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# A BILL FOR AN ACT

RELATING TO THE MILITIA.

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

1           SECTION 1. Section 121-30, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§121-30 Order to active service.** (a) In case of war,  
4 insurrection, invasion, riot, or imminent danger thereof~~[, or]~~;  
5 a public disaster or danger from flood, fire, storm, earthquake,  
6 civil disturbances, or terrorist events thereof; any forcible  
7 obstruction to the execution of the laws, or reasonable  
8 apprehension thereof~~[,]~~; or for assistance to civil authorities  
9 in disaster relief or civil defense, the governor may order the  
10 national guard or other component of the militia or any part  
11 thereof into active service. The governor or the governor's  
12 designated representative ~~[also]~~ may also order the national  
13 guard into active service ~~[in]~~:

14           (1) In nonemergency situations for duty and training in  
15 addition to the drill and instruction required by  
16 section 121-28~~[,]~~;



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

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

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

11       . SECTION 2. Section 121-43, Hawaii Revised Statutes, is  
12       amended to read as follows:

13       "~~[f]~~**\$121-43**~~[+]~~ **Nonforfeiture for absence.** (a) Every  
14       employee of a private employer who is a member of the national  
15       guard shall be entitled to absent oneself from the employee's  
16       employment duties while engaged in the performance of ordered  
17       national guard service and while going to and returning from  
18       such service. [~~Such~~] The person shall:

19       (1) If still qualified to perform the person's employment  
20       duties, be restored by [~~such~~] the employer or the  
21       employer's successor in interest to [~~such~~] the



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

18 (b) (1) Any person who is restored to or employed in a  
19 position in accordance with the provisions of  
20 subsection (a) shall be considered as having been on  
21 furlough or leave of absence; shall be so restored or  
22 reemployed without loss of seniority; shall be



1 entitled to participate in insurance or other benefits  
2 offered by the employer pursuant to established rules  
3 and practices relating to employees on furlough or  
4 leave of absence in effect with the employer at the  
5 time [~~such~~] the person was ordered to national guard  
6 service; and shall not be discharged from such  
7 employment position without cause within one year  
8 after such restoration or reemployment[-];

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

20 (3) Any person who holds a position described in  
21 subsection (a) shall not be denied retention in  
22 employment or any promotion or other incident or



1           advantage of employment because of any obligation as a  
2           member of the national guard.

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

12           (d) Any right, benefit, or protection that may accrue to a  
13 member of the national guard under the Uniformed Services  
14 Employment and Reemployment Rights Act as a result of an order  
15 to military duty under Titles 10 or 32 of the United States Code  
16 shall be extended to a member of the national guard who is  
17 called to state active duty for any period of time by the  
18 governor. The Servicemembers Civil Relief Act is incorporated  
19 into this section by reference.

20           (e) Any right, benefit, or protection that may accrue to a  
21 member of the national guard as a result of an order to military  
22 duty under Titles 10 or 32 of the United States Code shall be



1 extended to a member of the national guard who is called to  
2 state active duty by the governor, if the orders are for ten  
3 consecutive days or longer."

4 SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on July 1, 2012.



**Report Title:**

Public Safety; National Guard

**Description:**

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 powers of the Governor and Governor's designee in calling the National Guard into active duty. 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. Effective July 1, 2012. (SB2489 HD2)

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

