

JAN 24 2013

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.** (a) There shall be allowed to each
6 taxpayer subject to the taxes imposed by this chapter a credit
7 equal to the cost paid for employee insurance coverage for those
8 employees who are members of the national guard for the duration
9 of the national guard members' state active duty.

10 (b) If the tax credit claimed by the taxpayer under this
11 section exceeds the amount of the income tax payments due from
12 the taxpayer, the excess credit over payments due shall be
13 refunded to the taxpayer; provided that no refunds or payments
14 on account of the tax credit allowed by this section shall be
15 made for amounts less than \$1.

16 (c) The director of taxation shall prepare forms as may be
17 necessary to claim a credit under this section, may require



1 proof of the claim for the tax credit, and may adopt rules
2 pursuant to chapter 91.

3 (d) All of the provisions relating to assessments and
4 refunds under this chapter and under section 231-23(c)(1) shall
5 apply to the tax credit under this section.

6 (e) All claims for a tax credit under this section shall
7 be filed on or before the end of the twelfth month following the
8 close of the taxable year for which the credit may be claimed.
9 Failure to properly claim the credit shall constitute a waiver
10 of the right to claim the credit."

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

13 **"§121-30 Order to active service.** (a) In case of war,
14 insurrection, invasion, riot, or imminent danger thereof~~[7-08]~~;
15 a public disaster or danger from flood, fire, storm, earthquake,
16 civil disturbances, or terrorist events; or any forcible
17 obstruction to the execution of the laws, or reasonable
18 apprehension thereof[7]; or for assistance to civil authorities
19 in disaster relief or civil defense, the governor may order the
20 national guard or other component of the militia or any part
21 thereof into active service. The governor or the governor's

1 designated representative [~~also~~] may also order the national
2 guard into active service [~~in~~]:

3 (1) In nonemergency situations for duty and training in
4 addition to the drill and instruction required by
5 section 121-28[-];

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

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

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

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

18 "~~[+]~~**§121-43**~~[+]~~ **Nonforfeiture for absence.** (a) Every
19 employee of a private employer who is a member of the national
20 guard shall be entitled to absent oneself from the employee's
21 employment duties while engaged in the performance of ordered



1 national guard service and while going to and returning from
2 such service. [~~Such~~] The person shall:

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

8 (2) If not qualified to perform the person's employment
9 duties, by reason of disability sustained during
10 ordered national guard service, but qualified to
11 perform the duties of any other position in the employ
12 of [~~such~~] the employer or the employer's successor in
13 interest, be offered employment and, if [~~such~~] the
14 person so requests, be employed by [~~such~~] the employer
15 or the employer's successor in interest in [~~such~~] the
16 other position the duties of which [~~such~~] the person
17 is qualified to perform as will provide [~~such~~] the
18 person like seniority, status, and pay, or the nearest
19 approximation thereof consistent with the
20 circumstances in [~~such~~] the person's case,
21 unless the employer's circumstances have so changed as to make
22 it impossible or unreasonable to do so.



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

14 (2) Any person who is restored to or employed in a
15 position in accordance with the provisions of
16 subsection (a) should be so restored or reemployed in
17 such manner as to give [~~such~~] the person [~~such~~] the
18 status in the person's employment as the person would
19 have enjoyed if [~~such~~] the person had continued in
20 [~~such~~] the employment continuously from the time
21 [~~such~~] the person became engaged in the performance of
22 ordered national guard service until the time of



1 ~~[such]~~ the person's restoration to such employment, or
2 reemployment[-]; and

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

8 (c) The rights granted to members of the national guard
9 shall be in addition to the rights granted to them by federal
10 law, including the Servicemembers Civil Relief Act (50 U.S.C.
11 App. section 501 et seq., as amended) and the Uniformed Services
12 Employment and Reemployment Rights Act (38 U.S.C. section 4301
13 et seq., as amended). The Uniformed Services Employment and
14 Reemployment Rights Act and any subsequent federal law governing
15 reemployment of a member of the national guard, are incorporated
16 into this section by reference.

17 (d) Any right, benefit, or protection that may accrue to a
18 member of the national guard under the Uniformed Services
19 Employment and Reemployment Rights Act as a result of an order
20 to military duty under Title 10 or 32 of the United States Code
21 shall be extended to a member of the national guard who is
22 called to state active duty for any period of time by the

1 governor. The Servicemembers Civil Relief Act is incorporated
2 into this section by reference.

3 (e) Any right, benefit, or protection that may accrue to a
4 member of the national guard as a result of an order to military
5 duty under Title 10 or 32 of the United States Code shall be
6 extended to a member of the national guard who is called to
7 state active duty by the governor, if the orders are for ten
8 consecutive days or longer."

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect on July 1, 2013;
12 provided that section 1 shall apply to taxable years beginning
13 after December 31, 2013.

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S.B. NO. 1287

Report Title:

Public Safety; National Guard; Income Tax Credit

Description:

Establishes an employer income tax credit for taxpayers who maintain employee insurance coverage for national guard members for the duration of the national guard members' 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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

