter of two organizations. He said he had been extremely involved with process of employer/employee conflict resolutions. If an individual is called to serve on federal active duty, federal law is explicit in the protection of the individuals civilian re-employment. If an individual member of the Montana National Guard is called by the Governor in the event of a state emergency to serve in the state active duty status, there is no state law to insure job protection. Much confusion exists in regard to state active duty. Most employers as well as guardsmen think the federal law, Title 38 applies - it absolutely does not. Regardless of the existence or nonexistence of law, most employers are very understanding and most cooperative in time of emergency whether it is federal or state. There have been cases as recent as this past summer when guardsmen were placed on state active duty to fight forest fires. These guardsmen have been terminated from their civilian employment after returning from combating state emergencies. **EXHIBIT 2**

Hal Manson, American Legion of Montana said there are members of the American Legion that are veterans of other service and are now members of the Montana National Guard. People in the Guard have the same obligations to the Governor as they do to the federal government. These employees do not have the prerogative of saying no. It does not seem right they must fight for a job when they have done a job they have been required to do by the Governor. But, they are not given the proper protection.

Roger Hagan, Enlisted Associations of the Montana National Guard reiterated an incident of a National Guardsman who has lost his civilian job because of this duty with the guard. His association considers this a priority "people" issue. **EXHIBIT 3**

H. Polly Latray, Director, Veterans Employment and Training supports this legislation.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. COCCHIARELLA asked if this bill had appeared before the legislature previously. **Mr. Hagen** said no it had not been before the legislature.

REP. TUSS asked if he were responsible for the drafting of this proposition and if this applied to civilian employees and would this also include public employees. **B.G. Hindoien** said yes. He also stated that the leave could be used only for federal duty and not state duty. **REP. TUSS** then suggested an amendment regarding state militia.

REP. EWER said under current law, a person cannot wilfully deprive a member of the organized militia from being employed because of the old law and then questioned a case which had recently developed regarding the re-employment of a guardsman. **B.G. Hindoien** said this individual had reached a settlement.

Closing by Sponsor:

Sponsor closes.

EXECUTIVE ACTION ON HB 114

Motion: **REP. PAVLOVICH** MOVED DO PASS ON HB 114. **REP. PAVLOVICH** MOVED THE **AHNER** AMENDMENTS TO HB 114.

Vote: Motion to adopt the amendments carried 18-0.

Vote: **REP. PAVLOVICH** MOVED TO PASS AS AMENDED ON HB 114. The question was called. Motion carried 18-0.

Motion: REP. TUSS MOVED TO INSERT "STATE" INSERTED IN THE TITLE BETWEEN "GOT" AND "ORGANIZED". LINE 13 OF THE BODY WOULD HAVE THE SAME INSERTION.

Discussion:

REP. MILLS said he did not understand that this was a state organized unit. The federal government has something to with this also.

Steve Maly said organized militia is a defined term which appears earlier in the code. Even if not specifying it in this bill, that definition would hold. The objective of the amendment has already been met.

REP. LARSON said he had looked up the code and explained the definition of militia.

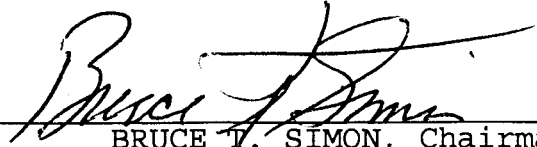
Motion/Vote: REP. TUSS withdrew the amendment she had originated. REP. EWER THEN MOVED THE AMENDMENT FOR IMMEDIATE EFFECTIVE DATE UPON PASSAGE.

The question was called. Motion carried 18-0.

REP. PAVLOVICH MOVED DO PASS AS AMENDED ON HB 114. Motion carried 18-0.

ADJOURNMENT

Adjournment: 9:10 AM.

A handwritten signature in cursive script, appearing to read "Bruce T. Simon", written over a horizontal line.

BRUCE T. SIMON, Chairman

A handwritten signature in cursive script, appearing to read "Alberta Strachan", written over a horizontal line.

ALBERTA STRACHAN, Secretary

BTS/ajs

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 1-12-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson			Y
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

Your Rights And Responsibilities

...employee shall be permitted to return with such seniority, status, pay, and vacation as if such employee had not been absent. Any person who seeks or holds a position shall not be denied hiring, retention in employment or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve Component.

The Department of Defense encourages employers to enthusiastically support a strong Guard and Reserve. Employers are an important influence on their employees who serve their country, part-time, as members of the Reserve Forces.

Certain personnel matters involving Guardsmen and Reservists are, however, dictated by law. Federal law spells out specific rights and responsibilities about which all employers of Guard and Reserve members should be aware. (Many state laws impose additional requirements as well.)

As an employer, you have certain responsibilities under the law. The details are spelled out in Chapter 43 of Part III, Title 38, U.S. Code. Here are some general provisions:

- You must allow Guard and Reserve members to attend military training, whether mandatory or voluntary.
- You must restore employees to their jobs upon their return from military duty.
- You may not refuse to hire persons in the Guard or Reserve because of their military obligation.

