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SENATE BILL 5586

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senators McCaslin, Sutherland and Roach; by request of Military Department.

Read first time February 8, 1991.                      Referred to Committee on Governmental Operations.

1            AN ACT Relating to technical corrections to the code governing the  
2 state militia; and amending RCW 38.04.010, 38.12.200, 38.16.030,  
3 38.24.010, 38.38.132, 38.38.260, 38.38.404, 38.38.564, 38.40.110,  
4 38.44.020, 38.44.030, 38.44.040, 38.44.050, and 38.44.060.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 38.04.010 and 1989 c 19 s 1 are each amended to read  
7 as follows:

8            When used in this ((act)) title, the following words, terms,  
9 phrases shall have the following meaning:

10            The word "militia" shall mean the military forces provided for in  
11 the Constitution and laws of the state of Washington.

12            The term "organized militia" shall be the general term to include  
13 both state and national guard and whenever used applies equally to all  
14 such organizations.

1       The term "national guard" shall mean that part of the military  
2 force of the state that is organized, equipped and federally recognized  
3 under the provisions of the national defense act of the United States,  
4 and, in the event the national guard is called into federal service or  
5 in the event the state guard or any part or individual member thereof  
6 is called into active state service by the commander-in-chief, the term  
7 shall also include the "Washington state guard" or any temporary  
8 organization set up in times of emergency to replace either the  
9 "national guard" or "state guard" while in actual service of the United  
10 States.

11       The term "state guard" shall mean that part of the military forces  
12 of the state that is organized, equipped, and recognized under the  
13 provisions of the State Defense Forces Act of the United States (32  
14 U.S.C. Sec. 109, as amended).

15       The term "active state service" or "active training duty" shall be  
16 construed to be any service on behalf of the state, or at encampments  
17 whether ordered by state or federal authority or any other duty  
18 requiring the entire time of any organization or person except when  
19 called or drafted into the federal service by the president of the  
20 United States.

21       The term "inactive duty" shall include periods of drill and such  
22 other training and service not requiring the entire time of the  
23 organization or person, as may be required under state or federal laws,  
24 regulations, or orders, including travel to and from such duty.

25       The terms "in service of United States" and "not in service of  
26 United States" as used herein shall be understood to mean the same as  
27 such terms when used in the national defense act of congress and  
28 amendments thereto.

29       The term "military" refers to any or all of the armed forces.

1       The term "armory" refers to any state-owned building, warehouse,  
2 vehicle storage compound, organizational maintenance shop or other  
3 facility and the lands appurtenant thereto used by the Washington  
4 national guard for the storage and maintenance of arms or military  
5 equipment or the administration or training of the organized militia.

6       The term "member" refers to a soldier or airman of the organized  
7 militia.

8       **Sec. 2.** RCW 38.12.200 and 1989 c 19 s 22 are each amended to read  
9 as follows:

10       Every commissioned officer of the organized militia of Washington  
11 shall, within sixty days from the date of the order whereby he or she  
12 shall have been appointed, provide at the officer's own expense(~~(~~  
13 with)) the uniform and equipment prescribed by the governor for his or  
14 her rank and assignment.

15       There shall be audited and may be paid, at the option of the  
16 adjutant general, to each properly uniformed and equipped officer of  
17 the active list of the organized militia of Washington, not in federal  
18 service an initial uniform allowance of one hundred dollars and  
19 annually thereafter for each twelve months state service an additional  
20 uniform allowance of fifty dollars, subject to such regulations as the  
21 commander-in-chief may prescribe to be audited and paid upon  
22 presentation of proper voucher.

23       **Sec. 3.** RCW 38.16.030 and 1989 c 19 s 32 are each amended to read  
24 as follows:

25       The inactive national guard of this state shall respectively be  
26 organized by the governor in regulations in conformance with the laws,  
27 rules and regulations of the United States. It shall consist of such  
28 organizations, officers and enlisted men as the governor shall

1 prescribe. No commissioned officer shall be transferred or furloughed  
2 to the inactive national guard (~~reserve~~) without the officer's  
3 written consent, except as otherwise expressly provided by law. Any  
4 officer of the inactive national guard may be restored to the active  
5 list by order of the governor, subject to the same examination as in  
6 the case of an original appointment to his or her rank, and in such  
7 event his or her service in the inactive national guard shall not be  
8 counted in computing total length of service for relative seniority.

