

SENATE BILL NO. 130

INTRODUCED BY R. WEBB

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE STATE MILITIA; CLARIFYING
5 PROVISIONS CONCERNING A VOLUNTARY STATE HOME GUARD; CLARIFYING THE GOVERNOR'S ROLE
6 AND RULEMAKING AUTHORITY; SPECIFYING THE AUTHORITY TO RECRUIT, TRAIN, EQUIP, CERTIFY,
7 AND ACTIVATE THE HOME GUARD; PROVIDING FOR CERTAIN DUTIES, RIGHTS, IMMUNITIES, AND
8 PRIVILEGES FOR HOME GUARD MEMBERS; AMENDING SECTIONS 2-16-204, 10-1-102, 10-1-201, 10-1-203,
9 10-1-204, 10-1-205, 10-1-206, 10-1-207, 10-1-301, 10-1-302, 10-1-303, 10-1-401, 10-1-402, 10-1-403, 10-1-501,
10 10-1-502, 10-1-503, 10-1-611, 10-1-612, 10-1-614, 10-1-701, 10-1-702, 10-1-703, 10-1-1002, 10-1-1003,
11 10-1-1009, AND 45-8-109, MCA; REPEALING SECTION 10-1-704, MCA; AND PROVIDING AN IMMEDIATE
12 EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 2-16-204, MCA, is amended to read:
17 **"2-16-204. Gubernatorial commissions.** (1) The governor ~~must~~ shall commission:
18 (a) all officers elected by the people whose commissions are not otherwise provided for;
19 (b) all officers of the militia, except as provided in [section 24];
20 (c) all officers appointed by the governor or by the governor with consent of the senate; and
21 (d) United States senators.
22 (2) The commissions of all officers commissioned by the governor must be issued in the name of the
23 state and must be signed by the governor and attested by the secretary of state under the great seal."

24
25 **Section 2.** Section 10-1-102, MCA, is amended to read:
26 **"10-1-102. Powers and duties of department of military affairs.** Under the direction of the governor,
27 the department shall:
28 (1) keep a roster of all officers and enlisted persons of the ~~militia~~ national guard of this state whether
29 active, inactive, or retired;
30 (2) supervise, administer, and coordinate civil defense and disaster control activities;



- 1 (3) recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;
- 2 (4) maintain the archives and keep the records and documents required by law or regulation to be filed
- 3 with the United States department of defense;
- 4 (5) establish and maintain the headquarters required for the militia; and
- 5 (6) exercise the powers vested in it and perform any other duty and function required of it by the governor
- 6 and by federal and state laws and regulations."

7

8 **Section 3.** Section 10-1-201, MCA, is amended to read:

9 **"10-1-201. Officers.** (1) The governor shall appoint all officers of the militia, except as provided in

10 [section 24].

- 11 (2) Officers must be citizens of the United States.
- 12 (3) ~~Before~~ Except as provided in [section 24], before a person can be appointed an officer by the
- 13 governor, the person must be examined and adjudged qualified to be an officer by an examining board. The
- 14 composition, appointment, and examination procedure of the board and the nature and scope of examinations
- 15 must be prescribed by federal law or regulation or state regulations.

- 16 (4) Each officer shall hold office under the appointment until the officer is regularly appointed to another
- 17 grade or office or until the officer is regularly retired, discharged, dismissed, or placed in the reserve."

18

19 **Section 4.** Section 10-1-203, MCA, is amended to read:

20 **"10-1-203. Retirement of officers.** (1) An officer of the national guard must be retired by order of the

21 governor for the following reasons:

- 22 (a) upon loss of federal recognition; or
- 23 (b) unfitness for military service because of a physical disability.
- 24 (2) An officer is retired from the ~~militia~~ national guard with the grade and rank held at the time of
- 25 retirement."

26

27 **Section 5.** Section 10-1-204, MCA, is amended to read:

28 **"10-1-204. Resignation of officers.** An officer of the national guard may resign, but the resignation is

29 not effective until it has been accepted by the governor."