- You must not fire, demote, or deny promotion or benefits to employees who exercise their rights to take part in military training.

- You must grant employees their earned vacations in addition to any leave for military training they require.

As an employer, you have rights under the law as well. These include:

- The right to know your employee's military training schedule as far in advance as possible.
- The right to have proof of an employee's military duty.
- The right to deny pay or special work rescheduling for periods of military duty to employees who serve in the Guard or Reserve. Although the Department of Defense encourages you to help employees make up pay or work lost due to military obligations, federal law does not require this special kind of help.

Applying the law gets complicated; there are exceptions and special conditions that sometimes affect the basic entitlements spelled out here. So, the Department of Defense offers you assistance. A full-time Ombudsman is available to help answer your questions through a toll-free telephone number (800) 336-4590. (From Guam or the Marianas Protectorate call (703) 696-1392 collect.) The service is available during normal business hours in the Eastern Time Zone (8:00 a.m. to 4:00 p.m.), Mondays through Fridays.

Informal assistance is also available from volunteer ombudsmen in all states, territories and the District of Columbia.

INFORMATION PAPER ON
VETERANS' REEMPLOYMENT RIGHTS FOR MEMBERS OF THE NATIONAL GUARD

- Chapter 43, Title 38 U.S.C. (Veterans' Reemployment Rights) provides civilian job protection for any individual, including members of the National Guard, called to serve the military in a Federal active duty status.
- Enforcement of the provisions of the Veterans' Reemployment Rights is a charter of the U.S. Department of Labor in conjunction with the U.S. Department of Justice.
- In 1972, the Secretary of Defense created an organization, comprised primarily of civilian volunteers, called "Employer Support of the Guard and Reserve" to assist in conflict resolution prior to the stages when the U.S. Departments of Labor and/or Justice must be involved.
- The undersigned has served for the past six years as the Executive Director for the Montana Committee for Employers Support of the Guard and Reserve.
- In that capacity, working very closely with the U.S. Department of Labor, I have been extremely involved with the processes of employer/employee conflict resolution.
- In the six years I have been involved in this conflict resolution process, several things have become evident:
 1. If an individual is called to serve on Federal Active Duty, Federal Law is explicit in the protection of that individual's civilian reemployment.
 2. If an individual, member of the Montana National Guard, is called by the Governor in the event of a State emergency to serve in a State Active Duty status, there is no State Law to insure job protection.
 3. Historically, periods of Federal Active Duty may last for several months (Desert Storm) while periods of State Active Duty are relatively short (usually not over 15 days).
 4. Much confusion exists relative to State Active Duty. Most employers, as well as Guardsmen, think the Federal Law (38 U.S.C.) applies. IT DOES NOT!
 5. Regardless of the existence, or nonexistence, of law most employers are very understand and cooperative in times of emergency, Federal as well as State emergencies; however, there have been cases (as recent as this past summer when Guardsmen were placed on State Active Duty to fight forest fires) that Guardsmen have been terminated from their civilian employment after returning from combating State emergencies.
 6. Montana needs a provision in the law to protect the civilian employment of Montana Guardsmen when those Guardsmen are called to State Active Duty in the event of a State emergency.

Frank E. Tobel, Colonel, MT ANG
Phone: 444-6901

- MONTANA NATIONAL GUARD (ARMY AND/OR AIR) STATE ACTIVATIONS -

START DATE:	END DATE:	WORKDAYS REQUIRED:	EVENT:	LOCATION:
27 Jul 94	30 Sep 94	12,102	Wildfire	Statewide
20 Aug 92	20 Aug 92	4	Wildfire	Dearborn
12 Mar 92	12 Mar 92	4	Wildfire	Cascade County
17 Oct 91	21 Oct 91	279	Wildfire	Lincoln County
17 Oct 91	28 Oct 91	105	Wildfire	Fergus County
10 Oct 91	28 Oct 91	20	Wildfire	Blain County
25 Apr 91	1 May 91	4,334	State Institution Strike	Statewide
14 Nov 90	20 Nov 90	248	Wildfire	Helena Nat'l Forest
9 Aug 90	13 Aug 90	23	Wildfire	Custer Nat'l Forest
2 Aug 89	4 Aug 89	3	Train Wreck	Whitefish
2 Feb 89	3 Feb 89	24	Train Explosion	Helena
16 Jul 88	18 Sep 88	8,888	Wildfire	Statewide
25 Sep 86	1 Oct 86	249	Flood	Milk River
16 Aug 86	19 Aug 86	45	Wildfire	Sand Creek
11 Aug 86	19 Aug 86	68	Wildfire	North Valley
10 Aug 85	15 Aug 85	48	Wildfire	Lost Trail Pass
9 Aug 85	12 Aug 85	67	Wildfire	Woodward Ranch
12 Jul 85	23 Jul 85	120	Wildfire	Hellgate Canyon
5 Jul 85	14 Jul 85	274	Wildfire	Sandpoint
2 Jul 85	6 Jul 85	119	Wildfire	Game Ridge
24 Jun 85	2 Jul 85	56	Wildfire	Milltown
27 Aug 84	20 Sep 84	5,272	Wildfire	Western Montana
21 Jun 84	25 Jun 84	25	Flood	Dillon

Numerous State activations occurred prior to 21 Jun 84 (i.e. State Institution Strike in 1979); however, complete records of such activations could not be located.

