

CUTE Secy COPY

SENATE STATE ADMIN.

EXHIBIT NO. 3
DATE 1.10.05
BILL NO. SB118

TESTIMONY IN SUPPORT OF SENATE BILL 118
Senate State Administration Committee
01/10/05

Presented by:

ROGER A. HAGAN

Officer and Enlisted Associations of the Montana National Guard

Madam Chair, members of the committee, for the record my name is Roger A. Hagan. I represent the more than 3,000 members of the Officer and Enlisted Associations of the Montana National Guard. It is my pleasure to rise in support of Senate Bill 118. I would like to thank the Department of Military Affairs for requesting this bill and Senator Wheat for sponsoring this very important legislation. Our Associations appreciate the hard work put into the development of this bill and recognize that the end product will result in greater protections for our airmen and soldiers and a much more user friendly Montana Code.

Our State Constitution, in Article II, Section 35, titled " Servicemen, servicewomen, and veterans " states; "The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature." While the current Montana Code, Title 10, has several references to employment protections, employer requirements and leave of absence provisions, many of those statutes have become antiquated in terminology or are rendered unnecessary by more recently enacted federal protections for members of the active components, the National Guard and the Reserve. This bill works to clarify the rights and benefits afforded our military members and to extend those provisions, more definitively, to our Montana National Guard members when serving on State Active Duty (SAD) in response to a call from the Governor during an emergency.

In 1994, Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA) to clearly define both employer and employee responsibilities should the employee join a military service or subsequently be called to military duty. The Act was crafted largely from lessons learned in Desert Shield/Desert Storm (Gulf War I). However, the USERRA was unable to legislate protections for National Guard members when called to SAD under the authority of the respective states' Governors. This legislation, among other things, establishes clear and definite procedures to be followed, should a member of the Montana National Guard and their employer have an employment dispute that resulted from the employee's membership in the National Guard. This bill, in essence, is a mini-USERRA for the State of Montana.

We are particularly pleased with the new sections, 1 through 17. The effort put into crafting this legislation is evident. Process is important and this legislation pays particular attention to the process. Enforcement is also important. While this legislation provides several options for early resolution of an employee/employer dispute, the enforcement mechanisms are also in place, should those resolution efforts fail. We thank

Lt Col Jim Moran and his staff at the Department of Military Affairs (DMA) for their great work.

Moving from the employer/employee related protections to the excused absence provisions of this bill, we acknowledge the amendments offered today that address the duty status definitions in Section 2 and the provision of paid leave for public employees in Section 21. These amendments are supported by our Associations and are the result of coordination between the bill sponsor, the DMA, our Associations and Senator Roush.

In effect, these amendments bring the state military leave provisions in line with similar leave provisions in the federal sector. Two things change if this amendment is accepted. First, with this change, a public employee's military leave may be used for any type of military duty performed while absent from their employment. In state government, the Department of Administration has determined that the leave may only be used for "training" encampments, cruises, or other training type duty (DOA opinion attached). Therefore when our airmen or soldiers gathered for preparation of mobilization, the leave could not be used. Second, unused military leave may be carried forward from one calendar year to another, with a 30-day maximum balance on the books in any calendar year. These provisions offer our public employees greater flexibility to perform their required military duty, to take the leave when most needed, and to suffer the least when absent from their employment for longer periods of military duty.

Our Associations urge your 'do pass' vote on Senate Bill 118. Again, I wish to thank the Department of Military Affairs and Senator Wheat for their efforts on this issue. I also wish to thank the Senate State Administration Committee for their consideration of this bill. Thank you for your time and support.

Roger A. Hagan
1/10/05

Paid Military Leave

Issue

May state agencies, at their discretion, provide employees paid Military Leave when they are ordered to "pre-deployment training" by the Montana National Guard?

Background

With increasing frequency, the President is calling National Guard and Reserve soldiers to active duty in the armed forces of the United States. Prior to their activation into the armed forces, National Guard soldiers are required to report for "pre-deployment training."

The National Guard treats soldiers ordered to pre-deployment training as soldiers in a Federal active service status. The National Guard uses four Federal active service categories:

- Active Duty for Special Work (ADSW)
- Active Duty Training (ADT)
- Annual Training (AT)
- Inactive Duty Training (IDT)

National Guard soldiers ordered to pre-deployment training are placed in an ADSW status. The National Guard uses ADSW for many special training projects, which are over and above typical training requirements.

The Montana National Guard has advised State Personnel Division that soldiers ordered to pre-deployment training remain under the control of the Governor of Montana. They are paid with Title 32 U.S.C. funds. When pre-deployment training ends, many soldiers - but not all - are issued orders to report for active duty in the U.S. armed forces. At that point, these soldiers are under control of the President and paid with Title 10 U.S.C. funds.

Montana Paid Military Leave

Montana law at 10-1-604, MCA, entitles qualifying public employees to paid Military Leave. Under this statute, an employee who qualifies is entitled to a "leave of absence with pay for a period of time not to exceed 15 working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States." (Emphasis added.)

State Personnel Division has adopted rules to implement this statute as it applies to state employees (ARM 2.21.410, et seq.). Under the Military Leave Policy (MOM 3-0321):

- Agencies routinely pay employees ordered to report for Annual Training (AT).
- Agencies may, at their discretion, pay an employee ordered to "active duty training other than encampments or cruises, for example, basic training, when the employee presents appropriate orders" (ADT).
- The policy does not allow paid leave for "regularly scheduled drills" (IDT).

Opinion

State Personnel Division believes state agencies have the authority to pay Military Leave to employees ordered to "pre-deployment training" or similar training assignments, which the National Guard classifies as ADSW. However, paid Military Leave should end when a soldier is ordered to active duty in the U.S. armed forces.

This should have minimal impact on state agency budgets because in no case may paid Military Leave exceed 15 working days (120 hours) per calendar year. For example, if an employee requests 40 hours of paid leave for pre-deployment training and the employee is ordered to annual training for three weeks in the same year, the employee would only be entitled to an additional 80 hours of paid Military Leave.