30

1 **Section 6.** Section 10-1-205, MCA, is amended to read:

2 **"10-1-205. Vacating commissions or warrants.** The commission or warrant of an officer in the national
3 guard must be vacated:

4 (1) upon acceptance by the governor of the resignation of the officer; or

5 (2) by an order of the governor discharging the officer:

6 (a) for failure to maintain the officer's qualifications for federal recognition;

7 (b) upon the scheduled or actual termination or withdrawal of the officer's federal recognition when
8 federal recognition is a prerequisite for continued service;

9 (c) upon a change in federal reserve status that makes the officer ineligible for continued assignment
10 to a unit of the ~~organized militia~~ national guard;

11 (d) for the officer's absence from duty without leave for more than 3 months;

12 (e) upon the recommendation of a board of examination or the sentence of a court-martial;

13 (f) upon conviction of a felony; or

14 (g) upon final sentencing to confinement in a federal or state penitentiary or correctional institution as
15 defined in 45-2-101."

16

17 **Section 7.** Section 10-1-206, MCA, is amended to read:

18 **"10-1-206. Examination as to fitness -- board of examination.** (1) The governor, when the governor
19 considers it necessary, may order an officer of the national guard to appear before a board of examination. The
20 board of examination consists of three officers, senior in rank to the officer whose fitness for service is under
21 examination. The board may:

22 (a) inquire into the fitness for military service due to physical disability of an officer under 10-1-203(1)(b);

23 or

24 (b) inquire into the moral character, capacity, and professional fitness of an officer in order to make a
25 recommendation under 10-1-205(2)(e).

26 (2) The board, under 10-1-203(1)(b), may recommend the retention of the officer being examined or
27 recommend the officer's retirement because of a physical inability to perform active service.

28 (3) The board, under 10-1-205(2)(e), may recommend the discharge and the vacating of the officer's
29 commission or warrant.

30 (4) The findings of the board become effective only upon the approval of the governor."

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Section 8. Section 10-1-207, MCA, is amended to read:

"10-1-207. Uniform allowance for officers. There may be paid annually on April 1 a uniform allowance to each properly uniformed and equipped officer of the ~~organized militia~~ national guard."

Section 9. Section 10-1-301, MCA, is amended to read:

"10-1-301. Terms of enlistment. Except as otherwise provided by federal law or regulation or under the provisions of part 7, enlistments, reenlistments, and extension of enlistments ~~shall~~ must be for periods as prescribed by the department."

Section 10. Section 10-1-302, MCA, is amended to read:

"10-1-302. Oath of enlistment. (1) Except when a comparable oath of enlistment is subscribed to under federal law or regulation, every person who enlists or reenlists in the national guard shall take and subscribe to the following oath of enlistment:

"I hereby acknowledge to have voluntarily enlisted this day of in the of the United States and the state of Montana for a period of years under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies, and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the officers appointed over me."

(2) Any officer of the ~~organized militia~~ national guard or any officer of the armed forces of the United States, detailed to duty with any component of the ~~organized militia~~ national guard of this state, may administer the oath of enlistment to enlisted personnel."

Section 11. Section 10-1-303, MCA, is amended to read:

"10-1-303. Extension of terms of service. If an emergency is declared by the president, congress, the governor, or the legislature, the governor may by proclamation, in accordance with federal and state law and regulation, extend the enlistment of an enlisted member of the ~~organized militia~~ national guard until 6 months after the termination of that emergency."