In addition, numerous Search & Rescue missions (several of which resulted in saving of life) have been performed coincident to training in National Guard Federal status.

TESTIMONY IN SUPPORT OF HOUSE BILL 114

House Business and Labor Committee
1/12/95

Presented by:

ROGER A. HAGAN

Officer/Enlisted Associations of the Montana National Guard

Mr. Chairman, members of the committee, for the record my name is MSGT Roger A. Hagan. I represent the more than 4,000 members of the Officer and Enlisted Associations of the Montana National Guard. I rise in strong support of House Bill Number 114, a bill to provide reemployment rights for our members who are called to active duty during a state emergency.

State activations of our Montana National Guard are an unpredictable occurrence. But, when they do happen our members, both Enlisted and Officer, either Army Guard or Air Guard, are there at a moments notice. Your "Montana Militia" defends, protects, and preserves our state citizens' lives and property at the call of our Commander-in-Chief, the Governor of the State of Montana. A process, that at one time or another, you will most likely witness in your district.

The recent experiences of Desert Storm and other regional conflicts that have involved the National Guard and Reserves, have identified a need to redefine and strengthen the Federal Veteran's Employment and Reemployment Act. Concurrently, the same need was identified for state National Guard activations. These same rights and protections must be afforded guard members when they are on State Active Duty, the same as if they were on a Federal mission. **This bill does just that!**

Some may question the necessity of this legislation. Who, they may ask, would deny a returning guard member the job that they held prior to state activation? Well, the story goes like this.

An E-5, Sergeant, in the National Guard, we'll call him Sergeant Jones, was called by the Governor to fight forest fires in our state in August of this past year. This individual had served our state and nation as a guard member for over 4 years. This was his first state call-up. He leaves his home in Northeastern Montana, a wife, two children, other family members, and his civilian job of 12 years; because many citizens elsewhere in Montana are in danger. He knows his commitment to serve our state and nation as a National Guard member must always come first. He established that obligation when he enlisted in the Montana Militia.

He first is deployed to the Pryor Mountains fire and soon after to the Yaak Fire in Northwestern Montana. While SGT Jones is in the opposite end of the state from his family, his boss called his wife and indicated that he was replaced in his position and that he would be offered a lower paying job until he could find other employment.

Upon completion of a state active duty tour, most Montana Militia members return home to their family and community, proud in knowing that they protected other citizens of our great state. But, upon SGT Jones' return, he knew he had to face this employment dilemma. If he is to continue employment with this employer, he must take a demotion. SGT Jones is effectively unemployed.

After almost a month of unemployment, hiring his own attorney and being denied unemployment benefits, he secures a new job with another employer in his town, at a considerable reduction in benefits. The lawsuit resulted in a settlement; but today at 1 p.m., SGT Jones has a hearing on the denial of his unemployment compensation claim.

This is the thanks that our SGT Jones got for responding to the needs of our state's citizens? ...Loss of employment, ...a demotion as the alternative, ...denial of unemployment benefits, ...the expenses of legal counsel ...and nowhere to turn for assistance.

Now SGT Jones is an assumed name, but the story is actually true. I spoke with the real sergeant just this morning. He has experienced a nightmare that no Montana Militia member should ever experience. I hasten to add that , although this story is about a "Mr." SGT Jones, we have several "Ms." SGT Jones' in our National Guard, many who were involved in the forest fire activation this past year.

Our associations consider this a priority "people" issue. We urge you to favorably consider this bill and support it throughout the legislative session. Please insure that we have no more SGT Jones' stories. Thank you for the opportunity to testify and I will remain available for questions.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business & Labor

SUB-COMMITTEE

DATE 1-12-95

BILL NO. HB 114

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
COLONEL FRANK TOBEL P.O. BOX 4789, HELENA, MT	MONTANA NATIONAL GUARD EMPLOYEE SUPPORT OF THE GUARD	X AS AMENDED	
B.G. GARY HINDOIX P.O. BOX 4789, HELENA, MT	MONTANA NATIONAL GUARD	X AS AMENDED	
ROGER A. HAGAN 1224 STUART, Helena, MT	ENLISTED/OFFICER ASSOCIATIONS OF MT NG	X AS amended	
H. Polly LATRAY-HALMES 111 N. LAST CHANCE Gulch HELENA, MT 59604	DIRECTOR VETERANS Employment & TRAINING		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:vissbcom.man

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