9       **Sec. 4.** RCW 38.24.010 and 1989 c 19 s 36 are each amended to read  
10 as follows:

11       All bills, claims and demands for military purposes shall be  
12 certified or verified and audited in the manner prescribed by  
13 regulations promulgated by the governor and shall be paid by the state  
14 treasurer from funds available for that purpose. In all cases where  
15 the organized militia, or any part of the organized militia, is called  
16 into the service of the state to execute or enforce the laws or in case  
17 of war, riot, insurrection, invasion, breach of the peace, (~~to execute~~  
18 ~~or enforce the laws,~~) public disaster, or the imminent danger of the  
19 occurrence of any of these events, warrants for allowed pay and  
20 expenses for such services or compensation for injuries or death shall  
21 be drawn upon the general fund of the state treasury and paid out of  
22 any moneys in said fund not otherwise appropriated. All such warrants  
23 shall be the obligation of the state and shall bear interest at the  
24 legal rate from the date of their presentation for payment.

25       **Sec. 5.** RCW 38.38.132 and 1989 c 48 s 15 are each amended to read  
26 as follows:

27       (1) Under such regulations as the governor may prescribe,  
28 limitations may be placed on the powers granted by this section with

1 respect to the kind and amount of punishment authorized, the categories  
2 of commanding officers and warrant officers exercising command  
3 authorized to exercise those powers, the applicability of this section  
4 to an accused who demands trial by court-martial, and the kinds of  
5 courts-martial to which the case may be referred upon such a demand.  
6 However, except in the case of a member attached to or embarked in a  
7 vessel, punishment may not be imposed upon any member of the organized  
8 militia under this section if the member has, before the imposition of  
9 such punishment, demanded trial by court-martial in lieu of such  
10 punishment. Under similar regulations, rules may be prescribed with  
11 respect to the suspension of punishments authorized hereunder. If  
12 authorized by regulations of the governor, a commanding officer  
13 exercising general court-martial jurisdiction or an officer of general  
14 rank in command may delegate powers under this section to a principal  
15 assistant.

16 (2) Subject to subsection (1) of this section, any commanding  
17 officer may, in addition to or in lieu of admonition or reprimand,  
18 impose one or more of the following disciplinary punishments for minor  
19 offenses without the intervention of a court-martial:

20 (a) Upon officers of his or her command:

21 (i) Restriction to certain specified limits, with or without  
22 suspension from duty, for not more than fourteen consecutive duty or  
23 drill days;

24 (ii) If imposed by an officer exercising general court-martial  
25 jurisdiction or an officer of general rank in command:

26 (A) Forfeiture of up to thirty days' pay, but not more than fifteen  
27 days' pay per month;

28 (B) Restriction to certain specified limits, with or without  
29 suspension from duty, for not more than fourteen consecutive drill or  
30 duty days;

1 (C) Detention of up to forty-five days' pay, but not more than  
2 fifteen days' pay per month;

3 (b) Upon other personnel of his or her command:

4 (i) If imposed upon a person attached to or embarked in a vessel,  
5 confinement for not more than three consecutive days;

6 (ii) Forfeiture of not more than seven days' pay;

7 (iii) Reduction to the next inferior pay grade, if the grade from  
8 which demoted is within the promotion authority of the officer imposing  
9 the reduction or any officer subordinate to the one who imposes the  
10 reduction;

11 (iv) Extra duties, including fatigue or other duties for not more  
12 than fourteen duty or drill days, which need not be consecutive, and  
13 for not more than two hours per day, holidays included;

14 (v) Restriction to certain specified limits, with or without  
15 suspension from duty, for not more than fourteen consecutive days;

16 (vi) Detention of not more than fourteen days' pay;

17 (vii) If imposed by an officer of the grade of major or above:

18 (A) The punishment authorized in subsection (2)(b)(i) of this  
19 section;

20 (B) Forfeiture of up to thirty days' pay, but not more than fifteen  
21 days' pay per month;

22 (C) Reduction to the lowest or any intermediate pay grade, if the  
23 grade from which demoted is within the promotion authority of the  
24 officer imposing the reduction or any officer subordinate to the one  
25 who imposes the reduction, but an enlisted member in a pay grade above  
26 E-4 may not be reduced more than two pay grades;

27 (D) Extra duties, including fatigue or other duties, for not more  
28 than fourteen drill or duty days, which need not be consecutive, and  
29 for not more than two hours per day, holidays included;

1 (E) Restriction to certain specified limits, with or without  
2 suspension from duty, for not more than fourteen consecutive days;

3 (F) Detention of up to forty-five days' pay, but not more than  
4 fifteen days' pay per month.