1 **Section 12.** Section 10-1-401, MCA, is amended to read:

2 **"10-1-401. Courts -- composition, jurisdiction, powers, and procedures.** The military courts for the
3 ~~militia shall~~ national guard must be constituted like similar courts of the armed forces of the United States. They
4 have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures of those
5 courts. The convening authority for these military courts and maximum punishments authorized ~~shall~~ must be as
6 prescribed by federal and state law and regulation applicable to the national guard."
7

8 **Section 13.** Section 10-1-402, MCA, is amended to read:

9 **"10-1-402. Persons subject.** All members of the ~~organized militia~~ national guard and all other persons
10 lawfully called, ordered, or drafted for duty in the ~~organized militia~~ national guard are subject to this part from the
11 dates they are required by the terms of the call, order, or other directive to serve."
12

13 **Section 14.** Section 10-1-403, MCA, is amended to read:

14 **"10-1-403. Territorial applicability.** (1) This part is applicable in all places in this state. It also applies
15 to all persons while serving outside this state and while going to and returning from service outside this state.

16 (2) Courts-martial and courts of inquiry may be convened and held in units of the ~~organized militia~~
17 national guard while serving outside this state. These courts serve with the same jurisdiction and powers as if
18 held in this state. Offenses committed outside this state may be tried and punished either in or out of this state."
19

20 **Section 15.** Section 10-1-501, MCA, is amended to read:

21 **"10-1-501. Pay for ~~militia~~ national guard.** (1) When the ~~organized militia~~ national guard is ordered into
22 active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses
23 must be drawn ~~upon~~ on funds appropriated by the legislature.

24 (2) If national guard members are placed on state duty for special work pursuant to 10-1-505, the
25 members are entitled to pay and allowances as provided in 10-1-502(3). Warrants for pay and allowances for
26 state duty for special work must be drawn ~~upon~~ on funds appropriated by the legislature."
27

28 **Section 16.** Section 10-1-502, MCA, is amended to read:

29 **"10-1-502. Pay and allowances.** (1) An officer of the national guard ordered into active duty as provided
30 for in Article VI, section 13, of the constitution of this state must receive pay and allowances as prescribed for an

1 officer of corresponding grade and length of service when on active duty in federal service.

2 (2) An enlisted member of the national guard ordered into active duty as provided for in Article VI, section
3 13, of the constitution of this state must receive pay at rates equivalent to twice those allowed for an enlisted
4 member of corresponding grade and length of time when on active duty in federal service. This schedule of pay
5 for enlisted members applies only to the first 15 days of service. After 15 days, an enlisted member must receive
6 the pay and allowances as prescribed for an enlisted member of corresponding grade and length of service when
7 on active duty in federal service.

8 (3) A national guard member placed on state duty for special work, as defined in 10-1-505, must receive
9 the pay and allowances as prescribed for an officer or enlisted member of corresponding grade and length of
10 service when on active duty in federal service.

11 (4) The pay and allowances provided for in subsections (1) and (2) may not be paid when pay and
12 allowances for the active duty are provided out of federal funds."

13

14 **Section 17.** Section 10-1-503, MCA, is amended to read:

15 "**10-1-503. Allowances for incidental expenses -- payment of claims authorized.** Each commanding
16 ~~officer~~ captain of an activated home guard company may receive an allowance for the incidental expenses of the
17 command. Additionally, the state, if activation was initiated by the governor, or the county, if activation was
18 requested by a county sheriff, may pay claims from home guard members for:

19 (1) personal equipment that is lost, damaged, or destroyed as a part of the active service;

20 (2) food, fuel, or other supplies used as part of the active service; or

21 (3) other necessary expenses incurred as part of the active service."

22

23 **Section 18.** Section 10-1-611, MCA, is amended to read:

24 "**10-1-611. Authority of commanding officer to arrest.** The commanding officer of a national guard
25 unit at any drill, parade, encampment, or other duty may order those under the commanding officer's command
26 to perform any military duty the commanding officer requires. The commanding officer of a national guard unit
27 may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted person of a national
28 guard unit who disobeys the orders of a superior officer."

29

30 **Section 19.** Section 10-1-612, MCA, is amended to read:

1 **"10-1-612. Arrest of trespassers and disturbers.** (1) The commanding officer of a national guard unit
 2 may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal,
 3 rifle range, or any other place devoted to or used for military purposes.

