

JAN 20 2012

A BILL FOR AN ACT

RELATING TO THE MILITIA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "**§235- Employer tax credit; national guard employee**
5 **insurance coverage.** There shall be allowed to each taxpayer
6 subject to the taxes imposed by this chapter, an employment
7 increase tax credit for the taxable year in which the credit is
8 properly claimed. The tax credit shall be equal to the amount
9 of the actual expenses incurred by the taxpayer to maintain
10 employee insurance coverage for members of the national guard
11 for the duration of the national guards' state active duty."

12 SECTION 2. Section 121-30, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§121-30 Order to active service.** (a) In case of war,
15 insurrection, invasion, riot, or imminent danger thereof[~~or~~];
16 a public disaster or danger from flood, fire, storm, earthquake,
17 civil disturbances, or terrorist events; any forcible
18 obstruction to the execution of the laws, or reasonable



1 apprehension thereof[~~7~~]; or for assistance to civil authorities
2 in disaster relief or civil defense, the governor may order the
3 national guard or other component of the militia or any part
4 thereof into active service. The governor or the governor's
5 designated representative also may order the national guard into
6 active service [~~in~~];

7 (1) In nonemergency situations for duty and training in
8 addition to the drill and instruction required by
9 section 121-28[~~7~~];

10 (2) To provide support to other states in response to a
11 request for assistance under the Emergency Management
12 Assistance Compact under chapter 128F; and

13 (3) To detect, prevent, prepare for, investigate, respond
14 to, or recover from any of the events for which an
15 order to active service may be made.

16 (b) The adjutant general may order the national guard or
17 other component of the militia or any part thereof into active
18 service for nonemergency purposes that are necessary and
19 attendant to the mission of the department of defense."

20 SECTION 3. Section 121-43, Hawaii Revised Statutes, is
21 amended to read as follows:



1 " ~~[f]~~§121-43~~[f]~~ **Nonforfeiture for absence.** (a) Every
2 employee of a private employer who is a member of the national
3 guard shall be entitled to absent oneself from the employee's
4 employment duties while engaged in the performance of ordered
5 national guard service and while going to and returning from
6 such service. ~~[Such]~~ The person shall:

7 (1) If still qualified to perform the person's employment
8 duties, be restored by ~~[such]~~ the employer or the
9 employer's successor in interest to ~~[such]~~ the
10 position or to a position of like seniority, status,
11 and pay; or

12 (2) If not qualified to perform the person's employment
13 duties, by reason of disability sustained during
14 ordered national guard service, but qualified to
15 perform the duties of any other position in the employ
16 of ~~[such]~~ the employer or the employer's successor in
17 interest, be offered employment and, if ~~[such]~~ the
18 person so requests, be employed by ~~[such]~~ the employer
19 or the employer's successor in interest in such other
20 position the duties of which ~~[such]~~ the person is
21 qualified to perform as will provide ~~[such]~~ the person
22 like seniority, status, and pay, or the nearest



1 approximation thereof consistent with the
2 circumstances in [~~such~~] the person's case,
3 unless the employer's circumstances have so changed as to make
4 it impossible or unreasonable to do so.

5 (b) (1) Any person who is restored to or employed in a
6 position in accordance with the provisions of
7 subsection (a) shall be considered as having been on
8 furlough or leave of absence; shall be so restored or
9 reemployed without loss of seniority; shall be
10 entitled to participate in insurance or other benefits
11 offered by the employer pursuant to established rules
12 and practices relating to employees on furlough or
13 leave of absence in effect with the employer at the
14 time [~~such~~] the person was ordered to national guard
15 service; and shall not be discharged from such
16 employment position without cause within one year
17 after such restoration or reemployment[-];

18 (2) Any person who is restored to or employed in a
19 position in accordance with the provisions of
20 subsection (a) should be so restored or reemployed in
21 such manner as to give [~~such~~] the person such status
22 in the person's employment as the person would have



1 enjoyed if [~~such~~] the person had continued in such
2 employment continuously from the time [~~such~~] the
3 person became engaged in the performance of ordered
4 national guard service until the time of [~~such~~] the
5 person's restoration to such employment, or
6 reemployment[-]; and

7 (3) Any person who holds a position described in
8 subsection (a) shall not be denied retention in
9 employment or any promotion or other incident or
10 advantage of employment because of any obligation as a
11 member of the national guard.

12 (c) The rights granted to members of the national guard
13 shall be in addition to the rights granted to them by federal
14 law, including the Servicemembers Civil Relief Act and the
15 Uniformed Services Employment and Reemployment Rights Act. The
16 Uniformed Services Employment and Reemployment Rights Act (38
17 U.S.C. 4301 et seq., as amended) and any subsequent federal law
18 governing reemployment of a member of the national guard, is
19 incorporated into this section by reference. Any right,
20 benefit, or protection that may accrue to a member of the
21 national guard under the Uniformed Services Employment and
22 Reemployment Rights Act as a result of an order to military duty



1 under Titles 10 or 32 of the United States Code shall be
 2 extended to a member of the national guard who is called to
 3 state active duty for any period of time by the governor. The
 4 Servicemembers Civil Relief Act (50 U.S.C. section 501 et seq.,
 5 as amended), is incorporated into this section by reference.
 6 Any right, benefit, or protection that may accrue to a member of
 7 the national guard as a result of an order to military duty
 8 under Titles 10 or 32 of the United States Code shall be
 9 extended to a member of the national guard who is called to
 10 state active duty by the governor, if the orders are for ten
 11 consecutive days or longer."

12 SECTION 4. Statutory material to be repealed is bracketed
 13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect upon its approval;
 15 provided that section 1 shall apply to taxable years beginning
 16 after December 31, 2012.

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SB HMS 2012-1195



S.B. NO. 2489

Report Title:

Public Safety; National Guard

Description:

Establishes an employer income tax credit for taxpayers who maintain employee insurance coverage for national guard members for the duration of the national guards' active duty. Expands the powers of the governor and governor's designee in calling the national guard into active duty. Allows the adjutant general to order the national guard into active service for nonemergency purposes that are necessary and attendant to the mission of the department of defense. Expands the rights granted to national guard members to incorporate rights granted under the Servicemembers Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act.

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