

2005 ASSEMBLY BILL 533

July 5, 2005 – Introduced by Representatives TOWNSEND, HINES, KRAWCZYK, KREIBICH, MUSSER, OTT, OWENS and PETTIS, cosponsored by Senators ZIEN and BRESKE. Referred to Committee on Military Affairs.

1 **AN ACT** *to amend* 20.465 (1) (title), 20.465 (1) (c), 20.465 (1) (g), 21.01 (1), 21.015
2 (1), 21.015 (2), 21.025 (2) (b), 21.025 (2) (c), 21.03, 21.07, 21.09, 21.11 (1), 21.11
3 (2), 21.13 (1), 21.13 (2), 21.18 (5), 21.19 (2), 21.19 (8), 21.20, 21.30, 21.32, 21.35,
4 21.36 (1), 21.36 (2), 21.38, 21.43, 21.47, 21.48 (1), 21.48 (3), 21.59, 102.07 (9),
5 102.475 (1) and 230.35 (3) (a); and *to create* 21.01 (3), 21.18 (1) (em) and 21.18
6 (5m) of the statutes; **relating to:** creating the Wisconsin naval militia and
7 making an appropriation.

Analysis by the Legislative Reference Bureau

Under current law, the Wisconsin national guard is composed of the army and air national guard. Current law also allows the adjutant general to establish and organize a state defense force if the national guard is called into the service of the United States. This bill creates a Wisconsin naval militia, which will be under the control of the adjutant general and will be subject to the same policies and procedures as the other military components. The naval militia's primary purpose under the bill is to respond to natural disasters, state emergencies, and domestic disorders.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.465 (1) (title) of the statutes is amended to read:

2 20.465 (1) (title) NATIONAL GUARD AND NAVAL MILITIA OPERATIONS.

3 **SECTION 2.** 20.465 (1) (c) of the statutes is amended to read:

4 20.465 (1) (c) *Public emergencies.* A sum sufficient to defray all expenditures
5 of the Wisconsin national guard, the Wisconsin naval militia, or the Wisconsin state
6 defense force when either the guard, militia, or defense force is called into state
7 service to meet situations arising from war, riot, natural disaster or great public
8 emergency and in preparation for an anticipated call into state service for these
9 emergencies.

10 **SECTION 3.** 20.465 (1) (g) of the statutes is amended to read:

11 20.465 (1) (g) *Military property.* The amounts in the schedule for rent of
12 state-owned military lands or buildings used by, acquired for or erected for the
13 Wisconsin national guard or other state recognized military force under s. 21.19 (2),
14 for rental of buildings and grounds maintenance equipment owned by the state and
15 required to properly maintain properties supported by state-federal cooperative
16 funding agreements, for the repair and maintenance of state-owned military lands
17 or buildings, for the payment of municipal assessments related to state-owned
18 military property and for the purchase and construction of new military property,
19 real and personal. All moneys received on account of lost military property, from the
20 sale of obsolete or unserviceable military property, from the sale of any state-owned
21 military property, real and personal, under s. 21.19 (3), from the rental of

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1 state-owned housing, or from the provision of housing-related services to military
2 personnel shall be credited to this appropriation.

3 **SECTION 4.** 21.01 (1) of the statutes is amended to read:

4 21.01 (1) The organized militia of this state shall be known as the “Wisconsin
5 national guard” and the “Wisconsin naval militia” and shall consist of members
6 appointed or enlisted therein in accordance with federal law or regulations
7 governing or pertaining to the national guard or to the naval militia.

8 **SECTION 5.** 21.01 (3) of the statutes is created to read:

9 21.01 (3) The Wisconsin naval militia shall consist of members or former
10 members of U.S. naval, coast guard, or marine corps reserve, enlisted or appointed,
11 who also join the Wisconsin naval militia. The members and units of the Wisconsin
12 naval militia while in state service shall be under the command and control of the
13 governor through the adjutant general. Their membership in the Wisconsin naval
14 militia is authorized under the provisions of Title 10 U.S. Code Sections 7851, 7852,
15 and 7854. The primary purpose of the naval militia will be to respond to the call of
16 the governor to support the state of Wisconsin during times of natural disaster, state
17 emergency, domestic disorder, or other public service support missions. The military
18 structure of the units of the naval militia will be established by the adjutant general
19 by military regulation, approved by the governor. The term “naval militia” when
20 used in this chapter will refer to the members and units thus organized and not to
21 the “national guard,” unless the context otherwise requires that interpretation.