4 (2) The commanding officer may arrest a person who:

5 (a) interrupts, molests, or disturbs the orderly discharge of duty by those under arms;

6 (b) disturbs or prevents the passage of troops going to or returning from any duty; or

7 (c) assaults a member of the uniformed militia while that member is performing any military duty.

8 (3) A person who is arrested under this section ~~shall~~ must be transferred to the civil authorities in the
 9 county where the offense was committed.

10 (4) A person committing an offense for which an arrest may be made pursuant to this section is guilty
 11 of a misdemeanor."

12

13 **Section 20.** Section 10-1-614, MCA, is amended to read:

14 **"10-1-614. Unlawful wearing of uniform.** A person who is not a member of the ~~organized militia~~
 15 national guard may not wear the uniform or insignia issued or authorized for use by the ~~organized militia~~ national
 16 guard."

17

18 NEW SECTION. **Section 21. Short title.** This part may be cited as the "Montana Home Guard
 19 Revitalization Act".

20

21 NEW SECTION. **Section 22. Purpose.** The purpose of this part is to establish the Montana home guard
 22 as a volunteer community service apparatus in Montana to fill the gap between community service organizations,
 23 such as a neighborhood watch program, and the Montana national guard, and to provide the state and its local
 24 communities with the ability to call on trained and organized volunteers when necessary resources are otherwise
 25 unavailable.

26

27 **Section 23.** Section 10-1-701, MCA, is amended to read:

28 **"10-1-701. Home guard -- organization and composition -- company identification.** (1) The home
 29 guard may be organized, maintained, and disbanded ~~at the discretion of the governor, in accordance with federal~~
 30 law and regulation, as provided for in this part when additional defense or emergency response forces are needed

1 in this state. The home guard ~~shall~~ must be composed of volunteers who include company captains, officers
 2 ~~assigned to it~~ selected by the company captains, and any able-bodied citizen of this state who volunteers to serve
 3 in it. ~~If additional persons are needed in the home guard, members of the unorganized militia shall serve if~~
 4 ~~enrolled by draft or otherwise as provided by law and regulation.~~

5 (2) The basic unit of the home guard is a company, which may be organized into platoons and squads.

6 (3) Each home guard company may adopt a company flag, a company creed, company colors, and other
 7 designations or insignia suitable for company identity and tradition. The company shall agree on a uniform to
 8 distinguish its members. A uniformly worn special badge with a company insignia or a readily available clothing
 9 item, such as a cap, shirt, or other item, is sufficient to constitute a uniform.

10 (4) A home guard company may be established as provided in [section 25] and may be formed as an
 11 infantry company, medical company, transportation company, heavy equipment company, construction company,
 12 forestry company, police company, environmental company, signal company, scout company, cavalry company,
 13 supply company, specialty company, general service company, or another type of company. A mixed company
 14 may be formed of specialized platoons or squads of the types listed in this subsection."

15
 16 **NEW SECTION. Section 24. Company captain responsibilities -- commissioning and recruiting**
 17 **members -- charter.** (1) A home guard company must be commanded by a captain commissioned by the
 18 governor. The company captain is responsible for selecting and commissioning the company's officers and for
 19 recruiting, training, mustering, equipping, assigning, and promoting company members. The company captain
 20 may dismiss or demote company members or administer lesser disciplinary measures.

21 (2) Each company member is responsible to the company captain, and each company captain is
 22 responsible to the governor through a chain of command established by the governor pursuant to rules adopted
 23 under 10-1-702.

24 (3) With the advice of the company officers, the company captain shall prepare and execute a company
 25 charter to specify the mission, policies, equipment, and procedures for the company. The charter must be
 26 approved by the governor to be valid.

27 (4) The company captain's responsibilities must also include a monthly report to the governor concerning
 28 the recruiting, training, mustering, equipping, physical fitness, and assignment and promotion of company
 29 members. Annual inspections must be convened to ensure readiness and strength.

