

---

---

# 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 [~~7-08~~];  
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[-]; 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[-];
- 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           " [{}\$121-43{}] **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. [sueh] The person shall:

- 7           (1) If still qualified to perform the person's employment  
8           duties, be restored by [sueh] the employer or the  
9           employer's successor in interest to [sueh] 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 [sueh] the employer or the employer's successor in  
17           interest, be offered employment and, if [sueh] the  
18           person so requests, be employed by [sueh] the employer  
19           or the employer's successor in interest in such other  
20           position the duties of which [sueh] the person is  
21           qualified to perform as will provide [sueh] 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 [~~sueh~~] the person had continued in such  
2           employment continuously from the time [~~sueh~~] the  
3           person became engaged in the performance of ordered  
4           national guard service until the time of [~~sueh~~] 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.

20          (d) Any right, benefit, or protection that may accrue to a  
21          member of the national guard under the Uniformed Services  
22          Employment and Reemployment Rights Act as a result of an order



1 to military duty under Titles 10 or 32 of the United States Code  
2 shall be extended to a member of the national guard who is  
3 called to state active duty for any period of time by the  
4 governor. The Servicemembers Civil Relief Act (50 U.S.C.  
5 section 501 et seq., as amended), is incorporated into this  
6 section by reference.

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

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 Statutory material to be repealed is bracketed  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

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



**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. (SD1)

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