22 **SECTION 6.** 21.015 (1) of the statutes is amended to read:

23 21.015 (1) Administer the national guard and the naval militia.

24 **SECTION 7.** 21.015 (2) of the statutes is amended to read:

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1 21.015 (2) Provide facilities for the national guard and the naval militia and
2 any other support available from the appropriations under s. 20.465.

3 **SECTION 8.** 21.025 (2) (b) of the statutes is amended to read:

4 21.025 (2) (b) The governor may form an aviation unit and a naval unit of the
5 state defense force and formulate the rules and regulations therefor and prescribe
6 the duties thereof consistent with the functions of the state defense force.

7 **SECTION 9.** 21.025 (2) (c) of the statutes is amended to read:

8 21.025 (2) (c) Officers and enlistees, while on active duty under orders of the
9 governor, shall receive the base pay and allowances of ~~the~~ their identical pay grade
10 in the United States army.

11 **SECTION 10.** 21.03 of the statutes is amended to read:

12 **21.03 Distribution of arms.** The governor may receive and distribute,
13 according to law, the quota of arms and military equipment which the state may
14 receive from the government of the United States under the provisions of any acts
15 of congress providing for arming and equipping the national guard, the naval militia,
16 and the state defense force.

17 **SECTION 11.** 21.07 of the statutes is amended to read:

18 **21.07 Decorations and awards.** The adjutant general may prescribe
19 decorations and awards for the national guard, the naval militia, and the state
20 defense force, the form and issue thereof made under rules adopted by the adjutant
21 general and approved by the governor.

22 **SECTION 12.** 21.09 of the statutes is amended to read:

23 **21.09 Training; special schools; pay and allowances.** The governor may
24 order the national guard or the naval militia, or both, to assemble for training at any
25 military establishment within or without the state specified and approved by the

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1 department of defense and fix the dates and places thereof, and the governor may
2 order members of the national guard and the naval militia, at their option, to attend
3 such special schools for military training as may be authorized by the state or federal
4 government. For such training and attendance at special schools, members of the
5 national guard and the naval militia shall receive such pay and allowances as the
6 federal government or the governor may authorize.

7 **SECTION 13.** 21.11 (1) of the statutes is amended to read:

8 21.11 (1) In case of war, insurrection, rebellion, riot, invasion or resistance to
9 the execution of the laws of this state or of the United States; in the event of public
10 disaster resulting from flood, conflagration or tornado; in order to assess damage or
11 potential damage and to recommend responsive action as a result of natural or
12 man-made events; or upon application of any marshal of the United States, the
13 president of any village, the mayor of any city, the chairperson of any town board, or
14 any sheriff in this state, the governor may order into active service all or any portion
15 of the national guard or the naval militia. If the governor is absent, or cannot be
16 immediately communicated with, any such civil officer may, if the officer deems the
17 occasion so urgent, make such application, which shall be in writing, to the
18 commanding officers of any company, battalion or regiment, or similar naval militia
19 unit, who may upon approval of the adjutant general, if the danger is great and
20 imminent, order out that officer's command to the aid of such civil officer. Such order
21 shall be delivered to the commanding officer, who shall immediately communicate
22 the order to each, and every subordinate officer, and every company commander or
23 similar naval militia commander receiving the same shall immediately
24 communicate the substance thereof to each member of the company or naval militia
25 unit, or if any such member cannot be found, a notice in writing containing the

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1 substance of such order shall be left at the last and usual place of residence of such
2 member with some person of suitable age and discretion, to whom its contents shall
3 be explained.

4 **SECTION 14.** 21.11 (2) of the statutes is amended to read:

5 21.11 (2) Any commissioned officer or enlisted member of the national guard
6 or the naval militia who fails to carry out orders or fails to appear at the time or place
7 ordered as provided in sub. (1) shall be punished under the Wisconsin code of military
8 justice. Any person who advises or endeavors to persuade an officer or ~~soldier~~
9 enlisted member to refuse or neglect to appear at such place or obey such order shall
10 forfeit not less than \$200 nor more than \$1,000.