30

1 **NEW SECTION.** **Section 25. How home guard company may be established.** (1) A home guard
2 company may be established in any of the following ways:

3 (a) The governor may appoint a home guard captain and authorize that captain to recruit, train, muster,
4 and equip a home guard company.

5 (b) Any citizen of good repute may form a company and petition the governor to appoint the citizen as
6 the company's captain and to accept the company into the home guard.

7 (c) Any group of citizens may form a company, select a company captain, and petition the governor to
8 commission the captain and accept the company as part of the home guard.

9 (2) To be officially recognized as a home guard company, the company must be certified by the governor
10 pursuant to 10-1-702.

11

12 **Section 26.** Section 10-1-702, MCA, is amended to read:

13 **"10-1-702. Gubernatorial rules for home guard -- company certification -- decertification.** (1) The
14 home guard ~~shall~~ must be organized, armed, equipped, maintained, disciplined, governed, administered, and
15 trained under rules prescribed by the governor in accordance with the provisions of this part. ~~These rules shall~~
16 ~~conform to federal law and regulations.~~ The rules may not be so burdensome that they preclude home guard
17 companies from being effectively organized, trained, and employed pursuant to this part.

18 (2) The governor shall, within 30 days of acceptance of a company into the home guard, issue to the
19 company a certificate of acceptance that entitles the company to all of the privileges, traditions, and
20 responsibilities of a home guard company for as long as that certificate of acceptance is valid. The first and
21 second certificates of acceptance are valid and in effect for 1 year from date of issuance. The third certificate of
22 acceptance is valid indefinitely unless revoked by the governor for cause or unless the certificate is voluntarily
23 abandoned or returned to the governor by a disused or disabled company."

24

25 **NEW SECTION.** **Section 27. Oaths -- conditions of service.** (1) Each member of a home guard
26 company shall, as a condition of acceptance into a home guard company, swear an oath as provided for in this
27 section and must be informed upon the member's recruitment that service in the home guard is at the member's
28 own risk and without compensation.

29 (2) Each home guard officer shall take and subscribe to the following oath of office before assuming
30 office:

1 "I,, do solemnly swear that I will support and defend the constitution of the state of Montana and the
 2 constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance
 3 to the same; that I will obey the orders of the governor of the state of Montana; that I make this obligation freely,
 4 without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the
 5 office of in the upon which I am about to enter, so help me God."

6 (3) Each noncommissioned person who joins the home guard shall take and subscribe to the following
 7 oath of enlistment:

8 "I hereby acknowledge to have voluntarily joined this day of in the home guard of the state of Montana. And
 9 I do solemnly swear that I will bear true faith and allegiance to the state of Montana, that I will serve it honestly
 10 and faithfully against all its enemies, and that I will obey the orders of the governor of the state of Montana and
 11 the officers appointed over me."

12 (4) A company captain or any commissioned officer of the home guard may administer this oath.

13
 14 **NEW SECTION. Section 28. Officer resignations -- when commissions must be vacated.** (1) An
 15 officer of the home guard may resign the officer's commission at any time.

16 (2) A commission must be vacated when an officer has been dismissed by the company captain for
 17 cause.

18 (3) A company captain's commission must be vacated if the company captain is dismissed by the
 19 governor for cause.

20 (4) A commission may be vacated for reasons including but not limited to:

21 (a) failure to maintain the officer's initial qualifications for recognition;

22 (b) absence from duty without leave for more than 6 months; or

23 (c) a felony conviction.

24
 25 **NEW SECTION. Section 29. Activation and deployment -- failure to respond -- restrictions.** (1) A
 26 home guard company may be activated and assigned to duty by order of the governor or on the request of a
 27 county sheriff if the requested activation is approved and ordered by the governor within 48 hours of the request.
 28 The governor or the county sheriff shall provide written documentation of the activation order to the company.

29 (2) A home guard company may volunteer service to the county sheriff.

