

## 1 SENATE BILL NO. 103

2 INTRODUCED BY VAN VALKENBURG

3 BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE IMMUNITY OF THE STATE, ITS OFFICERS,  
6 EMPLOYEES, AND AGENTS, AND MEMBERS OF THE MILITIA IN A CIVIL ACTION FOR DAMAGES WHILE  
7 ENGAGED IN FEDERAL ACTIVITIES."

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9 WHEREAS, Article VI, section 13, of the Montana Constitution provides that the "governor is  
10 commander-in-chief of the militia forces of the state, except when they are in the actual service of the  
11 United States"; and

12 WHEREAS, section 10-1-101, MCA, defines "militia" as "all the military forces of this state,  
13 whether organized or active or inactive"; and

14 WHEREAS, section 10-1-101, MCA, defines "national guard" as "the army national guard and the  
15 air national guard"; and

16 WHEREAS, section 10-1-102, MCA, recognizes that the Department of Military Affairs performs  
17 duties and functions required by federal laws and regulations; and

18 WHEREAS, section 10-1-104, MCA, recognizes the application of federal laws, regulations, forms,  
19 precedents, and usages relating to and governing the armed forces of the United States to the military  
20 forces of this state; and

21 WHEREAS, the Army National Guard and the Air National Guard perform a uniquely federal mission  
22 and role except when ordered by the Governor into state active duty as provided for in Article VI, section  
23 13, of the Montana Constitution; and

24 WHEREAS, the federal government has established comprehensive administrative programs to  
25 compensate military forces for injuries that they may incur while performing training for the nation's defense  
26 and to compensate those who make claims for death, personal injury, or damage to real or personal  
27 property under the Federal Tort Claims Act, 28 U.S.C. 2671, et seq.

28 NOW, THEREFORE, the Legislature finds it appropriate to enact [section 1] for the purpose of  
29 limiting liability of this state, its officers, employees, and agents, and members of the militia for the  
30 performance of the uniquely federal functions of the Army National Guard and the Air National Guard.

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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3 NEW SECTION. **Section 1. Immunity from liability.** The state, an officer, employee, or agent of  
4 the state, or a member of the militia may not be held liable in a civil action for damages that result from an  
5 action that occurs while the officer, employee, agent, or member is considered an employee of the federal  
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8 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an  
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11 NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that  
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13 act].

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15 NEW SECTION. **Section 4. Two-thirds vote required.** Because [section 1] limits governmental  
16 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of  
17 each house of the legislature for passage.

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-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0103, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to provide immunity for the State of Montana, its officers, employees, and agents, and members of the militia in a civil action for damages while engaged in federal activities.

ASSUMPTIONS:

1. Legislation would clearly limit the state's liability for state's organized militia while performing federal activities.
2. The liability for injuries or damages sustained during periods when the state's organized militia is performing federal activities will be provided by the federal government under the federal tort claims act.
3. In those instances when the state's organized militia is performing state active duty under order of the Governor of Montana, the legal responsibility or liability for damages caused by the organized militia continues to rest with the state and not with the federal government. The bill would not provide any immunity for state active duty situations.

FISCAL IMPACT:

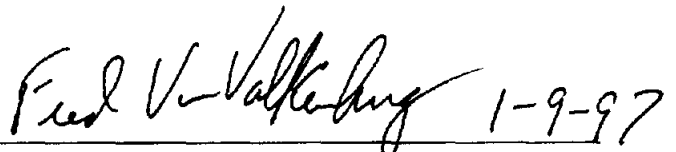
Savings to the state are potentially significant.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Legislation limiting liability of this state for the performance of the uniquely federal functions of the Air and Army National Guard will result in anticipated cost savings both due to limiting the state's liability exposure to pay damage awards and to reducing legal defense expenses. Because the statutes and court developed law surrounding the legal status of the National Guard is so involved, the clarification of the state's liability will reduce the legal complexity. Reduction of the legal complexity will affect both the number of suits that are filed, which must be defended at state expense, as well as remove the legal complexity connected with defending any litigation.

 1-7-97

DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 1-9-97

FRED VAN VALKENBURG, PRIMARY SPONSOR      DATE

Fiscal Note for SB0103, as introduced

SB 103

APPROVED BY COM  
ON JUDICIARY

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WHEREAS, Article VI, section 13, of the Montana Constitution provides that the "governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States"; and

WHEREAS, section 10-1-101, MCA, defines "militia" as "all the military forces of this state, whether organized or active or inactive"; and

WHEREAS, section 10-1-101, MCA, defines "national guard" as "the army national guard and the air national guard"; and

WHEREAS, section 10-1-102, MCA, recognizes that the Department of Military Affairs performs duties and functions required by federal laws and regulations; and

WHEREAS, section 10-1-104, MCA, recognizes the application of federal laws, regulations, forms, precedents, and usages relating to and governing the armed forces of the United States to the military forces of this state; and

WHEREAS, the Army National Guard and the Air National Guard perform a uniquely federal mission and role except when ordered by the Governor into state active duty as provided for in Article VI, section 13, of the Montana Constitution; and

WHEREAS, the federal government has established comprehensive administrative programs to compensate military forces for injuries that they may incur while performing training for the nation's defense and to compensate those who make claims for death, personal injury, or damage to real or personal property under the Federal Tort Claims Act, 28 U.S.C. 2671, et seq.

NOW, THEREFORE, the Legislature finds it appropriate to enact [section 1] for the purpose of limiting liability of this state, its officers, employees, and agents, and members of the militia for the performance of the uniquely federal functions of the Army National Guard and the Air National Guard.



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8 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an  
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11 NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that  
12 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
13 act].

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15 NEW SECTION. **Section 4. Two-thirds vote required.** Because [section 1] limits governmental  
16 liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of  
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**CONSTITUTIONAL AMENDMENT**

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