11 **SECTION 15.** 21.13 (1) of the statutes is amended to read:

12 21.13 (1) If any state resident who is a member of a national guard of any state,
13 of the naval militia, or of the state defense force is prosecuted by any civil or criminal
14 action for any act performed by the member while in the performance of military duty
15 and in pursuance of military duty, the action against the member shall be defended
16 by counsel, which may include the attorney general, appointed for that purpose by
17 the governor upon the recommendation of the adjutant general. The adjutant
18 general shall make the recommendation if the act performed by the member was in
19 the line of duty. The costs and expenses of any such defense shall be audited by the
20 department of administration and paid out of the state treasury and charged to the
21 appropriation under s. 20.455 (1) (b) and if the jury or court finds that the member
22 of the national guard, the naval militia, or the state defense force against whom the
23 action is brought acted within the scope of his or her employment as a member, the
24 judgment as to damages entered against the member shall also be paid by the state.

25 **SECTION 16.** 21.13 (2) of the statutes is amended to read:

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1 21.13 (2) Any civil action or proceeding brought against a member of a national
2 guard, the naval militia, or the state defense force under sub. (1) is subject to ss.
3 893.82 and 895.46.

4 **SECTION 17.** 21.18 (1) (em) of the statutes is created to read:

5 21.18 (1) (em) An assistant adjutant general for the naval militia who may hold
6 the rank of rear admiral lower half, or brigadier general, depending upon the branch
7 of service.

8 **SECTION 18.** 21.18 (5) of the statutes is amended to read:

9 21.18 (5) The adjutant general shall appoint persons to fill vacancies in
10 positions in the military staff of the governor. ~~Vacancies~~ Except as provided in sub.
11 (5m), vacancies on the military staff of the governor shall be filled by appointment
12 from officers actively serving in the national guard, except as provided in s. 15.31.
13 Interim vacancies shall be filled by appointment by the adjutant general for the
14 residue of the unexpired term.

15 **SECTION 19.** 21.18 (5m) of the statutes is created to read:

16 21.18 (5m) The term of the assistant adjutant general for the navel militia
17 shall be 3 years and may not be conditioned upon current membership in one of the
18 United States armed forces reserves. However, the appointee may be reappointed
19 to successive terms and must currently be either a member of a U.S. reserve
20 component, or have been separated from military service under honorable
21 conditions. The remainder of the military staff of the naval militia shall be
22 established by military regulations promulgated by the adjutant general and
23 approved by the governor.

24 **SECTION 20.** 21.19 (2) of the statutes is amended to read:

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1 21.19 (2) The department of military affairs on behalf of the state may rent to
2 appropriate organizations or individuals state-owned lands, buildings, and facilities
3 used by, acquired for, or erected for the national guard or other state recognized
4 military force, when not required for use by the national guard, or other state
5 recognized military force. Such rental shall not be effective unless in writing and
6 approved by the governor and the adjutant general or a designee in writing.

7 **SECTION 21.** 21.19 (8) of the statutes is amended to read:

8 21.19 (8) The adjutant general or a designee shall issue all necessary supplies
9 to members and units of the national guard, naval militia, or state defense force and
10 may contract for the purchase and transportation of such supplies, subject to s. 16.71
11 (1).

12 **SECTION 22.** 21.20 of the statutes is amended to read:

13 **21.20 Civil service status.** All full-time state-paid employees of the
14 department of military affairs shall be under the classified service, except the
15 adjutant general, the executive assistant to the adjutant general, the deputy
16 adjutants general for army and air, the assistant adjutant general for the naval
17 militia, and the administrator of the division of emergency management.

18 **SECTION 23.** 21.30 of the statutes is amended to read:

19 **21.30 Chief surgeons; powers and duties.** The chief surgeons for army and
20 air shall, under direction of the adjutant general, have general supervision of the
21 medical units of the national guard, the naval militia, and state defense force when
22 organized. The chief surgeons shall make recommendations concerning
23 procurement of medical supplies for state active duty operations, for the
24 procurement and training of medical personnel and for the publication of national
25 guard, naval militia, or state defense force directives on medical subjects. The chief

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1 surgeons shall submit an annual report of the affairs and expenses of their
2 departments to the adjutant general.

3 **SECTION 24.** 21.32 of the statutes is amended to read:

4 **21.32 Physical examinations.** The chief surgeons for army ~~and~~, air, and
5 naval militia shall provide for such physical examinations and inoculations of
6 officers, enlistees, and applicants for enlistment in the national guard and the naval
7 militia, as may be prescribed by department of defense and national guard
8 regulations and, if applicable, naval militia regulations.