30 (3) If a home guard company fails to respond to a call for activation at a minimum of half strength within

1 8 hours of the governor's call, the home guard company may be decertified by the governor and its captain
 2 dismissed. If a home guard member fails to respond to a call for activation, for cause or otherwise, the member
 3 may be dismissed from the company by the company captain.

4 (4) A home guard company or company members may not be deployed or assigned outside of
 5 Montana's borders. A home guard company or company members may serve in support of federal agencies but
 6 may not be compelled to serve under the direction of any federal agency, employee, or officer.

7 (5) The governor may activate any company of the home guard for a period not to exceed 10 consecutive
 8 days. The governor may not activate a company for more than 30 days in any calendar year without the prior
 9 consent of the legislature. In consenting to activation for more than 30 days in a calendar year, the legislature
 10 shall identify the specific company or companies for which it is authorizing active service and the date by which
 11 the active service must be terminated.

12

13 **Section 30.** Section 10-1-703, MCA, is amended to read:

14 **"10-1-703. ~~Use Training -- use of armories and equipment.~~ (1) Each home guard captain is**
 15 **responsible for ensuring that the personnel of the captain's company are trained sufficiently to fulfill the company's**
 16 **mission according to the company's charter. The national guard may provide training for units and personnel of**
 17 **the home guard to the extent that the resources of the national guard permit the training.**

18 (2) The governor may make available to the home guard the facilities of state armories and their
 19 equipment and any other state land and property ~~as that~~ that may be available. The governor may requisition from
 20 the federal government, for the use of the home guard, arms, ammunition, clothing, equipment, and other items
 21 in accordance with federal law and regulations to the extent that the governor may do so without obligating the
 22 home guard to federal service. The governing body of a county, municipality, or school district may make
 23 available to the home guard any premises, facilities, equipment, or other property belonging to or under the
 24 control of the county, municipality, or school district."

25

26 **NEW SECTION. Section 31. Volunteer status -- workers' compensation.** (1) A member of the home
 27 guard, whether on active duty or otherwise, serves strictly as an unpaid volunteer and is not entitled to
 28 compensation, except as provided in 10-1-503.

29 (2) When a home guard company is activated, the state, if the activation was initiated by the governor,
 30 or the county, if the activation was requested by the county sheriff, shall provide workers' compensation insurance

1 coverage for the activated members of the company for the duration of a member's active service under the
2 activation order.

3 (3) The governor shall report rosters of the home guard to the state workers' compensation plan and have
4 in place a workers' compensation insurance plan for when the home guard is activated.

5
6 **NEW SECTION. Section 32. Liability.** When a home guard company is in an activated status, the
7 provisions of 10-1-601 and 10-3-111 apply. A member of a home guard company is not liable for injuries or
8 damages incurred in the performance of assigned duties unless the member is found to be grossly negligent.

9
10 **Section 33.** Section 10-1-1002, MCA, is amended to read:

11 **"10-1-1002. Purpose -- legislative intent.** The purpose of this part is to recognize the importance of
12 the service performed by Montana national guard and home guard members and to protect the employment rights
13 of national guard and home guard members who may be called to state active duty when there is a state
14 emergency or disaster. The legislature also supports the efforts and sacrifices of the employers of Montana
15 national guard and home guard members and intends that this part will provide a means for national guard and
16 home guard members and employers to work cooperatively to resolve any workplace issues."

17
18 **Section 34.** Section 10-1-1003, MCA, is amended to read:

19 **"10-1-1003. Definitions.** Unless the context requires otherwise, as used in this part, the following
20 definitions apply:

21 (1) "Department" means the department of labor and industry established in 2-15-1701.

22 (2) "Elected official" means an official duly elected or appointed to any state or local judicial, legislative,
23 or executive elective office of the state, a district, or a political subdivision of the state, including a school district
24 or any other local district.

25 (3) (a) "Employer" means any public or private person or entity providing employment in Montana.

26 (b) The term does not include the United States.