5 Detention of pay shall be for a stated period of not more than one year  
6 but if the offender's term of service expires earlier, the detention  
7 shall terminate upon that expiration. Extra duties and restriction may  
8 not be combined to run consecutively in the maximum amount imposable  
9 for each. Whenever any such punishments are combined to run  
10 consecutively, there must be an apportionment. In addition, forfeiture  
11 of pay may not be combined with detention of pay without an  
12 apportionment.

13 (3) An officer in charge may impose upon enlisted members assigned  
14 to the unit of which the officer is in charge such of the punishment  
15 authorized under subsection (2)(b) of this section as the governor may  
16 specifically prescribe by regulation.

17 (4) The officer who imposes the punishment authorized in subsection  
18 (2) of this section, or a successor in command, may, at any time,  
19 suspend probationally any part or amount of the unexecuted punishment  
20 imposed and may suspend probationally a reduction in grade or a  
21 forfeiture imposed under subsection (2) of this section, whether or not  
22 executed. In addition, the officer may, at any time, remit or mitigate  
23 any part or amount of the unexecuted punishment imposed and may set  
24 aside in whole or in part the punishment, whether executed or  
25 unexecuted, and restore all rights, privileges, and property affected.  
26 The officer may also mitigate reduction in grade to forfeiture or  
27 detention of pay. When mitigating extra duties to restriction, the  
28 ~~((mitigated punishment))~~ restriction shall not be ~~((greater))~~ longer  
29 than the ~~((amount of the forfeiture))~~ number of hours of extra duty  
30 that may have been imposed. When mitigating reduction in grade to

1 forfeiture or detention of pay, the amount of the forfeiture or  
2 detention shall not be greater than the amount that could have been  
3 imposed initially under this section by the officer who imposed the  
4 punishment mitigated.

5 (5) A person punished under this section who considers the  
6 punishment unjust or disproportionate to the offense may, through the  
7 proper channel, appeal to the next superior authority. The appeal  
8 shall be promptly forwarded and decided, but the person punished may in  
9 the meantime be required to undergo the punishment adjudged. The  
10 superior authority may exercise the same powers with respect to the  
11 punishment imposed as may be exercised under subsection (4) of this  
12 section by the officer who imposed the punishment. Before acting on an  
13 appeal from a punishment of:

14 (a) Forfeiture of more than seven days' pay;

15 (b) Reduction of one or more pay grades from the fourth or a higher  
16 pay grade;

17 (c) Extra duties for more than ten days;

18 (d) Restriction for more than ten days; or

19 (e) Detention of more than fourteen days' pay;

20 the authority who is to act on the appeal shall refer the case to a  
21 judge advocate for consideration and advice, and may so refer the case  
22 upon appeal from any punishment imposed under subsection (2) of this  
23 section.

24 (6) The imposition and enforcement of disciplinary punishment under  
25 this section for any act or omission is not a bar to trial by court-  
26 martial for a serious crime or offense growing out of the same act or  
27 omission, and not properly punishable under this section; but the fact  
28 that a disciplinary punishment has been enforced may be shown by the  
29 accused upon trial, and when so shown shall be considered in



1 determining the measure of punishment to be adjudged in the event of a  
2 finding of guilty.

3 (7) The governor may by regulation prescribe the form of records to  
4 be kept of proceedings under this section and may also prescribe that  
5 certain categories of those proceedings shall be in writing.

6 **Sec. 6.** RCW 38.38.260 and 1989 c 48 s 27 are each amended to read  
7 as follows:

8 (1) (a) Trial counsel and defense counsel shall be detailed for  
9 each general and special court-martial. Assistant trial counsel and  
10 assistant and associate defense counsel may be detailed for each  
11 general and special court-martial. The governor shall prescribe  
12 regulations providing for the manner in which counsel are detailed for  
13 such courts-martial and for the persons who are authorized to detail  
14 counsel for such courts-martial.

15 (b) No person who has acted as investigating officer, military  
16 judge, or court member in any case may act later as trial counsel,  
17 assistant trial counsel, or, unless expressly requested by the accused,  
18 as defense counsel or assistant or associate defense counsel in the  
19 same case. No person who has acted for the prosecution may act later  
20 in the same case for the defense, nor may any person who has acted for  
21 the defense act later in the same case for the prosecution.