9 **SECTION 25.** 21.35 of the statutes is amended to read:

10 **21.35 Federal laws and regulations; no discrimination.** The
11 organization, armament, equipment, and discipline of the national guard and the
12 naval militia shall be that prescribed by federal laws or regulations; and the governor
13 may by order perfect such organization, armament, equipment, and discipline, at
14 any time, so as to comply with such laws and regulations insofar as they are
15 consistent with the Wisconsin code of military justice. Notwithstanding any rule or
16 regulation prescribed by the federal government or any officer or department
17 thereof, no person, otherwise qualified, may be denied membership in the national
18 guard or the naval militia because of sex, color, race, creed, or sexual orientation and
19 no member of the national guard or the naval militia may be segregated within the
20 national guard or the naval militia on the basis of sex, color, race, creed, or sexual
21 orientation. Nothing in this section prohibits separate facilities for persons of
22 different sexes with regard to dormitory accommodations, public toilets, showers,
23 saunas, and dressing rooms.

24 **SECTION 26.** 21.36 (1) of the statutes is amended to read:

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1 21.36 (1) The rules of discipline and the regulations of the armed forces of the
2 U.S. shall, so far as the same are applicable, constitute the rules of discipline and the
3 regulations of the national guard and the naval militia; the rules and uniform code
4 of military justice established by congress and the department of defense for the
5 armed forces shall be adopted so far as they are applicable and consistent with the
6 Wisconsin code of military justice for the government of the national guard and the
7 naval militia, and the system of instruction and the drill regulations prescribed for
8 the different arms and corps of the armed forces of the U.S. shall be followed in the
9 military instruction and practice of the national guard and the naval militia, and the
10 use of any other system is forbidden.

11 **SECTION 27.** 21.36 (2) of the statutes is amended to read:

12 21.36 (2) The governor may make and publish rules, regulations, and orders
13 for the government of the national guard and the naval militia, not inconsistent with
14 the law, and cause the rules, regulations, or orders, together with any related laws,
15 to be printed and distributed in book form, or another form, in any number that the
16 governor considers necessary. The governor may provide for all books and forms that
17 may be necessary for the proper discharge of the duty of all officers. The governor
18 may delegate the authority under this subsection to the adjutant general by
19 executive order.

20 **SECTION 28.** 21.38 of the statutes is amended to read:

21 **21.38 Uniform of Wisconsin national guard.** The uniform of the national
22 guard and the naval militia shall be that prescribed by regulations for the
23 corresponding branch of the United States armed forces. The uniform of the naval
24 militia shall be consistent for all unit members regardless of the branch of service.
25 This requirement shall be made by regulation by the adjutant general.

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1 **SECTION 29.** 21.43 of the statutes is amended to read:

2 **21.43 Commissions and rank.** The governor shall issue commissions to all
3 officers whose appointments are approved by the governor. Every commission shall
4 be countersigned by the secretary of state and attested by the adjutant general and
5 continue as provided by law. Each officer so commissioned shall take and file with
6 the department of military affairs the oath of office prescribed by article IV, section
7 28, of the constitution. All commissioned officers shall take rank according to the
8 date assigned them by their commissions, and when 2 of the same grade rank from
9 the same date, their rank shall be determined by length of service in the national
10 guard and naval militia creditable for pay, and if of equal service then by lot.

11 **SECTION 30.** 21.47 of the statutes is amended to read:

12 **21.47 Examinations for promotion or appointments.** The governor may
13 order any subordinate officer or person nominated or recommended for promotion or
14 appointment in the national guard or naval militia to be examined by any competent
15 officer or board of officers, designated in orders for that purpose, as to that person's
16 qualifications for the office to which that person may be recommended or appointed,
17 and may take such action on the report of such examining officer or board of officers
18 as the governor deems to be for the best interests of the service. The governor may
19 also require the physical examination provided for admission to the United States
20 army ~~or~~, air force, navy, marine corps, or coast guard.

21 **SECTION 31.** 21.48 (1) of the statutes is amended to read:

22 **21.48 (1)** Each officer and enlisted person of the national guard and the naval
23 militia on active duty in the state under orders of the governor on a state pay basis
24 shall receive the base pay and allowances of an officer or enlisted person of equal

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1 rank in the corresponding branch of the U.S. armed forces except that the base pay
2 so provided shall not be less than \$50 per day.