27 (4) "Federally funded military duty" means duty, including training, performed pursuant to orders issued
28 under Title 10 or 32 of the United States Code and the time period, if any, required pursuant to a licensed
29 physician's certification to recover from an illness or injury incurred while performing the duty.

30 (5) "Member" means a member of the state's organized militia provided for in 10-1-103.

1 (6) "Military service" includes both federally funded military duty and state active duty.

2 (7) (a) "State active duty" means duty performed by a member when a disaster or an emergency has
3 been declared by the proper authority of the state pursuant to Article VI, section 13, of the Montana constitution
4 or when a home guard company is activated under [section 29] to include the time period, if any, required
5 pursuant to a licensed physician's certification to recover from an illness or injury incurred while performing the
6 active duty.

7 (b) The term does not include federally funded military duty."
8

9 **Section 35.** Section 10-1-1009, MCA, is amended to read:

10 **"10-1-1009. Paid military leave for public employees.** (1) An employee of the state or of any political
11 subdivision, as defined in 2-9-101, who is a member of the ~~organized militia~~ national guard of this state or who
12 is a member of the organized or unorganized reserve corps or military forces of the United States and who has
13 been an employee for a period of at least 6 months must be given leave of absence with pay accruing at a rate
14 of 120 hours in a calendar year, or academic year if applicable, for performing military service.

15 (2) Military leave may not be charged against the employee's annual vacation time.

16 (3) Unused military leave must be carried over to the next calendar year, or academic year if applicable,
17 but may not exceed a total of 240 hours in any calendar or academic year."
18

19 **Section 36.** Section 45-8-109, MCA, is amended to read:

20 **"45-8-109. Civil disorder -- prohibited activities -- penalties -- exceptions.** (1) A person is guilty of
21 a crime if, with one or more other persons, the person purposely or knowingly assembles for the purpose of
22 training in, instructing in the use of, or practicing with any technique or means capable of causing property
23 damage, bodily injury, or death, with the purpose of employing the training, instruction, or practice in a civil
24 disorder.

25 (2) A person convicted of violating the provisions of subsection (1) is guilty of a felony and shall be
26 imprisoned in the state prison for a period not to exceed 10 years or be fined not to exceed \$50,000, or both.

27 (3) Subsection (1) does not prohibit:

28 (a) an act protected pursuant to Article II of the Montana constitution;

29 (b) an act of a governmental military force;

30 (c) an act of a peace officer performed in the lawful performance of the officer's duties;

1 (d) an authorized activity of the department of fish, wildlife, and parks; the department of corrections; a
2 law enforcement agency; or the law enforcement academy;

3 (e) training in nonviolent civil disobedience techniques;

4 (f) lawful self-defense or defense of others or an activity intended to teach or practice self-defense or
5 self-defense techniques; or

6 (g) a facility, program, or lawful activity related to firearms instruction or training intended to teach the
7 safe handling and use of firearms or activities or sports related to recreational use or possession of firearms; or

8 (h) training for any person actively involved in the home guard or training for admission into the home
9 guard.

10 (4) Sections 45-8-107 through 45-8-109 do not apply to an employer or employees involved in a labor
11 dispute."

12

13 NEW SECTION. Section 37. Repealer. The following section of the Montana Code Annotated is
14 repealed:

15 10-1-704. Pay and allowances.

16

17 NEW SECTION. Section 38. Codification instruction. [Sections 21, 22, 24, 25, 27 through 29, 31,
18 and 32] are intended to be codified as an integral part of Title 10, chapter 1, part 7, and the provisions of Title 10,
19 chapter 1, part 7, apply to [sections 21, 22, 24, 25, 27 through 29, 31, and 32].

20

21 NEW SECTION. Section 39. Severability. If a part of [this act] is invalid, all valid parts that are
22 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
23 the part remains in effect in all valid applications that are severable from the invalid applications.

24

25 NEW SECTION. Section 40. Effective date. [This act] is effective on passage and approval.

26 - END -