22 (2) Trial counsel or defense counsel detailed for a general court-  
23 martial:

24 (a) Must be a judge advocate who is a graduate of an accredited law  
25 school or is a member of the bar of a federal court or of the highest  
26 court of a state, or must be a member of the bar of a federal court or  
27 of the highest court of a state; and

28 (b) Must be certified as competent to perform such duties by the  
29 state judge advocate.

1 (3) In the case of a special court-martial:

2 (a) The accused shall be afforded the opportunity to be represented  
3 at the trial by counsel having the qualifications prescribed under  
4 (~~RCW 38.38.260~~) subsection (2) of this section unless counsel having  
5 such qualifications cannot be obtained on account of physical  
6 conditions or military exigencies. If counsel having such  
7 qualifications cannot be obtained, the court may be convened and the  
8 trial held but the convening authority shall make a detailed written  
9 statement, to be appended to the record, stating why counsel with such  
10 qualifications could not be obtained;

11 (b) If the trial counsel is qualified to act as counsel before a  
12 general court-martial, the defense counsel detailed by the convening  
13 authority must be a person similarly qualified; and

14 (c) If the trial counsel is a judge advocate or a member of the bar  
15 of a federal court or the highest court of a state, the defense counsel  
16 detailed by the convening authority must be one of the foregoing.

17 **Sec. 7.** RCW 38.38.404 and 1989 c 48 s 44 are each amended to read  
18 as follows:

19 (1) If an accused arraigned before a court-martial makes an  
20 irregular pleading, or after a plea of guilty sets up matter  
21 inconsistent with the plea, or if it appears that the accused has  
22 entered the plea of guilty improvidently or through lack of  
23 understanding of its meaning and effect, or if the accused fails or  
24 refuses to plead, a plea of not guilty shall be entered in the record,  
25 and the court shall proceed as though the accused had pleaded not  
26 guilty.

27 (2) With respect to any other charge or specification to which a  
28 plea of guilty has been made by the accused and accepted by the  
29 military judge or by a court-martial without a military judge, a

1 finding of guilty of the charge or specification may be entered  
2 immediately without vote. This finding shall constitute the finding of  
3 the court unless the plea of guilty is withdrawn prior to announcement  
4 of the sentence, in which event the proceedings shall continue as  
5 (~~through~~) though the accused had pleaded not guilty.

6       **Sec. 8.** RCW 38.38.564 and 1989 c 48 s 57 are each amended to read  
7 as follows:

8       (1) Upon the final review of a sentence of a general court-martial,  
9 the accused has the right to be represented by counsel before the  
10 reviewing authority, before the staff judge advocate, (~~as the case may~~  
11 ~~be,~~) and before the state judge advocate.

12       (2) Upon the request of an accused entitled to be so represented,  
13 the state judge advocate shall appoint a lawyer who is a member of the  
14 organized militia and who has the qualifications prescribed in RCW  
15 38.38.260, if available, to represent the accused before the reviewing  
16 authority, before the staff judge advocate, and before the state judge  
17 advocate, in the review of cases specified in subsection (1) of this  
18 section.

19       (3) If provided by the accused, an accused entitled to be so  
20 represented may be represented by civilian counsel before the reviewing  
21 authority, before the staff judge advocate, and before the state judge  
22 advocate.

23       **Sec. 9.** RCW 38.40.110 and 1989 c 19 s 52 are each amended to read  
24 as follows:

25       No club, society, association, corporation, employer, or  
26 organization shall by any constitution, rule, bylaws, resolution, vote  
27 or regulation, or otherwise, discriminate against or refuse to hire,  
28 employ, or reemploy any member of the organized militia of Washington

1 because of his or her membership in said organized militia. Any person  
2 or persons, club, society, association, employer, corporation, or  
3 organization, violating or aiding, abetting, or assisting in the  
4 violation of any provision of this section shall be guilty of a  
5 misdemeanor and on conviction thereof shall be fined in any sum not  
6 exceeding one hundred dollars and in addition thereto shall forfeit the  
7 right to do business for a period of thirty days. Any person who has  
8 been discriminated against in violation of this section shall have a  
9 civil cause of action for damages.