3 **SECTION 32.** 21.48 (3) of the statutes is amended to read:

4 21.48 (3) The governor may order, with their consent, to active duty in the
5 department of military affairs, any departmental officers of the governor's staff,
6 including the adjutant general ~~and~~, the deputy adjutants general, and the assistant
7 to the adjutant general for readiness and training for the naval militia, and while so
8 assigned the officers shall receive the pay, but not the allowances, of an officer of
9 equal grade in the armed forces of the United States.

10 **SECTION 33.** 21.59 of the statutes is amended to read:

11 **21.59 Issue of subsistence.** The adjutant general, during state active duty
12 of the national guard, the naval militia, or state defense force, shall issue subsistence
13 to personnel.

14 **SECTION 34.** 102.07 (9) of the statutes is amended to read:

15 102.07 (9) Members of the national guard, the naval militia, and state defense
16 force, when on state active duty under direction of appropriate authority, but only in
17 case federal laws, rules or regulations provide no benefits substantially equivalent
18 to those provided in this chapter.

19 **SECTION 35.** 102.475 (1) of the statutes is amended to read:

20 102.475 (1) SPECIAL BENEFIT. If the deceased employee is a law enforcement
21 officer, correctional officer, fire fighter, rescue squad member, diving team member,
22 national guard member, naval militia member, or state defense force member on
23 state active duty as described in s. 102.07 (9) or if a deceased person is an employee
24 or volunteer performing emergency management activities under ch. 166 during a
25 state of emergency or a circumstance described in s. 166.04, who sustained an

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1 accidental injury while performing services growing out of and incidental to that
2 employment or volunteer activity so that benefits are payable under s. 102.46 or
3 102.47 (1), the department shall voucher and pay from the appropriation under s.
4 20.445 (1) (aa) a sum equal to 75% of the primary death benefit as of the date of death,
5 but not less than \$50,000 to the persons wholly dependent upon the deceased. For
6 purposes of this subsection, dependency shall be determined under ss. 102.49 and
7 102.51.

8 **SECTION 36.** 230.35 (3) (a) of the statutes is amended to read:

9 230.35 **(3)** (a) Officials and employees of the state who have permanent status
10 and who are members of the national guard, the naval militia, the state defense force,
11 or any other reserve component of the military forces of the United States or this
12 state now or hereafter organized or constituted under federal or state law, are
13 entitled to leaves of absence without loss of time in the service of the state, to enable
14 them to attend military schools and annual field training or annual active duty for
15 training, and any other state or federal tours of active duty, except extended active
16 duty or service as a member of the active armed forces of the United States which
17 have been duly ordered but not exceeding 30 days, excluding Saturdays, Sundays
18 and holidays enumerated in sub. (4) in the calendar year in which so ordered and
19 held. During this leave of absence, each state official or employee shall receive base
20 state pay less the base military pay received for and identified with such attendance
21 but such reduction shall not be more than the base state pay. Other than for a leave
22 of absence for the adjutant general and any deputy adjutants general, such leave
23 shall not be granted for absences of less than 3 days. A state official or employee
24 serving on state active duty as a member of the national guard, naval militia, or state
25 defense force, may elect to receive pay from the state under s. 20.465 (1) in an amount

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1 equal to base state salary for such period of state active duty. Leave granted by this
2 section is in addition to all other leaves granted or authorized by any other law. For
3 the purpose of determining seniority, pay or pay advancement and performance
4 awards the status of the employee shall be considered uninterrupted by such
5 attendance.

6 **SECTION 37. Appropriation changes.**

7 (1) NAVAL MILITIA. In the schedule under section 20.005 (3) of the statutes for
8 the appropriation to the department of military affairs under section 20.465 (1) (a)
9 of the statutes, as affected by the acts of 2005, the dollar amount is increased by \$-0-
10 for fiscal year 2005-06 and the dollar amount is increased by \$-0- for fiscal year
11 2006-07 to fund the costs for operating the naval militia.

12 (2) NAVAL MILITIA. In the schedule under section 20.005 (3) of the statutes for
13 the appropriation to the department of military affairs under section 20.465 (1) (g)
14 of the statutes, as affected by the acts of 2005, the dollar amount is increased by \$-0-
15 for fiscal year 2005-06 and the dollar amount is increased by \$-0- for fiscal year
16 2006-07 to fund the costs for the rent of properties used by the naval militia.

17 (END)