10 **Sec. 10.** RCW 38.44.020 and 1989 c 19 s 56 are each amended to read  
11 as follows:

12 Persons making an enrollment under ((~~RCW 38.20.040 and 38.44.020~~  
13 ~~through 38.44.060~~)) this chapter shall, at the time of making same,  
14 serve a notice of such enrollment upon each person enrolled, by  
15 delivering such notice to the enrollee personally or by leaving it with  
16 some person of suitable age and discretion at his or her place of  
17 business or residence, or by mailing such notice to him or her at the  
18 enrollee's last known place of residence, and shall make a return under  
19 oath of such service to accompany the copy of the enrollment filed with  
20 the adjutant general. The return shall be prima facie evidence of the  
21 facts therein.

22 **Sec. 11.** RCW 38.44.030 and 1989 c 19 s 57 are each amended to read  
23 as follows:

24 Whenever an enrollment shall have been ordered under ((~~RCW~~  
25 ~~38.20.040 and 38.44.020 through 38.44.060~~)) this chapter, the  
26 commanding officers of existing organizations of militia, and the  
27 chiefs of all police and fire departments shall make and deliver to the  
28 enrolling officer of the county in which such organization and

1 departments are stationed, verified lists in triplicate of the members  
2 of their respective commands and departments, and the enrolling officer  
3 shall mark "Exempt" opposite the names of all persons so listed,  
4 attaching one copy of each such list to each copy of the enrollment.  
5 The enrolling officer shall also mark "Exempt" opposite the names of  
6 all federal, state and county officers. All other persons claiming  
7 exemption must within fifteen days after service upon them of the  
8 notice of enrollment make a written verified claim in duplicate of such  
9 exemption and file the same in the office of the county auditor, who  
10 shall within five days thereafter forward one copy thereof with remarks  
11 and recommendations to the adjutant general. Upon the expiration of  
12 the time within which any claim of exemption may be filed and received  
13 by the adjutant general, the latter shall notify the county auditor of  
14 the decision in each case where exemption has been claimed, and the  
15 county auditor shall write upon the roll opposite the name of each  
16 person whose claim of exemption has been allowed by the adjutant  
17 general, the word "Exempt." All those on the roll not marked "Exempt"  
18 shall be subject to military duty.

19 **Sec. 12.** RCW 38.44.040 and 1989 c 19 s 58 are each amended to read  
20 as follows:

21 If any officer or person, who becomes charged under ((RCW 38.20.040  
22 and 38.44.020 through 38.44.060)) this chapter with any duty relating  
23 to an enrollment of persons subject to military duty, refuses or  
24 neglects to perform the same within the time and substantially in the  
25 manner required by law, or if he or she shall knowingly make any false  
26 certificate, or if, when acting as county or assistant enrolling  
27 officer, he or she shall knowingly or willfully omit from the roll any  
28 person required by ((RCW 38.20.040 and 38.44.020 through 38.44.060))  
29 this chapter to be enrolled he or she shall thereby forfeit not less

1 than one hundred nor more than five hundred dollars, to be sued for in  
2 the name of the state of Washington by the prosecuting attorney of the  
3 county in which such offense shall occur, the amount of the penalty to  
4 be determined by the court, and, when recovered, to be paid into the  
5 ((military)) general fund of the state.

6       **Sec. 13.** RCW 38.44.050 and 1989 c 19 s 59 are each amended to read  
7 as follows:

8       Each county enrolling officer shall be allowed the sum of five  
9 cents per name enrolled and served with notice of enrollment by the  
10 enrolling officer or assistants, to be audited and paid as other  
11 military bills out of any moneys in the ((military)) general fund ((not  
12 otherwise)) appropriated to the military department, and from such  
13 allowance the enrolling officer must pay the assistant or assistants.

14       **Sec. 14.** RCW 38.44.060 and 1989 c 19 s 60 are each amended to read  
15 as follows:

16       All civil officers in each county, city and town shall allow  
17 persons authorized under ((RCW 38.20.040 and 38.44.020 through  
18 38.44.060)) this chapter to make enrollments, at all proper times, to  
19 examine their records and take copies thereof or information therefrom.  
20 It shall be the duty of every person, under the penalties provided in  
21 RCW 38.44.040, upon application of any person legally authorized to  
22 make an enrollment, truthfully to state all of the facts within his or  
23 her knowledge concerning any individual of whom the enroller shall make  
24 inquiry. In event of a violation of this section the enroller shall  
25 report the facts to the prosecuting attorney, who shall at once proceed  
26 to enforce the penalty.